



# Byron Shire Council



## Minutes

Ordinary Meeting

Thursday, 25 May 2017

# BYRON SHIRE COUNCIL

Ordinary Meeting Minutes  
25 May 2017

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# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

### MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 25 MAY 2017 COMMENCING AT 9.04AM AND CONCLUDING AT 4.55PM

I2017/634

**PRESENT:** Cr S Richardson (Mayor), Cr B Cameron, Cr C Coorey, Cr J Hackett, Cr A Hunter, Cr M Lyon, Cr J Martin, Cr S Ndiaye and Cr P Spooner

**Staff:** Ken Gainger (General Manager)  
Mark Arnold (Director Corporate and Community Services)  
Phil Holloway (Director Infrastructure Services)  
Shannon Burt (Director Sustainable Environment and Economy)  
Chris Larkin (Manager Sustainable Development) (Items 13.12 and 16.1)  
Ralph James (Coordinator Legal Services)  
David Royston-Jennings (Minute Taker)

*The Mayor opened the meeting and acknowledged that the meeting is being held on Arakwal Country and that we pay our respects to the elders past and present and extend our respect to the Bundjalung clans whose lands and waters are part of the Shire.*

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## PUBLIC ACCESS

Prior to dealing with the circulated reports and associated information, a Public Access Session was held and Council was addressed on the following:

### 9.1 Notice of Rescission Motion – Brunswick Heads Caravan Park (Resolution 17-120)

*Patricia Warren, representing the foreshore Protection Group, and Leigh Rees, representing the Brunswick Heads Progress Association, addressed Council against the recommendation.*

### 9.4 Lowering Flood Levels in North Byron Floodplain

*Mark Russell addressed Council in favour of the recommendation.  
Kathy Norley, representing the South Golden Beach Community Association, addressed Council against the recommendation.*

### 9.5 Secondary Dwelling Conditions

*David Wallace, representing Victims of Holiday Letting, addressed Council in favour of the recommendation.  
Fast Bucks addressed Council against the recommendation.*

### 9.6 Lighting for Mullum Skate Park

*Joseph Moriarty and Alli Spinner, representing Local Kids, addressed Council in Favour of the recommendation.*

### 13.3 Fishheads Café/Restaurant and Byron Bay Swimming Pool Complex

*Ralph Mamone, representing Fishheads @ Bangalow Pty Ltd, addressed Council against the recommendation.*

### 13.12 Planning 10.2016.575.1 Deferred – Additional Information with Regard to Resolution 17-079

*Brian Restall addressed Council in favour of the recommendation.*

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*Lani Jensen and Paul Tansley addressed Council against the recommendation.*

### PROCEDURAL MOTION

**17-154 Resolved** that Public Access be extended to 10.30am. (Richardson/Cameron)

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

### **Submission No. 1 Public Reserves**

Jo-Ann Allchin made a submission to Council regarding public reserves.

### **Submission No. 2 Scout Hall Lease**

Bryony Pearson made a submission to Council regarding the Byron Bay Scout Group.

### **Submission No. 3 Website Information**

Tom Tabart made a submission to Council regarding the accuracy of information on Councils website.

### **Submission No. 4 Flood Response in Byron Shire**

Matthew Lambourne made a submission regarding Council's response following recent flood events in the Shire and other flooding matters.

### **Question No. 1 Flood Response in Byron Shire**

Angela Dunlop asked the following question:

I represent SGBCA and residents living in the north of the shire who experienced the flood event of March. As a demonstration of council's duty of care why, after two months, have you not provided the opportunity for flood affected residents of South Golden Beach, New Brighton and ocean shores to provide feedback to council of their experiences so that council could collate and review flood data in order to improve on their strategies before, during and after a flood event. Surely those who experienced the flood first hand were in a position to provide constructive recommendations that should have been welcomed by council yet this opportunity has not been granted. Additionally, we wish to know what, if any, risk management strategies or emergency evacuation procedures council has in place, when they were drafted and when they are due for review?

The Director Infrastructure Services took the question on notice.

### **Question No. 2 Sewerage**

Tom Tabart asked the following question:

Has the information that the Councillors down graded the Ocean Shores sewage works to 1.1 prominently over time been communicate to the EPA or issued you a licence?

The Director Infrastructure Services took the question on notice.

### **Question No. 3 Formulated Responses**

Fast Bucks asked the following question:

Management comments to Council reports must not contain formatted responses. With regards to item 9.3 on the Bangalow Men's Shed, whilst not headed as the recommendation, the report notes that staff do not support the Notice of Motion. Is this a case of the General Manager ignoring Council Resolution 11-979, given that staff do not support the Notice of Motion, and is it also a case of the General Manager interfering in debate in areas which are outside his statutory brief?

The General Manager provided the following response, "No".

The meeting adjourned at 10.37am and reconvened at 11.03am

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### **APOLOGIES**

There were no apologies.

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### **REQUESTS FOR LEAVE OF ABSENCE**

There were no requests for leave of absence

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### **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

Cr Spooner declared a pecuniary interest in Report 13.9. The nature of the interest being that he is employed by the Byron Bay Community Association. Cr Spooner elected to leave the Chamber and will not participate in discussion and the vote.

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### **TABLING OF PECUNIARY INTEREST RETURNS**

There were no Pecuniary Interest Returns tabled.

