

Ordinary Council Meeting Minutes

28 September 2021



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01. OPENING OF ORDINARY MEETING

MINUTES of the ORDINARY MEETING of the CLARENCE VALLEY COUNCIL at Council Chambers, Maclean, 28 September 2021 commencing at 2.00pm and closing at 5.14pm.

OPENING PRAYER – The opening prayer was said by the Mayor.

ACKNOWLEDGEMENT OF THE TRADITIONAL CUSTODIANS OF THE LAND

I acknowledge the traditional custodians of these lands on which this meeting is taking place and pay tribute and respect to the Elders both past and present of the Bundjalung, Gumbaynggirr and Yaegl nations which lie within the Council boundaries.

ANNOUNCEMENT

All present are advised that this meeting is being broadcast live and audio recorded. Your attendance at this meeting is your acceptance that your image may be recorded and streamed to the internet as well as being retained in the archive of the record of the Council meeting.

Speakers are asked not to make insulting or defamatory statements and to take care when discussing other people's personal information. No other persons are permitted to record the meeting unless specifically authorised by Council to do so.

STATEMENT BY THE MAYOR

The Mayor apologised to Cr Toms and fellow Councillors for giving incorrect information on the Code of Meeting Practice at the August Council meeting regarding the number of questions that can be asked on an item.

MEMBERS

Cr Jim Simmons (Mayor), Cr Jason Kingsley (Deputy Mayor), Cr Andrew Baker, Cr Peter Ellem, Cr Debrah Novak, Cr Greg Clancy, Cr Arthur Lysaught, Cr Karen Toms and Cr Richie Williamson

PRESENT

General Manager (Ashley Lindsay), Director Corporate & Governance (Laura Black), Director Environment & Planning (Adam Cameron), Director Works & Civil (Jamie Fleeting) and Minutes Secretary (Lesley McBay).

02. APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE – Nil**03. DISCLOSURES AND DECLARATIONS OF INTEREST – 03.21.008****Declarations received at the commencement of and during the Ordinary Meeting**

<i>Name</i>	<i>Item</i>	<i>Interest/Action</i>
Ashley Lindsay	05.21.009	Pecuniary - Leave the meeting Relates to my employment with Council
Laura Black	05.21.009	Pecuniary - Leave the meeting As the report and recommendation relates to appointment and remuneration of myself.
Ashley Lindsay	05.21.010	Pecuniary - Leave the meeting Relates to my employment with Council
Ashley Lindsay	05.21.011	Pecuniary - Leave the meeting Relates to my employment with Council

<i>Name</i>	<i>Item</i>	<i>Interest/Action</i>
Cr Novak	6a.21.046	Pecuniary - Leave the meeting Is an applicant for a DA.
Adam Cameron	6a.21.045	Significant Non-Pecuniary - Leave the meeting A builder identified on the petition is constructing a residential dwelling for me.
Cr Toms	6a.21.044	Non-Significant Non-Pecuniary - Remain in the meeting Director of Contract Manager of Iluka Riverside Holiday Park on Crown Land

Declarations received at the Committee meetings

<i>Name</i>	<i>Item</i>	<i>Interest/Action</i>
Cr Toms	6b.21.073	Non-Significant Non-Pecuniary - Remain in the meeting Director of JKT & Sons contract Managers of Iluka Riverside Holiday Park – one of the Crown reserves in the application.
Cr Novak	6b.21.069	Significant Non-Pecuniary - Leave the meeting Children own property across the road that will be impacted by the DA

04. CONFIRMATION OF MINUTES**COUNCIL RESOLUTION – 04.21.008**

Lysaught/Baker

That the Minutes of the Ordinary Meeting of Council dated 24 August 2021, copies of which have been circulated, be taken as read and be confirmed.

Voting recorded as follows:

For: Simmons, Baker, Lysaught, Ellem, Williamson, Clancy, Kingsley, Toms, Novak

Against: Nil

5. MAYORAL MINUTES

ITEM	05.21.009	RESIGNATION – GENERAL MANAGER AND APPOINTMENT OF ACTING GENERAL MANAGER
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Meeting	Council	28 September 2021
Directorate	Mayoral Minute	
Submitted by	Cr Jim Simmons	
Attachment	Yes	

SUMMARY

This Mayoral Minute provides Councillors with an update and confirms the General Manager's plan for transition to retirement.

PROPOSED MOTION

That Council:

1. Note, the General Manager Ashley Lindsay's, plan for transition to retirement by taking leave, effective 4pm 26 November 2021 and concluding at 5pm 7 October 2022.
2. Accept, the General Manager Ashley Lindsay's, resignation, effective Friday 7 October 2022.
3. Appoint Council's Director Corporate & Governance, Laura Black to the temporary position of Acting General Manager effective 4pm 26 November 2021, under s351 of the Local Government Act 1993, for the period of the General Manager Ashley Lindsay's leave, and up to a period of no more than twelve (12) months or until such time as a General Manager is appointed.
4. Note, the appointment of the Acting General Manager is at the General Manager's TRP of \$305,298.30 with full accountability for assessment over the period against the requirements of the General Manager's 2021/2022 Performance Plan.
5. Note, responsibility for recruitment and appointment of a General Manager is that of the incoming Council elected 4 December, and that the appointment takes effect after the General Manager's resignation date of 7 October 2022.

Having declared an interest in this item, Ashley Lindsay and Laura Black left the Council meeting at 2.06pm. Ms Black returned at 3.03pm

COUNCIL RESOLUTION – 05.21.009

Mayor Simmons

That Council:

1. Note, the General Manager Ashley Lindsay's, plan for transition to retirement by taking leave, effective 4pm 26 November 2021 and concluding at 5pm 7 October 2022.
2. Accept, the General Manager Ashley Lindsay's, resignation, effective Friday 7 October 2022.
3. Appoint Council's Director Corporate & Governance, Laura Black to the temporary position of Acting General Manager effective 4pm 26 November 2021, under s351 of the Local Government Act 1993, for the period of the General Manager Ashley Lindsay's leave, and up to a period of no more than twelve (12) months or until such time as a General Manager is appointed.
4. Note, the appointment of the Acting General Manager is at the General Manager's TRP of \$305,298.30 with full accountability for assessment over the period against the requirements of the General Manager's 2021/2022 Performance Plan.
5. Note, responsibility for recruitment and appointment of a General Manager is that of the incoming Council elected 4 December, and that the appointment takes effect after the General Manager's resignation date of 7 October 2022.

Voting recorded as follows:

For: Simmons, Williamson, Baker, Lysaught, Kingsley
Against: Ellem, Novak, Toms, Clancy

CARRIED

AMENDMENT TO MOTION - DECLARED LOST

Novak/Toms

That Council amend points 3, 4 and 5 as written

1. ~~Note, the General Manager Ashley Lindsay's, plan for transition to retirement by taking leave, effective 4pm 26 November 2021 and concluding at 5pm 7 October 2022.~~
2. ~~Accept the General Manager, Ashley Lindsay's, resignation effective Friday 7 October 2022.~~
3. Employ a locum General Manager for the position of Acting General Manager of Clarence Valley Council until the General Manager vacancy is filled.
4. Budget allocation for this to come from the same budget the Mayor was intending to use.
5. Note, the responsibility for the recruitment and appointment of a General Manager is that of the incoming Council elected on 4 December, 2021.

Voting recorded as follows:

For: Clancy, Ellem Novak Toms

Against: Simmons, Lysaught, Williamson Baker, Kingsley

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

The General Manager's transition to retirement and impending resignation have been discussed previously by Council when entering into the current senior executive staff contract period and the matter was again discussed at the General Manager's 2020/2021 Annual Assessment held 17 August 2021.

I have approved the General Manager's transition to retirement plan for leave effective 4pm Friday 26 November 2021 and table his resignation effective 7 October 2022 for acceptance by the Council (attached).

Ashley Lindsay has been Clarence Valley Council's General Manager since July 2017. Mr Lindsay became General Manager during a time of difficult decisions for Clarence Valley Council. His finance background placed us in good stead to meet our goals for financial sustainability, while introducing robust planning for future service delivery. Rationalisation of Council's administration buildings and depots is of particular note, which I know also caused a lot of staff unrest and Mr Lindsay had to guide Council through that period and in recent years through the many disasters Council and the Community have faced from drought to bushfire to flood and now COVID-19. Mr Lindsay has provided steady leadership that now places the organisation in an opportunistic position to refine and improve its service delivery for customers. It has been my pleasure to work alongside Ashley during this time.

I also seek Council's endorsement of the appointment of the Director Corporate & Governance, Laura Black, as the Acting General Manager for the duration of the General Manager's leave and up to a period of no more than twelve (12) months as is provided for under section 351 of the Local Government Act 1993.

In the period of the General Manager's recent absence, Ms Black acted in the role of General Manager and led and progressed a significant number of key projects for which the General Manager is responsible including securing the Water Licence and acquisition from Essential Energy of the Nymboida Hydro Power station infrastructure, implementation of the recently adopted organisational structure, recruitment of the Director Environment & Planning, the upgrade and implementation of the Enterprise Asset Management System, the Calypso Holiday Park development and Yaegl Traditional Owners ILUA discussions. Ms Black has also dealt with and resolved a number of outstanding customer complaints and enquiries as has been noted by individual councillors via email and I am advised managed some significant operational challenges as well. Ms Black has formal qualifications in Social Sciences, Planning and Business Administration and as such is well qualified to hold the position over an extended period. I believe, Laura will progress the organisation toward its goals and will provide stability for the staff body and the organisation as it welcomes in a new Council. The General Manager's Performance Plan will become the responsibility of the Acting

General Manager and performance against it during the period of appointment should be assessed by the new Council at six (6) and twelve (12) months. Under Laura's guidance and Ashley's before her we have a professional and capable executive team and I believe the Council will do well into the future.

Recruitment, selection and appointment of the next General Manager is the responsibility of the newly elected Mayor and Council. I note from experience the recruitment process does take quite some time.

ITEM	05.21.010	APPOINTMENT OF LOCAL GOVERNMENT MANAGEMENT SOLUTIONS TO FACILITATE THE GENERAL MANAGER'S PERFORMANCE ASSESSMENTS 2021/2022
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Meeting	Council	28 September 2021
Directorate	Mayoral Minute	
Submitted by	Cr Jim Simmons	
Attachment	Confidential	

SUMMARY

This Mayoral Minute is tabled in accordance with the Office of Local Government's Guidelines for the appointment and oversight of General Managers issued under s23A of the Local Government Act, which states:

"The governing body of council and the general manager may agree on the involvement of an external facilitator to assist with the process of performance appraisal and the development of new performance plans."

PROPOSED MOTION

That Local Government Management Solutions be appointed to facilitate the General Manager's 2021/2022 performance assessments.

Mr Lindsay was not present during this item.

COUNCIL RESOLUTION – 05.21.010

Mayor Simmons

That Local Government Management Solutions be appointed to facilitate the General Manager's 2021/2022 performance assessments.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Novak, Williamson, Lysaught, Toms

Against: Clancy

CARRIED

FORESHADOWED MOTION

Clancy

That this item be deferred to the new Council to determine the facilitator.

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

The Office of Local Government's Guidelines for the appointment and oversight of General Managers provides that:

"council's governing body is to establish a performance review panel and delegate the task of performance reviews of the general manager to this panel.

It is recommended that the whole process of performance management be delegated to the performance review panel, including discussions about performance, any actions that should be taken and the determination of the new performance agreement.

Performance review panels should comprise the mayor, the deputy mayor, another councillor nominated by council and a councillor nominated by the general manager. The council's governing body may also consider including an independent observer on the panel.

The governing body of council and the general manager may agree on the involvement of an external facilitator to assist with the process of performance appraisal and the development of new performance plans. This person should be selected by the governing body of council or the performance review panel."

The relationship between the council, particularly the mayor and the general manager is critical to the effective administration of the organisation and delivery of a quality service to the community.

For over 25 years Local Government Management Solutions (LGMS) has been assisting councils with the requirements under clause 23A of the *NSW Local Government Act (1993)* through the Director General's guidelines for the Appointment and Oversight of General Managers. In NSW an annual performance review of the General Manager is a statutory requirement under the terms and conditions of the standard General Manager Contract (2006).

LGMS are leaders in positive performance review facilitation for local government senior staff.

LGMS provides a professionally managed performance review facilitation service to ensure an objective accountable process including constructive feedback to the General Manager.

LGMS also conduct workshops for Councillors on the General Manager performance review process.

A confidential copy of the LGMS fee proposal is attached to this Mayoral Minute.

ITEM 05.21.011 GENERAL MANAGER'S ANNUAL PERFORMANCE ASSESSMENT 2020/2021

Meeting	Council	28 September 2021
Directorate	Mayoral Minute	
Submitted by	Cr Jim Simmons	
Attachment	Yes plus Confidential	

SUMMARY

This Mayoral Minute is tabled in accordance with the Office of Local Government's Guidelines for the appointment and oversight of General Managers issued under s23A of the Local Government Act, which states:

"The panel should report back to the governing body of council in a closed session the findings and recommendations of its performance review as soon as practicable following any performance review. This should not be an opportunity to debate the results or re-enact the performance review of the general manager."

PROPOSED MOTION

That:

1. The General Manager's 2020/2021 annual Performance Assessment be noted.
2. Council note the Strategic and Operational Objectives against which the General Manager's Performance Agreement will be assessed for 2021/22.

Mr Lindsay was not present during this item.

COUNCIL RESOLUTION – 05.21.011

Mayor Simmons

That:

1. **The General Manager's 2020/2021 annual Performance Assessment be noted.**
2. **Council note the Strategic and Operational Objectives against which the General Manager's Performance Agreement will be assessed for 2021/22.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Williamson, Lysaught

Against: Toms, Clancy, Novak

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

The General Manager's annual performance assessment for 2020/21 was conducted in accordance with the General Manager's Contract of Employment and the Performance Management – General Manager Policy, adopted by Council in October 2018. The assessment was facilitated by LG Management Solutions, Council's contract supplier of this service.

The General Manager's Performance Review Panel comprises the Mayor Cr Simmons, Deputy Mayor Cr Kingsley, Cr Williamson and Cr Ellem. Councillors who are not on the panel were invited to provide feedback on the General Manager's performance prior to the assessment. Two Councillors who are not members of the Panel provided feedback, which was discussed and considered as part of the assessment. The annual Performance Assessment was facilitated by Christian Morris from LGNSW - Management Solutions and was conducted on Tuesday, 17 August 2021.

Overall, the Panel is more than satisfied with the performance of the General Manager, acknowledging performance above expectations in many areas. Throughout the difficulties of 2020/2021, the General Manager has demonstrated leadership in ensuring the organisation continues to deliver against its Operational Plan while also delivering significantly more capital outcomes relating to the additional funding received in the period, than was projected in the original budget.

The General Manager's Performance Review Panel is satisfied the annual Performance Assessment is complete. A confidential copy of the Annual Performance Assessment with aggregated ranking is attached.

The GM Performance Review Panel has agreed the Strategic and Operational Objectives of the Performance Contract for 2021/22, which include:

- 7.1 Financial Sustainability
- 7.2 Asset Management – implementation of the Enterprise Asset Management system
- 7.3 Financial Management
- 7.4 Community Engagement/Consultation
- 7.5 Major Project Delivery
- 7.6 Corporate System Development – Ci-Anywhere implementation
- 7.7 Corporate Performance – Establish Service Review Framework
- 7.8 Governance & Induction of the new Council.

A copy of Part 3 of the document is attached for the information of Councillors.

MOTION

Williamson/Lysaught

That speaking for/against the motion and right of reply be limited to 3 minutes for the remainder of the meeting.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Novak, Williamson, Lysaught, Toms

Against: Ellem, Clancy

Mr Lindsay returned to the Council meeting at 3.57pm.

6. REPORTS**a. GENERAL MANAGER****ITEM 6a.21.041 ELECTION OF DEPUTY MAYOR**

Meeting	Council	28 September 2021
Directorate	General Manager	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

SUMMARY

The Deputy Mayor's 12 month term ends at the end of September 2021 and Council is now required to determine if it will again elect a Deputy Mayor. If Council resolves in the affirmative to elect a Deputy Mayor this report deals with the election for the period from September 2021 until the next Local Government elections which are currently scheduled for 4 December 2021 or for the next 12 months (whichever is first).

OFFICER RECOMMENDATION

That:

1. Council resolve to elect a Deputy Mayor for the period until the next Local Government elections are held or for the next 12 months (whichever is first),

And in the event that Council resolves Recommendation 1 in the affirmative,

2. The General Manager, as Returning Officer, call for nominations for the election of Deputy Mayor, on the nomination form attached to the report.
3. In the event there is more than one nomination, the Council determine the form of ballot to be used to elect the Deputy Mayor.

COUNCIL RESOLUTION – 6a.21.041

Williamson/Ellem

That:

1. Council elect a Deputy Mayor for the period until the next Local Government elections are held or for the next 12 months (whichever is first),

And in the event that Council resolves Recommendation 1 in the affirmative,

2. The General Manager, as Returning Officer, call for nominations for the election of Deputy Mayor, on the nomination form attached to the report.
3. In the event there is more than one nomination, the Council determine the form of ballot to be used to elect the Deputy Mayor.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

MOTION

Toms/Baker

That open voting be the method of ballot to be used.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Clancy, Ellem, Novak, Williamson, Lysaught, Toms

Against: Nil

Nominations received as follows:

Cr Kingsley – Simmons/Lysaught Voting: Kingsley, Simmons, Williamson, Baker, Lysaught
Cr Toms – Novak/Clancy Voting: Toms, Ellem, Novak, Clancy

Cr Kingsley was declared as Deputy Mayor on a vote of 5/4.

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership
Objective 5.1 We will have a strong, accountable and representative Government
Strategy 5.1.7 Undertake the civic duties of Council in an ethical manner

BACKGROUND

The term of a Deputy Mayor is not prescribed by the Local Government Act, however due to the COVID-19 pandemic the Office of Local Government have instructed councils to hold an election for a deputy mayor if the deputy mayor's term has expired.

Council received a circular from the Office of Local Government dated 13 August 2021 giving instructions on Mayoral and Deputy Mayoral elections. The circular states that the civic offices of all mayors will expire on election day on 4 December 2021. However, if a deputy mayor's term expires before election day then an election may need to be held, noting that councils are not required to have a deputy mayor.

On 22 September 2020, Council held an Extraordinary Meeting where the Deputy Mayor was elected at Item 6a.20.020 as follows:

Following the ballot the Returning Officer declared Councillor Kingsley on a count of 7 votes to 1 was elected Deputy Mayor for the ensuing year until September 2021.

KEY ISSUES

Section 231 of the Local Government Act states:

1. *The councillors may elect a person from among their number to be the deputy mayor.*
2. *The person may be elected for the mayoral term or a shorter term.*
3. *The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.*
4. *The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.*

The Local Government Act does not specify the method of voting for the Deputy Mayor. However, as a guide a brief summary of the regulation for Mayoral elections is as follows.

Any nominations prepared prior to the meeting must be handed to the General Manager in his capacity as Returning Officer for the election. Nomination forms are included in the attachments.

If there is more than one candidate nominated, an election is necessary and Council must decide whether the election will be by:

- A Ordinary Ballot
- B Preferential Ballot
- C Open Voting

COUNCIL IMPLICATIONS

Budget/Financial

The Deputy Mayor's allowance is currently \$7,140 which is funded from the Mayoral Allowance for 2021/22 of \$61,280 (refer Item 6c.21.075 June 2021 Council meeting).

Asset Management

N/A

Policy or Regulation

Local Government Act

[OLG Circular 21-24, 13 August 2021, A784280](#)**Consultation**

N/A

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Lesley McBay, Coordinator Executive Support
Attachment	Nomination Form

ITEM	6a.21.042	NOMINATION OF VOTING DELEGATES FOR LGNSW ANNUAL CONFERENCE AND BOARD ELECTIONS
Meeting	Council	28 September 2021
Directorate	Office of General Manager	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

SUMMARY

As a result of COVID constraints and the further postponement of local government elections, Local Government NSW (LGNSW) will be holding an online Annual Conference for one hour commencing 9.30am on 29 November 2021. This report is seeking 4 delegates from Clarence Valley Council to vote at the annual conference and also the LGNSW Board elections.

OFFICER RECOMMENDATION

That Council nominate 4 Councillors as voting delegates for the LGNSW Board elections and the LGNSW Annual Conference to be held online on 29 November 2021.

COUNCIL RESOLUTION – 6a.21.042

Williamson/Ellem

That the Mayor and Crs Toms, Novak and Clancy be nominated as voting delegates for the LGNSW Board elections and the LGNSW Annual Conference to be held online on 29 November 2021.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.5 Represent our community at Regional, State and Federal levels

BACKGROUND

LGNSW have advised that in order to meet legislative obligations they must hold an Annual Conference in this calendar year where their Financial Statements and the Annual Report will be presented.

While the Special Conference will incorporate the debate and resolution of motions and a range of keynote speakers, the Annual Conference online event will be limited to the adoption of standing orders, along with reports from the President and Treasurer.

The LGNSW invitation is attached (refer Attachment A).

The timetable for the LGNSW Board elections which will be conducted by Postal Ballot commencing 27 October 2021 is attached (refer Attachment B).

KEY ISSUES

Separate from Conference registration, councils must advise LGNSW of the name(s) of their nominated voting delegates for both the Annual Conference and LGNSW Board election by 5pm (AEDT) on Tuesday, 5 October 2021.

The number of delegates that each council has is determined in accordance with Rule 23 of the LGNSW Association Rules. Clarence Valley Council is allocated 4 voting delegates. All delegates must be Councillors.

The Annual Conference Business Paper is expected to be available on the LGNSW website and forwarded to members (in electronic format) approximately two weeks prior to the Conference.

COUNCIL IMPLICATIONS**Budget/Financial**

There is no cost associated with this online meeting.

Asset Management

N/A

Policy or Regulation

N/A

Consultation

N/A

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Lesley McBay, Coordinator Executive Support
Attachment	A - LGNSW Annual Conference Invite B - Letter from AEC regarding LGNSW Board Elections

ITEM	6a.21.043	CREATE THE TREELANDS DRIVE COMMUNITY HUB IN YAMBA AND MACLEAN COMMUNITY PRECINCT (PHASE 1) DETAILED DESIGNS TENDER DELEGATION
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Meeting	Council	28 September 2021
Directorate	Works & Civil	
Reviewed by	Director - Works & Civil (Jamie Fleeting)	
Attachment	Nil	

SUMMARY

This report is seeking Council's delegation to the General Manager to accept open tenders for the engagement of professional services to prepare detailed designs for the 'Create the Treelands Drive Community Hub in Yamba' and 'Maclean Community Precinct (Phase 1)' projects.

OFFICER RECOMMENDATION

That Council:

1. Under S377 of the Local Government Act delegate to the General Manager to accept open tenders for professional services for the detailed designs for the 'Create the Treelands Drive Community Hub in Yamba' and 'Maclean Community Precinct (Phase 1)' projects.
2. Receive a report back to the November 2021 Council meeting with the outcome of the detailed design tender process for both projects.

COUNCIL RESOLUTION – 6a.21.043

Williamson/Lysaught

That Council:

1. **Under S377 of the Local Government Act delegate to the General Manager to accept open tenders for professional services for the detailed designs for the 'Create the Treelands Drive Community Hub in Yamba' and 'Maclean Community Precinct (Phase 1)' projects.**
2. **Receive a report back to the November 2021 Council meeting with the outcome of the detailed design tender process for both projects.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure

Strategy 2.1.4 Manage and enhance our parks, open spaces and facilities

BACKGROUND

Council received funding for the following projects under the Bushfire Local Economic Recovery (BLER) Fund as follows –

1. Create the Treelands Drive Community Hub in Yamba – (\$11,107,882 BLER-0094) with \$2,079,058 Council contribution that includes demolition of the existing community centre, new library, play space, art space, youth hub, carparking, landscaping and capability to operate as an emergency operations centre.
2. Maclean Community Precinct (Phase 1) – (\$4,997,000 fully funded by BLER-0093) that includes demolition of 48 River Street, refurbishment of the Civic Hall, multi-purpose meeting room/s and landscaping works.

Both projects are required to be completed by June 2023 and are at concept planning stage of development. Council has undertaken a project review and risk analysis on both projects that identified a need to proceed in a timely manner with engagement of professional services for detailed design.

KEY ISSUES

The delegation to the General Manager to determine tenders to engage professional services for the detailed design is sought for the following reasons –

1. Both projects are due for completion to meet funding deadlines by June 2023.
2. The projects are still at the concept planning stages with significant stakeholder engagement required to advance this preliminary work to detailed design to enable a further tender to be awarded by June 2022 for the construction works. The preliminary program requires early engagement of professional services to then allow a 12 month construction program for both projects.
3. The upcoming local government elections on 4 December 2021 and related caretaker period, limits opportunities for tenders greater than \$150,000 or 1% of the Council's revenue from rates in the preceding financial year (whichever is the larger), to be determined by Council being only to either the October 2021 Ordinary meeting, or after the election to the February 2022 Ordinary meeting, or at an Extraordinary meeting if called out of the caretaker period or after the election.
4. The detailed design open tender is scheduled to be released on 23 September and close on 15 October (minimum 21 days as per the Regulation) and limited time for tender evaluation before business papers close for the October Ordinary Council meeting.
5. Additional time given to tenderers will provide tenderers with the opportunity to provide a fully considered tender offer for professional services and is expected to achieve better value for money through the tendering process.
6. The additional time will provide for contingency to ensure the tender evaluation is properly completed. It is not uncommon during the assessment of tenders that additional time is required to ensure conformance and for any qualifications and departures to be removed/resolved.

The stakeholder engagement and detailed design phase is required to commence late 2021 and be completed by February 2022 to enable construction tenders to be released and reported to Council by May/June 2022.

In summary the current indicative timeframes for the Detailed Design tender process is as follows –

1. Detailed Design tender release – Thursday 23 September 2021
2. Detailed Design tenders close – Friday 15 October 2021
3. Tender Evaluation – Monday 18-20 October 2021
4. Tender Reports completed and Business Papers Close – Wednesday 20 October 2021
5. Tender Report Considered at Council - 26 October 2021.

Additional time is sought to enable steps 2 and 3 to be met and completed by both tenderers and Council staff.

COUNCIL IMPLICATIONS

Budget/Financial

The Create the Treelands Drive Community Hub in Yamba project is funded by \$11,107,882 BLER-0094 with \$2,079,058 Council contribution for a total project value of \$13,186,940.

The Maclean Community Precinct (Phase 1) project received \$4,997,000 being fully funded by BLER funds.

Asset Management

N/A

Policy or Regulation

- *NSW Local Government Act*
- *NSW Local Government (General) Regulation*
- *Council Report July Ordinary Council resolution [6a.21.033]*

Consultation

Consultation to develop the concept plans took place, however feedback and recent representations received for various user groups and individuals are requesting further input into the detailed design of both projects.

The need to award a tender for the engagement of professional services to commence the detailed design is a priority.

Legal and Risk Management

S377 of the Local Government Act states that –

a council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the Council under this or any other Act, other than the following—

a-h

i the acceptance of tenders to provide services currently provided by members of staff of the council,

j-u

The professional services sought under the detailed design tender for the projects are not provided or able to be performed by members of staff of Council. The delegation only allows the General Manager to accept tenders not to negotiate or cancel a tender.

Council is required to seek tenders in accordance with the Local Government Regulations for any value over \$250,000. Both projects detailed designs are anticipated to exceed this threshold.

During the caretaker period before the Council elections in December, Council cannot enter into any contract or undertaking involving an expenditure or receipt by the Council of an amount equal to or greater than \$150,000 or 1% of the Council's revenue from rates in the preceding financial year (whichever is the larger).

Climate Change

N/A

Prepared by	Peter Birch, Manager Open Spaces and Facilities
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ITEM	6a.21.044	BROOMS HEAD HOLIDAY PARK PLAN OF MANAGEMENT TO INCLUDE TRANSITIONAL SITES ON CROWN LAND
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Meeting	Council	28 September 2021
Directorate	General Manager	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

SUMMARY

This report is providing an update on progress with implementation of the resolution of the August 2021 meeting [Item 6c.21.100] which includes preparation of a draft Plan of Management that provides for the continuation of transitional camping at Brooms Head Holiday Park under conditions by September 2021.

OFFICER RECOMMENDATION

That Council note the delay with progressing resolution 6c.21.100 made at the August 2021 Ordinary meeting, pending legal advice.

COUNCIL RESOLUTION – 6a.21.044

Toms/Novak

That Council note the delay with progressing resolution 6c.21.100 made at the August 2021 Ordinary meeting, pending legal advice.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure

Strategy 2.1.4 Manage and enhance our parks, open spaces and facilities

BACKGROUND

At the meeting on August 2021, Council considered a report on transitional camping at Brooms Head Holiday Park [Item 6c.21.100], and resolved:

That Council receive at the September Meeting, and following consultation with the current registered traditional/transitional campers or their nominated representative and an inspection by those Councillors who wish to attend at the site prior to the September meeting, a report including a draft Plan of Management that includes:

1. *continuation of the relevant current natural attrition principle components of 1987 Plan of Management and,*
2. *options for improvement of public access to and amenity of the foreshore area together with greater park management efficiency by:*
 - a. *the agreed aggregation of remainder sites and,*
 - b. *the priority offer from time to registered traditional/transitional campers of acceptable alternative sites.*

KEY ISSUES

The August resolution has raised the issue of lawfulness to implement the resolution and to that end legal advice is being sought on a number of matters including:

Preparing a Plan of Management (PoM)

Council has sought to re-classify its Holiday Park reserves and has been advised by Crown Lands that the classification of caravan/tourist parks is on hold pending a departmental policy position on the future management of caravan and tourist parks. A copy of the advice received is attached. Also attached, is a copy of a presentation provided to staff highlighting the issues currently being considered by Crown Lands in relation to caravan and tourist parks.

Whether a PoM is required or not will depend on the 'classification' of the land under the *Local Government Act 1993* and until the Department releases a policy directive on the classification of Crown caravan/tourist parks there is no guidance from Crown Lands on the preparation of a PoM.

Lawfulness of Use with Plan of Management over Community Land

The principal issue at the centre of the classification of caravan/tourist park matter is the alienation of 'community' land for personal use – Permanent and long-term residents of caravan/tourist parks have exclusive use of the land on which they reside. Similarly, transitional campers have the exclusive use of a particular campsite for a particular period of time each year. This 'exclusivity' is different to a booking system that would allow various people to book the same spot each year. Implication here is that this 'exclusivity' may not be able to be written into a PoM if land was classified as 'community' land.

Lawfulness of whether the allowance for transitional camping sites within the Holiday Park needs to be specified on the s68 approval to operate the holiday park or not

A s68 Approval to operate a caravan/camping ground is a legislative requirement under the *Local Government Act 1993*. The matters that must be specified on the Approval are detailed under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*. It is a legislative requirement that the number of long and short-term sites (and the number of sites reserved for self-contained moveable dwellings) are listed on the Approval (cl. 72). However, it is not clear under the legislation that there is also a legal requirement to include the number of campsites or sites that may be used for special circumstances, including the current transitional camping arrangements. The transitional sites are not accommodated under the existing number of campsites identified or under the total number of sites on the Approval. The transitional sites are within the overall area identified as being the holiday park area within Lot 2 DP 1095139 however they are not sites per se that are available to be booked by any other visitor to the park.

As legal advice has been sought regarding lawfulness of the resolution, neither consultation with current transitional campers nor an onsite inspection by Councillors has been progressed.

COUNCIL IMPLICATIONS

Budget/Financial

Some legal costs will be incurred to seek the advice on the lawfulness of resolution 6c.21.100, with these costs being funded from within the adopted operational plan and budget for 2021/22.

Asset Management

N/A

Policy or Regulation

- *Crown Land Management Act 2016*
- *Local Government Act 1993*
- *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- *Native Title Act 1993 (Cth)*

Consultation

No further consultation has taken place at this time until legal advice is sought and considered.

Legal and Risk Management

A brief was provided to seek legal advice on the lawfulness of the resolution and that advice has not yet been finalised. It is anticipated that the advice will be provided to Council at the October 2021 Ordinary meeting.

Climate Change

N/A

Prepared by	Ashley Lindsay, General Manager
Attachment	A – Crown Lands advice regarding re-classification of Crown Land including caravan/tourist parks. B – Crown Lands presentation on <i>Categorisation & classification of caravan parks on Crown reserves (managed by Council Crown land managers)</i>

ITEM	6a.21.045	PETITION – RIVER BREEZE ESTATE – CLEARWATER CLOSE AND IBIS COURT, GRAFTON
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Meeting	Council	28 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes plus Confidential Attachment	

SUMMARY

<i>Developer</i>	Sticklip Pty Ltd
<i>Address</i>	Clearwater Close and Ibis Court, Grafton

Development Application SUB2006/0073 was approved under delegated authority on 11 October 2006 for a 14 Lot Subdivision with new road, at Clearwater Close and Ibis Court, Grafton. This subdivision is known as River Breeze Estate.

Council has recently been informed of alleged subsidence of fill material resulting in the alleged movement/cracking of foundations/concrete slabs, tiles and other construction materials for several residential lots within Stage 4 of the estate.

The residents of the affected lots have submitted a Petition to Council requesting a community meeting with Council to discuss and address the residents' concerns.

This report presents the Petition to Council.

OFFICER RECOMMENDATION

That Council note the Petition received calling on Council to convene a community meeting with residents of the River Breeze Estate, Grafton to discuss and address residents' concerns.

Having declared an interest in this item, Adam Cameron left the Council meeting at 4.07pm and returned at 4.20pm.

COUNCIL RESOLUTION – 6a.21.045

Toms/Novak

That Council receive and note the Petition calling on Council to convene a community meeting with residents of the River Breeze Estate, Grafton to discuss and address residents' concerns and note the General Manager's advice that a community meeting as requested will be held within 2 weeks' time from the date of this meeting.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.8 Ensure good governance, effective risk management and statutory compliance

BACKGROUND

Council has been informed of alleged subsidence of fill material for several residential lots within Stage 4 of the River Breeze Estate.

Development Application SUB2006/0073 was approved under delegated authority on 11 October 2006 and approval for construction of Stage 4 of the estate was issued under Construction Certificate CC2010/0820. The affected lots were released by Council under Subdivision Certificate SubCt2019/0044 on 4 December 2019 and registered by Deposited Plan No. 1254388 on 7 February 2020.

Of the lots created, five dwellings are under construction at various stages of completion. Dwellings have been approved on several other lots with construction not yet commenced.

Building contractors and landowners have notified Council of alleged poor-quality fill, inconsistent compaction, foreign materials in the fill and movement/cracking of foundations/concrete slabs, tiles and other construction materials.

KEY ISSUES

1. Petition

Council has received a document from affected landowners titled 'Petition for community meeting to discuss Riverbreeze Estate, Grafton Subdivision Ground Movement'. Copy provided as Attachment A.

It was requested that Council hold a community meeting to discuss and address the concerns of residents relating to the subdivision and ground movement issues.

To date, no formal meeting has been undertaken with affected landowners.

COUNCIL IMPLICATIONS

Budget/Financial

To date, Council has expended \$4,048.00 on obtaining legal advice from Marsdens Law Group.

Asset Management

N/A

Policy or Regulation

Australian Standard AS3798

Consultation

- Marsdens Law Group
- Council's Governance Section

Legal and Risk Management

Council staff sought legal advice from Marsdens Law Group. A copy is contained as a confidential attachment.

Climate Change

N/A

Prepared by	Carmen Landers, Acting Development Services Coordinator
Attachment	Petition for Community meeting to discuss Riverbreeze Estate, Grafton Subdivision Ground Movement
Confidential	Legal advice – Marsdens Law Group

Cr Novak left the Meeting at 4.21pm.

MOTION

Kingsley/Toms

That the Council meeting adjourn for a short break at 4.22pm.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Clancy, Ellem, Williamson, Lysaught, Toms

Against: Nil

The Council meeting resumed at 4.33pm.

ITEM	6a.21.046	DEVELOPMENT APPLICATIONS
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Meeting	Council	28 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director – Environment & Planning (Adam Cameron)	
Attachment	Yes	

SUMMARY

This report provides an update on Development Applications received, estimated value of works, applications approved and average processing times. A summary of where Council has exercised assumed concurrence to vary development standards under Clause 4.6 of the Clarence Valley Local Environmental Plan 2011 (LEP) is also provided within the report.

OFFICER RECOMMENDATION

That the update on Development Applications be noted.

Having declared an interest in this item Cr Novak left the Council meeting at 4.33pm and returned at 4.34pm.

COUNCIL RESOLUTION – 6a.21.046

Williamson/Toms

That the update on Development Applications be noted.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme	5 Leadership
Objective	5.1 We will have a strong, accountable and representative Government
Strategy	5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

The calculation method for the numbers of days an application is held by Council includes all calendar days including weekends and public holidays. This method is consistent with the NSW Department of Planning *Development Assessment Best Practice Guide – to assist Council to improve delivery timeframes*. A small percentage of development applications (DAs) approved have been with Council for a substantial amount of time and hence, these applications upwardly skew the average processing time. Hence, the median (or middle score) processing time for DAs has been included to give an additional indication of the amount of time taken to approve development applications during the reporting period. As Council has commenced taking applications electronically through the NSW Planning Portal the received date and the total number of days often does not match. The reason for this being that the application number is generated once Council accepts the application through the portal and issues the proponent with an invoice, the clock starts once payment of the application fees has been received which is usually not on the same day. Council's reporting of elapsed days has been refined to ensure numbers presented are compliant with the Environmental Planning and Assessment Regulation 2000 (the Regulation). The received date is taken from the date of payment in accordance with Clause 50 of the Regulation. Furthermore, as per Clause 107 of the Regulation, the first two days after an application is lodged, being the received day and following day, are not included in the assessment period.

As of the start of 2020, Council is now collecting estimated cost of works for subdivisions including all civil and associated works to create the allotments, previously the only cost of works included in subdivision application were building works.

KEY ISSUES

The figures from 1 July 2021 to 31 August 2021 are:

No. of Applications Received	No of Applications Approved	Value of Approved Works	No of Lots Approved	Processing Times (including stop-the-clock days)
186	53	\$26,521,654.23	5	Average: 82 days Median: 64 days

Of the 53 approved Development Applications between 1 July 2021 and 31 August 2021, 17 (39%) were determined within 40 days or less.

Exceptions to Development Standards under Clause 4.6 of the LEP

The following table outlines the use of Clause 4.6 for Development Applications determined during August 2021.

DA No.	Property	Standard to be Varied	Extent of Variation	Concurring Authority & Justification
DA2020/0536	85 Pine Street Junction Hill 2460	Clause 4.2B (3) - minimum lot size for dwelling house - 40Ha	2.6ha (93%)	Department of Planning, Industry and Environment in letter dated 29/07/2021 and determined by Council at their meeting 24 August 2021 – There are suitable areas to build on the lot above the 1 in 100 year flood height. The proposed dwelling is in keeping with the locality and will utilise existing infrastructure therefore not placing an unreasonable increase in demand. The locality of the site means it will have limited impact on the natural environment. The primary production and agricultural viability of the land has been compromised by the previous subdivision of the land.

COUNCIL IMPLICATIONS**Budget/Financial**

N/A

Asset Management

N/A

Policy or Regulation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

NSW Department of Planning Development Assessment Best Practice Guide – to assist Council to improve delivery timeframes

Consultation

Applicants with DAs exceeding 40 days would generally be aware of the reason/s why their DA has not been determined. Staff processing DAs are encouraged to maintain regular contact with Applicants and there remains room to improve this communication. Improvements such as this form one of the outcomes from Council's DA Review Project currently underway.

Correspondence acknowledging receipt of DAs or requesting additional information contains details of the staff member (including direct phone number) responsible for assessment of the DA. Hence, Applicants can easily make contact with the relevant officer if they require assistance or have any questions.

Legal and Risk Management

DAs that have not been determined within a period of 40 days (not including any 'stop-the-clock' days) can be considered by the Applicant to be deemed refusal. This factor is unlikely to apply to most of the DAs listed in the earlier table as the calculation of 40 days used for this report does not exclude 'stop-the-clock' days. However, when the appropriate circumstances apply to a DA then the *Environmental Planning and Assessment Act 1979* provides that an Applicant can lodge an appeal to the Land and Environment Court against the deemed refusal and request the Court to determine the DA. It is rare that Applicants pursue this course of action as the cost and time associated with pursuing Court action does not generally justify such action, especially if Applicants are confident that their DA will be approved when determined. DAs where a recommendation for refusal is possible are more likely to be subject to such appeal.

