

Business Paper

A Council meeting will be held on Tuesday 22 October 2019
in the Council Chambers located
Corner Tozer and Elbow Streets, West Kempsey
commencing at 9:00 am



INDEX

1	OPENING PRAYER.....	3
2	ACKNOWLEDGEMENT OF COUNTRY.....	3
3	APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE BY COUNCILLORS.....	3
4	CONFIRMATION OF MINUTES.....	3
5	DISCLOSURES OF INTEREST.....	3
6	ITEMS PASSED BY EXCEPTION.....	3
7	MAYORAL MINUTES.....	5
8	REPORTS OF COMMITTEES.....	6
8.1	MAYORAL COMMUNITY FUND.....	6
8.2	AUSTRALIA DAY AWARDS COMMITTEE.....	7
9	REPORTS TO COUNCIL.....	8
9.1	SALEYARDS STRATEGIC MANAGEMENT OPTIONS REPORT - PRELIMINARY OUTCOMES (STAGE 1).....	8
9.2	MACLEAY VALLEY COAST ECONOMIC DEVELOPMENT & TOURISM STRATEGY & DESTINATION MANAGEMENT PLAN - FINAL.....	18
9.3	2020 LOCAL EVENT DAY APPLICATIONS.....	23
9.4	2019-2020 CHRISTMAS NEW YEAR SHUTDOWN.....	26
9.5	KLEP2013-AM-27.....	27
9.6	PROPOSED ROAD CLOSURE AND PURCHASE AT BELLBROOK.....	31
9.7	OUTDOOR DINING APPROVALS.....	34
9.8	DISCLOSURE OF INTEREST RETURNS.....	38
9.9	DEVELOPMENT ACTIVITY AND LEP VARIATIONS - QUARTERLY SNAPSHOT.....	41
9.10	STATEMENT OF CASH AND INVESTMENTS.....	43
10	NOTICES OF MOTION/QUESTIONS WITH NOTICE.....	45
10.1	QUESTIONS ON NOTICE.....	45
11	CONFIDENTIAL MATTERS.....	47
11.1	LEGAL MATTERS.....	48
11.2	AUDIT AND RISK COMMITTEE MEETING MINUTES - 28 AUGUST 2019.....	48
11.3	RESCISSION MOTION - TENDER FOR ELECTION SERVICES.....	48
12	CONCLUSION OF THE MEETING.....	49

1 OPENING PRAYER

“Dear Lord, help us in our deliberations today so that our decisions will be for the greater good for the whole of Kempsey Shire - Amen”.

2 ACKNOWLEDGEMENT OF COUNTRY

“Council acknowledges that this meeting is being held on the traditional lands of the Dunghutti People”.

3 APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE BY COUNCILLORS

That the apology submitted by Councillors for non-attendance at the meeting be accepted and leave of absence granted.

4 CONFIRMATION OF MINUTES

That the minutes of the ordinary meeting of Kempsey Shire Council dated 17 September 2019 be confirmed.

Attachments

1. Minutes 2019-9-17 [4.1.1 - 13 pages]

5 DISCLOSURES OF INTEREST

That Councillors' declared interests be noted.

6 ITEMS PASSED BY EXCEPTION

The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.

Before the council or committee resolves to adopt multiple items of business on the agenda together, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.

The council must not resolve to adopt any item of business that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.

RECOMMENDED:

That the recommendations contained in the following items be adopted:

- 8.1 MAYORAL COMMUNITY FUND**
- 8.2 AUSTRALIA DAY AWARDS COMMITTEE**
- 9.2 MACLEAY VALLEY COAST ECONOMIC DEVELOPMENT & TOURISM STRATEGY & DESTINATION MANAGEMENT PLAN - FINAL**
- 9.3 2020 LOCAL EVENT DAY APPLICATIONS**
- 9.4 2019-2020 CHRISTMAS NEW YEAR SHUTDOWN**
- 9.5 KLEP2013-AM-27**
- 9.6 PROPOSED ROAD CLOSURE AND PURCHASE AT BELLBROOK**
- 9.7 OUTDOOR DINING APPROVALS**
- 9.8 DISCLOSURE OF INTEREST RETURNS**
- 9.9 DEVELOPMENT ACTIVITY AND LEP VARIATIONS - QUARTERLY SNAPSHOT**
- 9.10 STATEMENT OF CASH AND INVESTMENTS**
- 11.1 LEGAL MATTERS**
- 11.2 AUDIT AND RISK COMMITTEE MEETING MINUTES - 28 AUGUST 2019**
- 11.3 RESCISSION MOTION - TENDER FOR ELECTION SERVICES**

7 MAYORAL MINUTES

Nil

8 REPORTS OF COMMITTEES

8.1 MAYORAL COMMUNITY FUND

Officer Susan Kane, Executive Assistant - Mayor
File No F19/1658
Attachments 1. Mayoral Community Fund Minutes - 17 September 2019 [8.1.1 - 3 pages]

PURPOSE

To report on the activities of the Mayoral Community Fund.

RECOMMENDATION

That the information be noted.

BACKGROUND

The Mayoral Community Fund met on 17 September 2019 following the Ordinary meeting of Council.

Minutes of the Mayoral Community Fund meeting and successful applicants for funding are included within the attached minutes.

8.2 AUSTRALIA DAY AWARDS COMMITTEE

Officer Susan Kane, Executive Assistant - Mayor
File No F19/2252
Attachments 1. 20190927 Minute [8.2.1 - 11 pages]

PURPOSE

To report on the activities of the Australia Day Awards Committee.

RECOMMENDATION

That the information be noted.

BACKGROUND

The Australia Day Awards Committee met on Friday, 27 September 2019.

Minutes of the inaugural Australia Day Awards Committee meeting are attached to this report. The next meeting of the Australia Day Awards Committee will be held Friday 18 October 2019.

9 REPORTS TO COUNCIL

9.1 SALEYARDS STRATEGIC MANAGEMENT OPTIONS REPORT - PRELIMINARY OUTCOMES (STAGE 1)

Officer	Gayleen Burley, Manager Commercial Business
File No	F18/2079
Attachments	1. Council Report Attachment - Saleyards Submission Key Themes - 2019 10 02 [9.1.1 - 3 pages] 2. Saleyards submissions 14.10.19 [9.1.2 - 186 pages]

PURPOSE

The purpose of this Council report is to:

1. Report to Council the outcomes of the community engagement undertaken in relation to the Kempsey Regional Saleyard Strategic Options being considered;
2. Obtain Council endorsement of the proposed future actions in determining the most advantageous option to proceed with for the continued operation of the Kempsey Regional Saleyards.

RECOMMENDATION

- 1 That Council note the strong community and Saleyard user support for Council to retain ownership of the Kempsey Regional Saleyards at its current location;
- 2 That Council endorse further investigation and analysis of the “Maintain”, “Upgrade” and “Lease” options to determine the most advantageous option which will include:
 - a. “Maintain” and “Upgrade” options – development of a business plan to determine the changes required to the Saleyard operations in order to achieve long-term independent financial sustainability and reduce operational risk to Council and the associated stakeholder impacts; and
 - b. Simultaneously, conduct an Expression of Interest (EOI) for interested parties to lease the Kempsey Regional Saleyards.
- 3 That Council provide a report back to a future Council meeting to recommend either “Maintain”, “Upgrade” or “Lease” as the preferred management option for the Kempsey Regional Saleyards; and
- 4 That Council actively investigate grant funding opportunities for the upgrade of the Kempsey Regional Saleyards consistent with the business plan for an appropriate and financially affordable future capital works program.

BACKGROUND

In May 2018 Council was presented with an initial overview of the strategic options available in relation to the Kempsey Regional Saleyards (“Saleyards”) owned and operated by Kempsey Shire Council. That report highlighted a number of issues associated with the Saleyards including a sustained period of cash deficits, increasing operational challenges, and the requirement for substantial new loan funding to deliver the proposed capital expenditure program that had been outlined in the 2016 Saleyards Financial Plan and updated Business Plan developed by GHD.

The May 2018 report was a follow up to a resolution of the May 2017 Council meeting that a further review of the Saleyards Business Plan be undertaken.

The Saleyards Strategic Options Analysis report which provided detailed information and analysis to support the evaluation of alternative options available to Kempsey Shire Council ("Council") in relation to the future operation of the Kempsey Regional Saleyards was presented to Council on 25 June 2019. This report, supported by financial modelling incorporating the analysis and consultation that had been undertaken to date, was endorsed by Council to be placed on public exhibition for 42 days to invite community feedback on the identified options.

During the public exhibition period Council undertook further engagement with Saleyard users and the Kempsey Shire community to gain feedback on the Kempsey Regional Saleyards Strategic Options Analysis. This included:

- Attendance at Kempsey Regional Saleyards on the following dates seeking user feedback (Thursday 18 July 2019, Tuesday 23 July 2019, Saturday 27 July 2019 and Tuesday 6 August 2019);
- Attendance at Kempsey Riverside Markets on Saturday 3 August 2019;
- Media Release (9 July 2019); and
- Promotion via:
 - Kempsey Shire Council website;
 - Your Say Macleay engagement portal; and
 - Radio and television interviews/reports.

KEY CONSIDERATIONS

There was a significant response to the Saleyards Strategic Options Analysis report with 1,041 submissions being received during the public exhibition period. It should be noted however that a number of people submitted more than one submission in various formats (i.e. form letters, surveys, detailed submissions).

A high-level breakdown of the submissions received is as follows:

- 926 submissions were received as form letters which were organised and provided to Council by local agent, Kempsey Stock and Land. All of these submissions were identical and were in support of both the 'maintain' and 'upgrade' options;
- 82 completed surveys (varied responses); and
- 78 free-text submissions (varied responses).

