



Byron Shire Council



Minutes

Ordinary Meeting

Thursday, 21 September 2017

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes
21 September 2017

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BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 21 SEPTEMBER 2017 COMMENCING AT 9.07AM AND CONCLUDING AT 6.10PM
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12017/1339

PRESENT: Cr B Cameron (Deputy Mayor), 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)
Mila Jones (Minute Taker)

In the absence of the Mayor for today's meeting, the Deputy Mayor took the Chair.

The Deputy 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.

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 Plastic Free Byron Shire

Marie-Laurence Paquette (Positive Change for Marine Life) and Sasha Mainsbridge (Mullum Cares) addressed Council in favour of the recommendation.

9.2 Fly Neighborly Advice Agreement for Tyagarah Airfield

Matthew O'Reilly (CABS) addressed Council in favour of the recommendation.

9.5 Retraction of planning proposal regarding STRA

*David Wallace (VOHL) addressed Council in favour of the recommendation.
John Anderson addressed Council against the recommendation.*

13.1 Establishment of the Mullumbimby Hospital Site Project Reference Group and Selection of Community Representatives

Jo Faith addressed Council in favour of the recommendation.

13.4 Public Exhibition of Draft Policy - Byron Bay Urban Recycled Water Connection Policy

Matthew O'Reilly (CABS) addressed Council against the recommendation.

13.6 Australia Indonesia Arts Alliance Event 28-30 September 2017

Judy Shelley and Dee Tipping (Australia Indonesia Arts Alliance) addressed Council in favour of the recommendation.

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13.9 PLANNING - 10.2016.444.1 Subdivision of Two (2) Existing Lots into Five (5) Lots at 5 Bulgoon Crescent Ocean Shores

Peter Boyd addressed Council against the recommendation.

PROCEDURAL MOTION

17-378 Resolved that Public Access be extended to 10.45am. (Cameron/Spooner)

The motion was put to the vote and declared carried.

13.15 PLANNING - DA 10.2017.258.1 - Temporary Use of Land for Wedding Venue, 46 Bay Vista Lane Ewingsdale

Joe Vescio addressed Council in favour of the recommendation.

Matthew O'Reilly (CABS) addressed Council against the recommendation.

13.17 Update on Resolution 17-184 - Brunswick Heads Holiday Parks

John Dunn (Brunswick Heads Progress Association) and Michelle Grant addressed Council against the recommendation.

15.2 Substantial Dwelling Constructions without Council Consent

John Anderson addressed Council regarding this Question with Notice.

15.4 Application of Planning Law

John Anderson addressed Council regarding this Question with Notice.

The meeting adjourned at 10.47am and reconvened at 11.15am.

APOLOGIES

Cr Richardson was granted a leave of absence on 24 August 2017 for this meeting.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Spooner declared a pecuniary interest in Report 13.5. The nature of the interest being that his employer is a contractor for delivering Soul Street and First Sun events. Cr Spooner elected to leave the Chamber and will not participate in discussion and not vote.

Cr Spooner declared a pecuniary interest in Report 13.14. The nature of the interest being that the applicant is a fellow Councillor and considers it inappropriate to be voting on this matter.

Cr Spooner elected to leave the Chamber and will not participate in discussion and not vote.

Cr Hackett declared a significant non-pecuniary interest in Report 13.14. The nature of the interest being that she is the property owner. Cr Hackett elected to leave the Chamber and will not participate in discussion and not vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 17-379 Resolved** that the minutes of the Ordinary Meeting held 24 August 2017 be confirmed.
(Spooner/Hackett)
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 Establishment of the Mullumbimby Hospital Site Project Reference Group and Selection of Community Representatives
Report No. 13.3 Council Resolutions Quarterly Review - 1 April 2017 to 30 June 2017
Report No. 13.4 Public Exhibition of Draft Policy - Byron Bay Urban Recycled Water Connection Policy
Report No. 13.5 Safe Summer in the Bay, Schoolies and other large gatherings and counter-terrorism measures
Report No. 13.8 Review of Council delegations

Sustainable Environment and Economy

- Report No. 13.9 PLANNING - 10.2016.444.1 Subdivision of Two (2) Existing Lots into Five (5) Lots at 5 Bulgoon Crescent Ocean Shores
Report No. 13.10 PLANNING - Report update on Council resolution 16-662 - The Farm (DA 10.2016.698.1; PP 26.2016.6.1)
Report No. 13.11 PLANNING - 'Housekeeping' Amendment - Byron DCP 2014
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Report No. 13.15 PLANNING - DA 10.2017.258.1 - Temporary Use of Land for Wedding Venue, 46 Bay Vista Lane Ewingsdale
Report No. 13.17 Update on Resolution 17-184 - Brunswick Heads Holiday Parks

Infrastructure Services

- Report No. 13.19 Byron Bay Pay Parking Time Limits Review
Report No. 13.20 Land Acquisition for Bayshore Drive Roundabout
Report No. 13.21 Durrumbul Causeway

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Hunter and seconded by Cr Coorey. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 17-380 and concluding with Resolution No. 17-403.

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In accordance with Cr Hackett's and Cr Spooner's declarations of pecuniary interest in Report 13.14, they left the Chambers at 11.27am prior to the vote. The Councillors returned to the meeting at 11.28am.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 **Code of Conduct - Panel of Conduct Reviewers**
File No: I2017/987

17-380 Resolved that Council enter into an arrangement with other NOROC member councils to share a Code of Conduct Review Panel consisting of the following Reviewers:

<u>Nominee</u>	<u>Organisation (if applicable)</u>
Nicolas A P Harrison	Self
Michael Symons	Self
Graham Evans	O'Connell Workplace Relations
Kathy Thane	Train Reaction PTY LTD
Peta Tupney	Tress Cox Lawyers
Monica Kelly	Prevention Partners
Chris Gallagher	Chris Gallagher Consulting
Alison Cripps	Cripps Consulting
Kath Roach	Sincsolutions
Phil O'Toole	Centium
Emma Broomfield	Locale Consulting

(Hunter/Coorey)

Report No. 13.6 **Australia Indonesia Arts Alliance Event 28-30 September 2017**
File No: I2017/1158

17-381 Resolved that Council:

1. Endorse the co-hosting of an Indonesian Forum and associated events with the Australia Indonesia Arts Alliance, to be held in Byron Shire at a date to be determined;
2. Allocate \$3,000 of Council's Community Development Program's unallocated s356 donations in the 2017/18 budget to support international relations;
3. Reimburse the Australia Indonesia Arts Alliance for agreed expenses incurred as a co-host of the Indonesian Forum and associated events in Byron Shire to the limit of the budget allocated in part 2 of this Resolution;
4. Consider the inclusion of an item in the 2018/19 Operational Plan budget to continue to support international relations which contribute to community aspirations as outlined in the Community Strategic Plan 2027; and
5. Request staff to develop an international relations policy to provide a framework which governs how Byron Shire Council interacts, coordinates and liaises with foreign government bodies and delegations.

