



Byron Shire Council



Minutes

Ordinary Meeting

Thursday, 3 August 2017

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes
3 August 2017

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 3 AUGUST 2017 COMMENCING AT 9.03AM AND CONCLUDING AT 3.41PM
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I2017/1033

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)
Sharyn French (Manager Environmental and Economic Planning)
David Royston-Jennings/Mila Jones (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.

Councillor Hackett paid tribute to Col Hadwell, who recently passed. She paid tribute to his life, noting his many accomplishments and good character, before concluding by reciting a poem he had written about Byron Bay.

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:

13.6 BSC at Glassington Land and Environment Court Proceedings

Matthew O'Reilly, representing Community Alliance for Byron Shire, addressed Council against the recommendation.

13.7 Classification of land – former Mullumbimby Hospital site Lot 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722

Matthew O'Reilly, representing Community Alliance for Byron Shire, addressed Council in favour of the recommendation.

13.11 Planning – 10.2016.625.1 – Alterations and Additions to Existing Commercial Building to Create a Café and Day Spa at 35-37 Burringbar Street, Mullumbimby

*Brendan Lawless addressed Council in favour of the recommendation.
Matthew O'Reilly, representing Community Alliance for Byron Shire, addressed Council against the recommendation.*

13.13 Report of the Heritage Panel Meeting held on 27 April 2017

Len Bates, a community member of the Heritage Panel, addressed Council against the recommendation.

13.14 North Ocean Shores Sports Field Renaming

Ronda Asweich addressed Council in favour of the recommendation.

14.2 Byron Bay Bypass Legal Proceedings

John Anderson addressed Council on the response provided to the Question taken on notice at the 22 June Ordinary Meeting of Council.

14.3 Staff comments in Notices of Motion

John Anderson addressed Council on the response provided to the Question taken on notice at the 22 June Ordinary Meeting of Council.

Submission No. 1 201 Lismore Road, Bangalow

Ean Jones made a submission to Council regarding 201 Lismore Road, Bangalow.

Submission No. 2 Compliance

Tom Tabart made a submission to Council regarding compliance.

Submission No. 3 Public exhibition of Review of Environment Factors by Council

Matthew O'Reilly made a submission to Council regarding the public exhibition of Review of Environment Factors by Council.

Submission No. 4 Repair and resurfacing of Coolamon Avenue, Mullumbimby

Ivan Saric made a submission to Council regarding his request for the repair and resurfacing of Coolamon Avenue, Mullumbimby.

Question No. 1 Helicopter Scenic Flights

Virginie Hemmery asked the following question:

Can Council update the community on actions being undertaken to restrict the operation of helicopter scenic flights at Elements of Byron Resort and what compliance and prosecution action Council is pursuing regarding this unauthorised use?

The Director Sustainable Environment and Economy took the question on notice.

Question No. 2 Illegal Short Term Holiday Letting

David Wallace asked the following question:

With Council resuming prosecution of illegal holiday letting, is it prudent to review, revise and restore Fact Sheet 9 to the website as soon as possible?

The Director Sustainable Environment and Economy provided a response.

Question No. 3 Substantial Dwelling Constructions without Council Consent.

John Anderson asked the following question:

In the situation where a substantial dwelling is constructed without Council consent and where there are subsequent complaints from neighbours;

1. what criteria do council staff apply in order to determine their initial response, in terms of formal stop work orders, letters of demand, or whatever other avenues are available to them? Please describe options.
2. what criteria do council staff apply as to whether demolition or decommissioning is ordered, or whether a DA must be lodged for occupation of the dwelling, or whether such DA must be notifiable i.e. publicly advertised? Please describe options.
3. have there been any cases in the last five years where it has been the elected council, possibly in confidential session, which has made the relevant decisions? Please describe instances or where councillors have at least been informed.

The Director Sustainable Environment and Economy took the question on notice.

Question No. 4 Draft Koala Plan of Management

Matthew O'Reilly asked the following question:

Will Council consider re-exhibiting the Byron Koala Plan of Management?

The Director Sustainable Environment and Economy took the question on notice.

Question No. 5 Application of Planning Law

Tom Tabart asked the following question:

Given the desirability of consistency in Councils application of planning law, why has a stop work notice not been issued in relation to 139 Newes Road, Coorabell, Paradise 1, over illegal dwellings and road works close to Wilson's Creek, whereas 541 Friday Hut Road did receive a stop work notice?

