

# Responses to Questions on Notice

Received at the 25 March 2021  
Ordinary Meeting of Council

A handwritten signature in black ink, appearing to read "Mark Arnold".

**Mark Arnold**  
**General Manager**

# BYRON SHIRE COUNCIL

## QUESTIONS WITH NOTICE

1	Brunswick Heads STP .....	3
2	Byron Shire Council ats Oniva Pty Ltd - 94 Kingsford Drv, Brunswick Heads, Mixed Use Development comprising a General Store/Cafe, Cafe, Co-working Space, 8 Shop Top Dwellings and a Boarding House containing 39 Boarding Rooms.....	4

**QUESTIONS WITH NOTICE**

**Question with Notice No. 1 Brunswick Heads STP**

**File No:** I2021/523

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- 5 At Council's Ordinary Meeting held on 25 March 2021, Matthew O'Reilly asked the following question which was taken on notice:

*Does Council have any plans or proposals for the use of the old Brunswick Heads STP and what are they?*

**Response Director Infrastructure Services:**

- 10 On 28 January 2021 Council received an Interim site audit advice from the EPA accredited auditor. Further work is required to finalise the reporting on the remediation and ongoing contamination management of the site. Until this work is completed the final use of the site cannot be determined.

- 15 Upon completion of the site audit a report will be presented to Council on options for the future use of the Brunswick Heads STP site. These options will be based on the two previous consultant's reports from 2008 and 2016. In 2008 Council engaged GHD to review preliminary land use options for the STP. In 2016 Council engaged Mike Svikis Planning to undertake a review of the previous GHD report. The report to Council will be based upon the Svikis report, legislative changes to date, and the outcomes of the site  
20 audit.



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- An improved design integration to the public reserve resulting from greater activation of the ground floor retail use;
- A reduction in the number of boarding rooms from 39 to 38; and
- The provision of a share electric vehicle car space.

On 29 March 2021 the Court granted the parties an adjournment until 26 April 2021, to enable the development application to be considered at the Council meeting on 22 April 2021.

The Applicant consented to the notification of amended plans for a period of 7 days. This was factored in by the Court when granting the adjournment.

The amended plans were publicly notified from 7 April – 14 April, with a notification letter to previous submitters sent out also.

***The responses given to the questions below have had regard to the above resolution, and the report on the 22 April Ordinary meeting agenda.***

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***Question No. 2*** Annie Radermacher asked the following question: *Why has Council not asked for or spoken regarding the failure of our existing sewerage and stormwater systems when considering the development at 94 Kingsford Drive?*

**Response Director Sustainable Environment and Economy:**

Clause 6.6 of the Local Environmental Plan 2014 requires Council to be satisfied that services essential for the development including the supply of water and electricity, the disposal of sewage and stormwater and the provision of suitable vehicular access are available or that adequate arrangements have been made to make them available when required.

The site is able to be adequately serviced in terms of water supply, electricity and sewerage infrastructure. The revised scheme satisfactorily demonstrates that stormwater management is consistent with Council's requirements. Adequate vehicular access is provided for cars and service vehicles.

The existing sewer infrastructure has been assessed as able to cater for the development proposed. Sewer headworks charges as per Council's Fees and Charges would apply to the development if approved.

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***Question No. 3*** Giles Perryman asked the following question: *Given the Development Application regarding 94 Kingsford Drive appears to have failed to include a Waste Management Plan in the submitted documents (there are two documents listed as 'Waste Management Plan', but both are simply the same site plan showing the bin locations), does this not make the submission invalid and un-assessable by the Shire until the Waste Management Plan (required by the Shire in Chapter B8, Waste Minimisation and Management) has been provided by the applicant?*

**Response Director Sustainable Environment and Economy:**

A site minimisation and management plan has been submitted in accordance with the requirements of Chapter B8 of the Development Control Plan 2014.

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**Question No. 4** *Lisa Sandstrom asked the following question: Currently the footpath and 50/50 verge put forward by the The Kollektive's DA for the overflow of up to 80 cars from this development is the most utilised footpath in Bayside. It accesses our Preschool our Park and the tracks to our swimming holes. Does council acknowledge that by turning this community asset into a parking lot that the character of this community footpath to all our current meeting places is completely removed, It completely changes the character and safety of our park and by doing so brings into question the site suitability for this proposed development. What is councils response to character and site suitability legislation not being met by this DA?*

### **Response Director Sustainable Environment and Economy:**

- The documentation submitted by McLaren Traffic Engineering and Road Safety Consultants provides sufficient information to demonstrate that the development will not adversely impact on flow efficiency or road safety considerations. Modelling undertaken indicates that the Level Of Service (LOS) of the intersection of Bayside Way and Tweed Street (Old Pacific Highway) will remain unchanged.
  - Submissions in relation to the development raise concern regarding the impact of the proposal on the amenity of the local area particularly in relation to overflow car parking. Seven parking spaces are provided in excess to the requirements of the DCP and SEPP. An electric share car space is also proposed.
  - The site has an unusual configuration with 20 metres frontage to Torakina Road and 6.165 metres frontage to Kingsford Drive. The primary view of the site will be from the public reserve adjoining the site. A perspective of the development as viewed from the public reserve illustrates the retail tenancies address the reserve and provide a built form of residential scale. The development complies with the building height and floor space ratio controls and is compatible with the existing and desired future character of the area.
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**Question No. 5** *Andrew Graeme-Cook asked the following question: Are you aware the current PAMP that has been with Council for years has still not been acted upon and there is still a treacherous transit from Bayside Way to Tweed Street?*

### **Response Director Sustainable Environment and Economy:**

The Applicant is not obliged to provide any infrastructure outside of the boundary of the development site, and this cannot be required by the Council. Contributions are applicable and being levied against the development as per the adopted plan.