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### **ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

**17-155 Resolved** that the minutes of the following meetings be confirmed:

- Byron Shire Reserve Trust Committee held 20 April 2017
- Ordinary Meeting held 20 April 2017 (Hunter/Richardson)

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

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### **RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**

The Mayor suspended standing orders to allow for items to be reserved for debate, being:

#### **STAFF REPORTS**

##### **Corporate and Community Services**

- |                 |   |
|-----------------|---|
| Report No. 13.1 | Transport and Infrastructure Advisory Committee - Community Representatives |
| Report No. 13.2 | Coastal Estuary Catchment Panel - Community Representatives                 |
| Report No. 13.3 | Fishheads Cafe/Restaurant and Byron Bay Swimming Pool complex               |



Report No. 13.6 Council Investments April 2017

**Sustainable Environment and Economy**

Report No. 13.12 PLANNING - 10.2016.575.1 deferred - additional information with regard to resolution 17-079 to be provided to Council

**Sustainable Environment and Economy**

Report No. 16.1 CONFIDENTIAL - Section 82B Review where development application not accepted - Prelodgement No 111.2017.55.1 - Detached Dual Occupancy -164 Orana Road, Ocean Shores

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Hunter and seconded by Cr Cameron. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 17-156 and concluding with Resolution No. 17-178.

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**STAFF REPORTS – CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.4 Section 355 Committee - Appointment of new members**  
**File No:** I2017/560

**17-156 Resolved:**

1. That Heika Braha be appointed to the Lone Goat Gallery Board of Management.
2. That Ana Mantuaneli and Melissa Tonnet be appointed to the South Golden Beach Community Centre Management Committee. (Hunter/Cameron)

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

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**Report No. 13.5 Waiver of fees - Mullumbimby Civic Hall - Flood Recovery**  
**File No:** I2017/563

- 17-157 Resolved** that Council waives the fees for hire of the Mullumbimby Civic Hall by the Mullumbimby and District Neighbourhood Centre during the Ex-tropical cyclone Debbie flood disaster recovery period to the value of \$2,400. (Hunter/Cameron)

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

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**Report No. 13.7 Budget Review 1 January - 31 March 2017**  
**File No:** I2017/565

**17-158 Resolved:**

1. That Council authorise the itemised budget variations as shown in Attachment 2 (#E2017/31291) which includes the following results in the 31 March 2017 Quarterly Review of the 2016/2017 Budget:
  - a) General Fund – \$3,300 increase in the Estimated Unrestricted Cash Result
  - b) General Fund - \$1,628,300 increase in reserves
  - c) Water Fund - \$870,600 increase in reserves
  - d) Sewerage Fund - \$2,810,300 increase in reserves

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2. That Council adopt the revised General Fund Estimated Unrestricted Cash Result of \$1,145,200 for the 2016/2017 financial year as at 31 March 2017. (Hunter/Cameron)

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

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**Report No. 13.8**      **Grants Report**  
**File No:**              I2017/579

- 17-159 Resolved** that Council note the report. (Hunter/Cameron)

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

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**Report No. 13.9**      **Request for Section 356 Donation from Byron Bay Community Association**  
**File No:**              I2017/586

- 17-160 Resolved** that a \$5,000 donation be made to the Byron Bay Community Association to assist with the purchase of 20 seats in the 'Comfy Bums for the Byron Theatre' (seats) fundraising appeal from unspent funds in the Section 356 budget for the 2016/17 financial year. (Hunter/Cameron)

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

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**Report No. 13.10**      **Initial local government performance audits**  
**File No:**              I2017/592

- 17-161 Resolved** that the information contained in the letter from the Auditor-General of NSW dated 27 April 2017 (#E2017/30966) be noted. (Hunter/Cameron)

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

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### STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.11**      **PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 January 2017 to 31 March 2017**  
**File No:**              I2017/412

- 17-162 Resolved** that Council note the report. (Hunter/Cameron)

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

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### STAFF REPORTS – INFRASTRUCTURE SERVICES

**Report No. 13.13**      **Minutes of the Coastal Estuary Catchment Panel Meeting 16 March 2017**  
**File No:**              I2017/427

- 17-163 Resolved** that Council adopt the following Panel recommendations:

Panel Recommendation 4.1.1

That the Coastal Estuary Catchment Panel recommends to Council that:

1. feasibility plans be developed, including negotiations with State Government agencies and regulators to make the primary effluent release point through the Industrial Estate drain (Option 2 in the Capacity Assessment of the Belongil Creek Drainage System Report) as a modification to the current licence as soon as possible.
2. the parameters, triggers and limits of reuse at the current licence point (EPA 4) for the purpose of ensuring that acidic runoff events and / or peat fires are limited within the upper drainage catchment be determined.
3. Council acknowledge its commitment at the commissioning of Byron Bay STP to relying on reuse to match increases in sewer load and either find a strategy to achieve that level of reuse, or consider calling a moratorium.
4. within development of the strategy, both reuse for human activities, as well as within the environment, be considered.
5. feasibility studies be commenced for the recommended Byron Bay Sewage Treatment Plant 2025 augmentation to 10 ML/day.
6. Council include an easement over Lot 12 Bayshore Drive to ensure the feasibility of Option 2 effluent flow path through the industrial drain into the future. The cost of the easement, including opportunity cost, to be reimbursed to the General Fund from the Sewer Fund.
7. further information be provided on both the historical and future reuse regime and moratorium implications.
8. upon Council endorsement, this be sent to the Drainage Union. (Hunter/Cameron)

