

## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

a19 [PR-CM] Unauthorised Forestry and Road Works - Lot 136 DP 755724  
Boormans Road, Tyalgum

**SUBMITTED BY:** Development Assessment and Compliance

mhm

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Leaving a Legacy  
*Looking out for future generations*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.1 Natural Resource Management
- 1.1.1 Biodiversity Management - To protect and manage the environment and natural beauty of the Tweed for current and future generations.

**ROLE:** **Provider**

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#### SUMMARY OF REPORT:

Recent action relates to alleged unauthorised road works including vegetation removal which has been undertaken within and adjacent to an unformed Crown Road Reserve that adjoins Zara Road at Limpinwood. Council has previously resolved to investigate these works, and Council officers are currently working with Council's solicitors in the preparation of evidence to support this investigation.

A major contributor to these alleged unauthorised actions relates to the advancement by the owner of an approved Private Native Forestry Vegetation Plan (PNF - \_PVP – 03294), issued by the NSW Environment Protection Agency in 2013. Council has raised concerns with the NSW State Government on a number of occasions in respect of these Private Native Forestry (PNF) approvals, which provide only minimal levels of assessment of the local environmental impacts on the properties involved, and no prior consultation or approvals processes for surrounding local communities and councils in respect of supporting road infrastructure, and monitoring of ongoing impacts. A Mayoral Minute determined by Council at its meeting of 7 September 2017 again had resulted in representations to the NSW State Government to overhaul the PNF approvals system.

**LATE REPORTS**

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A key consideration for the PNF approval for the subject site is that, whilst the State based legislation has its own approval process, the use and works still need to be permissible with the zoning of the site. Under Tweed Local Environmental Plan 2014, large parts of the subject site are Deferred Matters, which then defers to the remaining operational provisions of Tweed Local Environmental Plan 2000. This LEP zones parts of the site, part 7(d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat), which requires development consent from Council for forestry and road works. The owners of the subject site have been provided with an extensive briefing of these LEP consent requirements on multiple occasions.

On 11 September 2017, Council was informed through an audit document prepared by the North East Forestry Alliance (see Attachment 1), that unauthorised road and vegetation removal works had been undertaken by the owners of the subject site, specifically within a portion of the south-eastern corner of Lot 136, in association with an existing portion of previously unmade Crown Road Reserve. This documented evidence of substantial threats to significant threatened and endangered fauna and flora, including the Masked Owl, Marbled Frogmouth and koalas. The audit also identified a lack of erosion sedimentation mitigation, and a failure to take account of the NSW Environment Protection Authority's "Private Native Forestry Code of Practice for Northern NSW", which is an integral condition of PNF approvals.

In response to this advice, Council officers inspected the subject site on 12 September 2017, with the prior permission, and in the presence of the site owners. A record of the officers' site inspection is also provided as Attachment 2 to this report. This inspection confirmed that unauthorised forestry and road works had been carried out in the portion of the site examined by the North East Forestry Alliance, in both the 7(d) and 7 (l) environmental zones. It was also evident that there was a lack of sedimentation erosion controls put in place, which creates the potential for significant environmental damage and pollution in the event of rainfall.

Following the site inspection, Council officers wrote to the site owners requesting that they cease any further unauthorised works, and to provide an explanation of the work carried out.

Council officers have also made relevant State and Federal Government compliance agencies aware of this unauthorised activity, and a further joint site inspection by both Council and EPA Compliance officers is scheduled for 19 September 2017.

The purpose of this report is to seek Council's support to engage solicitors and commence more detailed investigations as the basis for legal action against the site owners.