The Director Sustainable Environment and Economy took the question on notice.

Question No. 6 Council Advertising

Lee Cass asked the following question:

With approximate cost of \$75,000 per year, why does Council prioritise advertising with Byron Shire News as opposed to the local newspaper the Echo, given that the Echo puts out 23,000 copies per week when Byron Shire News puts out 16,000?

The General Manager provided a response.

The meeting adjourned at 10.09am and reconvened at 10.37am.

APOLOGIES

There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 17-287 Resolved** that Cr Richardson be granted a leave of absence from 20 to 27 September 2017.
(Hunter/Spooner)
The motion was put to the vote and declared carried.
-

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Paul Spooner declared a non-pecuniary interest in Report 13.4. The nature of the interest being that a nominee to a Section 355 Committee is an employee of the Byron Bay Community Association, of which he is the General Manager. Cr Spooner elected to remain in the Chamber and will participate in discussion and the vote.

Cr Paul Spooner declared a non-pecuniary interest in Report 13.8. The nature of the interest being that this report relates to the development matter dealing with another Councillor. Cr Spooner elected to leave the Chamber and will not participate in discussion or the vote.

Cr Alan Hunter declared a pecuniary interest in Report 13.8. The nature of the interest being a possible conflict. Cr Hunter elected to leave the Chamber and will not participate in discussion or the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with the Local Government Act 1993 Section 450(A), Section 449(3) Returns were tabled for the following members of staff:

Anna Vinfield, Manager Governance Services

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 17-288 Resolved** that the minutes of the following meetings be confirmed:
- Byron Shire Reserve Trust Committee held 22 June 2017
 - Ordinary Meeting held 22 June 2017
 - Extraordinary Meeting held 6 July 2017 (Spooner/Richardson)

The motion was put to the vote and declared carried.

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 Heritage Panel - Community Representatives

Report No. 13.2 Audit, Risk and Improvement Committee - Community Representatives

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- Report No. 13.3 Byron Shire Floodplain Risk Management Advisory Committee - Community Representatives
- Report No. 13.4 Section 355 Committee Matters - Appointment of new members, a resignation and Councillor representative request
- Report No. 13.6 BSC at Glassington Land and Environment Court proceedings
- Report No. 13.7 Classification of land - former Mullumbimby Hospital site Lot 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722
- Report No. 13.8 BSC at Hunter Land and Environment Court proceedings DA 10.2016.486.1, DA 10.2013.559.1

Sustainable Environment and Economy

- Report No. 13.9 Local Approvals Policy
- Report No. 13.11 PLANNING - 10.2016.625.1 - Alterations and Additions to Existing Commercial Building to Create a Cafe and Day Spa at 35-37 Burringbar Street Mullumbimby
- Report No. 13.13 Report of the Heritage Panel Meeting held on 27 April 2017

Infrastructure Services

- Report No. 13.14 North Ocean Shores Sports Field Renaming

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Richardson and seconded by Cr Lyon. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 17-289 and concluding with Resolution No. 17-292.

STAFF REPORTS – CORPORATE AND COMMUNITY SERVICES

Report No. 13.5 Council Investments June 2017
File No: I2017/948

- 17-289 Resolved** that the report listing Council's investments and overall cash position as at 30 June 2017 be noted. (Richardson/Lyon)

The motion was put to the vote and declared carried.

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.10 Draft Byron Shire Flying-fox Camp Management Plan
File No: I2017/835

- 17-290 Resolved:**
1. That the draft Byron Shire Flying-fox Camp Management Plan be noted.
 2. That the draft Byron Shire Flying-fox Camp Management Plan, Attachment 1 (E2017/68904), be placed on public exhibition for a period of four weeks from 5 August until 1 September 2017. (Richardson/Lyon)

Report No. 13.12 PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 April 2017 to 30 June 2017
File No: I2017/945

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17-291 Resolved that Council note the report. (Richardson/Lyon)

The motion was put to the vote and declared carried.

Crs Coorey, Martin, Lyon, Ndiaye, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.