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

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**Report No. 13.14      Council Part Road Reserve Closure adjoining Lot 1 DP 569047 100 Coolamon Scenic Drive Ewingsdale NSW 2479**  
**File No:                I2017/584**

**17-164 Resolved:**

1. That Council endorse the closure of road reserve adjoining Lot 1 DP 569047 100 Coolamon Scenic Drive Ewingsdale, as per figure 1 of this report, and move forward by submitting an application with Crown.
2. That Council accept market valuation obtained and delegate to the General Manager the authority to enter into a contract for sale of the closed part of the road with the owner of Lot 1 DP 569047.
3. Without limiting the delegation to the General Manager to negotiate a contract suitable to the Council, terms and conditions of the contract will include requirements for:
  - i. the applicant to pay all costs associated with the part road closure, including but not limited to:
    - a) Council / Crown application fees



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- b) Council's surveyor's fees and survey, valuation and legal costs
  - c) All registration fees
  - d) Legal costs
- ii The allotment created by the part road closure to be consolidated into the existing Parcel No 13330 Lot 1 DP 569047
- 4. That Council authorise the affixing of the Council seal to and the signing of all documents necessary to affect the sale and transfer of the part closed road. (Hunter/Cameron)

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

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**Report No. 13.15      Proposed Boundary Adjustment and Sale of Part Byron Shire Council Drainage Reserve Operational Land Lot 103 DP 1087996**  
**File No:**                      I2017/490

**17-165 Resolved:**

- 1. That Council endorse the Sale of Part Council owned Drainage Reserve Lot 103 DP 1087996 Operational Land to adjoining land owner at Lot 22 DP 249401.
- 2. That Council accept the Valuation report completed by Opteon Property Group (Confidential Attachment 1 E2017/10488).
- 3. Without limiting the delegation to the General Manager to negotiate a contract suitable to the Council, terms and conditions of the contract will include requirements for:
  - i. the applicant to pay all costs associated with the purchase of Council's operational land Drainage Reserve Part Lot 103 DP 1087996, including but not limited to:
    - a) Council application fees
    - b) Council's surveyor's fees and survey, valuation and legal costs
    - c) All registration fees
    - d) Legal costs
    - e) Costs associated with extending the pipe system to the new Boundary line
- 4. That the applicant extend Councils pipe system to the new boundary alignment, with the Sale and Boundary adjustment to occur once works have been completed.
- 5. That Council authorise the affixing of the Council seal to and the signing of all documents necessary to affect the sale and boundary adjustment.. (Hunter/Cameron)

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

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**Report No. 13.16      Update on Proposed Road Naming of Unnamed Lane, between Cedar Street & Myokum Street Mullumbimby**  
**File No:**                      I2017/577

**17-166 Resolved:**

- 1. That Council endorses the naming of the currently unnamed lane between Cedar Street and Myokum Street, Mullumbimby to 'Small Lane'.
- 2. That 'Small Lane' be submitted to the LPI for concurrence, and if gained, gazettal. (Hunter/Cameron)

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

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**COMMITTEE REPORTS – CORPORATE AND COMMUNITY SERVICES**

**Report No. 14.1**      **Report of the Finance Advisory Committee Meeting held on 13 April 2017**  
**File No:**              I2017/505

- 17-167 Resolved** that Council note the minutes of the Extraordinary Finance Advisory Committee Meeting held on 13 April 2017. (Hunter/Cameron)

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

- 17-168 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.1    Review of Council Investment Policy  
File No: I2017/341

Committee Recommendation 4.1.1

That the Finance Advisory Committee receive a further report on the review of the Council's Investment Policy at its next meeting scheduled for 18 May 2017, with the following amendments to the Draft Policy - Council Investments 2017 to be included:

- a) Definition for Social and Environmentally Responsible Investments
- b) Decision making process for the investment of funds with an authorised deposit-taking institution. (Hunter/Cameron)

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

- 17-169 Resolved** that Council adopt the following Committee Recommendation as follows:

Report No. 4.2    Draft 2017/2018 Budget Estimates  
File No: I2017/344

Committee Recommendation 4.2.1

That Council note the adoption of the Draft 2017/2018 Budget Estimates for the purposes of public exhibition at its Ordinary meeting held on 20 April 2017, with the inclusion of the following recommended amendments from the Finance Advisory Committee:-

- a) the inclusion of a revised Operating Revenue and Expenditure Budget for the Cavanbah Centre, and
- b) the distribution to Councillors by Memorandum of further information on significant variances to salary and wages budgets. (Hunter/Cameron)

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

- 17-170 Resolved** that Council adopt the following Committee Recommendation as follows:

Report No. 4.3    Draft 2017/2018 Revenue Policy  
File No: I2017/345

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### Committee Recommendation 4.3.1

That Council note the adoption of the Draft 2017/2018 Revenue Policy for the purposes of public exhibition at its Ordinary meeting held on 20 April 2017, with the inclusion of the following recommended amendments from the Finance Advisory Committee:

- a) an amendment to the section on Borrowings to include additional information on the level of existing debt and the impact of debt ratios of the additional borrowings forecast in the Draft Revenue Policy. (Hunter/Cameron)