(Hunter/Coorey)

Report No. 13.7 Council Investments August 2017
File No: I2017/1243

17-382 Resolved that the report listing Council's investments and overall cash position as at 31 August 2017 be noted. (Hunter/Coorey)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.13 Amendments to Council's adopted Fees and Charges - 2017/18
File No: I2017/1145

17-383 Resolved that Council adopt the amendments to the Fees and Charges 2017/18 by including the following fee:

1. Information and Technology Service fee levied against all new Development Applications (DAs) received at 0.07% of the estimated value of application. (Hunter/Coorey)

Report No. 13.14 PLANNING - S96 Application 10.2016.438.2 Minor changes to approved floor plan of dual occupancy dwelling, 2/4 Belongil Cres, Byron Bay
File No: I2017/1157

17-384 Resolved that, pursuant to Section 96 of the *Environmental Planning & Assessment Act 1979*, Application No. 10.2016.438.2, for minor changes to approved floor plan for Dual Occupancy, be approved by modifying Development Consent number 10.2016.438.1 as indicated in Attachment 3 (E2017/83865). (Hunter/Coorey)

*The motion was put to the vote and declared carried.
 Crs Coorey, Martin, Lyon, Ndiaye, Cameron and Hunter voted in favour of the motion.
 No Councillors voted against the motion.
 Crs Hackett and Spooner were not present for the vote.*

Report No. 13.16 Draft Road Airspace Policy
File No: I2017/1260

17-385 Resolved:

1. That Council adopt the Road Airspace Policy with the following amendments:
 - Amend part 2 to:
 This policy applies to property owners who want, in the future, wish to use adjacent road airspace for commercial benefit. This policy does not apply to existing encroachments in road reserve air space.
 - Delete the definition of 'road air space'.
 - Amend clause 5.6 to:
 In the event that no Section 138 approval has been granted, ~~Council may issue an order under Section 107 of the Roads Act to remove the structure. Such an order is not appealable~~ and the structure is not otherwise lawfully encroaching on road air space, Council may seek the structure's removal from the road reserve.
 - Delete part 7.

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2. That affected land owners be notified. (Hunter/Coorey)
-

Report No. 13.18 **Byron Energy Action Tank**
File No: I2017/1291

17-386 Resolved:

1. That Council note the report.
 2. That Council receive a further report once the Council owned land has been assessed for potential to support renewables, and of the implications of this in terms of process, probity and finance, should this land be sought by others for this purpose.
 3. That prior to the consideration of a Council report on these issues, that a Strategic Planning Workshop be conducted to enable more detailed discussion of the propositions articulated in the report. (Hunter/Coorey)
-

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 **Report of the Finance Advisory Committee Meeting held on 17 August 2017**
File No: I2017/1230

- 17-387 Resolved** that Council note the minutes of the Finance Advisory Committee Meeting held on 17 August 2017. (Hunter/Coorey)

- 17-388 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.1 2016/17 Financial Sustainability Plan - Update on the Action Implementation Plan as at 30 June 2017
File No: I2017/966

Committee Recommendation 4.1.1

That the update report to 30 June 2017 on the 2016/2017 Financial Sustainability Plan Action Implementation Plan (E2017/68956) be received and noted. (Hunter/Coorey)

- 17-389 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.2 Carryovers for Inclusion in the 2017/18 Budget
File No: I2017/1082

Committee Recommendation 4.2.1

That Council note the works and services, and the respective funding shown in Attachment 1 (#E2017/77527) were carried over from the 2016/2017 financial year and adopted as budget allocation revotes for inclusion in the 2017/2018 Budget Estimates, by Council at its Ordinary meeting held on 24 August 2017. (Hunter/Coorey)

- 17-390 Resolved** that Council adopt the following Committee Recommendation:

Report No. 4.3 Council Budget Review - 1 April 2017 to 30 June 2017
File No: I2017/1084

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Committee Recommendation 4.3.1

That Council note that it authorised the itemised budget variations as shown in Attachment 2 (#E2017/79490) which included the following results in the 30 June 2017 Quarterly Review of the 2016/2017 Budget:

General Fund - \$0 change in Unrestricted Cash Result

- a) General Fund - \$12,866,200 increase in reserves
- b) Water Fund - \$5,528,900 increase in reserves.
- c) Sewerage Fund - \$4,959,400 increase in reserves.

at its Ordinary meeting held on 24 August 2017.

(Hunter/Coorey)

Report No. 14.2 Report of the Audit, Risk and Improvement Committee Meeting held on 17 August 2017

File No: I2017/1275

17-391 Resolved that Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 August 2017. (Hunter/Coorey)

17-392 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.1 Internal audit service provider introduction

File No: I2017/1037

Committee Recommendation 4.1.1

That the Audit, Risk and Improvement Committee note the introductory presentation and welcome O'Connor Marsden and Associates as Council's internal audit, risk and improvement services provider for the four year contract period. (Hunter/Coorey)

17-393 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.2 Internal Audit, Risk and Improvement Committee - overview

File No: I2017/1038

Committee Recommendation 4.2.1

That the Audit, Risk and Improvement Committee:

1. Appoint Michael Georghiou as the Committee's Chairperson
2.
 - a) Note the Audit, Risk and Improvement Committee's constitution
 - b) Request Committee community members to complete acknowledgment of the Code of Conduct. (Hunter/Coorey)

17-394 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.3 Summary of Internal Audit Program 2013 - 2017

File No: I2017/1083

Committee Recommendation 4.3.1

That the Audit, Risk and Improvement Committee:

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1. Note the report from outgoing auditor Grant Thornton.
2. Consider the report conclusions in developing the audit, risk and improvement delivery program for 2017 – 2021. (Hunter/Coorey)

17-395 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.4 2017 Interim Audit Management Letter

File No: I2017/1087

Committee Recommendation 4.4.1

That the comments provided by Management in response to matters raised in the 2017 Interim Audit Management Letter be noted by Council. (Hunter/Coorey)

17-396 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.5 Costings associated with Land and Environment Court proceedings Byron Shire Council ats Butler Street Community Network Inc.

File No: I2017/1091

Committee Recommendation 4.5.1

That this report be noted. (Hunter/Coorey)

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.3 Report of the Biodiversity and Sustainability Panel Meeting held on 31 August 2017

File No: I2017/1263

17-397 Resolved that Council note the minutes of the Biodiversity and Sustainability Panel Meeting held on 31 August 2017. (Hunter/Coorey)

17-398 Resolved that Council adopt the following Committee Recommendation:

Procedural Motion Resignation of Kate Smillie

Committee Recommendation

That the resignation from Kate Smillie be accepted and a letter of appreciation be sent to Kate thanking her for her knowledge and commitment to the Biodiversity and Sustainability Panel and Advisory Committee, over the past seven years. (Hunter/Coorey)

17-399 Resolved that the Biodiversity and Sustainability Panel Constitution be amended to reflect the change from seven to six community representatives. (Hunter/Coorey)

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.4 Report of the Transport and Infrastructure Advisory Committee Meeting held on 17 August 2017

File No: I2017/1137

17-400 Resolved that Council note the minutes of the Transport and Infrastructure Advisory Committee Meeting held on 17 August 2017. (Hunter/Coorey)

17-401 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.1 Update on Council's Pedestrian Access and Mobility Plan (PAMP) and Bike Strategy and Action Plan (Bike Plan)

File No: I2017/1003

Committee Recommendation 4.1.1

1. That Council:
 - a) note the report on the update on the progress of Council's Pedestrian Access and Mobility Plan (PAMP) and Bike Strategy and Action Plan (Bike Plan);
 - b) reconsider funding streams (including section 94 revenue streams) so that Council can complete the PAMP and Bike Plan in the next 6 months; and
 - c) develop a consultants brief for the PAMP and Bike Plan
2. That a link to Council's Capital Works Program, PAMP and Bike Plan be provided to the Transport and Infrastructure Advisory Committee members. (Hunter/Coorey)

17-402 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.2 Bridge - Asset and Risk Management

File No: I2017/1006

Committee Recommendation 4.2.1

1. That Council:
 - a) note the report on bridge asset and risk management; and
 - b) support the ongoing expenditure in the draft Long Term Financial Plan to address the high risk Bridge Capital Works Program.
2. That the Strategic Asset Management Plan (SAMP) be provided to the Transport and Infrastructure Advisory Committee. (Hunter/Coorey)

17-403 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.3 Broken Head Road Cycleway - Browning Street to Clifford Street