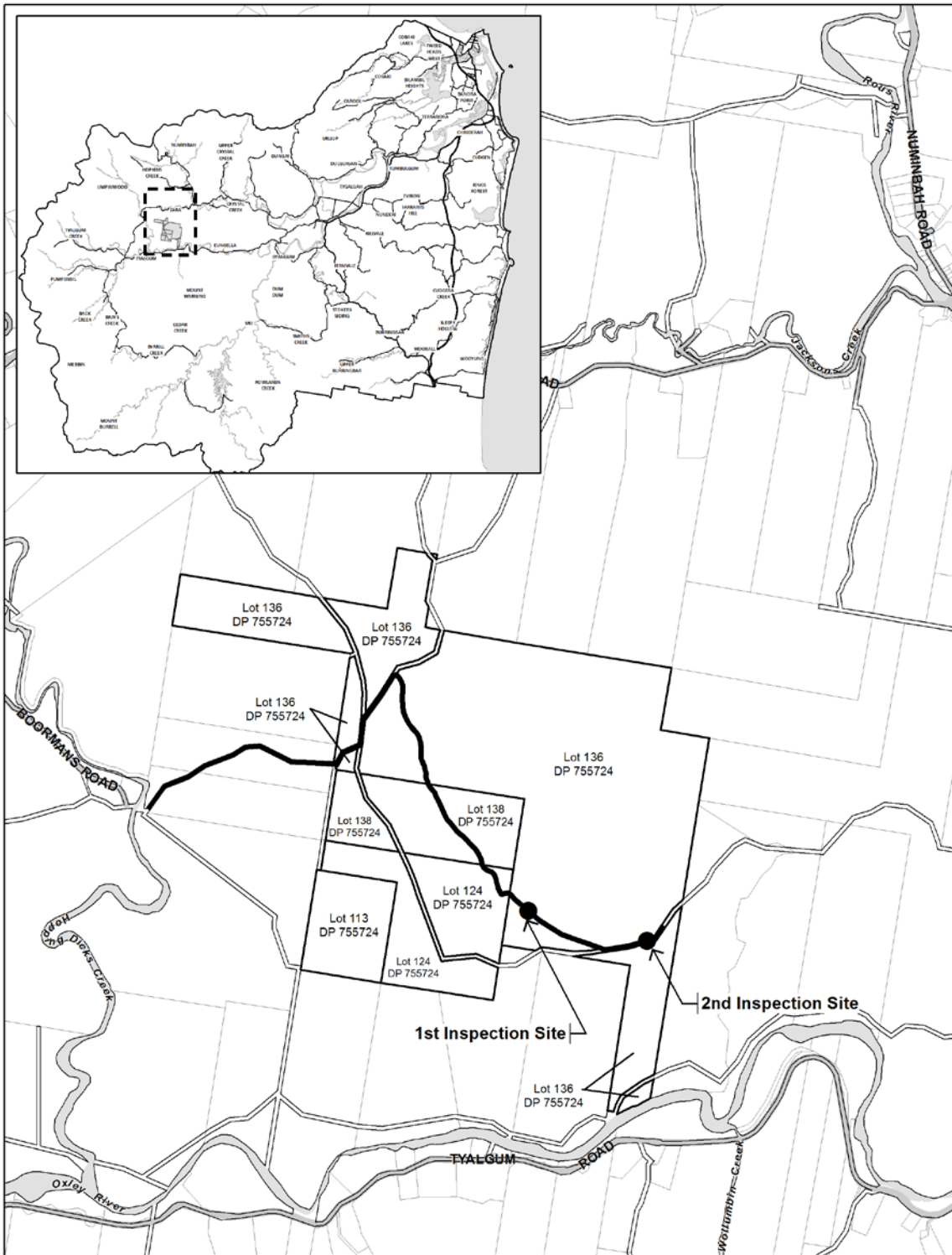
**RECOMMENDATION:**

**That:**

- 1. Council engages its solicitors to provide advice regarding the unauthorised forestry and road works within that portion of Lot 136 DP DP755724 Boormans Road, Tyalgum affected by Tweed Local Environmental Plan 2000 environmental zones, as identified in this report, and that a further report be submitted to Council providing preferred options for prosecution of the site owners, and best options to impose a statutory stop work order under the Environmental Planning and Assessment Act 1979 and the Protection of the Environment Operations Act 1997;**
- 2. Council endorse that a systematic site assessment be undertaken to inform any investigation and compliance action including:**
  - a. Survey all constructed roads via vehicle traverse with differential GPS;**
  - b. Survey the aerial extent and location of all areas of vegetation clearing;**
  - c. Assessment by a suitably qualified ecologist to quantify the vegetation classification of areas impacted by vegetation clearing; and**
  - d. Assessment by a suitably qualified ecologist of the quantified extent of vegetation clearing in relation to the impacts of the clearing on threatened species and threatened species habitat.**
- 3. Council officers continue to work with relevant State and Federal Government compliance agencies to seek a prosecution of the site owners under their legislation and appropriate site management.**

**REPORT:**

**SITE PLAN - LOCATION OF WORKS**



1:24,000 @ A4 Portrait  
 0 200 400 600 m  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

**TWEED** CIVIL & CULTURAL CENTRE  
 3 Tyumbalum Road  
 Murumbidgee NSW 2484  
 PO Box 816  
 Murumbidgee NSW 2484  
 T: (02) 9670 2400 / 1300 292 872  
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 W: www.tweed.nsw.gov.au  
 E: planning@tweed.nsw.gov.au

**Locality Plan**  
 Lots 113, 124, 136 & 138 DP 755724  
 Locality of Zara and Tyalgum

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 Filepath: Z:\ESRIPRO\COUNCIL REPORTS\ZaraTyalgum.mxd Author: J.Batchelor - Strategic Planning & Urban Design Unit Date Printed: 11 September, 2017

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Figure 1: Subject property with Tweed LEP 2000 land zoning