No Councillors voted against the motion.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 15.1 **CONFIDENTIAL - Tender - Contract Truck Haulage, Plant and Equipment Hire 2017-0012**

File No: I2017/844

17-292 Resolved:

1. That Council award Tender 2017-0012 for the Contract Truck Haulage and Plant and Equipment Hire to all Tenderers as a Panel Contract in accordance with the contract documents and the rates and information supplied in their tenders.
2. That Council makes public its decision, including the name of the successful tenderers, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Richardson/Lyon)

PROCEDURAL MOTION

17-293 Resolved that Council change the order of business to deal with Reports 13.6, 13.7, 13.11, 13.13 and 13.14 next on the Agenda. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.6 **BSC ats Glassington Land and Environment Court proceedings**

File No: I2017/979

17-294 Resolved that the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2016.423.1, subject to appropriate conditions to be finalised under delegation. (Coorey/Spooner)

The motion was put to the vote and declared carried.

Report No. 13.7 **Classification of land - former Mullumbimby Hospital site Lot 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722**

File No: I2017/958

17-295 Resolved that Council give notice for not less than 28 days of the following proposed resolution:

pursuant to Section 34 of the Local Government Act 1993:

“That Lot 188 DP 728535 and lot 1 DP 1159861 and lot 138 DP 755722, the former Mullumbimby Hospital site, be classified “operational” under the Local Government Act 1993.” (Martin/Ndiaye)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.11 PLANNING - 10.2016.625.1 - Alterations and Additions to Existing Commercial Building to Create a Cafe and Day Spa at 35-37 Burringbar Street Mullumbimby
File No: I2017/943

17-296 Resolved that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application 10.2016.625.1 for alterations and additions to existing commercial building to create a recreation facility (indoor - spa) and food and drink premises (café – juice bar), be granted consent subject to conditions listed in Attachment 2 #E2017/72513 as amended below:

- 4. Restricted Use of Treatment Rooms
 - a) Skin Penetration activities are not permitted within the treatment rooms with out prior approval of Council.
 - b) The treatment rooms must not be used for any form of residential occupation or as tourist and visitor accommodation unless separately approved by Council.

- 11. Bicycle parking required.

The application for a Construction Certificate is to include:

- ii) plans and specification indicating 10 bicycle parking spaces that are to be located off-site and provided within Burringbar Street road reserve. Bicycle parking spaces are to be located adjacent to the existing landscape areas on the corner of Burringbar Street and Studal Lane (within parking triangles remaining from existing angle car parking bays) or elsewhere in Burringbar Street adjacent to Street Landscape areas.

The bicycle parking arrangements are to comply with the requirements of AS 2890.3: Parking facilities, Part 3: Bicycle parking.

Such plans and specifications must be approved as part of the Construction Certificate and approved under separate Roads Act approval. (Cameron/Coorey)

The motion was put to the vote and declared carried.

Report No. 13.13 Report of the Heritage Panel Meeting held on 27 April 2017
File No: I2017/976

17-297 Resolved:

- 1. That Council note the minutes of the Meeting held on 27 April 2017.
- 2. That Council does not adopt the Panel's Recommendation 4.1.1 as shown in the attachment to this report, but instead adopts the Management Recommendation as follows:

Management Recommendation:

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- a) A link be provided in the email sent to notify the Heritage Panel of heritage DAs lodged.
 - b) Council's Heritage Advisor to run more "free heritage advisory" days for the public.
 - c) General fact sheets with information on heritage to be developed by the Heritage Advisor.
 - d) The use of project working groups to identify grant and project opportunities and implementation of any grant available.
 - e) The Heritage Panel to be kept informed of grant opportunities including for Heritage Mapping.
 - f) Invite the Aboriginal Liaison Officer to attend future meetings of the Panel.
 - g) That the Panel review the Constitution at the next meeting.
 - h) That the Heritage Panel request a letter from Council to the Minister of Planning expressing Council's concern that the Affordable Housing SEPP overrides local heritage provisions in the LEP and DCP and that Clause 16A (Affordable Housing SEPP) is too vague to enable Council to make decisions on character alone.
 - i) Grant funding to be sought to undertake a DCP Heritage Conservation Area review.
 - j) Community based heritage study to be reviewed subject to funds being made available and should the Heritage Study be updated any new items be considered for listing in the LEP.
3. That Council identify submissions from Heritage Panel members and/or the comments of the Heritage Panel in staff assessment reports within Council agendas.
 4. That Council allow for discussion of live applications at Heritage Panel meetings where time permits. (Cameron/Richardson)

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

Report No. 13.14 **North Ocean Shores Sports Field Renaming**
File No: 12017/957

17-298 Resolved that Council:

- a) selects Bob Belleair Sports Field as its preferred permanent name for the North Ocean Shores Sports Field from the community suggestions provided in this report;
- b) staff proceed to exhibit the preferred name for 28 days as per Council's Naming of Public Places and Community Facilities Policy; and
- c) should no objections be received for the preferred new name, that the name be adopted and submit the name to the NSW Geographical Names Board for approval and registration. (Ndiaye/Richardson)

AMENDMENT

Moved that Council:

- a) selects Tuckaburra Sports Field as its preferred permanent name for the North Ocean Shores Sports Field from the community suggestions provided in this report;
- b) staff proceed to exhibit the preferred name for 28 days as per Council's Naming of Public Places and Community Facilities Policy; and
- c) should no objections be received for the preferred new name, adopt the name and submit the name to the NSW Geographical Names Board for approval and registration. (Spooner/Hackett)

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The amendment was put to the vote and declared lost.

Crs Coorey, Martin, Lyon, Ndiaye, Richardson and Cameron voted against the amendment.

The motion was put to the vote and declared carried.

MAYORAL MINUTE

There was no Mayoral Minute.

NOTICES OF MOTION

Notice of Motion No. 9.1 Alternative Trialled Options for Managing our Threatened Coastal Zone

File No: I2017/923

17-299 Resolved:

1. That Council write to our local members of parliament calling for a coordinated national approach to managing coastal hazards. Currently, the task of dealing with coastal hazards along Australia's vast coastline is left predominately to local councils. This enormous task is beyond the capacity of councils, states and territories. The scale of the challenge requires a national approach, national leadership and national funding.
2. That Council submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.
3. That if these submissions are unsuccessful, staff prepare a report on the implications of holding an event in Byron Shire, inviting key experts in coastal management.
4. That Council invites Angus Gordon to share his insights on the Collaroy tripperwall for possible adoption within Byron Shire. (Hackett/Spooner)

The motion was put to the vote and declared carried.

Cr Hunter voted against the motion.

Notice of Motion No. 9.2 Business Advisory Group

File No: I2017/977

- 17-300 Resolved** that Council receive a report from staff within three months regarding the establishment of a Business Advisory Group comprising of distinguished local business leaders from various fields of endeavour, including commerce, agriculture, creative enterprises and others as appropriate, to work with Council in identifying business growth opportunities for the Byron region, including those potentially developed on Council owned properties. The staff report needs to also recommend the structure, cost and management support for the group. (Hunter/Richardson)

The motion was put to the vote and declared carried.

Crs Coorey, Cameron and Hackett voted against the motion.

The meeting adjourned at 12.37pm for lunch and reconvened at 1.32pm in the Conference Room.

PETITIONS

The Mayor tabled a petition containing 1,768 signatures from residents objecting to Development Application 10.2016.283.1, 201 Lismore Road, Bangalow.

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Grants and Submissions as at 12 July 2017**
File No: I2017/959

17-301 Resolved that Council note the report. (Richardson/Lyon)

The motion was put to the vote and declared carried.

DELEGATES' REPORTS

Ecocity World Summit 12-14 July 2017

The Mayor gave a verbal report on the Summit.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Heritage Panel - Community Representatives**
File No: I2017/684

17-302 Resolved:

1. That Council note the report.
2. That Council nominate the following community representatives for appointment to the Heritage Panel:
 - a) Janet Kneale
 - b) Joe Vescio
 - c) Robyn Wright
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.

Report No. 13.2 **Audit, Risk and Improvement Committee - Community Representatives**
File No: I2017/644

17-303 Resolved that in accordance with section 10A(2)(d)(i) of the Local Government Act 1993, Council move into confidential session to discuss this report as the information contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

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17-304 Resolved:

1. That Council note the report.
2. That Council nominate the following three community representatives for appointment to the Audit, Risk and Improvement Committee to sit on this Group:
 - a) Michael Georghiou
 - b) Brian Wilkinson
 - c) Rae Wills
3. That Council thank all nominees and retiring members for their interest and time in submitting an Expression of Interest and where relevant, their time on the previous Committee.
4. That Council authorise the General Manager delegated authority to negotiate the three appointments' payments to fit within the allocated budget.
5. That for the next nomination process Council establish a sitting fee for the chairperson and the committee members. (Cameron/Richardson)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 17-305 Resolved that the meeting move out of confidential session. (Richardson/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.3 **Byron Shire Floodplain Risk Management Advisory Committee - Community Representatives**

File No: I2017/782

- 17-306 Resolved that in accordance with section 10A(2)(a) of the Local Government Act 1993, Council move into confidential session to discuss this report as the matters and information in this report relate to personnel matters concerning particular individuals (other than councillors). (Richardson/Cameron)

The motion was put to the vote and declared carried.