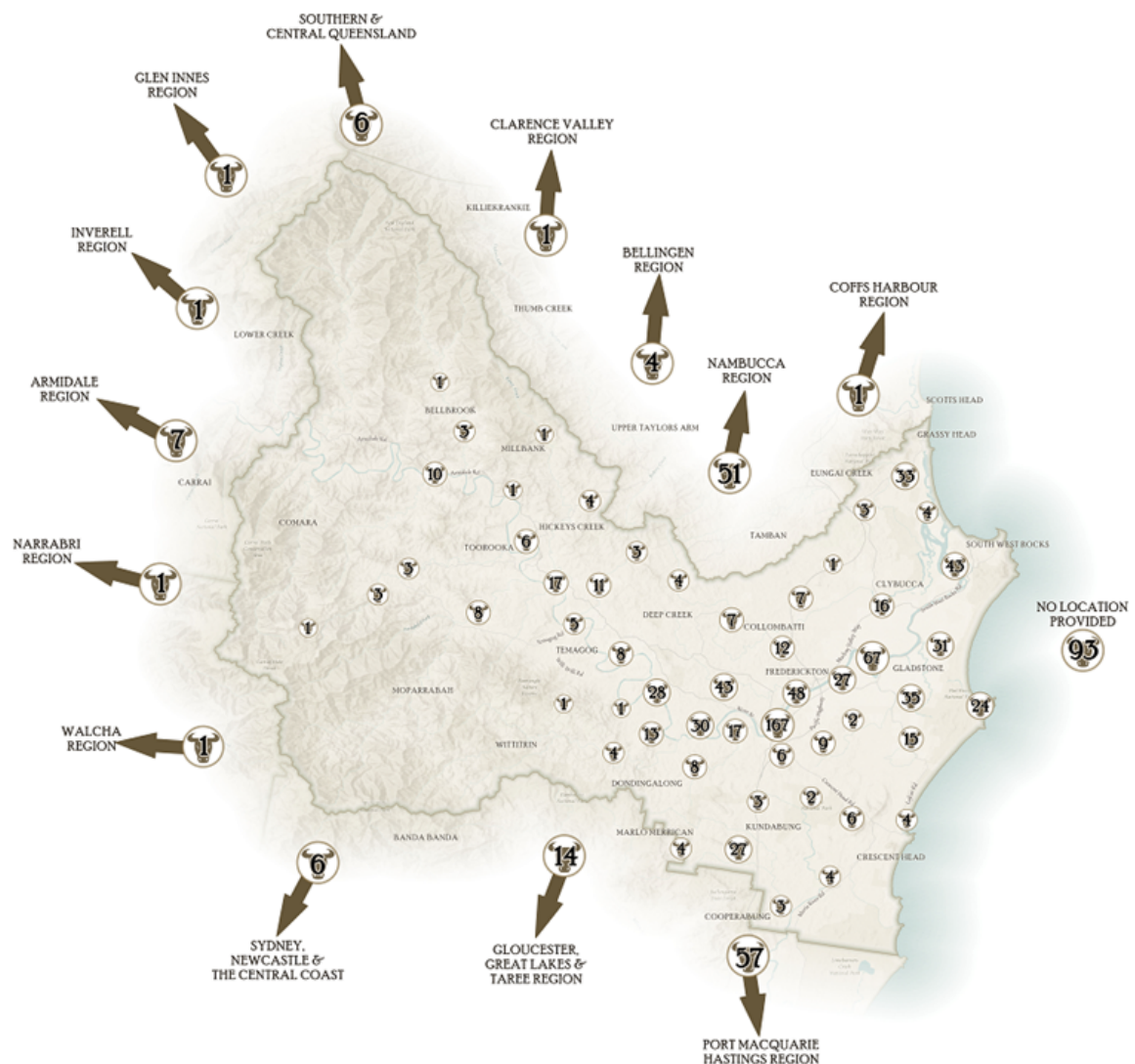
Table 1 and Figure 1 below highlight that 77.5% of the submissions received came from people residing in Kempsey Shire. A further 12% of submissions received were from people residing on the Mid North Coast New South Wales (MNC NSW) excluding Kempsey Shire. The remainder of the submissions received were from broader NSW (1.5%), interstate (0.5%) or from an unknown location (8.5%).

Table 1: Submissions received from place of residence

Location	Number of Submissions
Armidale Region	7

Bellingen Region	4
Clarence Valley Region	1
Coffs Harbour Region	1
Glenn Innes Region	1
Gloucester & Great Lakes Region	14
Kempsey Region	843
Nambucca Region	51
Narrabri Region	1
Port Macquarie Region	57
Southern & Central Qld	6
Sydney, Newcastle & Central Coast Regions	6
Walcha Region	1
Unknown	93
TOTAL	1,086

Figure 1 – Diagram showing submission place of residence



SALEYARD MANAGEMENT OPTIONS

Council made a clear ‘call to action’ by requesting submissions nominate a preferred Saleyard management option. Five (5) options for consideration were provided in relation to the future management of the Kempsey Regional Saleyards as detailed below in Table 2:

Table 2: Kempsey Regional Saleyards’ Strategic Options

OPTION DESCRIPTOR	DEFINING FEATURES
Maintain	Council continues to own and operate the current Saleyards without significant capital investment.
Upgrade	Council continues to own and operate the saleyards and undertake a capital works improvement program
Lease	Council enters a long-term lease of the Saleyards with an external party assuming operational management responsibilities.
Sell	Council enters into a Sale Agreement with an alternative saleyard

	operator for the entirety of the Saleyards facility and business
New Facility	Council builds a new facility partially funded through assumed Government grants.

Attached to this report is the key submission themes demonstrating support for a particular option.

As shown in Table 3 below, the public submissions have demonstrated that there is overwhelming support for Council to maintain ownership of the Saleyards with the majority supporting the “Maintain” and/or “Upgrade” options.

Table 3: Number of Submissions Received in Support of Saleyard Management Options

	Maintain	Upgrade	Lease	Sell	New Facility
Single Option Submission	23	50	8	13	9
Option 1 or 2	944 (926 were form letters)				
Option 1, 2 or 3	1				
Option 2 or 3		1			

When submissions supporting a single or multi option are aggregated, again it is clear that there is extensive support for the “Maintain” and/or “Upgrade” saleyard management options (refer to Table 4):

Table 4: Single & Multi Option Submissions - Aggregated Responses

Total Support for Each Option:				
Maintain	Upgrade	Lease	Sell	New Facility
967	994	9	13	9

ANALYSIS OF SALEYARD MANAGEMENT OPTIONS

A high-level assessment of the five Saleyard management options has been undertaken based on the following:

- Outcomes of the community engagement (as detailed above);
- Financial modelling (as outlined in the options papers); and
- Operational risk to Council as the owner and/or operator of the Saleyards.

The outcomes of the high-level assessment are provided below.

Maintain & Upgrade Options

Notwithstanding the strong community support for Council to maintain or upgrade the Saleyards, the Saleyards are not financially sustainable in its current operational state and the risk to Council of operating the Saleyards also needs to be taken in account.

This being the case, it is recommended that Council develop a detailed business plan for the “Maintain” and “Upgrade” options. The business plan will determine the:

- Changes required to operate the Saleyards as a financially sustainable Council owned and operated enterprise. In order to increase the financial viability of the Saleyards the following areas would be reviewed in detail:
 - Fees and charges (existing and new);
 - Operational arrangements;
 - Staffing requirements; and
 - Value-adding opportunities and diversification of business opportunities.
- Community and saleyard stakeholder impacts as a result of changes identified in the business plan; and
- Operational risk to Council from owning and operating the Saleyards, which includes but not limited to:
 - Work Health and Safety
 - Animal Welfare
 - Biosecurity
 - Chain of Responsibility

Lease Option

Simultaneously while the business plan is being developed, it is recommended that Council conduct an Expression of Interest (EOI) for interested parties to lease the Kempsey Regional Saleyards. In instances such as these, it is common practice for Council's to call for an EOI when there is uncertainty as to either the interest or the capacity of external parties to undertake the proposed services. Subsequent to the 25 June Council meeting when the Saleyards Strategic Management Options was considered, Council has received informal expressions of interest in leasing the saleyards. This indicates that the lease option should be explored more formally and compared to the maintain and upgrade options prior to a final decision being made.

Whilst there was limited support via the submissions for the 'lease' option, it is recommended that it be further investigated based on the following:

- Council will still retain ownership of the Saleyards and the Saleyards could still be used a flood refuge;
- As the asset owner, Council will still be ultimately responsible for the upgrade of the Saleyards;
- Whilst the overwhelming majority of respondents stated they wanted Council to "Maintain" and/or "Upgrade" the Saleyards, without knowing the impacts associated with the changes required to bring the Saleyard operations to a financial sustainable level then the "Lease" option should not be ruled out at this point in time;
- From a financial perspective, the net present value (NPV) of the "Lease" option was superior to both the maintain and upgrade options and second only to the sell option;
- Council, as the owner of the Saleyards, will be able to apply for government grants for future capital upgrades;
- Decreased operational cost to Council as operational expenses such as staffing, maintenance, cleaning would be the operational responsibility of the lessee;

- Mitigation of Council risk in operating the Saleyards (refer Policy & Legislation section as detailed in this report);
- Potential increased expertise management of the Saleyards under a lease agreement; and
- Increased agility to respond to changing market needs.

Sell Option

Based on the strong community and saleyard user support for Council to retain ownership of the Kempsey Regional Saleyards, it is recommended that the 'Sell' option be discarded and not be considered further as a current option for the Kempsey Regional Saleyards. It is possible that this option could be considered at a future time, although this would only be considered after considerable further community engagement.