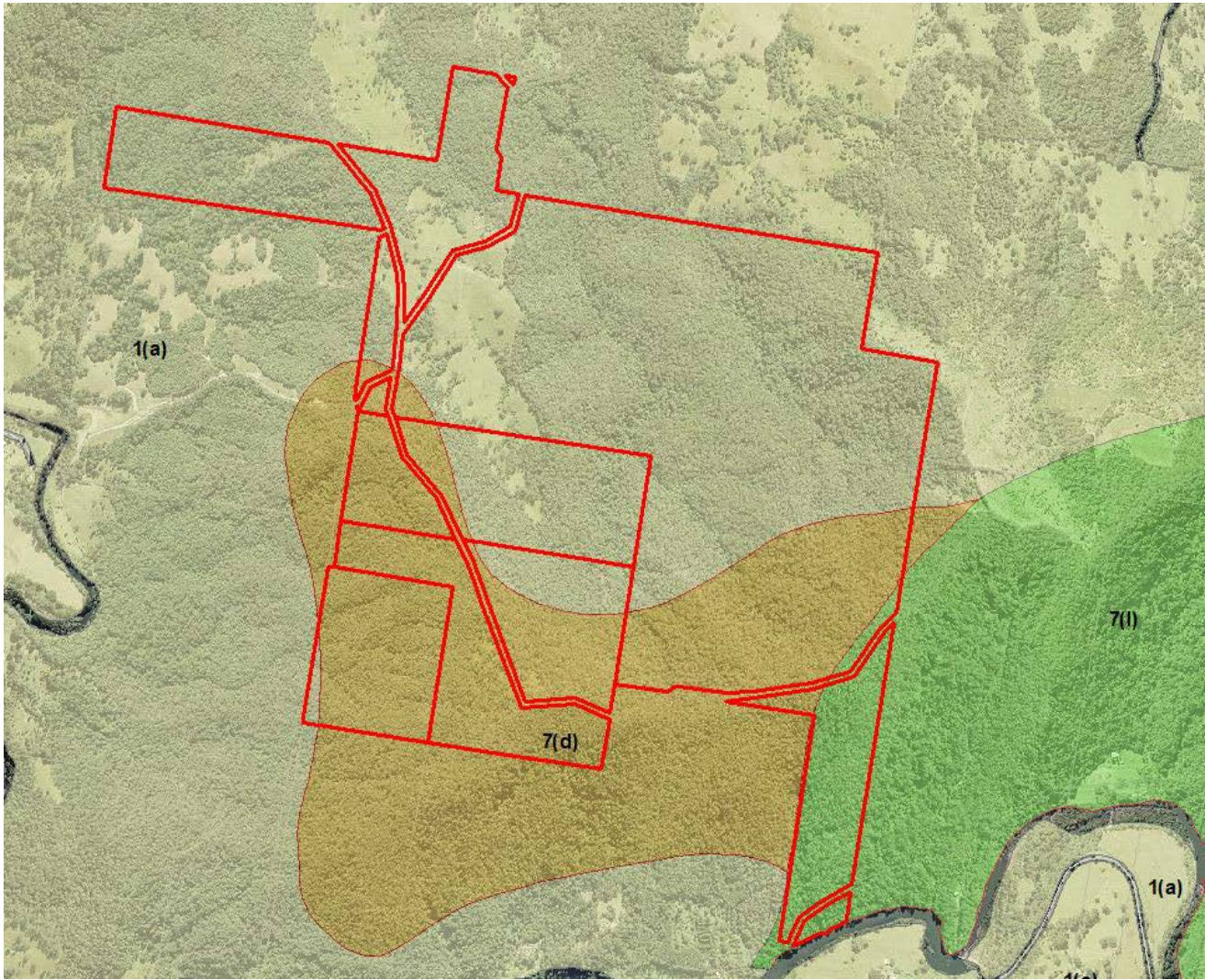
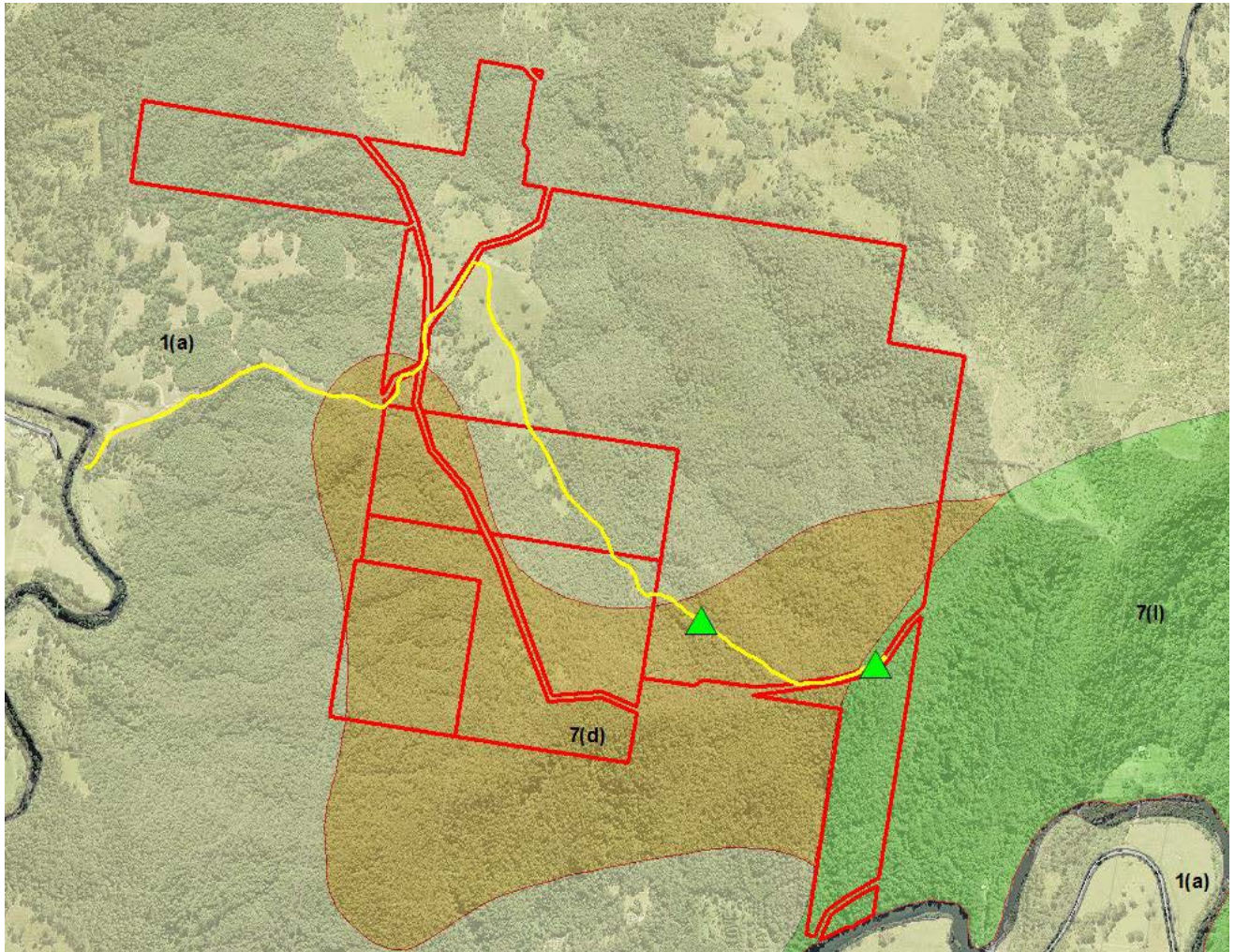


