



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Agenda

Ordinary Council Meeting Thursday 7 November 2019

held at

**Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road,
Murwillumbah**

commencing at the conclusion of the Planning Committee meeting
which commences at 5.30pm.

Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

Guiding Principles for Tweed Shire Council

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

Items for Consideration of Council:

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CONFIRMATION OF PLANNING COMMITTEE MINUTES

1 [CONMIN-CM] Adoption of the Recommendations of the Planning Committee Meeting held Thursday 7 November 2019

SUBMITTED BY: Corporate Governance

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 provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

SUMMARY OF REPORT:

The recommendations of the Ordinary Planning Committee Meeting held Thursday 7 November 2019 require their adoption by Council for the resolutions to be acted upon.

RECOMMENDATION:

That the recommendations of the Ordinary Planning Committee Meeting held Thursday 7 November 2019 be adopted.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE GENERAL MANAGER

2 [GM-CM] Expressions of Interest - North Byron Parklands Regulatory Working Group

SUBMITTED BY: Land & Economic Development

mhm



People, places and moving around

Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.7 Events - To develop, attract and support events that showcase the Tweed's unique characteristics and identity.

ROLE: Collaborator

SUMMARY OF REPORT:

In March 2019 the NSW Planning Assessment Commission granted Development Consent for a number of events to be undertaken on a permanent basis at North Byron Parklands. These consent conditions also required the establishment of a Regulatory Working Group (RWG). The RWG must comprise of at least two community representatives with one from Byron Shire Council and one from Tweed Shire Council.

Council sought Expressions of Interest (EOI) from persons that would like to be appointed as the Tweed Shire community representative on the North Byron Parklands (Parklands) RWG, for a maximum term of two years.

Expressions of Interest opened on 1 October and closed on Friday 18 October 2019.

One nomination was received and reviewed against the selection criteria.

RECOMMENDATION:

That:

1. Council determines its preferred option in appointing a Tweed Shire community representative to the North Byron Parklands Regulatory Working Group.
2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (e) information that would, if disclosed, prejudice the maintenance of law.

REPORT:

In March 2019 the NSW Planning Assessment Commission granted Development Consent for a number of events to be undertaken on a permanent basis at North Byron Parklands. These consent conditions also required the establishment of a Regulatory Working Group (RWG). The RWG must comprise of at least two community representatives with one from Byron Shire Council and one from Tweed Shire Council.

Council sought Expressions of Interest (EOI) from persons that would like to be appointed as the Tweed Shire community representative on the North Byron Parklands (Parklands) RWG, for a maximum term of two years.

The RWG has been operating for many years to review environmental management and community relations. Members include the NSW Police, Byron Shire Council staff, Tweed Shire Council staff (Events Officer), Roads and Maritime Services, Rural Fire Service, State Emergency Service, Office of Environment and Heritage and National Parks and Wildlife Service.

The RWG operates under an agreed Terms of Reference and typically meets twice a year with members invited on a tour of large events when they occur.

The EOI was advertised in Council's weekly newspaper, the Tweed Link, published on 1 October 2019. The EOI's closed on 18 October 2019.

The EOI form and Terms of Reference were available on Council's website.

One community nomination was received. An assessment was made against the following selection criteria (which formed part of the EOI application form):

- Live or work in the south of Tweed Shire (where the venue is located);
- Have an understanding or interest in the creative industries sector;
- Be well connected to the broader community (i.e. have existing ties to the community and /or community groups);
- Be objective;
- Ideally have an understanding of or experience with outdoor event aspects such as traffic, community relations, noise, etc;
- Be willing to work constructively to identify realistic opportunities for improvements;
- Be able to clearly articulate community concerns or issues to the RWG; and
- Abide by the RWG Terms of Reference.

The nominee was able to provide detail on their past experience with Committees and Boards which indicated that they were connected within the community. They were also able to outline some ties to the south of the Tweed Shire (Mooball) and broader community but they do not live near where the venue is located; their professional experience and qualifications were based primarily around agriculture and conservation with no relevant experience or interest expressed with regard to the creative industries sector or outdoor events. There was also no detail given with regard to their interest or professional experience around event logistics such as traffic, community relations, safety, noise, etc.

The nomination does not satisfy all aspects of the selection criteria and has therefore been referred for Council's determination.

Byron Shire Council undertook a similar EOI process to Tweed Shire Council, with a closing date of 7 October 2019.

Byron Shire received no community nominations for the RWG.

OPTIONS:

1. As Council is not the consent authority, and the only EOI received did not meet all aspects of the selection criteria, Council could advise the Chair of the North Byron Parklands Regulatory Working Group that it is not able to provide a suitable community representative. It is the responsibility of the RWG to report this advice to the NSW Planning Secretary in accordance with their Development Consent.
2. Council could appoint the nominee, despite not satisfying all aspects of the selection criteria.
3. Council could resolve to readvertise for nominees.