Any missing link in the cycleway between Bayside Way and Tweed Street will be completed by Council.

Note the applicant will be required to pay \$15,174 in developer contributions to bikeways/ footpaths as a condition of consent.

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**Question No. 6** *Gary William Brazenor asked the following question: What is Council's thoughts on a housing solution for families in Brunswick Heads?*

### **Response Director Sustainable Environment and Economy:**

This is a matter for the elected Council to respond to.

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However, there are multiple reports and resolutions since 2016 which provide the adopted position of Council on housing and housing solutions in the Byron Shire.

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**Question No. 7** David Carnovale asked the following question: *If the General Manager is not authorised to enter into consent orders or Conciliation Agreement, will the entity entrusted with this decision require a commitment by Council to upgrade the currently overloaded and inadequate sewage & stormwater infrastructure of Bayside?*

**Response Director Sustainable Environment and Economy:**

See question 2 for response.

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**Question No. 8** Judith Brazenor asked the following question: *Has Council reached out to State MPs to place a moratorium on boarding houses whilst the review is underway, as requested in our petition from over one thousand residents?*

**Response Director Sustainable Environment and Economy:**

A response was published 10 December 2020 to the petition lodged seeking a moratorium on boarding houses – link below.

<https://www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-notice>

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**Question No. 9** Evelyn Morgan asked the following question: *Do Council or the developer intend to put in the public transport links, footpaths and a cycle way to Brunswick Village and other infrastructure that will be required to service this development?*

**Response Director Sustainable Environment and Economy:**

See question 5 for response.

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**Question No. 10** Tracey Leanne Graham asked the following question: *The traffic study was done during COVID 19 lockdown. Will the traffic study be re-done prior to any decision being made on this DA?*

**Response Director Sustainable Environment and Economy:**

A contention was included in the Statement of Facts and Contentions which argued that insufficient information had been provided to enable a proper assessment of the impact of the proposed development on traffic in the locality. Without prejudice additional information was prepared by McLarens Traffic Engineering on behalf of the Applicant in response, which was considered to resolve the issue.

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**Question No. 11** Michele Grant asked the following question: *Why has Council's "list of Contentions" for Bayside Boarding House not included character legislation, site suitability and LEP zone objections?*

**Response Legal Counsel:**

Council's contentions were formulated by the experts it engaged in relevant fields. Council staff and its external lawyers can not influence an expert to include a contention which the expert does not consider ought be included.

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Essentially, expert evidence is opinion evidence or, the opinion of the expert. The primary function of the expert witness is to assist the court in reaching its decision by providing independent expert/technical analysis and opinion on an issue(s), based on the information provided by those instructing the expert.

An expert witness must comply with the code of conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005*

The expert witness code of conduct imposes:

- a general duty to the Court
- a duty to comply with orders
- a duty to work co-operatively with other expert witnesses
- requirements regarding the content of the expert's report.

### *General duty to the Court*

An expert witness has an overriding duty to assist the Court impartially on matters relevant to the expert witness's area of expertise. An expert witness' paramount duty is to the Court and not to any party in the proceedings (including the person retaining the expert witness. An expert witness is not an advocate for a party.

### *Duty to comply with Court directions*

An expert witness must abide by any direction of the Court.

The expert, when complying with any direction of the Court to confer with another expert witness or to prepare a parties' expert's report with another expert witness in relation to any issue:

- (a) must exercise his or her independent, professional judgment in relation to that issue
- (b) must endeavour to reach agreement with the other expert witness on that issue
- (c) must not act on any instruction or request to withhold or avoid agreement with the other expert witness.

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**Question No 12:** *Leonie Maree Davis asked the following question: Does Council intend to represent its constituents by taking steps toward bringing this development more in line with the Council's own character narrative for Brunswick Heads?*

The site is within Pocket B as identified in the character narrative of the Brunswick Heads DCP 2014. The provisions for the vacant undeveloped land in Bayside Brunswick in summary state that the land is suitable for one and two storey medium density housing, well designed and compact forms with parking onsite. That future housing options need to consider decreasing household sizes and increasing lone person housing. The type and form of housing proposed is consistent with this character narrative.

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**Question No 13:** *Todd Buckland asked the following question: The site has been zoned commercial for well over 20 years to service the whole Bayside community as it grows. What is Council's alternative solution to cater for the need for more retail space in the area?*

The proposal includes a commercial/retail area. The locality is also serviced by the Village Green Service Station and Green Grocer near the entrance to Bayside Way on Tweed Street. It is noted there is undeveloped B4 and B2 Zoned Land in Brunswick Heads which can provide more retail and commercial space for the community as it grows.