



# Byron Shire Council



## Minutes

**Extraordinary Meeting**  
**Thursday, 19 December 2013**

# BYRON SHIRE COUNCIL

Extraordinary Meeting Minutes  
19 December 2013

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*The following items are listed in the order in which they were dealt with.*

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# BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING MINUTES

19 DECEMBER 2013 (1 of 9)

<b>MINUTES OF THE BYRON SHIRE COUNCIL EXTRAORDINARY MEETING HELD ON THURSDAY, 19 DECEMBER 2013 COMMENCING AT 9.05AM AND CONCLUDING AT 3.20PM</b>
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#E2013/82741

PRESENT: Cr S Richardson (Mayor), Cr B Cameron, Cr C Cubis (arrived at 9.10am), Cr D Dey, Cr A Hunter, Cr S Ibrahim, Cr P Spooner, Cr R Wanchap and Cr D Woods

Staff: Ken Gainger (General Manager)  
Mark Arnold (Director Corporate and Community Services)  
Phil Holloway (Director Infrastructure Services)  
Ray Darney (Executive Manager Environment and Planning)  
Shannon McKelvey (Executive Manager Organisation Development)  
Joylene McNamara/Mila Jones (Minute Taker)

*The Mayor opened the meeting and acknowledged that the meeting was being held on Bundjalung Country.*

APOLOGIES: There were no apologies.

## REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

## DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

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### **CORPORATE AND COMMUNITY SERVICES - DIRECTOR'S REPORT**

**Report No. 3.1. Sub-lease for temporary tenure of part Mullumbimby Civic Hall**  
**File No: #E2013/82097**

#### **13-706 Resolved:**

1. That Council not enter into a lease or licence agreement with Mullumbimby District Neighbourhood Centre for tenure over the Multipurpose Room of the Mullumbimby Civic Hall.
2. That Council request the Mullumbimby Civic Hall Board of Management to negotiate with Southern Cross Distance Education directly to provide them with casual hire/booking access to the Multipurpose Room until such time as the Annex Building has been reconstructed. (Richardson/Ibrahim)

*The motion was put to the vote and declared carried.*

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### **ENVIRONMENT AND PLANNING - EXECUTIVE MANAGER'S REPORTS**

**Report No. 3.2. PLANNING - Report of Minutes from the Koala Plan of Management Meeting held 9 December 2013**  
**File No: #E2013/82322**

#### **13-707 Resolved:**

1. That the outcome of the music festival stakeholder workshop be noted.

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2. That the minutes and recommendation of the KPOM Project Reference Group be noted.
3. That the draft Byron Coast Comprehensive Koala Plan of Management as reported to Council on 10 October 2013 be placed on public exhibition in February 2014 following incorporation of the following amendments:
  - a) to Part 6.5.3 as outlined in this report (on Pages 8 - 9); and
  - b) to Part 6.4.2:

#### 6.4.2 Retention of Preferred Koala Food Trees (PKFT)

- A. There shall be no removal of any PKFT >250mm dbh as a consequence of new subdivisions.
- B. For other development applications:
  - (i) The principles of avoidance, minimisation and mitigation of impacts on preferred koala feed trees and potential koala habitat must be applied.
  - (ii) The applicant must demonstrate by way of stadia survey that removal and/ or impact on preferred koala feed trees has been avoided to the maximum extent possible through development location, design, construction and management of development activities.
  - (iii) Approval for clearing of preferred koala feed trees will only be granted if Council is satisfied:
    - a) all feasible ways of avoiding the removal of the preferred koala feed trees have been examined and demonstrated to be unachievable. Appropriate documentation to be submitted with the development application.
    - b) the removal of preferred koala habitat is to be undertaken to the minimal possible extent.
    - c) priority has been given to the retention of preferred koala feed trees >250mm dbh.
  - (iv) Where the applicant has demonstrated to Councils satisfaction that removal of PKFT is unavoidable then compensation for loss is required as per Part 7 of this Plan.
  - (v) The applicant must demonstrate to the satisfaction of Council that the protection of all preferred koala feed trees to be retained is consistent with the requirements of AS 4970-2009 (Protection of Trees on Development Sites).
  - (vi) Preferred Koala Feed Trees retained that occur within residential allotments arising from the subdivision of land must be protected by an effective restriction on as to the user on title of the land where appropriate. (Dey/Richardson)

