



Byron Shire Council



Minutes

Ordinary Meeting

Thursday, 22 February 2018

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes
22 February 2018

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**MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY,
22 FEBRUARY 2018 COMMENCING AT 4.04PM AND CONCLUDING AT 11.17PM**

12018/253

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: Mark Arnold (Acting General Manager)
James Brickley (Acting Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
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.

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:

8.1 Future Use of the Surplus Transport for NSW Land in Mullumbimby

David Brown addressed Council in favour of the recommendation.

9.1 Byron Bay Historical Walk – Stage 2

Donald Maughan (Byron Bay Historical Society) addressed Council in favour of the recommendation.

William Martin (Byron Bay Walking Tours) addressed Council against the recommendation.

13.3 Draft Community Strategic Plan and Community Solutions Panel

Ann Reed addressed Council in favour of the recommendation.

13.4 Update on Resolution 17-585 regarding Adani and the Carmichael Mine

Matthew Lambourne addressed Council in favour of the recommendation.

13.17 PLANNING – 26.2017.3.1 – Update on Planning Proposal for rezoning of land at Saddle and Gulgan Roads between Mullumbimby and Brunswick Heads

David Brown and Kelvin Daly addressed Council in favour of the recommendation.

Matthew O'Reilly addressed Council against the recommendation.

13.22 PLANNING - Development Application 10.2017.474.1 Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedrooms 70 - 90 Station Street Mullumbimby

John McKenna (North Coast Community Housing) addressed Council in favour of the recommendation.

13.23 Mafeking Road and other requests to enact Council Policy 17.4

Peter Ryan and Melissa Begg addressed Council against the recommendation.

13.24 Contributions for Secondary Dwellings

*David Wallace (VOHL) addressed Council in favour of the recommendation.
Matthew O'Reilly addressed Council against the recommendation.*

15.3 General Manager Delegations

John Anderson addressed Council against this item.

15.10 Rural Accommodation Figures

Matthew O'Reilly addressed Council against this item.

15.14 Byron Bypass

John Anderson addressed Council against this item.

Submission No. 1 Issue of trust

Matthew Lambourne made a submission to Council regarding receiving a response on drainage.

Submission No. 2 Tyagarah Aerodrome

Matthew O'Reilly made a submission to Council regarding vegetation and consent at the Tyagarah Aerodrome.

Submission No. 3 General Manager Delegations

John Anderson made a submission to Council regarding powers of the General Manager in relation to the Byron Bay bypass.

Question No. 1 Illegal tourist letting

Matthew Hartley asked the following question:

"Did the Mayor make his statements that there is no legislation against illegal tourist letting in residential areas, based on your own knowledge, or were you given legal advice to that effect?"

The Mayor, Cr Richardson responded as follows:

"Matthew, if I could just get you to actually show me that quote, show me where it was from, the question that was asked and the context, as I've got no recollection I actually said those exact words. I'm sure I did, so if you could just give me the context, and I'll gladly give you a response"

Question No. 2 Compliance Inspections

Matthew O'Reilly asked the following question:

"When Council compliance officers conduct an inspection of any property (whether they enter the property or not and whether they give notice of the inspection or not) within their delegated powers under the Environmental Planning and Assessment Act, the Local Government Act, the Protection of the Environmental Operations Act or the Roads Act is it Council policy that they complete a record or report of the inspection or is absolutely no record of the inspection required to be entered into the Council file?"

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

Question No. 3 Butler Street Bypass

John Anderson asked the following question:

“Given that it was the Regional Planning Tribunal that issued the consent for the Butler Street Bypass, and given that the Butler Street residents in their court appeal nominated the Northern Region Joint Regional Planning Panel, GHD Ltd (the authors of the development application) and Byron Council as respondents in that order, by what process and under what authority were the Panel and GHD allowed to walk away leaving all the legal work and all the legal costs to Byron Council?”

Ralph James, Legal Counsel responded as follows:

The Land and Environment Court legislation allows a party, any party served with proceedings, to file what is called a submitting appearance. A submitting appearance is one where the party says ‘I submit to whatever orders the Court makes on hearing the evidence’. In the Bypass proceedings, the first two respondents, namely the JRRP and GHD, each filed submitting appearances, as is their unchallengeable right. Council, for reasons which have been explored uphill and down dale, played an active role in the proceedings and because we did that, then we bore the costs of undertaking that role.