Climate Change

The matters discussed in this report have no direct impact on climate change or the effects thereof. Development or works proposed in individual DAs can have implications and these can be considered in assessment of DAs as relevant, eg development on land subject to long term sea level rise and/or coastal erosion.

Prepared by	James Hamilton, Development Planner
To be Tabled	Approved Applications and Undetermined Applications over 40 days

VOTE BY EXCEPTION

Kingsley/Toms

That the following Items be adopted as recommended:

- 6b.21.064
- 6b.21.065
- 6b.21.066
- 6b.21.067
- 6b.21.070
- 6b.21.071
- 6b.21.072
- 6b.21.073
- 6b.21.074
- 6c.21.112
- 6c.21.113
- 6c.21.114
- 6c.21.115
- 6c.21.116
- 6c.21.117
- 6c.21.118
- 6c.21.119
- 6c.21.120
- 6c.21.122
- 6d.21.008
- 6e.21.017
- 6e.21.018
- 6e.21.019

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

b. ENVIRONMENT, PLANNING & COMMUNITY REPORT

MINUTES of a meeting of the **ENVIRONMENT, PLANNING & COMMUNITY COMMITTEE** of Clarence Valley Council held in the Council Chambers, Maclean on Tuesday, 21 September 2021 commencing at 3.30pm and closing at 4.58pm.

MEMBERS

Cr Andrew Baker (Chair), Cr Greg Clancy, Cr Debrah Novak, Cr Jim Simmons (Mayor)

PRESENT

Cr Karen Toms, Cr Peter Ellem (on-line), Cr Arthur Lysaught (until 4.07pm), Cr Jason Kingsley, Ashley Lindsay (General Manager), Ms Laura Black (Director – Corporate & Governance), Mr Adam Cameron (Director – Environment & Planning) and Mr Jamie Fleeting (Director – Works & Civil) were in attendance.

APOLOGIES – Cr Richie Williamson

MOTION

Novak/Clancy

That a leave of absence for Cr Richie Williamson be granted.

Voting recorded as follows:

For: Baker, Clancy, Novak, Simmons

Against: Nil

ITEM	6b.21.063	DA2021/0466 PROPOSED CARPORT AT 43 ALICE STREET, GRAFTON
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

<i>Applicant</i>	Alexandra Vasilieff
<i>Owner</i>	Alexandra Vasilieff
<i>Address</i>	43 Alice Street, Grafton
<i>Submissions</i>	One against the proposal

DA2021/0466 proposes a single carport with a front roller door located 1.0m from the front boundary instead of the 6m setback required by the Residential Development Control Plan (DCP). The application was considered at a Development Assessment Panel meeting (internal staff meeting) and not supported as there is a suitable alternative location behind the 6m building line setback. Amended plans were requested for an appropriately designed carport located at least 6m from the street boundary. The applicant has requested the application be considered at a Council meeting as originally proposed.

OFFICER RECOMMENDATION

That DA2021/0466 be refused on the following grounds:

- Non-compliance with Clause C16.1 of the CVC Residential Development Control Plan which requires a minimum 6.0m setback to the street boundary.
- The location and design of the carport will have an adverse impact on the streetscape, heritage conservation area and encourage applications for similar structures with a similar setback in Grafton.

MOTION

Simmons/Novak

That DA2021/0466 be refused on the following grounds:

- Non-compliance with Clause C16.1 of the CVC Residential Development Control Plan which requires a minimum 6.0m setback to the street boundary.
- The location and design of the carport will have an adverse impact on the streetscape, heritage conservation area and encourage applications for similar structures with a similar setback in Grafton.

Voting recorded as follows

For: Nil

Against: Baker, Clancy, Novak, Simmons

The Motion was put and declared LOST.

COMMITTEE RECOMMENDATION

Clancy/Baker

That Council defer this item to next week's meeting to allow staff to discuss with the applicant the possibility of amending the set back to 2-3m from the front boundary.

Voting recorded as follows:

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.063**Clancy/Novak**

That DA2021/0466 be approved subject to a 2.0m setback to the front boundary as offered by the applicant, measured to the closest part of the carport subject to the draft advices and conditions.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED**LINKAGE TO OUR COMMUNITY PLAN**

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

DA2020/0466 was lodged on 30 June 2021 for a 3 x 5.5m gable roofed carport with a roller door on the front, located 1.0m from the front boundary. This 565m² property is located in Alice Street, Grafton between Bacon Street and the North Coast railway line. This street is in a heritage conservation area and four heritage items are located nearby. The dwelling is setback 8.2m from the front boundary and has generous side boundary setbacks and a small rear yard.

Part F of the CVC Residential DCP contains development controls and guidelines that apply to heritage conservation areas to ensure new buildings do not detract from the historic character of a building, nearby buildings or the streetscape. Clause F10.7 relates to garages and carports and states:

- Locate garages and carports towards the rear of allotments, set back from the front building line.
- As far as possible match the roof pitch, form and materials of the main building.

The application was referred to Council's Heritage Officer who made the following comments:

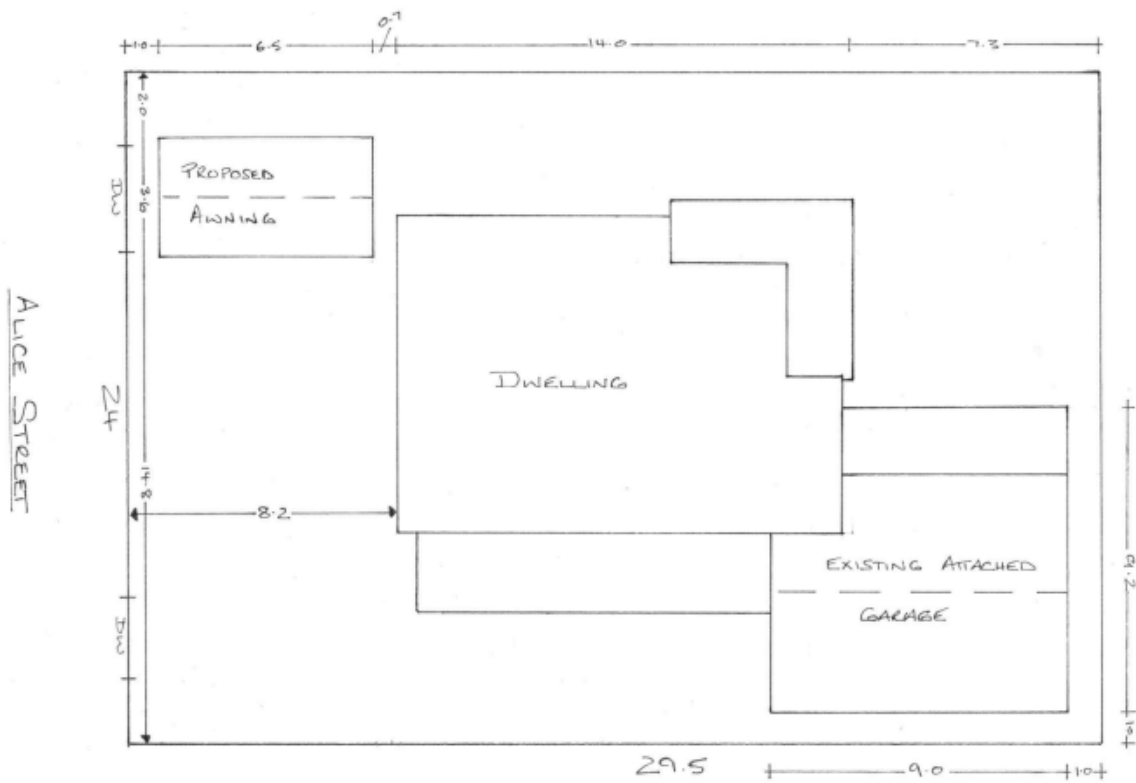
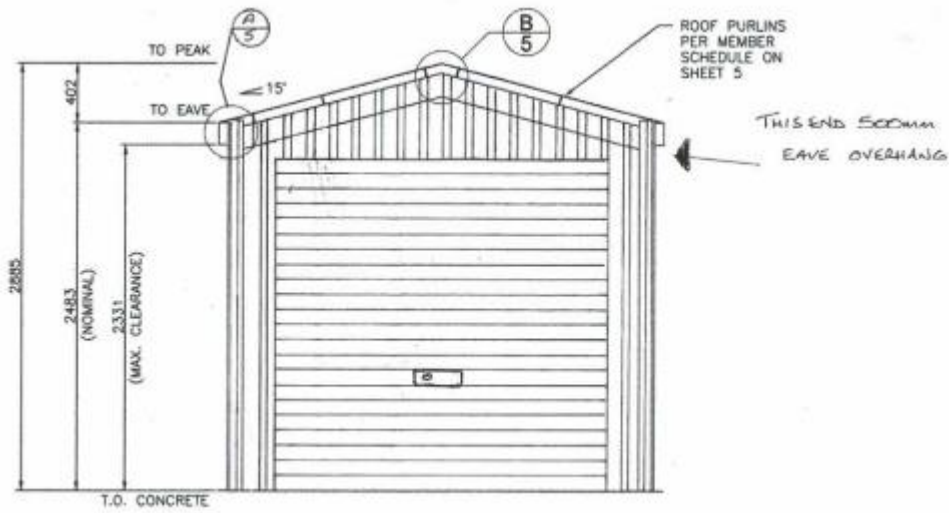
I do not support the proposed structure being built in a front setback.

The front gardens, fences, landscaping and grassed verges combine to create an important element of the Heritage Conservation Area and contribute strongly to the setting of heritage items and contributory dwellings within this precinct.

There is no justification for a breach of this standard and an approval would have an unacceptable impact upon the aesthetic significance and setting of the Grafton Heritage Conservation Area.

Approval of the application would set an undesirable precedent and likely to encourage other applications.

An alternative location exists behind the setback for an appropriately designed carport in accordance with the DCP policies.





There are two structures within the front setback on the other (eastern) side of Alice Street. A garage was approved at 44 Alice Street in 1994 with a 300mm setback to Alice Street as part of a unit development. This was approved well before the street became part of a heritage conservation area in 2010. Also, a carport with a roller door on the front at 38 Alice Street was approved at a Council meeting in 2012 with a 2.0m front

setback. Both of these structures are on the other side of Alice Street. There are no existing setback variations on the western side of Alice Street.

The current application was considered by staff at a Development Assessment Panel (DAP) meeting and was not supported. The applicant was requested to submit amended plans for an appropriately designed carport located at least 6m back from the street boundary. At this setback the carport would be located 2.2m in front of the dwelling but would not project out in front of other dwellings on the western side of Alice Street. The house is set back 4.2m from the southern side boundary provided a suitable alternative location for the carport in compliance with the Building Code and Council's DCP policies. The applicant has requested the application be considered at a Council meeting as originally proposed.



Suggested alternative location for the carport

KEY ISSUES

- The CVC Residential Development Control Plan (DCP) was introduced in 2006 and it contains guidelines for new development in heritage conservation areas.
- The heritage controls in the DCP encourage residents to invest in restoring their dwellings as they know there are guidelines in place to protect the historic character of the area.
- Traditionally garages are located in the rear yard of properties. Carports are traditionally located at the side or rear of houses rather than very close to the front boundary.
- The carport design is considered suitable, subject to some minor adjustments, provided it is set back 6m from the front boundary. These adjustments include the use of matching cladding to the house on the front elevation of the carport rather than standard metal cladding, a traditional barge board/capping at the front of the carport and the use of quad roof guttering which is the traditional roof gutter profile. These adjustments are noted in the draft conditions of approval in the attachments to this report.

OPTIONS

1. That DA2021/0466 be refused on the following grounds:
 - Non-compliance with Clause C16.1 of the CVC Residential Development Control Plan which requires a minimum 6.0m setback to the street boundary.
 - The location and design of the carport will have an adverse impact on the streetscape, heritage conservation area and encourage applications for similar structures with a similar setback in Grafton

2. That DA2021/0466 be approved subject to a minimum 6m front setback and the draft conditions of approval contained in the attachments to this report.
3. That DA2021/0466 be approved as submitted subject to the draft conditions of approval contained in the attachments to this report. This option is not recommended for the reasons contained in this report.

COUNCIL IMPLICATIONS

Budget/Financial

There may be a cost to Council if the applicant chooses to appeal a refusal decision of Council.

Asset Management

N/A

Policy or Regulation

Environmental Planning and Assessment Act 1979

Clarence Valley Local Environmental Plan 2011

Clarence Valley Council Residential Development Control Plan

Consultation

The proposal was notified to neighbours with one submission received not supporting the proposal in its current location forward of the 6m building line setback.

Legal and Risk Management

Whilst Councils' development controls can be varied when there is good reason, controls that are consistently applied are fairer for all, as residents who design their proposals to comply with Council's DCP controls are not disadvantaged. The Land and Environment Court is more likely to uphold DCP controls that are consistently applied, than controls that are often varied.

Climate Change

N/A

Prepared by	Greg McCarthy, Senior Building Surveyor
Attachment	1. Plans submitted with DA2021/0466 4. Schedule of draft conditions if the application is approved
To be tabled	2. Neighbour's submission against the proposal in current location 3. Email from applicant requesting the application be considered at a Council meeting

ITEM 6b.21.064 DA2021/0303 DWELLING AT 5 CARRINGTON STREET, PALMERS ISLAND

Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

<i>Applicant</i>	Tim Berry Building Design & Drafting
<i>Owner</i>	Gay Marsden
<i>Address</i>	5 Carrington Street, Palmers Island (Lots 20 & 21 Section 2 DP2107)
<i>Submissions</i>	Two written objections

DA2021/0303 was lodged on 12 May 2021 for a new two storey dwelling on a vacant land at 5 Carrington Street, Palmers Island. The proposal was considered at a Development Assessment Panel meeting (internal staff meeting) and supported subject to the dwelling being relocated at least 15m towards Carrington Street to comply with the DCP controls related to riverbank erosion, reduce privacy impacts for neighbours and reduce shading to on site wastewater disposal areas. This would increase the setback to the riverside boundary from 1.5m to 16.5m. The applicant was not agreeable to this change to the location of the dwelling and requested the application be considered at a Council meeting.

OFFICER RECOMMENDATION

That DA2021/0303 be refused on the following grounds:

1. Non-compliance with Clause 7.6 of the CVC Local Environmental Plan – ‘Development of land subject to riverbank erosion’ and Clause T7.3 of the CVC Residential Development Control Plan.
2. The location and design of the dwelling will have adverse impacts on the privacy and amenity of the two adjoining properties.
3. The location of the proposed dwelling will overshadow the effluent disposal area at 3 Carrington Street and the proposed effluent irrigation area at 5 Carrington Street will be overshadowed by the existing dwelling at 7 Carrington Street.

COMMITTEE RECOMMENDATION

Simmons/Novak

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Simmons, Baker

Against: Novak, Clancy

CARRIED on the Chair’s casting vote.

FORESHADOWED MOTION

Novak

That this item be deferred to full Council meeting.

COUNCIL RESOLUTION – 6b.21.064

Kingsley/Toms

That DA2021/0303 be refused on the following grounds:

1. Non-compliance with Clause 7.6 of the CVC Local Environmental Plan – ‘Development of land subject to riverbank erosion’ and Clause T7.3 of the CVC Residential Development Control Plan.
2. The location and design of the dwelling will have adverse impacts on the privacy and amenity of the two adjoining properties.

3. The location of the proposed dwelling will overshadow the effluent disposal area at 3 Carrington Street and the proposed effluent irrigation area at 5 Carrington Street will be overshadowed by the existing dwelling at 7 Carrington Street.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

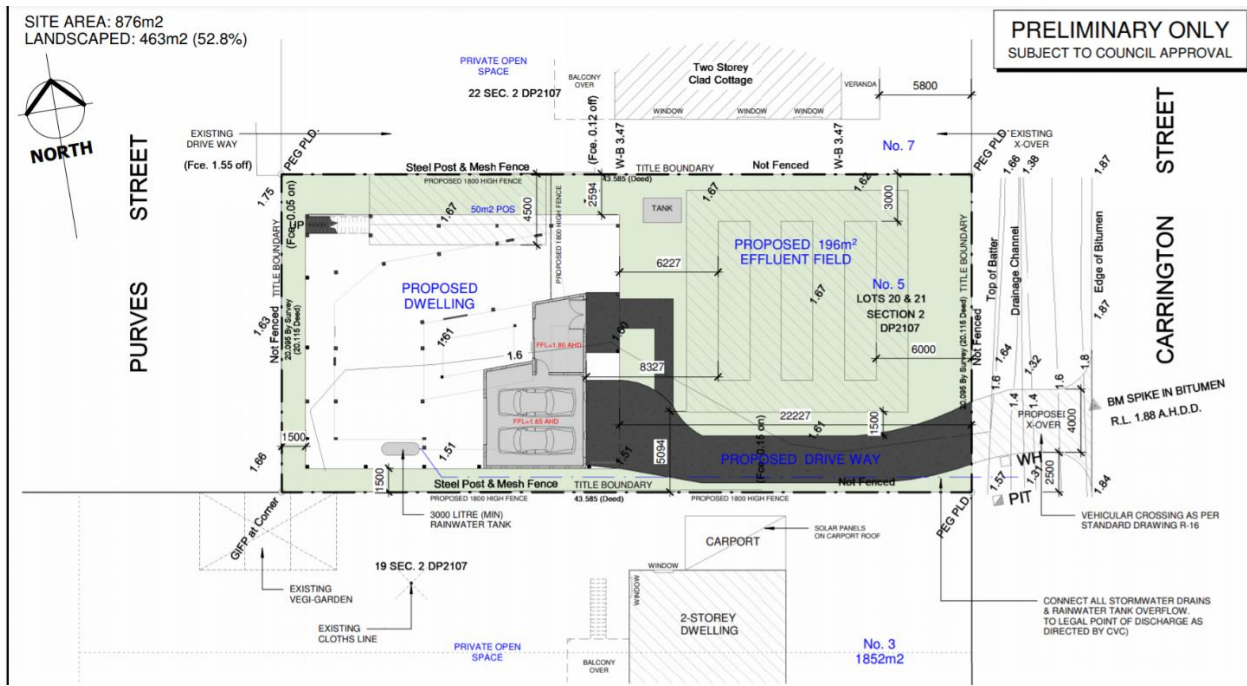
Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

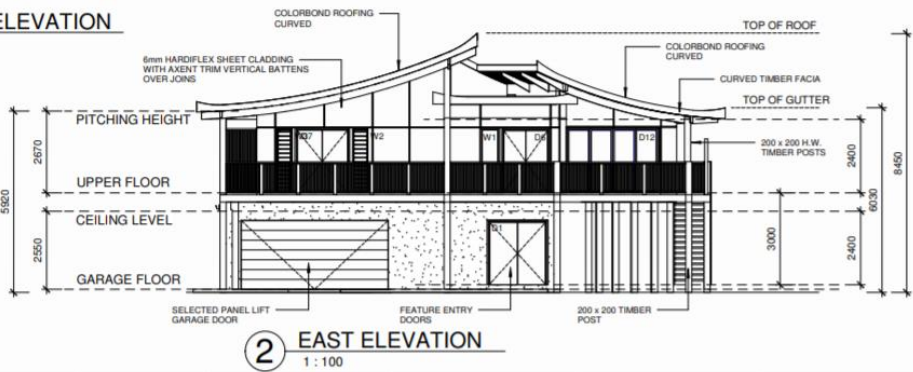
DA2021/0303 was lodged on 12 May 2021 for a new two storey dwelling on a vacant land at 5 Carrington Street, Palmers Island. Notification of the application resulted in objections to the proposal from the adjoining property owners at 3 and 7 Carrington Street. The objections mainly relate to the location of the new dwelling adjacent to the rear yards of 3 and 7 Carrington Street rather than adjacent to the dwellings. The proposed dwelling location has impacts on privacy, amenity, shading of effluent disposal areas and river views.

The property is located in Palmers Island village which has a history of riverbank erosion resulting in Part T of the Residential Development Control Plan (DCP) requiring no new buildings in precinct 1 (adjacent to the riverbank) and relocatable buildings in precinct 2 to be located as far as practicable from the river. The property is located in precinct 2. The dwelling is proposed to be located approximately 65m from the current riverbank, and if located adjacent to the adjoining dwellings would be located approximately 80m from the riverbank.





1 NORTH ELEVATION
 1 : 100



REVISED DA DRAWINGS	29/01/21	TR
DA DRAWINGS	21/04/21	TR
ROOF CHANGES	19/04/21	TR
CLIENT CHANGES	23/01/21	TR
REVISED PRELIMINARY	11/02/21	TR
PRELIMINARY DRAWINGS	15/12/21	TR
ISSUES:		

(C) COPYRIGHT - THESE DRAWINGS ARE SUBJECT TO COPYRIGHT AND REMAIN THE PROPERTY OF Tim Berry. THEY ARE NOT TO BE ALIENED OR REPRODUCED IN ANY WAY OR WHILE WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER.

TIM BERRY
 REGISTERED BUILDING PRACTITIONER (RBA)
 BUILDING DESIGN & DRAFTING
 (ARCHITECTURAL) No. OF-AD-9021



TITLE:
 ELEVATIONS 1.

PROJECT:
 PROPOSED DWELLING

ADDRESS:
 5 CARRINGTON STREET
 PALMERS ISLAND
 NSW, 2463
 Lot 20 & 21 Sec 2 DP2107

COUNCIL:
 CLARENCE VALLEY

CLIENT:
 G. MARSDEN

TIM BERRY
 Building Design & Drafting
 Office: 24/19-21 Colburn Street, Yamba, NSW, 2464
 Email: tim.berry@tdg.com.au Ph: 0410 123 976

DESIGNED: TB DRAWN: TB
 SHEET SIZE: A3 SHEET No: A05
 REF No: 21-0-44 ISSUE: DA-1



View of 5 Carrington Street from Carrington Street



View from rear of 5 Carrington Street towards the unformed section of Purves Street and the Clarence River

KEY ISSUES

Issues raised in the submissions are:

- Loss of privacy to rear yards
- Loss of river views
- Detrimental affect on amenity of neighbouring properties
- Reduced solar access
- Location of effluent field close to neighbour's house
- Dwelling located closer to river is not in accordance with the Palmers Island Village controls in the DCP to protect against the effects of riverbank erosion
- Proposed on site sewage system

Riverbank erosion risk/Location of dwelling

- Palmers Island village has a history of riverbank erosion resulting in the buy back and relocation of a number of houses in the village in the 1990's and early 2000's. A Management Plan was adopted by the former Maclean Council in 1995. Whilst only minor erosion has occurred since the mid 1990's there is a significant risk of a large deep seated slip in the riverbank after a flood. Part T of the DCP has controls including no new buildings to be erected in precinct 1 (adjacent to the river) and relocatable buildings in precinct 2 located to '*maximise as far as practicable the distance from the nearest point of the building to the riverside boundary...*' The upper level of the dwelling is designed to be relocatable. The masonry garage at ground floor level is not designed to be relocatable.
- Part T of the DCP states that should the riverbank come within 18m of any building, the owner will be responsible for the removal of any or all buildings from the site at the owners expense, or where possible, to a location on the site further than 18m from the riverbank.
- A DCP variation is requested to locate the dwelling 1.5m from the riverside boundary instead of as far as practicable from the riverside boundary. The proposed 65m setback to the river provides a substantial buffer distance against future erosion. By positioning the dwelling approximately 15m closer to Carrington St this buffer would increase to approximately 80m and the dwelling would closely align with the rear of the dwellings at 3 & 7 Carrington Street.

Privacy

- The dwelling is located adjacent to the two adjoining rear yards.
- The first floor has a wrap around verandah on its entire perimeter. The location of the dwelling towards the riverside boundary and adjacent to the adjoining rear yards is similar to a proposal for a secondary dwelling or dwelling on a battle axe lot in terms of its privacy impacts. These impacts can be addressed through window design and use of privacy screens, however the extensive verandahs make this difficult. The inclusion of some 1.8m high privacy screens at the sides of the dwelling on revised plans submitted after receipt of the submissions will reduce privacy impacts, but they are still significant.
- The proposed location of the dwelling will enable the residents of the new dwelling to look back into the rear of the adjoining residences resulting in a significant loss of privacy.

On-site waste water

- The proposed location of the dwelling 1.5m from the riverside boundary allows the on-site effluent disposal area to be located more than 100m from the river which is the recommended minimum buffer distance from a river in Council's On-Site Waste Water Strategy 2013. Council's on-site waste water officers have advised a slightly reduced setback to approximately 65m can be considered where a high quality secondary treated effluent system is proposed. While a 100m setback is preferred, it is not considered an impediment to swapping the dwelling and effluent field locations.
- The submissions have raised issues with the proposed on-site effluent disposal system, however Council's on-site waste water officers have advised the proposed system is suitable for this location and the distance to ground water is sufficient for a secondary treated system that relies on evaporation and transpiration (using the sun and the wind) to take up effluent.
- If the dwelling was moved closer to Carrington Street the effluent disposal area could be redesigned to have the entire disposal area located on the river side of the dwelling or be split with part of the disposal area located in the rear yard and part in the front yard.

Shading

- Shadow diagrams for 21 June have been submitted that indicate no shading impact on 7 Carrington Street and a significant impact of the rear yard and effluent disposal area at 3 Carrington Street from the proposal.

- If the dwelling was located adjacent to the adjoining dwellings there would be benefits in reducing winter shading to the effluent disposal areas of 3 and 5 Carrington Street from the dwellings located on the northern side of these disposal areas.

Loss of river views

- The positioning of the dwelling 1.5m from the riverside boundary will result in some loss of river views to 3 and 7 Carrington Street. However, these views are through the adjoining property and in accordance with view sharing principles, views through a neighbour's property are hard to protect.
- The dwellings are located a considerable distance (over 80m) from the river. There is other privately owned land between the properties and the river and whilst this land is located in precinct 1 and cannot have buildings approved on it, tree planting can occur which would also impact views.
- Loss of river views is considered a minor consideration in the assessment of this DA.

Comment

If the dwelling was located 15m towards Carrington Street it would closely align with the rear of the dwellings at 3 & 7 Carrington Street and result in less impacts on privacy, amenity, river views and solar access. The recently approved on-site waste water system would require amendment to accommodate the altered location of the dwelling. This system has not been installed yet and no additional Council fees would apply to amend the approval.

OPTIONS

1. That DA2021/0303 be refused on the following grounds:
 - Non-compliance with Clause 7.6 of the CVC Local Environmental Plan – 'Development of land subject to riverbank erosion' and Clause T7.3 of the CVC Residential Development Control Plan.
 - The location and design of the dwelling will have adverse impacts on the privacy and amenity of the two adjoining properties.
 - The location of the proposed dwelling will overshadow the effluent disposal area at 3 Carrington Street and the proposed effluent irrigation area at 5 Carrington Street will be overshadowed by the existing dwelling at 7 Carrington Street. This is the Officer Recommendation.
2. That DA2021/0303 be approved as submitted, subject to the draft conditions of approval contained in the attachments to this report. This option is not recommended for the reasons outlined in this report.

COUNCIL IMPLICATIONS

Budget/Financial

There may be a cost to Council if the applicant chooses to appeal a refusal decision of Council.

Asset Management

N/A

Policy or Regulation

Environmental Planning and Assessment Act 1979

Clarence Valley Local Environmental Plan 2011

Clarence Valley Council Residential Development Control Plan

Consultation

The proposal was notified to neighbours with two submissions received.

Legal and Risk Management

By locating the dwelling as far as practicable from the riverside boundary in accordance with the DCP, it increases the chance that the dwelling will not need to be removed or relocated during its life should future erosion result in the riverbank coming within 18m of the dwelling.

Climate Change

The scientific community has warned that extreme weather events including increased severity and frequency of flooding is one of the effects of climate change.

Prepared by	Greg McCarthy, Senior Building Surveyor
Attachment	1. Revised plans submitted with DA2021/0303 including shadow diagrams 4. Schedule of draft conditions to be used if the application is approved
To be tabled	2. Submissions from two adjoining neighbours 3. Response to submissions from the applicant and owner

ITEM 6b.21.065 DA2021/0060 PROPOSED CARPORT AT 173 ALICE STREET, GRAFTON

Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

<i>Applicant</i>	Patricia Burgess
<i>Owner</i>	Patricia Burgess
<i>Address</i>	173 Alice Street, Grafton
<i>Submissions</i>	Nil

DA2021/0060 was lodged on 8 February 2021 for a carport with a front roller door. The carport has a nil setback to Hoof Street instead of the minimum 3.5m setback. The carport is proposed alongside a garage with a nil setback that was approved at a Grafton City Council meeting in 2003 when Council resolved not to approve a similar carport alongside the garage. As staff don't support this application and a similar proposal was previously refused at a full Council meeting this proposal is reported to Council.

OFFICER RECOMMENDATION

That DA2021/0060 be refused on the following grounds:

- Non-compliance with Clause C16.5 of the CVC Residential Development Control Plan which requires a minimum 3.5m setback to a secondary street frontage on a corner block.
- The location and design of the carport will have adverse impact on the streetscape and encourage applications for other structures with a nil setback in Grafton.

COMMITTEE RECOMMENDATION

Clancy/Baker

That DA2021/0060 be approved as submitted subject to the draft conditions of approval contained in the attachments to this report.

Voting recorded as follows

For: Clancy, Baker, Simmons, Novak

Against: Nil

COUNCIL RESOLUTION – 6b.21.065

Kingsley/Toms

That DA2021/0060 be approved as submitted subject to the draft conditions of approval contained in the attachments to this report.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

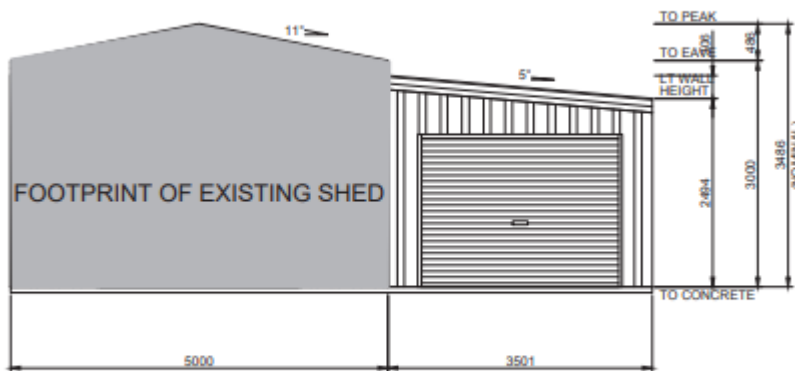
The property is located on the corner of Alice and Hoof Street, Grafton. DA2003/142 was considered at a Council meeting in June 2003 after staff recommended the garage and carport be setback in line with the dwelling. Council resolved to approve the garage with a nil setback to Hoof Street 'subject to:

1. The façade of the garage is re-designed to incorporate a dutch gable.
2. The carport is deleted from the proposal'.

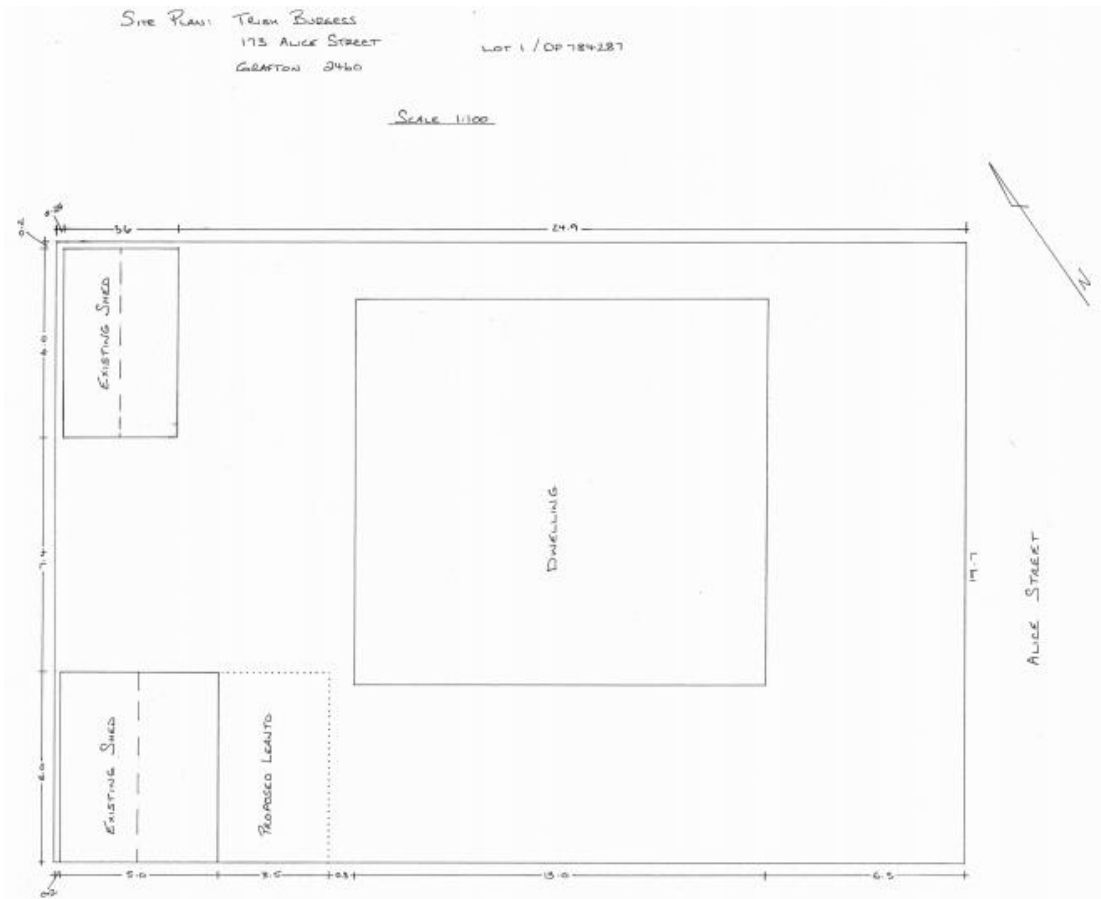
DA2021/0060 was lodged on 8 February 2021 for a carport with a front roller door in the same location as the previous carport that was not approved by Council in 2003. The carport has a nil setback to Hoof Street.

The rear yard of the property is affected by local ponding of surface water after heavy rain and this was taken into account by Council when approving the original garage. A grated pit and pump pipeline to the street has since been installed in the rear yard to address this ponding issue.

The current application was considered by staff at a Development Assessment Panel (DAP) meeting and was not supported. The applicant was requested to submit amended plans for another location on the property but has requested the application be considered at a Council meeting.



3 ENDWALL EXTERIOR ELEVATION
6 SCALE: 1 = 100





KEY ISSUES

- The CVC Residential Development Control Plan (DCP) was introduced in 2006 and it contains a minimum building line setback of 3.5m to new structures from a secondary street frontage on corner blocks.
- It is not common to see a garage with a nil setback on a corner property in this part of Grafton which is generally known for its wide streets and generous building setbacks. The existing garage was approved prior to the adoption of the current DCP. The addition of another structure alongside the garage will have a further negative impact on the streetscape and encourage applications for similar structures that are not in keeping with the character of the area.
- Council previously resolved to not approve an open carport in this location. This is a very similar proposal to what was proposed in 2003, except that a roller door is now proposed on the front of the carport.

OPTIONS

1. That DA2021/0060 be refused on the following grounds:
 - Non-compliance with Clause C16.5 of the CVC Residential Development Control Plan which requires a minimum 3.5m setback to a secondary street frontage on a corner block.
 - The location and design of the carport will have adverse impact on the streetscape and encourage applications for other structures with a nil setback in Grafton. This is the officer recommendation.
2. That DA2021/0060 be approved as submitted subject to the draft conditions of approval contained in the attachments to this report. This option is not recommended for the reasons contained in this report.

COUNCIL IMPLICATIONS

Budget/Financial

There may be a cost to Council if the applicant chooses to appeal a refusal decision of Council.

Asset Management

N/A

Policy or Regulation

Environmental Planning and Assessment Act 1979

Clarence Valley Local Environmental Plan 2011

Clarence Valley Council Residential Development Control Plan

Consultation

The proposal was notified to neighbours with no submissions received.

Legal and Risk Management

Whilst Council's development controls can be varied when there is good reason, controls that are consistently applied are fairer for all, as residents who design their proposals to comply with Council's DCP controls are not disadvantaged. The Land and Environment Court is more likely to uphold DCP controls that are consistently applied than controls that are often varied.

Climate Change

N/A

Prepared by	Greg McCarthy, Senior Building Surveyor
Attachment	1. Plans submitted with DA2021/0060. 4. Schedule of draft conditions if the application is approved.
To be tabled	2. Letter from applicant giving reasons why the carport should be approved 3. Copy of Council report and resolution from June 2003 meeting

ITEM	6b.21.066	DA2021/0055 BAIT PROCESSING AND COLD STORAGE FACILITY, 3 DEERING STREET, YAMBA
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

Applicant	Tweed Bait Pty Ltd
Owner	Tweed Bait Pty Ltd
Address	3 Deering Street, Yamba
Submissions	Yes – 5

Tweed Bait Pty Ltd seeks approval for a bait processing and cold storage facility within a new industrial shed with a floor area of 1345.3m² in the Yamba industrial area that includes a storage area with blast freezer (906 m²), truck parking area (217.6 m²), cool room (282.6 m²) and anti room (104.6 m²) with associated driveways and parking areas.

The proposal seeks a variation to the maximum height requirement of 9m for parts of the facility:

- cool room is to be 11.2m to the top of the roof (24.4% variation), and
- Anti room 9.145m to the top of the roof (1.6% variation)

The remaining roof areas will have a maximum height of 7.76m

As submitted by the Applicant, the variation is sought to facilitate a safe and efficient loading dock and the efficient vertical storage of bulk refrigerated stock. An increased height for the cool room is required to allow for a mandatory air gap between the cool room roof and ceiling of the building while allowing for sufficient cold storage space (vertical storage of 3 bulk pallets) to achieve operational efficiency of the business. The cool room floor is also elevated to facilitate the loading of trucks. The cool room roof area constitutes 21% of the total roof area of the facility.

The proposed height variations require the resolution of Council in accordance with the staff delegations.

The height variations and the issues raised in submissions are discussed in this report and a recommendation is provided for Council's consideration.

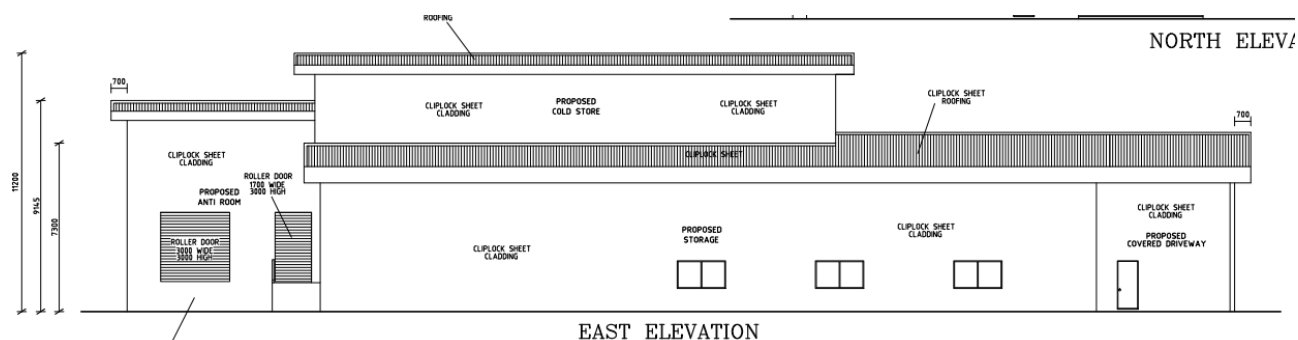


Figure 1 – East elevation showing varied roof heights

OFFICER RECOMMENDATION

That:

1. After consideration of the application under clause 4.6 of the *Clarence Valley Local Environmental Plan 2011* (CVLEP) Council support a variation to the 9 metre maximum building height prescribed by clause 4.3 and Height of Buildings Map and approve the proposed height variations to the cool room and anti room (11.2m and 9.145m) sought by the Applicant, and
2. DA2021/0055 be approved subject to the imposition of conditions contained in Schedule 1.