*The motion was put to the vote and declared carried.*

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**Report No. 3.3. PLANNING - Belongil Interim Beach Access Stabilisation Works**  
**File No: #E2013/75722**

**13-708 Resolved** that the meeting move into committee.

(Wanchap/Ibrahim)

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*The motion was put to the vote and declared carried.*

*The General Manager arrived at Chambers at 9.40am.*

Moved: That Council move out of committee. (Cubis/Woods)

*The motion was put to the vote and declared lost.*

*Crs Dey, Richardson, Cameron, Wanchap and Spooner voted against the motion.*

**13-709 Resolved** that Council move out of committee. (Cubis/Woods)

*The motion was put to the vote and declared carried.*

*Crs Ibrahim, Dey, Cubis, Woods, Richardson, Cameron, Wanchap, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

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## PROCEDURAL MOTIONS

**13-710 Resolved** that the matter rest on the table. (Richardson/Cameron)

*The motion was put to the vote and declared carried.*

*The meeting adjourned at 11.18am to open the Byron Shire Reserve Trust Committee Meeting and reconvened at 11.23am. Resolution No **13-711** was used during that meeting.*

**13-712 Resolved** that Report 3.3 be lifted off the table. (Woods/Richardson)

*The motion was put to the vote and declared carried.*

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*Standing orders were suspended to allow for an explanation of The WRL Final Draft Revision 1 Detailed Design Belongil Interim Beach Access Stabilisation Works (Annexure 1(a) #E2013/79294) by James Caley.*

Moved: That in relation to the proposed Belongil Interim Beach Stabilisation Works, Council resolves:

1. That the Review of Environmental Factors satisfies the Provisions of Section 111 of the Environmental Planning and Assessment Act 1979 and that the proposed works are considered unlikely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats.
2. That Council prior to adopting the Review of Environmental Factors for Interim Beach Access Stabilisation Works at Belongil, Byron Bay invite the NSW Coastal Panel (and other relevant agencies) to provide a presentation on the matters raised in correspondence dated 28 November 2013 with a view to clarifying how these proposed works will inform and compliment the Coastal Zone Management Plan. (Spooners/Richardson)

## AMENDMENT

**13-713 Resolved** that in relation to the proposed Belongil Interim Beach Stabilisation Works, Council resolves:

# BYRON SHIRE COUNCIL

## EXTRAORDINARY MEETING MINUTES

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1. That the Review of Environmental Factors satisfies the Provisions of Section 111 of the Environmental Planning and Assessment Act 1979 and that the proposed works are considered unlikely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats.
2. That Council endorses the Review of Environmental Factors for the Interim Beach Access Stabilisation Works at Belongil, Byron Bay (Annexure 1(b)) and adopts the design for the Belongil Interim Beach Access Stabilisation Works (Annexure 1(a) #E2013/79294) subject to:
  - a) the inclusion of a modular stair structure and/or stairs, that can be removed in order to restrict access when beach conditions are unsafe; and
  - b) the removal of the reference to the sandbagging of kerb inlet in Table 5.6 of the REF.
3. That a project plan be received at the next council meeting in February 2014 outlining the steps forward.
4. That Council invite the NSW Coastal Panel (and other relevant agencies) to provide a presentation in February 2014 on the matters raised in correspondence dated 28 November 2013 with a view to clarifying how these proposed works will inform and compliment the Coastal Zone. (Ibrahim/Woods)

*The amendment was put to the vote and declared carried.*

*Crs Ibrahim, Cubis, Woods, Wanchap and Hunter voted in favour of the amendment.*

*Crs Dey, Richardson, Cameron and Spooner voted against the amendment.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.*