File No: I2017/1039

Committee Recommendation 4.3.1

1. That Council:
 - a) note the report on the Broken Head Road Cycleway – Browning Street to Clifford Street;
 - b) allocate the carried over 2016/17 budget for Broken Head Road Shared Cycleway to procure a report from a suitably qualified person to:
 - i) preview existing shared path and cycleways on Broken Head Road and Bangalow Road, between Clifford Street and Browning Street, Byron Bay;

- ii) preview existing infrastructure against current standards and advise where upgrades may be required as part of the project;
 - iii) provide options including indicative costings which meet the Roads and Maritime Services (RMS) warrants and would likely receive RMS approval for filling the missing links along the shared path between Clifford Street and Browning Street, Byron Bay;
 - iv) identify which sections may be eligible for grant funding under the RMS Active Transport Grants Program; and
 - v) undertake critical analysis for any proposed works including swept path analysis and considerations for emergency services
2. That the Consultants report be reported to an Extraordinary Meeting of the Transport and Infrastructure Advisory Committee. (Hunter/Coorey)
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PROCEDURAL MOTION

- 17-404 Resolved** that Council change the order of business to deal with items 9.1, 9.2, 9.5, 13.4, 13.5, 13.9, 13.10, 13.11, 13.15, 13.17 next on the Agenda with Report 13.1 being dealt with last on the Agenda. (Cameron/Lyon)

The motion was put to the vote and declared carried.

NOTICES OF MOTION

Notice of Motion No. 9.1 Plastic Free Byron Shire
File No: I2017/1154

17-405 Resolved:

1. That Council received a report in October 2017 on Council's capacity to influence reductions in single use of plastic bags and packaging with the intent of implementing a voluntary ban of single use plastic bags and packaging in the Byron Shire by Plastic Free July 2018.

This could involve:

- a) creating a program of education and assistance for local businesses and the community to reduce the use of disposable plastic items including plastic bags, plastics drinking straws, bottled water, takeaway coffee cups and food containers.
- b) host a number of events to raise awareness and promote alternatives for local businesses and local business groups.
- c) support and promote the positive steps being taken in the community to reduce the use of single use plastic items.
- d) report back the costs and benefits of phasing out single use plastics for Council if it was implemented across the shire.
- e) the implementation of Council's existing Sustainable Events Management Policy, in particular as it relates to the use of disposable plastic items and packaging for takeaway items and single use plastic water bottles.
- f) Work in conjunction with local groups like Plastic Free Byron, Positive Change for Marine Life, Mullum Cares and Boomerang Bags and the Chambers across the Shire to find the best ways to help implement these changes.

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2. That Council look to identify potential funding streams to help support the process through grants or other means.
3. That included in the report is an investigation of options for incentives to reduce use of plastic in take away venues.
4. That Council investigate potential legal options for a ban or covenant to assist in this process.
5. That Council creates and promotes more public water stations across the shire to reduce the need for single use water bottles.
6. That Council writes to the NSW Premier Gladys Berejiklian, NSW Environment Minister Gabrielle Upton, NSW MLC for Ballina, Tamara Smith, NSW Member for the Northern Rivers, Benjamin Franklin and the Federal Member for Richmond, Justine Elliot, advocating for a ban on single use plastic bags and asking for any support they may be able to give. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Notice of Motion No. 9.2 Fly Neighbourly Advice Agreement for Tyagarah Airfield
File No: I2017/1271

- 17-406 Resolved** that Air Services Australia (ASA), the Aircraft Noise Ombudsman(ANO), non-profit tenants at Tyagarah Airfield, commercial tenants at Tyagarah airfield, Tyagarah Progress Association, land owners within 3km of Tyagarah airfield and interested residents be invited to participate in an initial stakeholder meeting facilitated by Council to consider the development of an FNA agreement in the next three months. (Coorey/Cameron)

The motion was put to the vote and declared carried.

Notice of Motion No. 9.5 Retraction of Planning Proposal regarding STRA
File No: I2017/1282

- 17-407 Resolved** that Council write to the Minister for Planning as per S.58 (4) of the Environmental Planning and Assessment Act 1979, and request that Amendment No.11 Byron Local Environmental Plan 2014, not proceed to enable Council time to reconsider and resubmit a more detailed and well-thought-through planning proposal following the outcome of the State Government's consideration of the Short Term Holiday Letting in NSW Options Paper. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

Crs Cameron, Spooner and Hunter voted against the motion.

The meeting adjourned at 12.36pm for lunch and reconvened at 1.22pm.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.4 Public Exhibition of Draft Policy - Byron Bay Urban Recycled Water Connection Policy
File No: I2017/1122

- 17-408 Resolved** that Council adopt the Byron Bay Urban Recycled Water Connection Policy as per Attachment 1 (#E2017/62524) with the following amendments:

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1. Objectives

The objective of this policy is to facilitate connection to the Byron Bay Recycled Water Scheme and use of that water, in particular by large water users such as commercial enterprises, sporting associations and clubs.

2. Scope

This policy applies to connections and water usages that are close (in the order of 100m) to the recycled water supply line.

The maximum value that Council will fund is \$20,000 per connection.

4.2 Council Pays Upfront Costs for Installation

[as printed but with the addition of a new paragraph between paragraphs 2 and 3]

The property owner/applicant will estimate their uptake of recycled water and demonstrate how this commitment will be achieved. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Report No. 13.5 **Safe Summer in the Bay, Schoolies and other large gatherings and counter-terrorism measures**

File No: 12017/1149

In accordance with his declaration of pecuniary interest in this matter, Cr Spooner left the Chamber, did not participate in the discussion and did not vote.

17-409 Resolved:

1. That Council note the requirement for community safety measures for community events for crowds of more than 3,000 people.
2. That Council work with NSW Police to implement interim arrangements to safeguard the community against potential risks for Safe Summer in the Bay 2017/18.
3. That Council work with NSW Police and event stakeholders to develop a community safety plan that is proportionate and may identify permanent infrastructure arrangements to ensure the community is safeguarded. (Martin/Ndiaye)

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

Cr Spooner returned to the Chamber at 1.40pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 **PLANNING - 10.2016.444.1 Subdivision of Two (2) Existing Lots into Five (5) Lots at 5 Bulgoon Crescent Ocean Shores**

File No: 12017/944

- 17-410 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2016.161.1 for Subdivision to create five (5) residential lots,

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associated infrastructure works and removal of ten (10) trees, be granted consent subject to the conditions listed in Attachment 3 with an amendment to Condition 7(b) shown below:

7(b) Access Handle

A minimum five and half (5.5) metre wide reinforced concrete driveway (or equivalent) for the first 6 metres into proposed Lot 2 and then to a width of three (3) metres together with all necessary services/service conduits (water, sewer, telephone, power, stormwater) within the access handle of proposed Lot 2 to provide access via a Right of Way to proposed Lot 1, and 3. Retaining walls on the western side of the driveway are to be designed to maximise setbacks to the adjoining property (Lot 447 DP 238451) and minimise fill heights to be no more than 1 metre in height adjacent to the western boundary with Lot 447. Such setbacks are to be a minimum width of 3 metres where the driveway narrows to 3 metres. The area between the retaining wall and boundary to be suitably landscaped and planted with native trees and shrubs. Details to be submitted with the landscape plan.

A minimum three (3) metre wide reinforced concrete driveway (or equivalent) together with all necessary services/service conduits (water, sewer, telephone, power, stormwater) within the access handle of proposed Lot 5 and to provide access via a Right of Way to proposed Lot 4. Suitable turning areas and widening to be provided at the end of the access handle, to facilitate access and egress to the site in a forward direction and for the passing of vehicles. (Coorey/Lyon)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Report No. 13.10 **PLANNING - Report update on Council resolution 16-662 - The Farm (DA 10.2016.698.1; PP 26.2016.6.1)**
File No: I2017/1011

17-411 Resolved:

1. That Council note the report.
2. That Council discuss this matter at a workshop prior to the October Ordinary Meeting.
(Spooner/Hunter)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

The meeting adjourned at 2.21pm to open the Byron Shire Reserve Trust Committee Meeting and reconvened at 2.24pm.