CONCLUSION:

The consent for the North Byron Parklands sits with the State Government. A condition of that consent is to appoint a suitable representative to the North Byron Parklands Regulatory Working Group for Tweed and Byron Shires. An EOI from Byron resulted in no applications. An EOI from Tweed resulted in one application, partially meeting the selection criteria.

This report is for Council to determine its preferred option in appointing a Tweed Shire community representative to the North Byron Parklands Regulatory Working Group.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Nil.

c. Legal:

Tweed Shire Council is not the consent authority.

d. Communication/Engagement:

Inform - We will keep you informed.

The EOI was advertised in Council's weekly newspaper, the Tweed Link, published on 1 October 2019. The EOI's closed on 18 October 2019.

The EOI form and Terms of Reference were available on Council's website.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Expression of Interest – Member Nomination for North Byron Parklands Regulatory Working Group (ECM 6108823)

REPORTS FROM THE DIRECTOR ENGINEERING

3 [E-CM] RFO2019094 Environmental Impact Statement (EIS) for Clarrie Hall Dam Raising (WAT70)

SUBMITTED BY: Water and Wastewater - Business & Assets

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.4 Water Supply -- To provide secure, high quality and reliable drinking water which meets health and environmental requirements.

ROLE: **Provider**

SUMMARY OF REPORT:

The Request for Offer RFO2019094 Environmental Impact Statement (EIS) for Clarrie Hall Dam Raising was called to engage a suitably qualified and experienced consultant to provide an EIS for the raising of Clarrie Hall Dam. Consultants were called from a list of suitable consultants as established from an expression of interest process conducted previously.

The offer was uploaded on Tweed Shire Council's Tender site as per the requirements of the Local Government Regulation 2005 and was scheduled to close at 4:00pm NSW Local Time on 28 August 2019.

Offers were received on 28 August 2019, and Council officers completed an assessment and provided an Addendum Report to Council in the Agenda for the Planning Committee Council Meeting of 7 November 2019. Due to some late advice about the scope of works from the preferred Bidder, Council Officers requested that the advice be properly assessed and the Addendum Report be considered at the next Council meeting. Council officers will undertake an assessment and provide an Addendum Report to Council to be included in the Agenda for the Council Meeting of 7 November 2019.

RECOMMENDATION:

That Council considers an Addendum report for RFO2019094 Environmental Impact Statement (EIS) for Clarrie Hall Dam Raising (WAT70).

REPORT:

As per Summary of Report.

OPTIONS:

Not applicable.

CONCLUSION:

Not applicable.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Policy v1.7.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [E-CM] Road Closure Application - Bryens Road, Nobbys Creek

SUBMITTED BY: Design

mhm



Behind the scenes
Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Behind the scenes
- 4.1 Assurance
- 4.1.3 Legal Services - To support and advise staff on organisational legal issues and property management of Council controlled assets

ROLE: Leader

SUMMARY OF REPORT:

An application has been received to close and purchase a part of a partly formed road, adjacent to Bryens Road, Nobbys Creek to rectify the encroachment of unauthorised water extraction structures (shed filling station, pipes and fence) on the road reserve. It is proposed to exchange the area of closed road, for an alternative road alignment so that the structures will be within private land, there will be no monetary consideration for the transfer of the closed road.

The property is better known as Rosehill Estate and has an approval for water extraction from 2006 being DA06/0603. The approval did not authorise tanks, filling stations, pipes or fences at the front of the property. It appears that such infrastructure was constructed without approval sometime after 2015 (based on an aerial photographic review).

A review of Council's policy on Unauthorised Private Structures on Public Roads notes the several options to deal with unauthorised encroachments onto Council public roads.

The policy notes that Council will not enter into arrangements for leases within the road reserve to encompass existing or proposed structures. Council, will as a preferred approach, consider an application to close and purchase part of the public road having regard to the merits of each proposal, existing and future utilities, road works, public amenity and safety.

The road closure will not impact on surrounding properties, nor will it interfere with public access currently available.

It is recommended that approval be granted for the closure and purchase of a section of unformed road adjacent to Lot 66 in DP 755715 at Nobbys Creek.

Such action would enable the applicant to lodge a development application for works on Council land (with Council consent) as the land would ultimately become his to enable the development application to be considered on its merits.