Figure 2: Route travelled (yellow line) and inspection points (green triangles).



**PHOTOS FROM SITE INSPECTION**



Figure 3: Photographs taken at location of first site inspection (525617 6864972)





Figure 4: Photographs taken at location of second site inspection (525575 6864839)

Following the site inspection, Council officers wrote to the site owners requesting that they cease any further unauthorised works, and to provide an explanation of the work carried out.

Council officers have also made relevant State and Federal Government compliance agencies aware of this unauthorised activity, and a further joint site inspection by both Council and EPA Compliance officers is scheduled for 19 September 2017.

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**OPTIONS:**

That:

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2. Council endorse that a systematic site assessment be undertaken to inform any investigation and compliance action including:
  - a. Survey all constructed roads via vehicle traverse with differential GPS;
  - b. Survey the aerial extent and location of all areas of vegetation clearing;
  - c. Assessment by a suitably qualified ecologist to quantify the vegetation classification of areas impacted by vegetation clearing; and
  - d. Assessment by a suitably qualified ecologist of the quantified extent of vegetation clearing in relation to the impacts of the clearing on threatened species and threatened species habitat.
3. Council officers continue to work with relevant State and Federal Government compliance agencies to seek a prosecution of the site owners under their legislation and appropriate site management.

**Option 2:**

That Council issue a Penalty Infringement Notice to the site owners for the unauthorised works.

Option 1 is recommended.

**CONCLUSION:**

It is considered that, subject to further investigations and legal advice, Council should commence prosecution proceedings given the significance of the offence and the information known at the time of writing about the incident and the identity of the alleged offender.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Council will incur legal expenses, however if successful, costs can be awarded in Class 4 and 5 proceedings in the Land and Environment Court to the successful party.

It is also recommended that a systematic site assessment be undertaken to inform any investigation and compliance action. Given the workload demands currently being experienced by Council's NRM Unit as a result of a number of major compliance and legal investigations, it may be necessary that external consultants be engaged to assist with this investigation and any prosecution actions.