Resolution numbers 17-412 and 17-413 were used for the Byron Shire Reserve Trust Committee Meeting.

Report No. 13.11 **PLANNING - 'Housekeeping' Amendment - Byron DCP 2014**
File No: I2017/1041

17-414 Resolved:

1. That Council proceed with preparation and public exhibition of the Byron DCP 2014 amendments proposed in this report, as detailed in Attachment 1 (#E2017/86663) and Attachment 2 (#E2017/85812) as amended below:

Item 4 - Chapter B3 Services B3.2.1 Provision of Services

3. Telecommunications Infrastructure

- c) Alternative means of telecommunications access for rural subdivision may be considered where the applicant can demonstrate that an NBN service is available and is supported by a letter from a recognised telecommunications consultant confirming that each allotment can be serviced by such a system.

Approvals for rural subdivisions utilising alternative means of telecommunications access will require restrictions on the title of all new allotments consistent with the concept sought by the developer (e.g. fixed line telephone services not provided).

2. That Council receive a further report for consideration of submissions following the statutory public exhibition period;
3. That should there be no submissions, the amendments to the DCP be adopted as of the close of the statutory public exhibition period date, and notified accordingly. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

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

Cr Hunter voted against the motion.

Report No. 13.15 PLANNING - DA 10.2017.258.1 - Temporary Use of Land for Wedding Venue, 46 Bay Vista Lane Ewingsdale

File No: I2017/1229

Moved:

1. That pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment, 1979, the proposed development is contrary to the provisions of cl 2.8(3) of Byron Local Environmental Plan 2014, in that Council cannot be satisfied that the temporary use as proposed will not adversely impact adjoining land or the amenity of the neighbourhood.
2. That pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment, 1979, the proposed development is likely to result in adverse environmental and social impacts in the locality.
3. That pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment, 1979, the site is not suitable for the development as proposed, as the temporary use is likely to adversely impact on adjoining land and the amenity of the neighbourhood. (Spooner/Hackett)

PROCEDURAL MOTION

17-415 Resolved that Cr Spooner be granted a one minute extension to his speech. (Ndiaye/Cameron)

The motion was put to the vote and declared carried.

The motion (Spooner/Hackett) was put to the vote and declared lost.

Crs Coorey, Hackett, Spooner voted in favour of the motion.

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

17-416 Resolved that, pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2017.258.1, for a Temporary Function Centre, be approved

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subject to the conditions listed in Attachment 2 with the amendments to Conditions listed in document E2017/91129 and as noted below:

Helicopter Access

No members of the wedding party, including Bride and Groom and Bridal party, guests or celebrant are to use helicopters to access or leave the site at any time. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Crs Martin, Lyon, Ndiaye, Cameron and Hunter voted in favour of the motion.

Crs Coorey, Hackett and Spooner voted against the motion.

Report No. 13.17 Update on Resolution 17-184 - Brunswick Heads Holiday Parks
File No: I2017/1261

Moved:

1. That Council notes the following Concept Parameters as shown in Attachment 1 (#E2017/86763) and detailed below for the purposes of amending the Plans of Management for Terrace Reserve for the purposes of public exhibition of the Crown Reserves Plan of Management:
 - a) Southern Cypress Pine Precinct is to be restricted to use as a memorial park and not used as a camping area.
 - b) Temporary toilet block in Southern area to be removed
 - c) The Trust will negotiate to form a consolidated central permanent residents' precinct which will be made to comply with the 10m set back from top of bank to all structures. Compliance to be achieved within 12 months.
 - d) Permanent residents unable to comply with 10m setback will be relocated to north western precinct.
 - e) Terrace Reserve operational boundary will be established to achieve 10m set back from top of bank to any short-term camp sites and 10m set back from top of bank for all cabins and dwelling sites in providing a continuous foreshore walkway.
2. That Council supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Terrace Reserve as per the parameters above.
3. That:
 - a) Council imposes a condition on any Approval to Operate issued by Council in respect of the applications for Terrace Reserve 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. That, 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.

Proposed amendments to Resolution 17-184

Ferry Reserve Holiday Park

The operational boundary of Ferry Reserve Holiday is to remain along the southern boundary of Riverside Cres to retain the integrity of the entire foreshore area for public use and enable required rehabilitation of wildlife corridor. The riverside road provides a clearly defined barrier to separate park activities from public lands and will help prevent further encroachment of public open space.

Massey Greene Holiday Park

The western boundary at Massey Greene to remain as determined in all previous motions (2012-2015) (ie. aligned to existing picket fence) excluding Lot 7005 from the operational area to provide adequate space between boat harbour to access Yacht precinct, boat ramp and public access. The foreshore walkway to be extended to 10m wide to improve public access along the riverfront (along northern, eastern and western boundaries) as agreed.

(Spooner/Hackett)

PROCEDURAL MOTION

17-417 Resolved that Cr Ndiaye be granted a one minute extension to her speech. (Cameron/Hunter)

The motion was put to the vote and declared carried.

The motion (Spooner/Hackett) was put to the vote and declared lost.

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

FORESHADOWED MOTION

17-418 Resolved:

1. That Council notes the following Concept Parameters as shown in Attachment 1 (#E2017/86763) and detailed below for the purposes of amending the Plans of Management for Terrace Reserve for the purposes of public exhibition of the Crown Reserves Plan of Management:
 - a) Southern Cypress Pine Precinct is to be restricted to short-term camping sites with no permanent residents or cabins to be relocated to the area.
 - b) Camping practices in Southern Cypress Pine Precinct will observe and protect structural root zones of the Cypress Pines as part of an ongoing monitoring program.
 - c) The Trust will negotiate to form a consolidated central permanent residents' precinct which will be made to comply with the 3m set back from top of bank to any structure as a minimum. The Trust will make endeavours to achieve 10m set back from top of bank to any structure wherever feasible.
 - d) Remaining permanent residents will be relocated to north western precinct.
 - e) With the exception of the central permanent residents' precinct addressed in item 1c, Terrace Reserve operational boundary will be established to achieve 7m set back from top of bank to any short-term camp sites and 10m set back from top of bank to any dwelling sites in providing a continuous foreshore walkway.
 - f) the Southern Cypress Pine Precinct is acknowledged as a place of reflection and remembrance.
 - g) Any areas of Indigenous cultural significance be recognised and protected.
2. That Council supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Terrace Reserve as per the parameters above.
3. That:
 - a) Council impose a condition on any Approval to Operate issued by Council in respect of the applications for Terrace Reserve that the operation of the caravan park/camping ground and any building or work associated with its operation must comply with all

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- 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. That 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 years. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

MAYORAL MINUTE

There was no mayoral minute.

NOTICES OF MOTION

Notice of Motion No. 9.3 Roadworks in Protected Areas
File No: I2017/1272

Cr Coorey withdrew this Notice of Motion.

Notice of Motion No. 9.4 Review of Selected Policies
File No: I2017/1276

17-419 Resolved:

1. That Council notes that staff are preparing a report on the review of all of Council's policies that is being undertaken in partnership with Council's internal auditors.
2. That a briefing on the review process occurs at the next available Strategic Planning Workshop.
3. That the following be considered priority policies:
 - a) Affordable Housing on Council Owned Land Policy 2009
 - b) Community Economic Development Policy 2010
 - c) Planning Agreement Policy 2009
 - d) Positive Ageing Policy 2010
 - e) Social Impact Assessment Policy 2009 (Coorey/Ndiaye)

The motion was put to the vote and declared carried.