17-307 Resolved:

1. That Council note the report.
2. That Council nominate the following community representatives for appointment to the Byron Shire Floodplain Risk Management Advisory Committee to sit on this Group:
 - a) Robyn Bolden
 - b) Rebecca Brewin
 - c) Susan Skyvington
 - d) Steve Keefe
 - e) Duncan Dey
 - f) Matthew Lambourne
3. That Council thank all nominees for their interest and time in submitting an Expression of

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Interest.

(Richardson/Cameron)

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

PROCEDURAL MOTION

17-308 Resolved that the meeting move out of confidential session. (Richardson/Cameron)

The motion was put to the vote and declared carried.

The meeting adjourned at 2.34pm in order to open the Byron Shire Reserve Trust Committee Meeting. Resolution 17-309 was used during that meeting. The Ordinary Meeting reconvened at 2.36pm.

Report No. 13.4 Section 355 Committee Matters - Appointment of new members, a resignation and Councillor representative request

File No: I2017/809

Cr Spooner declared a non-pecuniary interest in this matter. He elected to remain in the Conference Room and participate in the discussion and the vote.

17-310 Resolved:

1. That Council appoint Cr Coorey as the Councillor representative to the Senior Citizen's Hall Byron Bay replacing Cr Ndiaye in this role, with Cr Hackett being the alternate delegate.
2. That the resignation from Peter Wynn-Moylan from the Bangalow A&I Hall Board of Management be accepted and that a letter of thanks be provided.
3. That the resignation from Howard Sedgmen be accepted following the Lone Goat Gallery Board of Management meeting on 14th August 2017 and that a letter of thanks be provided.
4. That Shanti Des Fours be appointed to the Lone Goat Gallery Board of Management.
5. That the resignation from Leigh Rees from the Ocean Shores Community Centre Management Committee be accepted and that a letter of thanks be provided.
6. That Susan Cubis be appointed to the Ocean Shores Community Centre Management Committee.
7. That Melinda Bennett be appointed to the Brunswick Heads Memorial Hall Management Committee. (Ndiaye/Richardson)

The motion was put to the vote and declared carried.

Report No. 13.8 BSC ats Hunter Land and Environment Court proceedings

DA 10.2016.486.1, DA 10.2013.559.1

File No: I2017/967

Cr Spooner declared a non-pecuniary interest in this matter. He elected to leave the Conference Room and not participate in the discussion or the vote.

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Cr Hunter declared a pecuniary interest in this matter. He elected to leave the Conference Room and not participate in the discussion or vote.

- 17-311 Resolved** that in accordance with section 10A(2)(g) of the Local Government Act 1993, Council move into confidential session as advice concerns litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (Richardson/Coorey)

*The motion was put to the vote and declared carried.
Crs Spooner and Hunter were not present for the vote.*

17-312 Resolved:

1. That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving development application 10.2016.486.1, subject to appropriate conditions to be finalised under delegation.
2. That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement modifying development application 10.2013.559.1, subject to appropriate conditions to be finalised under delegation. (Lyon/Richardson)

*The motion was put to the vote and declared carried.
Crs Spooner and Hunter were not present for the vote.*

PROCEDURAL MOTION

- 17-313 Resolved** that the meeting move out of confidential session. (Richardson/Cameron)

*The motion was put to the vote and declared carried.
Crs Spooner and Hunter were not present for the vote.*

Crs Spooner and Hunter returned to the meeting at 3.06pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 **Local Approvals Policy**
File No: 12016/997

17-314 Resolved:

1. That Council endorse the exemption provisions of the draft Local Approvals Policy and request consent from the Departmental Chief Executive for the proposed exemptions.
2. That the draft Local Approvals Policy, after consent by the Departmental Chief Executive, be placed on public exhibition for a period of 42 days for community consultation and submissions from interested parties.
3. That after the community consultation process the Draft Local Approvals Policy be reported back to Council.
4. That a workshop is held on the Local Approvals Policy as part of a Strategic Planning Workshop. (Coorey/Richardson)

The motion was put to the vote and declared carried.