COMMITTEE RECOMMENDATION

Novak/Simmons

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Novak, Simmons, Baker, Clancy

Against: Nil

COUNCIL RESOLUTION – 6b.21.066

Kingsley/Toms

That:

1. After consideration of the application under clause 4.6 of the *Clarence Valley Local Environmental Plan 2011 (CVLEP)* Council support a variation to the 9 metre maximum building height prescribed by clause 4.3 and Height of Buildings Map and approve the proposed height variations to the cool room and anti room (11.2m and 9.145m) sought by the Applicant, and
2. DA2021/0055 be approved subject to the imposition of conditions contained in Schedule 1.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

DA2021/0055 for a bait processing and cold storage facility was lodged with Council on 2 February 2021 and placed on exhibition between 4 and 19 February 2021. Five submissions were received during the exhibition period; the issues raised in the submissions are discussed in the issues section of this report.

The site is zoned IN1 Industrial under the Clarence Valley Local Environmental Plan 2011 (CVLEP). The proposal is characterised as being a type of light industry which is a permitted use in the IN1 zone. As defined in the CVLEP **light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following; (a) high technology industry, (b) home industry, (c) artisan food and drink industry.

On 25 February 2021 Council requested additional information requesting a noise impact assessment and noise management plan, detailed stormwater management plan, vehicle manoeuvring diagrams and landscape plan.

The Applicant was also advised that concurrence must be obtained from the Trade Waste Regulation Team, of the Department of Industry for the discharge of liquid trade waste to Council's sewerage system.

On 17 June 2021 the Applicant's consultant wrote to Council requesting that the information be required as conditions of consent and/or be provided prior to issue of a Construction Certificate. To progress the application Council staff have provided conditions of consent that address the requested information.

It is proposed that a condition of consent require that any requirements stipulated by the Trade Waste Regulation Team, of the Department of Industry shall be implemented.



Figure 2 – Site Plan showing shed location (sourced from Applicants SEE)

As submitted with the application, Tweed Bait is presently the largest wholesale bait supplier in Australia and Yamba is a strategic location for the business with a company fishing vessel operating from Yamba.

The applicant has provided the following details of the operation of the facility:

- The facility will employ 3 full time staff and 5 casual staff,
- The operation hours are 7am to 6pm up to 7 days a week, depending on the season,
- The main processing area is accessed from Fairtrader Drive and the driveway on Deering Street allows for the delivery vehicles to exit in a forward direction when Deering Street is formed.

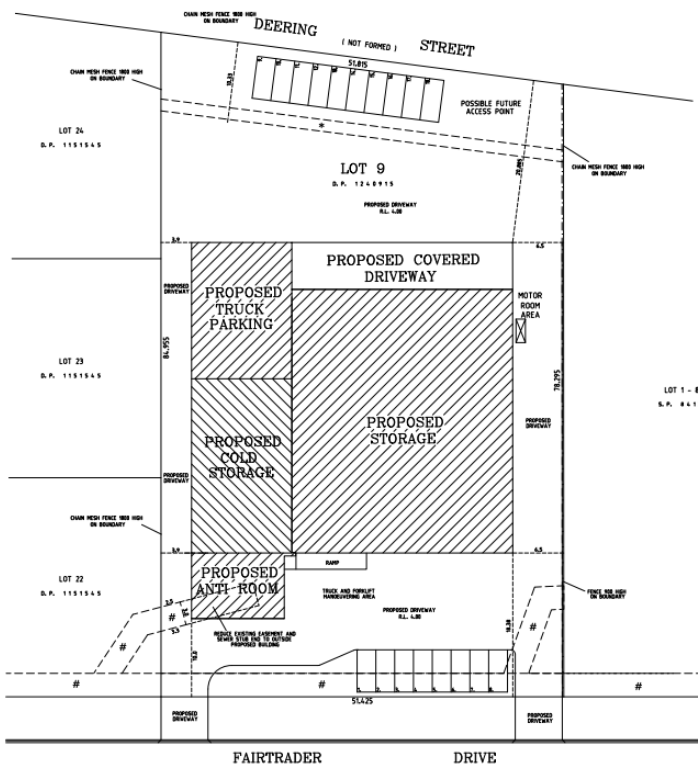


Figure 2 – Site layout of the facility

KEY ISSUES**Issue 1 – Height variation**

The Applicant has included a written request under Clause 4.6 – Exceptions to Development Standards of the CVLEP with the application seeking a variation to the 9 metre maximum height specified on the Height of Buildings Map of the Clarence Valley Local Environmental Plan 2011 (the LEP).

The proposal seeks a variation to the maximum height requirement of 9m for parts of the facility; the cool room is to be 11.2m to the top of the roof (24.4% variation), and the anti room 9.145m to the top of the roof (1.6% variation). The remaining roof areas will have a maximum height of 7.76m.

Clause 4.6 of the CVLEP enables a consent authority, in this case the Council, to grant development consent for a development that contravenes a development standard, such as the height of buildings criteria, when Council is satisfied about the following matters:

- (a) That the Applicant has made written request seeking to justify the contravention of the development standard and such written request has adequately demonstrated:
 - (i) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (ii) that there are sufficient environmental planning grounds to justify contravening the development standard;
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and
- (c) The concurrence of the Secretary has been obtained.

[NOTE: The NSW Department of Planning Circular PS 08-003, dated 9 May 2008, notified that Council can assume the Director-General's concurrence where an environmental planning instrument has adopted clause 4.6 of the Standard Instrument. The CVLEP adopts clause 4.6 of that Instrument.]

The objectives of clause 4.6 are as follows:

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development;*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The height of buildings development standard is established within clause 4.3 of the CVLEP. The objectives of this clause are as follows:

- (a) *To maintain the low scale character of towns and villages in the Clarence Valley;*
- (b) *To protect the amenity of neighbouring properties by minimising visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public land.*

Comment

The variation is sought to facilitate a safe and efficient loading dock and the efficient vertical storage of bulk refrigerated stock. An increased height for the cool room is required to allow for a mandatory air gap between the cool room roof and ceiling of the building while allowing for sufficient cold storage space (vertical storage of 3 bulk pallets) to achieve operation efficiency of the business. The cool room floor is also elevated to facilitate the loading of trucks.

The Applicant has submitted that compliance with the 9m development standard would preclude an efficient use of the site, the additional 2.2m in height over the cool room will be of no consequence to the character or amenity of the surrounding area and the location of the building is well separated from adjoining land uses. Compliance with the development standard would hinder attainment of the Environmental Planning and Assessment Act objection to promote orderly and economic use and development of land.

The partial variation to the roof height will be over approximately 21% of the total roof area. The objection to the standard is supported by staff as it provides flexibility and a better outcome in the circumstances. The main height variation is for a small proportion of the building and there is no adverse visual impact, view loss, loss of privacy and solar access to adjoining land. The variation is supported on merit and staff recommend that Council support the variation to the standard.

Issue 2 – Impacts on the amenity of nearby residences (noise, odour and visual impacts)

Concern has been raised in the 5 submissions in regard to the potential increased noise and odour pollution from the site. The submissions have been received from residents that are 130m, 200m and 250m from the site. In summary, the submissions raise the following issues and concerns:

- Ongoing noise and operation hours of the facility now and into the future,
- No details of types and volumes of vehicles, trucks and forklifts,
- Lack of detail on noise generating machinery and activities; traffic, machine room and 24 hour running refrigeration units,
- Sets a precedent for future noisy development in the estate,
- No submission of a noise assessment,
- Not consistent with the planning objectives to provide great places to live and work,
- Lack of opportunity for public participation,
- Height variation is the financial benefit of one ratepayer and not in the public interest, rather an individual financial interest,
- Will not protect the amenity of the environment,
- Odours from the bait processing facility, amenity impacts and health and safety impacts,
- Building is not of low scale character and will have an unattractive visual impact, and
- The facility would be better located away from existing residents.

Comment

The NSW Noise Policy for Industry (NPfI) was released in 2017 and sets out the requirements for the assessment and management of operational noise from industry in NSW. Local Government is an independent regulator for noise under NSW legislation and has discretion for dealing with noise.

Clause 6.1.1 of the NPfI states that where noise levels are exceeded for existing sites, Council can assess feasible and reasonable noise mitigation strategies.

Staff consider that limiting the hours of operation should be in line with the NPfI and it is proposed that the operating hours be limited to 7.00am-6.00pm Monday to Friday, 7.00am to 5.00pm Saturday and no operation on Sunday or public holidays to ameliorate the concerns and potential impacts on nearby residence in this location. This is reflected in a draft condition of consent.

Council's Environmental Officer has considered the proposal and has submitted recommended conditions to suitably address potential odour management and noise management from the site. These include:

- No storage of product where it can generate odours,
- No storage of equipment that may emit odours outside of the facility,
- No hosing down of equipment outside of the facility,
- Noise emissions not to exceed 5d(B)A Leq (15 min) above background levels measures at residential properties.

It is submitted that the imposition of the noise emission requirements sets a precedent for good and effective management of noise from the industrial precinct. It is noted that the Applicant has agreed to the imposition of such a condition in response to Council information request.

Similar to other industrial developments that have the potential to impact on nearby residents, it is proposed that:

- A Noise Management Plan be prepared by a suitably qualified acoustic practitioner for the ongoing operation of the facility and independent noise monitoring by a suitably qualified acoustic practitioner is to be undertaken within six months of operation of the shed and associated activities.
- An operational noise monitoring report is to be provided to Council to determine actual project noise levels. Any recommendations for additional noise mitigation measures is to be undertaken by the facility.

As mentioned earlier in the report the proposed use of the land for light industry is a permitted use in the IN1 zone. The conditions of consent can adequately mitigate the potential adverse impacts on the nearby residences.

Best practice procedures are recommended for the processing facility in that any potential offensive noise or odours be managed within the current NSW environmental guidelines.

The options for Council are:

1. Approve the height variation and development application subject to the imposition of the Draft Advices and Conditions contained in Schedule 1;
2. Approve the application subject to the submission of a noise assessment report to meet the NSW Noise Policy for Industry standards prior to the issue of the Construction Certificate and the consent be conditioned to operate in accordance with the recommendations of the noise assessment report;
3. Defer the application and request the applicant provide a noise assessment report. Upon receiving the report, refer the application back to Council with draft conditions that address any recommendations of the report; or
4. Refuse the application with valid reasons.

COUNCIL IMPLICATIONS

Budget/Financial

N/A

Asset Management

N/A

Policy or Regulation

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Clarence Valley Local Environmental Plan 2011
- Industrial Zones Development Control Plan
- NSW Noise Policy for Industry

Consultation

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Engineering	Supported with conditions
Health & Building	Supported with conditions
Environmental Health	Supported with conditions
Trade Waste	Supported with Conditions

Legal and Risk Management

Should the Applicant be dissatisfied with Council's decision, they have a right of appeal to the Land and Environment Court which may incur a financial cost to Council. Prior to any appeal submitted through the Court the Applicant can seek a review of Council's determination in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

Climate Change

Obligations are on the Applicant in regards to the proposal to reduce greenhouse gas emissions, energy efficiency and reduce potable water consumption. Compliance that these commitments have been met will be through best practice management.

Prepared by	Pat Ridgway, Senior Development Planner
Attachment	A. Plans
To be tabled	B. Statement of Environmental Effects, S4.6 variation and additional information response C. Submissions D. Section 4.15 Assessment Report

Schedule 1 – Draft Advices and Conditions

Definitions

NorBE means the control and mitigation of developed stormwater quality and flow-rate quantity to achieve a neutral or beneficial outcome for post-development conditions when compared to pre-development conditions, in accordance with **NRDC**.

NRDC the current civil engineering standards in accordance with the relevant parts of the following guidelines

- A Northern Rivers Local Government Development and Design Manual (AUS-SPEC)
- B Northern Rivers Local Government Construction Manual (AUS-SPEC)
- C Northern Rivers Local Government Handbook of Stormwater Drainage Design (AUS-SPEC)
- D Northern Rivers Local Government Handbook for Driveway Access To Property (AUS-SPEC)
- E Sewerage Code of Australia (WSA 02 - 2002)
- F Water Supply Code of Australia (WSA 03 - 2002)
- G Clarence Valley Council 'MUSIC' Guidelines (Draft)

AUS-SPEC documents can be obtained from a link under the 'Planning & Building' section of the Clarence Valley Council webpage.

WSA documents are subject to copyright and may be obtained from the 'Water Services Association of Australia'.

For 'MUSIC' guidelines and policy documents contact Council's development engineer.

offensive odour means an odour:

- (a) that, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances:
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a strength, nature, duration, character or quality prescribed by the Protection of the Environment Operations Regulations or that is emitted at a time, or in other circumstances, prescribed by the regulations.

WSUD means Water Sensitive Urban Design

Clarence Valley Council Development Control Plans include Sustainable Water Controls which identify the measures required in the various land use zones. Council endorses the Queensland 'Water By Design - Healthy Waterways' reference and technical guidelines for the design and construction of WSUD drainage systems.

The **WSUD** documents may be accessed via the 'Water-By-Design' web-site.

Advices

1. This development is subject to high consumption non-residential charges for water and sewer in lieu of Section 64 Headworks Contributions. Current 2021/22 rates are as follows:

Area	2021/22 Consumption Charge (\$/kL)	High Consumption Charge (\$/kL)
Water – All areas	\$ 2.59	\$ 3.46 ¹
Sewer – Maclean, Townsend, Ilarwill, Lawrence, Iluka & Yamba	\$ 3.60	\$ 7.14 ²

¹ Applies to that component of water consumption above 1.233kL/day

² Applies to that component of sewage generation above 0.74kL/day

2. Any activity to be carried out on any part of the road reservation requires the prior approval of Council under the NSW Roads Act 1993.

3. The proposed anti room is situated over an existing sewer main and easement on the property. This main provides sewer servicing and connection for the Lot. The sewer main is not identified on Council's asset mapping and the easement does not benefit Council. The 88B indicates that this easement benefits the neighbouring property SP 84131.

If the property SP 84131 is benefited by the sewer easement, it will be required that the relevant property owner(s) agree to the modification/removal of the easement prior to construction of any structures over this area.
4. No construction is to be commenced until a Construction Certificate has been issued.
5. Prior to work commencing on a development the applicant must give notice to Council of their intention to commence work. Such notice shall be submitted to Council at least two (2) days before work commences.
6. Access to the building for disabled persons shall be provided and constructed in accordance with the requirements of Part D3 of the Building Code of Australia and AS 1428.1-2009.
7. Accessible facilities for the use of the disabled shall be provided as specified in Clause F2.4 of the Building Code of Australia and shall be constructed to the requirements of AS 1428.1-2009.
8. Car parking spaces for people with disabilities are to be provided as required by Part D3.5 of Building Code of Australia.
9. In a building required to be accessible, braille and tactile signage complying with Specification D3.6 of the Building Code of Australia and incorporating the international symbol of access or deafness, as appropriate, in accordance with AS 1428.1-2009 must identify each sanitary facility; space with a hearing augmentation system and door with a required 'exit' sign.
10. An accessible path of travel shall have a maximum construction tolerance of 5mm at abutting surfaces (eg. lip at doorways) with a rounded or bevelled edge.

CONDITIONS:

1. The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia (BCA) and being generally in accordance with the following plan(s) as amended in red, or where modified by any conditions of this consent.

Drawing	Drawn by	Dated	Sheets	Reference
Proposed Site Plan	Gavin Duffie	11.1.21	1 of 5	G3153
Proposed Floor Plan	Gavin Duffie	11.1.21	2 of 5	G3153
Foundation Plan	Gavin Duffie	11.1.21	3 of 5	G3153
Elevations	Gavin Duffie	11.1.21	4 of 5	G3153
Section A-A and I.Q.F. Tank Plan	Gavin Duffie	11.1.21	5 of 5	G3153

2. Payment to Council of the contributions pursuant to Section 7.12 of the Environmental Planning and Assessment Act:

\$38,000.00

GL S94ACVCOthResAcco

This amount is based on the following calculation:

- a Proposed cost of carrying out the development is more than \$200,000 = value of development x 0.01
- b The value of development stated in the application was \$3,800,000.00

The contributions are to be paid to Council prior to release of the Construction Certificate. All contribution plans are available for inspection at Clarence Valley Council Offices, 50 River Street, Maclean and 2 Prince Street, Grafton.

In the event of any subsequent amendment to the approved Development Plans, the calculated contribution amounts may vary, and if so will become the contribution payable. A true estimate of the value of development must be provided when application is made for the Construction Certificate.

3. A landscape plan prepared by a person competent in the field is to be submitted to Council for approval prior to the issue of a Construction Certificate. The plan shall indicate the mature height, location, quantity and species of all plantings and shall provide details of soil conditions, the planting method and maintenance program.
4. Prior to issue of the Construction Certificate, details of noise mitigation measures and acoustic design of the new shed must be submitted to Council for approval.
5. The developer must bear any costs relating to alterations and extensions of existing roads, drainage and services for the purposes of the development.
6. Prior to issue of the Occupation Certificate, the applicant is to provide water supply infrastructure to service the development, in accordance with the requirements and specifications of the Clarence Valley Council Sewer & Water Connection Policy and NRDC.
7. Prior to release of the Occupation Certificate sewerage reticulation infrastructure is to be provided to service the development in accordance with the requirements and specifications of Clarence Valley Council's Sewer & Water Connection Policy and NRDC. Details of existing sewer junction locations on the site are to be provided.
8. Written consent from the owners of SP84131 for any works within the existing sewer easement on the property are to be provided to Council for approval with the Building Construction Certificate.
9. Special footing / sewer main protection works, in accordance with Clarence Valley Council's Policy for building in close proximity to sewers, will be required for buildings or any other works over or within the zone of influence of Council sewer mains. It is recommended that, prior to commencement of design, the matter be discussed with Council's Water Cycle Section.
10. All stormwater falling on the property is to be collected within the property and discharged in accordance with the relevant parts of the applicable Clarence Valley Council Development Control Plans and **NRDC**. A Stormwater Management Plan must be prepared to reflect these standards and guidelines.

A Stormwater Management Plan (SWMP) that demonstrates **NorBe** must be prepared in accordance with **NRDC**. The SWMP must be prepared in accordance with the guidelines listed under the Industrial Zones DCP and demonstrate compliance with the controls for quality and quantity management targets.

The SWMP must consider any adjacent property or infrastructure affected by the development. Design details of the drainage system and point of discharge must be submitted with the Stormwater Management Plan for approval by Council and/or accredited private certifier prior to issue of the Building Construction Certificate. Connection to the public drainage system requires the approval of Council under the NSW Local Government Act.

The Stormwater Management Plan must include a management plan for any **WSUD** systems. The management plan must consider construction and operational phases.

All inter-allotment and Council owned stormwater drainage systems must be located within drainage easements.

On-site detention (OSD) and water quality control systems for individual proposed lots need not be provided until a building is occupied on the lot, but the Development Application must demonstrate **NorBe** by calculation and details acceptable to Council.

11. Car parking, driveways, manoeuvring and access areas must be constructed, sealed, line

marked and drained for a minimum of 18 car parking spaces in accordance with the DA approved plan and made available thereafter. The car parking classification is Class 2 for the internal parking and is to be designed in accordance with AS2890, the relevant parts of the applicable Council DCP and **NRDC**. All car parking spaces must be accessible by B99 vehicles.

12. Prior to the issue of the Building Construction Certificates, the adequacy of parking, car parks, driveways, garages and vehicular accesses for the development is to be demonstrated by the submission of standard scale plans with manoeuvring paths shown in accordance with AS2890. This must clearly demonstrate that the parking area will function as intended. The parking area plans are to be submitted and approved by Council or accredited private certifier.
13. Erosion and Sediment Control is to be implemented in accordance with the relevant parts of the applicable Council Development Control Plans, 'NSW Managing Urban Stormwater - Soils and Construction (Blue Book)' and NRDC. These controls are to be maintained and managed by the applicant and/or the appointed contractor until an Occupation Certificate is issued.

Building

14. The development is not to be occupied or used until such time as an Occupation Certificate has been issued.
15. **Working/Construction Hours - Working hours on construction or demolition shall be limited to the following:**
 - 7.00 am to 6.00 pm**
 - 8.00am to 1.00pm Saturday**
 - No work permitted on Sundays and public holidays**

The builder is responsible to instruct and control sub contractors regarding the hours of work and the requirements of the Protection of the Environment Operations Act 1997 and Regulations.

Site Safety Management Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.

All excavations and back filling associated with the erection and demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

16. A person who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land shall, at their own expense and where necessary:
 - a Preserve and protect the building from damage; and
 - b If necessary, underpin and support the building in an approved manner, details of which are to be submitted with the application for the Construction Certificate and certified by a professional engineer or an accredited certifier.

The person who causes this excavation must, at least seven (7) days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to this owner of the proposed work. (Note: An adjoining allotment of land includes a public road and any other public place. A building includes a fence).

17. Prior to commencement of works, a sign must be erected in a prominent position on any work site on which work is being carried out:
 - a Stating that unauthorised entry to the work site is prohibited, and
 - b Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside of working hours, and
 - c Showing the name, address and telephone number of the principal certifying authority for the work, and

Any such sign is to be removed when the work has been completed.

18. A vehicular crossing to provide access to the allotment as detailed on the approved plans is to be constructed in accordance with the requirements of Council's Operations Section and be fully completed prior to requesting a final inspection and the issue of an Occupation Certificate. An application for driveway access crossing is to be submitted and approved by Council prior to any work commencing.
19. A suitable enclosure shall be provided on site, during construction, for depositing waste materials that could become wind blown. Waste materials shall be disposed of to an approved recycling service or waste depot. No burning of waste materials shall occur.

The waste management plan submitted with this application shall be complied with during demolition/construction work and all measures required for the ongoing use of waste management facilities in the development shall be in place prior to the issue of the Occupation Certificate.

20. **Site Safety Management Building** equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.

All excavations and back filling associated with the erection and demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

Any such sign is to be removed when the work has been completed.

21. The building work involving the installation, modification or extension of a **relevant fire safety system** cannot commence unless:
- a plans have been submitted to Council as the principal certifying authority that show:
 - i in the case of building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the **relevant fire safety system**, or
 - ii in the case of building work involving the modification or extension of the relevant fire safety system—the layout, extent and location of any new or modified components of the **relevant fire safety system**, and
 - b specifications have been submitted to Council as the principal certifying authority that:
 - i describe the basis for design, installation and construction of the **relevant fire safety system**, and
 - ii identify the provisions of the Building Code of Australia upon which the design of the system is based, and
 - c those plans and specifications:
 - i have been certified by a compliance certificate referred to in 6.4 of the Act as complying with the relevant provisions of the Building Code of Australia, or
 - ii have been endorsed by a competent fire safety practitioner as complying with the relevant provisions of the Building Code of Australia.

relevant fire safety system means any of the following:

- a a hydraulic fire safety system including:
 - i a fire hydrant system (including street hydrants) or
 - ii a fire hose reel system, or
 - iii a sprinkler system (including a wall-wetting sprinkler or drencher system), or
 - iv any type of automatic fire suppression system of a hydraulic nature,
- b a fire detection and alarm system,
- c a mechanical ducted smoke control system.

The principal contractor for building work must ensure that the most recently endorsed copy of the plans and specifications for any **relevant fire safety system** for the building that were required to be submitted to the principal certifying authority:

- a are kept on the site of the building work, and
- b are made available for inspection on request by the certifying authority, consent authority, Council and Fire and Rescue NSW at the times during which the building work is carried out.

22. The waste management plan submitted with this application shall be complied with during demolition/construction work and all measures required for the ongoing use of waste management facilities in the development shall be in place prior to the issue of the Occupation Certificate.

Odour Management

23. No offensive odours as defined in this consent are to be emitted from the business.
24. At no time is any seafood, other food product or other items to be left or stored in an area where it can generate odours.
25. There is to be no storage of equipment i.e. crates, fish tubs or other items that may emit odours outside the premises.
26. No hosing or wash down of product, crates or any other items is to occur outside the business premises.

Noise Management

27. Noise emissions from the activity shall not exceed 5d(B)A Leq (15min) above the background level measured at habitable areas of nearby residential properties during the hours of 7:00 A.M. through until 6:00 P.M.
28. Noise emissions from the activity shall not exceed 3d(B)A Leq (15min) above the background level measured at habitable areas of nearby residential properties during the hours of 6:00 P.M. through until 7:00 A.M.
29. Operating hours and any deliveries for works associated with the facility, are to be limited to:
- 7:00am to 6:00pm Monday to Friday,
 - 7:00am to 5:00pm Saturday,
 - No work is permitted on Sundays and Public Holidays
30. A Noise Management Plan must be prepared by a suitably qualified acoustic practitioner with reference to the conditions of consent and submitted to Council for approval prior to operation of the facility. The plan must detail the methods that will be implemented for the operations associated with the shed to minimise noise impacts on the nearest affected dwellings. Information should include but is not limited to:
- a) Identification of nearby residences and other sensitive land uses.
 - b) Hours of operation.
 - c) Project noise trigger levels.
 - d) Detailed examination of all feasible and reasonable management practices that will be implemented to minimise noise impacts with reference to section 3.4 of the NPfl and section 5.2 of the noise assessment.
 - e) Strategies to promptly deal with and address noise complaints. This should include any records that should be kept in receiving and responding to noise complaints.
 - f) Name and qualifications of person who prepared the report.

The shed and associated activities must be managed and operated in accordance with the approved plan. All staff must be inducted to the plan and a copy must be available on the premise at all times.

31. An operational noise monitoring report is to be provided to Council to determine actual project noise levels. Any recommendations for additional noise mitigation measures is to be undertaken by the facility.

Trade Waste

32. An application to discharge liquid trade waste for Concurrence Classification C dischargers shall be submitted to Council for assessment with the Construction Certificate Application.
33. Prior to release of the Construction Certificate, concurrence must be obtained from the Trade Waste Regulation Team, Department of Industry for Council to approve the discharge of liquid trade waste to Council's sewerage system. Any requirements stipulated by the department shall be implemented.
34. Prior to Council issuing the trade waste approval, certification shall be provided to Council from an appropriately qualified person that all trade waste pre treatment equipment and systems have been installed and commissioned in accordance with relevant standards, the Trade Waste Regulation Team Department of Industry requirements, and Council requirements.
35. Prior to release of the Occupation Certificate, approval to discharge liquid trade waste to Council's sewerage system must be obtained from Council.

ITEM	6b.21.067	MOD2021/0034 – MODIFICATION OF SUB2005/5058 – AMEND SUBDIVISION LAYOUT – 362 NORTH STREET, GRAFTON
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Manager - Development & Land Use Planning (Murray Lane)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

<i>Applicant</i>	Jim O'Donohue – O'Donohue Hanna & Associates Pty Ltd
<i>Owner</i>	Dougherty Bros Pty Ltd
<i>Address</i>	362 North Street, Grafton
<i>Submissions</i>	Yes – 2 Objections

Council has received an application under Section 4.55 of the *Environmental Planning and Assessment Act, 1979* to modify SUB2005/5058 to amend the approved subdivision layout.

The application was notified and 2 submissions were received during the notification period. The application is being reported to Council as the original application was determined by the full Council. This report discusses the key issues with the application and provides a recommendation for Council's consideration.

OFFICER RECOMMENDATION

That Council accept MOD2021/0034 is substantially the same development as approved under SUB2005/5058 and approve the modification subject to the amended Conditions and Advices contained in Schedule 1.

COMMITTEE RECOMMENDATION

Clancy/Baker

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.067

Kingsley/Toms

That Council accept MOD2021/0034 is substantially the same development as approved under SUB2005/5058 and approve the modification subject to the amended Conditions and Advices contained in Schedule 1.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

Section 4.55 Modification Application MOD2021/0034 was lodged on 17 May 2021 to amend the layout of an approved 98 lot residential subdivision under SUB2005/5058, see Figure 1 for proposed lot layout. The Applicant has sought to amend the subdivision layout to remove the remaining ‘mews style’ lots and revert to a more conventional subdivision layout. The changes will include removal of the 28 higher density ‘Mews Lots’ between 400m² to 512m² and deleting the rear laneways and open space between Mews Lots which will result in proposed lots increasing in size ranging between 685m² and 1,198m², no additional lots are proposed. Two Stages of this development have been released, with Stage 3 under construction. This modification only relates to Stage 4 of the development.

The modification will require an amendment to Condition 1 and deletion of Condition 9 which relates to the design guidelines for the Mews Lots. The Applicant also seeks to amend Conditions 20 and delete conditions 19 and 29 which read as follows:

- 19. *The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street. The cycleway/pedestrian path shall commence from the point at which the internal cycleway meets those streets and extend to the southeast corner of the development.
(Reason: To provide for and encourage the use of cycles and public amenity).*
- 20. *Prior to development of the site beyond 50 lots, an on road cycleway shall be constructed, at full cost to the developer, from the south east corner of the development to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets.
(Reason: To provide for and encourage the use of cycles and public amenity).*
- 29. *All pathways in the subdivision are to be provided with a concrete or brick paved surface with minimum 1.2 metres width in accordance with Council’s Development Specification – Aus-Spec.*

In lieu of deleting Conditions 19 and 29, the Applicant is proposing to amend Condition 20 to extend the on-road cycleway further west to Flame Street and also provide the on-road cycleway on the southern side of North Street to the intersection with Cranworth Street.

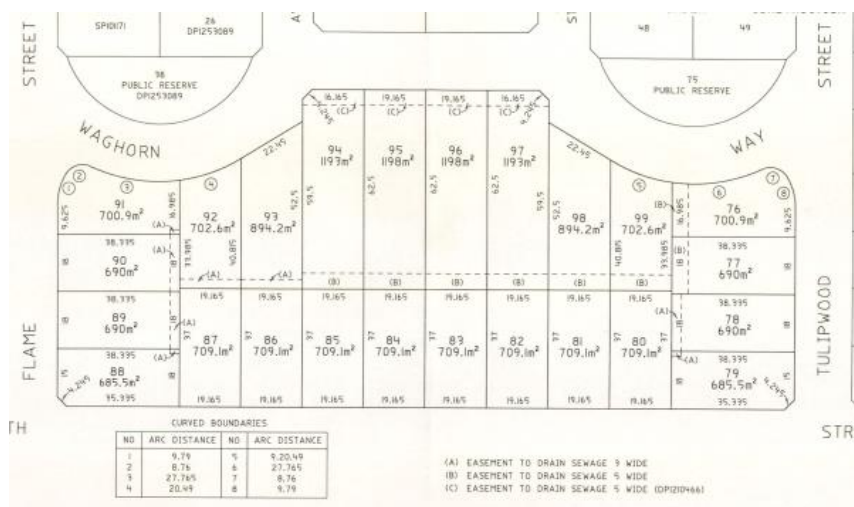


Figure 1 shows proposed amended lot layout for Stage 4 of the subdivision.

The subdivision was granted approval under SUB2005/5058 on 25 July 2006. The application has subsequently been modified by Court Order in 2009 which changed the requirement to provide a turning lane into North Street from Turf Street to make a monetary contribution to Council for the required works. The development has been subject to 2 previous modification applications being:

- 1. MOD2009/0054 – This application amended the telecommunication type required to service the development.
- 2. MOD2016/0006 – This application resulted in removal of the ‘Mews’ style lots in Stages 2 and 3 of the development and reverting back to a more conventional subdivision layout. This modification resulted in a reduction in lot yield of 1, dropping from 99 to 98 lots.

The 'Mews Lots' in the subdivision were groups of lots as seen in Figure 2 below whereby lots had dual road frontage and gained vehicular access via a narrow lane at the rear of the lots. This was envisaged as innovative and as providing a mix of density and housing options for future land owners. These lots also had specific design guidelines applicable including reduced setbacks and landscaped area requirements. Visitors to these lots were to park in designated on-street parking areas and use a connect footpath network to gain entry to the front of the mews properties.



Fig 2 - setback requirements (not to scale)

Figure 2 shows current Mews Lots south of the proposed road subject of MOD2021/0034.

KEY ISSUES

1. Is the development substantially the same development as approved?

This fundamental question needs to be dealt with before any further assessment of the proposed modification. MOD2021/0034 has been lodged under Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which reads as follows:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Consideration of whether the proposed modification is substantially the same development needs to be assessed against the original approved development and not the current modified development. Comparison of the qualitative and quantitative changes is required to determine whether the proposed modification is substantially the same development. Focus is to be given on the particular elements that are being changed, especially where that component is an essential component of the development. The key difference proposed by the applicant is the complete removal of the Mews Lots and proposed access from North Street.

The Applicant has provided the following justification in support of the application to demonstrate the proposed modification is substantially the same development as approved:

- a) The reduction in public areas (roads and open space) results in a lower maintenance cost to Council.
- b) The larger lots provide greater flexibility in development potential for single level dwellings compared to the restrictive Mews Guidelines which would generally require 2 storey developments to meet the provisions resulting in increased construction costs.
- c) The changes from Mews Lots to traditional lots will facilitate provision of higher density development and provision of more affordable housing resulting in greater utilisation of available services in accordance with the concept of urban consolidation.
- d) The Mews Lots present servicing issues for utilities, stormwater management and waste collection due to the narrow 6.5m rear laneways which over time could become an issue.
- e) The Mews Lots were not proposed as affordable housing lots despite what State Policy suggested at the time of the DA.
- f) The modified layout will result in a traditional style estate which replicates the characteristics of the estate to be consistent throughout.
- g) The proposal will not present issues with provision of services.

Comment

Development Application SUB2005/5058 was approved by Council at their meeting of 25 July 2006 and has subsequently been modified by Court Order and further Council meetings (MOD2016/0006 – Item No. 14.063/16). The initial approval granted a subdivision for 99 lots and included Mews Style lots throughout the subdivision layout. The modification by Court Order and MOD2009/0054 did not change the fundamental layout of the development and was considered substantially the same. MOD2016/0006 gave approval to amend the subdivision layout for 12 lots and reduce the number of mews lots from 37 to 28.

The main amendment to the development is the change of access for lots that had frontage to North Street, with removal of the rear laneways a total of 9 lots will gain direct access from North Street. The frontage of the development in North Street is recognised by Council's Open Spaces Manager as an emerging avenue of significance regarding the Jacarandas once canopies on either side of the road combine. The Applicant has demonstrated that these lots will not result in the removal of any Jacaranda trees for the provision of driveways, other than what has already been approved for the new intersections on North Street to service the development.

The removal of the Mews Lots and reconfiguration of Stage 4 of the estate will not increase the number of lots, however will result in less public open space between the Mews Lots. The provision of public open space was provided to compensate for the small Mews Lots and guidelines which required less private open space in comparison to the Development Control Plan. Development of the reconfigured lots will need to comply with current Private Open Space and Landscaped Area provisions which are not considered to increase the density of developed areas of Stage 4. A further consequence of the proposed amendment will also be the removal of the rear laneways and footpaths for pedestrian access through the open space areas for visitors to access the Mews Lots. Overall it is considered that the proposed modification will not create additional impacts that are not able to be satisfactorily mitigated through further detailed design of stormwater management and assessed as part of future development applications for each lot.

Taking into account the changes to the development and no greater impact as a result of the proposal it is considered that Council has the ability to determine MOD2021/0034 under Section 4.55 (1A) as the development is substantially the same development as approved.

2. Issues Raised in Submissions

The majority of issues raised in the submissions received do not solely relate to the proposed modification. A summary of the issues is provided below with a relevant comment.

- a) The filling of the land is unauthorised earthworks.
Comment: Filling of the land was proposed as part of the initial subdivision application, filling works have been subsequently undertaken for each stage of the development with appropriate civil construction approvals issued for bulk earthworks or was inclusive in the overall civil works for the respective stage. Material imported for Stage 3 and Stage 4 footprint is primarily quarry material, with minor quantities sourced from the South Grafton Golf Club. The fill was authorised under each respective Construction Certificate.

- b) Filling of the land and further development of the site will increase runoff resulting in drainage and stormwater issues.
Comment: Stormwater modelling and assessment considered the completed development and demonstrated no additional runoff from the site. This may need to be upgraded/amended with the future construction of the subdivision to account for the amended design.
- c) Provision of access to North Street will compromise the existing drainage network and result in additional traffic, the developer should be required to widen the road and provide kerb and gutter and provision of a footpath.
Comment: Although all internal roads are serviced by kerb and gutter requiring the provision of kerb and gutter on North Street due to direct change in access would be out of character with the surrounds. The development has not been required to provide kerb and gutter in Marlow Street or Earl Street where direct access was proposed. The Applicant will construct an inter allotment drainage line to direct stormwater north/north-east to the Ayr Street Reserve, therefore no additional water from the development with the exception of new driveways on North Street will drain to the existing grass swale. Requiring kerb and gutter and associated road widening may result in the majority of Jacarandas in this locality needing to be removed. The applicant will be widening North Street to provide an on-road cycleway however, no additional traffic will be created by the reconfiguration of the lots. Therefore, the provision of kerb and gutter in North Street is not required.
- d) Compliance with consent Conditions:
- Incorrect construction of stormwater line:
Comment: Stormwater drainage infrastructure was constructed in accordance with the applicable engineering standards. All infrastructure adopted by Council is independently certified prior to acceptance.
 - Provision of off-road footpath on North and Earl Streets for the development frontage and On-Road Cycleway.
Comment: The Applicant will be required to provide an on-road cycleway prior to the release of the subdivision certificate in the current stage under construction as the 50 lot threshold will be triggered. The developer currently is only required to provide the cycleway on the northern side. Should Council resolve to approve the modification application the cycleway will be extended from the Earl/North Street intersection further west to Flame Street and also be provided on both sides of the road. The developer has offered this additional length as an offset for removal of the off-street footpaths in North Street, Earl Street and through the subdivision.
 - Provision of turning lane on Turf Street
Comment: This matter was the subject of the Court Order. The Court ruled in the favour of the developer and instead of constructing the turning lane, the developer was required to pay Council a contribution towards the upgrade. This was paid to Council before the release of Subdivision Certificate for the First Stage.
 - Certification of Fill Material:
Comment: Council has been provided with the relevant Natural Excavated Natural Material and Excavated Natural Material Certificates for the source of fill associated with Stage 2, 3 and 4 of the Development.
 - Colorbond panels not permitted:
Comment: The restriction on colorbond panels only applies to the 'Mews Lots' of which the developer has modified the subdivision to remove these lots from the first 3 stages of the development. Should this application be approved, this will delete the remaining 'Mews Lots' in the subdivision.

COUNCIL IMPLICATIONS

Budget/Financial

There may be financial costs to Council should the Applicant appeal Council's decision. The application was accompanied by all fees required to be paid by Council's Fees and Charges. Assessment of the application has been completed by staff utilising recurrent staffing budgets.

Asset Management

Approval of the modification will result in less assets (rear laneways, open space and footpaths) being dedicated to Council in comparison to the approved development. However, Council will gain an additional length of on-road cycleway on the southern side of North Street.

Policy or Regulation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

Clarence Valley Local Environmental Plan 2011

Clarence Valley Council Development Control Plan for Development in Residential Zones

Consultation

The following sections of Council were consulted during the assessment of this application:

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Development Engineer	Supported subject to conditions
Open Spaces	Supports proposal

Legal and Risk Management

Should the Applicant be dissatisfied with Council's decision, they have a right of appeal to the Land and Environment Court which may incur a financial cost to Council. Prior to any appeal submitted through the Court the Applicant can seek a review of Council's determination in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

Climate Change

The change to the layout for Stage 2 is not considered to significantly result in impacts that would contribute to climate change in comparison to the already approved development.