New Facility Option

As detailed in the Strategic Options Analysis paper the "New Facility" option is cost prohibitive with a negative Net Present Value of approximately \$6.4M over a 10-year modelling period and \$5.4M over 25 years. Even if Council was successful in receiving a grant for the construction of a new facility, Council would most likely be required to finance a multi-million dollar loan as most grants of this size require a co-contribution from Council (generally in the order of 50%). Given Council's current financial constraints and that there was significant community and saleyard user support for "Maintain" and / or "Upgrade" the Saleyards in its current location and limited support for a new saleyard facility, the "New Facility" option at this point in time is deemed to be financially unviable. Consequently, this option has also been discarded and will not be considered further as a potential option for the Kempsey Regional Saleyards.

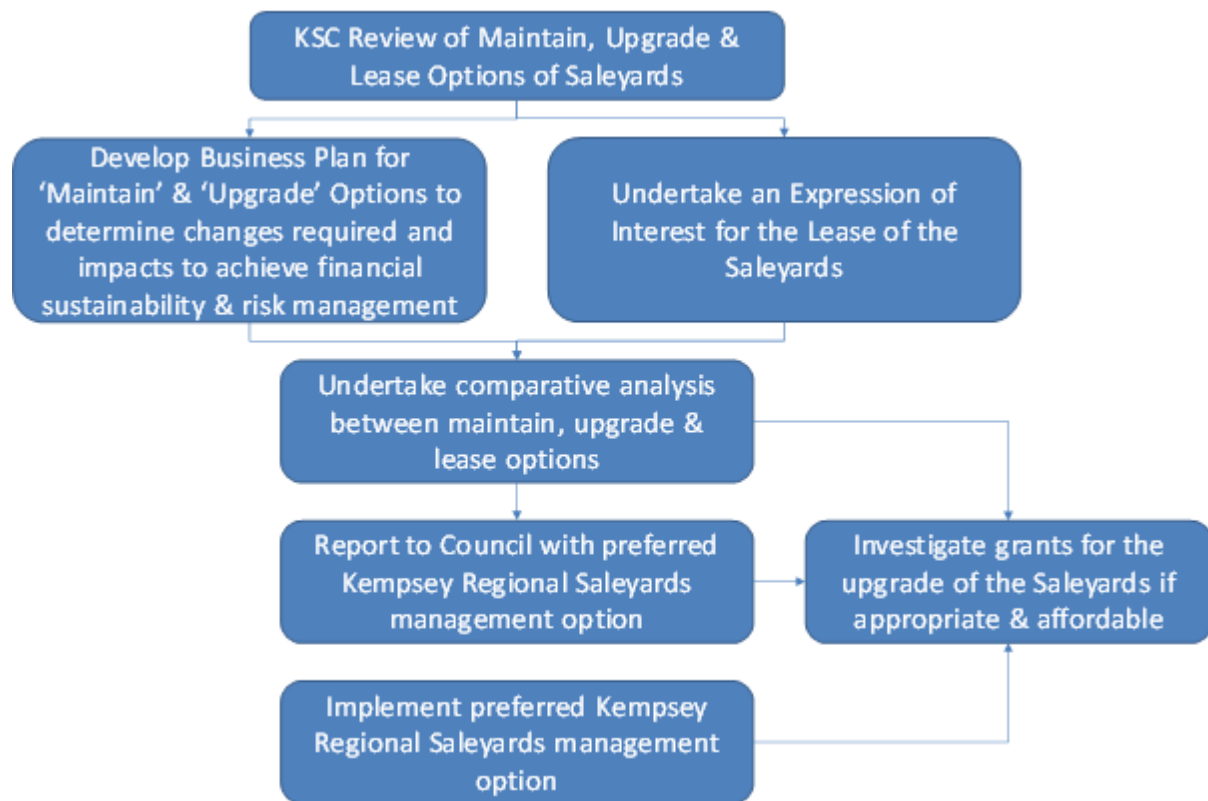
RECOMMENDED PROCESS FOR DETERMINING SALEYARD PREFERRED MANAGEMENT MODEL

Post the development of the Business Plan and completion of the EOI process, a comparison of the maintain, upgrade and lease options will be undertaken in order to achieve best value. Determining 'best value' is more than just a financial exercise and takes into account a range of factors including:

- Quality and performance
- Value for money
- Risk management
- Ethics and fair dealing
- Opportunities for local employment growth; and
- Sustainability.

The proposed process for determining the preferred model for the future management of the Saleyards is shown in Figure 2 below:

Figure 2 – Process for determining preferred management model of the Kempsey Regional Saleyards



Capital Improvements

If the recommendations as outlined in this report are adopted, then the “Sell” and “New Facility” options will no longer be a consideration within this review. As Council retains ownership of the Saleyards under the three remaining options “Maintain”, “Upgrade” or “Lease”, grant funding can be actively sought for the upgrade of the Saleyards. However, any grant application will need to be supported by the findings of the business plan which will determine the appropriate level of upgrade required in order to meet legislative requirements, operational need and financial sustainability considerations.

Policy and Legislation

Whilst there is no policy or legislation implications associated with this specific report, in making the final recommendation to Council for the preferred management model of the Kempsey Regional Saleyards the following key regulated areas will be considered:

- **Work Health and Safety:** safety is a major consideration when large numbers of permanent, part-time and casual staff, transport operators, contractors, producers, agents and buyers visit or work with livestock and trucks at the saleyards. Livestock saleyards present a unique high-risk environment in terms of Workplace Health & Safety Management. As Kempsey Shire Council owns and operates the Saleyards with a small number of in-house staff, most of the ‘point-of-risk’ work is undertaken by people not working directly for council. This requires Kempsey Shire Council to establish the necessary systems and processes to ensure that there is consultation, cooperation and coordination between duty holders to establish and perform their respective WHS duties, and comply with the WHS legislation.

- **Animal Welfare:** Animal welfare concerns are becoming increasingly important to industry, government, consumers and the general public, both in Australia and internationally. Practices which may have once been thought acceptable are now being reassessed in light of new knowledge and changing attitudes. 'Animal welfare' has several dimensions including the mental and physical aspects of the animal's well-being, as well as people's subjective ethical preferences. Animal welfare requires modern built facilities as well as good management, systems and operations.
- **Biosecurity:** The large number of animals passing through a saleyard means an emergency animal disease outbreak may be first detected in these facilities and Saleyard owners/operators play a crucial part in early identification and reporting. There are certain actions a business must legally take in order to be biosecure. These are detailed in the [Biosecurity Act 2015 and supporting legislation](#). The laws cover things that are likely to have the biggest impact on our economy, environment or community. They include rules around:
 - High risk and priority pests and diseases that must be reported - these are known as 'notifiable pests and diseases', 'prohibited matter' and 'biosecurity events'
 - Having the right accreditation, registrations, certificates and permits.
- **Chain of Responsibility (COR):** The aim of COR is to make sure everyone in the supply chain shares responsibility for ensuring breaches of the Heavy Vehicles National Law (HVNL) do not occur. Under COR laws if you are named as a party in the chain of responsibility and you exercise (or have the capability of exercising) control or influence over any transport task, you have a responsibility to ensure the HVNL is complied with. The law recognises that multiple parties may be responsible for offences committed by the drivers and operators of heavy vehicles. A person may be a party in the supply chain in more than one way.

The above items present significant operational and financial risks to Council in operating the saleyards. WHS, Animal Welfare, Biosecurity, COR and potentially other risk areas will be key considerations in determining the final Saleyard management option recommended to Council.

Strategic Alignment

This report is aligned with the following corporate strategies:

Strategic Plan	Action	Performance Measure
Kempsey Shire Council Operational Plan 2019/20	WS05.1.1 - Business performance of Council's commercial assets are maximised	Finalise options paper and implement Council endorsed Kempsey Regional Saleyards preferred management / ownership model.
Kempsey Shire Council Delivery Program 2017 - 2021	Economic Development: Gross domestic product of the Shire is increasing	Implement business plans for Council's income producing assets
Kempsey Shire Council Delivery Program 2017 - 2021	Economic Development: Increase returns from agriculture	Investigate the potential for a regional sale yards facility
Kempsey Shire Council Delivery Program 2017 - 2021	Finding Service Efficiencies: Service Reviews:	Review all services and develop implementation of best practice delivery

Impact on Financial Sustainability

The Saleyards are currently resulting in annual cash deficits to Council that are being funded by Council's General Fund. Based on current operations, these cash deficits are forecast to continue and increase over coming years, which adversely impacts Council's future financial sustainability. The future adoption of any saleyard management option needs to strongly consider the financial impacts on Council's General Fund.

Other Matters

During the period of business plan development and EOI for the lease of the Saleyard facility, Council will continue to operate and maintain the Saleyards on an 'as is' basis with the casual extension of current contracts in place until a Council decision on the Strategic Management Options has been made.

CONCLUSION

Based on the overwhelming support for Council to retain ownership of the Saleyards in the current location and the financial burden of developing a new facility, it is recommended that the "Sell" and "New Facility" options be discarded and removed from further consideration within this review. Council will proceed with further investigation of "Maintain" and "Upgrade" options via Business Plan development and the "Lease" option via an EOI process. The result of the comparative analysis between the three options will be presented to a future Council meeting with a recommendation to proceed with a single preferred option.

Further, given that Council retains ownership of the Saleyards in the current location under "Maintain", "Upgrade" and "Lease" options, Council can commence investigating grant funding opportunities for the capital upgrade of the Saleyards once an appropriate and financially affordable level of capital works has been determined.

9.2 MACLEAY VALLEY COAST ECONOMIC DEVELOPMENT & TOURISM STRATEGY & DESTINATION MANAGEMENT PLAN - FINAL

Officer	Gayleen Burley, Manager Commercial Business
File No	F12/1860
Attachments	<ol style="list-style-type: none">1. Macleay Valley Economic Development & Tourism Strategy Final October 2019 [9.2.1 - 50 pages]2. Macleay Valley Coast Destination Management Plan Final October 2019 [9.2.2 - 45 pages]

PURPOSE

The purpose of this report is to inform Council of the results of the recent public exhibition of the draft ten-year Economic Development and Tourism Strategy that incorporates a stand-alone Destination Management Plan.