**c. Legal:**

Council approval is being sought to engage solicitors.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |   |
|---------------|---|
| Attachment 1. | Document prepared by the North East Forestry Alliance (ECM 4768583)         |
| Attachment 2. | A record of the officers' site inspection - 12 September 2017 (ECM 4768584) |
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## REPORTS FROM THE DIRECTOR ENGINEERING

### a39 [E-CM] Crown Land Management Regulation 2017

SUBMITTED BY: Design

mhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.4 Councillor and Civic Business - To make informed decisions in the best interest of the community.

ROLE: **Collaborator**

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#### SUMMARY OF REPORT:

The Crown Land Management Act 2016 ("CLM Act") was assented on 14 November 2016, this piece of legislation followed the issue of a White Paper titled "Crown Lands Management Review", to which Council lodged a submission.

Council has and continues to participate in the Local Land Pilot, a process to test the review and assessment of Crown Land for transfer to Council. The pilot has provided Council with an opportunity to review Crown Land within the Tweed Local Government Area.

In 2016 a Parliamentary inquiry into Crown Land was also undertaken, with Council appearing at the Ballina hearing of the inquiry. A report of the inquiry was issued in October 2016, with twenty (20) recommendations.

As mentioned earlier, the CLM Act was introduced into Parliament shortly thereafter and approved in November 2016, to be enacted when the associated regulations were finalised in 2017.

The Crown Land Management Regulation 2017 has now been introduced and submissions in response to the draft regulations are required to be submitted before midnight 24 September 2017. A draft submission has been prepared and is an annexure to this report and this report includes an overview of the CLM Act, to provide a context for the submission.

**RECOMMENDATION:**

**That Council receives and notes this report and approves the forwarding of a submission to the Crown Land Management Regulation 2017.**

**REPORT:**

The *Crown Land Management Act 2016* ("CLM Act") was assented on 14 November 2016, this piece of legislation followed the issue of a White Paper titled "Crown Lands Management Review" in 2014, to which Council lodged a submission.

Council has and continues to participate in the Local Land Pilot during 2015, a process to test the review and assessment of Crown Land for transfer to Council. The pilot has provided Council with an opportunity to review Crown Land within the Tweed Local Government Area, how it is used and managed.

In 2016 a Parliamentary inquiry into Crown Land was also undertaken, with Council appearing at the Ballina hearing of the inquiry. A report of the inquiry was issued in October 2016, with twenty (20) recommendations. The Honorable Paul Toole MP, Minister for Lands and Forestry issued a letter to the NSW Legislative Council in April 2017 that the NSW Government 'supports, or supports in principle all of the recommendations of the report'.

As mentioned earlier, the CLM Act was introduced into Parliament shortly thereafter and approved in November 2016, to be enacted when the associated regulation was finalised in 2017.

The *Crown Land Management Regulation 2017* has now been introduced and submissions in response to the draft regulations are required to be submitted before midnight 24 September 2017. A draft submission is an attachment to this report and the report is intended to be an overview of the CLM Act, to provide a context for the submission.

When the Regulation was placed on exhibition, for public submissions, a Regulatory Impact Statement was also made available, this document explains and discusses the impact of the regulations only, it does not discuss the changes covered in the CLM Act. This Impact Statement is also an annexure to this report for reference.

**Regulatory Impact Statement**

The Regulatory Impact Statement ("RIS") provides a useful overview of the changes in the CLM Act, as well as providing discussion on the impacts on both the State Government and its management of Crown Land.

The RIS states that the regulations are intended to support the objectives and principles of the CLM Act, to provide a foundation for reviewing the CLM Act, the stated objectives and principles of the CLM Act are set out below:

**Objectives of CLM Act**

- To provide for the ownership, use and management of the Crown land of New South Wales
- To provide clarity concerning the law applicable to Crown land
- To require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land
- To provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales
- To facilitate the use of Crown land by Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land

- To provide for the management of Crown land having regard to the principles of Crown land management

The legislated **principles** of Crown land management are:

- That environmental protection principles be observed in relation to the management and administration of Crown land
- That the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible
- That public use and enjoyment of appropriate Crown land be encouraged
- That, where appropriate, multiple use of Crown land be encouraged
- That, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
- That Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

The RIS sets out a summary of reforms emanating from the CLM Act, these are as follows:

<b>Key theme</b>	<b>Response in CLM</b>
Create a single, modern Crown land legislation	<ul style="list-style-type: none"> <li>• First step towards consolidating 8 existing pieces of legislation into a single, streamlined and modern Crown land legislation that is easier to use and understand</li> </ul>
Give Aboriginal communities greater recognition and rights in Crown land management	<ul style="list-style-type: none"> <li>• Acknowledge the importance of Crown land to Aboriginal people in legislation</li> <li>• Refers to the need to facilitate the use of Crown land by Aboriginal people</li> <li>• Provides protections for Aboriginal interests under Aboriginal land rights and facilitates compliance with native title legislation</li> </ul>
Improve community engagement on major decisions	<ul style="list-style-type: none"> <li>• Requires the preparation of a community engagement strategy to better involve the community in major decisions on Crown land that affects the community</li> </ul>
Involve local councils, which are best placed to own and/or manage locally-significant Crown land	<ul style="list-style-type: none"> <li>• Continues to allow land to be vested in local councils, which will occur through voluntary negotiation and be guided by criteria to determine land more suitable for local ownership</li> <li>• Enables the councils to manage Crown reserves under the provisions of the Local Government Act 1993</li> <li>• Other state legislation requires councils to undertake community consultation on significant strategic or land-use planning decisions on this land</li> </ul>

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<p>Create greater flexibility on Western land leases to build the regional economy, while protecting the area's environment</p>	<ul style="list-style-type: none"> <li>• Allows leaseholders to purchase land if it is required for urban expansion or is capable of being used for agricultural purposes</li> <li>• Allows low impact activities, such as film making, farm tourism and small to medium scale energy generation to proceed without the Minister's approval</li> <li>• Allows Councils managing Crown reserves to do so solely under the robust requirements of the Local Government Act 1993, removing the complexity of operating under 2 different legal frameworks</li> </ul>
<p>Introduce stronger compliance provisions, including higher penalty levels and allowing longer periods to begin prosecution</p>	<ul style="list-style-type: none"> <li>• Increases the maximum penalty for a range of illegal activities on Crown land from \$2,200 to \$220,000 for corporations and \$110,000 for individuals</li> <li>• Increases time limit to bring offences to court from six months to 2 years</li> </ul>
<p>Cut unnecessary red tape</p>	<ul style="list-style-type: none"> <li>• Allows Minister's consent to lodge development applications to be assumed for lower-impact proposals and where consistent with an approved plan of management</li> <li>• Reduces the current three-level structure for reserve management to two levels – the reserve itself and a manager of the reserve</li> </ul>

**Table 1**

The RIS also provided a summary of matters covered by the proposed regulations:

<b>Part of Act</b>	<b>Matters covered in regulations</b>
<p>Part 1: Preliminary</p>	<ul style="list-style-type: none"> <li>• Definition of a mineral</li> <li>• Division of boundaries</li> </ul>
<p>Part 2: Dedicated or reserve Crown land</p>	<ul style="list-style-type: none"> <li>• Prescription of the purpose, conditions and maximum term of short term licence</li> <li>• Change in the area of a building footprint that requires Minister's consent</li> <li>• Types of development where Minister's consent is always required</li> </ul>
<p>Part 3: Management of Crown land</p>	<ul style="list-style-type: none"> <li>• Appointment of non-council managers to category 1</li> <li>• The membership, procedures and functions of community groups</li> <li>• Additional matters to be included in annual reporting</li> <li>• Record keeping requirements for non-council managers</li> </ul>
<p>Part 4: Acquisition of land and vesting of Crown land</p>	<ul style="list-style-type: none"> <li>• Local land criteria (criteria to determine if transferable Crown land is suitable for local use)</li> <li>• Vesting of Crown land in other statutory corporations</li> <li>• Indemnification for relevant conduct by local councils vested with former Crown land</li> <li>• Surrender of lands and leases</li> </ul>