RECOMMENDATION:

That:

- 1. Council approves progressing the public notification of the closure of a section of partly formed road reserve adjacent to Lot 66 DP 755715 at Bryens Road, Nobbys Creek.**
- 2. Where objections are received, Council will review and assess the merits of the objection and if satisfied that any objection can be addressed satisfactorily that Council approves the closure of the section of partly formed road reserve adjacent to Lot 66 DP 755715 at Bryens Road, Nobbys Creek and accepts the dedication of an alternative road reserve to maintain the connection of the road reserve to Bryens Road.**
- 3. The creation of a Right of Carriageway benefiting Lot 121 in DP 1111869 over the closed road parcel to ensure that a physical formed access remains pending the formation of the dedicated road.**
- 4. The applicant bears all survey and legal costs arising from this application.**
- 5. Easements be created over public authority reticulation services, if any.**
- 6. All necessary documentation be executed under the Common Seal of Council.**
- 7. Council provides owners consent for a development application, to be lodged by the applicant, for use of the structures within the subject road reserve, pending the closure of the road reserve.**

REPORT:

An application has been received to close and purchase a part of a partly formed road, adjacent to Lot 121 in DP 1111869 and Lot 66 in DP 755715 at Nobbys Creek, to rectify the encroachment of structures on a road reserve. The structures include a small shed serving as a filling station for bulk water deliveries and a rendered brick fence, see Figures 1 and 2 below:



Figure 1 – rendered brick fence



Figure 2 – small shed

The applicant currently operates a water bottling and bulk water supply business from Lot 121 in DP 1111869 (formerly Lot 1 DP 128866) and Lot 66 DP 755715 under DA06/0603 dated 26 September 2006. Figure 1 shows unauthorised water tanks flanking the boundary between Lot 66 and Lot 121, and Figure 2 shows the unauthorised filling station, within the road reserve.

It is proposed to close the connection of the unnamed road reserve adjoining Bryens Road (shown outlined in orange in Figure 3 below), and exchange it for an alternative road alignment (shown outlined in yellow) so that the unauthorised structures will be within private land, there will be no monetary consideration for the transfer of the closed road. The areas to be exchanged will be approximately 270 m² each, although when surveyed, these areas may differ.

It is understood that there is a pipeline between these 2 points (white dashed line), which currently spans Lot 66 (within the area to be dedicated as road, outlined in yellow) and the road reserve to be closed (outlined in orange), see Figure 3 below. This pipeline could be addressed by a s138 application to consider approving the pipeline within the road and proposed road reserves when accompanied with a future application to regularise the unauthorised water extraction structures.



Figure 3 – plan showing the pipeline and road closure and road dedication areas

The applicant has prepared a development application for additions and alteration to the water bottling facility and to address the unauthorised structures and their encroachments of these

structures within the road reserve. The road reserve to be partly closed was formerly a Crown Road, which was transferred to Council, by gazettal dated 13 September 2019, to facilitate this application being lodged.

This transfer allows Council to consider the application to address the encroachments of these unauthorised structures against Council's Policy, Unauthorised Private Encroachments on Council Public Roads ("Encroachment policy"), as a prequel to the lodgement of the development application.

If the road had not been transferred, Crown Lands, as the owner of the road, would have been required to provide owners consent for the development application to deal with the structures within the road reserve. It was recommended that the road reserve be transferred to Council to allow Council to deal with the issue, provide owners consent as owner of the road, and to apply the Encroachment policy to deal with the encroachments prior to the lodgement and acceptance of the development application for the water bottling operation.

Should the development application not be approved, the issue of the unauthorised structures would still need to be addressed, so the application for road closure and purchase was accepted.

Council's Policy Unauthorised Private Encroachments on Council Public Roads

The Encroachment policy provides several options to deal with structures on Council public roads.

Removal

Encroachments which reduce public safety or public amenity, obstruct public access, are subject of a dispute between adjoining landowners or compromise future Council works will not be considered for retention.

Road Closure and Private Purchase

In some cases, the closure and purchase of the road reserve to deal with the encroaching structure may be considered. Council's Road Closure and Private Purchase Policy sets out the criteria for roads ineligible for closure and the exceptions that can be applied.

Registration of a Positive Covenant

This option allows the retention of the unauthorised structures, but minimises Council's exposure to public liability. The registration of a positive covenant can be imposed as a condition of consent on a development approval. The benefit of this option is that the covenant will set out the requirements for indemnification of Council for any liability relating to the structures on the road reserve, require civil engineer specifications for the structures, and set out maintenance and repair obligations to be imposed.

Creation of an Easement

The creation of an easement may also be considered, which will be subject to a Deed of Agreement between Council and the applicant, setting out the obligations of the applicant to

bear all costs in registering the easement, and the payment of compensation to Council for granting of the easement.

The Deed would also set out the terms of the easement, maintenance and repair obligations, including the requirement for structural engineer's certification, public liability indemnification of Council and agreement as to the extinguishment and removal of the easement, relating to the expected life of the unauthorised structures.