QUESTIONS WITH NOTICE**Question With Notice No. 14.1 Sewage System****File No:** I2017/928

At Council's Ordinary Meeting held on 22 June 2017, Tom Tabart asked the following question which was taken on notice:

Why has virtually all the land required by the pipe line from Ocean Shores to Brunswick Valley already been acquired and how much has it cost?

Response Manager Utilities:

On 25 February 2010, the following report to an ordinary Council meeting produced the following:

WATER AND RECYCLING - CONFIDENTIAL REPORT

Report No. 13.8 CONFIDENTIAL Ocean Shores Effluent Reuse Easements and Grant Application

Summary:

Council resolved in February 2009 to defer elements of the Brunswick Area Sewerage Augmentation Scheme, including the Ocean Shores effluent reuse infrastructure, due to financial limitations.

A grant opportunity providing up to 50% of project costs may afford Council the opportunity to implement this project in a shorter timeframe than would otherwise be the case.

A critical component of this project that will eliminate the last of Councils dry weather effluent discharges from sewage treatment plants to the environment, whether undertaken in the short or longer term, is the acquisition of easements along the proposed pipeline route.

The acquisition of easements is a key element of pipeline projects and can take extended periods of time which could impact on the feasibility of current and future grant opportunities. For this reason, it is proposed to proceed with acquisition of easements.

The purpose of this report is to advise Council of the grant initiative and seek approval for the expenditure in the 2010/11 budget and to acquire the easements.

Resolution 10-90:

Resolved that in relation to affected private property parcel numbers being 12390, 96030, 124450 239590 and Crown land road reserves, that Council authorise subject to the parties entering an acceptable deed of agreement:

- a) *the acquisition of the easements as detailed in this report: and*
- b) *the affixing of the Council seal to all necessary documents that affect the acquisitions.*
(Tucker/Woods)

Costs for the easement acquisitions including legal, surveying, registration, wages, etc. approximate \$130,000 to date. The budget estimate for the project in 2010 was \$168,000.

Question With Notice No. 14.2 Byron Bay Bypass Legal Proceedings
File No: I2017/929

At Council's Ordinary Meeting held on 22 June 2017, *Fast Buck\$* asked the following questions which were taken on notice:

Why was the amount of money spent? I would like an explanation in relation of the case and how many hearing days there were, the cost for barristers and solicitors, the cost for expert reports and how many of these there were, I'd also like to know in what authority did the General Manager commit so many resources to this single case and, given that Council won the case, who gets to pay the costs?

Response Coordinator Legal Services:

The Land and Environment Court proceedings were an objector appeal brought pursuant to s 98(1) of the *Environmental Planning and Assessment Act 1979* (NSW) by the Butler Street Community Network Incorporated against the Northern Region Joint Regional Planning Panel, GHD Pty Ltd and Byron Shire Council. The appeal was against the grant of consent by the JRPP on 22 June 2016 for Development Application No 10.2016.77.1 lodged by GHD on behalf of the Council, for the construction of a bypass road and associated works ('the Byron Bay Bypass').

The objector appeal was lodged on 20 July 2016 and sought that development consent be refused to Development Application number 10.2016.77.1

Council had resolved twice to progress with the preferred route along Butler Street.

Both the JRPP and GHD filed submitting appearances. Council's active role in the proceedings was authorised by the General Manager who is delegated to take such actions and do such acts or things (not inconsistent with the Act or any Act, ordinance, regulation, or by-law conferring powers or imposing duties on the Council or with any resolution or minute which has been passed or adopted by the Council) as he deems necessary to generally manage, control and administer the affairs of the Council including exercise of the powers and discretions of the Council and performance of its duties.

The proceedings were the subject of a conciliation conference on site and then in Byron Bay on Friday 2 December 2016. No agreement was reached.

It is the usual practice of the Court to list merit appeals for a conciliation conference unless the parties can satisfy the Court that there is a good reason the proceedings should not be fixed for a conference. The purpose of a conciliation conference is to resolve or narrow the issues in dispute between parties.

The matter was heard on 17-19 May 2017. Day 1 of the hearing was on-site. Days 2 and 3 were at the Land and Environment Court in Sydney.

On 2 June 2017 the Commissioner made the following orders:

1. Development Consent is granted to Development Application No. 10.2016.77.1 for construction of a road and associated works subject to conditions of consent.
2. The appeal is otherwise dismissed.