*Crs Ibrahim, Cubis, Woods, Wanchap and Hunter voted in favour of the motion.*

*Crs Dey, Richardson, Cameron and Spooner voted against the motion.*

## FORESHADOWED MOTION

### **13-714 Resolved:**

1. That legal advice be obtained in relation to the Belongil Interim Beach Stabilisation Works and issues raised in the REF including:
  - a) the precedent nature of the works in relation to other areas of the Byron Shire
  - b) the procedural requirements and responsibility associated with the acceptance of any contribution of funds from private landowners in relation to the works
  - c) the need for council to consider any conditions or provisions associated with the implementation of the works, in particular the procedures and responsibility for monitoring and maintaining the works
  - d) whether approval is required from the Native Title claimants for the works proposed
  - e) Any other matter deemed appropriate when considering previous and current litigation concerning coastal matters
2. That Councillors be provided with copies of all legal advice already obtained on the draft REF. (Richardson/Spooner)

*The motion was put to the vote and declared carried.*

*Crs Ibrahim, Dey, Woods, Richardson, Cameron, Wanchap, Spooner and Hunter voted in favour of the motion.*

*Cr Cubis voted against the motion.*

*The meeting adjourned at 12.45pm for a lunch break and reconvened at 1.14pm. Cr Cubis did not return to the meeting.*

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**INFRASTRUCTURE SERVICES - DIRECTOR'S REPORTS**

**Report No. 3.4. Roundhouse Subdivision - Sale of lots**

**File No:** #E2013/79984

- 13-715 Resolved** that Council delegate to the General Manager, authority to sell all eleven lots of the Roundhouse subdivision and to attach the Council seal to all documents associated with the subdivision and sale where necessary. (Richardson/Hunter)

*The motion was put to the vote and declared carried.*

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**Report No. 3.5. Rous Water Future Water Strategy**

**File No:** #E2013/80282

- 13-716 Resolved** that Council hold a workshop with Rous Water presenting the draft future water strategy document and this meeting is to be organised for early February 2014 and notes the information provided in this report regarding the status and progression of the Future Water Strategy. (Woods/Hunter)

*The motion was put to the vote and declared carried.  
Cr Dey voted against the motion.*

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**Report No. 3.6. Upper Coopers Creek - Temporary Road**

**File No:** #E2013/77579

**13-717 Resolved:**

1. That Council defer further planning for the construction of the proposed temporary road around the land slip on Upper Coopers Creek Road via Tickle Road and Englishes Road.
2. That staff advise affected residents, residents beyond the current slip, the Member for Lismore Thomas George MP, RMS and the Department of Emergency Services of the decision to defer. (Richardson/Woods)

*The motion was put to the vote and declared carried.*

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**INFRASTRUCTURE SERVICES AND ENVIRONMENT AND PLANNING – DIRECTORS' REPORT**

**Report No. 3.7. Possible Land Purchase for Community Benefit**

**File No:** #E2013/78737

- 13-718 Resolved** that this matter rest on the table. (Dey/Woods)

*The motion was put to the vote and declared carried.*

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PROCEDURAL MOTION

13-719 Resolved:

1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following reports, namely:
  - 4.1 Tender Assessment Contract Management Land Slips 2013-0052
  - 4.2 Tender Assessment Federal Drive Landslip Repair Works 2013-0046
  - 4.3 Tender Assessment Wilsons Creek Slip Micropiled Anchored Wall 2013-0036
  - 4.4 Tender Assessment - Upper Coopers Creek – Construction of Landslip Repair Works 2013-0038
2. That the reasons for closing the meeting to the public to consider these items be that:
  - a) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
  - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor, or reveal a trade secret.
3. That on balance it is considered that receipt and discussion of the matters in open Council would be contrary to the public interest, as:
  - a) Disclosure of the confidential information could adversely affect Council's ability to contract with preferred tenderers or could affect Council's ability to attract competitive tenders in the event that fresh tenders are invited;
  - b) Tender respondents have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by tender respondents could result in the withholding of such information by those respondents and a reduction in the provision of information relevant to Council's decision.
4. That in accordance with Sections 10A(4) of the *Local Government Act 1993*, the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed. (Woods/Hunter)

*The motion was put to the vote and declared carried.*

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CONFIDENTIAL SESSION

INFRASTRUCTURE SERVICES - CONFIDENTIAL REPORTS

Report No. 4.1.      **CONFIDENTIAL Tender Assessment Contract Management Land Slips 2013-0052**  
File No:              #E2013/79040

13-720 Resolved:

1. That Council award the Tender - Contract Management Services - Land Slips to GHD Pty Ltd in accordance with the rates submitted in their tender and the tender documents.