Lease or Licence of Council Road Reserve

The policy provides that only in exceptional circumstance will Council enter into arrangements for leases within the road reserve to encompass existing or proposed structures. The *Roads Act 1993* provides that a lease can only run for five years at a time and must not contain structures that cannot be removed.

Road Closures and Private Purchase

The Road Closures and Private Purchase policy ("road closure policy"), sets out a list of circumstances where road will not be eligible for road closure, these include roads that provide, inter alia, access to rivers, creeks and lakes; roads that contain public authority reticulation services, unless the relevant authorities agree to an easement or relocation of these services; physical access to public or private properties, unless a suitable alternative road is dedicated as public road, or a right of carriageway is created over the existing road or road to be formed.

Discussion

The removal of the unauthorised structures is not considered necessary in this instance as the masonry walls and shed do not reduce public safety, amenity or obstruct public access, nor are they a subject of dispute between adjoining neighbours.

The applicant is seeking to close and purchase a small area of formed road, containing unauthorised structures, and to exchange it for an alternative area of land to be dedicated as road. This complies with the road closure policy and the Encroachment policy.

The road closure will not impact on surrounding properties, nor will it interfere with public access currently available. It is recommended that a Right of Carriageway be created over the road closure parcel for the benefit of Lot 121 in DP 1111869 to ensure that physical access is available for that parcel to Bryens Road pending formation of the newly dedicated road.

The options to register a positive covenant or easement are also available, however, the unauthorised structures would remain on public land, and would require Council to review the matter over time to ensure that the obligations imposed under these options are being met.

The leasing or licensing of the road reserve also retain the structures on public land, and would require a review every 5 years.

These latter options would generate an impost on Council resources and not remove the issue of encroachment onto the road reserve.

The option of closing and purchasing the impacted area of road reserve and exchanging it for an alternative dedicated road reserve transfers the liability wholly onto the landowner, and is the preferred approach, when completed, will not require future Council resourcing to manage.

An inspection of the site has been conducted and it was determined that no Council or service infrastructure is within or near the part of the road reserve that would be impacted by the road closure.

It is recommended that approval be granted for the closure and purchase of a section of partly formed road adjacent to Lot 66 in DP 755715 at Nobbys Creek.

OPTIONS:

Option 1:

1. Council approves progressing the public notification of the closure of a section of partly formed road reserve adjacent to Lot 66 DP 755715 at Bryens Road, Nobbys Creek.
2. Where objections are received, Council will review and assess the merits of the objection and, if satisfied that any objection can be addressed satisfactorily that Council approves the closure of the section of partly formed road reserve adjacent to Lot 66 DP 755715 at Bryens Road, Nobbys Creek and accepts the dedication of an alternative road reserve to maintain the connection of the road reserve to Bryens Road.
3. The creation of a Right of Carriageway benefiting Lot 121 in DP 1111869 over the closed road parcel to ensure that a physical formed access remains pending the formation of the dedicated road.
4. The applicant bears all survey and legal costs arising from this application.
5. Easements be created over public authority reticulation services, if any.
6. All necessary documentation be executed under the Common Seal of Council.
7. Provide owners consent for a development application, to be lodged by the applicant, for use of the structures within the subject road reserve, pending the closure of the road reserve.

Option 2:

Council does not approve the road closure and exchange of land for dedication of the partly formed road reserve adjacent to Lot 66 DP 755715 at Bryens Road, Nobbys Creek as road and selects another option from the Unauthorised Private Encroachments on Council Public Roads.

CONCLUSION:

To address the encroachment of private unauthorised structures within a Council road reserve, it is recommended that the road closure be approved in exchange for a dedicated road reserve, in accordance with Council's Encroachment policy, and road closure policy.

COUNCIL IMPLICATIONS:

a. Policy:

Road Closures and Private Purchase v1.2 and Unauthorised Private Encroachments on Council Public Roads v1.0.

b. Budget/Long Term Financial Plan:

There will be no budgetary or long term financial implications arising from the recommendation.

c. Legal:

The land exchange will proceed as a road closure and road dedication, upon registration of the plan, the road will be dedicated to Council in fee simple.

d. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

Advertising of the proposed road closure will be published in the Tweed Link providing the public with a 28 day submission period for comments or objections.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [E-CM] 5859 Tweed Valley Way - On Site Sewage Management

SUBMITTED BY: Director

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.6 Environmental Health - To support public health and environmental safety through education, inspections and enforcement of government rules and regulations.

ROLE: **Provider**

SUMMARY OF REPORT:

The owners of Lot B DP 419641 (5859 Tweed Valley Way) have been in discussions with Council for several years in an attempt to resolve the land tenure issues associated with their On Site Sewage Management system (OSSM). The transpiration trenches for the OSSM are located on the adjoining property and the lot has various constraints which limit the viability of on-site treatment.