Prepared by	James Hamilton, Development Planner
Attachment	1. Proposed Plans
To be tabled	2. Notice of Determination 3. Submissions 4. Section 4.15 Report

Schedule of Amended Conditions

Amended Conditions

1. *The development being completed in conformity with the Environmental Planning & Assessment Act, 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with plans as provided in the Statement of Environmental Effects dated November 2005 and prepared by Stephen J Conelly, Town Planner, and the amended lot layout plan for lots 27-30, 57-61 and ~~68-74~~ only, drawing number 10450-01, dated 26 February 2016, one (1) sheet, prepared by Bothamley and O'Donohue Pty Ltd, **and plan titled Marlowvale Estate – Stage 4, dated 14 May 2021, one (1) sheet and drawn by O'Donohue Hanna & Associates Pty Ltd, or as modified by any conditions of this consent.***
20. *Prior to development of the site beyond 50 lots, an on road cycleway **on both side of North Street** shall be constructed, at full cost to the developer, from ~~the south east corner of the development~~ **Flame Street** to connect with the North Street on road cycleway at the intersection of North and Cranworth Streets.
(Reason: To provide for and encourage the use of cycles and public amenity).*

Delete

9. *The applicant shall at the time of registration place a covenant on the title of each of the mews lots requiring all dwelling houses to be constructed in accordance with the document entitled "Waghorns Farm, Grafton Mews Allotments Design Guidelines, June 2006", and as revised on 29 February 2016. And all mews lots within the development are to be developed with single residences. No mews lot(s) shall be consolidated or further subdivided. The council shall be the only authority authorised to release vary or modify such covenant provisions.*
19. *The developer shall provide at full cost to the developer, an off road shared cycleway/pedestrian path along the frontage of the development in North Street and Earl Street. The cycleway/pedestrian path shall commence from the point at which the internal cycleway meets those streets and extend to the southeast corner of the development.
(Reason: To provide for and encourage the use of cycles and public amenity).*
29. *All pathways in the subdivision are to be provided with a concrete or brick paved surface with minimum 1.2 metres width in accordance with Council's Development Specification – Aus-Spec.
(Reason: To ensure pathways are provided in accordance with Council policy).*

ITEM	6b.21.068	REV2021/0008 – SECTION 8.2 REVIEW OF DA2021/0004 - GENERAL INDUSTRY (CAR WASH) - RELATING TO SECTION 64 WATER AND SEWER HEADWORK CHARGES
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes	

SUMMARY

<i>Applicant</i>	DCS Building and Consulting
<i>Owner</i>	Brewhouse Group Pty Ltd
<i>Address</i>	160 North Street, Grafton
<i>Submissions</i>	Nil

The Applicant has lodged a Section 8.2 Review of DA2021/0004 under the *Environmental Planning and Assessment Act 1979*. Development Application DA2021/0004 approved a General Industry (Car Wash) at 160 North Street, Grafton. As part of the approval Section 64 contributions were imposed on the consent in line with the adopted Water Directorate ET Guidelines.

The Applicant is now seeking Council waive the whole of the contributions payable for the development and apply the current high consumption non-residential charge for water and sewer which came into effect on 1 July 2021.

This review is forwarded to Council for determination as Council previously resolved to approve DA2021/0004 at their 25 May 2021 meeting, Item No. 6b.21.019. This matter is discussed in detail in the Key Issues section of this report and a recommendation to Council is provided for consideration.

OFFICER RECOMMENDATION

That Council refuse REV2021/0008 as the Applicant's proposal is inconsistent with Points 3(ii) and Point 6(vi) of Resolution 6a.21.027 at the 22 June 2021 Council meeting as the development was approved prior to 1 July 2021.

COMMITTEE RECOMMENDATION

Simmons/Novak

That this item be deferred to full Council meeting to allow receipt of a report of further discussion between the officers and the applicant as to the options available to the applicant including withdrawal and lodging a new DA.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.068

Williamson/Baker

That Council refuse REV2021/0008 as the Applicant's proposal is inconsistent with Points 3(ii) and Point 6(vi) of Resolution 6a.21.027 at the 22 June 2021 Council meeting as the development was approved prior to 1 July 2021.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

AMENDMENT TO MOTION

Simmons/Novak

That Council

1. Refuse REV2021/0008 as the Applicant's proposal is inconsistent with Points 3(ii) and Point 6(vi) of Resolution 6a.21.027 at the 22 June 2021 Council meeting as the development was approved prior to 1 July 2021.
2. **Refund the fees referred to by the applicant of \$900.**

Voting recorded as follows:

For: Nil

Against: Simmons, Kingsley, Baker, Clancy, Ellem, Novak, Williamson, Lysaught, Toms

LOST

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

Development Application DA2021/0004 for General Industry (Car Wash) upon 160 North Street, Grafton was approved by Council at their meeting held 25 May 2021. The notice of determination was issued on 1 June 2021. The approved works included a single car wash bay and two vacuum bays.

Based on a single lane car wash, the proposed development was assessed as contributing an additional 5.24ET demand on Council's water supply, and an additional 8.57ET loading on Council's sewerage system.

The development was assessed on a per lane/bay in a car wash at a rate of 5.7ET for water and 9.03ET for sewer in accordance with the Water Directorate ET Guidelines current at the time. However, an applicable credit of 0.46ET for pre-existing uses was applied to the development resulting in a total contribution ET rate of 5.24 (5.7-0.46) for water and 8.57 (9.03-0.46). The following contributions were applied to the development based on 2020/21 financial year.

- Water Headworks \$4,979.00 x 5.24 additional ET = \$26,089.96
- Sewer Headworks \$6,811.00 x 8.57 additional ET = \$58,370.27

Twelve (12) months has not elapsed since the determination of the consent, therefore the contributions above are still current, the total payable is \$84,652.20.

KEY ISSUES

1. Waiving of Section 64 Water and Sewer Contributions

The Applicant has requested Council remove the total contribution amount of \$84,652.20 for sewer and water contributions and apply the recently adopted high consumption non-residential charge for water and sewer to the development.

Comment

The development has been levied with Section 64 Contributions in accordance with Council's adopted guidelines applicable at the time which would be similarly applied to any other business of similar nature as standard practice.

Council resolved at their meeting held 25 May 2021 (Item No. 6a.21.025) to amend the 2021/22 draft Revenue Policy to include a Non-Residential High Consumption Charge methodology for water and sewer applicable to all non-residential developments approved after 1 July 2021. Part of the resolution reads as follows:

'A Non-Residential High Consumption Charge will apply to non-residential properties with development approval issued after 1 July 2021. The Non-Residential High Consumption Charge is calculated by amortising the Section 64 Developer Charge for water and sewer over 40 years with a cost of capital of 5% and a forecast escalation of developer charges of 2.5% and then divided by 230kl/year and 138kl/year for water and sewer.'

Prior to 1 July 2021, Section 64 contributions for new non-residential development were applied in accordance with the NSW Water Directorate Guidelines. As DA2021/0004 was determined on 1 June 2021 and the Non-Residential High Consumption Charge did not come into effect until 1 July 2021, Council cannot legally apply the new non-residential rate. The Applicant has been advised that should they intend to be considered under the Non-Residential High Consumption Charge they would need to apply for a new Development Application and surrender consent DA2021/0004.

The revenue policy does not set a policy "position" but is a statutorily required document outlining how Council will generate its income. The implementation of the policy is under other sections of the *Local Government Act 1993* (LGA) such as Section 602 where Council resolves to adopt its rates and charges. The statutory requirement for the Revenue Policy is specified in Section 223(1)(f) of the LGA:

(f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,

There is a statutory process that the Applicant must go through in order for Council to reconsider the applicable charges that are incurred by the development. The high consumption charges are charged under Section 502 of the Local Government Act and were adopted following the statutory process required for setting fees and charges (Resolution 6a.21.027 at the 22 June 2021 Council meeting). The Applicant in this instance has not followed that process. The only option for the proponent to have their development considered under the Non-Residential High Consumption Charge is to lodge a new development application. Note, that if Council were to resolve to agree to the Applicant's request without first undertaking the statutory process for modifying fees and charges it is considered this would be an *ultra vires* resolution.

Option 1

Council support the officer recommendation as the review is inconsistent with Points 3(ii) and Point 6(vi) of Resolution 6a.21.027 at the 22 June 2021 Council meeting as the development was approved prior to 1 July 2021 and therefore cannot be supported by Council staff.

Council advise the Applicant that on Application for the Certificate of Compliance for Water and Sewer that they seek a reduction under Council's policy for Section 64 Assistance for Small Business. This policy acknowledges that sewer and water developer contributions can adversely impact on the viability of establishing small businesses (industrial and commercial). To assist with the establishment of small businesses, the policy allows the reduction of the calculated Section 64 sewer and water contributions for commercial and industrial small business developments by up to 2ET as follows:

- First 2 ET - 50% reduction (i.e. up to 1.0ET total reduction)
- The 3rd and 4th ET - 30% reduction (i.e. up to 1.6ET total reduction)
- The 5th and 6th ET - 20% reduction (i.e. up to 2.0ET total reduction) >6 ET - No further reduction

If Council supports a reduction in accordance with the policy, then an amount of \$61,072.20 will be payable to Council towards sewer and water headworks resulting in a monetary reduction of \$23,580.00. This is the officer recommendation.

Option 2

Council support the request from the Applicant to have the development considered under the Non-Residential High Consumption Charge and resolve to commence the statutory process to modify the fees and charges. This is not the officer recommendation.

Option 3

If Council is of the opinion that the contributions are excessive Council may wish to waive part or the full contribution amount of \$84,652.20. This is not the preferred option as it is inconsistent with Council's policy and could set a precedent for other similar type of developments. This is not the officer recommendation.

COUNCIL IMPLICATIONS**Budget/Financial**

Council's Section 64 Assistance Policy for Small Business allows a reduction of sewer and water contributions up to 2ET's. If Council supports a reduction in accordance with the policy, then an amount of \$61,072.20 will be payable to Council towards sewer and water headworks resulting in a monetary reduction of \$23,580. If Council supports the full waiving of contributions, this would result in a reduction of \$84,652.20 towards provision of sewer and water infrastructure. Waiving the full contribution amount is likely to result in similar retail businesses claiming discounts of similar development setting an undesirable precedent.

If Council were to follow the statutory process to modify the high consumption fees so that these charges can be applied to developments approved prior to 1 July 2021, it would apply to all development approvals to which the charge applies.

Asset Management

Council would be accepting additional maintenance costs on Council infrastructure as a result of an increase in usage/loading from the development without collecting appropriate contributions.

Policy or Regulation

Section 64 Assistance for Small Business
Water Directorate ET Guidelines
Local Government Act and Regulation

Consultation

The following internal sections of Council were consulted during the assessment:

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Development Engineer	Does not support proposal
Water Cycle	Does not support proposal

Legal and Risk Management

The recommendation to waive contributions up to 2ET complies with Council's Section 64 Assistance for Small Business resulting in reduced legal and risk management.

Climate Change

N/A

Prepared by	James Hamilton, Development Planner
Attachment	Applicants Submission

ITEM	6b.21.069	PLANNING PROPOSAL REZ2020/0004 – SOUTH MACLEAN HIGHWAY SERVICE CENTRE
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

Proponent	Hargreaves Property Group
Date Received	14 July 2020
Owner	Maclean Service Centre Pty Ltd
Subject land	Lot 2 DP 634170, Schwonberg Street, Townsend
Current Zoning CVLEP 2011	RU2 Rural Landscape (RU2)
Proposal	To enable an additional use of the subject land for the purposes of a highway service centre (subject to a development application)

A planning proposal has been submitted to Council seeking to enable an additional use of land under the Clarence Valley Local Environmental Plan 2011 (CVLEP) to allow, with granting of development consent, the construction of a highway service centre on land east of the Pacific Motorway at Townsend. The planning proposal has been publicly exhibited and referred to relevant State Government agencies. This report considers feedback received during the consultation phase and seeks endorsement from Council to approve the planning proposal, and to finalise the proposed amendment to the CVLEP. Following endorsement from Council, a request will be sent to Parliamentary Counsel seeking the legislative amendments to be drafted. Once Council is satisfied with those amended provisions the CVLEP amendment can be authorised to be made under the delegated authority that has been issued to Council staff for this proposal. The formal amendment will then be published in the Government Gazette.

OFFICER RECOMMENDATION

That Council:

1. Endorse planning proposal REZ2020/0004 to amend Schedule 1 of the Clarence Valley Local Environmental Plan 2011 to enable an additional use of land known as Lot 2 DP 634170, Schwonberg Street, Townsend for the purposes of a highway service centre, subject to development consent; and
2. Exercise its delegated authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the amendment to the *Clarence Valley Local Environmental Plan 2011*.

Having declared an interest in this item Cr Novak left the Committee meeting at 4.30pm and returned at 4.45pm.

COMMITTEE RECOMMENDATION

Simmons/Baker

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Simmons, Baker

Against: Clancy

Having declared an interest in this item Cr Novak left the Council meeting at 5.04pm and returned at 5.09pm.

COUNCIL RESOLUTION – 6b.21.069

Toms/Lysaught

That Council:

- 1. Endorse planning proposal REZ2020/0004 to amend Schedule 1 of the Clarence Valley Local Environmental Plan 2011 to enable an additional use of land known as Lot 2 DP 634170, Schwonberg Street, Townsend for the purposes of a highway service centre, subject to development consent; and**
- 2. Exercise its delegated authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the amendment to the *Clarence Valley Local Environmental Plan 2011*.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Williamson, Lysaught, Toms

Against: Clancy

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 3 Economy

Objective 3.1 We will have an attractive and diverse environment for business, tourism and industry

Strategy 3.1.3 Provide land use planning that facilitates and balances economic growth, environmental protection and social equity

BACKGROUND

The proposed siting of a highway service centre in the South Maclean locality has been the subject of a Ministerial Planning Direction since 1995. Ministerial Local Planning *Direction 5.4 - Commercial and Retail Development along the Pacific Highway, North Coast* provides direction on suitable locations for new highway service centres where these are 'out of town' and not already zoned for urban uses. The nominated locations include Chinderah (north and south-bound), Ballina, Maclean (southern interchange), Woolgoolga (northern interchange at Arrawarra), Nambucca Heads, Kempsey, Port Macquarie, Taree and Tomago.

The subject land (refer to Figure 1) was previously occupied by the Maclean Sewage Treatment Plant. Following installation of the new STP at Woodford Island this site was decommissioned in 2010 and the land was subsequently sold. A planning proposal was prepared by Council in 2017 to rezone the land from SP2 Special Purpose Infrastructure to RU2 Rural Landscape consistent with the surrounding zoning which became effective in 2018. Decontamination and rehabilitation of the site to residential standard was completed prior to resale.

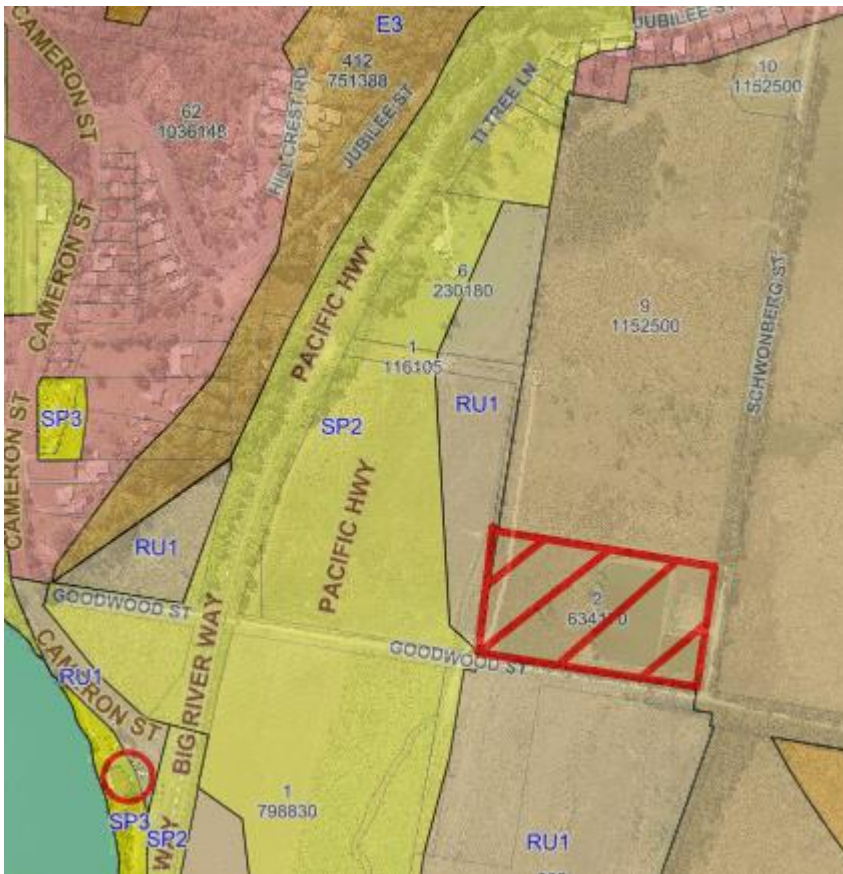


Figure 1 – Proposed site for highway service centre (shown bordered and hatched red) in relation to the location of Ferry Park visitor centre (shown by red circle).

A spur road has been partially constructed off the new interchange towards Goodwood Street adjacent to the proposed highway service centre site as part of the recent Pacific Highway upgrade.

The Gateway Determination from the Department of Planning, Industry and Environment, received on 15 July 2021, required the planning proposal to be updated to:

- include discussion on the proposal's consistency with Council's Local Strategic Planning Statement;
- include discussion on the likely increased employment opportunities and expected social benefits of the proposal; and
- include reference to all supporting studies.

The planning proposal was subsequently updated to address those requirements.

The delay of one year between receipt of the planning proposal and the Gateway Determination occurred as the Applicant was required to submit additional information to ensure appropriate assessment of a range of issues or challenges for the site and future development.

Public exhibition of the planning proposal commenced on 13 August 2021 and was completed on 2 September 2021.

KEY ISSUES

Strategic context

The siting of a highway service centre adjacent to the southern interchange at Maclean, along with a range of other locations between Tweed Heads and Hexham (near Newcastle) has been endorsed through the Ministerial *Local Planning Direction 5.4 - Commercial and Retail Development along the Pacific Highway, North Coast* since 1995. The current proposal is consistent with that planning direction.

Specific considerations for the subject land and proposed use are relevant and these are presented and discussed below.

Existing zoning and proposed change

The site is zoned RU2 Rural Landscape and highway service centres are prohibited in the RU2 zone under the CVLEP.

This planning proposal requests a change to Schedule 1 of the CVLEP to enable an additional use of land on the subject land for the purposes of a highway service centre. The following suggested wording for clause has been provided by the Applicant:

Use of Certain Lands at Townsend

- (1) *This clause applies to Lot 2 DP 634170 Schwonberg Street, Townsend and identified as "Area D" on the Additional Permitted Uses Map.*
- (2) *Development for the purpose of a Highway Service Centre is permitted with development consent.*

The objectives of the RU2 Rural Landscape zone provide scope to require a highway service centre to be compatible with nearby rural character of this site and productive use of nearby rural land.

A future highway service centre on the subject land would become one of the 'gateways' to Maclean and the Clarence Valley, especially for motorists using the Pacific Highway. While there are at least two existing facilities that currently offer direct service to highway motorists (eg sites at Halfway Creek), the South Maclean site will be the only nominated service centre located on the future Pacific Motorway within the Clarence Valley. Hence, this proposed facility offers opportunity to promote the Clarence Valley to the travelling public without being a formal visitor information centre. For example, the Ballina Service Centre includes attractive maps and information about the Richmond Valley and other points of interest within the local area. This model is something Council and the proponent can liaise on independent of this planning proposal.

There are also requirements for the proposal to satisfy the Local Strategic Planning Statement, which aims to take a 'placemaking' approach and includes a myriad of priorities to make the Clarence an attractive, sustainable and resilient place. The objectives of the RU2 zone and other requirements within the Ministerial Direction, Council's LSPS and normal considerations for development applications, together with the developers already stated intentions, will ensure the new service centre fits with the character befitting of an entrance to Maclean and the Clarence Valley.

Site and Development Considerations

A planning proposal considers feasibility and suitability of a development to the proposed location and should provide sufficient information to identify relevant considerations such as environmental risks, site specific requirements and similar contextual matters. Council staff identified several potential engineering and environmental considerations relevant to the site and requested additional information to assess the proposal. The requested information was completely provided in May 2021 and generally address Council's preliminary comments and is adequate for this stage of the development.

Relevant considerations are presented in a little more detail below:

Earthworks/Geotechnical

Preliminary comments highlighted concerns regarding compaction/suitability of the underlying soil, influence of groundwater, filling of the site and its suitability for commercial development.

A Geotechnical Investigation Report has been provided with advice that *'preliminary analysis undertaken in the current assessment indicates site preloading with wick drains may provide one viable geotechnical design solution, although further detailed analysis and design will be required to establish the most cost-effective ground improvement option'*. Additionally, preliminary testing indicated that *'the site could be made suitable for the proposed development providing appropriate ground/site preparation measures are performed'*.

Further, the report advises that, *'some long term 'creep' consolidation of the subsurface material at the site is anticipated. The structural design of buildings and civil design of roads and drainage will need to take account of the anticipated long-term settlements (including differential settlements). Settlement sensitive structures should consider the use of piled footings and adequate articulation'*. Given the proposed lightweight, single storey structures, it is expected this creep can be managed and the design can make appropriate allowances for any long-term settlement. Such measures would require further detail for DA and Construction Certificate (CC) approvals, however, Council's Engineer advises that they are not considered necessary at this stage.

Flooding

The proposed site is located within the Clarence River floodplain and is subject to flooding. Preliminary information provided by the Applicant recognised that the development could have potential impacts on flooding via obstruction and loss of floodplain storage due to proposed filling works of up to 5 metres and 80,000 solid m³ of soil to establish a pad above the required flood level. Council staff requested further information to better assess the potential impacts on local flooding.

The submitted Flooding Assessment, prepared by GHD, considers the site and proposed development in 'worst case scenarios', based on the updated Lower Clarence River Flood model, developed for the Pacific Highway upgrade.

The report concludes that '*The flood impact assessment has identified the impact of filling due to the proposed development and loss of flood storage within the Clarence River floodplain has negligible (<1 mm) effect on flood levels in the area*'. The report does state though, that it is assumed the updated flood model represents the 'as constructed' design geometry and drainage associated with the Pacific Highway upgrade. Again, Council's Engineers are satisfied with the current level of assessment given more details would be required if the proposal progresses to a DA and CC in the future, and surrounding residents will be notified and able to comment on those details.

Traffic and site access

The site is positioned to service south bound Pacific Highway traffic but can also be accessed from north bound traffic via the highway overpass. Local traffic will also be able to utilise the highway service centre. Heavy vehicle access to the site, internal parking/manoeuvring as well as access to the site via the unsealed portion of Schwonberg Street were matters the Applicant was required to address.

The submitted Traffic Impact Assessment recognised a total requirement of 25 heavy vehicle parking spaces, 21 car parking spaces, 1 service vehicle space and multiple spaces for buses and/or RV's. The current proposal satisfies these requirements and provides additional car parking spaces. Due to the nature of the development, parking requirements and provisions on-site will be assessed at DA stage and will be required to be provided in accordance with AS 2890 standards.

Sweep paths of heavy vehicles to and through the site currently show non-compliance. Sweep path analysis will be required at DA stage and it is foreseen that minor changes can be made to accommodate design vehicles. This is a detailed design issue that can be resolved at DA stage.

The report identifies sufficient intersection sight distance and maintains a high level of service for all intersections to the development based on traffic volumes recorded prior to operational use of the Pacific Highway upgrade. Further traffic data may be required at DA stage to more accurately represent and assess local traffic patterns around the development.

Not surprisingly the traffic consultants did not observe any existing pedestrian or vehicle use of Schwonberg Street in their site assessment. However, it is reasonable to expect that usage to change if this development was to progress and be constructed. The condition and geometry of the unsealed section of Schwonberg Street is not suitable to accommodate increased traffic volumes and design considerations at DA stage should be considered to manage, and possibly discourage, its use as an access to the highway service centre. Given Schwonberg Street offers the most direct access to/from the site for local residents east of the Pacific Highway the specifics of how access along and use of this thoroughfare will be best managed will need to be determined in the future if the CVLEP is amended and the proposal is progressed to construction.

Concern was also raised by Council staff regarding construction traffic and its impact to the local road network. The proposal requires importing approximately 80,000 solid m³ of fill material to the site, or around 7,000 truck and dog loads. These impacts will be assessed by Transport for NSW (RMS) regarding the Pacific Highway network and construction traffic and their impacts to the State and local road network can be conditioned at DA stage and assessed under dilapidation reports once all fill sources are more formally determined and agreed.

Transport for NSW (RMS)

TfNSW considers the Planning Proposal is generally consistent with TfNSW's Highway Service Centres along The Pacific Highway Policy and the Section 9.1 Direction 5.4(6). TfNSW understands any future development application will need to include an updated Traffic Impact Assessment, which will be referred to TfNSW in accordance with Clause 104 of the SEPP Infrastructure 2007. TfNSW notes that the subject site is

comparatively smaller than sites accommodating HSC uses along the Pacific Highway. Consideration will need to be given to the effective use of available space to manage conflict between light vehicles, heavy vehicles and pedestrians. Future options are available to reconfigure the site compared to the indicative plans provided at the rezoning stage and Council officers can work with the proponent and Transport for NSW to optimise the site and minimise any internal conflicts in the site and manage impacts for surrounding residents. Given the assessment and advice from TfNSW this is not a reason to decline or delay the planning proposal.

Services

Services are available to the site or can be extended to service the development. Servicing plans will be required at DA stage.

Environmental Impacts

Comments have been provided by the Environment Protection Authority (EPA), Council's Trade Waste Officer (TWO) and Environmental Health Officer. None have raised concerns with the planning proposal. However, each have provided advice to ensure that preparation and assessment of any future DA properly considers measures to protect the environment. It is important to note that six (6) public submissions have raised concerns with the potential impact on the environment from the proposed highway service centre and the advice below addresses those concerns and the relevant legislative requirements.

Council's TWO has advised that the initial management intent for trade waste associated with the centre, as stated in the planning proposal, would not be consistent with Council's current practices and requirements. Specifically, the advice is that a containment tank for any spills or other potential contaminants must be provided. This advice, citing examples of similar considerations for DAs for service stations around the Clarence Valley, has been provided to the Applicant. The Applicant has confirmed via email that this advice can be accommodated at the DA stage.

The EPA feedback has stated no concerns and they have provided reference to a range of guidance notes and legislation that will need to be addressed at the DA stage.

No response was received from DPIE - Biodiversity Conservation Division (BCD), however a conversation with BCD indicated there were no concerns with the proposal.

No response was received from Yaegl Traditional Owners Corporation. A Cultural Heritage Impact Assessment completed as part of the planning proposal did not raise any concerns. Further engagement with traditional owners prior to lodging any future DA may add value to the final outcomes for the site and ensure it appropriately reflects the stories and traditions associated with the land and immediate area.

Written Submissions

A total of seven (7) public submissions have been received, one (1) providing conditional support and six (6) opposing the service centre. Agency responses from Transport for NSW and the Environmental Protection Agency (EPA) state no opposition to the proposal. A Submissions Analysis is provided at Attachment A and full copies of each written submission are provided at Attachment B.

The issues raised in public submissions, are discussed below, however they are not considered substantive enough to outweigh the strategic and Ministerial Direction for a service centre to be located at the Maclean South Interchange. Further, the concerns presented in submissions can and will need to be considered further at DA stage. Council officers and the Applicant are confident the issues can be acceptably addressed and managed to enable support for a highway service centre on this site.

The key issues raised include:

- The need for promotion of the Maclean/Clarence Valley within the new service centre, as this may be the only stopping point for visitors.
- The need to make the highway service centre an attractive place with landscaping and treatment consistent with the 'gateway' to Maclean and the Clarence Valley.
- Concern about flooding impacts on nearby properties and nearby roads and access.
- Concern about potential impacts on the environment from spills and contaminants associated with the highway service centre.
- Stormwater treatment and the need to incorporate best practice water sensitive urban designed stormwater quality.
- Potential precedent for rezoning and development in this vicinity.

- Potential impacts on nearby residents from light (both service centre and trucks/vehicles) along with noise from braking and accelerating trucks, especially through the 24/7 operation.
- Concern about the proliferation of fast-food outlets and associated impacts on health and wellbeing of residents and the nearby high school, obesity, roadside littering and the like.

The concerns raised have either been addressed through the information provided and assessed by Councils Engineers, Water Cycle section (flooding), Transport for NSW, EPA or Council's TWO, or will be addressed at DA stage. The Applicant is aware of the various concerns that have been raised. Council officers will continue to work with the Applicant to ensure the best possible outcomes for the Clarence Valley for this important 'gateway' or 'window' into the Clarence Valley for passing traffic.

Options

The options available to Council include:

Option 1 – Endorse the planning proposal, as per the Officer Recommendation, for the reasons and justification provided within this report.

Option 2 – Not support the planning proposal. This is not recommended as an option, given the Ministerial Local Planning *Direction 5.4 - Commercial and Retail Development along the Pacific Highway, North Coast* and the assessment provided in this report.

Option 3 – Not support the planning proposal as submitted and require some amendment to the proposal. This is not recommended as an option, given the assessment provided in this report and that all detailed planning matters will be considered at the DA stage.

Option 1 is the preferred option.

Options 2 and 3 are not supported by Council staff and if Council resolves to not support the Officers Recommendation with or without amendment then in accordance with Council's adopted Community Participation Plan 2019 the Council needs to provide reasons for such decision.

COUNCIL IMPLICATIONS

Budget/Financial

The Applicant has paid the required fees for processing the planning proposal.

Asset Management

A 400mm diameter watermain running under the site is part of the trunk main servicing Gulmarrad and Brooms Head. An air valve is located adjacent to the site. The pipeline is adjacent to the edge of the power easement. Settlement is a concern, however, Council's Engineer advises that the indicative plans and future conditions on any development application (as applicable) will be adequate to ensure the protection of Council assets.

Policy or Regulation

Environmental Planning and Assessment Act 1979 - including relevant State Environmental Planning Policies and Minister's Section 9.1 Directions
North Coast Regional Plan
Local Strategic Planning Statement (LSPS)

Consultation

The planning proposal was publicly exhibited from 13 August 2021 to 2 September 2021 (longer than the minimum 14 days required by the Gateway Determination). Letters were sent to property owners in the vicinity of the proposed site (see Figure 1). The proposal was also advertised via Council's noticeboard and on the DPIE Planning Portal.

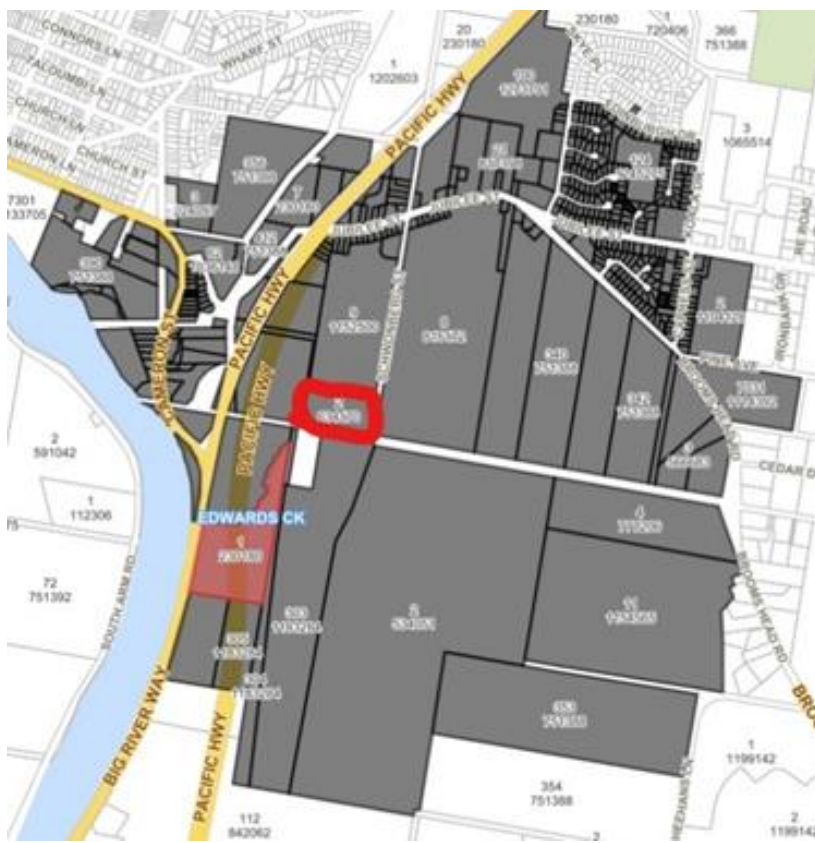


Figure 1 - Notification letters sent to property owners in the vicinity of the proposed Highway Service Centre, in addition to online and Council’s noticeboard notification.

Discussion of submissions and issues presented is provided in the ‘Key Issues’ earlier, the submissions analysis at Attachment A and copies of submissions are provided at Attachment B.

The following NSW agencies or organisations were also consulted:

- Transport for NSW (Roads and Maritime Services)
- Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
- Yaegl Traditional Owners Corporation
- NSW Environment Protection Authority

A summary of their responses is also included in the ‘Key Issues’ above, the submissions analysis at Attachment A and copies of submissions are provided at Attachment B.

Legal and Risk Management

Council has been delegated authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the amendment to the *Clarence Valley Local Environmental Plan 2011*. A decision to endorse the planning proposal and to make the plan will be consistent with the *Environmental Planning and Assessment Act, 1979* and Ministerial Planning Direction. Further, a DA and related applications will need to be submitted to Council for consideration prior to a highway service centre being approved and constructed on the site.

Climate Change

The proposal has included consideration of flooding calculations which include impacts of climate change. The impact of a highway service centre on CO² emissions has not been considered in detail. Council could investigate requirements for electric vehicle charging facilities in association with the new facility at future DA stage, along with other sustainability initiatives to both mitigate emissions associated with road transport.

Prepared by	Stephen Timms, Senior Strategic Planner (Policy) and Scott Lenton, Acting Strategic Planning Coordinator
Attachment	A. Submissions Analysis
To be tabled	B. Individual submissions

ITEM 6b.21.070 LOT SIZE ISSUE – R5 LARGE LOT RESIDENTIAL

Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes plus To be tabled Attachment	

SUMMARY

Council has prepared and exhibited a planning proposal to enable the continued dwelling eligibility of several undersize, vacant lots in the R5 Large Lot Residential zone across the Clarence Valley. This report informs Council of feedback from recent consultation and exhibition and recommends how the proposal should progress.

OFFICER RECOMMENDATION

That Council:

1. Endorse planning proposal REZ2020/0003 to amend Council's Lot Size Maps under the *Clarence Valley Local Environmental Plan 2011* to enable dwelling eligibility to continue on those lots identified at Table 1 and 2 of this report; and
2. Exercise its delegated authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the amendment to the *Clarence Valley Local Environmental Plan 2011*.

COMMITTEE RECOMMENDATION

Baker/Novak

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Novak, Simmons, Clancy

Against: Nil

COUNCIL RESOLUTION – 6b.21.070

Kingsley/Toms

That Council:

1. Endorse planning proposal REZ2020/0003 to amend Council's Lot Size Maps under the *Clarence Valley Local Environmental Plan 2011* to enable dwelling eligibility to continue on those lots identified at Table 1 and 2 of this report; and
2. Exercise its delegated authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* to finalise the amendment to the *Clarence Valley Local Environmental Plan 2011*.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 3 Economy

Objective 3.1 We will have an attractive and diverse environment for business, tourism and industry

Strategy 3.1.3 Provide land use planning that facilitates and balances economic growth, environmental protection and social equity

BACKGROUND

Commencement of the *Clarence Valley Local Environmental Plan 2011* (CVLEP) introduced a provision to prevent the development of undersize lots in rural, environmental and large lot residential zones with dwellings after a 10-year 'sunset period'. That sunset period expires this December and applies to vacant undersize allotments that have been created under approved subdivisions in the past. Two large lot residential subdivisions, one at Junction Hill and another at Mountainview, as well as a scattering of 15 other undersize lots in other R5 Large Lot Residential zones would be affected, and lose dwelling entitlements in December, unless the minimum lot size for those specific lots is changed.

The proposal to amend the minimum lot size for the subject lots within Mountain View Estate and Cronin Estate in Junction Hill was reported to Council in 2020. Issues had been raised by Andrew Fletcher & Associates regarding the potential loss of dwelling eligibility for lots that are below the minimum lot size under new requirements in the CVLEP. These undersize lots were legally created through subdivisions under the previous Copmanhurst LEP, are vacant, and are not subject to a valid development consent for a dwelling to be constructed on them. To ensure these lots retained their dwelling eligibility Council resolved to prepare a planning proposal.

A 'Gateway Determination' was subsequently provided by the Department of Planning, Industry and Environment (DPIE) and the determination included advice for Council to explore other sites in the R5 zone that may lose their dwelling eligibility on 23 December 2021.

A subsequent investigation by Council staff determined that 15 additional vacant lots are currently within the R5 Large Lot Residential Zone with a dwelling entitlement and have a land area below the minimum lot size specified on the Minimum Lot Size Map under the CVLEP. DPIE were requested to amend the Gateway Determination to also include those additional 15 lots as part of the planning proposal.

An amended Gateway Determination was issued in July 2021 concurring to inclusion of the additional lots and directing Council to consult with NSW Rural Fire Service (RFS) and publicly notify the proposal for a minimum of 14 days.

The planning proposal has recently been publicly advertised for a period of 14 days. RFS and all directly affected landowners were consulted. Three (3) public submissions support the proposal and no public objections have been received. RFS do not object to the proposal.

KEY ISSUES**Mountain View Estate and Cronin Estate**

A number of lots within Mountain View and Cronin Estates were created under the former Copmanhurst LEP which allowed lots to be created under the minimum lot size now required (refer to specific lots in Table 1 below). The Lot Size Map is proposed to be amended to ensure that a dwelling can be approved, no further subdivision of the subject allotments can occur and that the approved subdivision layout is retained. The minimum lot size is now proposed to be 2,000m² for those lots, which is consistent with the character of the surrounding estate and the reason why the subdivision was previously approved. There are no good planning reasons for refusing the planning proposal to amend the minimum lot size for the residential lots to retain their dwelling eligibility.

Lot	DP	Address	Existing Lot Size	Proposed Lot Size map
13	1244553	Mountain View Estate	3,087m ²	2,500m ²
23	1244553	Mountain View Estate	3,774m ²	2,500m ²
24	1244553	Mountain View Estate	3,552m ²	2,500m ²
25	1244553	Mountain View Estate	3,386m ²	2,500m ²
28	1244553	Mountain View Estate	3,696m ²	2,500m ²
29	1244553	Mountain View Estate	3,600m ²	2,500m ²
30	1244553	Mountain View Estate	3,600m ²	2,500m ²
31	1244553	Mountain View Estate	3,969m ²	2,500m ²
32	1244553	Mountain View Estate	3,201m ²	2,500m ²
36	1244553	Mountain View Estate	2,724m ²	2,500m ²
132	1263591	8 Cronin Ave, Junction Hill	1,951m ²	2,000m ²

Table 1 - Details of the vacant R5 zoned lots in the Cronin and Mountain View Estates in the planning proposal.

The Department of Planning, Industry and Environment agree with Council's assessment against the planning framework and there are no reasons why the proposal should not be supported.

Additional 15 lots

Council investigation of all R5 Large Lot Residential zones across the Clarence Valley has determined that an additional 15 vacant lots will lose their dwelling eligibility on 23 December 2021 if they are not included in this planning proposal (refer to specific lots in Table 2). The planning proposal captures these and will amend the minimum lot size specifically for these lots to enable a dwelling to be approved on those lots. The lots are part of approved subdivisions and there is a reasonable expectation among the landowners and adjoining properties that a dwelling would be constructed on those lots at some point. With the confirmation from RFS that there are no objections from a bushfire planning perspective, there is no good planning reason why the planning proposal should not be supported.

Lot	DP	Address			Existing Lot Size	Proposed Lot Size map
11	826716	132	Arthur Street	GRAFTON	774m ²	750m ²
3	843504		Gardiners Road	JAMES CREEK	1.0ha	1.0ha
3	857120	20	Erikas Drive	ASHBY	5722m ²	5000m ²
4	869802		Crisp Drive	ASHBY HEIGHTS	1.48ha	1.0ha
17	1056728		Old Ferry Road	ASHBY	1.03ha	1.0ha
65	1047424		Crisp Drive	ASHBY HEIGHTS	1.0ha	1.0ha
7	1047034		Merle Ann Court	ASHBY	6107m ²	5000m ²
33	881130	115	Crisp Drive	ASHBY HEIGHTS	5212m ²	5000m ²
13	1078938		Erikas Drive	ASHBY	1.32ha	1.0ha
5	1129491		Crisp Drive	ASHBY HEIGHTS	1.35ha	1.0ha
23	1056728	14	Sunset Close	ASHBY	1.15ha	1.0ha
1	1192542	90	Patemans Road	ASHBY	7100m ²	5000m ²
67	1209690		Crisp Drive	ASHBY HEIGHTS	1.15ha	1.0ha
70	1209690		Ashby Tullymorgan Road	ASHBY HEIGHTS	1.19ha	1.0ha
2822	774107	270	Lower Kangaroo Creek Road	COUTTS CROSSING	2.02ha	1.5ha

Table 2 – Details of the 15 additional vacant R5 zoned lots that have been included in the planning proposal.

Comments from Rural Fire Service

The NSW RFS was consulted as some of the lots included in the planning proposal are within or near bushfire prone land.

RFS feedback is that, *Future residential development to comply with the specification and requirements of Planning for Bushfire Protection guidelines*. This is a routine requirement for new dwellings on bushfire prone land at DA stage.