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## EXTRAORDINARY MEETING MINUTES

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2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Woods/Ibrahim)

*The motion was put to the vote and declared carried.*

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**Report No. 4.2.           CONFIDENTIAL Tender Assessment Federal Drive Landslip Repair Works 2013-0046**

**File No:**                   #E2013/78294

**13-721 Resolved:**

1. That Council award Tender 2013- 0046 Federal Drive – Construction of Landslip Repair Works, to Sporting Services (Const) Pty Ltd T/As Pan Civil for \$209,600.00,excluding GST.
2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Woods/Hunter)

*The motion was put to the vote and declared carried.*

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**Report No. 4.3.           CONFIDENTIAL Tender Assessment Wilsons Creek Slip Micropiled Anchored Wall 2013-0036**

**File No:**                   #E2013/78278

**13-722 Resolved:**

1. That Council allocate \$65,000 from the Infrastructure Services Reserve to the Wilsons Creek Slip Micropiled Anchored Wall.
2. That Council award Tender 2013-0036 - Wilsons Creek Slip Micropiled Anchored Wall to Ark Construction Group for \$2,601,085, including GST.
3. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Woods/Richardson)

*The motion was put to the vote and declared carried.*

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**Report No. 4.4.           CONFIDENTIAL Tender Assessment - Upper Coopers Creek – Construction of Landslip Repair Works 2013-0038**

**File No:**                   #E2013/78304

**13-723 Resolved:**

1. That Council award Tender 2013-0038 – ‘Upper Coopers Creek - Construction of Landslip Repair Works’ to Mainland Civil Pty Ltd (Qld) for \$2,613,252.82, excluding GST.

# BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING MINUTES

19 DECEMBER 2013 (8 of 9)

2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Woods/Hunter)

*The motion was put to the vote and declared carried.*

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## PROCEDURAL MOTIONS

- 13-724 Resolved** that the meeting move out of confidential session. (Woods/Richardson)

*The motion was put to the vote and declared carried.*

- 13-725 Resolved** that Report 3.7 be lifted off the table. (Woods/Richardson)

*The motion was put to the vote and declared carried.*

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## INFRASTRUCTURE SERVICES AND ENVIRONMENT AND PLANNING – DIRECTORS' REPORT

**Report No. 3.7. Possible Land Purchase for Community Benefit**

*continued*

**File No:** #E2013/78737

*The original motion was withdrawn.*

- 13-726 Resolved** that Cr Dey be granted a two minute extension to his speech. (Richardson/Cameron)

*The motion was put to the vote and declared carried.*

**13-727 Resolved:**

1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely "Possible Land Purchase for Community Benefit.
2. That the reasons for closing the meeting to the public to consider this item be that, the report contains information that could if disclosed confer a commercial advantage on a person with whom the council is conducting or proposing to conduct business.
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the information could compromise the commercial position of the Council in negotiations relating to the potential purchase of land. (Woods/Dey)

*The motion was put to the vote and declared carried.*

- 13-728 Resolved** that Council resolve in accordance with option A from confidential document #E2013/83711. (Woods/Spooner)

*The motion was put to the vote and declared carried.*

- 13-729 Resolved** that Council move out of confidential session. (Dey/Woods)

*The motion was put to the vote and declared carried.*

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**PROCEDURAL MOTION**

1. Urgency Motion - Local Infrastructure Renewal Scheme

**13-730 Resolved** that the matter of the Local Infrastructure Renewal Scheme be discussed as a matter of urgency, the reason for the urgency being that the deadline for application is 31 December 2013. (Ibrahim/Hunter)

*The motion was put to the vote and declared carried.*

*The Mayor ruled the matter of application to the Local Infrastructure Renewal Scheme to be of great urgency.*

Moved: That Council make an application to the Local Infrastructure Renewal Scheme as a contingency plan for the funding of the Byron Bypass. (Ibrahim/Hunter)

*The motion was put to the vote and declared lost.*

*Crs Dey, Richardson, Cameron, Wanchap and Spooner voted against the motion.*

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*There being no further business the meeting concluded at 3.20pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting as confirmed at Council's Ordinary Meeting on 6 February 2014.

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Mayor Simon Richardson