The Economic Development and Tourism Strategy and Destination Management Plan provides a ten-year strategic planning document to guide the overall vision for economic development and tourism growth of the Shire.

The Economic Development and Tourism Committee met on 26 September 2019 to consider the submissions received during the public exhibition period and support the adoption of the two strategies. The final versions, incorporating the key changes listed in this report, are attached for adoption by Council.

RECOMMENDATION

- 1 That Council note the submissions received as detailed in this report.**
- 2 That Council, having considered the submissions, adopt the final Economic Development and Tourism Strategy and the final Destination Management Plan as attached.**

BACKGROUND

The project to develop the Economic Development and Tourism Strategy and the Destination Management Plan began in July 2018 and has progressed through extensive targeted consultations and several stages of community engagement and feedback.

The development of the Economic Development and Tourism Strategy and Destination Management Plan has been co-funded with the support of the Australian Government – Building Better Regions Fund, the Macleay Valley Business Chamber, the Macleay Valley Business Women’s Network and a matching contribution from Council.

Council considered the draft Economic Development and Tourism Strategy and the draft Destination Management Plan at its meeting on 21 August 2019 and resolved to place them on public exhibition for a period of 28 days.

The drafts were made available for public comment from 21 August to 20 September 2019 on Council’s online engagement portal Your Say Macleay. The site attracted 271 visitors and 66 document downloads.

There were seven (7) submissions received for the Economic Development and Tourism Strategy and 10 submissions for the Destination Management Plan. A summary of the comments included within these submissions is set out in the following tables.

Economic Development and Tourism Strategy

Comment	Response
Support for an agricultural proposal to develop strategies to rapidly expand the value of agricultural production by linking intensive small-scale farming to research, employment and training, especially as it applies to the utilisation of flood plain lands previously used by the dairy industry.	<p>Support for the strategy and comments noted.</p> <p>This has now been included in the final strategy at Executive Summary page v and point 2.2 page 20:</p> <p>A) That the Macleay Valley Agri-business Working Group, to be formed as part of the strategy, consider this proposal and refer their findings to Council's Strategic and Asset Planning.</p> <p>B) That the issues concerning land size and land use be referred to Council's Strategic and Asset Planning for consideration.</p>
Support for sponsorship and development of events and festivals.	Support for the development of events noted. This is included in the strategy at point 1.20 on page 18.
Support for public art, such as murals, as an attractor to bring visitors into Kempsey.	Support for public art noted. This is included in the strategy at point 1.17 on page 18.
Concern about empty commercial properties in Kempsey.	<p>Comment noted.</p> <p>A focus of the strategy is to encourage and develop new and existing businesses as well as a program of streetscape improvements at point 1.18 on page 18.</p>
Support for the creation of leashed and unleashed dog parks.	<p>Comment noted.</p> <p>Refer to Council's Strategic and Assets Planning for consideration.</p>
Concern for the balance between preserving country lifestyle and encouraging development.	<p>Comment noted.</p> <p>These issues will form part of the Local Character Statements being prepared by Council's Strategic and Asset Planning during 2019/20.</p>
Support for place activation through providing	Comment noted.

wi-fi in public spaces.	This idea is included for further consideration in the plan at point 1.15 on page 18.
Support for sustainable industry development, such as renewable technology, new energy supply projects and increased recycling.	Comment noted. Some of these projects are included in the strategy and will be considered at point 1.26 on page 19.
Support for aboriginal led business development.	Comment noted. Aboriginal business development support included in the strategy at points 1.27 and 1.28 on page 19.
Support for a new high school in South West Rocks.	Comment noted. This would be considered as one issue within the Education Masterplan which is included in the strategy at point 1.11 on page 18.

Destination Management Plan:

Comment	Response
<p>Recommendation to recognise Arts Mid North Coast, the peak body for arts and cultural development across the north coast region, as a key stakeholder.</p> <p>Further recommendation to recognise the value of cultural tourism to the regional visitor economy and to support initiatives to identify, showcase and develop cultural experiences.</p>	<p>Support for the plan noted.</p> <p>This has been included in the final plan as follows:</p> <p>A) That Arts Mid North Coast be recognised as a key stakeholder in the plan on Executive Summary page (vi) and pages 9, 12, 30.</p> <p>B) That Council partner with Arts Mid North Coast to promote and support arts and culture sector activities throughout the region at point 3.1.5 on page 33.</p>
Support for the activation of the river strategy to assist businesses located along the river. Support also for water-based events, such as surf craft races to be staged on the river.	<p>Support for the plan noted.</p> <p>Activation of the river is included as a game changer project at point 1.2 on page 32.</p>
Support for retaining culture and heritage of towns and villages as unique to the Macleay Valley.	<p>Support for the plan noted.</p> <p>Investigation of heritage precincts included in the plan at point 2.3.1 on page 32.</p>
Comments were received that relate to the development of high-end accommodation that were both supportive and not supportive.	<p>Support and comments noted.</p> <p>Included in the plan at points 3.3.1 and 3.3.2 on page 33.</p>

Support for sports tourism to become a major driver of the visitor economy by utilising the new sports infrastructure, including increased pathways and cycleways and a focus on building mountain bike experiences to link sport and recreational activities.	<p>Comment noted.</p> <p>An adventure sports strategy is one of the game changer projects (point 1.3 page 26) and support for integrating infrastructure planning with existing Council sports strategies is also included in the plan at points 3.1, 3.4.3 and 3.4.4 on page 33.</p>
Work with Aboriginal Elders to develop a museum and education facility at Kinchela Boys Home site.	<p>Comment noted.</p> <p>This proposal will be referred for consideration as part of the Indigenous Enterprise Support at points 1.27 and 1.28 on page 19 of the Economic Development and Tourism Strategy.</p>
Sustainable development and preservation of the environment preferred over development projects and attracting new visitors. Expressed preference for low impact nature-based activities and extending stay of existing visitors.	<p>Comment noted.</p> <p>Nature-based tourism is included in the plan in the key game changer projects on page 32.</p>
Support for habitat protection and preservation of diversity, including support for the Great Koala National Park project.	<p>Comment noted.</p> <p>Support for bio-diversity strategy included in the plan at point 2.1 on page 32.</p>
Proposal to provide outsourced visitor information services.	<p>Comment noted.</p> <p>This will be considered as part of the review of the Visitor Information Services included in the plan at point 4.3 on page 35.</p>

KEY CONSIDERATIONS

Grant Requirements

The grant funding from Australian Government Building Better Regions Fund requires the final Economic Development and Tourism Strategy, incorporating a stand-alone Destination Management Plan be adopted by the end of October 2019. Approval at this meeting will meet that milestone requirement.

Strategic Alignment

The development of these two plans is aligned to the following Kempsey Shire Council strategies as outlined below:

Delivery Plan 2017-2020: WS-03 Develop and implement an economic development strategy.

Operational Plan 2019-20:

- *WS03.11 Adopt and commence implementation of Economic Development and Tourism Strategy together with relevant Destination Management Plan.*
- *WS02.12 Implement Events Program as per Economic Development and Tourism Strategy.*

Stakeholder Engagement

The period of public exhibition from 21 August to 20 September 2019 has completed the consultation process that began in February 2019. The extent of this consultation has been outlined in previous Council reports.

The overall responses from the public exhibition are in support of the two strategies. The key principles, themes and projects, as outlined in the Economic Development and Tourism Strategy and the Destination Management Plan, have gained community support.

CONCLUSION

The presentation of the final Economic Development and Tourism Strategy and the final Destination Management Plan brings to fruition a long-held objective of the Council to map out a future plan for the development of the Macleay Valley that can guide our economic development and meet the needs of our community. The final versions of the two strategies, that incorporate the recommendations outlined in this report, are presented for Council adoption.

9.3 2020 LOCAL EVENT DAY APPLICATIONS

Officer Lisa Smith, Executive Officer - Corporate and Commercial
File No F19/1660
Attachments Nil

PURPOSE

To report on applications made for two (2) half-day (afternoon) local event days in 2020 for the Kempsey Show and the Kempsey Cup.

RECOMMENDATION

That an application be made to NSW Industrial Relations for:

- a. a half day local event, from 1:00pm, Wednesday, 22 April 2020 for the Kempsey Show, and
- b. a half day local event, from 1:00pm, Friday, 6 November 2020 for the Kempsey Cup.

BACKGROUND

Council has received applications for half-day (afternoon) local event days in 2020 for:

- Kempsey Show – Wednesday, 22 April
- Kempsey Cup – Friday, 6 November.

A history of applications for the past five (5) years is below:

Year	Application details
2019	No applications received
2018	Request received for the Kempsey Show; however, it was received too late for an application to the Minister
2017	Half day local events declared for the Kempsey Show and Kempsey Cup
2016	Half day local events declared for the Kempsey Show and Kempsey Cup
2015	Half day local events declared for the Kempsey Show and Kempsey Cup
2014	Half day public holiday declared for the Kempsey Show and a half day local event declared for the Kempsey Cup

These events are significant social events in the Shire, attracting both local residents and visitors.

In 2017 Council made a two (2) part resolution, 2017.256, in response to applications for the Kempsey Show and Kempsey Cup. The second part of the resolution was:

That a report be brought back to Council outlining the benefits of a local event day whether we should continue to process local event days or promote local events in a different manner.

It should be noted there is no record of the second part of the recommendation in 2017 being completed.