Submissions

Three (3) public submissions support the planning proposal and no objections have been received. In addition, some landowners made verbal enquiries during the exhibition period to better understand the planning proposal and what it means for them.

COUNCIL IMPLICATIONS

Budget/Financial

There are no implications on Council's immediate budget for approving the planning proposal. The proposal has been prepared in-house by Council staff. Advertising and administrative costs are covered by recurrent budgets.

Asset Management

As the extension of dwelling eligibility on a discrete number of existing lots within existing subdivisions is proposed and this is not expected to have any tangible impact on Council's assets or management thereof.

Policy or Regulation

Environmental Planning and Assessment Act 1979
Clarence Valley Local Environmental Plan 2011
Council's Local Strategic Planning Statement
North Coast Regional Plan

Consultation

The proposal was publicly notified between 19 August and 6 September 2021, which was longer than the minimum (14-day) requirements of the DPIE Gateway Determination. Three emails supporting the proposal, routine RFS feedback and no objections were received. All affected landowners were notified of the planning proposal.

Legal and Risk Management

There are not considered to be any risks with approving the planning proposal. The process has followed the Gateway Determination from DPIE and other statutory processes.

Delegated Authority has been granted to Clarence Valley Council by DPIE as the determining authority for the planning proposal.

Climate Change

The planning proposal has considered the impacts of climate change, particularly adaptation to natural hazards such as flooding and bushfire risk. The continuation of dwelling eligibility does not raise any concerns regarding climate change mitigation or adaptation that are different to other single dwellings around the LGA. Detailed consideration of any bushfire risk or other climate related hazards will occur at DA stage.

Prepared by	Stephen Timms, Senior Strategic Planner (Policy)
Attachment	Planning Proposal R5 Large Lot Residential (Note: To be tabled - pages 37 to 92)

ITEM	6b.21.071	CONSIDERATION TO 'OPT IN' TO 'SPECIAL FLOOD CONSIDERATION' CLAUSE IN THE CLARENCE VALLEY LOCAL ENVIRONMENTAL PLAN	
Meeting	Environment, Planning & Community Committee	21 September 2021	
Directorate	Environment, Planning & Community		
Reviewed by	Director - Environment & Planning (Adam Cameron)		
Attachment	Yes		

SUMMARY

The NSW Department of Planning, Industry and Environment has requested Council to seek a formal Council resolution in order to 'Opt In' to have a new flood considerations clause added to the *Clarence Valley Local Environmental Plan 2011*. This report provides background and key issues to inform a decision by Council.

OFFICER RECOMMENDATION

That Council advise the NSW Department of Planning, Industry and Environment that it would like to 'Opt In' for the optional 'special flood considerations' clause to be added to the *Clarence Valley Local Environmental Plan 2011*.

COMMITTEE RECOMMENDATION

Novak/Simmons

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.071

Kingsley/Toms

That Council advise the NSW Department of Planning, Industry and Environment that it would like to 'Opt In' for the optional 'special flood considerations' clause to be added to the *Clarence Valley Local Environmental Plan 2011*.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 4 Environment

Objective 4.2 We will foster a balance between development and the environment considering climate change impacts

Strategy 4.2.2 Plan, resource and respond to natural hazards and disasters taking into account impacts from climate change

BACKGROUND

On 14 July 2021 the NSW Government's Flood Prone Land package commenced. The latest package replaces the 2007 Flood Policy package and includes the following components:

- a new planning circular: *Considering flooding in land use planning: guidance and statutory requirements* (and revoking the existing planning circular PS 07-003),
- a new guideline: *Considering Flooding in Land Use Planning (2021)* (and revoking the Guideline on Development Controls on Low Flood Risk Areas),

- an amendment to clause 7A of Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*. The changes will simplify the notation to advise of flood-related development controls on planning certificates issued by Council,
- two standard instrument local environmental plan (LEP) clauses which introduce flood related development controls (one mandatory, one optional),
- a SEPP amendment to replace councils existing flood planning clause with the new mandatory standard instrument clause, and
- a revised local planning direction regarding flooding issued under section 9.1 of the *Environmental Planning and Assessment Act 1979* (the Act).

The 'mandatory' standard LEP clause in relation to flood-related considerations for development on land below the flood planning level (ie the 1% AEP flood event plus 500mm freeboard) has been made effective and replaced a similar clause (former clause 7.3) that was in the *Clarence Valley Local Environmental Plan 2011* (CVLEP). The 'optional' standard LEP clause, now subject to this report and otherwise referred to as the 'special flood considerations' clause, is proposed to apply to development on land located between the flood planning level and the probable maximum flood (PMF) level. Again, the CVLEP contains a similar clause (clause 7.4) that requires consideration, prior to granting consent, to a range of sensitive land uses that are susceptible to isolation and/or evacuation issues in a significant flood event. Such sensitive land uses already subject to special flood consideration under clause 7.4 include caravan parks, correctional facilities, emergency services facilities, group homes, hospitals, residential care facilities, and tourist and visitor accommodation. The proposed 'optional' clause is expected to apply to a broader range of land uses that are known to be particularly sensitive to flood risk.

Given the optional clause was very similar to the intent of the existing clause 7.4 in the CVLEP Council officers, at the invitation of the NSW Department of Planning, Industry and Environment (DPIE), submitted an expression of interest (EOI) on 1 July 2021 to be included in a conversation regarding a 'special flood considerations' clause being included in the CVLEP. DPIE have acknowledged receipt of that EOI.

DPIE have now advised, as at 26 August 2021, that *'the Department requests that councils that still want to opt-in to the 'special flood considerations' clause now seek formal resolution of their council to opt in, prior to the council caretaker period commencing.*

The Department will provide more detail to council in the coming weeks regarding next steps, including additional information required and targeted engagement.'

The other components of the Flood Prone Land package have already become effective and are being implemented in development assessment and strategic planning actions. In practical terms, not too much has changed for CVC. The new package offers greater flexibility in setting development controls through future flood risk management planning processes. An overview of the new package and changes is provided as an attachment to this report in the form of Frequently Asked Questions as published by the NSW DPIE.

To assist with interpretation of this report the following definitions are provided:

1% AEP flood – *This is the design flood event used in the Clarence Valley LGA. This event has a 1% chance of occurring in any one year, however it may actually occur more or less frequently.*

Probable maximum flood – *this event is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum rainfall in combination, or concurrent, with the worst flood producing catchment conditions.*

Flood planning level – *for the Clarence Valley LGA the flood planning level is the level of the 1% AEP event plus a freeboard of 0.5 metres.*

KEY ISSUES

The CVLEP already contains a special flood consideration clause (clause 7.4) as detailed below:

7.4 Floodplain risk management

- (1) The objectives of this clause are as follows—
 - (a) in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding in events exceeding the flood planning level,
 - (b) to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.
- (2) This clause applies to—
 - (a) land between the flood planning area and the line indicating the level of the probable maximum flood as shown on the [Flood Planning Map](#), and
 - (b) land surrounded by the flood planning area,but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.
- (3) Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land—
 - (a) caravan parks,
 - (b) correctional facilities,
 - (c) emergency services facilities,
 - (d) group homes,
 - (e) hospitals,
 - (f) residential care facilities,
 - (g) tourist and visitor accommodation,
- (4) In this clause—

probable maximum flood has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

Note—

The *probable maximum flood* is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.

The proposed 'special flood considerations' clause is expected to be similar in intent to the existing CVLEP clause and will ensure proper consideration of the risk from floods on development that is considered to be sensitive to, or provide special challenges eg evacuation management, in significant flood events exceeding the 1% AEP flood event.

The new package will ensure both existing and future community are more resilient to flooding through addressing flood risk appropriately, as not all flood risk is the same for the same probability flood event and this needs to be taken into consideration when undertaking land-use planning.

COUNCIL IMPLICATIONS

Budget/Financial

There is no non-recurrent budget implications for Council if it decides to 'Opt In' to have this optional clause added to the CVLEP. Administration of the process will be managed by DPIE and Council will contribute staff time that is funded through recurrent staffing budgets.

The new clause is similar to an existing clause in the CVLEP and does not often apply to new development proposals, hence there is generally no additional costs for proponents of new developments. However, when the circumstances exist and significant flood events have potential to adversely affect special types of development then it is appropriate that the risk is assessed and managed.

Asset Management

No implications for CVC assets.

Policy or Regulation

Clarence Valley Local Environmental Plan 2011
NSW Flood Prone Land Package

Consultation

DPIE will liaise with Council prior to finalising the 'special flood considerations' clause if Council chooses to 'Opt In'. The CVC Floodplain Risk Management Committee can be included in internal consultation if DPIE provides adequate time for the changes to be finalised.

Legal and Risk Management

It is considered prudent for Council to 'Opt In' to be part of discussions with DPIE to ensure the 'special flood considerations' clause is added to the CVLEP and upholds Council's duty of care to ensure proper consideration of flood risk to sensitive types of development located on land between the flood planning level and the PMF.

Climate Change

Climate change effects are factored into flood modelling that are revised from time to time. Hence, there is an indirect consideration of climate change when considering the impacts of flood risk on new development. This improves the resilience of new development against future climate-related effects.

Prepared by	Scott Lenton, Acting Strategic Planning Coordinator
Attachment	Flood Prone Land Package - Frequently Asked Questions (May 2021)

ITEM	6b.21.072	AMENDMENT TO WATER QUALITY TARGETS FOR NEW DEVELOPMENT IN CLARENCE VALLEY DEVELOPMENT CONTROL PLANS	
Meeting	Environment, Planning & Community Committee	21 September 2021	
Directorate	Environment, Planning & Community		
Reviewed by	Director - Environment & Planning (Adam Cameron)		
Attachment	Nil		

SUMMARY

This report seeks to obtain Council endorsement to amend the water quality targets for new development contained in Clarence Valley Development Control Plans to ensure consistency between these Plans, stormwater modelling software and standards adopted by other Northern Rivers Councils.

OFFICER RECOMMENDATION

That:

1. The Clarence Valley Development Control Plans for Development in Residential Zones, Business Zones, Industrial Zones, and Environmental Protection, Recreation and Special Use Zones are amended by replacing the existing Water Quality Targets table with the targets at Table 2 of this report;
2. The Clarence Valley Development Control Plan for Development in Business Zones is amended by replacing the objectives at clause G1 so that they are consistent with the objectives at clause H1 of the Development in Residential Zones DCP;
3. The Clarence Valley Sustainable Water Requirements: Information for Applicants (November 2004) is amended by replacing Tables 2 and 3 with the targets at Table 2 of this report, combining Sections 5.1 and 5.2 under a new heading 'Water Quality Targets for new Development', and that Tables 6-12 of guideline are deleted along with any references to those Tables, and that associated edits (for example, table of contents) are completed;
4. The amendments to the Clarence Valley Development Control Plans and Information for Applicants guide are placed on public exhibition in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulation 2000 for a minimum of 28 days;
5. A report is provided to Council after the public exhibition period to consider any submissions and that in the event no submissions are received that request change to the amended DCPs and Information for Applicants guide then Council notify the public, in accordance with the *Environmental Planning and Assessment Act 1979* and Regulation 2000, that the amendments will be effective from the date such notice is published on Council's website.

COMMITTEE RECOMMENDATION

Novak/Simmons

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.072

Kingsley/Toms

That:

1. **The Clarence Valley Development Control Plans for Development in Residential Zones, Business Zones, Industrial Zones, and Environmental Protection, Recreation and Special Use Zones are amended by replacing the existing Water Quality Targets table with the targets at Table 2 of this report;**
2. **The Clarence Valley Development Control Plan for Development in Business Zones is amended by replacing the objectives at clause G1 so that they are consistent with the objectives at clause H1 of the Development in Residential Zones DCP;**

3. The Clarence Valley Sustainable Water Requirements: Information for Applicants (November 2004) is amended by replacing Tables 2 and 3 with the targets at Table 2 of this report, combining Sections 5.1 and 5.2 under a new heading 'Water Quality Targets for new Development', and that Tables 6-12 of guideline are deleted along with any references to those Tables, and that associated edits (for example, table of contents) are completed;
4. The amendments to the Clarence Valley Development Control Plans and Information for Applicants guide are placed on public exhibition in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and Regulation 2000 for a minimum of 28 days;
5. A report is provided to Council after the public exhibition period to consider any submissions and that in the event no submissions are received that request change to the amended DCPs and Information for Applicants guide then Council notify the public, in accordance with the *Environmental Planning and Assessment Act 1979* and Regulation 2000, that the amendments will be effective from the date such notice is published on Council's website.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 4 Environment

Objective 4.1 We will preserve and enhance our natural environment

Strategy 4.1.1 Manage our coastal zone, waterways, catchments and floodplains in an ecologically sustainable manner

BACKGROUND

Sustainable Water Controls have existed for all new development proposals since before 2004 when Clarence Valley Council was formed. The original provisions were fundamentally based on the concept of neutral or beneficial effect on water quality (NorBE) and when adopted by the former Clarence Valley Councils they were quite advanced. In fact, the Clarence Valley provisions applied to new residential development before the *State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004* (also known as BASIX) was gazetted. Once BASIX was gazetted the sustainable water controls in the DCPs for single dwellings and dual occupancies were removed as they could no longer be legally applied.

More recently Council has been lobbied by interested persons to review the Sustainable Water DCP and the basis of the request seems to be weighted towards implementation of 'best-practice' stormwater management in both private development and Council works. The Sustainable Water provisions in Council DCPs can achieve that outcome for private development that is subject to a development application (DAs), however there is a need to review the stormwater quality targets to provide consistency with regional minimum standards.

Since 2011 when all of the former Clarence Valley Council DCPs were rationalised into the five zoned-based DCPs there has been a chapter providing the water quality requirements to be achieved in conjunction with new development (for example, see Table 1 below). These targets require that measures are included in the design, construction and operation of development (at different scales) to ensure acceptable water quality outcomes and reduce the potential for pollution and adverse impacts to the receiving environment. For example, excessive discharge of nitrogen into waterways can cause toxic algal blooms and excessive sediment runoff can cause blockages and/or sub-optimal function of formal stormwater drainage infrastructure and changes to natural water flows in natural systems due to sediment deposition.

TABLE H2 Default Water Quality Targets

Parameter	Development			
	Under 500m ²	Over 500m ² to 1 ha	1ha to 2ha	Greater than 2ha
Gross Pollutants >5mm	50% of average annual load retained.	80% of average annual load retained.	80% of average annual load retained.	80% of average annual load retained.
Coarse Sediment (0.5 – 5mm)	30% of average annual load retained.	50% of average annual load retained.	80% of average annual load retained.	80% of annual load retained.
Medium Sediment (0.05 – 0.5mm)	30% of average annual load retained.	50% of average annual load retained.	50% of average annual load retained.	50% of annual load retained.
Fine Sediment (<0.05mm)	No default set	No default set	30% of average annual fine sediment load retained.	50% of annual load retained.
Nutrients (Total Nitrogen and Total Phosphorous)	No default set	No default set	30% of average annual load retained.	50% of average annual load retained.
Heavy Metals	No default set	30% of average annual load retained.	50% of average annual load retained.	50% of average annual load retained.
Oil & Grease	30% of average annual load retained for oil and grease producing industries only.	30% of average annual load retained for oil and grease producing industries only.	50% of average annual load retained or Alternative TPH < 10mg/L.	50% of average annual load retained or Alternatively TPH < 10mg/L.
pH	pH of runoff to be restricted between pH 6.5-8.5.	pH of runoff to be restricted between pH 6.5-8.5.	pH of runoff to be restricted between pH 6.5-8.5.	pH of runoff to be restricted between pH 6.5-8.5.

Table 1 – Example of the Water Quality Targets table from current Clarence Valley DCPs.

Contemporary stormwater management practices, often referred to as water sensitive urban design (WSUD), aim to catch or slow the rate at which stormwater discharges from the development into the downstream environment consistent with the NorBE concept mentioned earlier. This reduces the 'peaky' flows and reduces the risk of flash flooding in local sub-catchments. It also provides time for any pollutants in the stormwater to be trapped, absorbed or deposited before causing adverse impacts on the receiving environment. The Council's Community Strategic Plan supports measures that manage our waterways in an ecologically sustainable manner. Development has potential to generate point-source pollution and adverse environmental impacts if not appropriately managed. These impacts can arise during construction or operational phases and hence, good planning to manage water quality impacts is required early in the development cycle.

The existing water quality controls applicable to new residential, business, industrial and tourist or special use development relate to 9 different parameters that are variably applied depending on the scale of new development as shown in the extract at Table 1 above. Proponents of new development need to demonstrate how the water quality targets will be achieved at DA stage by providing modelling of stormwater management measures using a software program called MUSIC. It has been discovered that the water quality criteria in the MUSIC model, that is intended to be consistent with the baseline water quality targets in the Northern Rivers Design and Construction Manual (NRDC), are inconsistent with the target criteria in the Council's DCPs. It is desirable that all the criteria are consistent across all applicable documents and modelling requirements to ensure a common minimum standard across the region and so reduce potential confusion and frustration for proponents and consultants.

The costs of demonstrating satisfaction of the current water quality targets in conjunction with preparation of DA documentation can be significant for larger development proposals. The proposed changes to water quality targets will simplify requirements and reduce costs for applicants and their consultants in demonstrating satisfaction of stormwater runoff outcomes as part of the DA process. In addition, the changes should reduce staff time to assess stormwater management reports.

KEY ISSUES

There is a need for consistent minimum water quality targets across all documents and guidelines that Council applies to new development. Further, endorsing the NRDC minimum water quality standards ensures consistency among all local councils on the Northern Rivers and makes life less complicated for stormwater management practitioners in both private and local government sectors.

Council already applies water quality targets through the MUSIC model software for a lesser range of parameters compared to the existing DCP controls. It is proposed to amend the relevant tables in the Sustainable Water Controls chapters of the Residential Zones, Business Zones and Industrial Zones DCPs to reduce the number of parameters from nine (9) to four (4). The target for each of the parameters seeks an improvement on the current DCP criteria consistent with regional guidelines and the MUSIC modelling outcomes. The adjusted and recommended list of parameters and their respective targets is shown in Table 2 below.

WATER QUALITY PARAMETER	DEFAULT TARGET
Gross Pollutants	90% of average annual load retained
Total Phosphorus (TP)	45% of average annual load retained
Total Nitrogen (TN)	60% of average annual load retained
Total Suspended Solids (TSS)	85% of average annual load retained

Table 2 – Proposed Default Water Quality Targets for Clarence Valley DCPs (not including the Development in Rural Zones DCP)

Reducing the number of parameters is intended to simplify the stormwater modelling requirement. On-ground stormwater management measures that are employed in new development will indirectly assist in reducing the load of most parameters (ie coarse sediments, heavy metals, and oils and greases) that are no longer recommended to be assessed. For example, grass swale drains or bio-filter basins will also trap coarser sediments along with heavy metals (that often bind to the sediments) and oils/greases as a by-product of being installed. Local soils in the Clarence Valley tend to be acidic (pH <7), hence it would be uncommon for water being discharged from a development site to be alkaline (ie pH >7) unless the soil was being excessively treated with lime or there were other special circumstances. In such cases, Council can consider the special circumstances of the case and ensure water quality is managed as appropriate.

In reviewing the sustainable water controls in the existing DCP chapters it is noted that the objectives for the chapter in the Business Zones DCP are inconsistent with the relevant chapter in other DCPs. Hence, it is proposed that the objectives at clause G1 of the DCP for Development in Business Zones are amended to be consistent with the objectives in the other sustainable water controls DCP chapters.

The DCP provisions are supported by an accompanying guide, called *Sustainable Water Requirements: Information for Applicants* (November 2004). This guide provides additional details on information required in support of DAs and information to guide stormwater management design and outcomes for new development. In order to make the Information for Applicants guide and the DCP consistent there are a number of tables that it is recommended are deleted. The first two tables provide water quality targets for new subdivisions and new built development, respectively. It is recommended these two tables are deleted and replaced with water quality targets for all new development as per Table 2 of this report. This will also assist make the guide easier for applicants to understand, reduce confusion and align the guide with current practice.

In addition, Tables 6-12 (inclusive) of the guide specify 'deemed-to-comply' stormwater quality improvement devices (SQIDs) for different water quality parameters and different scales of development. With the recommended changes to, and simplification of, the water quality targets (refer to Table 2 of this report) it is recommended that Tables 6-12 are deleted as the targets are proposed to be modified, the range of SQIDs and current technology makes the lists of SQIDs in the Tables out-of-date and the 'deemed-to-comply' SQIDs are not something that developers ever use or rely on. Instead water quality outcomes are demonstrated for each proposed development through submission of a MUSIC model that shows how the

water quality targets will be satisfied. Hence, Tables 6-12 are no longer relevant and simply add unnecessary content to the guide.

Options

There is an option to 'Do Nothing' or leave the water quality targets in the existing DCPs as they are. However, that is likely to cause further confusion and frustration for proponents, their consultants and Council staff alike. The proposed solution to reduce the number of parameters being assessed and adjust the targets to align with the baseline adopted by the NRDC, the Council's MUSIC modelling guideline and NorBE is preferred.

COUNCIL IMPLICATIONS

Budget/Financial

Amendment of the DCP, and giving of public notice/s, as relevant, will be covered by existing recurrent staff budget. It is expected that the proposed changes will simplify requirements and reduce costs for applicants and their consultants in demonstrating satisfaction of water quality targets during the DA process. In addition, the changes should reduce staff time to assess stormwater management reports.

The MUSIC-link report is a great tool to make assessment easier. For later stages of the post-DA development process, eg Subdivision Certificate stage, the Council fees that applicants need to pay for Council staff to check water quality modelling can be reduced from \$836.40 to \$252.00, where the MUSIC-link report is used.

Asset Management

No impact on Council assets as a result of the proposed recommendation.

Policy or Regulation

Environmental Planning and Assessment Act 1979 and Regulation 2000
Clarence Valley Development Control Plans

Consultation

The proposed changes have been generated by conversations between proponents and Council staff. It is recognised the current inconsistencies are causing uncertainty and frustration. The proposed amendments will be subject to public exhibition if Council accepts the proposal to amend the DCPs and related information for Applicants' guideline.

Legal and Risk Management

It is prudent to have development controls that are relevant, consistent with local government minimum standards and that uphold the intent of the Community Strategic Plan to manage our waterways in a sustainable manner. This in turn supports local agriculture and fisheries and the environment that sustains these industries as well as overall community health and well-being. Inconsistent requirements present added risk for Council and this report seeks to overcome that inconsistency.

Climate Change

The proposed changes to the DCP will have a neutral impact on climate change. Promoting and implementing improved management of soil and water management measures on new development sites will reduce potential for accelerated rates of sediment deposition in the environment and this reduces the future effects of climate change, such as sea level rise and more intense rainfall.

Prepared by	Scott Lenton (Acting Strategic Planning Coordinator)
Attachment	Nil

ITEM	6b.21.073	UPDATE TO COUNCIL'S APPLICATION TO THE MINISTER FOR LANDS AND FORESTRY TO CLASSIFY CERTAIN CROWN RESERVES AS 'OPERATIONAL' LAND
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes	

SUMMARY

This report provides an update to Council's application to the Minister for Lands and Forestry (now Minister for Water, Property and Housing) to classify certain Crown reserves as 'Operational' land for the purpose of its management under the *Local Government Act 1993*.

OFFICER RECOMMENDATION

That Council:

1. Note the outcome of its request as Crown Land Manager for Ministerial consent to classify certain Crown reserves under its control as 'Operational' land for the purpose of the reserve's management under the *Local Government Act 1993*;
2. As a Crown Land Manager continue to negotiate an appropriate outcome for the remaining reserves under consideration by the Minister's delegate;
3. As Crown Land Manager make a separate application to the Minister for Water, Property and Housing under the General Manager's signature to become the Crown Land Manager of R1093 (Lake Minnie Water) and R1094 (Lake Hiawatha) and request the Minister to consent to the classification of these reserves as 'Operational'; and
4. In its capacity as the Local Roads Authority prepare a separate report, to be brought back to Council at a later date, detailing the process and cost to compulsorily acquire the land on which the public roads that traverse the Crown Reserves detailed in this report.

COMMITTEE RECOMMENDATION

Novak/Simmons

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.073

Kingsley/Toms

That Council:

1. Note the outcome of its request as Crown Land Manager for Ministerial consent to classify certain Crown reserves under its control as 'Operational' land for the purpose of the reserve's management under the *Local Government Act 1993*;
2. As a Crown Land Manager continue to negotiate an appropriate outcome for the remaining reserves under consideration by the Minister's delegate;
3. As Crown Land Manager make a separate application to the Minister for Water, Property and Housing under the General Manager's signature to become the Crown Land Manager of R1093 (Lake Minnie Water) and R1094 (Lake Hiawatha) and request the Minister to consent to the classification of these reserves as 'Operational'; and
4. In its capacity as the Local Roads Authority prepare a separate report, to be brought back to Council at a later date, detailing the process and cost to compulsorily acquire the land on which the public roads that traverse the Crown Reserves detailed in this report.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Theme	5 Leadership
Objective	5.1 We will have a strong, accountable and representative Government
Strategy	5.1.8 Ensure good governance, effective risk management and statutory compliance

BACKGROUND

Council at its meeting of 16 October 2018 (Council Resolution – 13.061/18) resolved:

That Council:

1. Note the requirements of Section 3.22 (4)(b) of the Crown Land Management Act 2016 and the process required to classify Crown reserves that can not be used or dealt with as 'community' land under the Local Government Act 1993 as 'operational' land; and
2. Make an application to the Minister for Lands and Forestry for consent to classify and manage the Crown land or parts thereof detailed in this report as 'operational' land under the Local Government Act 1993, being:
 - a. The 27 reserves to be classified as operational in full as identified in Attachment 2.
 - b. The 21 reserves to be classified in part as operational as identified in Attachment 3.

Council submitted its application to the Minister on 31 October 2018.

In addition, Council resolved at its meeting of 20 November 2018 (Council Resolution 14.132/18):

That Council:

1. Note the requirements of Section 3.23 of the Crown Land Management Act 2016 and the process required to assign an initial category to each of the Crown reserves managed by Council as a Crown Land Manager; and
2. Notify the Minister administering the Crown Land Management Act 2016 in writing of the initial categories so assigned; and
3. Include those parts of Reserves 91064, 91133, 95748 and 98163 detailed in Attachment 1 as part of the application to the Minister for consent to classify and manage as 'operational' land under the Local Government Act 1993 as previously resolved (Council Resolution 13.061/18).

Council submitted this additional application to the Minister on 4 December 2018.

The Minister via their delegate provided the Minister's response to Council's request(s) on the 9 July 2019 (Attachment 1). In summary the Minister consented to:

- 14 reserves in full to be classified as 'Operational' (out of 27 reserves requested)
- 2 reserves in part to be classified as 'Operational' (out of 25 reserves requested)

The Minister's delegate also claimed that six reserves were not managed by Council, being:

- R1093 – Lake Minnie Water
- R1094 – Lake Hiawatha
- R88402 – Tyringham Rubbish Depot Reserve
- R88545 – Copmanhurst Rubbish Depot Reserve
- R92112 – Baryulgil Rubbish Depot Reserve
- D1000641 – Grafton Council Chambers.

Three of these reserves (the three rubbish depots) were part of a separate request from Council to be appointed as the Crown Land Manager of. Council has since been appointed Crown Land Manager of these reserves and those lands classified as 'Operational'. The inclusion of the Grafton Council Chambers was a clerical error on behalf of Crown Lands. This has now been rectified and the land classified as 'Operational'.

Since the receipt of the Minister's notification Council staff have held three face-to-face meetings via Zoom/Team Meetings and numerous emails and phone conversations with the Council Crown Land Management (CCLM) team within NSW Crown Lands to progress Council's request for particular reserves to

be classified in full or part as 'Operational' for the purpose of the reserves management under the *Local Government Act 1993*. Currently Council has received Ministerial consent to manage as 'Operational':

- 19 reserves* in full to be classified as 'Operational' (out of 27 reserves requested)
- 2 reserves in part to be classified as 'Operational' (out of 25 reserves requested)

* Includes one reserve that has been consented to part being managed as 'Operational'.

The outstanding reserves that Council sought to be classified in full or part as 'Operational' are:

Reserves requested to be Operational (in full)

The eight remaining reserves (out of the 27 reserves originally requested) include:

- 3 reserves (R72797, R89830 & R95566) developed as caravan/tourist parks (Wooli, Iluka Riverside & Minnie Water Holiday Parks).
- 2 reserves (R1093 & R1094) notified for water supply (Lake Hiawatha & Lake Minnie Water).
- 2 reserves (R89464 & R92094) notified for parking (Iluka Beach Car Park & Skinner Street Car Park, South Grafton).
- 1 reserve (R80498) notified for cemetery (Grafton Lawn Cemetery).

Reserves requested to be Operational (in part)

The 23 remaining reserves (out of the 25 reserves originally requested) include:

- 10 reserves (R44430; R53477; R56099; R70140; R82861; R97031; R140055; R140083 R1003009 & D540049) that have public roads traversing part of the reserve.
- 5 reserves (R40190; R87496; R88421; R95841 & R98072) where access across the reserve provides a personal benefit to someone.
- 3 reserves (R91133; R98163 & R1003020) where the (operational) infrastructure built on the reserve is inconsistent with the notified purpose.
- 2 reserves (R65975 & R81523) partly developed as caravan/tourist parks (Brooms Head Holiday Parks & Calypso Yamba).
- 1 reserve (R91064) that has a tenant occupying an old school principal's residence.
- 1 reserve (R96648) that has an encroachment benefiting the adjoining landholder.
- 1 reserve (R1003009) that has unresolved restrictions regarding the use of the land.

KEY ISSUES

Council staff are continuing to negotiate with the NSW Government's CCLM staff in regards to five outstanding matters:

- the classification of the five holiday parks managed by Council;
- the classification of the Coaldale Rural Fire Service facility built on the Coaldale Community Centre reserve (R91133);
- the classification of the combined Council Works Depot/RFS/SES/Marine Rescue facility built at the rear of the Wooli Sportsground (R1003020);
- the classification of the Marine Rescue facility on Moriartys Reserve, Iluka (R88421); and
- the classification of the old school principal's residence on the Tullymorgan School Reserve (R91064).

The five outstanding matters are summarised below as:

Holiday Parks

Council manages five Crown caravan/tourist parks: R65975 – Brooms Head Holiday Park; R72797 – Wooli Holiday Park; R81523 – Calypso Yamba Holiday Park; R89830 – Iluka Riverside Holiday Park & R95566 – Minnie Water Holiday Park. Council sought to have the holiday parks classified as 'Operational' because the occupation and use of the land by onsite managers, long-term and permanent residents cannot be managed if the land is classified as community land under the *Local Government Act 1993*. Crown Lands are aware of this matter (and a couple of other matters affecting the management of caravan/tourist parks as community land) and are in the process of developing a policy directive.

Until such time as the Minister releases this policy directive the classification (and subsequent management) of caravan/tourist parks under the *Local Government Act 1993* remains on hold. Consequently, the land remains Crown land managed under the *Crown Land Management Act 2016*. The transitional arrangements in regards to licencing under the *Crown Land Management Regulation 2018* apply.

Infrastructure inconsistent with the notified purpose

Three reserves have operational infrastructure constructed on them that are inconsistent with the notified purpose of the respective reserves. Crown Lands has informed Council staff that it is still investigating whether an additional purpose may be added to these reserves to legitimise the structures and to allow the land associated with the structures to be classified as 'Operational'. Crown Lands have advised that these matters are complicated by the fact that each of these reserves have had a native title claim determined over them requiring Crown Solicitor advice on whether an additional purpose can be added to the respective reserves.

R91133 - Coaldale Community Centre & Bushfire Shed, Coaldale. This reserve was notified for the public purpose of Community Centre. The construction of a Rural Fire Service facility on this reserve is deemed by Crown Lands to be inconsistent with the use and management of this reserve for Community Centre. Part of the facility has been built on Lot 7004 DP 92929 (shaded red) which has three unresolved Aboriginal Land Claims (ALC7244; ALC14173 & ALC27452) over it. In addition, access to the Rural Fire Service facility is gained partially across private land (part Lot 26 DP 751364) from Lankey's Creek Rd.



R1003020 - Public Reserve & Sportsground, Woolli. Council originally constructed a works depot behind the Woolli sportsground canteen/amenities building, and then allowed the RFS, SES and Marine Rescue to add additional bays to the works depot over time. This reserve was notified for the public purpose of Public Recreation and Coastal Environmental Protection. Crown Lands deems the construction of this combined facility as being inconsistent with the use and management of this reserve for Public Recreation and Coastal Environmental Protection. Part of the facility has been built on Lot 7011 DP 1035042 which has two unresolved Aboriginal Land Claims (ALC29799 & ALC42289) over it.



R88421 - Moriartys Reserve, Iluka. NSW Marine Rescue operates a marine rescue facility on this reserve. The operation of this facility is a direct tenure between Crown Lands and Marine Rescue NSW.

Council has no involvement in the use or management of this facility. An additional classification issue regarding this reserve is the road across this reserve to access the northern training wall constructed by the NSW Port Authority. The public also use this road to access the training wall and the adjoining river and coastal beach area(s). The use and management of this road is not the responsibility of Council and cannot be managed as Community land under the *Local Government Act 1993*. The land also has an unresolved Aboriginal Land Claim (ALC42284) over it.



Occupation of old Tullymorgan Public School Principal’s residence

R91064 – Tullymorgan School Reserve & Residence, Tullymorgan. The old Tullymorgan Public School and adjoining Recreation Reserve is now reserved for Public Recreation, Preservation of Native Flora, Preservation of Native Fauna and Preservation of Historical Sites and Buildings, notified 23 March 1978. Council was appointed trustee of this reserve on the 15 September 1978.

The old School Principals’ residence is currently tenanted. Crown Lands preference is that the building is made available for public use. The existing school building on the reserve is currently used as a community hall providing the community with a public meeting space. Crown Lands have partly accepted Council’s submission that there is no additional requirement for a public building at this location. Crown Lands is continuing to investigate whether the old principal’s residence can be classified as operational land.



The reserves that Council sought to classify in full or part as ‘Operational’ that Crown Lands did not support are summarised as follows:

Public roads traversing part of a reserve

Council manages ten reserves where a public road has been constructed across part of the reserve. Council’s request to manage these roads as ‘Operational’ has been rejected on the basis that Council as a Local Roads Authority will need to compulsorily acquire the land from the Crown and dedicate that part of the road as a public road under the *Roads Act 1993*. The 10 reserves include:

- R44430 - Diggers Headland Reserve, Diggers Camp – part of Nuggett & Miners Streets built across the reserve
- R53477 - Induna Reserve, South Grafton – part of old Grafton Bridge service road built across the reserve
- R56099 - Wooli Bowling Green Reserve, Wooli – part of Main Street and Riverside Drive built across the reserve
- R70140 - Tucabia Riverbank Reserve, Tucabia – part of Coldstream Terrace built across the reserve
- R82861 - Junction Hill Skate Park, Junction Hill – part of the Summerland Way built across the reserve
- R97031 - Sandon Public Reserve, Sandon – part of the Sandon Beach Access Road built across the reserve
- R140055 - Iluka Pre-school, Iluka - part of Micalo Street built across the reserve
- R140083 - Woombah Street Public Reserve, Maclean – Harwood Street built across the reserve
- R1003009 - Yamba Bay Foreshore Reserve – part of Yamba Road built across the reserve
- D540049 - Tyndale Park, South Arm – part of South Arm Road built across the reserve

An investigation into the process and cost to compulsorily acquire the land on which public roads have been constructed is required.

Traversing a reserve to the benefit of a non-reserve visitor

In general, Council cannot issue a licence to traverse land managed as 'Community' under the *Local Government Act 1993*. The exception being a person who requires access across community land to transport building materials and equipment required in relation to building work that is to be, or is being, carried out on land adjoining the community land, or to remove waste that is consequential on such work. Council can issue a temporary (12 month) licence under the *Crown Land Management Act 2016*, however, this is not the preferred solution to these matters.

In addition, Crown Lands does not support the long-term granting of a tenure to traverse Crown land where alternative legal access can be obtained. In these instances, Crown Lands preference is for Council as the Crown Land Manager to resolve the matter.

R40190 - Lawrence Memorial Park, Lawrence. The owner of Lot 1 Sec 4 DP 566 (to the north of the reserve) gains access to their residence across this reserve via the internal road then driving across a grassed area. A review of historical aerial images showed that the house existed prior to Council's appointment as trustee of the reserve on the 25 September 1959. Legal access to the land/residence is provided from Grafton Street.



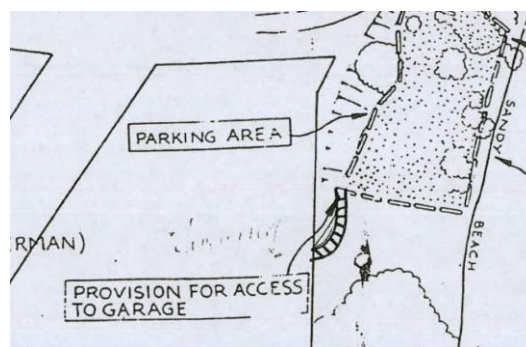
Prior to the land being reserved for Public Recreation on the 7 March 1958 the land was reserved for Public Wharf (shown as the area with the circled 15 above right) being R9862, notified 12 October 1889 to which a Government wharf was constructed. It is likely (but not yet investigated) that the construction and use of the house with its access facing the reserve was associated with the operation of the Government wharf.

Council staff will continue to investigate his matter to find an equitable solution to the management of the access across the reserve.

R87496 - Jackadgery Hall Reserve, Jackadgery. A dwelling has been constructed on this reserve. The dwelling and occupation of the dwelling existed prior to Council's appointment as trustee of this reserve on the 25 November 1988. Over the years Council has approached Crown Lands to resolve the occupation of this reserve. An unresolved Aboriginal Land Claim (ALC 15863 lodged by New South Wales LC on behalf of Grafton-Ngerrie LALC on the 9 May 2008) currently exists negating any progress by Crown Lands on the resolution of this matter.



R95841 - Wooloweyah Foreshore Reserve, Wooloweyah. The owner of Lot 4 DP 228486 has a licence issued by Council when it was the Corporate Manager of the Clarence Coast Reserve Trust (now revoked), with the consent of the Minister, to traverse the reserve from Lakes Boulevard to access the garage constructed at the rear of the property. The licence was issued under the repealed *Crown Lands Act 1989* for the life of the garage. The licence remains valid under the *Crown Land Management Act 2016*.



R98072 - Ngayundi Yamba Sports Complex, Yamba. The owners of Lot 522 DP 633898 and Lot 51 DP 751395 on Quarterdeck Place (to the west of the reserve) currently obtain access to their properties via the internal access road across the reserve that links to Angourie Road (on the east of the reserve). This situation has arisen due primarily to the historic access created across the reserve to reach Lot 522 that was in existence prior to Council being made trustee of the reserve in 1986. In addition, access is not available along the unmade section of Quarterdeck Place adjoining the north-eastern side of Lot 51. Anecdotal evidence suggests that access through the reserve has been occurring since late 1984.



The original PoM for the reserve (Old Yamba Racecourse Reserve R98072) approved by the then Regional Manager for the Department of Lands on 10 October 1985 identifies three reserve access points, being two access points off the former Freeburn Street road reserve (now Quarterdeck Place and partially constructed) and one access point off Angourie Road.

The original PoM for the reserve was written at a time when the proposed Yamba Motorway/Bypass was likely to have been completed in the *not too distant future*. Hence, the reserve access off Freeburn Street and the road through the reserve may have been constructed in anticipation of the motorway/bypass being constructed along Deering Street and the future development of Freeburn Street as a major road to service areas west of Yamba.

Crown Lands have informed Council that if there is no proposal to link the two sections of Quarterdeck Place then Council as the Local Roads Authority should consider the compulsory acquisition of the internal road across the reserve and make the road a public road.

Land developed and primarily used as carparks

Crown Lands did not accept Council’s submission that carparks are operational by nature and have classified them as Community land categorised as ‘General Community Use’. This decision contrasts with the nine carparks owned by Council all classified and managed as ‘Operational’. Crown land on which carparks have been built are:

R89464 - Iluka Beach Car Park and R92094 - Skinner Street Car Park, South Grafton both notified for the public purpose of Parking.



R89464 - Iluka Beach Car Park



R92094 - Skinner Street Car Park, South Grafton (being the area shaded red as part of

the larger area utilised as a car park and classified as 'Operational')

R98163 - Spencer Street Boat Ramp and Car Park, Iluka notified for the public purpose of Public Recreation



Note: The Iluka Cub & Scout Hall is R88860 for Boy Scouts managed by the Australian Boy Scouts Association

These reserves and the management of the land as 'General Community Use' have been included in the generic plan of management that is currently with the Crown Lands Council CLM for approval to place on public exhibition.