PETITIONS

1. Tyagarah Airfield

The Deputy Mayor tabled a petition containing 281 signatures which states:

"The Petition of residents of Byron Shire brings to the attention of the Byron Shire Council the intensification of use of Tyagarah Airfield over the last ten years without any environmental impact

assessments being carried out on the negative impacts on the local community and environment..."

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Submissions and Grants as at 30 August 2017**
File No: I2017/1161

17-420 Resolved that Council note the report. (Ndiaye/Cameron)

The motion was put to the vote and declared carried.

DELEGATES' REPORTS

1. SES Mullumbimby Community Post-Flood Action Workshop

Cr Martin advised Council:

On Tuesday Cr Cameron and I both attended the SES Mullumbimby Community Post-Flood Action Workshop at the Ex-services Club. It was at a tricky time to hold it at 6:00pm but about 30 people turned up and shared their stories of their experiences during the last flood. From losing things to just being scared all sorts of stories came out.

One of the issues was their difference in reading from various flood levels and also reports that were coming through from the BOM about whether it was mild to moderate. The SES have acknowledged that there were problems there and they are looking into doing a national review of warning standards in the Australian Fire and Emergency Services.

Tony Nash was there from infrastructure which was really wonderful as he took notes on the residents reports of what drains needed repairing or digging out, trees that were across the river and the like so that was really useful.

The focus of the forum was that people got to tell their stories however the SES then explained that they're trying to shift the culture of residents expecting somebody else to come and save them and are now looking at getting groups of people together and community action teams to come up with solutions on what to do next time.

One of the really interesting pieces of information that came out of the night was the Mullumbimby SES only has 19 members and that was quite a shock to everyone there and with 4 to 5 of them on the phones, so that left 14 people to do 230 rescues. So they are really understaffed and don't have enough volunteers so these community actions teams are going to be training people to look out for each other and what to do when another flood happens; they're looking for support in that area. It was really positive and it was very well supported by the community and I look forward to seeing how this is going to roll out. I think the Mullumbimby Residents Association were right behind helping to make this happen, so hopefully next time we have a major weather incident we will have some trained community people all on board to help.

Cr Cameron added:

It was really pleasing for me to see that, the direction in capacity building within the community, establishing resources at local levels, building resilience. It was very much the direction that was behind the motion this Council passed following Cyclone Debbie, so it was good to see the community groups getting involved. Just to add, there are another two of these meetings coming

up this weekend; I think one is at Ocean Shores at 10:30am on Saturday morning and one at Billinudgel on the Sunday during the day.

Cr Coorey left the Chambers at 3.55pm.

2. Arakwal National Park and Byron Coast Area Management Committees

Cr Spooner advised Council:

I'm the representative on the Arakwal National Park Management Committee and the Byron Coast Area Management Committee. We had a meeting on Monday for an issue that has come up, that I think is relevant for us. I just want to flag it at this point because there has been a bit of discussion with the General Manager and with Mr James over it. Essentially it is around the clothes optional bathing at Tyagarah. This has been an issue that's been around for some time and there has been increased concerns around the negative social impacts and behaviours that are occurring around that area of the coast line as well as some sexual assaults recently have been reported - we last dealt with it back in 2013.

The discussion at National Parks on Monday was to try and take some firmer action over how the area is utilised and I got an email from Sue Walker who is the Area Manager for Parks who is telling me that National Parks and Wildlife Services and the Police inspected the Tyagarah reserve day use area on 19 September. We have endorsed signage for the carpark and lake area regarding the Tyagarah nature reserve not being a clothes optional area. The signage is being organised and I listed it as a priority with a media release going out when it's installed. Sue Walker indicated National Parks supports a proposal to remove the Council's clothes optional area declaration and I'll be submitting a notice of motion in regards to this, and I'm interested in any discussion prior to the next meeting around this. Apparently the declaration was made back in the 90s by Council even though they didn't have the authority to do it. We need to get rid of it, and I look for your support to be in line with what National Parks is doing in order to curb the negative behaviour in that area.

What I'd also like to flag is the discussion that was held, by my recollection, about 4 year ago around what other options are there in our community because I'm not necessarily against clothes optional beaches. It's this particular location that has increasingly caused issues for local residents. It's not a safe place to go anymore and that's the message, especially to woman and for kids and families. I think we do need to look at it and not just put our head in the sand, so to speak.

So I'm happy to have that discussion with people prior to the next meeting but National Parks are moving on it so I think we should as well.

The meeting adjourned at 4.02pm and reconvened at 4.14pm.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.3 Council Resolutions Quarterly Review - 1 April 2017 to 30 June 2017
File No: I2017/1080

17-421 Resolved:

1. That Council receive and note the information provided in this report on outstanding Council Resolutions in Attachment 1 (#E2017/84730).
2. That Council note the completed Resolutions in Attachment 2 (#E2017/84729).
3. That no further action be taken in respect of Resolution 14-146 and that it be closed.

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4. That while a new website is being designed, that more information is included in quarterly reports on the progress of resolutions. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

Report No. 13.8 **Review of Council delegations**
File No: I2017/1266

17-422 Resolved that with regard to the review of delegations, Council:

1. Revoke its previous delegations and adopt:
 - a) Instrument of Delegation to the Mayor as per Attachment 1 (E2017/87215); and
 - b) Instrument of Delegation to the General Manager as per Attachment 2 (E2017/86811) and amended as follows:
 - i) under Tender Acceptance, that the upper limit of projects is set at \$250,000
2. Reconfirm its delegation of its functions for noxious weeds under the Noxious Weeds Act, 1993 to Rous County Council until such time as the delegation is revoked or re-delegated.
3. Reconfirm its delegations to Council's Special Purposes Committees (noted below) as set out in Council's Code of Meeting Practice (schedule B, E2016/78355):
 - a) Byron Shire Reserve Trust Committee
 - b) Planning review Committee
4. Note that Delegations of Authority were adopted and confirmed for all its Section 355 Committees on 29 September 2016 (Res 16-485).
5. Reconfirm its acceptance of delegation of functions from other agencies as set out at Attachment 3 (E2013/31451).
6. Receive a report with advice on how delegations that are exercised can be reported to Council efficiently and effectively. (Cameron/Coorey)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 **Update on Res 17-299 Alternative trialled options for managing our threatened coastal zone**
File No: I2017/1121

17-423 Resolved:

1. That Council proceed with an invitation to Angus Gordon to address Council on:
 - a) the tripper wall with a view to its adoption at the mouth of Belongil Creek.
 - b) the history of coastal management and processes in the Byron Shire
 - c) implications for Byron Shire when new state legislation for coastal zone management comes into force later this year
 - d) history of flooding within the Belongil Creek and Cumbebin Swamp wetlands and consideration of such given future building development adjoining the areas.
2. That a funding source for this be identified from existing operational funds. (Hackett/Coorey)

PROCEDURAL MOTION

17-424 Resolved that Cr Hackett be granted a one minute extension to her speech. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

*The motion (Hackett/Coorey) was put to the vote and declared carried.
Crs Hunter voted against the motion.*

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.19 **Byron Bay Pay Parking Time Limits Review**
File No: I2017/1162

17-425 Resolved:

1. That Council endorse for consultation the proposal of the changes to the parking time limits in the Byron Bay pay parking area as outlined below:
 - a) Wordsworth Street – modify 2P zone to OP (no limit) zone
 - b) Shirley Street – modify 4P zone to OP (no limit) zone
 - c) Lawson Street North and South Car Parks – modify from OP (no limit) to 4P
 - d) Somerset Street and Butler Street Reserve – modify to free parking zone
 - e) Butler Street – modify 4P zone to OP (no limit) zone
 - f) Byron Street – modify 2P zone to 1P zone
 - g) Fletcher Street – modify eastern side from 4P to 2P
 - h) Jonson Street – modify Carlyle to Kingsley zone from 1P to 2P
2. That Council staff consult with the community regarding the changes to the time limits, and provide a report for Council endorsement at either the December 2017 or January 2018 meeting, with the preference for the December meeting.
3. That Council approve a budget of \$5,000 for community consultation regarding the changes to time limits, from the Pay Parking Reserve. (Ndiaye/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.20 **Land Acquisition for Bayshore Drive Roundabout**
File No: I2017/1237

17-426 Resolved:

1. That Council acquire an area of land from Lot 6 DP 1222674 and Lot 5 DP 1222674 as shown on Option 2 in Attachment 2 (E2017/85933) for the purposes of road widening.
2. That the acquisition be done by agreement.
3. That staff commence the process of compulsory acquisition for road widening in the event that the acquisition by agreement process fails.
4. That the General Manager and Mayor be delegated to negotiate the price for the acquisition of the land.