KEY CONSIDERATIONS

Policy and Legislation

Consideration of the applications must comply with the *Public Holidays Act 2010*

<https://legislation.nsw.gov.au/#/view/act/2010/115/full>

A declared local event day does not automatically mean that employers in the particular locality are compelled to treat the day as a public holiday. Entitlements to paid time off work or penalty rates on a local event day will only arise where they have been agreed at the workplace level, usually in the form of an enterprise agreement or a contract.

This is different to a public holiday being gazetted which results in entitlement to penalty rates for those required to work.

The guidelines for considering Local Public Holiday and Local Event Day applications outline the importance of Council being mindful of the potential impact the application will have upon businesses and communities within the designated public holiday areas.

For the Minister to declare a local event day or part day under the *Public Holidays Act 2010* the Minister must be satisfied that the community will observe the day or part day as being of special significance.

There is no obligation on Council to make application to the Minister.

Council practice in past years has been to place advertisements in the weeks leading up to the half day holiday to clarify the requirements on local businesses.

Strategic Alignment

There is no specific action or reference to the Kempsey Show or Kempsey Cup in Council's adopted Delivery Program or Operational Plan.

Impact on Financial Sustainability

There is no impact on Council's salaries and wages if the applications are approved as local event days. The costs to Council are in terms of administration and advertising. These costs are not material and would be funded from within existing budgets.

Stakeholder Engagement

Advertising as required under the legislation, was commenced on 2 September 2019 with submissions received up to 4:30pm on 1 October 2019. Information was placed on the front page of Council's website, Facebook page and notices, with a standalone advertisement in the Macleay Argus on 2 October. Local chambers of commerce, banks/financial institutions and schools were contacted directly with two (2) submissions received as follows.

Submission 1

I wholeheartedly support the half day applications for Kempsey Show Day and Kempsey Cup for 2020. Both events are not only historically important to our Valley and community but an important source for economic injection into the two community centres Warwick Racecourse and Kempsey Showgrounds.

They are both days for bringing our community together and inviting tourists into our town.

I hope the applications are successful.

Submission 2

As a business we support and welcome community events, we would have no issue with the Kempsey Show Day and Kempsey Cup being half day local events days. However, if council intends to put Kempsey Show Day and Kempsey Cup through as a Half Day Local Public Holiday we wouldn't support this as it would affect our business operation through the payment of public holiday penalty rates to our staff members who would be required to staff our venue during the half day public

holiday and our PT and FT staff who will not work. It should be noted that the revenue for the week leading into the Kempsey Show Day and Kempsey Cup are less than average as it stands and the introduction of penalty rates in this period would cost our business an extra \$9000 for the 2 x half day public holidays.

CONCLUSION

The requests from the Kempsey Show Society and Kempsey Race Club Inc to have their respective events forwarded to the Minister for consideration as half day local event days are not unreasonable. The events align with our vision in the Community Strategic Plan of providing the community with opportunity to prosper in an environment that supports well-being and connectedness.

9.4 2019-2020 CHRISTMAS NEW YEAR SHUTDOWN

Officer John Gilroy, Manager Organisational Development & Performance
File No F19/1933
Attachments Nil

PURPOSE

Each year the Council Administration Centre, Libraries and Depot are closed during the Christmas – New Year Period. The purpose of this report is to seek approval from Council to notify the public that Council offices will be closed from 1pm Tuesday 24th December 2019 to Wednesday 1st January 2020, and re-open on Thursday 2nd January 2020.

RECOMMENDATION

That Council offices be closed from 1pm Tuesday 24th December 2019 through to Wednesday 1st January 2020, and re-open on Thursday 2nd January 2020.

BACKGROUND

This year, the gazetted public holidays will be on Wednesday 25th December (Christmas Day), Thursday 26th December (Boxing Day) and Wednesday 1st January (New Year's Day). Accordingly, it is recommended Council close from 1pm Tuesday 24th December 2019 to Wednesday 1st January 2020, and re-open on Thursday 2nd January 2020.

By this time, employees will have either accrued sufficient hours by working additional hours during the year to take leave during the shutdown or will use their annual leave.

9.5 KLEP2013-AM-27

Officer	Peter Orr, Senior Strategic Planning Officer
File No	KLEP2013-AM-27
Attachments	<ol style="list-style-type: none">1. Amended Planning Proposal July 2019 [9.5.1 - 49 pages]2. Gateway Determination [9.5.2 - 2 pages]3. Dept Planning Industry & Environment Agreement to Altered Planning Proposal [9.5.3 - 1 page]4. NPWS Advice [9.5.4 - 2 pages]5. RFS Advice [9.5.5 - 2 pages]

PURPOSE

To consider the following planning proposal for progression to the next stage of the local plan making process.

Proposal: Make a number of ‘housekeeping’ amendments to Kempsey Local Environmental Plan (KLEP) 2013

Location: Portions of Saltwater Links Estate (Malbec Part 3A residential subdivision), South West Rocks; Seascape Grove Residential Estate, South West Rocks; and Willi Willi National Park

Proponent: Kempsey Shire Council

Status: Community and agency consultation undertaken

Council is to consider any matters raised in the community and agency submissions and decide whether to exercise delegation to make the proposed amendment to KLEP2013.

RECOMMENDATION

- 1 That the planning proposal, which seeks a number of housekeeping amendments, be progressed to make the amendment to the local environmental plan, described as KLEP 2013 (Amendment 27).
- 2 That Council staff request the Parliamentary Counsel’s Office to draft the legal instrument, KLEP 2013 (Amendment 27), under s 3.36(1) of the Environmental Planning and Assessment Act 1979 to give effect to the final planning proposal.
- 3 That the General Manager exercise delegation from the Minister for Planning to make the amending instrument, KLEP 2013 (Amendment 27).
- 4 That upon the making of KLEP 2013 (Amendment 27), the Department of Planning, Industry & Environment be requested to notify the plan on the NSW Legislation webpage.

ISSUES

A delegate for the Minister for Planning has issued authorisation for Council to exercise delegation to make the amending LEP. This means that Council undertakes the role of:

- instructing Parliamentary Counsel’s Office to draft the legal instrument which will give effect to the planning proposal;
- making the amending local environmental plan; and
- requesting the amending local environmental plan be notified on the NSW Legislation website.

The plan comes into effect the day that it is published on the legislation website.

BACKGROUND

This planning proposal (see **attached**) comprises of the following KLEP 2013 housekeeping amendments:

- Remove an identified portion of the mapped urban release area within Urban Release Area Map Sheet URA_013B to enable the assessment of future development applications for dwellings/buildings within Stage 1 of the Malbec Part 3A approval (Saltwater Links Estate), otherwise prohibited by clause 6.3 of KLEP 2013;
- Amend zone and minimum lot size mapping in response to a Notice of Reservation under the National Parks & Wildlife Act 1974 received from the Office of Environment & Heritage (OEH); and
- Amend building height, land zone and minimum lot size mapping for a small portion of R5-Large Lot Residential zone to standardise these values with the adjacent R1-General Residential zone in a single land parcel (currently the subject of a residential subdivision identified as the Seascope Grove Residential Estate, located at South West Rocks).

These housekeeping amendments apply to:

- The Malbec Part 3A approval (Saltwater Links Estate): Portions of Lots 1 and 2 DP1229162, Belle O'Connor Street, South West Rocks (approximately 1.7ha);
- Willi Willi National Park: Lot 42, 43 & 49 DP752424; Lot 1 DP594173; and Lot 113 & 114 DP752431 (approximately 198 hectares); and
- Seascope Grove Residential Estate: portion of Lot 332 DP1220901, Belle O'Connor Street, South West Rocks (approximately 2,200m²).

On 20 November 2018, Council resolved:

That the planning proposal, which seeks a number of housekeeping amendments, be submitted to the Minister for Planning for Gateway consideration pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979.

On 20 February 2019 a delegate for the Minister for Planning issued a Gateway determination to proceed with the planning proposal, along with written authorisation to exercise the delegation of the Minister's functions under S3.36 of the *Environmental Planning and Assessment Act 1979* (the Gateway determination is **attached**).

COMMUNITY CONSULTATION

Public exhibition

The planning proposal was placed on public exhibition from Tuesday 12th March 2019 through to Tuesday 9th April 2019. No public submissions were received during the exhibition period.

Agency responses

As required by condition number 3 of the Gateway determination, consultation was undertaken with the following State agencies:

- NSW Rural Fire Service; and

- NSW Office of Environment and Heritage – National Parks and Wildlife Service (OEH – NPWS).

The agency responses are **attached**, with a summary provided below.

NSW Rural Fire Service

The NSW RFS advised that it has no objection to the planning proposal proceeding and provided the following standard comments:

Future development applications for all development on bush fire prone lands will be required to comply with either S4.14 of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997, depending upon the nature of the proposed development, and the relevant provisions of Planning for Bush Fire Protection.