Encroachment benefiting the adjoining landholder

R96648 - Story House Museum, Yamba. The adjoining Yamba Golf Course has constructed a concrete path on and has enclosed part of the Story House Museum site as part of the golf course area. Council currently issues a short-term licence under the *Crown Land Management Act 2016* for the encroachment. Council staff are working with the Golf Club to resolve the encroachment.



Grafton Lawn Cemetery

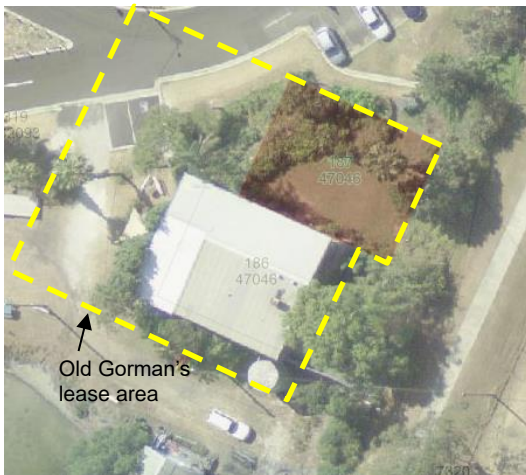
R80498 – Grafton Lawn Cemetery, Braunstone. Crown Lands did not accept Council's submission that cemeteries are operational by nature and have classified all cemeteries as 'Community' land categorised as 'General Community Use'.



This reserve and the management of the land as 'General Community Use' has been included in the generic plan of management that is currently with the Crown Lands Council CLM for approval to place on public exhibition.

Old Gormans Restaurant

R1003009 – Hickey Island Reserve, Yamba – Crown Lands rejected Council's submission that the old Gormans Restaurant site was previously subject to a direct licence between Lands and the Licensee, and that the site was currently subject to an Aboriginal land claim (ALC 38016) preventing maintenance and public access to the site. Crown Lands classified the land as Community and categorised the land as 'General Community Use'.

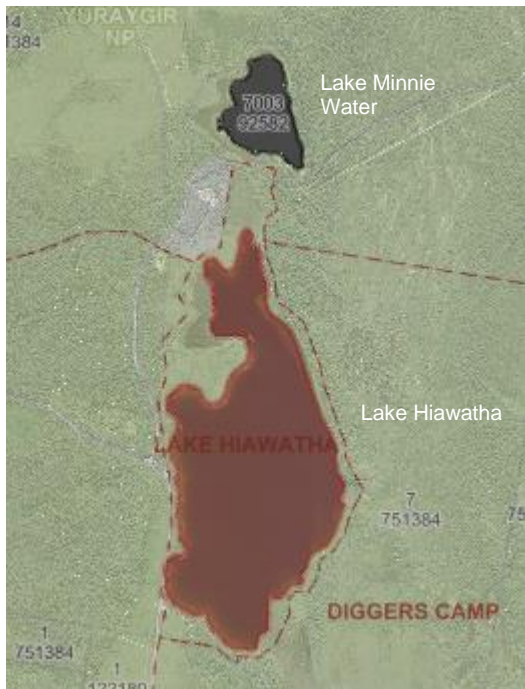


Note: ALC 38016 (over Lot 186 DP 47046) was resolved in favour of the claimants on the 12 November 2018 (and was subsequently sold by the claimants in September 2020). The land is no longer Crown land. A land claim that was lodged over Lot 187 DP 47046 (ALC 51058) on 2/06/2020 was refused but is currently under Appeal. In the interim, Lot 187 is being managed as part of the Hickey Island reserve.

Hickey Island reserve (R1003009) and the management of Lot 187 as 'General Community Use' has been included in the generic plan of management that is currently with the Crown Lands Council CLM for approval to place on public exhibition.

Lake Minnie Water & Lake Hiawatha

R1093 – Lake Minnie Water & R1094 – Lake Hiawatha, Minnie Water were reserved from sale for Water Supply and Other Public Purposes on the 4 February 1884 (GG, #62 (SUPPLEMENT), p912). These reserves are part of the Wooli Water Supply Catchment District that was placed under the control of the Council of the Shire of Ulmarra on the 2 December 1966 under the *Local Government Act 1919* (GG, #132, p4986). These reserves and associated Council infrastructure provide the water supply to the townships of Wooli and Minnie Water respectively.



Crown Lands have informed Council staff that the management of these reserves defaults to the Minister. If Council wished to manage these reserves Council would need to apply to become the Crown Land Manager of them.

As these two lakes provide the water supply for the villages of Minnie Water and Wooli it is recommended that Council applies to the Minister to be the Crown Land Manager of these reserves and that the reserves are classified as 'Operational' for the purpose of their management under the *Local Government Act 1993*.

COUNCIL IMPLICATIONS

Budget/Financial

The continuation of negotiations in an attempt to resolve outstanding classification matters is resourced from the recurrent staff budget.

Acquisition of Crown land where Council roads traverse a Crown reserve will have a non-recurrent budget implication on future budgets that is not yet fully understood. For example, the process to compulsorily acquire the land on which the roads have been built will require:

- A survey of the roads and the land required for the road;
- A valuation of the land to be acquired;
- The undertaking of a native title assessment for each reserve/road and serving of a notification under Subdivision M of the *Native Title Act 1993* (Cth);
- A report to Council on this matter seeking a resolution to proceed with an application to Crown Lands/Minister to acquire the land for road purposes;
- The resolution of any unresolved Aboriginal Land Claim that may have been lodged over the land on which the road has been built; and
- Preparation and lodgement of an Application to Crown Lands/Minister to compulsorily acquire land for the purpose of a road;
- Payment of compensation both to Crown Lands as owner of the land and to respective traditional owners for loss of their native title rights and interests.

A budget allocation would be required to undertake survey and preparation of road plans, lodge application, cover legal fees and compensate Crown Lands as owner of the land and potentially traditional owners (for loss of native title rights and interests) as well as any Aboriginal Land Claim claimants if their application pre-dates the construction of the road. An estimate to undertake this process to be submitted for consideration for a budget allocation has not yet been undertaken.

Asset Management

Council assets that exist on the identified reserves will benefit from more efficient management if classification of the lands is changed to operational.

Policy or Regulation

Crown Land Management Act 2016
Local Government Act 1993

Consultation

Internal consultation has been undertaken with Council's Open Spaces and Facilities; Strategic Infrastructure and Water Cycle sections. Ongoing consultation with the Crown Lands' Council CLM team to resolve outstanding classification requests continues.

Legal and Risk Management

Council sought to classify certain reserves as 'Operational' under the *Local Government Act 1993* due to perceived implications in regards to the management of these reserves (or part thereof) if Council was required to manage them as 'Community' land under the Act. The resolution of the outstanding matters is important to provide certainty to the management of these reserves.

Climate Change

There are no climate change implications from the subject of the report or the Officers Recommendation.

Prepared by	Dr Danny Parkin, Senior Strategic Planner (Public Land/Native Title)
Attachment	Ministerial Classification letter to Council

ITEM 6b.21.074 CLARENCE VALLEY LOCAL HERITAGE GRANTS PROGRAM 2021-22

Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes	

SUMMARY

A local heritage grant program has been offered by Council annually since 2003 with the budget funded by both Council and a grant from Heritage NSW. Owners of heritage places can apply for financial contribution, or incentive, to partially fund completion of nominated heritage conservation and maintenance works. Each year a different part of the CVLGA is deemed to be the priority on a rotation.

This report provides an assessment of the applications and recommendations for allocation of available funding.

OFFICER RECOMMENDATION

That Council:

1. Endorses grant offers to Applicants for Project ID 1, 2, 4, 6, 7, 8, 9 and 11 matching the amount shown in the Option 1 Grant Offer column in the table at Attachment A and advises successful Applicants of the relevant conditions for payment and acquittal requirements;
2. Advertises a second round of the 2021/22 Local Heritage Grants Program for the Clarence Valley LGA utilising the balance of the 2021/22 Local Heritage Grants Program budget with no priority area being allocated;
3. Receive a report containing details of second round applications and assessment with recommendations for allocation; and
4. Advise the unsuccessful Applicants for Round 1 that they will be reconsidered in Round 2 on merit along with any other applications provided additional details are submitted to ensure applications satisfy all the eligibility criteria prior to the close of the Round 2 Program.

COMMITTEE RECOMMENDATION

Novak/Baker

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Baker, Clancy, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.074

Kingsley/Toms

That Council:

1. **Endorses grant offers to Applicants for Project ID 1, 2, 4, 6, 7, 8, 9 and 11 matching the amount shown in the Option 1 Grant Offer column in the table at Attachment A and advises successful Applicants of the relevant conditions for payment and acquittal requirements;**
2. **Advertises a second round of the 2021/22 Local Heritage Grants Program for the Clarence Valley LGA utilising the balance of the 2021/22 Local Heritage Grants Program budget with no priority area being allocated;**
3. **Receive a report containing details of second round applications and assessment with recommendations for allocation; and**
4. **Advise the unsuccessful Applicants for Round 1 that they will be reconsidered in Round 2 on merit along with any other applications provided additional details are submitted to ensure applications satisfy all the eligibility criteria prior to the close of the Round 2 Program.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms
Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 1 Society
Objective 1.1 We will have proud and inviting communities
Strategy 1.1.2 Respect the heritage of the region by highlighting and enhancing our unique characteristics

BACKGROUND

The Local Heritage Places Grants acts as a catalyst to support and encourage conservation of heritage items and contributory historic buildings. The grant program is funded by Council with an additional financial contribution from Heritage NSW. This year's program has a priority to the rural areas of the LGA as well as the Ulmarra-Nymboida Heritage Study area. The 2020/21 program was prioritised to the Maclean area and in 2019/20 the Grafton and South Grafton areas were the priority. Implementation of the Local Heritage Assistance Program is listed as a major project for Strategic Planning & Building and Development Services in the Council's 2021/22 Operational Plan.

Types of projects that are eligible for funding under the Program include:

- termite control, site stabilisation, stormwater and subsoil drainage;
- emergency repairs and keeping buildings watertight pending longer term restoration;
- re-roofing and guttering in authentic materials and profiles;
- protection of archaeological sites including protection of cemetery sites;
- removal of unsympathetic additions and restoration to original details;
- reinstatement of missing elements to original details, such as fences, verandahs, timber windows, decorative features;
- repainting in a traditional heritage colour scheme; and
- Building Code Australia upgrades (fire, services, and access) for ongoing and new uses.

Heritage grants are an important tool for heritage conservation and deliver a positive message to the community of Council's support for its cultural heritage. The grants raise awareness of the need for ongoing and correct maintenance and stimulate projects for maintenance and restoration, which are essential for long term conservation of the heritage items.

Public notice of the Heritage Assistance Program funding opportunity was provided on Council's website until 2 August 2021. Information on eligible and ineligible works or actions was provided and Applicants were advised to submit at least one quotation for the estimated costs of the works to justify the value of the proposal.

All applications are assessed by two (2) Council officers before a final score is determined after considering applications against a set of pre-determined, merit-based criteria. Criteria include whether the site is a heritage item, in a heritage conservation area, whether the site/works will have public exposure, heritage conservation outcomes, public benefit, education value and others. The total score for each application is used to rank the relative merit of applications, with applications within the nominated priority area for the 2021/22 Program being considered before applications for works in other areas of the LGA.

KEY ISSUES

Application Overview

A total of eight (8) eligible applications have been received under the 2021/22 Local Places Heritage Grants program prior to the closing date. In addition, one (1) application was submitted after the closing date and two (2) applications have not submitted written quotations, and therefore are not deemed to be eligible. A summary of the applications and recommended funding is set out in Attachment A to this report.

The submitted projects include a range of conservation works such as ongoing repair, restoration and maintenance or other minor works, eg new fences. Regular maintenance, especially to ensure adequate drainage and prevent moisture ingress will avert and prevent accelerated deterioration of heritage fabric and

structures. Restoration or reconstruction of elements is keenly taken up by many owners who are keen to reinstate properties to accurate historical details. The use of heritage colour schemes and appropriate materials is important to maintain an accurate aesthetic significance to the fabric of a property and streetscape settings.

The number of applications received is lower than previous years. Since the Program has closed there have been further enquiries from interested heritage property owners that weren't aware of the current Program being advertised. It is considered worthwhile advertising a Round 2 Program this financial year to enable even more heritage conservation projects to be assisted by this Program and the benefit of the Program being increased.

Proposed Works

The proposed projects include some critical roofing maintenance, drainage works, guttering, repairs or reconstruction of damaged joinery, removal of unsympathetic elements and reconstruction to match or suit the era original details, installation of appropriate fences, window hoods and repainting in heritage colour schemes.

Eligible applications (3 of) for places in the priority area for the 2021/22 Program include the former Presbyterian Church at Brushgrove which is considered a heritage item at risk of serious decline, Windsor Cottage (Hoades Lane, Ulmarra, being a significant historic residence), and maintenance to a set of timber barns at Nymboida.

Eligible applications (5 of) received outside the priority area include projects in Grafton and Maclean for guttering, verandah restoration and sympathetic fences. All these works cumulatively add to the conservation and enhancement of heritage fabric of the town, maintain and enhance the settings of these places and provide a good example to other heritage property owners.

Assessment of applications

Works to heritage items and contributory buildings within heritage conservation areas in rural areas of the LGA as well as the area covered by the Ulmarra-Nymboida Heritage Study is the priority for this financial year. Applications outside the priority area are typically considered if there are funds remaining unallocated after the priority area applications are considered.

All applications received, including one (1) late application and two (2) ineligible applications that didn't include a quote for proposed works, have been assessed independently by two (2) Council officers before a final score has been determined against a pre-determined set of merit-based criteria. The assessment criteria are provided at Table 1 below. The applications for priority areas were then ranked in order of score (highest to lowest) before the outside priority area applications were assessed and ranked. The final merit-based ranking is provided at Attachment A, however three (3) of the applications are not deemed to be eligible as they contained inadequate justification or were received late. The ineligible applications are Project ID Number 3, 5 and 10 in Attachment A.

Selection criteria	Points
Heritage Item	15
In a heritage conservation area	5
Public access and visibility	1-10
Located in well-maintained streetscape/setting	1-10
Located in a heritage group, complex or main street precinct	1-10
Degree of maintenance to avert risks to place/premises and conservation value of works.	1-20
Works additional to maintenance, e.g., remove unsympathetic alterations	1-10
Sustainable long-term heritage benefits	5-10
Increases opportunities for learning, access, community involvement, employment, regional economy positive community attitudes	1-10
Total	Score out of 100

Table 1 – Assessment criteria and scoring options for each criteria.

At the time of preparing this report the Applicants for the two (2) ineligible applications have been asked to provide quotations to justify project costs in the event that Council wishes to consider making an offer of funding.

Allocation

All eight (8) eligible applications submitted before the closing date are recommended to be supported for funding. One application scored very low in terms of conservation outcomes and as the subject building has no public visibility only a nominal or small grant of \$500 is recommended.

The maximum funding that is offered for any eligible project is normally up to 50% of the project cost (as shown in a quotation) or \$2,000 whichever is the lesser. When the Program is undersubscribed, as it has been this year, then a further or extra allocation of up to \$2,000 and a sub-total of no more than a total of 50% of the project cost may be considered. This process can be repeated in an attempt to exhaust the balance of the funding available. Up to four (4) options to complete this process are displayed in Attachment A and described later in these 'Key Issues'.

Exhausting the available funding as described above is easy and efficient in terms of Council time and resourcing, however given that the intent of the Program is to enable and incentivise more projects it is proposed that the allocation of funding offer ceases after the Option 1 offer. This leaves \$21,545 unallocated and would enable funding of upwards of 10 additional applications in a second round offer of the Program. This would significantly add to the cost:benefit of the 2021/22 Program and the number of heritage properties that would benefit.

If a second round of the Program was advertised and offered then the three (3) ineligible applications could be considered, on merit along with other eligible applications, provided relevant information (eg quotations) was supplied.

Economic Benefit

The total value of the eight (8) eligible projects is \$85,811 and the value of funding being recommended for offer is \$13,955. Hence, the funding represents a value add of 6.1:1. If the balance of available funds, being \$21,545, can be held over and allocated in a second round of the Program to additional projects this is likely to significantly enhance the multiplier of value-add benefits from the Program and this is considered well worth pursuing.

Options

Council has the options to:

1. Make offers of grant funding according to the Option 1 offers shown in Attachment A. This is recommended as the unallocated balance of \$21,545 would be significant and would enable a substantial number of additional heritage projects to be funded this financial year through a second round advertising of the Program. Council also has the option to allocate at this step and then return the unallocated funds to the Council's budget;
2. Make offers of grant funding according to the Option 2 sub-total offers shown in Attachment A. This is not recommended as it would leave an unallocated balance of \$11,295 that does not provide as much funds to consider fresh applications in a Round 2 Program that would value-add to the benefit of the Program. Council would have the option to allocate at this step and then return the unallocated funds to the Council's budget;
3. Make offers of grant funding according to the Option 3 sub-total offers shown in Attachment A. This is not recommended as there would only be \$3,275 unallocated which makes advertising of a second round of the Program less efficient to administer and is more likely to result in unsuccessful applications due to insufficient funding being available. Council would have the option to allocate at this step and then return the balance of unallocated funds to the Council's budget;
4. Make offers of grant funding according to the Option 4 sub-total offers shown in Attachment A. This would result in full allocation of the \$35,500 budget for the Program. Council would have the option to allocate at this step and then return the unallocated funds to the Council's budget; and
5. Cease the offer of funding at Option 1, 2 or 3 and use the unallocated funds for maintenance of Council-owned heritage buildings or assets. This is not recommended as the primary intent of the Program is to assist private landowners with heritage conservation works.

Option 1 is the preferred option as it significantly enhances the reach and benefit of the 2021/22 Local Heritage Grants Program albeit with some added staff resourcing from the Strategic Planning and Communications teams.

COUNCIL IMPLICATIONS**Budget/Financial**

Council's Local Heritage Assistance Program has a total budget of \$35,500 of which \$30,000 is from Council's budget and \$5,500 is grant funding from Heritage NSW. The funding criteria from Heritage NSW require that Council match the Heritage NSW contribution. Hence, Council has a minimum obligation to commit \$5,500 to this Program or a total expenditure of \$11,000. Application guidelines state that eligible applications will typically be funded up to a maximum of \$2,000 or 50% of the quoted estimate of cost of the works, whichever is the lesser.

The current Program has been undersubscribed and if funding is limited to an amount less than the full \$35,500 budget, as provided in Options 1-4 above, there will be spare funds remaining in the budget. Endorsing funding to the level provided for in the Option 1 list would commit \$13,955 and would cover the minimum funding obligation of \$11,000 under the terms of funding from Heritage NSW. Council needs to determine how the balance of the funds is spent and this is discussed further in 'Key Issues' under the 'Allocation' and 'Options' headings.

In previous years this Program has been quite popular and at times some eligible and lower ranked applications cannot be funded.

Asset Management

None of the applications relate to Council owned assets. In the circumstances, Council has the option to determine if any of the remaining or uncommitted funds once the eight (8) eligible applications are funded can be used for heritage conservation or maintenance works on Council-owned buildings or places, eg Grafton Regional Gallery, Prince Street Clocktower, or others (refer to Option 6 in 'Key Issues' above). This latter option is not recommended.

Policy or Regulation

Works proposed under the Heritage Assistance Grants Program are typically 'minor works' that do not need a DA to be submitted and approved prior to works commencing. This advice is issued with the grant notice prior to works commencing. If a DA is required the Applicant/s will be advised accordingly.

Consultation

The 2021/22 Clarence Valley Local Heritage Grants Program was advertised on Council's website.

Legal and Risk Management

The Grant Program does not raise any potential legal or risk management issues.

Climate Change

Heritage conservation is positive through conservation of existing resources and utilising the embodied energy of existing buildings.

Prepared by	Deborah Wray (Senior Strategic Planner) and Scott Lenton (Acting Strategic Planning Coordinator)
Attachment	Summary of applications and potential allocation of grant funding for 2021/22

ITEM	6b.21.075	CLARENCE VALLEY LOCAL STRATEGIC PLANNING STATEMENT (LSPS) ANNUAL REPORT
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Meeting	Environment, Planning & Community Committee	21 September 2021
Directorate	Environment, Planning & Community	
Reviewed by	Director - Environment & Planning (Adam Cameron)	
Attachment	Yes	

SUMMARY

Council approved the Local Strategic Planning Statement (LSPS) in August 2020 and NSW Department of Planning, Industry and Environment (DPIE) endorsed the LSPS and uploaded to their website on 29 September 2020. A key action of the LSPS requires provision of an annual report to monitor its implementation. This report provides the status of each action in the LSPS and progress on a range of strategic planning initiatives under the LSPS.

OFFICER RECOMMENDATION

That Council note the progress made to implement the Local Strategic Planning Statement.

COMMITTEE RECOMMENDATION

Novak/Clancy

That the Officer Recommendation be adopted.

Voting recorded as follows

For: Clancy, Baker, Novak, Simmons

Against: Nil

COUNCIL RESOLUTION – 6b.21.075

Novak/Toms

That Council note the progress made to implement the Local Strategic Planning Statement.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.6 Ensure decisions reflect the long-term interest of the community and support financial and infrastructure sustainability

BACKGROUND

The LSPS was prepared in 2020 to satisfy requirements of the *Environmental Planning and Assessment Act 1979* and deadlines set by the Department of Planning Industry and Environment. The LSPS contains a range of actions that require Council to update strategic planning, to plan for a growing population, enable more job opportunities and to protect our natural environment and the places and spaces that are valued by the Clarence Valley community.

The LSPS and its Action Plan is needed to help implement our Community Strategic Plan, Regional Economic Development Strategy, Biodiversity Strategy and other plans and strategies. The LSPS also explains how State Government strategies will be applied to the Clarence Valley and a place-based

approach to achieving higher order goals. These include the 20-year Economic Vision for Regional NSW, the NSW State Infrastructure Strategy, Future Transport 2056, along with the North Coast Regional Plan.

Action 23.1 of the LSPS states that:

An Annual report will explain to Council, the community and other interested parties how the LSPS is being implemented and any items for Action. Reviews will also be fed upwards to inform any reviews of the North Coast Regional Plan and improvements to planning policy and practice.

KEY ISSUES

An Action Plan was prepared to focus implementation of the LSPS and secure budget allocations for the projects proposed in this financial year. The Action Plan was approved by Council Executive in February 2021. The Action Plan is attached and outlines the timeline for preparation of a Clarence Valley Local Growth Management Strategy (LGMS) and supporting studies, as well as a list of specific actions. It is important to note that timeframes for completing the LGMS have been adjusted and it remains on track to be completed this financial year, as stated in the LSPS. For example, the Rural Lands Strategy has commenced ahead of schedule as funding became available, whereas the Housing Strategy has been delayed and will still be completed this financial year. Council is making good progress on the LSPS Actions.

Highlights in the 12 months to September 2021 include:

- Updated **population forecasting** from .id consultants (including COVID analysis up to April 2021).
- The **Grafton Precinct Plan and Transport Strategy** has been completed and approved by Council.
- A draft Development Control Plan (**DCP**) for **Clarenza** has been endorsed by Council and is on public exhibition.
- A **Rural Lands Strategy, Employment Lands Strategy** and **Housing Strategy** have commenced or will be completed this financial year to contribute to the LGMS.
- Updated Flood Prone Land Policies and practices (refer also to the separate 'special flood considerations' clause report to this meeting).
- A Climate Change Impact Assessment and Resilience Framework is in preparation to be completed this financial year.

The original long list of Actions in the adopted LSPS have also been divided into Projects and Principles for the *Action Plan*. We have divided these into Projects where these are a specific task with a clear deliverable and timeframe, examples include preparing an Employment Lands Strategy, Rural Lands Strategy, Housing Strategy or updating the Bushfire Prone Land Maps. The remaining Actions that are intended to guide and improve decision-making at various levels of the Council on an on-going basis and do not have an end date have been recast as Principles. Examples include: *to ensure First Nations communities are involved in the development of strategic plans* or *promote walking and cycling in all decision making*.

The Principles have been placed into a checklist that should be used before making decisions related to certain matters, such as:

- New strategic plans, strategies or policies (eg the LGMS)
- Large scale or important CVC Projects that require a Project Management Plan
- All Planning Proposals (zoning or other amendments to the CVLEP).

The intention is to ensure greater consideration of all relevant issues for strategic planning and other project work, to highlight challenges and opportunities early in the planning process and to enhance the quality of decisions and associated outcomes.

COUNCIL IMPLICATIONS

Budget/Financial

The Implementation of the Actions within the LSPS has been supported through Council's 2021/22 Operational Plan. There will be an ongoing need for budget allocation and staff resources to complete the Actions in the LSPS. Projects for 2022/23 and beyond will be considered in future budget planning discussions.

Asset Management

The LSPS sets aspirations to plan for resilient infrastructure and utilise strategic land use planning to avoid natural hazards and provide for more efficient infrastructure provision, including social infrastructure to support our community.

Policy or Regulation

The LSPS covers a range of topics that interact with land use planning, from population growth and economic development, to community safety, and protecting our natural environment. The LSPS establishes a broad policy direction for the Clarence Valley that guides Council policy with regulatory effect under the *Environmental Planning and Assessment Act, 1979*.

Consultation

The LSPS was subject to public consultation and as certain Projects required by the LSPS are prepared there will be project-specific engagement with the local community, industry and business interests, government agencies, non-government organisations and community-based groups.

Legal and Risk Management

There are not considered to be any risks associated with implementation of the LSPS Action Plan. Consideration of the LSPS Principles in planning and managing Council projects, strategic planning and policy initiatives will strengthen outcomes and reduce risk. Specific project risks will be managed as needed.

Climate Change

The LSPS includes a range of priorities with regard to natural hazards, placemaking, sustainability and a low carbon economy. Progressing with these initiatives will promote a more resilient Clarence Valley community who can live within our sub-tropical climate, safely manage natural hazards and adapt to a changing climate future. Progress on the climate change risk assessment and resilience framework consistent with the LSPS are very relevant examples. Additional project work over the life of the LSPS Action Plan will also contribute to making the urban environment and new subdivisions cooler through increased shade and green infrastructure or open space provision.

Prepared by	Stephen Timms, Senior Strategic Planner (Policy)
Attachment	LSPS Action Plan 2021

c. CORPORATE GOVERNANCE AND WORKS COMMITTEE

MINUTES of a meeting of the **CORPORATE, GOVERNANCE & WORKS COMMITTEE** of Clarence Valley Council held in the Council Chambers, Maclean on Tuesday, 21 September 2021, commencing at 2.00pm and closing at 2.27pm.

MEMBERS

Cr Karen Toms (Chair), Cr Peter Ellem (attending via online), Cr Jason Kingsley, Cr Arthur Lysaught

PRESENT

Cr Andrew Baker, Cr Greg Clancy, Cr Debrah Novak, Ashley Lindsay (General Manager), Ms Laura Black (Director – Corporate & Governance), Mr Adam Cameron (Director – Environment & Planning) and Mr Jamie Fleeting (Director – Works & Civil) were in attendance.

APOLOGIES – Cr Jim Simmons (Mayor), Cr Richie Williamson

DISCLOSURE AND DECLARATIONS OF INTEREST – Nil

ITEM	6c.21.112	COUNCIL MEETING CHECKLIST – UPDATE ON ACTIONS TAKEN
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Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Office of General Manager	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

SUMMARY

This report updates Councillors on actions taken to implement resolutions of previous Council meetings.

OFFICER RECOMMENDATION

That the schedule of actions taken on Council resolutions be noted and those resolutions marked as complete be removed from the checklist.

COMMITTEE RECOMMENDATION

Lysaught/Kingsley

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.112

Kingsley/Toms

That the schedule of actions taken on Council resolutions be noted and those resolutions marked as complete be removed from the checklist.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

BACKGROUND

A formal monthly report is required for each Council meeting to include the full checklist from the previous month and any outstanding actions from earlier meetings.

KEY ISSUES

A checklist is issued to Managers and relevant staff after each Council meeting to enable them to provide comments on the status of resolutions adopted by Council.

The attached checklist contains actions taken on all Council resolutions from the previous month's meeting and the status/progress on all Council resolutions that have not yet been fully implemented.

Those items marked as complete will not appear on any future checklists if the officer recommendation is adopted.

COUNCIL IMPLICATIONS**Budget/Financial**

N/A

Asset Management

N/A

Policy or Regulation

Local Government Act 1993 S355 (1)

Consultation

Staff and Managers

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Lesley McBay, Coordinator Executive Support
Attachment	Checklist

ITEM	6c.21.113	EXTENSION OF THE DISABILITY INCLUSION ACTION PLAN
-------------	------------------	--

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Director - Corporate & Governance (Laura Black)	
Attachment	Yes	

SUMMARY

The report details the updated Disability Inclusion Action Plan for 2021/2022.

OFFICER RECOMMENDATION

That Council endorse the one-year extension of the Disability Inclusion Action Plan (DIAP) for 2021/2022.

COMMITTEE RECOMMENDATION

Kingsley/Lysaught

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.113

Kingsley/Toms

That Council endorse the one-year extension of the Disability Inclusion Action Plan (DIAP) for 2021/2022.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.3 Engage with the community to inform decision making

BACKGROUND

The Council has a current Disability Inclusion Action Plan (DIAP) 2017-2021. With the extension of the Integrated Planning Reporting documents, the DIAP has been extended for an additional year.

KEY ISSUES

The plan has been updated and reformatted with current statistics.

Council's report on the delivery of the DIAP for 2020/2021 will be noted in the Annual Report, with a copy being forwarded to the Minister per Section 13 of the Disability Inclusion Access Act.

COUNCIL IMPLICATIONS**Budget/Financial**

Actions in DIAP will be met through current operational or capital works budget for 2021/22.

Asset Management

N/A

Policy or Regulation

NSW Disability Inclusion Act 2014

NSW Disability Inclusion Regulation 2014

Consultation

Internal staff stakeholder with deliverables.

Legal and Risk Management

A DIAP is a legislation requirement

Climate Change

N/A

Prepared by	Alex Moar, Manager Organisational Development
Attachment	DIAP 2021/2022

ITEM 6c.21.114 TRANSFER OF PUBLIC ROAD TO NATIONAL PARKS & WILDLIFE SERVICE

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Director - Corporate & Governance (Laura Black)	
Attachment	Yes	

SUMMARY

To consider transfer of a council public road to National Parks & Wildlife Service for addition to the Everlasting Swamp National Park.

OFFICER RECOMMENDATION

That Council:

1. Support the addition of the unused section of Council public road within Lot 1 DP 1259385, to the Everlasting Swamp National Park, in accordance with provisions of the *National Parks and Wildlife Act 1974*;
2. Support a change to the zoning under the *Clarence Valley Local Environmental Plan 2011* for the unformed road reserve, Lot 1 DP 1259385 and any nearby lots forming part of the Everlasting Swamp National Park and Nature Reserve that are not currently zoned E1 National Parks and Nature Reserves zone to be changed to that zone and request NPWS to seek that change through publication of a gazette notice by the NSW Minister for Planning and Public Spaces;
3. Support a change of zoning for any future land transferred or gazetted to be included in the NPWS estate as E1 National Parks and Nature Reserves zone and request NPWS to seek that change through publication of a gazette notice by the NSW Minister for Planning and Public Spaces; and
4. Delegate authority to the General Manager to execute documents associated with the transfer if required.

COMMITTEE RECOMMENDATION

Lysaught/Kingsley

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.114

Kingsley/Toms

That Council:

1. **Support the addition of the unused section of Council public road within Lot 1 DP 1259385, to the Everlasting Swamp National Park, in accordance with provisions of the *National Parks and Wildlife Act 1974*;**
2. **Support a change to the zoning under the *Clarence Valley Local Environmental Plan 2011* for the unformed road reserve, Lot 1 DP 1259385 and any nearby lots forming part of the Everlasting Swamp National Park and Nature Reserve that are not currently zoned E1 National Parks and Nature Reserves zone to be changed to that zone and request NPWS to seek that change through publication of a gazette notice by the NSW Minister for Planning and Public Spaces;**
3. **Support a change of zoning for any future land transferred or gazetted to be included in the NPWS estate as E1 National Parks and Nature Reserves zone and request NPWS to seek that change through publication of a gazette notice by the NSW Minister for Planning and Public Spaces; and**
4. **Delegate authority to the General Manager to execute documents associated with the transfer if required.**

Voting recorded as follows:
For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms
Against: Nil

CARRIED

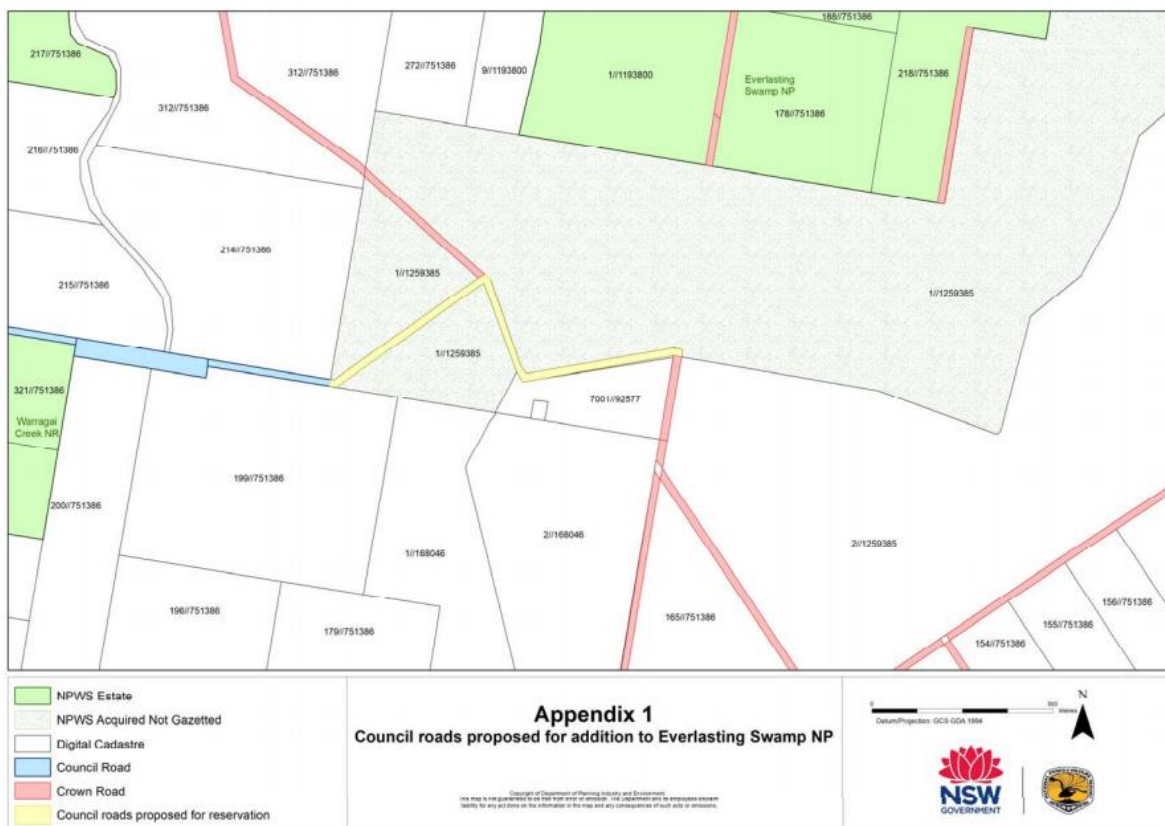
LINKAGE TO OUR COMMUNITY PLAN

- Theme 4 Environment
- Objective 4.1 We will preserve and enhance our natural environment
- Strategy 4.1.1 Manage our coastal zone, waterways, catchments and floodplains in an ecologically sustainable manner

BACKGROUND

National Parks & Wildlife Service (NPWS) have identified an unformed Council public road that traverses Lot 1 DP 1259385 and part of the Everlasting Swamp National Park and is requesting it's inclusion in the National Park estate.

The road reserve is zoned RU1 Primary Production and RU2 Rural Landscape and Lot 1 DP 1259385 is zoned RU1 Primary Production, RU2 Rural Landscape and E2 Environmental Conservation under the *Clarence Valley Local Environmental Plan 2011 (CVLEP)*. Land included in national parks estates would typically be zoned E1 National Parks and Nature Reserves consistent with the gazetted use and tenure of the land as well as the LEP Mapping Guidelines published by the NSW Government. If the subject land remains in the RU1 and RU2 zone then it will be Council's responsibility to amend the CVLEP mapping through a time-consuming planning proposal (rezoning process) to effect the change. Alternatively, it is suggested that Council should show support for the change to the zoning to be made in conjunction with the process for incorporating the road reserve into the National Park estate. The NSW Minister for Planning and Public Spaces has the power to make this zoning change without the need for Council to undertake a planning proposal.



Extract from attachment showing location of Council public road.

KEY ISSUES

The subject land is Council public road reserve. It traverses through Lot 1 DP 1259385. Lot 1 has been acquired by NPWS and is intended to be added to the Everlasting Swamp National Park.

NPWS state the reasons for the transfer of road and the process in their letter dated 26 August 2021 (refer Attachment A).

The road is not currently formed or used as a road. It is not required for Council's future road network as the surrounding land will be National Park.

As indicated in their letter, if council agrees to the proposal, NPWS can publish a gazette notice to reserve the road as part of the Everlasting Swamp National Park. Under the *National Parks and Wildlife Act 1974*, and the gazette notice has the effect of extinguishing the council road without needing to undertake a formal road closure under the *Roads Act 1993*.

COUNCIL IMPLICATIONS**Budget/Financial**

Council does not maintain this section of road. National Parks & Wildlife Service will administer the process in liaison with Council staff where required.

Asset Management

The road is not currently shown on Councils Asset register.

Policy or Regulation

National Parks and Wildlife Act 1974
Clarence Valley Local Environmental Plan 2011
Roads Act 1993

Consultation

Internal consultation has been undertaken with Councils Strategic Planning, Development Planning, NRM and Civil Services section and all sections support the addition of the road to the conservation area. In addition, the Strategic Planning team request that the zoning of the land should be adjusted by the acquisition authority in consultation with the NSW Department of Planning, Industry and Environment to be compatible with the use and tenure of the land and the NSW Government's LEP Mapping Guidelines. Further, a similar process should be undertaken in future acquisitions for the NPWS estate.

Legal and Risk Management

As the subject land is currently a public road, the *Roads Act 1993* entitles members of the public to use it. The transfer of the section of public road to National Park reduces Councils releases liability and potential future maintenance responsibilities.

Climate Change

Transfer of the public road reserve to NPWS will ensure full management of the subject land as part of the national park estate. This would be expected to have a positive impact on potential climate change effects, albeit minor.

Prepared by	Kylee Baker, Property Coordinator
Attachment	Letter from NPWS

ITEM 6c.21.115 2021/22 MONTHLY FINANCIAL REPORT – AUGUST 2021

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Manager - Finance & Systems (Kate Maginness)	
Attachment	Yes	

SUMMARY

The purpose of this report is to provide financial data at the end of each month for actual income and expenditure, for all funds and provide advance notice of potential budget variations. This report is submitted to Council in addition to the statutory reporting requirements of the Quarterly Budget Review Statements.

Budget variations identified in this report do not impact the General Fund. The reserve fund variations identified in this report will decrease the reserve funds by \$1,132,085.

OFFICER RECOMMENDATION

That Council:

1. Receive and note the monthly financial information report for August 2021, attached to this report.
2. Endorse the proposed variations, which decrease Financial Reserves by \$1,132,085 for inclusion in the September Quarterly Budget Review Statement to be reported in October 2021.

COMMITTEE RECOMMENDATION

Kingsley/Lysaught

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.115

Kingsley/Toms

That Council:

1. Receive and note the monthly financial information report for August 2021, attached to this report.
2. Endorse the proposed variations, which decrease Financial Reserves by \$1,132,085 for inclusion in the September Quarterly Budget Review Statement to be reported in October 2021.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.2 We will have an effective and efficient organisation

Strategy 5.2.1 Operate in a financially responsible and sustainable manner

BACKGROUND

Section 202 of the *Local Government (General) Regulation 2005* requires that the responsible accounting officer of a council must:

- a) *Establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and*
- b) *If any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

The attachment to this report incorporates a monthly transactional summary of operational and capital income and expenditure by sub service for all Funds. Included in this summary are actual loan repayments transacted and estimated accruals for depreciation, staff entitlements and interest, with these being confirmed at end of year. Reserve interest is excluded, as this is transacted annually.