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Part 5: Dealings involving Crown land and other related land	<ul style="list-style-type: none"> <li>• Matters that are required or permitted to be in the terms and conditions of a holding</li> <li>• Prescribed distance from an urban area for the sale of land in the western division</li> <li>• Conditions of a licence granted for unauthorised users and occupiers of Crown land</li> <li>• The manner and period within which a transferee must notify the Minister of the transfer of a licence benefiting other land that is sold or leased again</li> <li>• Activities prohibited on a public access easement</li> <li>• Other structures that can be erected on a public access easement that does not require Minister's consent</li> <li>• Defining the prescribed assessment principles</li> </ul>
Part 6: Rent for holdings	<ul style="list-style-type: none"> <li>• Minimum base rent and rent base adjustment date</li> </ul>
Part 7: Alteration, withdrawal and forfeiture of holdings	<ul style="list-style-type: none"> <li>• Modifications to the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the payment of compensation from compulsory acquisition</li> </ul>
Part 8: Native Title rights and interests	<ul style="list-style-type: none"> <li>• Contributions to, or indemnification against, compensation payable by the State for the impact of relevant conduct on native title rights and interests (including when to confer jurisdiction to the Land and Environment Court)</li> </ul>
Part 9: Protection of Crown land	<ul style="list-style-type: none"> <li>• Prescribed activities that can be prohibited</li> <li>• Provisions for care, control management of Crown land</li> <li>• Materials that cannot be deposited on Crown land</li> </ul>
Part 12: Administration	<ul style="list-style-type: none"> <li>• Fees for certain matters</li> <li>• Interest rates for amounts owing</li> <li>• Who should the Minister seek advice from when assessing the State Strategic Plan</li> <li>• Manner in which documents are served</li> </ul>
Part 13: Miscellaneous	<ul style="list-style-type: none"> <li>• Disclosure of information about holders of enclosure permits and other holdings over Crown land to local councils</li> <li>• Receipts and disbursements of statutory land managers</li> </ul>
Schedule 3: Land in Western Division	<ul style="list-style-type: none"> <li>• Approving the carrying out of specified approved activities</li> <li>• Method for calculating rent for continued Western lands leases</li> <li>• Application to convert a term lease to perpetual lease</li> <li>• Manner and timing for payment of survey fees related to conversion of term lease to perpetual lease</li> <li>• Where the Minister's consent for cultivation is not required</li> <li>• Giving of notice to landholders affected by enclosure permits</li> </ul>
Schedule 4: Purchasable leases	<ul style="list-style-type: none"> <li>• Consideration when determining a purchase application for a perpetual lease</li> </ul>
Schedule 5: Statutory land managers	<ul style="list-style-type: none"> <li>• Employment/engagement of secretaries and treasurers</li> <li>• Procedures for calling and conduct of meetings</li> </ul>

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Schedule transitional provisions	7: Savings, and other	<ul style="list-style-type: none"> <li>• Standard form trust instruments over institutional private land</li> <li>• Calling or conduct of meetings for trusts over institutional private land</li> <li>• Short term licences over community land</li> </ul>
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**Table 2**

The RIS, rather than discussing parts of the CLM Act, as listed in Table 2, sets out chapters discussing the impacts of the regulations on the following matters, which are referenced to those parts of the CLM Act dealing with each matter:

1. the management of Crown land
2. the acquisition and vesting of Crown land
3. dealings involving Crown Land
4. lands in the Western Division
5. protection and enforcement relating to Crown land
6. preliminary and miscellaneous items

Not all parts of the CLM Act affect Council, notably those sections relating to the Western Division, which primarily relate to current leases and stock routes.

**Discussion**

The CLM Act has incorporated the intentions set out above, and the changes to Crown land management in the CLM Act which will impact on Council have been identified as:

1. All reserve trusts will be abolished, and in their place "*Crown land managers*" will be appointed by gazettal for a term as set out in the gazettal notice. Such Crown land managers will be known as '*qualified persons*', and these are described in the CLM Act in section 3.3(2) as including local councils, Local Aboriginal Land Council, a prescribed body corporate, a statutory land manager, a Ministerial Corporation, and bodies under other legislation (association, company or body corporate) or the head of a government sector agency.

Those parcels of Crown land that are not vested in Council, which are currently managed by Council as Reserve Trust Managers, will remain Council responsibility, as Crown land managers, excepting where other bodies, as listed above, are appointed.

Clause 5 of the regulations provide that a Crown land manager may by public notice displayed at or adjacent to each entrance of Crown land, do any of the following:

- (a) Specify the times during which the land or any part of the land is to be open to the public
- (b) Close to the public the whole or any part of the land or any structure or enclosure in or on the land
- (c) Restrict or regulate the purposes for which the whole or part of the land or any structure may be used
- (d) Prohibit the use of the whole or part of the land or any structure on the land for any purpose specified on the notice.

It is an offence by any person whose actions are contrary to such a notice, with a penalty of \$220.

Clause 7 allows Crown land managers to charge fees for access to Crown land, for use of facilities (eg gas barbecues) within the Crown land, however the Minister may serve a notice of disallowing the charging or the varying of such fee.

Clause 8 sets out conditions of entry to Crown land that can be applied by public notice, as well as allowing specific entry and exit points, as above, it is an offence by any person whose actions are contrary to such a notice, with a penalty of \$220.

These clauses are introduced by the regulations and sets down clearer parameters of regulation of the use of Crown land managed by Council.

This matter is further elaborated upon in clauses 13 and 14 of the regulations, which set down offences and prohibited activities; some are additional to those already in the *Crown Lands Act 1989*.

Further, Part 9 of the CLM Act bolsters the protection of Crown land with sections that set out unauthorised uses; pollution or contamination involving Crown land; improper land use or use of structures; vehicles on Crown land. There are also provisions relating to the removal of persons from Crown land; remediation of Crown land; power of entry provisions, and the capacity to issue stop activity orders. Appeals against charges are to be heard in the Land and Environment Court.

Part 11 of the CLM Act sets out how offences against the Act and regulations are to be dealt with, and allows for a period of 2 years, rather than the current 6 months, within which proceedings can commence. Section 11.2 sets out the liability for offences by corporations and individuals, as well as applying categories for offences where the maximum penalty applies.