This report sets out a number of options and the implications of the same. The report also includes legal advice which articulates previously unknown powers of Council's to construct water supply and sewerage systems on private property without compensation for the benefit of another party.

This report cautions Council on the use of this power and suggests various options in an attempt to rectify the issue.

RECOMMENDATION:

That:

1. Council at this point in time takes no action in regards to the water connection and On-Site Sewage Management system of Lot B DP 419641 and waits for the development approval process to proceed on the adjoining land Lot 7 DP 593200 which will provide an opportunity for the land tenure issues to be resolved.
2. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

Lot B DP 419641 (5859 Tweed Valley Way) was created in 1960 over an existing farm house on a large rural property adjoining Mooball village. The property is approximately 719m² in size and has access to the road network via two rights of way which exist over lot 7 DP 593200 and lot 1 DP 231846. The property was not considered for connection to the Burringbar Mooball Sewerage Scheme as it sits outside the village zoning. The scheme was completed in 2008. The property is connected to the Tweed District water supply via a rural connection and private service over the adjoining property, Lot 7 DP 593200.

The previous owners of the house and property, in all probability, would have had an OSSM operating since the 1950s with the transpiration trenches located in the same position as they are today. The below aerial map illustrates the subject property, Lot B, in blue and its proximity to Tweed Valley Way, the sewerage system (dotted red line) and water supply system (light Blue line) of Council. The dark blue line is the private water service traversing Lot 7.



It first came to Council's attention in 2013 that the transpiration trenches (drainage lines) from the septic system of Lot B were located on the adjoining Lot 7. Since this time the owners, the adjoining owners and Council have been attempting to resolve the encroachment. The first and most obvious solution was for the OSSM to be upgraded and the transpiration trenches to be contained within the property boundary of Lot B. The owners engaged a consultant to prepare an on-site sewage management design report. The report states the preferred option of the property owners is to connect to the Mooball low pressure sewerage system.

The report also contains a proposal to repair the existing septic system by constructing the equivalent of the existing effluent disposal area currently located on the adjoining property within the Chapman's property. This option is described by the author as the best practical option (other than connection to the sewerage system).

It is considered the report does not adequately demonstrate the construction of effluent disposal beds within the property boundaries will provide an acceptable level of environmental impact for the development when assessed in accordance with AS 1547/2012 and NSW Environment and Health Protection Guidelines "On-site Sewage Management for Single Households". In addition the loss of land within the property boundaries for recreational amenity of occupants has not been addressed in the report.

Other solutions which have subsequently been explored include the purchase of the property (Lot B) by the adjoining owners (Lot 7), and the negotiation of an easement by the owners of Lot B over Lot 7 to allow them to construct and operate a pipeline connected to Council's sewerage system. The advice received to date indicates that the negotiations have not resulted in a suitable outcome.

More recently a request was received from Cr Cherry for officers to explore Council's powers under s59A of the Local Government Act 1993. The officer's advice prior had been:

1. That the development application of the adjoining land would need to address the access, water pipe, and effluent area of the owners land.
2. If consent for the adjoining development was forthcoming, it is likely there would be conditions imposed, for the perpetual tenure of access, water and effluent to be satisfied prior to release of the subdivision certificate.
3. Council as the Local Water Utility does not have the power to extend the sewerage or water supply systems to service Lot B without the owners of lot 7 granting an easement. Council's powers of Compulsory Acquisition would not provide the ability to extend the public sewerage system.

Legal advice was therefore sought on Council's powers under s59A of the Local Government Act 1993 and was subsequently provided by Lindsay Taylor Lawyers on 28 August 2019. See Confidential Attachment 2. In summary the advice is contrary to that of the officers and concludes that Council does have the power to extend the sewer system to service Lot B across Lot 7 without agreement and compensation or the need to create an easement. Council officers are not aware of instances of this part of the act being used in the circumstances that exist in this situation and Lindsay Taylor Lawyers have advised the same.

The powers provided by the Act are understandable for situations where there is broader public benefit from the construction of a pipe across a person's land however in this instance there is no public benefit only the benefit of a single party. It is the officer's view that the use of the Act in this situation is not reasonable and would set an undesirable precedent that could have unknown and unpredictable consequences in other dealings Council may have in the future. For further reference the Department of Local Government Circular 06-01 dated 4 January 2006 is provided as Attachment 1 and within this the use of Council's powers under the Act are cautioned.