The report table below highlights any proposed budget variations that staff have become aware of during the past month that may affect the 2021/22 budget. The mechanism for revising the adopted budget is the Quarterly Budget Review Statement (QBRS) in compliance with Clause 203 of the Local Government (General) Regulation 2005.

QBRS reports are submitted to Council in October, February (in the absence of a January meeting) and April of each year, with annual financial information being reported in October (Refer to Audit and Pre-Audit Budget V Actual Result) and November (Annual Financial Statements).

KEY ISSUES

Major Budget Variations Proposed

Following is a list of the major proposed variations identified during the month of August 2021.

Sub Service	Variation Comments	Net Impact to General Fund Decrease / (Increase)	Net Impact to Reserves Decrease / (Increase)	Previous Council Resolution
344	<p>Service – Waste Services Sub-Service – Waste and Sustainability</p> <ul style="list-style-type: none"> Additional North East Waste Grant Funding (to be administered by CVC: Northern Rivers Illegal Dumping Hotspot Intervention Program (\$72,330) Project Management (\$100,000) Communications (\$38,000) Waste Education (\$100,000) Asbestos Management Program (\$15,000) Education (\$70,000) Training & Development (\$7,000) Better Waste Recycling Fund - Business Waste Reduction Program (\$81,836) Love Food Hate Waste (\$137,887) Waste Renewal (\$10,000) BINTRIM (\$40,375) Other Projects (\$26,749) Host Council Contribution \$7,000 to be funded from RA 31171 – North East Waste (New) Group 	\$Nil	\$Nil	N/A
		\$Nil	\$7,000	N/A
391	<p>Service – Water Cycle Sub-Service – Water Operations</p> <ul style="list-style-type: none"> Fund design and construction of Lawrence Reservoir from RA 79010. 	\$Nil	\$1,121,000	6e.21.010 (June 2021)
420	<p>Service – Library Services Sub-Service – Clarence Regional Library</p> <ul style="list-style-type: none"> Fund RFID secure returns chute for Urunga Library from RA 41127 	\$Nil	\$4,085	N/A

Sub Service	Variation Comments	Net Impact to General Fund Decrease / (Increase)	Net Impact to Reserves Decrease / (Increase)	Previous Council Resolution
	TOTAL Proposed General Fund / Reserve Balance Impact	\$Nil	\$1,132,085	

Explanation of Attachment

Income and Expenditure Statements (attachment) are included for the information of Councillors. It should be noted that the reports include actual monthly transactions with the exception of:

- Accruals for depreciation, staff entitlements and Reserve interest are estimated only based on adopted budget, with actual accruals calculated and adjusted end of year.

COUNCIL IMPLICATIONS

Budget/Financial

General Fund Budget (Surplus)/Deficit

Original Budget Adopted by Council June 2021	(\$103,608)	Surplus
Q1 Proposed Budget Variations – July	\$200,000	Deficit
Q1 Proposed Budget Variations – August	\$Nil	
Proposed Movement of General Fund 2021/22 Budget Result August 2021	\$83,608	Deficit

Proposed Impact on External and Internal Financial Reserve Funds Result

Reserve Movements

Original Budget Adopted by Council June 2021	\$26,958,747	Decrease
Q1 Proposed Budget Variations – July	\$Nil	Decrease
Q1 Proposed Budget Variations – August	\$1,132,085	Decrease
Proposed Movement of Reserve Funds 2021/22 Budget Result August 2021	\$28,090,832	Decrease

Asset Management

N/A

Policy or Regulation

Section 202 of the *Local Government (General) Regulation*

Consultation

This report has been prepared in consultation with the Management Accounting Team and relevant Budget Managers.

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Christi Brown, Management Accountant Coordinator
Attachment	Income and Expenditure Statements by Service & Sub Service

ITEM 6c.21.116 POLICY REPORT

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Manager - Organisational Development (Alex Moar)	
Attachment	Yes	

SUMMARY

This report details recommendation for adopting (i) the Access to Council Documents Policy V5.0; (ii) the Policy Sports Tourism Policy V1.0 and the Water Usage Concession for Dialysis Machines in Private Households V4.1.

OFFICER RECOMMENDATION

That:

1. The Access to Council Documents policy V5.0 be placed on public exhibition and be adopted pending no feedback that changes the intent of the policy.
2. The Sports Tourism policy V1.0 be placed on public exhibition and be adopted pending no feedback that changes the intent of the policy
3. Council adopts the Water Usage Concession for Dialysis Machines in Private Households policy V4.1.

COMMITTEE RECOMMENDATION

Ellem/Lysaught

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.116

Kingsley/Toms

That:

1. **The Access to Council Documents Policy V5.0 be placed on public exhibition and be adopted pending no feedback that changes the intent of the policy.**
2. **The Sports Tourism Policy V1.0 be placed on public exhibition and be adopted pending no feedback that changes the intent of the policy.**
3. **Council adopt the Water Usage Concession for Dialysis Machines in Private Households Policy V4.1.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.2 Create awareness of Council's roles, responsibilities and services

BACKGROUND*Access to Council Documents Policy V5.0*

Council has been working with the Information and Privacy Commission (IPC) as part of its process of continual improvement for open access. On 20 August Council received a letter from the IPC containing 'observations made to guide further remediation planning and activities'. Several of these recommended changes Council's Access to Council Documents policy, most substantively to include further provision for the *GIPA Regulation 2018*. This, and several other changes provided the opportunity to move to a principles-based Council policy, further aligning Council practice with the intent of the GIPA instruments. The proposed amendments are marked up.

Sports Tourism Policy V1.0

Council commenced its Sports Tourism program in 2013 engaging Sports Marketing Australia Pty. Ltd. to deliver a Decentralisation Program. A number of sporting organisations have a working relationship with Council, including Hockey NSW, Cricket NSW, Geoquest, Grafton City Tennis Club, 100 Hour Rogaine, Clarence 100, Waveski Australia and Grafton Cycle Club and in May 2021, Council resolved to in-source this function, and this required a policy to be prepared. This policy is a new policy.

Water Usage Concession for Dialysis Machines in Private Households V4.1

Council provides a concession to ratepayers required to operate a home dialysis machine in private households. The minor change to the concessions in the policy aligns them to the tri-annual billing that was commenced in the 2020-21 rating year. As the amendment to policy does not change the intent but rather aligns the policy with operational administration, it is considered the policy does not require public exhibition.

KEY ISSUES

As identified above.

COUNCIL IMPLICATIONS**Budget/Financial**

N/A

Asset Management

N/A

Policy or Regulation*Access to Council Documents Policy V5.0*

The revised policy further aligns Council's policies with the guidance of the IPC in relation to the GIPA instruments.

Consultation

N/A

Legal and Risk Management

N/A

Climate Change

N/A

Prepared by	Bligh Grant, Governance Officer
Attachment	Attachment A. Access to Council Documents V5 Attachment B. Policy Sports Tourism Program V1 Attachment C. Water usage concession for dialysis machines in private households V4.1

ITEM	6c.21.117	ANNUAL DISCLOSURES OF INTERESTS RETURNS 1 JULY 2020- 30 JUNE 2021; EXIT DISCLOSURES OF INTERESTS RETURNS
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Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Manager - Organisational Development (Alex Moar)	
Attachment	Yes	

SUMMARY

The purpose of this report is to comply with Council's obligations under the Local Government Act and associated instruments and guidelines, in particular Council's 'Disclosure of Interests—Reporting Responsibilities' Procedure and Council's Code of Conduct, as derived from the Model Code of Conduct, Part 4 and informed by the Information and Privacy Commission (IPC).

OFFICER RECOMMENDATION

That the annual disclosures of interests returns by Councillors, managers and designated persons and the exit returns be accepted by Council and made available in redacted form on Council's website as part of Council's obligations under open access requirements.

COMMITTEE RECOMMENDATION

Ellem/Kingsley

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.117

Kingsley/Toms

That the annual disclosures of interests returns by Councillors, managers and designated persons and the exit returns be accepted by Council and made available in redacted form on Council's website as part of Council's obligations under open access requirements.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.8 Ensure good governance, effective risk management and statutory compliance

BACKGROUND

Disclosures of interests returns are required at various points in Council's calendar and at points in the career progression of designated persons. These are specified in Part 4 of Council's Code of Conduct. This report appends seven annual returns for Mayor/councillors; 14 annual returns for management/designated persons and two exit returns.

KEY ISSUES

Councillors and designated persons who have provided a return within three months of the reporting date for annual returns (30 June) are not required to provide an annual return.

The public interest test as specified in clause 14 of the GIPA Act (2009) is applied to each return. Unredacted returns are kept on file; redacted returns are posted on Council's website.

COUNCIL IMPLICATIONS**Budget/Financial**

N/A

Asset Management

N/A

Policy or Regulation

Local Government Act 1993

Government Information (Public Access) Act 2009

Privacy and Personal Information Protection Act 1998

Clarence Valley Council 'Disclosure of Interests—Reporting Responsibilities Procedure

Clarence Valley Council Code of Conduct

Information and Privacy Commission: Information Access Guideline 1: For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons)—September 2019.

Consultation

Information and Privacy Commission

Legal and Risk Management

The disclosures of interests returns regime is a statutory requirement and an important part of Council's governance procedures and risk management.

Climate Change

N/A

Prepared by	Bligh Grant; Governance Officer
Attachment	<p>A. Councillors DoI Annual 2020-21 [Mayors and Councillors: Simmons, Kingsley; Baker; Clancy; Ellem; Toms; Williamson].</p> <p>B. Designated Persons DoI Annual 2020-21 [Birch, Black, Brenton, Cameron, Dunne, Fleeting, Harre, Landers, Lenton, Lindsay, Maginnity, Mashiah, Moar, Pate].</p> <p>C. Designated Persons. Exit Returns 2020-21 [Howarth, Schroder].</p>

ITEM	6c.21.118	CLARENCE AND LOWER CLARENCE SPORTS COMMITTEES – MINUTES OF MEETINGS
Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Works & Civil	
Reviewed by	Manager - Open Spaces & Facilities (Peter Birch)	
Attachment	Yes	

SUMMARY

This report provides a copy of the minutes of the meetings and recommendations from the Clarence and Lower Clarence Sports Committees held on Monday 23 August 2021 for consideration.

OFFICER RECOMMENDATION

That Council:

1. receive and note the Minutes from Monday 23 August 2021 Clarence Sports Committee and Lower Clarence Sports Committee meetings.
2. endorse the recommendation by the Lower Clarence Sports Committee that \$8,862.83 (ex GST) is allocated to the Harwood Cricket Club for Synthetic Pitch at Harwood Oval.
3. endorse the recommendation by the Lower Clarence Sports Committee that \$8,200.00 (ex GST) is allocated to the Lower Clarence Tennis Association for Upgrade Surface of Two Tennis Courts at Ryan Park Tennis Complex.
4. endorse the recommendation by the Lower Clarence Sports Committee that \$2,815.00 (ex GST) is allocated to the Maclean Dirt Bike Club for Replace Canteen Roof at Flood Refuge Reserve, Townsend.

COMMITTEE RECOMMENDATION

Lysaught/Kingsley

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.118

Kingsley/Toms

That Council:

1. receive and note the Minutes from Monday 23 August 2021 Clarence Sports Committee and Lower Clarence Sports Committee meetings.
2. endorse the recommendation by the Lower Clarence Sports Committee that \$8,862.83 (ex GST) is allocated to the Harwood Cricket Club for Synthetic Pitch at Harwood Oval.
3. endorse the recommendation by the Lower Clarence Sports Committee that \$8,200.00 (ex GST) is allocated to the Lower Clarence Tennis Association for Upgrade Surface of Two Tennis Courts at Ryan Park Tennis Complex.
4. endorse the recommendation by the Lower Clarence Sports Committee that \$2,815.00 (ex GST) is allocated to the Maclean Dirt Bike Club for Replace Canteen Roof at Flood Refuge Reserve, Townsend.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 1 Society

- Objective 1.1 We will have proud and inviting communities
- Strategy 1.1.3 Support, encourage and celebrate community participation, community organisations and volunteerism

BACKGROUND

Two sports committees operate within the Clarence Valley, the Clarence Sports Committee and the Lower Clarence Sports Committee and meet on the second Monday of the month, at three month intervals.

Due to the current COVID-19 restrictions both committee meetings were held online utilising the Microsoft Teams platform. This report provides a copy of the minutes of the meetings and recommendations from the Sports Committees meetings that were held on Monday 23 August 2021.

Council endorsed the Committee's recommendations at its May 2021 meeting (6a.21.023) that:

12. *endorse the recommendation by the Lower Clarence Sports Committee that Harwood Cricket Club application for Synthetic Pitch be prioritised for the next available funding round.*
13. *endorse the recommendation by the Lower Clarence Sports Committee that Lower Clarence Tennis Association application for Upgrade Surface of Two Tennis Courts be prioritised for the next available funding round.*
14. *endorse the recommendation by the Lower Clarence Sports Committee that Maclean Dirt Bike Club application for Replace Canteen Roof be prioritised for the next available funding round.*

KEY ISSUES

Summary of General Business

A summary of the matters discussed at each Committee is as follows –

Clarence Sports Committee

- Sports Awards 2021 – report from Sub-Committee
- Sports Committee Funded Projects – update from delegates
- Regional Sport Facility Fund
- 2021/22 Sports Committee Funding
- Scaffolding at Sporting Facilities
- COVID-19 Safety Plans
- NSW Government Stronger Country Communities Fund (Round 4)
- Item 07.21.012 – Notice of Motion regarding the proposed Sports Management Policy Amendment
- General Business and updates from sporting delegates

Lower Clarence Sports Committee

- Sports Awards 2021 – report from Sub-Committee
- Grant Funding Updates
- Yamba Sports Complex – Internal Drainage
- Sports Committee Funded Projects – update from delegates
- Regional Sport Facility Fund
- 2021/22 Sports Committee Funding
- Scaffolding at Sporting Facilities
- COVID-19 Safety Plans
- NSW Government Stronger Country Communities Fund (Round 4)
- Item 07.21.012 – Notice of Motion regarding the proposed Sports Management Policy Amendment
- General Business and updates from sporting delegates

Sports Committee Funding

Council supports two Sports Committees in the Clarence Valley. The Clarence and Lower Clarence Sports Committee's make recommendations to Council for the annual allocation of funds (currently \$40,000.00 per committee) for projects of a capital nature that enable the participation in sport in the Clarence Valley. Received applications, after assessment by Council Officers against the Application Guidelines and Criteria for Sports Committee Funding Assistance, will be reported to, and considered at, the next available Sports Committee meeting. Recommendations made by the Sports Committees are then reported to Council for consideration and endorsement at the next available Meeting of Council.

Due to the delay of the council elections, caretaker mode and reinstatement of the new council, there will be only one round of funding for 2021/22 which will be open for a period of 5 months. The 2021/22 Sports Committee applications opened on Monday 16 August 2021 and will close on Monday 31 January 2022.

The Lower Clarence Sports Committee recommended the three applications prioritised for the next available funding round by Council at the May 2021 meeting (6a.21.023) be allocated funding through this round.

COUNCIL IMPLICATIONS

Budget/Financial

Council has allocated an amount of \$40,000.00 grant funding to the Clarence Sports Committee and an amount of \$40,000.00 grant funding to the Lower Clarence Sports Committee to undertake capital works. Funding is on a dollar for dollar (1:1) basis with applicants.

As there is only one round of funding in 2021/22, any unallocated funds will be returned to Council's Sportsground Income Reserve Account (RA11035) in accordance with Council's adopted application guidelines.

Asset Management

Application Guidelines and Criteria for Sports Committee Funding Assistance specify that funded projects will at all times remain the property of Clarence Valley Council. Council sporting assets are managed in the Open Spaces Assessment Management Plan and Swimming Pool Asset Management Plan.

Funding applications that align with Council's strategic planning documents (Clarence Valley Open Space Strategic Plan; Clarence Valley Sports Facilities Plan; Clarence Valley Council's Disability Action Plan) will have a higher priority when considering projects for recommendation. Ongoing maintenance is required at many of Council's sporting facilities, however, applications for funding through the sports committee must be made by the individual sports.

Policy or Regulation

The following references are applicable to this report:

- Sports Committees (Clarence and Lower) are committees of Council being appointed under s.355 of the Local Government Act 1993
- Clarence Valley Council Handbook For s355 Committees
- Asset Management Policy V 3.0
- Clarence Valley Sports Facilities Plan – November 2011
- Clarence Sports Committee Constitution
- Lower Clarence Sports Committee Constitution
- Application Guidelines and Criteria for Sports Committee Funding Assistance

Consultation

Consultation occurred with delegates at the Clarence Sports Committee and Lower Clarence Sports Committee meetings held on Monday 23 August 2021.

Legal and Risk Management

Sports Committees (Clarence and Lower) are committees of Council being appointed under s.355 of the Local Government Act 1993 and are appointed to make recommendations to Council on the sporting interests in the Clarence Valley area.

The Clarence Valley Council Handbook For s355 Committees (June 2014) states that:

"Your Committee is a Committee of Council. It is established under s.355 of the Local Government Act 1993, allowing Council to delegate under s.377 of the Act some of its functions to it. The delegations are set out in the Constitution adopted by Council for your Committee.

As such, Council is responsible for everything that your Committee does while it is acting within its Constitution. It is therefore important that your Committee only acts within the powers set out in its Constitution and keeps Council advised of what it is doing. Many of the guidelines in this Manual are there to ensure that Council is aware of your Committee's activities.

From a legal perspective, it is important for you to be aware that your Committee is acting on behalf of Council. Legally your Committee is 'Council', and anything your Committee does while it is acting within its

Constitution is Council's responsibility. The actions of your Committee are actions of Council. Your Committee should not act independently of Council. If it does act independently and outside its Constitution, then its members may be liable for its actions."

Climate Change

N/A

Prepared by	Gavin Beveridge, Parks & Recreation Officer
Attachment	Attachment A - Minutes – Clarence Sports Committee Meeting – 23 August 2021 Attachment B - Minutes – Lower Clarence Sports Committee Meeting – 23 August 2021

ITEM 6c.21.119 UPDATED SEE PARK MASTERPLAN

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Works & Civil	
Reviewed by	Manager - Open Spaces & Facilities (Peter Birch)	
Attachment	Nil	

SUMMARY

Community consultation was undertaken in 2019 to capture the key elements of a concept masterplan for See Park, Grafton. Council resolved (item 6c.19.041) to include these key themes in a plan which was completed and reported to the August meeting of Council. The resolution from August (item 6c.21.107) now seeks an amendment to the original scope for inclusion of additional access items which will have safety, budget and amenity implications. This report seeks an allocation for design amendments and additional time to prepare the amendments to the concept masterplan design.

OFFICER RECOMMENDATION

That Council

1. Note the safety, budget and natural amenity impacts of the amendments.
2. Allocate a budget of \$2,000 from the general fund for the design amendments and for inclusion in the Q1 QBRS to be reported in October 2021.
3. Receive a report back to Council by October 2021 with the updated concept masterplan design.

COMMITTEE RECOMMENDATION

Lysaught/Ellem

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.119

Kingsley/Toms

That Council

1. Note the safety, budget and natural amenity impacts of the amendments.
2. Allocate a budget of \$2,000 from the general fund for the design amendments and for inclusion in the Q1 QBRS to be reported in October 2021.
3. Receive a report back to Council by October 2021 with the updated concept masterplan design.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure

Strategy 2.1.4 Manage and enhance our parks, open spaces and facilities

BACKGROUND

At the February 2019 meeting, Council resolved (item 17.003/19) to 'consult the community to determine the desires and needs of any future development of See Park'.

Community engagement was completed and included on site pop up sessions, online engagement through Clarence conversations, involvement from the local media and consultation with primary users including the Jacaranda Festival. The results of this engagement were reported back to Council in August 2019 (Item 6c.19.041) which was then resolved to progress to the design based on the inclusion of the key themes which were identified through community engagement.

An allocation was included in the 2020/21 budget to allow the project to be developed to concept masterplan stage. The concept masterplan was completed based on the identified key themes and reported to the August meeting of Council. The resolution from August (item 6c.21.107) now seeks an amendment to the original scope for inclusion of additional access items as follows –

That:

1. *Council note the concept Masterplan for See Park Grafton.*
2. *The concept Masterplan for See Park Grafton be amended to include the following:*
 - a. *Softfall and concrete paths throughout the playground area linking all pieces of play equipment regardless of whether they are inclusive/accessible.*
 - b. *One (1) wheelchair accessible piece of play equipment and minimum two (2) pieces of sensory play equipment.*
 - c. *Replacement of the bridge crossing over the pond on page 10 of the concept Masterplan from stairs to a compliant wheelchair accessible bridge.*
 - d. *Confirmation of three (3) accessible BBQ's and their locations noting them on the amended concept Masterplan.*
 - e. *An accessible path which leads from either the corner of Turf and Bacon Street (near the BBQ shelter) or the footpath near the existing timber bridge (whichever starting location provides the least obstruction from retained plants and existing trees) down to the pond on the Turf Street side of the park.*
3. *The amendments in point 2 are aligned with the NSW Department of Planning, Industry & Environment's "Everyone Can Play" best practice guidelines and that the said guidelines are officially referenced in the amended concept Masterplan.*
4. *Council receive a report to the September 2021 Council meeting cycle with an amended concept Masterplan as per points 2 and 3 of this motion.*

The report presents information on the design amendments to address the resolution and requests additional time to respond prepare the concept masterplan design.

KEY ISSUES

The concept masterplan was completed, based on feedback received from the community consultation sessions and engagement with the community stakeholders as part of that process. The keys items for inclusion in the design were addressed, coupling built infrastructure with the natural amenity of the park. Overwhelmingly, the park is used for the natural assets, linking the water, flora and fauna together to create a sensory playground. Accessible pathways have been added throughout the park to link all areas, however the addition of more will detract from the green space that the community told us they loved. Changing the design will impact the feedback received through the consultation process.

The See Park concept masterplan considered Council's strategic planning documents, policies and procedures, along with the Everyone Can Play Guideline. Development of the plan considered not only the guideline but were sympathetic to the heritage and natural values of the park. Also considered was the location of See Park being within 2.4km of the award-winning Jacaranda Park regional inclusive playscape. Most suggested amendments are an additional extra allocation of service provision of facilities, will directly increase the project budget, and are challenged by the site constraints, topography, heritage and natural values of the park and its location.

Over allocation of the Everyone Can Play Guideline at See Park, especially in terms of accessibility, could lead to increases in service provision levels. Community expectations will be that these increases to service provision levels will be implemented consistently across the Valley. A revision of the Playground Asset

Management Plan will be required to model the long-term financial implications for Council and to determine the community's ability and willingness to pay for increases in service provision.

Council aims to provide the community with a strategic network of quality play spaces, containing safe and compliant equipment that provide recreation and challenge for the users. Staff have knowledge of Everyone Can Play Guideline which has been used to inform design briefs, address existing play spaces, determine improvements to increase inclusivity and influence budget setting for play spaces. Open Spaces strategic planning documents are to be reviewed in 2021 and the guidelines will be integrated to form part of Council's delivery program.

To facilitate the design amendments additional time and budget is sought to prepare the amendments to the concept masterplan design.

COUNCIL IMPLICATIONS

Budget/Financial

The concept masterplan was funded from PJ 994752 and included in the 2020/21 capital works program. An additional \$2,000 is required for additional design fees associated with the proposed amendments.

Asset Management

Asset management planning leads business performance by assisting Council and the community in matching the quantity and quality of play spaces needed by the community, with the community's ability and willingness to pay for the service. The creation of a financially sustainable Playground Asset Management Plan has allowed Open Spaces to plan and forecast for the maintenance and operation, staged renewal or upgrade of existing play space assets. The plan represents an important tool for staff in responding to customer requests / enquiries and ensures a consistent service provision is applied across the Clarence Valley local government area.

Policy or Regulation

- NSW Disability Inclusion Act 2014
- Disability Inclusion Action Plan 2017 – 2021
- Open Spaces Strategy
- Council report 17.003/19
- Council report 6c.19.041
- Council report 6c.21.107

Consultation

Extensive consultation was undertaken with the feedback reported to Council in August 2019. This feedback was used to develop the concept masterplan. The proposed amendments from the August meeting of Council (item 6c.21.107) impact on and are additional to the feedback already received from the community. For example the additional pathways will impact on greenspace and trees that the community feedback indicated it wanted.

Legal and Risk Management

The proposed amendment to the design of the installation of "softfall and concrete paths throughout the playground area linking all pieces of play equipment regardless of whether they are inclusive/accessibile" will require the use of rubberised softfall and can present risk and safety issues. Playground under surfacing is an integral part of a safe play space and it is an important element in play space planning and design. Impact-absorbing material must be used under play equipment with fall heights greater than 600mm above ground level, and needs to extend to the extremities of the impact areas around the equipment in line with the Australian Standard 4685:2014.

Loose organic type materials such as certified bark is currently used under the climbing equipment as this material provides an absorbing level of impact if a fall is experienced from the equipment. The use of rubberised softfall under this equipment has a 'bouncier' effect. Additionally, a combination of softfall treatments creates a greater sensory effect for children.

Climate Change

The proposed amendments to the design will detract from the natural amenity of the area, creating more hard stand areas and less green space, and potentially less natural shade if trees are required to be removed to increase pathways throughout the park.

Prepared by	Rachelle Passmore, Senior Parks and Recreation Officer
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ITEM	6c.21.120	ALCOHOL PROHIBITED AREA TEMPORARY REVOCATION – JACARANDA FESTIVAL
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Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Works & Civil	
Reviewed by	Manager - Open Spaces & Facilities (Peter Birch)	
Attachment	Nil	

SUMMARY

An application for a further two Jacaranda Festival events has been received that will permit the sale and consumption of alcohol at Market Square and See Park. Market Square and See Park are alcohol prohibited areas and approval of the sale and consumption of alcohol within the park requires the temporary revoking of the restriction for the duration of the events.

OFFICER RECOMMENDATION

That Council:

1. revoke the alcohol prohibition area at Market Square for the 2021 Jacaranda Festival from midday Friday 29 October 2021 to 5:30pm Sunday 7 November 2021.
2. revoke the alcohol prohibition area at See Park for the 2021 Jacaranda Festival from 9:00pm Saturday 23 October 2021 to 11:00pm Saturday 23 October 2021.

COMMITTEE RECOMMENDATION

Kingsley/Ellem

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.120

Kingsley/Toms

That Council:

1. revoke the alcohol prohibition area at Market Square for the 2021 Jacaranda Festival from midday Friday 29 October 2021 to 5:30pm Sunday 7 November 2021.
2. revoke the alcohol prohibition area at See Park for the 2021 Jacaranda Festival from 9:00pm Saturday 23 October 2021 to 11:00pm Saturday 23 October 2021.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 3 Economy

Objective 3.1 We will have an attractive and diverse environment for business, tourism and industry

Strategy 3.1.5 Attract and grow events which contribute to the economy with a focus on high participatory events

BACKGROUND

At the 27 July 2021 ordinary meeting, Council considered a report regarding the Alcohol Prohibited Area Temporary Revocation – Jacaranda Festival [Item6c.21.091] resolving:

'That Council revoke the alcohol prohibition area at Market Square for the 2021 Jacaranda Festival from midday Friday 29 October 2021 to midday Sunday 7 November 2021'

An application for a further two Jacaranda Festival events has been received that will permit the sale and consumption of alcohol at Market Square and See Park.

KEY ISSUES

Alcohol Prohibited Areas

The drinking of alcohol is prohibited at Market Square, Grafton all hours (24/7) [Item 15.035/19]. This prohibition is in place to promote the safe use of the park.

The drinking of alcohol is prohibited at See Park, Grafton from 9:00pm – 9:00am [Item 15.035/19]. This prohibition is in place to promote the safe use of the park.

Alcohol prohibited areas are enforced by Clarence Valley Council's Rangers and the NSW Police.

Jacaranda Festival

The Jacaranda Festival is a multiday, multi faceted event (see attached program). As part of the committees desire to grow the event and cater for resident and visiting communities expectation it is proposed that **13** events within the larger calendar of events will permit the sale and consumption of alcohol in Market Square, Grafton. The events being;

- Caringa Ball (Friday, 29 October)
- Queen Crowning (Saturday, 30 October)
- Retrofest (Sunday, 31 October)
- National Artist Concert (Sunday, 31 October)
- TAIKOZ – Japanese Drumming Dynamos (Monday, 1 November)
- Melbourne Cup Garden Party (Tuesday, 2 November)
- Last Five Years – A Musical by Jason Robert Brown (Wednesday, 3 November)
- Jacaranda Thursday (Thursday, 4 November)
- Venetian Carnival (Friday, 5 November)
- Highland Splash – Pipe Bands & Highland/Irish Dancers (Saturday, 6 November)
- Party in the Park (Saturday, 6 November)
- Jacaranda Raffle Draw (Saturday, 6 November)
- **Bearded Bingo hosted by Briefs Club & Special Guest (Sunday 7 November) – NEW EVENT**

Additionally, the Jacaranda committee is planning **1** event in See Park, Grafton that will permit the sale and consumption of alcohol. The event being;

- **Illuminate See Park (Saturday, 23 October) – NEW EVENT**

The applicant has advised that alcohol will be served by qualified attendants who hold an RSA Certificates within a delineated area. Police will be notified of the event and available to attend if required, however it is envisaged that the style of the event will determine positive behaviour.

It is proposed to adjust the prohibition in this instance to allow alcohol consumption as part of this event.

COUNCIL IMPLICATIONS

Budget/Financial

N/A

Asset Management

N/A

Policy or Regulation

The following references are applicable to this report:

- Local Government Act 1993, section s632A
- Council Minute 15.035/19
- Council Resolution - 6c.19.009

Consultation

The Application has been received from Jacaranda Festival Committee. Internal consultation has occurred with several areas of Council.

Legal and Risk Management

If approved, a risk management plan will be submitted by the applicant, prior to the event.

Climate Change

N/A

Prepared by	David Sutton, Open Spaces Coordinator
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ITEM 6c.21.121 MONTHLY INVESTMENT REPORT – AUGUST 2021

Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Corporate & Governance	
Reviewed by	Manager - Finance & Systems (Kate Maginness)	
Attachment	Yes	

SUMMARY

The purpose of this report is to inform Council of the details of Council's investment funds as at the end of each month.

OFFICER RECOMMENDATION

That the report indicating Council's funds investment position as at 31 August 2021 be received and noted.

COMMITTEE RECOMMENDATION

Lysaught/Kingsley

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley

Against: Ellem

COUNCIL RESOLUTION – 6c.21.121

Lysaught/Toms

That the report indicating Council's funds investment position as at 31 August 2021 be received and noted.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Novak, Williamson, Lysaught, Toms

Against: Ellem, Clancy

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.2 We will have an effective and efficient organisation

Strategy 5.2.1 Operate in a financially responsible and sustainable manner

BACKGROUND

This report has been completed in accordance with the *Local Government Act 1993*, Part 9, Division 5, Clause 212 of the *Local Government (General) Regulation 2005*, and Council's Investment Policy, which requires a monthly report to Council. The report is to include the source and amount of funds invested, terms of performance, and a statement of compliance in relation to the *Local Government Act 1993*.

KEY ISSUES**Source of Funds Invested**

The funds invested are funds held under internal and external restrictions. External Restricted Funds are primarily from Sewer & Water, Granting Bodies and Developer Contributions. Internal restrictions are primarily sourced from General Revenue Funding and Unspent Loans.

Based on the audited 30 June 2020 figures, funds have been sourced from the following areas:

External Reserves		Internal Reserves	
Sewerage Funds	6.37%	Plant Equipment Reserve	7.47%
Water Supply Funds	29.31%	Regional Landfill Reserves	4.12%
Developer Contributions	18.52%	Fin. Assist Grants paid in advance	4.66%
Unexpended Grants	4.80%	Waste Mngmt / Commercial Waste	3.75%
Domestic Waste Management	1.28%	Infrastructure Assets Renewals	1.35%
Holiday Parks	1.79%	Employee Leave Entitlements	2.72%
Deposits, Retentions and Bonds	1.75%	Roads & Quarries Reserves	2.71%
Other External	1.58%	Strategic Building Reserve	1.22%
		Building Asset Renewals	0.87%
		Other (refer attachment for further detail)	5.73%
	65.40%		34.60%
		Total External & Internal Reserves	100.00%

Portfolio Credit Limits

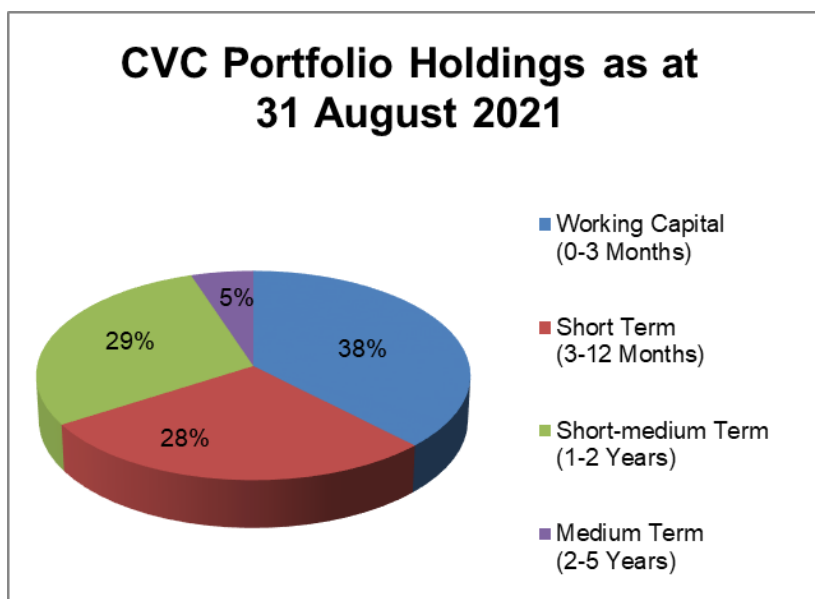
Tabled below is a summary of Council's investments as at 31 August 2021 which details compliance with Council's Investment Policy Portfolio Credit Limits.

Portfolio Credit Limits as at 31 August 2021				
Credit Rating Long Term	Investment Policy Maximum Holding	Total Investments Held	% of Total Investments	Complies with Policy (yes/no)
AAA	100.00%	4,990,328	3.61%	Yes
AA	100.00%	58,131,487	42.11%	Yes
A	60.00%	18,250,000	13.22%	Yes
BBB	50.00%	56,675,592	41.06%	Yes
TOTAL INVESTMENTS		138,047,407	100.00%	

Note, a permanent cap of \$250,000 per person per institution on deposits is guaranteed by the Federal Government under the *Financial Claims Scheme* and hence receives a rating of AAA.

Portfolio Holdings by Maturity

Illustrated and tabled below is a summary of Council's investments by maturity as at 31 August 2021. Excluding "at-call" working capital, 37.70% of Council's investments are maturing within the next twelve months.



Individual Institution or Counterparty Limits

Tabled below is a summary of Council's investments as at 31 August 2021 which details compliance with Council's Investment Policy Counterparty Limits.