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

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**Report No. 14.2      Report of the Finance Advisory Committee Meeting held on 16 February 2017**  
**File No:              I2017/506**

- 17-171 Resolved** that Council note the minutes of the Finance Advisory Committee Meeting held on 16 February 2017. (Hunter/Cameron)

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

- 17-172 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.1    Budget Review - 1 October to 31 December 2016  
File No: I2017/137

### Committee Recommendation 4.1.1

1. That Council note that it authorised the itemised budget variations as shown in Attachment 2 (#E2017/7234) which includes the following results in the 31 December 2016 Quarterly Review of the 2016/2017 Budget:

- a) General Fund – \$40,900 decrease in the Estimated Unrestricted Cash Result;
- b) General Fund – \$1,716,400 increase in reserves;
- c) Water Fund – \$2,030,600 decrease in reserves;
- d) Sewerage Fund – \$2,876,900 decrease in reserves,

at its Ordinary meeting held on 23 February 2017.

2. That Council note that it adopted the revised General Fund Estimated Unrestricted Cash Result of \$1,146,500 for the 2016/2017 financial year as at 31 December 2016 at its Ordinary meeting held on 23 February 2017. (Hunter/Cameron)

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

- 17-173 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.2    2017/2018 Revenue Policy - Review of Rating Structure  
File No: I2017/140

### Committee Recommendation 4.2.1

That Council receive further presentation on options for review of the rating structure at the 9 March Councillor Strategic Planning Workshop. (Hunter/Cameron)

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

**17-174 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.3 2016/17 Financial Sustainability Plan - Update on the Action Implementation Plan as at 31 December 2016

File No: I2017/152

Committee Recommendation 4.3.1

That the update report to 31 December 2016 on the 2016/2017 Financial Sustainability Plan Action Implementation Plan (E2017/1518) be received and noted. (Hunter/Cameron)

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

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**COMMITTEE REPORTS – INFRASTRUCTURE SERVICES**

**Report No. 14.3 Report of the Water, Waste and Sewer Advisory Committee Meeting held on 13 April 2017**

**File No:** I2017/583

**17-175 Resolved** that Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 13 April 2017. (Hunter/Cameron)

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

**17-176 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.1 Questions Raised by Committee Member Regarding Ocean Shores and Brunswick Valley STPs

File No: I2017/365

Committee Recommendation 4.1.1

That Council note the information provided to the Water, Waste and Sewer Advisory Committee regarding the Ocean Shores and Brunswick Valley Sewage Treatment Plants. (Hunter/Cameron)

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

**17-177 Resolved** that Council adopt the following Committee Recommendations:

Report No. 4.2 Inflow and Rainfall - Brunswick Valley STP, March 2017

File No: I2017/366

Committee Recommendation 4.2.1

1. That Council note that the Water, Waste and Sewer Advisory Committee was provided with daily inflow and rainfall figures for March 2017 for the Brunswick Valley STP.
2. That the Committee be provided with a report on the need to replace the original sewer network in 'old' Mullumbimby (as it was in the 1960s, when the sewer network was built) and to consider including allocations in its future business plans for sewer management.
3. That the report, in part 2 of the recommendation above, consider options and how well they protect or enhance the environment. (Hunter/Cameron)

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

**17-178 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.3 Ocean Shores to Brunswick Valley STP Transfer Feasibility Study  
File No: I2017/449

Committee Recommendation 4.3.1

That Council notes the Committee discussed the report about Ocean Shores to Brunswick Valley STP Transfer Feasibility Study. (Hunter/Cameron)

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

PROCEDURAL MOTION

**17-179 Resolved** that Council change the order of business to deal with Reports 9.1, 9.4, 9.5, 9.6, 13.3 and 13.12 next on the Agenda. (Richardson/Ndiaye)

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

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**NOTICES OF MOTION AND RESCISSION**

**Notice of Rescission Motion No. 9.1 Brunswick Heads Caravan Park (Resolution 17-120)**  
**File No:** I2017/569

**17-180 Resolved** that Council rescind Resolution No. 17-120 from its Ordinary meeting held on 20 April 2017 which reads as follows:

1. *That Council reiterate its non-negotiable position that any license approvals will be only granted to NSWCHPT if the following are ensured:*

- *full and wide access along all of the foreshores by meeting or exceeding legal requirements for setbacks;*
- *commit to removal of encroachments from the foreshore open spaces;*
- *formalised improved access to the boat ramps long enjoyed by locals;*
- *public use of lot 7005 in Massey Greene;*

2. *That due to the recognition of the historical and community significance of the Cypress Pines in the Terrace; and the commitment to the protection of the memorial Cypress Pines in the Terrace, there is to be no short term camping or permanent residency permitted in the southern end of Terrace Park.*

(Coorey/Richardson)  
(Ndiaye/Richardson)

*The motion was put to the vote and declared carried.*  
*Crs Coorey, Hackett and Spooner voted against the motion.*

PROCEDURAL MOTION

**17-181 Resolved** that Cr Coorey be granted a one minute extension to her speech. (Richardson/Ndiaye)  
*The motion was put to the vote and declared carried.*

PROCEDURAL MOTION

**17-182 Resolved** that Cr Spooner be granted a one minute extension to his speech. (Richardson/Ndiaye)

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

PROCEDURAL MOTION

**17-183 Resolved** that Cr Richardson be granted a one minute extension to his speech.

(Richardson/Ndiaye)