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5. That subject to the land owner's agreement Council takes an interest in Lot 5 DP 1222674 for the purposes of a drainage easement.
6. That the Public Art Panel is consulted in relation to the gateway features included on the roundabout. (Ndiaye/Cameron)

PROCEDURAL MOTIONS

- 17-427 Resolved** that Cr Coorey be granted a one minute extension to her speech. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

- 17-428 Resolved** that Cr Cameron be granted a one minute extension to his speech. (Ndiaye/Spooner)

The motion was put to the vote and declared carried.

*The motion (Ndiaye/Cameron) was put to the vote and declared carried.
Crs Coorey and Hackett voted against the motion.*

FORESHADOWED MOTION

- 17-429 Resolved** that a Councillor workshop be held to consider the merits and deficiencies of traffic lights compared to roundabouts in regards to Byron Bay traffic. (Spooner/Hunter)

The motion was put to the vote and declared carried.

Report No. 13.21 **Durrumbul Causeway**
File No: 12017/1290

- 17-430 Resolved:**

1. That Council support the implementation of Option 2 – Replace Durrumbul 2 Causeway
2. That pursuant to Section 55 (3) of the Local Government Act 1993, there are extenuating circumstances which apply to the "Durrumbul 2 Causeway (Asset ID 17496) Reconstruction Works" such that a satisfactory result would not be achieved by inviting tenders for the following reasons:
 - i) The level of service provided to the community by the Durrumbul 3 Causeway (Asset ID 78753) is not acceptable due to regular inundation.
 - ii) It is considered more of a benefit to the community to complete the works without the tender process, than to risk not completing the proposed work as soon as possible and prior to the wet season.
3. That Council delegate authority to the General Manager to negotiate agreement with suitable contractors to complete the reconstruction of the causeway.
4. That approved NDRRA flood recovery funds on \$66,000 be allocated towards the reconstruction, and the balance to be funded from the renewal reserve.
5. That subject to confirmation and advice to be shared with Councillors, this design conforms to fish passage standards for new structures and that it grants passage to fish and other fluvial species. (Ndiaye/Cameron)

The motion was put to the vote and declared carried.

Cr Hunter left the Chamber at 5.37pm and did not return.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Establishment of the Mullumbimby Hospital Site Project Reference Group and Selection of Community Representatives**

File No: I2017/927

17-431 Resolved:

1. That pursuant to Section 10A(2)(a) (refer to relevant part of Act below) of the Local Government Act 1993, Council resolve into Confidential Session to discuss this report.
2. That the reasons for closing the meeting to the public to consider this item be that:
 - a) personnel matters concerning particular individuals (other than councillors)
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest. (Cameron/Martin)

The motion was put to the vote and declared carried.

17-432 Resolved:

1. That Council increase the number of representatives the Mullumbimby Hospital Site Project reference Group from 15 to 16 as a result of strong applications and interest in the Project Reference Group as outlined below
 - a) That Council select 12 representatives for appointment to the Mullumbimby Hospital Site Project Reference Group from the Community Organisation nominees, noting the Project Guidance Group have recommended the appointment of representatives of the following groups:
 - Mullumbimby Hospital Action Group
 - North Coast Community Housing
 - Third Sector Australia (formerly On Track Community Programs)
 - Mullumbimby & District Neighbourhood Centre
 - Mullumbimby Chamber of Commerce
 - Byron Youth Service
 - Mullumbimby Residents Association
 - Brunswick Heads Progress Association
 - Ocean Shores Community Association
 - Arts Northern Rivers
 - Creative Mullumbimby
 - Aboriginal Services Coalition
 - b) That Council appoint the following 5 individual community representatives to the Mullumbimby Hospital Site Project Reference Group from the individual community nominees:
 - Mandy Hallinan
 - Jeremiah O'Toole
 - Simone O'Brien

- Gill Lomath
- Louise Earnshaw

3. That Council thank all other nominees for their interest and time in submitting an Expression of Interest and invite them to participate in future broader consultation activities;
4. That Council adopt the Draft Constitution for the Mullumbimby Hospital Site Project Reference Group including the purpose, objectives, membership and timeframe for the group to operate, and amend the number of community representatives from 4 to 5.
(Martin/Cameron)

The motion (Martin/Cameron) was put to the vote and declared carried.

- 17-433 Resolved** that the meeting move out of confidential session. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

QUESTIONS WITH NOTICE

Question With Notice No. 15.1 Helicopter Scenic Flights
File No: I2017/1093

At Council's Ordinary Meeting held on 3 August 2017, Virginie Hemmery asked the following question which was taken on notice:

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?

Response Director Sustainable Environment and Economy:

BACKGROUND

Premises

The premises being used for the landing of helicopters include part Lots 1, 2, 11 and 12 in DP243218. The two helicopter landing sites are located on separate lots outside the Elements Resort complex.

ATTACHMENT 1. A helicopter landing procedure provided by Elements with a diagram depicting the approximate location of the two helicopter landing sites.

Zoning

The premises are zoned SP3 Tourist under the Byron Local Environmental Plan 2014 and 7 (f1) (Coastal Land Zone) under the Byron Local Environmental Plan 1988.

Complaints

Byron Shire Council has received 5 formal complaints in regards to helicopters landing at Elements.

Response

On 13 January 2017 Council wrote to Elements requesting the following:

Council requests that you obtain independent planning advice in the matter and advise Council in writing within 28 days of the date of this letter as to how you intend to proceed with the matter.

On 13 January 2017 Council also reported the issue to the Australian Civil Aviation Authority.

On 8 February 2017 Elements wrote to Council arguing that a helipad has not been constructed and therefore development consent is not required to land helicopters at the premises. Elements said that additional planning advice would be forthcoming to support their argument.

Elements again wrote to Council on 4 May 2017 claiming that the helicopter landing activities are ancillary to the resort. Elements also claimed that only 5 helicopter movements had taken place in the previous 15 months.

CURRENT SITUATION

Under the Byron Local Environmental Plan 2014 a helipad is defined as:

Helipad means a place not open to the public used for the taking off and landing of helicopters.

A helipad is permitted with development consent on land zoned SP3 Tourist under the Byron Local Environmental Plan 2014.

Under the Byron Local Environmental Plan 1988 a heliport is defined as:

Heliport means an area or place which is used for the taking off and landing of helicopters that are available for use by the public and includes terminal buildings and facilities for the parking, servicing and repair of helicopters.

A heliport is prohibited development on land zoned 7 (f1) (Coastal Land Zone) under the Byron Local Environmental Plan 1988.

In correspondence received from Elements on 4 May 2017 the following key arguments were made.