Individual Institution or Counterparty Limits as at 31 August 2021					
Financial Institution	Credit Rating Long Term	Investment Policy Maximum Holding	Total Investments Held	% of Total Investments	Complies with Policy (yes/no)
TERM DEPOSITS					
AMP	BBB	15.00%	8,000,000	5.80%	Yes
BoQ	BBB+	15.00%	8,000,000	5.80%	Yes
Bendigo	BBB+	15.00%	3,000,000	2.17%	Yes
CBA	AA-	30.00%	3,000,000	2.17%	Yes
Credit Union Australia	BBB	15.00%	2,000,000	1.45%	Yes
Defence	BBB	15.00%	10,000,000	7.24%	Yes
ING Direct	A	15.00%	13,000,000	9.42%	Yes
ME Bank	BBB+	15.00%	16,000,000	11.59%	Yes
NAB	AA-	30.00%	20,000,000	14.49%	Yes
P&N	BBB	15.00%	3,000,000	2.17%	Yes
RaboDirect	A+	15.00%	6,000,000	4.35%	Yes
Westpac	AA-	30.00%	6,000,000	4.35%	Yes
TOTAL TERM DEPOSITS			98,000,000	70.99%	
MANAGED FUNDS					
TCorp	AAA	40.00%	490,328	0.36%	Yes
TOTAL MANAGED FUNDS			490,328	0.36%	
FUNDS AT CALL					
AMP	BBB	15.00%	8,365,614	6.06%	Yes
AMP	BBB	15.00%	1,059,978	0.77%	Yes
ANZ	AA-	30.00%	6,789,012	4.92%	Yes
CBA	AA-	30.00%	16,280,872	11.79%	Yes
CBA	AA-	30.00%	7,061,603	5.12%	Yes
TOTAL FUNDS AT CALL			39,557,079	28.65%	
TOTAL INVESTMENTS			138,047,407	100.00%	

Register of Investments - Clarence Valley Council as at 31 August 2021					
Financial Institution	Total Investments Held	% of Total Investments	Maturity Date	Investment Return	Credit Rating Long Term
WORKING CAPITAL (0-3 MONTHS)					
T-CorpIM Cash Fund	490,328	0.36%	At-Call	0.12%	AAA
AMP Bank Ltd	8,365,614	6.06%	At-Call	0.55%	BBB
AMP Bank Ltd	1,059,978	0.77%	At-Call	0.50%	BBB
ANZ Banking Group Ltd	6,789,012	4.92%	At-Call	0.05%	AA-
Commonwealth Bank of Australia	16,280,872	11.79%	At-Call	0.00%	AA-
Commonwealth Bank of Australia	7,061,603	5.12%	At-Call	0.05%	AA-
AMP Bank Ltd	1,000,000	0.72%	31/08/2021	0.80%	BBB
Bendigo Bank	3,000,000	2.17%	15/10/2021	0.45%	BBB+
Commonwealth Bank of Australia	3,000,000	2.17%	12/11/2021	0.55%	AA-
ING	2,000,000	1.45%	29/11/2021	1.55%	A
National Australia Bank	2,000,000	1.45%	10/09/2021	0.75%	AA-
Westpac Bank	1,000,000	0.72%	16/11/2021	1.22%	AA-
TOTAL WORKING CAPITAL (0-3 MONTHS)	52,047,407	37.70%		0.30%	
SHORT TERM (3-12 MONTHS)					
AMP Bank Ltd	2,000,000	1.45%	02/12/2021	1.45%	BBB
AMP Bank Ltd	3,000,000	2.17%	05/03/2022	0.95%	BBB
Bank Of Queensland Ltd	1,000,000	0.72%	02/12/2021	3.80%	BBB+
Bank Of Queensland Ltd	1,000,000	0.72%	02/12/2021	0.54%	BBB+
Bank Of Queensland Ltd	1,000,000	0.72%	09/05/2022	3.60%	BBB+
Bank Of Queensland Ltd	1,000,000	0.72%	03/08/2022	3.60%	BBB+
Credit Union Australia	2,000,000	1.45%	07/07/2022	0.37%	BBB
Defence Bank	2,000,000	1.45%	17/12/2021	0.50%	BBB
ING	3,000,000	2.17%	11/02/2022	1.60%	A
ING	2,000,000	1.45%	21/02/2022	1.60%	A
ING	3,000,000	2.17%	21/02/2022	1.60%	A
ME Bank Ltd	1,000,000	0.72%	15/02/2022	0.45%	BBB
ME Bank Ltd	2,000,000	1.45%	03/03/2022	0.45%	BBB
ME Bank Ltd	2,000,000	1.45%	09/05/2022	0.50%	BBB
ME Bank Ltd	3,000,000	2.17%	11/05/2022	0.50%	BBB
ME Bank Ltd	5,000,000	3.62%	09/06/2022	0.47%	BBB
ME Bank Ltd	1,000,000	0.72%	06/07/2022	0.50%	BBB
National Australia Bank	2,000,000	1.45%	02/12/2021	0.50%	AA-
Westpac Bank	2,000,000	1.45%	18/07/2022	1.08%	AA-
TOTAL SHORT TERM (3-12 MONTHS)	39,000,000	28.25%		1.07%	

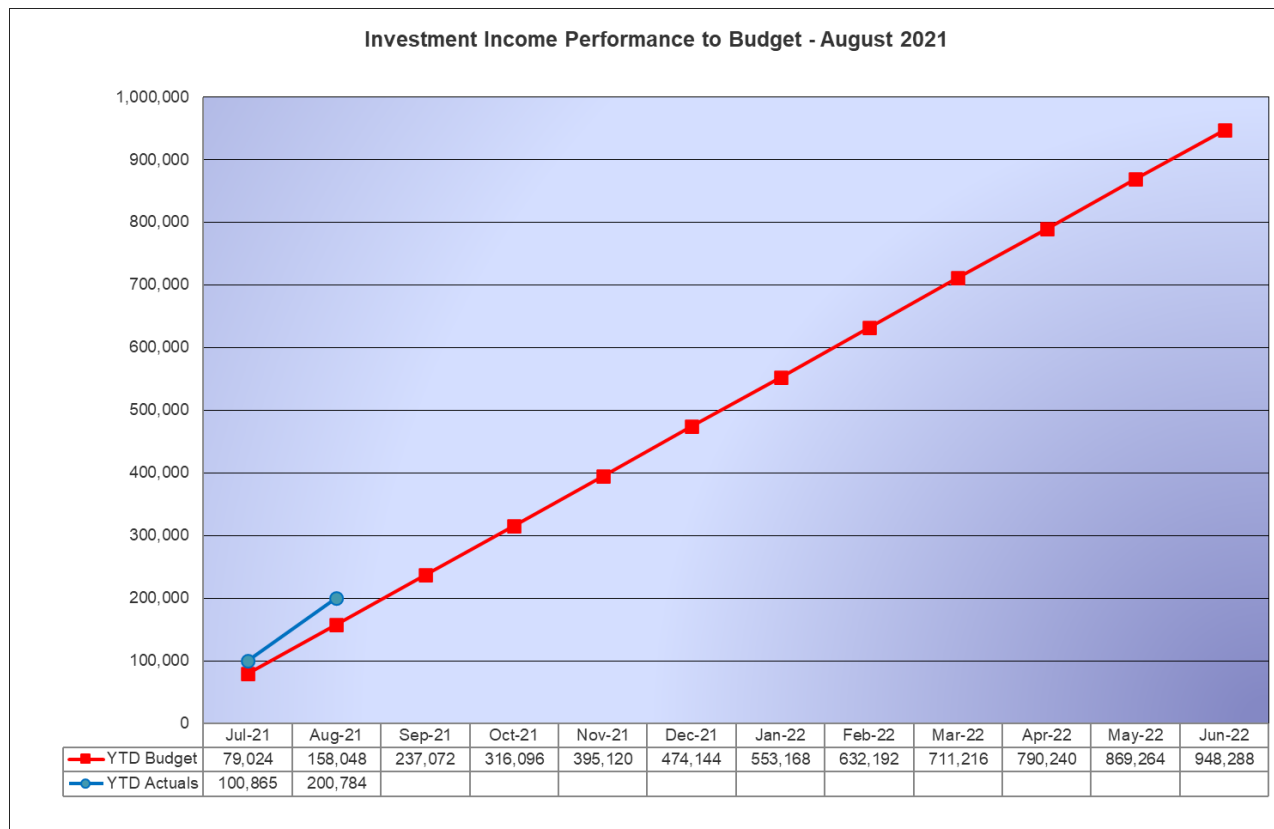
Financial Institution	Total Investments Held	% of Total Investments	Maturity Date	Investment Return	Credit Rating Long Term
SHORT - MEDIUM TERM (1-2 YEARS)					
AMP Bank Ltd	2,000,000	1.45%	14/11/2022	0.55%	BBB
Bank Of Queensland Ltd	2,000,000	1.45%	08/02/2023	3.55%	BBB+
Bank Of Queensland Ltd	2,000,000	1.45%	21/08/2023	3.60%	BBB+
Defence Bank	2,000,000	1.45%	21/11/2022	0.62%	BBB
Defence Bank	2,000,000	1.45%	02/12/2022	0.64%	BBB
Defence Bank	2,000,000	1.45%	03/03/2023	0.50%	BBB
Defence Bank	2,000,000	1.45%	9/03/2023	0.53%	BBB
ING	1,000,000	0.72%	04/10/2022	3.66%	A
ING	2,000,000	1.45%	02/03/2023	0.55%	A
ME Bank Ltd	2,000,000	1.45%	15/06/2023	0.50%	BBB
National Australia Bank	2,000,000	1.45%	18/11/2022	0.60%	AA-
National Australia Bank	2,000,000	1.45%	01/12/2022	0.60%	AA-
National Australia Bank	2,000,000	1.45%	06/03/2023	0.60%	AA-
National Australia Bank	2,000,000	1.45%	05/06/2023	0.55%	AA-
National Australia Bank	2,000,000	1.45%	15/06/2023	0.55%	AA-
National Australia Bank	2,000,000	1.45%	10/08/2023	0.60%	AA-
P&N Bank	3,000,000	2.17%	13/03/2023	0.55%	BBB
RaboDirect (Australia) Ltd	2,000,000	1.45%	13/09/2022	3.40%	A+
RaboDirect (Australia) Ltd	1,000,000	0.72%	05/12/2022	3.21%	A+
RaboDirect (Australia) Ltd	1,000,000	0.72%	17/08/2023	3.40%	A+
Westpac Bank	2,000,000	1.45%	13/03/2023	0.94%	AA-
TOTAL SHORT-MEDIUM TERM (1-2 YEARS)	40,000,000	28.98%		1.24%	
MEDIUM TERM (2-5 YEARS)					
National Australia Bank	2,000,000	1.45%	08/07/2024	0.80%	AA-
National Australia Bank	2,000,000	1.45%	12/01/2026	1.00%	AA-
RaboDirect (Australia) Ltd	2,000,000	1.45%	19/09/2023	3.40%	A+
Westpac Bank	1,000,000	0.72%	20/06/2024	0.85%	AA-
TOTAL MEDIUM TERM (2-5 YEARS)	7,000,000	5.07%		1.61%	
TOTAL INVESTMENTS	138,047,407	100.00%		0.86%	

COUNCIL IMPLICATIONS

Budget/Financial

Portfolio Investment Returns to 31 August 2021			
	Actual	Budget 2020/21	Over/(Under)
This Month			
Cash Deposits & FRNs	\$99,923	\$78,974	\$20,949
Managed Funds	(\$4)	\$50	(\$54)
	\$99,919	\$79,024	\$20,895
Year to Date			
Cash Deposits & FRNs	\$200,736	\$157,948	\$42,788
Managed Funds	\$48	\$100	(\$52)
	\$200,784	\$158,048	\$42,736

- Actual results have shown that total interest income to 31 August 2021 is \$42.7k above the 2021-22 YTD budget of \$158.0k.

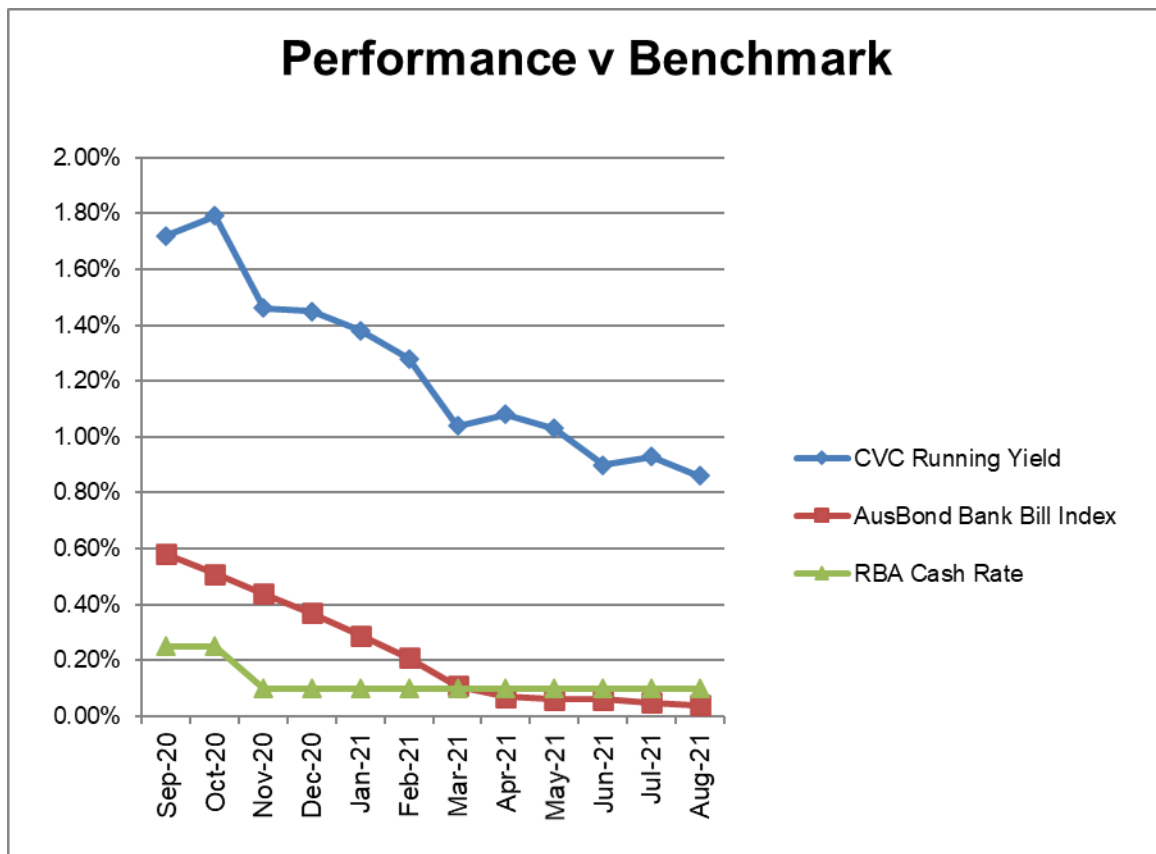


- Running yields* to 31 August 2021 have been:

AMP Business	0.50%
AMP 31 Day Notice	0.55%
ANZ Premium Business	0.05%
CBA General	0.00%
24hr Call Account	0.05%
T-CorpIM Cash Fund	0.12%
Term Deposits	<u>1.15%</u>
Total	0.86%

*Running yield is a measure of the return (before costs) that would be earned from current positions if there were no trades and no fluctuation in market yields.

- The RBA cash rate at the end of August was 0.10%. The benchmark AusBond Bank Bill Index was 0.04% for August.
- The current running yield of the total investment portfolio remains at elevated levels above the cash rate. At month-end, it stood at +0.86% (July 0.93%).



The following investment was transacted during August:

- NAB \$2.0m TD matured 11/8/2021 – reinvested at 0.60% for 2 years – matures 10/8/2023
- AMP \$1.0m TD matured 31/8/2021 – reinvested at 0.75% for 2 years – matures 31/8/2023

Asset Management

N/A

Policy or Regulation

- Local Government Act 1993
- Part 9, Division 5, Clause 212 of the Local Government (General) Regulation 2005
- Investment Policy

Consultation

N/A

Legal and Risk Management

N/A

Climate Change

Climate change impact of the current investment portfolio has not been undertaken. Investments are driven by the current Investment Policy.

Prepared by	Kirsty Gooley – Financial Analyst
Attachment	Movement of Funds Between Months – August 2021

ITEM	6c.21.122	WORKS REPORT
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Meeting	Corporate, Governance & Works Committee	21 September 2021
Directorate	Works & Civil	
Reviewed by	Director - Works & Civil (Jamie Fleeting)	
Attachment	Nil	

SUMMARY

Reports on capital and major maintenance works carried out by the Works and Civil Group until late August 2021.

OFFICER RECOMMENDATION

That the Works report be received and noted.

COMMITTEE RECOMMENDATION

Kingsley/Ellem

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Lysaught, Toms, Kingsley, Ellem

Against: Nil

COUNCIL RESOLUTION – 6c.21.122

Kingsley/Toms

That the Works report be received and noted.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure


Strategy 2.1.5 Provide safe and effective vehicular and pedestrian networks that balance asset conditions with available resources


BACKGROUND

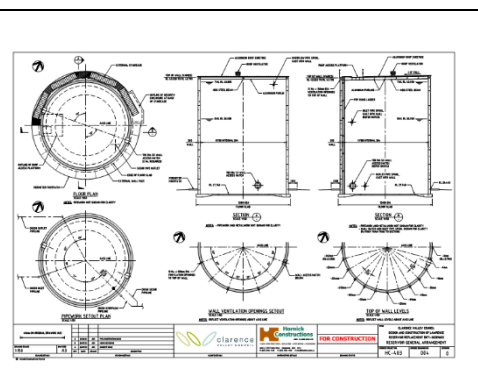
Works are undertaken to maintain Council assets and undertake construction within budgets and timeframes established by Council. Departures from set programs and budgets are reported to Council as part of the works program reporting.

KEY ISSUES

The projects below highlight capital projects being undertaken during August 2021.

Project:	Townsend Park Playground Upgrade	
Project Description:	Upgrade to accessible playground, connecting pathways, half basketball court, hitting wall, and walking track	
Budget:	\$336,967	
Expenditure:	\$90,305	
Status:	<ul style="list-style-type: none"> Project 80% complete Equipment and rubberised soft fall install delayed due to COVID-19 border restrictions 	

Project:	Safer Roads Stimulus Project – Hortons Creek, Armidale Road	
Project Description:	Upgrade two sections of Armidale Road at Hortons Creek within identified crash zones.	
Budget:	\$2,431,590	
Expenditure:	\$1,607,025	
Status:	<ul style="list-style-type: none"> Cut to Fill Earthworks (95,000m3) complete Sealed stage 1 complete Target seal stage 2, 14th Sept on track Completion Milestone, 30th Sept on track 	

Project:	Lawrence Reservoir	
Project Description:	Construction of replacement 1.7ML reservoir at Lawrence	
Budget:	\$2.2 million	
Expenditure:	Nil to date	
Status:	<ul style="list-style-type: none"> “Design and Construct” Contract awarded at 21 June 2021 Council meeting Contract start up workshop held 11 August Contractor submitted design plans for review Queensland border closure has delayed site establishment for at least 4 weeks 	

COUNCIL IMPLICATIONS

Budget/Financial

N/A

Asset Management

Maintenance standards are undertaken in accordance with that detailed in the relevant Asset Management Plan. Capital works are as detailed in the Delivery Plan and Operational Plan.

Policy or Regulation

There are no policy or regulation implications.

Consultation

Consultation has been held internally with Civil Services Section and Water Cycle Section and Open Spaces and Facilities Section.

Legal and Risk Management

There are no legal or risk management implications.

Climate Change

There are no climate change implications.

Prepared by	Alan Dunne, Greg Mashiah, Peter Birch
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d. INFORMATION ITEMS

ITEM	6d.21.008	ITEMS FOR INFORMATION
Meeting	Council	28 September 2021
Directorate	Office of General Manager	
Reviewed by	General Manager - Ashley Lindsay	
Attachment	Yes	

OFFICER RECOMMENDATION

That the Items for Information as listed below be noted:

1. Clarence Regional Library Committee: Minutes of meeting held 13 August 2021.
2. Ewingar Hall Committee: Minutes of meeting held 5 August 2021.
3. Coffs Harbour City Council: Response to Item 07.21.006 (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
4. Kyogle Council: Response to Item 07.21.006 (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
5. The Hon Barnaby Joyce MP: Response to Item 07.21.010 (Funding for New Lawrence Bridge).
6. The Hon Paul Toole MP: Response to Item 07.21.010 (Funding for New Lawrence Bridge).
7. Clarence Valley Council: Mayor's response letter to Coffs Harbour, Glen Innes Severn and Kyogle Councils - (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
8. Clarence Valley Council: Mayor's response letter Tenterfield Shire Council - (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).

COUNCIL RESOLUTION – 6d.21.008

Kingsley/Toms

That the Items for Information as listed below be noted:

1. Clarence Regional Library Committee: Minutes of meeting held 13 August 2021.
2. Ewingar Hall Committee: Minutes of meeting held 5 August 2021.
3. Coffs Harbour City Council: Response to Item 07.21.006 (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
4. Kyogle Council: Response to Item 07.21.006 (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
5. The Hon Barnaby Joyce MP: Response to Item 07.21.010 (Funding for New Lawrence Bridge).
6. The Hon Paul Toole MP: Response to Item 07.21.010 (Funding for New Lawrence Bridge).
7. Clarence Valley Council: Mayor's response letter to Coffs Harbour, Glen Innes Severn and Kyogle Councils - (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).
8. Clarence Valley Council: Mayor's response letter Tenterfield Shire Council - (Request for Support for a Moratorium on Mining in Areas Affecting the Clarence River Catchment).

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

Prepared by	Debbie McGilvray, Executive Support Officer
Attachments	As listed above

a. TENDERS

ITEM	6e.21.017	TENDER 21/023 HORIZONTAL DIRECTIONAL DRILLING SERVICES SUPPLY PANEL
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Meeting	Council	28 September 2021
Directorate	Works & Civil	
Reviewed by	Director - Works & Civil (Jamie Fleeting)	
Attachment	Confidential	

SUMMARY

Tenders have been called for the supply of Horizontal Directional Drilling (HDD) services to Council for the period 1 October 2021 to 30 June 2023, with an option to extend the period tender for 12 months. This report recommends the acceptance of some of the Tenders received to be included on a Panel of Suppliers for engagement as required.

OFFICER RECOMMENDATION

That:

1. A Panel of Suppliers be established under the contract terms and conditions of Tender 21/023 – Horizontal Directional Drilling services for the period 1 October 2021 to 30 June 2023.
2. The Panel of Suppliers comprise:
 - a. Ameidat Pty Ltd T/A Coffs Coast Under Road Boring
 - b. Maxibor Australia Pty Ltd
 - c. Inncontrol Pty Ltd T/A Gosling Electrical
 - d. Jones Group (NSW) Pty Ltd
 - e. Ledonne Constructions Pty Ltd
 - f. Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd
 - g. Utilstra Pty Ltd.
3. The General Manager be authorised to exercise an option of a 12 month contract extension if it is in the interest of Council and for contractors which are deemed to have performed satisfactorily.

COUNCIL RESOLUTION – 6e.21.017**Kingsley/Toms**

That:

1. **A Panel of Suppliers be established under the contract terms and conditions of Tender 21/023 – Horizontal Directional Drilling services for the period 1 October 2021 to 30 June 2023.**
2. **The Panel of Suppliers comprise:**
 - a. **Ameidat Pty Ltd T/A Coffs Coast Under Road Boring**
 - b. **Maxibor Australia Pty Ltd**
 - c. **Inncontrol Pty Ltd T/A Gosling Electrical**
 - d. **Jones Group (NSW) Pty Ltd**
 - e. **Ledonne Constructions Pty Ltd**
 - f. **Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd**
 - g. **Utilstra Pty Ltd.**
3. **The General Manager be authorised to exercise an option of a 12 month contract extension if it is in the interest of Council and for contractors which are deemed to have performed satisfactorily.**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure

Strategy 2.1.2 Ensure adequate natural disaster management

BACKGROUND

Council requires HDD services throughout the year. This may require that Council:

- Engage a Supplier to provide services that exceed \$250,000 in value for any single event,
- Engage a Supplier to provide services that exceed \$250,000 in value over a number of events, or
- Engage a Supplier to provide services that exceed \$250,000 in value over a range of disciplines (e.g. HDD services and plant hire).

To ensure that Council complies with the requirements of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*, tenders have been called for the supply of HDD services for the period 1 October 2021 to 30 June 2023, with an option to extend the contract by 12 months, subject to satisfactory performance. Tenderers who supplied the most favourable tenders will be added to a Panel of Suppliers to be engaged by Council as and when required during the year.

KEY ISSUES

Tenders were called on 30 July and closed on 27 August 2021 using the Tenderlink e-tendering service. Submissions were accepted through Tenderlink e-tendering only. Direct advice was also sent to contractors who were suppliers under the previous HDD Period Supply Contract (18/006). Eight tenders were received at the close of tenders.

Tenders were evaluated by a Tender Evaluation Committee (TEC) comprising Water Cycle staff. In accordance with Section 169(3) of the *Local Government (General) Regulation 2021*, Tenderers were assessed on their experience in fulfilling the requirements of similar contracts and their capacity to fulfil the requirements of the contract. As outlined in the attached confidential report, the TEC recommends that seven of the Contractors be shortlisted for the Services Panel.

In addition to providing technical information on their experience and capability, Tenders were required to nominate:

- Rates for HDD work for various pipe sizes, with rates to be provided where the Tenderer provides the pipe and where Council supplies the pipe,
- The minimum notice required for cancellation without penalty, and
- The cost of cancellation if less than minimum notice was given.

Scheduled HDD works sometimes need to be cancelled at relatively short notice due to weather, responses to mains breaks etc, so in addition to the nominated rates, minimum notice and cost of cancellation are also key considerations when engaging an HDD contractor under the services contract.

COUNCIL IMPLICATIONS

Budget/Financial

Funds for the provision of HDD services are contained within capital and maintenance budgets.

Asset Management

Council does not currently have the plant or equipment to provide HDD services and, given the specialist nature of the work and the variability of the requirement for HDD services, it is proposed that Council continue to use external contractors to provide this service when required.

Policy or Regulation

The tendering process followed is consistent with the requirement of the Local Government Act and Regulation and Council's Sustainable Procurement Policy – Supporting Local Business. In accordance with Council's Sustainable Procurement Policy the following processes were undertaken:

- Local suppliers, contractors and/or consultants were notified through local advertising, and
- Tender specifications were structured so local suppliers and/or contractors were not excluded from being the prime supplier/contractor

Consultation

N/A

Legal and Risk Management

The Directors of the eight Tendering firms are:

Tenderer	Director/Partner
Ameidat Pty Ltd T/A Coffs Coast Under Road Boring	Tim Wilcox & Sharyn Wilcox
Maxibor Australia Pty Ltd	Rodney O'Meley
Inncontrol Pty Ltd T/A Gosling Electrical	Matthew Gosling
Jones Group (NSW) Pty Ltd	Mitchell Jones
Ledonne Constructions Pty Ltd	Tony Ledonne
Midcoast Under Road Boring Pty Ltd	John Kiddle
Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd	Izac Skennar & Jodie Skennar
Utilstra Pty Ltd	E Kabir

Climate Change

Not applicable to this tender.

Prepared by	Greg Mashiah (Manager Water Cycle), Andrew Potter (Water & Sewer Operations Coordinator) & Matt Godfrey (Acting Senior Engineering Officer)
Confidential	Tender Evaluation Report

ITEM 6e.21.018 TENDER 21/024 VACUUM EXCAVATION SERVICES SUPPLY PANEL

Meeting	Council	28 September 2021
Directorate	Works & Civil	
Reviewed by	Director - Works & Civil (Jamie Fleeting)	
Attachment	Confidential	

SUMMARY

Tenders have been called for the supply of Vacuum Excavation services to Council for the period 1 October 2021 to 30 June 2023, with an option to extend for 12 months. This report recommends accepting all of the Tenders received to be included on a Panel of Suppliers for use as required.

OFFICER RECOMMENDATION

That:

1. A Panel of Suppliers be established under the contract terms and conditions of *Tender 21/024 – Vacuum Excavation Services* for the period 1 October 2021 to 30 June 2023.
2. The Panel of Suppliers comprise:
 - a. Ameidat Pty Ltd T/A Coffs Coast Under Road Boring
 - b. Cable & Pipe Locations P/L
 - c. Dynamic Hydro Excavations P/L
 - d. Eljo Pty Ltd & The Trustee for the Rico Family Trust T/A Clarence Valley Septics
 - e. Inncontrol Pty Ltd T/A Gosling Electrical
 - f. JR & EG Richards Pty Ltd T/A Hydro Digga Pty Ltd
 - g. Ledonne Constructions Pty Ltd
 - h. Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd
 - i. Total Drain Cleaning Services Pty Ltd.
3. The General Manager be authorised to exercise the 12 month contract extension option for Contractors which are considered to have performed satisfactorily.

COUNCIL RESOLUTION – 6e.21.018**Kingsley/Toms**

That:

1. A Panel of Suppliers be established under the contract terms and conditions of *Tender 21/024 – Vacuum Excavation Services* for the period 1 October 2021 to 30 June 2023.
2. The Panel of Suppliers comprise:
 - a. Ameidat Pty Ltd T/A Coffs Coast Under Road Boring
 - b. Cable & Pipe Locations P/L
 - c. Dynamic Hydro Excavations P/L
 - d. Eljo Pty Ltd & The Trustee for the Rico Family Trust T/A Clarence Valley Septics
 - e. Inncontrol Pty Ltd T/A Gosling Electrical
 - f. JR & EG Richards Pty Ltd T/A Hydro Digga Pty Ltd
 - g. Ledonne Constructions Pty Ltd
 - h. Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd
 - i. Total Drain Cleaning Services Pty Ltd.
3. The General Manager be authorised to exercise the 12 month contract extension option for Contractors which are considered to have performed satisfactorily.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms
 Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 2 Infrastructure

Objective 2.1 We will have communities that are well serviced with appropriate infrastructure

Strategy 2.1.2 Ensure adequate natural disaster management

BACKGROUND

Council requires Vacuum Excavation services throughout the year. This may require that Council:

- Engage a Supplier to provide services that exceed \$250,000 in value for any single event,
- Engage a Supplier to provide services that exceed \$250,000 in value over a number of events, or
- Engage a Supplier to provide services that exceed \$250,000 in value over a range of disciplines (e.g. Vacuum Excavation and Horizontal Directional Drilling).

To ensure that Council complies with the requirements of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*, tenders have been called for the supply of Vacuum Excavation services for the period 1 October 2021 to 30 June 2023, with an option to extend the contract by 12 months, subject to satisfactory performance. Tenderers who supplied the most favourable tenders will be added to a Panel of Suppliers to be engaged by Council as and when required during the year.

KEY ISSUES

Tenders were called on 30 July and closed on 27 August 2021 using the Tenderlink e-tendering service. Direct advice that the Tender was being called was sent to contractors who were suppliers under the previous Vacuum Excavation Period Supply Contract (18/005). Nine tenders were received at the close of tenders.

Tenders were evaluated by a Tender Evaluation Committee (TEC) comprising Water Cycle staff. In accordance with Section 169(3) of the *Local Government (General) Regulation 2021*, Tenderers were assessed on their experience in fulfilling the requirements of similar contracts and their capacity to fulfil the requirements of the contract. As outlined in the attached confidential report, the TEC recommends that all of the Tenderers be shortlisted for the Services Panel.

In addition to providing technical information on their experience and capability, Tenderers were required to nominate:

- Rates for vacuum excavation work, including after hours and weekend rates,
- Minimum guaranteed response times to various locations within the Clarence Valley Council area,
- The minimum notice required for cancellation without penalty, and
- The cost of cancellation if less than minimum notice is given.

Scheduled vacuum excavation works sometimes need to be cancelled at relatively short notice due to weather, responses to mains breaks etc, so in addition to the tendered rates, minimum notice and cost of cancellation are key considerations when engaging a vacuum excavation contractor from the panel for a specific project. Vacuum excavation may also be required for emergency works, so minimum response times and out of hours rates are also key considerations when engaging a contractor from the panel.

COUNCIL IMPLICATIONS

Budget/Financial

Funds for the provision of vacuum excavation services are contained within capital and maintenance budgets.

Asset Management

Council does not currently have the plant or equipment to provide vacuum excavation services. While Council is acquiring vacuum excavation plant in 2021/22, given the variability of the requirement for vacuum excavation Council will continue to need to use external contractors to provide this service when required.

Policy or Regulation

The tendering process followed is consistent with the requirement of the Local Government Act and Regulation and Council's Sustainable Procurement Policy – Supporting Local Business. In accordance with Council's Sustainable Procurement Policy the following processes were undertaken:

- Local suppliers, contractors and/or consultants were notified through local advertising, and
- Tender specifications were structured so local suppliers and/or contractors were not excluded from being the prime supplier/contractor

Consultation

N/A

Legal and Risk Management

The Directors of the nine Tendering Firms are:

Tenderer	Director/Partner
Ameidat Pty Ltd T/A Coffs Coast Under Road Boring	Tim Wilcox & Sharyn Wilcox
Cable & Pipe Locations P/L	Shane Buckley
Dynamic Hydro Excavations P/L	Andrew Smith
Eljo Pty Ltd & The Trustee for the Rico Family Trust T/A Clarence Valley Septics	Robert Richards & Michael Barnes
Inncontrol Pty Ltd T/A Gosling Electrical	Matthew Gosling
JR & EG Richards Pty Ltd T/A Hydro Digga Pty Ltd	Kenneth Ian Richards, Paul Welch & Cheryl Maree Morrison
Ledonne Constructions Pty Ltd	Tony Ledonne
Ozcom Holdings Pty Ltd T/A Ozcom Drilling Pty Ltd	Izac Skennar & Jodie Skennar
Total Drain Cleaning Services Pty Ltd	Nick Messina & Paul Qiu

Climate Change

Not applicable to this tender.

Prepared by	Greg Mashiah (Manager Water Cycle), Andrew Potter (Sewer and Water Operations Coordinator) & Matt Godfrey (Acting Senior Engineering Officer)
Confidential	Tender Evaluation Report

ITEM	6e.21.019	RFT21/21 YAMBA SKATE PARK EXTENSION ON CROWN LAND
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Meeting	Council	28 September 2021
Directorate	Works & Civil	
Reviewed by	Manager - Open Spaces & Facilities (Peter Birch)	
Attachment	Confidential	

SUMMARY

The report presents the outcome of tender that was called for the construction of Yamba Skate Park Extension at Yamba Oval & Skate Park (R82747) and seeks Council's endorsement to award the contract.

OFFICER RECOMMENDATION

That Council as Crown Land Manager of Yamba Oval & Skate Park (R82747):

1. Accept the tender from Concrete Skateparks Pty Ltd (Administrators Appointed) for RFT21/21 Yamba Skate Park Extension for the construction of the extended skate park at a cost of \$575,000 (Incl GST) to be funded from Yamba Skate Park (FP 540549 Sub Service 341).
2. Authorise the General Manager to approve variations up to 10% of the contract value.
3. Allocate funding to a reserve as a potential compensable act for the extinguishment of native title in accordance with the attached confidential report.
4. Allocate \$100,000 from the internal reserve RA11035 Sportsfield Income Reserve to fund the additional contract sum and project contingency and included in Q1 of the Quarterly Budget Review Statement (QBR).

COUNCIL RESOLUTION – 6e.21.019**Kingsley/Toms**

That Council as Crown Land Manager of Yamba Oval & Skate Park (R82747):

1. **Accept the tender from Concrete Skateparks Pty Ltd (Administrators Appointed) for RFT21/21 Yamba Skate Park Extension for the construction of the extended skate park at a cost of \$575,000 (Incl GST) to be funded from Yamba Skate Park (FP 540549 Sub Service 341).**
2. **Authorise the General Manager to approve variations up to 10% of the contract value.**
3. **Allocate funding to a reserve as a potential compensable act for the extinguishment of native title in accordance with the attached confidential report.**
4. **Allocate \$100,000 from the internal reserve RA11035 Sportsfield Income Reserve to fund the additional contract sum and project contingency and included in Q1 of the Quarterly Budget Review Statement (QBR).**

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

LINKAGE TO OUR COMMUNITY PLAN

Theme 1 Society

Objective 1.1 We will have proud and inviting communities

Strategy 1.1.1 Encourage vibrant and welcoming towns and villages

BACKGROUND

The provision of skate facilities in Yamba has many chapters, some more positive than others.

A community-built skate park inclusive of a 'bowl' was built by the community in mid 2006 and was extended in 2012 with grant funds from the 'out of box' youth program. An independent condition assessment of the 'bowl' was completed in late 2010 including a recommendation for demolition. The extension that was

completed in 2012 remains in place and is much loved by the community. The area where the original bowl was built remains vacant.

The Yamba skate facility is located on the corner of Coldstream and River Street, Yamba. The location is part of the larger Yamba Oval & Skate Park Reserve, creating the opportunity to further tie into existing sporting and youth activity within Yamba. Being located adjacent to the town centre on the intersection of two major access road facilitates engagement with the broader community.

After nearly 10 years of intensive use by the community the extension is showing signs of wear and tear, it contains some features that are considered obsolete and due to the size and configuration it is unable to function to its full potential during peak periods.

CONVIC Skate Parks Pty Ltd were engaged by Council in 2020 to develop a youth and family space that will create a dynamic and activated central community hub, offering recreational and social experiences for all members of the community. It is proposed that the skate facility will become one of the foremost youth spaces within the region it will be a strategic public realm hub for Yamba and the wider Clarence Valley Council area.

With a high level of community engagement, the detail design and tender documentation were developed with tenders called Monday, 9 August 2021, closing Monday, 6 September 2021.

KEY ISSUES

Design

Yamba Skate Park Extension project extends on the existing skate park located on the corner of Coldstream and River Streets, Yamba. The project scope includes but is not limited to site establishment, demolition, earthworks, utilities realignment and construction, steel work, concrete work, furniture, applied finishes, and any other associated works within the required skate park works tolerances. The design documentation, schedules and specifications developed by CONVIC. An artist impression of the proposed works (foreground) and 'extension' (background) is provided below.



Tenders

Three (3) Tenders were received in response to the Request for Tender process, the Tenderers being listed in alphabetical order in the following table and throughout report:

Tenderer	ABN	Address
Concrete Skateparks Pty Ltd (Administrators Appointed) As Trustee of Lewers Family Trust Trading as Concrete Skateparks Pty Ltd (Administrators Appointed)	34 4095 06526	15/120 Edward Street, Brisbane City, QLD, 4000
CONVIC Pty Ltd	23 159 140 137	Unit 13, 46-50 Regent Street, Richmond, VIC, 3121

Tenderer	ABN	Address
VFG Skate Parks Pty Ltd ATF VFG Trust	51 313 640 046	493 Clothiers Creek Road, Nunderi, NSW, 2484

Summary and Recommendation

Tender Evaluation Committee (TEC) evaluated the submissions against the Mandatory Participation Criteria to ensure compliance with the Tender Evaluation Plan (TEP). The three (3) Tenders received were deemed compliant and were processed through to the evaluation criteria assessment.

The TEC reviewed the three (3) Tenders against the non-price (technical) criteria independently and then as a group to form a consensus score. CONVIC Pty Ltd ranked first, Concrete Skateparks Pty Ltd ranked second. The TEC then reviewed the three (3) Tenders against the price (commercial) as a group. Concrete Skateparks Pty Ltd ranked first.

After consideration of the tender submissions, scoring, and project reference checks, the TEC considered the offer from Concrete Skateparks Pty Ltd as the most advantageous to council and recommends this tender be accepted.

Details of the TEC's assessment are included in the confidential attachment.

COUNCIL IMPLICATIONS

Budget/Financial

Council successfully applied for grant funding of \$500,000 from the Federal Government Local Roads & Community Infrastructure Fund Round 2.

The available budget for the tender is \$500,000 Yamba Skate Park, Financial Project 540549, Sub Service 341 and the GST exclusive tender price is \$522,727.27.

If Council accepts the preferred tender, the budgeted sum will need to be increased by \$100,000 to allow for the additional contract sum and project contingency. It is recommended that funding be drawn from the Sportsfield Income Reserve RA11035 which has an estimated balance as at 30 June 2021 of \$271,000.

Asset Management

The proposed Yamba Skate Park Extension is a new asset and will need to be included into Council's Asset Management Plans.

Policy or Regulation

The tendering process followed is consistent with the requirement of the Local Government Act and Regulation and Council's Sustainable Procurement Policy – Supporting Local Business.

In accordance with Council's Sustainable Procurement Policy the following processes were undertaken:

- Local suppliers, contractors and/or consultants were notified through local advertising.
- Tender specifications were structured so local suppliers and/or contractors were not excluded from being the prime supplier/contractor.
- The tender specification requested tenderers to identify the local suppliers/contractors that would be involved in delivering/constructing the project and the tender assessment included a 15% weighting of the total tender score for local supplier content. The Tender Evaluation Plan contains details of the local supplier content for each tenderer.

Consultation

The consultation comprised of three separate engagement methods: open community surveys, a drop-in session and a core user group workshop.

Open to the public for three weeks the open community consultation comprised of an online survey and attracted both future users of the space and surrounding residents. The drop-in session was held on the 3rd of October at the existing skatepark, this session aimed to capture feedback from local users of the space. Taking place on the 15th of October over an online video call, a selected group of core users were given the forum to verbally discuss their thoughts on the project in detail.

The consultant engaged to undertake the consultation and design are industry exemplars having completed multiple engagement sessions, on completion the consultant communicated that the level of engagement of the community was one of the highest they had experienced.

Legal and Risk Management

The Yamba Oval & Skate Park (R82747) is within the Yaegl People #2 Native Title Determination area. Native title has been determined by the Federal Court to continue to exist on this reserve. While the extension of the skate park will be constructed in the area that the original skate bowl was constructed, Council will be required to notify of this project under the Native Title Act 1993 (Cth). Any new work that impacts the rights and interests of traditional owners may be compensable under the Act. Sites Officers may also be required during excavation works to ensure the integrity of any Aboriginal cultural heritage objects found are not damaged by the works.

Three (3) submissions were received in response to the Request for Tender process, the Company Partners and Directors are as follows:

Tenderer	ABN	Name of Partners and Directors	Position
Concrete Skateparks Pty Ltd	34 4095 06526	Robert Lewers Bill Karageozis Jonathan Paul McLeod	Director Administrator Administrator
CONVIC Pty Ltd	23 159 140 137	Julius Turanyik	C.E.O.
VFG Skate Parks Pty Ltd	51 313 640 046	Kieran Avington	

Concrete Skateparks Pty Ltd entered Voluntary Administrators 20 July 2021 with McLeod & Partners appointed to undertake analysis of the Company's business, property, affairs, and financial circumstances. McLeod & Partners called a meeting of creditors 24 August 2021, at this meeting an update on the Voluntary Administration was provided, a vote taken to approve the Administrators fees and a date set for a creditors meeting being 26th October 2021.

It is understood that Concrete Skateparks Pty Ltd are working with the administrators and creditors to continue to trade while the company is restructured. Since entering into voluntary administration they have been awarded works to the value of approximately \$2,165,000 ex GST being the Narara Skate Park Project, three design and construction contracts for Brisbane City Council (due to be completed Nov – Dec) and one for Inner West Council. Further information on managing risk associated with Concrete Skateparks P/L is discussed further in the confidential attachment.

Climate Change

The provision of any new asset results in resource consumption and emission production factors that contribute to climate change. To minimise the impact the materials used will contain a high content of material that can be recycled at the end of its useful life and all waste material able to be recycled.

Prepared by	Andrew Auglys, Team Leader Open Spaces
Confidential	RFT21-21 Yamba Skate Park Extension

7. NOTICE OF MOTIONS - Nil

8. CONFIDENTIAL BUSINESS - Nil

9. QUESTIONS WITH NOTICE

ITEM	09.21.005	QUESTIONS WITH NOTICE
Meeting	Council	28 September 2021

CR KAREN TOMS

Please find following my questions on notice as per our Code of Meeting Practice.

05.21.009 Resignation - General Manager and Appointment of Acting General Manager

1. Is the 7 October 2022 resignation date an extension of the General Manager's employment Contract?

RESPONSE: No

2. If so please advise the date the General Manager's employment contract expires?

3. Does the proposed motion regarding the appointment of Director of Corporate & Governance, Laura Black to the temporary position as Acting General Manager for period of the General Manager's leave and up to a period of no more that twelve (12) months prevent a new council from altering that decision?

RESPONSE: No, I don't believe so.

6a.21.045 Petition - River Breeze Estate, Clearwater Close and Ibis Court Grafton

1. Does council have the LEVEL 1 Certification Certificate for fill and compact works provided by the developer Sticklip Pty Ltd?
2. Is that certification the same as a VENM - Virgin Excavated Natural Material Certification?
3. Is that information and document available under the Government Information Public Access Act 2009 through council's website?
4. Do council officers play a role in site inspections of level I soil and compact works?
5. Is it a fact that Level 1 certification of fill gives quality assurances to builders and owners therefore not needing to do their own geotechnical studies?
6. Does Council's Geotechnical Risk Management Policy have a part to play for affected landowners of the Breeze Estate?

RESPONSE: The item on the business paper before Council relates to the receipt of a Petition. The questions 1 – 6 above are not about a matter on the business paper.

7. When can residents expect a meeting to discuss this matter?

RESPONSE: Within the next 2 weeks.

COUNCIL RESOLUTION – 09.21.005

Toms/Kingsley

That the Questions with Notice be noted.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

CARRIED

10. LATE ITEMS OF BUSINESS AND MATTERS ARISING - Nil

11. CLOSE OF ORDINARY MEETING

There being no further business the Ordinary Council Meeting closed at 5.14pm.