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

**17-184 Resolved** that Council:

1. Notes the following Concept Plans for the purposes of the public exhibition of the Crown Reserve Plans of Management;
  - a) Revised Concept Plan for Ferry Reserve Holiday Park as shown at Attachment 1.
  - b) Revised Concept Plan for Massy Greene Holiday Parks as shown at Attachment 2.
2.
  - a) Supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Ferry Reserve as per 1a hereof and it notes that it shows proposed road layout, formalised public access to the Boat Ramp and 10 meter setback from the Brunswick River.
  - b) Supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Massy Green as per 1b hereof and notes that it shows proposed road layout, formalised public car parking, open public space in lot 7005 including a children's play area and public access to light craft ramp and 10 meter setback from the Brunswick River.
3.
  - a) Impose a condition on any Approval to Operate issued by Council in respect of the applications in 1a and 1b that the operation of the caravan park/camping ground and any building or work associated with its operation must comply with all applicable standards imposed by the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and;
  - b) where there is any non-compliance with the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005 NSWCHPT commit to doing all acts and things necessary to resolve the non-compliance issues as part of the development and works programme of the relevant Holiday Park in accordance with the timing schedule and staging plan known as SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES which will form part of the Approval to Operate.
4. In order to enable the development and works program set out in the SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES as per 3b and included as a condition in any Approval to Operate, the Approval to Operate be issued for a period of three (3) years.
5. Defer consideration of the Revised Concept Plan for Terrace Reserve Holiday Park until the June Ordinary meeting and schedule in early June a further workshop with representatives from the NSWCHP Trust, Council, Long Term Park Residents and the Community to consider the two (2) Revised Concept Plan options presented to the Councillor Strategic Planning Workshop on 11 May 2017 and working together to negotiate a suitable park



design that :-

- a) achieves compliance with the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and
- b) recognises the historical public significance of cypress pines area
- b) provides a suitable setback of 10 meters from the Brunswick River to allow public access (includes the Trust continuing to negotiate with park residents to achieve the 10 meter setbacks adhered to in other areas of the Brunswick foreshore), and
- d) provides a design which includes a vegetation plan of management which will protect the foreshore and Cyprus Pines. (Ndiaye/Lyon)

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

*Crs Coorey, Hackett and Spooner voted against the motion*

## PROCEDURAL MOTION

**17-185 Resolved** that Cr Ndiaye be granted a one minute extension to her speech. (Richardson/Lyon)

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

## AMENDMENT

Moved that Council:

1. Obtain independent legal advice regarding:
  - i) the current situation with the Brunswick Holiday parks Section 68 licences for Approval to Operate and in particular any liability for council if the licences aren't currently valid
  - ii) the responsibility of council under the S68 of the Local Government Act 1993 to ensure a current licence identifies the boundaries, constraints and legal and or policy responsibilities in relation to the lands under the control of NSWCHPT
  - iii) the role of council in requiring a current S68 licence for a Plan of Management
  - iv) the potential for legal action if a council seeks to require a landowner/manager to meet planning and policy requirements in a S68 licence or for the preparation of a Plan of Management.
  - v) any implications from the Friends of King Edward Park Inc. v Newcastle City Council decision, for possible amendments to the 2014 plans of management for Brunswick Heads Caravan Park
2. Receive a report with an update on RES 15-651 regarding the Memorandum of Understanding involving BSC and NSWCHPT and the request for lodgement of an S68 application by NSW Crown Holiday Park Trust (NSWCHPT)

(Cr Coorey/Spooner)

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

*Crs Martin, Lyon, Ndiaye, Richardson and Hunter voted against the motion.*

## PROCEDURAL MOTION

**17-186 Resolved** that Cr Coorey be granted a one minute extension to her speech. (Richardson/Lyon)

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

# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

### PROCEDURAL MOTION

**17-187 Resolved** that Cr Ndiaye be granted a one minute extension to her speech. (Richardson/Coorey)

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

### PROCEDURAL MOTION

**17-188 Resolved** that Cr Richardson be granted a two minute extension to his speech.

(Richardson/Ndiaye)

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

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**Notice of Motion No. 9.4      Lowering Flood Levels in North Byron Floodplain**  
**File No:                              I2017/605**

**17-189 Resolved:**

1. That Council use the North Byron Floodplain Risk Management Study and Plans to investigate potential methods for lowering flood levels in the Marshall's Creek floodplain through options such as floodwater outlets, dredging, rock wall alterations and flood levies.
2. That Council considers doubling the funding for north urban drainage maintenance and rural drainage maintenance from all available resources to speed up the flood mitigation works in the Marshalls Creek Floodplain including:-
  - a. Gutter maintenance
  - b. drain and channel cleaning
  - c. increasing pipe sizes where necessary
  - d. road culverts maintenance; and
  - e. causeways
3. That the maintenance program is reviewed annually.
4. That to support items 1 & 2 above, staff provide funding source options and wider financial implications to the 22 June 2017 Council meeting, to be considered as part of the adoption of the 2017/18 Operational Plan.
5. That Council establish a North Byron Floodplain PRG for a 12 month period to examine the implications of the recent flood event and review previous modelling and to invite community membership and notify past members.
6. That parts 1 to 5 inclusive here of are resolved without admissions and without prejudice.  
(Hunter/Richardson)