The secondary issue for the owners of Lot B is that their private water supply service line is located on Lot 7 without any form of land tenure. This service line is not unlike many across the Shire which are historic in nature, exist opportunistically in rural areas and are there at the sole discretion of the land owner on which land they traverse. Given the nature of these

connections Council is unable to provide the full level of service which exists in urban areas of the Shire in terms of flow, pressure and fire-fighting. The use of the Act in this situation not only raises issues around not providing broader public benefit it also sets a precedent for many other private lines such as this that exist around the Shire and the potential for Council to extend the public system across private land to service them.

OPTIONS:

The following sets out the various options available to Council.

1. That Council requires the owners of Lot B DP 419641 (5859 Tweed Valley Way) to pursue an On Site Sewage Management System contained wholly within the property which will include removal of trees and vegetation or a reduction in the tree canopy, and disconnection from the Tweed District Water supply.

Discussion

There are a number of new and emerging technologies which could be utilised to improve the treatment and disposal of wastewater from the site. Disconnection from the Council water supply would significantly reduce the load on the OSSM and therefore improve the reliability of the disposal system. Removal of trees along the Northern boundary of the property and / or a reduction of the tree canopy would also greatly enhance the performance of the disposal system.

There is a risk of failure with this system as it would require a greater level of management and attention to ongoing maintenance given the smaller lot size.

The cost to the owner of this system is estimated at \$40,000 including a consultant report, system design and installation, vegetation removal, and the installation of water tanks and associated plumbing.

Council costs for OSSM approvals and water disconnection would be borne by the owner.

2. That Council requires the owners of Lot B DP 419641 (5859 Tweed Valley Way) to pursue an On Site Sewage Management System contained wholly within the property which will include removal of trees and vegetation or a reduction in the tree canopy.

Discussion

As per option 1 however as the property would still be connected to the District Water Supply the reliability of the disposal system would not be as good. The private water service would still be located on the Lot 7 and therefore could only remain at the discretion of that owner. There are many such instances of this across the Shire.

There is an increased risk of failure with this system as it would require a greater level of management and attention to ongoing maintenance given the smaller lot size and there is a risk that the owner of Lot 7 could unilaterally decide to require the private water service to be removed.

The cost to the owner of this system is estimated at \$25,000 including a consultant report, system design and installation, and vegetation removal.

Council costs for OSSM approvals would be borne by the owner.

3. That in the following order:
 - A. Council requests the owners of Lot B DP 419641 to formally request connection at their property boundary to Councils sewerage system on the basis that they pay all associated costs of the connection.
 - B. Council signals its intention to the owners to use its powers under section 59A and section 191A of the Local government Act 1993 to extend the sewerage system across Lot 7 DP 593200 to service Lot B DP 419641 (5859 Tweed Valley Way).
 - C. Council negotiates with the owners of Lot 7 DP 593200 to extend the sewerage system across their land to service Lot B DP 419641 on the basis that, notwithstanding the provisions of s59A and S191A of the Local Government Act the Council intends to create an easement over their land and compensate them for the easement and pipeline, and that if requested Council is prepared to provide them with a connection point for their property.
 - D. If the owners of Lot 7 DP 593200 are not willing to negotiate then a report will be prepared for Council to consider it's use or otherwise of s59A and s191A of the Local Government Act.
 - E. If the owners of Lot 7 DP 593200 reach a negotiated agreement with the Council then a report be prepared to Council recommending the adoption of the agreement and extension of the Burringbar Mooball Sewerage Scheme.

Discussion

The powers provided to Council under s59A and s191A would allow extension of the sewer across Lot 7 DP 593200 to service Lot B DP 419641 without agreement and compensation to the owner. This power has not been used by Council previously and whilst the legal advice considers it to be "within" Council's powers and "appropriate" it is the officer's view that as there is one party that would benefit from the extension at the detriment of another then it is not a reasonable use. The Officers of Council and Lindsay Taylor Lawyers are not aware of the Act being used in a situation such as this.

As it is located outside of the village zone the pump station servicing the property would be the responsibility of the owner to maintain. This is the position of Council on all other similar low pressure pump systems. Those pump stations within the village zone are maintained by Council.

This solution provides the lowest risk of system failure.

Council direct costs including pipeline and s64 headworks would range between \$10,700 and \$15,000 depending on the route selected. The cost to the owner including Council costs is estimated between \$31,500 and \$36,000 depending on the selected option. This includes s64 headworks, pump station, pipeline, decommissioning of septic and other associated works. The unknown costs at this point is the cost of compensation and creation of an easement over Lot 7, which will also need to be met by the owner of Lot B DP 419641.

4. That in the following order:
 - A. Council requests the owners of Lot B DP 419641 to formally request connection at their property boundary to Councils sewerage and water supply system on the basis that they pay all associated costs of the connections.