NSW Office of Environment and Heritage – National Parks and Wildlife Service

OEH – NPWS reviewed the planning proposal and provided the following comments:

	OEH – NPWS submission	Comment/Response
1	<p>NPWS objects to the land use zoning change proposed for part Lot 8 DP754441 on the following grounds.</p> <ul style="list-style-type: none"> • This portion of land (as shown on Figure 5 of the Planning Proposal) is not yet reserved as part of Limeburners Creek National Park but is surrounded by that park and remains vested in the Minister for the Environment under Part 11 of the <i>National Parks and Wildlife Act 1974</i> NPW Act). • It therefore meets the statutory definition of E1–National Parks and Nature Reserves for the purposes of a Local Environmental Plan, as it is land acquired under the NPW Act. • Further, it is noted that under Clause 65 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>, any development of this land which is authorised under the NPW Act is development without consent and not subject to Council’s planning approval. 	<p>OEH provided Council with a gazetted copy of the <i>Notice of Reservation of a National Park</i> which included the removal of a 15.9ha portion of the E1-National Parks and Nature Reserves zone within Lot 8 DP754441 (which was to be back-zoned to RU2-Rural landscape zone) at Limeburners Creek National Park. Aerial images of this site suggest that this area had been/was utilised as a quarry.</p> <p>Given the objection of NPWS, the rezoning referred above now no longer forms part of this Planning Proposal, which has been revised.</p> <p>The revised Planning Proposal was provided to the Department of Planning who have advised (copy of notice attached) that:</p> <ul style="list-style-type: none"> • an alteration of the Gateway determination is not necessary; • no further community consultation is required; and • that Council can proceed with the assessment of the proposal.
2	<p>NPWS recommends the retention of E1 zoning for the entirety of Lot 8 DP754441 and supports the retained E1 zoning for Lot 108 and Lot 186 DP754441.</p>	<p>The entirety of Lot 8 DP754441 now remains in the E1-National Parks and Nature Reserves zone.</p>

3	NPWS supports the proposed land use zoning change, from E3–Environmental Management and RU2–Rural landscape to E1–National Parks and Nature Reserves, for the lands newly reserved as part of Willi Willi National Park, identified under this Planning Proposal as: Lot 1 DP594173; Lots 42, 43 and 49, DP752424; and Lots 113 and 144, DP752431.	Noted.
---	--	--------

FINAL STEPS

The NSW Department of Planning has issued Council delegation to make the plan. Council is now requested to resolve to use the delegation in completing the plan.

This will involve a report back to the NSW Department of Planning, obtaining legal advice from the Parliamentary Counsel, the General Manager’s final signature on the amended Planning Instrument and then publication on the NSW Legislation website.

9.6 PROPOSED ROAD CLOSURE AND PURCHASE AT BELLBROOK

Officer	Robert Fish, Director Operations & Planning
File No	F19/1650
Attachments	1. Area Originally Sought for Closure and Purchase [9.6.1 - 1 page] 2. Amended Area for Closure - Survey Sketch [9.6.2 - 1 page] 3. Submissions [9.6.3 - 2 pages]

PURPOSE

To advise Council of an application received for the closure and purchase of part of East Street at Bellbrook.

RECOMMENDATION

- 1 That Council publish a Notice of Road Closure in the NSW Government Gazette to close that part of East Street, Bellbrook, situated on the western side of Lot 1 DP739113 (land occupied by the Bellbrook Hotel) but excluding an area 3 metres wide situated on the eastern boundary of Lot 8 Section 1 DP758083 (16 Main Street, Bellbrook) as shown in the attached plan prepared by Surveyors M W Rogers & Associates reference 05980RD01.VCD
- 2 That the Notice of Road Closure vest the land in Kempsey Shire Council as operational land.
- 3 That Council sell the land in the closed road to the owner of Lot 1 DP739113 at its market value as determined by Council's Consulting Valuer.
- 4 That Council delegate authority to the General Manager to sign:
 - a. Survey plan of road closure
 - b. Contract for the Sale of Land
 - c. Land Registry Services documents:
 - i. Application for issue of certificate of title for the land in the closed road
 - ii. Transfer form.

BACKGROUND

Council is in receipt of an application from the owners of Lot 1 DP739113 (the Bellbrook Hotel) for the closure and purchase of the public road situated on the western side of the Hotel. The area of land subject to the application is shown in the **attachment 'Area Originally Sought for Closure and Purchase'**. Subject to a detailed survey, the area is approximately 1,981m².

KEY CONSIDERATIONS

Policy and Legislation

Division 3 of Part 4 of the *Roads Act 1993* (Sections 38A to 38F) outlines the ability and process Councils are to follow when considering the closure of a Council owned road.

On receipt of the application a road status check was conducted to ensure the road is in the ownership of Council. It is common in rural and regional areas for Crown owned roads to exist in conjunction with Council owned roads. On determining Council is the owner of this road, then pursuant to Section 38A of the *Roads Act 1993*, an initial assessment was conducted as to the suitability of the road for closure. Factors considered included:

- Is the road reasonably required for public use (whether for present or future needs)?

- Is the road required to provide continuity for the existing road network?
- If the road provides a means of vehicular access to particular land, is another public road available to provide lawful and practicable access to that land?

On the basis that the closure of the road was unlikely to significantly adversely impact on the above factors, mandatory notification of the proposal to close and sell the road was undertaken. Details on the notification are provided in the Stakeholder Engagement section of this report.

Impact on Financial Sustainability

If Council endorses the closure, the land can be sold to the applicant at its full market value as determined by Council's Consulting Valuer. The value of the land includes such factors as its size and land zoning.

A sale to the adjoining owner generally provides a better financial return to Council as distinct from Council developing the land in its own right due to the ability of the adjoining owner to combine the use of the land in the closed road with the use of the adjoining land parcel. This economy of scale is reflected as an adjoining purchaser's premium paid when buying land. A sale to the road closing applicant does not incur development costs, agent commission charges nor a holding period if Council was to develop and sell the land on the open market in a location with limited housing demand. Disposal of the block via a means other than to the adjoining landowner is therefore not recommended.

As mandated in section 43(4) of the *Roads Act 1993*, monies derived from the sale are to be used for road maintenance or for the purchase of land for road purposes.

Stakeholder Engagement

Pursuant to Section 38B of the *Roads Act 1993*, notification of the proposal to close and sell the road was:

- published in the *Macleay Argus*;
- Statutory Authorities notified; and
- Adjoining landowner notified.

A 28-day notification period is prescribed in which submissions in respect of the proposed road closure can be lodged with Council.

At the conclusion of the notification period, submissions (**attached**) were received from the Department of Primary Industries – Recreation Fishing and Waterways; and the adjoining landowner.

A summary of the issues raised and comments in response are in the following table:

ISSUE	COMMENT
Loss of access for recreational fishers	Part of the road sought for closure is in effect the riverbank. The bank at this location is steep and heavily timbered. Vehicular access is not available and access on foot would be challenging. There is formed access to the river suitable for vehicles at the rear of the adjoining hotel and access one block away at the Bellbrook bridge. The closure of the road

	would result in nil practicable loss of access to the river.
Riparian vegetation coming into private ownership	The management of vegetation is subject to the same environmental legislation and is not dependent on ownership.
Loss of access and decrease in property value	<p>Part of a circular driveway in use by an adjoining landowner may fall within the road sought for closure. This would need to be determined by detailed survey. If the access to the circular drive is found to be within the road sought for closure, it can be excluded from the final plan of road closure or a right of carriageway granted to maintain lawful access or the access slightly relocated.</p> <p>A decrease in property value is subjective and the claim is not supported by empirical evidence. Alternatively, it may be that if the closed road was improved/developed from its current state, this may increase the value of the adjoining property.</p>

The matters raised in the submissions have been referred to the applicant. An amended area of road sought for closure has been submitted. The amended area is shown in the **attachment 'Amended area for closure – survey sketch'** and comprises an area of approximately 771m². The amended area removes from the application, the area of riparian vegetation (the riverbank) and ensures a 3-metre wide corridor of public road will be retained along the eastern boundary of the adjoining property at 16 Main Street (Lot 8 Section 1 DP758083). The area of road sought for closure has been reduced by approximately 1,210m².

CONCLUSION

The application for road closure complies with the provisions of the Roads Act 1993. The amended area now sought for closure and purchase is considered to adequately address the concerns raised in the submissions received during the notification period.

The amended area of road closure and purchase by the adjoining property owner is recommended to Council for approval via the relevant statutory process. This method of sale provides the most favourable outcome for Council.

9.7 OUTDOOR DINING APPROVALS

Officer	Gayleen Burley, Manager Commercial Business
File No	F18/1349
Attachments	1. Outdoor-dining-policy-guide [9.7.1 - 18 pages]

PURPOSE

To report on the current status of commercial use of footpath areas within the Kempsey Shire and to recommend continuation of the moratorium on Fees and Charges in line with the NSW Outdoor Dining Policy 2019 for a period from 1 July 2020 to 30 June 2025.

RECOMMENDATION

- 1 That the moratorium on the payment of fees and charges associated with the commercial use of footpath areas within the Kempsey Shire, villages and town centres be extended to 30 June 2025.**
- 2 That Council opt in to the NSW Outdoor Dining Policy 2019 and work with Service NSW and the Easy To Do Business program to ensure that all safety and legislative compliance issues are met by business owners through the self-assessment and lodgement process as outlined in the Policy.**

BACKGROUND

The moratorium on fees for commercial use of footpath areas was first introduced in 2015 to the Smith Street and Kempsey CBD areas as part of the by-pass strategy for a period of two years.

Council resolved at the September 2018 Council meeting to extend the moratorium on the payment of fees and charges associated with the commercial use of footpath areas within the Kempsey Shire, villages and town centres until 1 July 2020. At this time Council also resolved for the Economic Development and Tourism Committee to report on the effectiveness of the moratorium and how fees could be reintroduced.

At a State level, an extensive trial was conducted by the NSW Government from September 2017 to December 2018 and based on the findings of the trial the NSW Outdoor Dining Policy 2019 was developed (attached). This policy is an opt-in policy for all Councils in New South Wales.

Council is a member of the Small Business Friendly Council network and supporting the key policies developed to streamline red tape and encourage increased economic activity is an expectation of the membership.

KEY CONSIDERATIONS

Policy and Legislation

The NSW Outdoor Dining Policy 2019 builds on the successful Easy To Do Business program, run in partnership with Service NSW, to make it easier for retail food businesses to expand into outdoor dining activities.