- A. *The site does not contain a "helipad" and the use of the site is clearly not a "heliport" as defined by BLEP14 as there is no public use of the site in this regard.*
- B. *The transport of guests of the resort, on occasion, by helicopter, is ancillary to the resort use. The area utilised is the general open area of the site and there is not a specific helipad provided. Further, the use could not be characterised as a separate and independent use of the site.*

In response to argument A above it is Council's opinion that the landing of helicopters on the premises only has to be a "place" and the presence of physical structures or buildings are not required to meet the definition of a helipad under the Byron LEP 2014.

Furthermore, the place for the landing of helicopters has been specifically dedicated by Elements in their helicopter landing procedure. Council is of the view that the landing of helicopters at Elements is defined as a helipad and requires development consent.

In response to point B above the most relevant Land and Environment Court case law relating to a helipad is the matter of Christopher Peter Walker v Warringah Council (1998) NSWLEC 276 (5 November 1998). In this case the applicant (Mr Walker) successfully argued that the use of a helicopter pad on his premises for private use was ancillary to his dwelling house.

However, the circumstances in this matter were significantly different whereby the court was asked to determine whether the use was ancillary to the dwelling house and whether it was

permissible in the zone with development consent. It should be noted that if a development, activity, or use is found to be ancillary, any such development, activity, or use is not exempt from the requirement to obtain development consent.

The circumstances in the Walker case were:

- The applicant and his wife are the registered proprietors of and reside at the subject property, 301 McCarrs Creek Road, Terrey Hills.
- The applicant intends to use a small two-seater helicopter for personal private transportation between his dwelling house on the subject land and various places at which he carries on business.
- The helicopter will only be used as a private means of transport for the applicant and his wife to and from work and occasionally on private social occasions.

In regards to Elements the circumstances are:

- The helipads are being used by persons that do not own and reside on the premises.
- The helipads are commercial in nature.
- The helipads are located on land that is separate from the resort complex.

Whether the helipads at Elements are ancillary development or not, it is Council's view that they require development consent.

On Monday 4 September 2017 Council wrote to Elements requiring the lodgement of a development application for a helipad within 28 days. If no such application is forthcoming Council will consider its enforcement options in accordance with Council's Enforcement Policy, which may include but is not limited to the issue of notices, orders or commencement of legal proceedings.

Question With Notice No. 15.2 Substantial Dwelling Constructions without Council Consent

File No: I2017/1094

At Council's Ordinary Meeting held on 3 August 2017, John Anderson asked the following question which was taken on notice:

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.

Response Director Sustainable Environment and Economy:

1. Council will record and assess every report alleging unauthorised activity. Council will respond to every such report unless the person raising the matter has indicated they do not wish to

receive a response about council's handling of the matter, or the report is anonymous. (See point 2 for enforcement options available).

- a. Generally speaking, Council's objectives when dealing with reports alleging unauthorised activity are to:
 - i. maintain the collective good and welfare of the community
 - ii. prevent or minimise harm to health, welfare, safety, property or the environment
 - iii. consider the broader public interest having regard to council's priorities and any resource limitations
 - iv. consider the report fairly and impartially. Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required. An investigation of alleged unauthorised activity may take a significant amount of time to complete, particularly where the issues are complex.
 - v. If council decides to investigate, staff will give the person who reported the alleged unauthorised activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation. Decisions about what action should be taken by council are made at the council's discretion. This means the objective is that reports alleging unauthorised activity will be resolved to the satisfaction of council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action. Council staff will endeavour to manage the expectations of people who report alleged unauthorised activity, and in particular explain that in the absence of sufficient evidence of unauthorised activity, council may be unable to take further action. They will also explain that council does not have unlimited resources and powers to deal with reports alleging unauthorised activity. If council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual. While there are certain statutory requirements that must be met in relation to notices and orders council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

2. Council has discretion in deciding whether to take enforcement action on the basis of the available evidence and the circumstances of the individual case.

- a. At the conclusion of an investigation, Council may have one or more of the following options:
 - i. Take no action;
 - ii. Counsel the alleged offender;
 - iii. Issue an electronic caution;
 - iv. Issue a PIN;
 - v. Issues Notices and Orders;
 - vi. Commence criminal proceedings;
 - vii. Commence civil proceedings;
 - viii. Report broader matters to the elected council.
- b. When deciding whether to take enforcement action, Council will consider the circumstances of the case. These include:
 - i. Has Council created an estoppel situation?
 - ii. Is the breach a technical breach only?

- iii. When was the unauthorised activity carried out and for how long?
- iv. How has the unauthorised activity affected the natural or built environment and the health, safety and amenity of the area?
- v. Would consent have been given if it had been sought?
- vi. Can the breach be easily remedied?
- vii. Does the person in breach show contrition?
- viii. Are there any particular circumstances of hardship affecting the complainant or the person the subject of the CRM?
- ix. Has the person the subject of the CRM received a previous warning or other non-coercive approach or has formal legal action been taken?
- x. Would an educative approach be more appropriate than a coercive approach?
- xi. What are the costs and benefits of taking formal enforcement action as opposed to taking informal or no action?
- xii. What are the chances of success if the proposed enforcement action was challenged in court?
- xiii. Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
- xiv. What action would be reasonable and proportionate in this case?
- xv. What would be in the public interest?

c. Staff consider the requirements under Chapter 17 DCP 2010 and or Part A14 DCP 2014 as to whether or not notification of any DA is required.

3. Yes, one in confidential session – Minutes from 25 May 2017 ordinary meeting below:

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.

Question With Notice No. 15.3 Draft Koala Plan of Management
File No: I2017/1095

At Council's Ordinary Meeting held on 3 August 2017, Matthew O'Reilly asked the following question which was taken on notice:

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

Response Director Sustainable Environment and Economy:

A report to the Ordinary Meeting Council 23 February 2017 provided an update on the status of the Byron Coast Koala Plan of Management (KPOM).

http://byron.infocouncil.biz/Open/2017/02/OC_23022017_AGN_603.PDF

In essence, the KPOM does not meet the requirements of the current State Environmental Planning Policy No 44 Koala Habitat Protection i.e. relate to core habitat because core habitat is

not mapped independently within the Shire.

In advice to Council, the Department of Planning and Environment (DPE) suggested the following options for the KPOM:

1. Undertaking additional mapping to ascertain 'core habitat' then seek approval of a KPOM for core habitat - however this is problematic and also extremely costly and may not achieve the result for koala habitat protection; or
2. Council wait the outcomes of the current SEPP 44 review before than reviewing and re-submitting for approval the KPOM as a Plan (not a strategy) as the review is likely to resolve the above areas of concern as raised by DPE.

Based on staff current understanding of the SEPP 44 review and in discussion with DPE option 2 is staff's position.

As such once the SEPP 44 review is completed; the Byron Coast KPOM will be reviewed, and if required exhibited and then submitted for final approval to DPE. A definitive time on this is not possible given the dependency on the State Government for this to occur.

Question With Notice No. 15.4 Application of Planning Law
File No: I2017/1096

At Council's Ordinary Meeting held on 3 August 2017, Tom Tabart asked the following question which was taken on notice:

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?

Response Director Sustainable Environment and Economy:

1. 139 Newes Road was inspected by officers on 3 February 2017.
2. Owner of 139 Newes Road is in the process of complying with Council requirements (particularly in relation to survey plan - not within 40m of high water mark; and Rural Fire Service access).
3. 139 Newes Road had completed building – no ongoing works - so Stop Work Order not relevant.
4. 541 Friday Hut Road has been inspected by officers three times this year, and monitored in between.
5. 541 Friday Hut Road had building works in process so Stop Work order applied.
6. For further information, please refer to Council's Enforcement Policy below:
<http://www.byron.nsw.gov.au/publications/enforcement-policy>

Question With Notice No. 15.5 Waste Management
File No: I2017/1163

At Council's Ordinary Meeting held on 24 August 2017, Tom Tabart asked the following question which was taken on notice:

I have been informed by staff that we currently have contracts to accept our waste with two tips in QLD and that they utilise Ipswich transport contractor JR Stephens to transport our waste to the tip of our choice. On the other hand in an article in the Northern Star on 2 February 2017 a staff member has stated that "council chose a garbage transport company via an open tender process and the contract winner had an existing service with a Toowoomba landfill facility".