[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2017/1278.html?stem=0&synonyms=0&query=title\(butler%20street%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2017/1278.html?stem=0&synonyms=0&query=title(butler%20street%20))

Council was represented by Mr A Galasso SC instructed by HWL Ebsworth Lawyers (from Council's legal services panel)

Council relied on the expert evidence of Mr Paul Grech (planning), Dr Renzo Tonin (acoustic), Mr Robert Staas (heritage), Professor Roberta Ryan (social planning) and Mr Daniel Williams (ecology).

Legal representatives and experts were required to attend both the Conciliation Conference and the hearing.

Costs as at 30 June 2017 were:

Legal representation (solicitor and counsel) \$440,371.38 ex GST
Experts \$31,728.87 ex GST

For cases in Class 1 of the Court's jurisdiction, the Court rules (Pt 3 rule 3.7 of the *Land and Environment Court Rules 2007*) provide that the Court is not to order payment of costs unless the Court considers that an order for the whole or any part of the costs is fair and reasonable in the circumstances. What is 'fair and reasonable' depends on the circumstances of each individual case. No costs order has been made.

Council is seeking to recover the legal costs incurred relating to an unsuccessful Notice of Motion brought by the Butler Street Community Network. The total of these legal costs is \$22,665 (ex GST). In delivering judgement on the Notice of Motion the Judge reserved the question of costs.

Question With Notice No. 14.3 Staff comments in Notices of Motion

File No: I2017/972

At Council's Ordinary Meeting held on 22 June 2017 and previously, Mr John Anderson asked the following question which was taken on notice:

(interpreted from comment) Do the GM/staff overstep their role and act contrary to Resolution 11-979 and thereby fail to respect the "separation of powers" by providing advice and/or options to Council in staff comments to Notices of Motion?

Response Coordinator Legal Services:

The starting point in considering the question is Resolution 11-979. That resolution provides *"that supporting notes and comments (from management) pertaining to notices of motion should not include a specific formatted recommendation"*.

The motion was moved by Cr Tabart on 1 December 2011. The motion was put to the vote and declared tied. The Mayor used her casting vote and declared the motion carried.

The motion was brought forward by Cr Tabart in response to the General Manager's answer to Mr Anderson's questions taken on notice from the Ordinary Meeting of 20 October 2011.

The relevant words in resolution 11-979 are "specific formatted recommendation".

Cr Tabart's motion sought *"that supporting notes and comments (from management) should not come with notices of motion"*. That wording seemed to suggest that staff must not provide commentary or information on any Notice of Motion in any form.

However the Councillor's Background Notes to the Notice of Motion provided that:

Removing the right of recommending such Notices of Motion should in no way restrict the ability of staff to fully advise councillors on the implications of Notices of Motion nor to recommend courses of action that councillors may wish to consider (e.g. 'as a result to these comments councillors may wish to consider ...').

All that resolution 11-979 requires is that staff comments not include a specific formatted resolution. That does not preclude staff from fully advising councillors as to the implications of the Notice of Motion nor to highlight for Councillor's matters for consideration. Those matters may be contrary to what is contained in the Notice of Motion.

In interpreting the meaning of resolution 11-979 the following cases relating to statutory interpretation are of assistance.

Mills v Meeking (1990) 169 CLR 214, Dawson J at 235:

"The literal rule of construction, whatever the qualifications with which it is expressed, must give way to a statutory injunction to prefer a construction which would promote the purpose of an Act to one which would not, especially where that purpose is set out in the Act.

Engineers case (Amalgamated Society of Engineers v Adelaide Steamship) (1920) 28 CLR 129 at 161-2 Higgins J:

"The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we consider the result to be inconvenient or impolitic or improbable."

An application of the principles of these cases means that resolution 11-979 is interpreted by specific reference to its words. Interpretation is assisted by reference to the Councillor's background notes from which the intention behind the resolution is gleaned.

It is abundantly clear that the intent of the resolution was to remove specific formatted recommendations but to preserve the ability of staff to fully advise councillors on the implications of Notices of Motion and even to go so far as to provide for consideration, courses of action that councillors may wish to take on board.

The actions which the GM/staff presently undertake in respect of Notices of Motion do not offend resolution 11-979 nor do they stray into the area of contravening the separation of powers between the elected body and the executive.