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

*Crs Coorey, Cameron and Hackett voted against the motion.*

### PROCEDURAL MOTION

**17-190 Resolved** that Cr Hunter be granted a two minute extension to his speech. (Richardson/Lyon)

# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

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

The meeting adjourned for lunch at 1.05pm and reconvened at 1.52pm

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### **Notice of Motion No. 9.5      Secondary dwelling conditions**

**File No:** I2017/606

#### **17-191 Resolved:**

1. That Council recognises community concerns regarding the lack of affordable housing in Byron Shire and concerns that secondary dwellings, as defined and facilitated by the NSW State Environmental Planning Policy (Affordable Rental Housing) 2009, are being used for tourism purposes via short term letting, holiday letting Air Bnb and similar online platforms.
2. That Council responds to concerns and compliance issues by:
  - a) contacting all property owners with a secondary dwelling (granny flat) approved since the passage of Council Resolution 11-268 and seek property owners' confirmation that they are complying with their approval and/or conditions of consent with the regard to the Environmental Planning Assessment Act and to Byron Shire Council Resolution 11-268.
  - b) developing a form that seeks the owners signature regarding compliance with consent and Resolution 11-268 for inclusion with the correspondence to be returned to council within 30 days.
3. That a report be received from staff informing Council as to the outcome of 2(a) and (b).
4. Request staff to commence the process to amend clause 2.14 in the 2012 Byron Developer Contributions Plan to provide that the clause does not apply to secondary dwellings used for tourism purposes.
5. Request staff to commence an evaluation of Council's policy of waiving Council S64 and S94 contributions for secondary dwellings as a means to support affordable housing and provide recommendations to strengthen affordability outcomes of secondary dwellings.
6. Request staff to identify how the Affordability Housing SEPP 2009 could be applied to establish an exception from Council S64 and S94 for 'affordable rental accommodation'
7. That a further report be furnished to Council on points 5 and 6 above. (Coorey/Richardson)

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

#### PROCEDURAL MOTION

#### **17-192 Resolved** that Cr Coorey be granted a one minute extension to her speech. (Richardson/Ndiaye)

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

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### **Notice of Motion No. 9.6      Lighting for Mullumbimby Skate Park**

**File No:** I2017/614

#### **17-193 Resolved:**

# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

1. That Council receive a report on the costs, implementation and operation of lighting at Mullumbimby Skate Park.
2. That the report be tabled at or before the first meeting of August for possible implementation within six months, and that a possible funding source be identified.
3. That the report outlines and considers the most efficient energy technology possible.  
(Ndiaye/Richardson)

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

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### STAFF REPORTS – CORPORATE AND COMMUNITY SERVICES

**Report No. 13.3**      **Fishheads Cafe/Restaurant and Byron Bay Swimming Pool complex**  
**File No:**              **I2017/486**

**17-194 Resolved:**

1. That Council, subject to Crown consent, extend the lease/management agreement over part Road Reserve and part Council owned Operational Land (part Lot 4 DP827049 and part Lot 5 DP 827049), known as the Byron Bay Swimming Pool Complex, to Fishheads@Byron Pty Ltd for a 3 year period (1 July 2017 to 30 June 2020).
2. That the extension be on the same terms and conditions contained in the current lease/management agreement, but with a CPI increase (based on all groups Sydney June) in the rent and management fee.
3. That the lease contains no carry over provisions after 30 June 2020. (Spooner/Hunter)

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

### PROCEDURAL MOTION

**17-195 Resolved** that Cr Spooner be granted a one minute extension to his speech. (Richardson/Ndiaye)

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

*The meeting adjourned at 2.30pm to open the Byron Shire Reserve Trust Committee Meeting. Resolution Numbers 17-196 and 17-197 was used during that meeting. The Ordinary Meeting reconvened at 2.38pm.*

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### STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.12**      **PLANNING - 10.2016.575.1 deferred - additional information with**  
**File No:**              **regard to resolution 17-079 to be provided to Council**  
                                 **I2017/419**

**17-198 Resolved** that Council:

1. note the report
2. pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.575.1 for a Rural Industry (Micro Distillery) and Industrial Retail Outlet, be



# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

3. That a report on points 1 and 2 be provided to the Transport and Infrastructure Advisory Committee prior to being reported to Council for adoption at the 3 August 2017 Ordinary Meeting.
4. That Council allocate the proposal in the Capital Works program for 2017/18 for the Broken Head Road – Off Road Shared path with a budget of \$292,600 to an On Road cycleway along Bangalow Street, Byron Bay to Suffolk Park.  
(Richardson/Coorey)

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

### PROCEDURAL MOTION

- 17-202 Resolved** that Cr Richardson be granted a two minute extension to his speech.  
(Spooner/Cameron)

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

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**Notice of Motion No. 9.3      Bangalow Men's Shed Carpark**  
**File No:**                              I2017/604

*This Notice of Motion was withdrawn by Cr Hunter*

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### PETITIONS

The Mayor tabled a petition regarding flood mitigation and response, with regards to the 2017 storm event, containing 233 signatures which states:

'We the undersigned request the following action from Byron Shire Council in the immediate affect;

- A Resident and Business Forum with the aim at re-evaluating our Flood Mitigation Plan and discussion about ongoing viability of the area should work not be undertaken.
- The Dredging of Marshal's Creek and Reading's Bay and possible outlets to the sea.
- Revision of SES capacity to handle flood response and evacuation practice.
- The maintenance of storm water drains to be undertaken and maintained regularly.
- Proper consultation with the community regarding systems that are put in place and transparent action plans to be undertaken during future events.
- Council to effectively lobby State Government as to the Shire's plight, so that we are on equal footing with our neighbours'

The Mayor tabled a petition containing 193 signatures which requests lighting at Mullumbimby Skate Park.