- B. Council signals its intention to the owners to use its powers under section 59A and section 191A of the Local government Act 1993 to extend the sewerage and water supply system across Lot 7 DP 593200 to service Lot B DP 419641 (5859 Tweed Valley Way).
- C. Council negotiates with the owners of Lot 7 DP 593200 to extend the sewerage and water supply system across their land to service Lot B DP 419641 on the basis that, notwithstanding the provisions of s59A and S191A of the Local Government Act the Council intends to create an easement over their land and compensate them for the easement and pipeline, and that if requested Council is prepared to provide them with connection points for their property.
- D. If the owners of Lot 7 DP 593200 are not willing to negotiate then a report will be prepared for Council to consider it's use or otherwise of s59A and s191A of the Local Government Act.
- E. If the owners of Lot 7 DP 593200 reach a negotiated agreement with the Council then a report be prepared to Council recommending the adoption of the agreement and extension of the Burringbar Mooball Sewerage Scheme and Tweed District Water Supply.

Discussion

The option is the same as Option 3 but with the connection to the water supply extended to the property boundary. As previously stated there are many such instances of these opportunistic connections in the shire and they exist at the discretion of the land owner on whose property the pipeline traverses. The extension of the water supply to the property boundary would set a precedent for all such connections and a maintenance and service liability for Council.

This solution provides the lowest risk of system failure.

Council direct costs including pipeline and s64 headworks would range between \$12,000 and \$17,500 depending on the route selected. The cost to the owner including Council costs is estimated between \$33,000 and \$40,000 depending on the selected option. This includes s64 headworks, pump station, pipeline, decommissioning of septic and other associated works. The unknown costs at this point is the cost of compensation and creation of an easement over Lot 7, which will also need to be met by the owner of Lot B DP 419641.

The plan below is a schematic of the connection options.



5. That Council at this point in time takes no action in regards to the water connection and On-Site Sewage Management System of Lot B DP 419641 and waits for the development approval process to proceed on the adjoining land Lot 7 DP 593200 which will provide an opportunity for the land tenure issues to be resolved.

Discussion

The water supply connection and OSSM have been in existence for several decades in their current form. Whilst the owners of Lot B are anxious to have the land tenure issue resolved the owners of Lot 7 have not indicated that they are planning on taking action for the removal of either service. The next available opportunity for the issues to be resolved would be at the time of approval of the development application of Lot 7 whereby it would be likely that a condition would be imposed that the development application of the adjoining land would need to address the access, water pipe, and effluent area of the owners of Lot B. If consent was forthcoming, it is likely there would be conditions imposed, for the perpetual tenure of access, water and effluent to be satisfied prior to release of the subdivision certificate.

This option is relatively low risk however if the owners of Lot 7 demand rectification of the encroachment then alternative action would be required.

There is nil cost to Council and the property owners of Lot B apart from ongoing maintenance of the OSSM.

CONCLUSION:

Option 5 above, which allows the existing status quo to remain, is preferred. There is some risk that the owners of Lot 7 will require rectification of the encroachment at which point the preferred option of officers would be Option 1 which requires the disconnection from Council's

water supply and the design and installation of a suitable OSSM by the owners of Lot B. Options 3 and 4 require Council utilising its powers under Section 59A and 191A of the Local Government Act and in this instance it is not considered reasonable.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The costs associated with the various options are detailed above. It is envisaged that there would be no additional costs to Council under any of the proposed options.

c. Legal:

Yes, legal advice is attached.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Department of Local Government Circular to Councils (ECM 6109225).

(*Confidential*) Attachment 2. Letter dated 26 August 2019 from Lindsay Taylor Lawyers (ECM 6099776).

6 [E-CM] North Byron Parklands - Request for Water Supply During Falls Festival 30 December 2019 to 2 January 2020

SUBMITTED BY: Water and Wastewater - Operations

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.4 Water Supply -- To provide secure, high quality and reliable drinking water which meets health and environmental requirements.

ROLE: **Provider**

SUMMARY OF REPORT:

Council has received a letter from North Byron Parklands requesting an exemption from Council's Drought Water Restriction Policy for their Falls Festival from 30 December 2019 to 2 January 2020.

Council is to determine if an exemption will be granted.

RECOMMENDATION:

That Council determine if an exemption from its policy, Drought Water Restrictions v3.2, be provided to the North Byron Parklands for their Falls Festival from 30 December 2019 to 2 January 2020.

REPORT:

Council has received a letter from North Byron Parklands requesting an exemption from Council's Drought Water Restriction Policy for their Falls Festival from 30 December 2019 to 2 January 2020.

The letter was received 22 October 2019 and is provided as Attachment 1.

The level in Clarrie Hall Dam dropped to 90% of capacity on 21 October 2019 which was posted on Council's web site and Water Caters were contacted. The level continues to drop at a rate of 1.2% per week.