URGENCY MOTIONS

PROCEDURAL MOTION

- 17-315 Resolved** that the matter of rural industries food precinct be discussed as a matter of urgency, the urgency being that the process to consider the application will commence with JRPP meetings 17 August 2017, prior to the next Ordinary Council meeting and any Council submission after that date. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

No. 1. Matter of Urgency - Rural Industries Food Precinct**17-316 Resolved:**

1. That Council prepare a submission on the Development Application 10.2016.283.1- Rural Industries Food Precinct.
2. That a Council staff member (not involved in the assessment of the Development Application in point 1) be requested to finalise a submission on behalf of Council objecting to the Development Application 10.2016.283.1 on the following grounds:
 - a) excessive bulk and scale of buildings and infrastructure not in keeping with a rural and local village setting.
 - b) failure to provide clarity on the changing cost of the project to make it eligible for JRPP consideration; and lack of certainty as to changes that have exacerbated the cost increase; requiring either a need for an amended DA, or an extended period of exhibition for public submissions
 - c) Traffic:
 - i) insufficient information to enable an informed consideration of the traffic impacts, as many activities and tenants are yet to be identified and the mix between car and truck movements are yet to be known.
 - ii) failure to provide clarity on the proposed road intersection treatment, including any required land acquisitions.
 - d) The wastewater treatment and disposal proposed within the DA represents a significant environmental risk due to:
 - i) unsuitable wastewater treatment and disposal proposal, potentially resulting in substantial pollution of local groundwater and waterways, including Byron Creek and the Wilson River
 - ii) failure to outline how projected waste water loads are to have development and operations licensed by the EPA, as per the Protection of the Environment Operations Act (Schedule 1) and the EPA's Licensing Guidelines.
 - iii) insufficient waste water design configuration to provide for the removal of nutrients (especially Nitrogen and Phosphorus) from the wastewater stream, posing critical risks to the quality and health of groundwater and the waterways which receive groundwater or surface runoff from the site. This is particularly critical for Byron Creek given its low flow during periods of limited rainfall (which make it strongly susceptible to eutrophication), and its environmental value.
 - iv) failure to consider odour emissions from the wastewater treatment facility
 - v) failure to appropriately explain how part of the effluent disposal area within the 1 in 100 year flood zone could accommodate the proposed effluent loads without saturation and subsequent run-off.
 - vi) a lack of verification of the suitable irrigation rate based on the characteristics of the actual soils present at the site.
 - e) failure to adequately address impacts on nearby Koala and Platypus populations, including dealing with potential threats to connectivity;
 - f) failure to outline the need for such a large food industry precinct, as only two tenants have been identified, calling into question the accuracy of defining the DA as a food industry precinct.
5. That the Council submission be finalised and submitted up to seven days before any scheduled JRPP meeting on the Development Application. This submission to include any other matters that may be pertinent to the consideration of the Development Application by the JRPP in addition to those in point 2 above.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

3 August 2017

6. That Council confirm a staff representative and the following individual Councillors: Richardson, Lyon, Coorey and Cameron to be registered to address the planning panel at the scheduled meeting of the JRPP to express the views of Council.
7. That Council write to Ben Franklin MLC, Tamara Smith MLA, Justine Elliot MP, Walt Secord MLC, Dawn Walker MLC and Gabrielle Upton MP, outlining the resolution and request their support. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 17-317 Resolved** that the matter of smart drum lines within the Cape Byron Marine Park is discussed as a matter of urgency, the urgency being the installation of smart drum lines is scheduled to begin on August 12, prior to the next Ordinary Council meeting. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

No. 2 Matter of Urgency - Smart Drum Lines within the Cape Byron Marine Park

- 17-318 Resolved** that Council write to the Department of Primary Industries-Fisheries to:

1. Thank them for seeking Council's support for shark mitigation measures along the coastline within the Byron Shire.
2. Reiterate Council's support (Resolution 17-275) for the trial of smart drum lines, with the installation of lines within the Cape Byron Marine Park to be commenced outside of the whale migration season (June/November) to ensure the safety of whales through the marine park.
3. Reiterate its support for the use of drone surveillance and any other surveillance programs as preferred non-intrusive shark mitigation measures within Byron Shire.
4. Seek cost estimates for the proposed smart drum line program within Byron Shire and drone surveillance program particulars. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

There being no further business the meeting concluded at 3.41pm.

I hereby certify that these are the true and correct Minutes of this Meeting as confirmed at Council's Ordinary Meeting on 24 August 2017.

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Mayor Simon Richardson