Which version is correct? Has the Toowoomba transport contract been terminated? Is the trucker the same company in both scenarios? Do we get to choose what tip we patronise? And if so, what is the criteria utilised to choose a tip?

Response Director Infrastructure Services:

Council has a current contract with Veolia Environmental Services for provision of transport and disposal of waste from the Byron Resource Recovery Centre (BRRC) which was the company referred to in the Northern Star article. This contract resulted from an open tender process and commenced on 21 September 2013. The term of the contract is 5 years with the option to extend for 2 additional 12 month periods. Council does not hold any contract with JR Stephens – they subcontract to Veolia for the transport component of the entire transport and disposal contract.

Council does not get to choose the facility for disposal, rather, any change in the nominated disposal site occurs via contract variation and which must fall within the general scope of the contract specification. The disposal sites nominated in the original tender proposal were the Veolia owned and operated Wattle Glen facility for inert/bulky waste and the Veolia/JJRichards & Sons co-owned and operated TiTree bioreactor facility for putrescible waste, both in Ipswich. The Wattle Glen facility was closed by Veolia in December 2015 due to it reaching capacity and they diverted Council's inert/bulky waste component to an alternate Cleanaway operated landfill facility in Ipswich.

Following a Staff site visit to the Ti Tree Bioreactor and discussion with Veolia, Council Staff began a trial approximately 6-8 weeks ago that involves sending all waste received at the BRRC to the TiTree Bioreactor. This is being conducted with the objective of improved operational efficiencies and environmental outcomes due to reduced truck movements resulting from better compaction and loading of waste into larger 100 cubic meter walking floor haulage vehicles.

URGENCY MOTIONS**PROCEDURAL MOTION**

- 17-434 Resolved** that Council discuss event road closure for the 50th Anniversary of NSW National Parks and Wildlife Service, the urgency being that the an event is to be held on Sunday 8 October 2017, which is before Council's next Ordinary Meeting on 26 October 2017. (Cameron/Ndiaye)

The Deputy Mayor ruled that the matter was urgent.

The motion was put to the vote and declared carried.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

21 September 2017

No. 1. Matter of Urgency - Event Road Closures - 50th Anniversary NSW National Parks and Wildlife Service

17-435 Resolved:

1. That Council endorse the Traffic Management Plan for the 50th Anniversary of the NSW National Parks and Wildlife Service to be held on Sunday 8 October 2017 that includes:
 - a) the temporary road closure of Lighthouse Road (between Palm Valley Drive and the Cape Byron Lighthouse) between 5:00am and 4:00pm;
 - b) the use of the Clarkes Beach bus stop for the operation of the free shuttle bus service.
2. That the approval provided in Part 1 is subject to:
 - a) separate approvals by NSW Police and RMS being obtained;
 - b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;
 - c) that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;
 - d) Due to the event being held at the end of the school holidays, the applicant be required to supply a VMS board notifying of the road closures for the event on Sunday 8 October. VMS board to be placed on the corner Tallows Beach Drive from 9am Friday the 6th October advising of the road closure..
 - e) the event be notified on Council's webpage;
 - f) the event organiser:
 - i) undertake consultation with community and affected businesses including adequate response/action to any raised concerns;
 - ii) undertake consultation with emergency services and any identified issues addressed;
 - iii) hold \$20m public liability insurance cover which is valid for the event;
 - iv) paying Council's Road Event Application Fee prior to the event.

(Cameron/Ndiaye)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 17-436 Resolved** that the Byron Lighthouse Run 2017 be discussed as a matter of urgency, the urgency being that the event is to be held on Sunday 22 October 2017 which is before the next Ordinary Meeting of Council. (Cameron/Ndiaye)

The Deputy Mayor ruled that the matter was urgent.

The motion was put to the vote and declared carried.

No. 2. Matter of Urgency - Byron Lighthouse Run 2017

17-437 Resolved:

1. That the Traffic Management Plan and Traffic Control Plan/s that relate to the Byron

Lighthouse Run 2017, to be held Sunday 22 October 2017, which includes the temporary road closures below, be endorsed between these times:

- a) Lawson Street, between Massinger Street and Lighthouse Road, between 6:30am and 10:00am;
- b) Tallow Beach Road, between Lighthouse Road and Tallow Beach Car Park, between 6:30am and 10:00am;
- c) Lighthouse Road, between Lawson Street and the Cape Byron Lighthouse, between 6:30am and 10:00am; and
- d) Brooke Drive, between Lighthouse Road and the Pass, between 6:30am and 10:00am.

2. That the approval provided in Part 1 is subject to:

- a) separate approvals by NSW Police, RMS and Cape Byron Headland Trust being obtained;
- b) implementation of the approved Traffic Management Plan and Traffic Control Plan/s by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover; and
- c) The event organiser:
 - i) advertising the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;
 - ii) providing copy of the advert for Council's web page;
 - iii) informing community and businesses that are directly impacted (e.g. adjacent to the event), including the Beach Byron Bay Café and North Coast Holiday Park Clarkes Beach, via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
 - iv) arranging for private property access and egress affected by the event;
 - v) liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;
 - vi) consulting with emergency services with any identified issues being addressed;
 - vii) holding \$20m public liability insurance cover which is valid for the event; and
 - viii) payment of Council's Road Event application fee prior to the event.

(Cameron/Ndiaye)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

17-438 Resolved:

- 1. That attendance at the NSW Coastal Conference be discussed as a matter of urgency, the urgency being that the earlybird registration closes on 22 September 2017 and the conference starts on 8 November 2017.
- 2. That attendance at the Local Government NSW Annual Conference be discussed as a matter of urgency, the urgency being that the earlybird registration closes on 23 October 2017 which is prior to the next Ordinary Meeting on 26 October 2017. (Hackett/Ndiaye)

The Deputy Mayor ruled that the matter was urgent.

The motion was put to the vote and declared carried.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

21 September 2017

No. 3. Matter of Urgency - NSW Coastal Conference and LG NSW Annual conference

17-439 Resolved:

1. That Crs Hackett and Coorey be delegated to attend the NSW Coastal Conference to be held in Port Stephens from 8-10 November 2017.
2. That Cr Ndiaye be delegated to attend the Local Government NSW Annual Conference as a voting delegate to be held in Sydney from 4-6 December 2017. (Hackett/Cameron)

The motion was put to the vote and declared carried.

PROCEDURAL MOTIONS

- 17-440 Resolved** that the meeting be extended past 6.00pm to 6.10pm to allow for discussion of an urgency motion. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

- 17-441 Resolved** that council consider measures to facilitate water deliveries beyond a number of causeways in Main Arm due to decreased load limits. The urgency being the issue becoming severe for a number of affected residents. (Cameron/Ndiaye)

The Deputy Mayor ruled that the matter was urgent.

The motion was put to the vote and declared carried.

No. 4. Matter of Urgency - Water deliveries

17-442 Resolved:

1. That Council provide urgent advice to Councillors through the Deputy Mayor, within 7 days, of possible measures to facilitate private water deliveries to affected Main Arm residents.
2. That Council communicate with affected residents regarding the status of the causeways and any ongoing issues regarding the availability of access. (Cameron/Ndiaye)

The motion was put to the vote and declared carried.

There being no further business the meeting concluded at 6.10pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 26 October 2017.

.....
Mayor Simon Richardson