The NSW Outdoor Dining Policy 2019 is designed to:

- Provide a framework for establishing and operating an outdoor dining area, including:
 - Determining the suitability of a site
 - Managing public safety including road safety

- Ensuring operations do not detract from the visual appeal of an area
- Meeting ongoing operational requirements
- Meeting all necessary State and Federal legislative requirements.
- Reduce time and complexity of the approval process for business by outlining the steps a business must take to be granted an outdoor dining permit;
- Encourage the use of public places for outdoor dining as a means of stimulating business growth and development;
- Ensure any outdoor dining activities have minimal disruption to neighbours, pedestrians and other street users;
- Promote vibrancy, culture, vitality, amenity and ambience in the street environment of commercial areas while also protecting the existing local character of an area.

All businesses undertaking outdoor dining activities will still be required to have a valid permit which will be issued by Council, once the outdoor dining application has been processed through the Easy To Do Business online platform. The permit is required even when no fee is payable under moratorium conditions.

To be granted a permit for outdoor dining activities under this policy, a business must self-assess its proposed outdoor dining area against five requirement areas outlined in the attachment (Table 1) and ensure it meets all the prerequisites detailed in the policy. The five permit requirements include Location/Site Suitability; Safety; Amenity; Function; Legal and Compliance.

Once granted a permit, a business must maintain compliance with these requirements and the permit terms.

This policy applies to existing, approved, food-based businesses located within identified outdoor dining locations in the local government area. It does not apply to businesses with specific conditions as part of their DA approvals.

Businesses apply for a permit through the Service NSW Easy To Do Business Concierge Service at mybusiness.service.nsw.gov.au/crsb/od

Council fees will be waived for businesses that obtain a permit under this policy.

The permit must be displayed at the businesses to which the permit refers or be produced on request. It will outline the conditions of the approval and can be revoked or suspended by Council as a result of breaches of those conditions.

The recommended permit period is five years under this policy.

A copy of the NSW Outdoor Dining Policy 2019 is attached.

Strategic Alignment

Council is a Small Business Friendly Council and we are working in conjunction with the Easy To Do Business program in many ways and a continuation of this fee moratorium policy would allow for a more detailed analysis of the economic and community impact of the policy to be assessed during the five year moratorium period.

The draft Economic Development and Tourism Strategy clearly supports the initiatives of the NSW Government in encouraging vibrant place-based activities within our villages and townships as a means to attract and service both residents and visitors.

Recommendations included in the proposal are consistent with:

- HS05.3.1 Regulate food health risk
- WS03.1.1 Implement Economic Development and Tourism Strategy

Impact on Financial Sustainability

a. Effectiveness of the moratorium on fees

One of the key objectives of the moratorium on fees was to enhance the vibrancy of the designated business areas which has a key flow on effect for safety of public spaces and increased economic activity.

Since the highway by-pass, there has been an increased number of outdoor dining venues in Smith Street that have created benefits to the amenity of the town centre and have led to increased activity throughout the streets.

The following is a breakdown of the 23 outdoor dining venues across the various villages in the local government area:

- 6 venues – Kempsey and South Kempsey
- 8 venues – South West Rocks
- 4 venues – Crescent Head
- 2 venues – Frederickton
- 2 venues – Hat Head
- 1 venue – Stuarts Point

Of this total number, five venues have substantially improved their outdoor dining presence and a continuation of the policy would serve to continue this development, and potentially grow the number of venues.

Enhancing opportunities for the day and night-time economy in the Kempsey CBD should continue especially in light of the imminent opening of the new Kempsey cinema, which is expected to attract increased numbers of residents and visitors to the Kempsey CBD.

b. How could fees be re-introduced?

The commitment of the NSW Government to reduce red tape and business costs forms a key tenet of the NSW Outdoor Dining Policy 2019, which is very targeted and thorough in its focus. The ability to self-assess and submit documents through the Service NSW Business Concierge system greatly reduces the staff resources required by Council to re-introduce applications, leases, conduct assessments and inspections. Steps to re-introduce fees would include re-negotiating new leases as the majority of leases with Council have expired.

A simple permit system run by Council would operate as the next step in the approval process conducted by Service NSW.

c. Budget Implications

The cost of the program of assessment and enforcement far outweighs the anticipated fees to be collected, which are estimated to be in the order of \$15,000 per annum based on a square metre or per chair rate as outlined in the 2019/20 Fees and Charges. This figure excludes those venues that have substantial built structures that form part of their DA applications. Of the 23 venues benefiting

from outdoor dining, there are at least six who have their dining located within private property so they would not attract any fees even if the moratorium on fees was lifted.

Stakeholder Engagement

Parties consulted within Council include:

- Development and Compliance conducted the audit of operators using outdoor dining spaces.
- Commercial Property compiled the current leasing and fee status.
- The Economic Development and Tourism Committee considered the recommendations on 26 September 2019 and committee members were in agreement with the proposed moratorium on fees continuing, rather than reintroduction.

CONCLUSION

The continuation of the moratorium on outdoor dining fees would be a strong boost to activating our public spaces, encouraging growth in hospitality businesses and general economic growth within the Shire.

Support for the NSW Outdoor Dining Policy 2019 is consistent with Council's participation in the Small Business Friendly Councils network and is highly beneficial for local businesses in streamlining processes and encouraging new business development.

9.8 DISCLOSURE OF INTEREST RETURNS

Officer	Daniel Thoroughgood, Manager – Governance and Information Services
File No	F19/1961
Attachments	1. OLG Circular 19-21 Release of IPC Guideline 1 Returns of Interests [9.8.1 - 3 pages] 2. Information Access Guideline 1 for local councils on the disclosure of information September 2019 [9.8.2 - 12 pages]

PURPOSE

To table Disclosure of Interest Returns lodged by Councillors and Designated Persons under clause 4.21(b) of Council's Code of Conduct.

RECOMMENDATION

- 1 That the lodgement and tabling of the 2019/2020 Disclosure of Interest Returns be noted.**
- 2 That these Disclosure of Interest Returns, with residential addresses and signatures redacted, be published on Council's website.**

BACKGROUND

Council's Code of Conduct requires that councillors and designated persons lodge a disclosure of interests, in the form prescribed by schedule 2 to the code, within 3 months after 30 June of each year.

Designated persons include the general manager, senior staff, and other members of staff, delegates of Council, or members of committees which have been identified by the council. The positions of Director Corporate and Commercial and Director Operations and Planning are senior staff. At 30 June 2019 no other persons had been designated under clause 4.8(c) or (d).

These returns are required to be tabled at the first meeting of the council after the last day by which the return is required to be lodged. The last day by which the return is required to be lodged for returns as at 30 June 2019 was 30 September 2019.

KEY CONSIDERATIONS

Policy and Legislation

The Requirement to Lodge and Table Returns

The requirement to lodge returns, and table them at a meeting, is established by clauses 4.8, 4.9, 4.20, 4.21 and 4.28 of Council's Code of Conduct, which is published on Council's website. Compliance by councillors, committee members and staff with Council's Code of Conduct is mandatory per s440 *Local Government Act 1993* (the Act).

4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position

identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest

(d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person: (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and (b) must disclose pecuniary interests in accordance with clause 4.10.

4.20 A councillor:

(a) must prepare and submit written returns of interests in accordance with clause 4.21, and

(b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:

(a) becoming a councillor or designated person, and

(b) 30 June of each year, and

(c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.

The Requirement to Publish Returns

Clause 4.27 of the Code of Conduct requires that the council make publicly available the information contained within returns and, also, to abide by any guidelines issued by the Information Commissioner. The Information Commissioner released a revised version of their publication "Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*" on September 2019.

Previously it has not been the practice of this council to publish returns disclosing the interests of councillors and designated persons on the council's website. The new guideline requires that the returns are published on the council's website unless there is an overriding public interest against disclosure; providing examples of residential addresses and signatures, as information to which this might apply. Where there is an overriding public interest against disclosure of some information

contained within the returns only that information should be withheld and the remainder of the return published in a redacted form.

These guidelines are made mandatory both under Council's Code of Conduct and s12(3) and s14(3) of the *Government Information (Public Access) Act 2009*.

Designated Persons

At 30 June 2019 no persons had been designated under clause 4.8(c) or (d) of the Code of Conduct.

This matter was considered by Council's Executive on 25 September and a range of positions were designated based upon their ability to expend Council's funds or bind Council to decisions. These persons need to complete returns by December 2019 and these returns will be tabled at the February meeting of Council.

CONCLUSION

That Council notes the lodgement and tabling of returns as required by the Code of Conduct and resolves to publish these returns, with signatures and residential addresses redacted, on the council's website.

9.9 DEVELOPMENT ACTIVITY AND LEP VARIATIONS - QUARTERLY SNAPSHOT

Officer Graham Snow, Manager Development & Compliance
File No F18/1831
Attachments Nil

PURPOSE

To report to Council quarterly on any approvals that included variations to Council's Kempsey Local Environmental Plan (KLEP) 2013, which involved the use of Clause 4.6, and to provide information on development approvals for the period of July, August and September 2019.

RECOMMENDATION

That the information be noted.

BACKGROUND

In accordance with a Department of Planning and Environment direction, all development applications determined involving the use of State Environmental Planning Policy 1 or clause 4.6 of KLEP 2013 to vary a development standard are required to be reported to Council for information.

During the July to September 2019 quarter there has been one application approved which involved variations to the KLEP 2013. The Department of Planning & Environment have been informed of these variations via quarterly reporting and they are also listed on Council's website.

For Councillors information the application is:

T6-18-416

Application number: T6-18-416

Subject land: Lot 132 DP707345 and Lot 71 DP811904, Gregory Street and Paragon Avenue, South West Rocks

Description: Mixed Use Development Clause: 4.1 of KLEP 2013

Development requirement: 11m building height

Proposed: The proposal is to for a mixed use development comprising of 512m² ground floor retail, 32 shop top residential apartments and 94 internal carparking spaces across 5 storeys. Including lift overrun the overall building height is 16.5m. This represents a variation from the development standard of 50%.