An offence is a category 1 offence if the prosecution establishes (to the criminal standard of proof) that the offence was committed intentionally and the offence caused or contributed to a significant harm to Crown land, persons or animals on Crown land. Significant harm includes, but is not limited to contamination or pollution. For a corporation the maximum penalty of \$220,000 applies with a further penalty of \$2,200 for each day the offence continues. For an individual the maximum penalty of \$110,000 will apply with a further penalty of \$1,100 for each day the offence continues.

Those offences listed above (from Part 9 of the CLM Act) can all be category 1 offences if it can be established that the offence was committed intentionally and the offence caused or contributed to a significant harm, as mentioned above.

Any other offence will be a category 2 offence for which a penalty of \$2,200 will apply to a corporation and \$220 for each day the offence continues and \$1,100 to an individual and \$110 for each day the offence continues.

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2. It is intended that Crown land with 'local' significance shall, with the agreement of local councils, be vested in fee simple in the local councils. Most of the land will be vested as 'community land', as defined in the *Local Government Act 1993* ("LGA"). Such land will require plans of management, with a three year period within which to adopt such plans.

Crown land that is currently utilised for operational purposes, will be vested as 'operational' land, these will be parcels that are currently used for depots, civic centres, cemeteries and the like, and will not be required to be included in plans of management.

The regulations set out the criteria for "local' land in clause 26, which, in summary, sets out the following:

- (a) Whether the land provides, or has demonstrated potential to provide, a public good predominantly for residents in the local government area, in a way that is consistent with local planning instruments;
- (b) Whether the land use is consistent with the functions of local government or could be used for activities consistent with those functions
- (c) Whether the land is managed, or has identified potential to be managed, as a community asset by a local council or some other body.

Clause 26 notes that a good is not a 'public good' if residents can be prevented or excluded from using the land or one resident's enjoyment of it will reduce another person's enjoyment of it.

As a result of this vesting, councils will, in accordance with clause 27, will be liable to indemnify the State for the whole of the amount of compensation payable by the State for the impact of relevant conduct. "*Relevant conduct*" is defined in 8.12 of the CLM Act as works undertaken by a body for public housing, public infrastructure (sewerage, water or roads) and the like which will extinguish native title. In other words, a local council will be liable for the whole amount of compensation payable as a result of works undertaken by them on the Crown land vested in the council which extinguishes native title.

3. Part 8 of the CLM Act deals with native title rights and interests and requires that a Crown land manager must employ or engage a native title manager. The native title manager will, on behalf of the Crown land manager, investigate the status of Crown land managed by that body to ensure that the Crown land manager's dealings with that land complies with the applicable provisions of the native title legislation. The native title manager must have approved training and qualifications; the CLM Act provides that the Minister may, by notice published in the NSW Government Gazette, approve kinds of training or qualifications that a person must have to act as a native title manager for the purposes of this part of the CLM Act.

A native title manager must not allow the granting of leases or licences, approve mortgages, impose or agree to covenants or other restrictions in dealings on Crown land or submit a plan of management unless written advice that these actions comply with the applicable provisions of the native title legislation.

There are no provisions in the regulations relating to this new requirement; this was added to illustrate impacts on the administration of Crown land vested in local councils generated by the CLM Act.

It is recommended that a submission to NSW Department of Industry and Forestry be forwarded which sets out those issues identified.

**OPTIONS:**

1. To forward a submission to NSW Department of Industry and Forestry.
2. To not forward a submission to NSW Department of Industry and Forestry.

**CONCLUSION:**

The cost of specialist training and qualifications for current or future Council employees to become native title managers should be borne by the NSW Government, as the requirement for each council to require such advice for specifically, leasing and licensing Crown land, will be ongoing.

The necessity for Plans of Management for all of the Crown land vested in Council will also generate costs to Council, and should also be borne by the NSW Government.

The expansion of the regulatory measures to protect Crown land will also require training for Council staff to ensure that they are appraised and authorised to take those actions now forming part of the protection of Crown land requirements.

These are the direct financial implications arising from the CLM Act and regulations and it is recommended that Council lodges a submission as set out in the attached letter.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not applicable.

**b. Budget/Long Term Financial Plan:**

No financial implications arise from this report; however significant financial implications arise as a result of the new legislation which requires clarification from the State Government.

**c. Legal:**

This report was prepared by internal legal services provider.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

This report is in response to the State Government's public engagement relating to new regulations for the management of Crown Land in NSW.

**LATE REPORTS**

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**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- Attachment 1. Crown Land Management Regulations 2017 – Regulatory Impact Statement (ECM 4770716).
- Attachment 2. Draft Letter of Submission to NSW State Government (ECM 4770884).
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