At the time of writing this report, 28 October 2019, the level in Clarrie Hall Dam was 88% and at the current rate of decline, with no significant rainfall occurring, will be at 77% by the 30 of December 2019, the start of the Falls Festival.

At 90% Council's Drought Water Restrictions v3.2 bans external sales from the shire. This means local water carters cannot sell water outside of the Tweed Shire border and carters from other Shires cannot buy water from the Tweed (unless it is being used within Tweed Shire). This ban is not lifted until the dam refills to 100%.

At a dam level of 75% Council's Drought Water Restrictions v3.2 introduces Level 1 Restrictions on all residents. The Policy is provided as Attachment 2, but among an extensive list of other items it includes:

- *R.1 Internal Water Use e.g. showers, toilets, taps etc. - Residents using water from the town water supply are requested to conserve water wherever possible. Target total residential consumption is 153 litres per person per day. Showers, toilets and taps should be at least 3-star WELS rated*
- *R.3 Garden Watering - Watering cans or buckets permitted at any time. Hand held hoses permitted for 1 hour per day every second day between 4pm and 9am on odd or even days matching house number. Micro sprays and drip (sub-surface) irrigation permitted for 15 mins between 4pm and 9am on odd or even days matching house number. Garden watering not permitted on the 31st day of any month. Any other watering systems including sprinklers, soaker hoses and unattended hoses not permitted. All hand held hoses must be fitted with an on/off nozzle.*
- *R.12 Washing of Driveways, Paved Areas and Paths - Permitted prior to sale or lease of property with Council approval. Not permitted for any other reason except for health and safety reasons. Efficient high pressure, low flow rate cleaners with trigger control are to be used*
- *R.15 Car/Vehicle Washing - Buckets permitted at any time. Hand held hoses permitted between 4pm and 9am on odd or even days matching house number. Efficient high pressure, low flow rate cleaners with trigger control are to be used if possible.*
- *R.16 Washing of Boats, Boat Motors and Trailers used in Salt Water - Permitted for 10 mins at any time.*

The North Byron Parklands are proposing an extension of their onsite rain water tank system which if full at the start of a festival, would supply the majority of water used at a festival,

reducing the reliance on the town water system. This extension will not be in place for the upcoming Falls Festival.

North Byron Parklands are still able to source water from Bryon Shire for this event however they state the facilities at Tyagarah do not accommodate semitrailer tankers and only have one fill pipe, which if the event was to source all its water from this location, would result in significant delays in filling tankers and as a result threaten the continued supply of potable water to staff and patrons at this event.

While sourcing potable water from Shackles water stand pipe in Tweed Shire Council is more expensive than sourcing water from Byron Shire Council, it provides a number of logistical benefits including:

- The ability to accommodate semitrailer tankers;
- More than one fill pipe.

DISCUSSION

North Byron Parklands make up the bulk of external sales from the shire in recent years.

North Byron Parklands are still able to source water from Bryon Shire for this event but logistically it is considered more difficult.

The Drought Water Restriction Policy has contained this ban since February 2007. The previous policy of August 2002 banned external sales at 65%. The dam has dropped below 90% on 6 occasions since the last major drought to affect the Tweed in 2002/2003.

Providing an exemption does undermine confidence in the Policy and the timing is likely to be close to the time Level 1 Restrictions are imposed across the Shire, provided no significant rainfall occurs. Such a decision could be perceived as controversial.

It should also be noted Council's Water Strategies Review, Project Reference Group, is currently considering the Drought Management Strategy.

If an extension is granted it should be a one off exemption and should only be granted to North Byron Parklands and not to any individual Water Carter.

OPTIONS:

1. Grant exemption.
2. Do not grant exemption.

CONCLUSION:

Council is to determine if an exemption to the Drought Water Restrictions v3.2, will be granted.

COUNCIL IMPLICATIONS:

a. Policy:

Drought Water Restrictions v3.2.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Letter from North Byron Parklands re banning the sale of potable water outside of the Tweed and its impact on festivals held at the Parklands (ECM 6110617).

Attachment 2.

Policy - Drought Water Restrictions Version 3.2 Adopted by Council at its meeting on Thursday 21 March 2019 Minute No: 102 (ECM 5836676).

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR ENGINEERING IN COMMITTEE

C1 [E-CM] Funding the Voluntary Purchase of 6074 Tweed Valley Way, Burringbar

REASON FOR CONFIDENTIALITY:

Contains reference to personal hardship suffered by a member of the community.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors).
- (b) the personal hardship of any resident or ratepayer.

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.2 Asset Protection
- 1.2.1 Floodplain Management - To manage the risk of flooding and its impacts for property owners and the community.

ROLE: **Leader**