The Mayor tabled a petition containing 578 signatures from residents of Middle Pocket objecting to the proposed development of a Micro Distillery and Industrial Shop.

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### SUBMISSIONS AND GRANTS

An update on Grants was provided in report 13.8.

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## DELEGATES' REPORTS

1. Australian Coastal Council's Conference, Recliffe, QLD, 3-5 May 2017

Cr Hackett advised Council:

Cate and I went up to the Australian Coastal Conference up at Redcliff last month and found it extremely informative and came back quite excited about all these papers that we had heard which are now online, so we are hoping that we will be able to share them with the entire Council and other interested parties, particularly as they address constant coastal issues that we have in Byron Bay. Cate will probably talk about some different things to me but we went around and saw a lot of things that they had been doing on the Queensland coast there North of Brisbane for a long time. Some of their land is actually below sea level where they are building, so they have great concerns about sea levels rising, so they have been for years building sea walls and replenishing sand pumping. Because they have been doing this for so long, dealing with these coastal issues for so long, they are all the costing of what has been happening and then so you have got the cost of going this way and the cost of going that way and then issues that came up when they did one thing, when they did another thing, and therefore the on going costs that were incurred when they went down that road and sometimes they decided they would like to back track, ect. It was very good to get all the financial detail from people who are much further along the line at trying to control the coast than we are down here. There was even a fellow from Coffs Harbour who has done his PHD from South Australia in cost effective planned retreat and he has a lot of examples from the USA about how planned retreat doesn't have to break the bank and that it can be done in certain ways that can be quite cost effective. The particular sand pumping up on Bribie Island, we met Councillors from the Shoalhaven that were saying this is all our sand from the Shoalhaven up here and how the sand there is moving South, where as our sand is moving North, but the sand on the Ocean side of Bribie Island is moving South so the whole Island is moving South and so because they are built in the middle of the island they are concerned that eventually there buildings will be on the sea. Because the island is moving South around them they are pumping sand from one end to the other all the time and what they are finding is that, and they have costing for all of that, but what they find is that the sand is moving South four times faster once they pump it to the North. It heads South three or four times faster then it does naturally, so they are chasing their tail a lot of the time. Anyway, we would like to bring a lot of this information - well I certainly would - to the rest of the Councillors and see if we can get up a few workshops and look at these because they were also dealing with the interface and estuaries and the ocean and things they have done to address that and problems they have run into, ect. A lot of things they are experiencing are what we will have to deal with in the future and I think we can learn from these workshops.

Cr Coorey advised Council:

It was a really interesting conference. I suppose most of you have been to Coastal Council conferences before. There were a few things that were very interesting there and that I think some of you might be already aware of the national climate adaptation facility and they actually developed a program called **Coastidate** with shows the implication of erosion of sea level rise, ect. I think that this kind of forward planning is really essential and these tools are really useful to have and I would like to see us really taking into account a lot of this stuff. When we are looking at it one of the things Jan mentioned going to Bribie Island and seeing sand pumping and other things the problem is that we are fortunate, far more fortunate than Queensland and Southern Queensland, that the level of development is relatively small compared to what they are doing and they are paying a lot of money and there are a lot of costs to property as a result of this and was impropriety thorough or properly ill considered close to the shore lines. We are at least a step ahead of that and I think we have an opportunity to be on the front foot of a lot of that and also to use a lot of the technology that some of you saw that the gentleman from Telstra that came and showed how we could actually identify how many people were actually in our Shire at any good given time and do some planning around that. There was some talk about Air BnB - the woman that spoke of that

was from the University of Sydney, in urban and regional planning, that did have very much an urban focus and I think there was some information to be taken away from that but I think for her part it was very much about Sydney and Melbourne. In all it was good and it was a good thing for us as new Councillors to consider a lot of that stuff as well and given our involvement and interest in the area.

## 2. Bangalow Men's Shed

Cr Hunter advised Council:

The Mayor and I attended a meeting with the men's shed over there as per the Notice of Motion, hence the reason for it being withdrawn, because we had achieved what the motion set out to achieve and that was attempt to find a resolution - an amicable resolution - with the men's shed. As I say, Simon and I attended some weeks ago and we left it unresolved with them to accept an offer that was relevantly fair and equitable. They haven't seen it that way and fully responded to our proposal or proposition, so we are still in advances. I'm satisfied that Council's now done everything Council can do to resolve it. Now it's a matter of waiting and seeing what happens at the next step. It disappoints me because I thought it was a no brainer to resolve but it is not turning out to be as simple as first thought.

Cr Richardson advised Council:

We have tried to give everyone some really reasonable ways forward, which we thought may be begrudgingly accepted, and woke up the next morning and it seemed to be rejected. We will see what happens from here.