Objections: 11

Planning comment:

The application was reported to the September 2019 Ordinary Council Meeting where Council resolved to support the variation requested and issue the development consent. Details on the variation requested and commentary on the application merit and assessment process were incorporated in the report to Council at that time.

Development Activity Information and Statistics

The Environmental Planning and Assessment Regulations specify that the approval time for a development application is 40 days.

Listed below are development statistics for the report period being July, August and September 2019, financial year to date totals and a comparison from the same period the previous financial year.

Month	No. of DA's determined within 40 days	Total No. of DA's determined	%	Value	~ No. of new dwellings approved
July	29	42	69	\$5.5M	22
August	24	34	70.5	\$6.3M	9
Sept	28	37	75.7	\$13.3M	38
YTD TOTALS 2019-20	81	113	71.6	\$25.1M	69
2018-19 YTD TOTALS COMPARISON	89	110	80.9	\$9.5 M	21

Please note:

- Private certifier determinations are included in the number of determinations

During this quarter one application was refused which related to an industrial building in South West Rocks. There were seven withdrawn development applications for this quarter.

KEY CONSIDERATIONS

Policy and Legislation

In accordance with a Department of Planning & Environment direction, all applications determined involving the use of SEPP 1 or Clause 4.6 to vary a development standard are required to be reported to Council for information and a return submitted to the Department quarterly.

Strategic Alignment

N/A

Impact on Financial Sustainability

N/A

Stakeholder Engagement

Public notification is conducted in accordance with the controlling legislation and Council policy.

Other Matters

N/A

CONCLUSION

That Council note the information on development standard variations and development activity.

9.10 STATEMENT OF CASH AND INVESTMENTS

Officer	Wayne Douglass, Chief Financial Officer
File No	N/A
Attachments	1. Investment Performance Chart September 2019 [9.10.1 - 1 page] 2. Investments at September 2019 [9.10.2 - 1 page] 3. Bank Reconciliation September 2019 [9.10.3 - 1 page]

PURPOSE

In accordance with the Local Government (General) Regulation 2005 (the Regulation), a report on investments is to be provided monthly to Council.

RECOMMENDATION

That the report be noted.

ISSUES

Council's investments are in accordance with the Local Government Act (1993) and Council's investment policy.

BACKGROUND

Clause 212 of the regulation states:

Local Government (General) Regulation 2005

Part 9 Division 5 Clause 212

212 Reports on council investments

(1) The responsible accounting officer of a council:

(a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:

(i) if only one ordinary meeting of the council is held in a month, at that meeting, or

(ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and

(b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.

(2) The report must be made up to the last day of the month immediately preceding the meeting.

Note.

Section 625 of the Act specifies the way in which a council may invest its surplus funds.

KEY CONSIDERATIONS

Council's investments are in accordance with the Local Government Act (1993) and Council's investment policy.

Council continues to hold high levels of cash and investments. Council is currently holding \$45.1M in on-call cash and investments and \$6.8M in the bank, totalling \$51.9M as at 30 September 2019. This is \$2.8M lower than last month.

The investment income budget for the year is \$1.3M which is approximately \$0.1M higher than last year's budget. The budget assumed continued higher levels of cash being held and steady interest rates.

Investment income year to date is \$239,410. This is lower than budgeted and may be attributable to the effects of lower interest rates over recent months and the resultant impact on investment income across the portfolio. The full year investment income forecast will be reviewed as part of the upcoming Quarterly Budget Review process.

CONCLUSION

Council is holding \$51.9M in cash and investments. Investment income generated is lower than budget for the month.

10 NOTICES OF MOTION/QUESTIONS WITH NOTICE

10.1 QUESTIONS ON NOTICE

COUNCILLOR M J BAXTER	FILE: F19/1945	LJH
QFNM1 Is there anything that Council can do to help progress the development of the old ambulance station into a youth hub for Kempsey?		
RESPONSE Council staff have been working closely with the NSW State Government and Local Member Melinda Pavey in her capacity as Minister for Property and Housing. We have provided advice on planning and design concepts for the facility. The next stages will seek greater community and stakeholder involvement in co-designing service delivery models for the youth hub.		

COUNCILLOR A P PATTERSON	FILE: F19/1945	GMS
QFNM1 30 Broughton Street, re: storage of vehicles onsite, has the owner of the property permission to do so?		
RESPONSE Since 2015, Council's Rangers and Compliance Officer have responded to numerous issues regarding parking of vehicles within the property boundary of 30 Broughton Street, on the road verge and on the public road in front of the property. The vehicles have both been registered and unregistered but when they are located on site, with no commercial activity associated with it, there is no permission needed. The location will continue to be monitored in future.		

COUNCILLOR D F SAUL	FILE: F19/1945	DES
QFNM1 When can we expect some road rehabilitation for Edgar Street in Frederickton?		
RESPONSE In Council's Ten Year Works Program there are no road rehabilitation works proposed for Edgar Street, Frederickton, with the exception of any minor rehabilitation work that may occur in conjunction with kerb and gutter works.		

COUNCILLOR D F SAUL	FILE: F19/1945	DES
QFNM2 For Edgar Street in Frederickton, do we have a start date for the kerb and guttering that was proposed in the 10-year plan?		
RESPONSE This project is planned to commence in February/March 2020. Further work is also planned in 2020/21.		

COUNCILLOR D F SAUL	FILE: F19/1945	DES
QFNM3 Will Council undertake laying of baits for the rabbit plague in Cyrus Saul again?		
RESPONSE Councils feral animal contractor has visited the site on a number of occasions to determine the number of rabbits at this location. Rabbit numbers are not excessive, however the area will continue		

to be monitored and baiting will occur when sufficient numbers of rabbits are present.

COUNCILLOR A T SHIELDS	FILE: F19/1945	EF
QFNM1 Can we have an update on the parking fines in Sturt Street, South West Rocks?		
RESPONSE Council has held discussions with the NSW Police about the matter, reinforcing on behalf of the Sturt Street residents their distress over the issue of the fines to date. The discussion has essentially confirmed the district office's awareness of the issue of the fines and the road carriageway constraints. Options are now being investigated to improve the parking and through traffic problems in Sturt Street. Local residents and key stakeholders will be invited to comment on possible options. The outcomes of the investigations will ultimately be reported to the Local Traffic Committee for consideration. It is noted that no funding has been identified in forward programs for any works that may be identified as a result of the investigations.		

COUNCILLOR B J MORRIS	FILE: F19/1945	DST
QFNM1 The recently implemented requirement for an amendment to a motion, to be considered in order, being that an amendment is acceptable only if it makes a minor change without adding any additional matters is inconsistent with Councils Procedure 5.1.4 Code of Meeting Practice. Clause 10.6 states that any motion or amendment that is unlawful must be ruled out of order and Clause 10.11 states that an amendment to a motion must relate to the matter being dealt with in the original motion. Given this apparent inconsistency, will Council be amending Procedure 5.1.4 to articulate the requirements as verbally outlined at Councils Meeting of 20 August 2019?		
RESPONSE There is no inconsistency between Clauses 10.6 and 10.11. Clause 10.11 provides that particular types of amendments are unlawful, invoking clause 10.6 to provide that the chair must rule it out of order.		

COUNCILLOR L J HAUVILLE	FILE: F19/1945	GMB
QON1 What progress has been made in funding and installing flight monitoring CCTV equipment at Kempsey Shire Airport at Aldavilla?		
RESPONSE The new flight monitoring system with CCTV supplied by ABaSS was installed at Kempsey Airport on 18 September. From 18 September to 30 September, ABaSS was monitoring airport usage only to ensure that the CTTV and monitoring systems were working correctly. ABaSS have provided example pictures of the CCTV footage and they are of a high quality. The ABaSS system has been operational since 1 October.		

11 CONFIDENTIAL MATTERS

MOTION FOR CONFIDENTIAL SESSION

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

Set out below is section 10A(2) of the Local Government Act 1993 in relation to matters which can be dealt with in the closed part of a meeting.

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors)
- (b) the personal hardship of any resident or ratepayer
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would, if disclosed;
 - (i) prejudice the commercial position of the person who supplied it,or
 - (ii) confer a commercial advantage on a competitor of the Council,or
 - (iii) reveal a trade secret
- (e) information that would, if disclosed, prejudice the maintenance of law
- (f) matters affecting the security of the Council, councillors, council staff or Council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

Councillors are reminded of their statutory obligations in relation to the non-disclosure to any outside person of matters included in this section.

That Council form itself into the Confidential Session, and at this stage, the meeting be closed to the public to permit discussion of the confidential business items listed for the reasons as stated in the Agenda.

11.1 LEGAL MATTERS

Officer Daniel Thoroughgood, Manager Governance & Information Services
File No F19/1960

Section 10A(2)(g) – Legal Proceedings

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (Local Government Act 1993, section 10A(2)(g))

On balance, the public interest in preserving the confidentiality of the advice, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

11.2 AUDIT AND RISK COMMITTEE MEETING MINUTES - 28 AUGUST 2019

Officer Matthew Bentley, Internal Auditor
File No F19/2510

Section 10A(2)(e) – Maintenance of Law

This report is submitted on a confidential basis as it involves information that would, if disclosed, prejudice the maintenance of law. (Local Government Act 1993, section 10A(2)(e))

On balance, the public interest in preserving the confidentiality of the information which relates to matters of law, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

11.3 RESCISSION MOTION - TENDER FOR ELECTION SERVICES

Officer Liz Campbell, Mayor
File No F12/1151-01

Section 10A(2)(c) – Commercial Advantage in Business Dealing

This report is submitted on a confidential basis as it involves information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business. (Local Government Act 1993, section 10A(2)(c))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

Section 10A(2)(d)(i) – Commercial Position

This report is submitted on a confidential basis as it involves commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. (Local Government Act 1993, section 10A(2)(d)(i))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

12 CONCLUSION OF THE MEETING