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## **STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1**      **Transport and Infrastructure Advisory Committee - Community Representatives**  
**File No:**              I2017/454

### **17-203 Resolved:**

1. That Council note the report.
2. That Council appoint Alexandra Anne Maclean, David Michie, Graham Hamilton and Sapoty Brook to the Transport and Infrastructure Advisory Committee.
3. That Council amend the constitution of the Transport and Infrastructure Advisory Committee to accommodate 4 members.
4. That Council thank all nominees for their interest and time in submitting an Expression of Interest. (Cameron/Hackett)

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

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**Report No. 13.2**      **Coastal Estuary Catchment Panel - Community Representatives**  
**File No:**              I2017/455

### **17-204 Resolved:**

1. That Council note the report.

# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

2. That Council appoint Kate Akkerman, Mary Gardner, Matthew Lambourne, Tony Flick, Tim Hochgrebe and Duncan Dey to the Coastal Estuary Catchment Panel.
3. That Council thank all nominees for their interest and time in submitting an Expression of Interest.  
(Cameron/Richardson)

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

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**Report No. 13.6**      **Council Investments April 2017**  
**File No:**              I2017/564

### 17-205 Resolved:

1. That the report listing Council's investments and overall cash position as at 30 April 2017 be noted.
2. That Council write to the Westpac Group thanking them for making a public declaration not to support Adani and the Carmichael Coal Mine.
3. That Council write to the Commonwealth Bank of Australia advising them of Council's resolution (17-150) from the 20 April 2017 Ordinary Meeting.
4. Subject to a response from the Commonwealth Bank of Australia, Council writes to neighbouring Councils whom utilise the Commonwealth Bank of Australia to consider as part of any future tender for the provision of Banking Services inclusion in the tender specification that financial institutions supporting fossil fuels will not be considered when the existing contract for provision of Banking Services expires on 31 December 2018.

(Ndiaye/Lyon)

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

*Crs Hackett, Spooner and Hunter voted against the motion.*

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## QUESTIONS WITH NOTICE

**Question With Notice No. 15.1**      **Tyagarah Airfield**  
**File No:**                                  I2017/502

At Council's Ordinary Meeting held on 20 April 2017, Matthew O'Reilly asked the following question which was taken on notice:

*Why is Council conducting environmental assessment for the three stages of vegetation removal at Tyagarah Airfield separately rather than in their entirety and why is the council not allowing public comment or oversight on these operations and the review of environmental factors that were prepared and why has council failed to obtain Development Applications for this vegetation removal despite councils own legal advice telling them a DA is required?*

### **Response Manager Open Spaces and Resource Recovery, Michael Matthews:**

Ecological Assessments have been separately prepared for both Stage 1 and Stage 2 works, and concluded that no significant adverse effect is likely for flora or fauna.

The works are operational maintenance of an existing Obstacle Limitation Surface (the safe envelope for aircraft landing and take-off) for the runway.

Works for Stage 1 and 2 are permissible without consent under Part 3, Division 1 (Air Transport Facilities), Clause 22 of the State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) which was the mechanism used for Stage 1 treatment within the RU2 zone.

As the airfield is operational, a staged approach was chosen for the reasons of:

- careful consideration of environmental factors
- mixed land tenure and zone where encroachment occurs
- to assess the level of success of the treatment methodologies for stage 1
- Stage 1 vegetation treated was considered as less significant and was considered to present a greater risk to aircraft due to its proximity to take off and landing and airside envelopes
- Owner's Consent requirements where vegetation is located on other's land
- due diligence in progressively removing vegetation that has encroached the Operational Obstacle Limitation Surface

Council has reviewed legal advices it holds and is of the view that no Development Consent was necessary for operational maintenance of vegetation of the Obstacle Limitation Surface (OLS) for all works undertaken to date.

Planning mechanism used to facilitate continual maintenance of vegetation encroachments is assessed and applied specific to the situation, such as ownership, existing SEPPS and the like.

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## **CONFIDENTIAL REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

### **PROCEDURAL MOTION**

#### **17-206 Resolved:**

1. That pursuant to Section 10A(2)(a) and (e) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Section 82B Review where development application not accepted - Prelodgement No 111.2017.55.1 - Detached Dual Occupancy -164 Orana Road, Ocean Shores .
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) personnel matters concerning particular individuals (other than councillors)
  - b) information that would, if disclosed, prejudice the maintenance of law
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:  
  
(a) disclosure could prejudice the Council's position in litigation; and (b) disclosure could adversely impact Council's position in the upcoming negotiations. (Cameron/Richardson)

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

# BYRON SHIRE COUNCIL

## ORDINARY MEETING MINUTES

25 May 2017

**Report No. 16.1**      **CONFIDENTIAL - Section 82B** Review where development application not accepted - Prelodgement No 111.2017.55.1 - Detached Dual Occupancy -164 Orana Road, Ocean Shores  
**File No:**                      I2017/553

**17-207 Resolved:**

1. That Council confirm its decision to not accept the development application under Section 82 B of the Environmental Planning and Assessment Act 1979.
2. That staff be requested to undertake a formal investigation into the vegetation clearing that has occurred on 164 Orana Road, Ocean Shores.
3. That the applicant be advised accordingly. (Richardson/Ndiaye)

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

PROCEDURAL MOTION

**17-208 Resolved** that the meeting move out of confidential session. (Cameron/Richardson)

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

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*There being no further business the meeting concluded at 4.55pm.*

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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 22 June 2017.



.....  
Mayor Simon Richardson