Question No. 4 Byron Bay Bypass

Paul Jones asked the following question:

“The Land and Environment Court issued its approval for the bypass road within the wetlands portion of the proposed route subject to a significant list of consent conditions. Council must comply with these court orders and not as it suggests “considerations and resolutions of Council in association with the RMS”. The court orders are clear, the project is as approved, the question remains, does the published latest bypass cost estimate 14 December 2017 of \$22.5M cover all consent conditions of the development approval and what has been done to date to fulfil the specific consent conditions in relation to the wet lands?”

The question was taken on notice.

The meeting adjourned at 5.37pm and reconvened at 6.00pm.

The meeting adjourned at 6.03pm to open the Byron Shire Reserve Trust Committee Meeting. The Ordinary Meeting reconvened at 6.10pm.

APOLOGIES

There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Coorey declared a non-pecuniary interest in Report 9.1. The nature of the interest being that her partner works with one of the interested parties and is friends with both of the parties. Cr Coorey remained in the Chamber and will not participate in discussion and the vote.

Cr Spooner declared a pecuniary interest in Report 9.3. The nature of the interest being that his employer, Byron Bay Community Association has received a donation from the Falls Festival to support both the Soul Street New Year's Eve event and the First Sun New Year's Day event. Cr Spooner elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

18-072 Resolved that the minutes of the following meetings be confirmed:

- Byron Shire Reserve Trust Committee held 1 February 2018
- Ordinary Meeting held 1 February 2018 (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. 13.2 Council Resolutions Quarterly Review - 1 October 2017 to 31 December 2017
- Report No. 13.5 Byron Environment Centre
- Report No. 13.6 Council Budget Review - 1 October 2017 to 31 December 2017
- Report No. 13.10 Joint Organisation of Councils

Sustainable Environment and Economy

- Report No. 13.12 PLANNING - 24.2017.82.1 'Housekeeping' Amendment - Byron DCP 2014 (Various Chapters)
- Report No. 13.13 Draft Constitutions for new Biodiversity Advisory Committee and Sustainability and Emissions Reduction Advisory Committee
- Report No. 13.16 PLANNING - 24.2018.6.1 - Car Share Policy and Draft Amendments to Byron Development Control Plan 2014 Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access.
- Report No. 13.17 PLANNING - 26.2017.3.1 - Update on Planning Proposal for rezoning of land at Saddle and Gulgán Roads between Mullumbimby and Brunswick Heads
- Report No. 13.22 PLANNING - Development Application 10.2017.474.1 Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedrooms 70 - 90 Station Street Mullumbimby

Infrastructure Services

- Report No. 13.23 Mafeking Road and other requests to enact Council Policy 4.17

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Report No. 13.24 Contributions for Secondary Dwellings

REPORTS OF COMMITTEES

Infrastructure Services

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 16 January 2018
6.5 Traffic - Cowper St 34 - Regulatory Signage - No Parking 1am - 6am

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Richardson and seconded by Cr Hackett. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 18-073 and concluding with Resolution No. 18-092.

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Submissions and Grants as at 31 January 2018**
File No: I2018/73

18-073 Resolved that Council note the report and Attachment (E2018/6444). (Richardson/Hackett)

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Operational Plan 2017-2018 - 6-month progress report to 31 December 2017**
File No: I2017/1028

18-074 Resolved that Council note the six-month progress report to 31 December 2017 (Attachment 1 E2018/10208) on the Operational Plan 2017-2018. (Richardson/Hackett)

Report No. 13.3 **Draft Community Strategic Plan and Community Solutions Panel**
File No: I2017/2082

18-075 Resolved that Council:

1. Notes the outcomes from community engagement undertaken in late 2017 (Attachment 1 E2018/10080) and that the report be published.
2. Endorses "Our Byron, Our Future" (draft Community Strategic Plan 2028) (Attachment 2 E2018/10708) for public exhibition and seeks feedback specifically on:
 - a) Proposed vision
 - b) Proposed strategies
 - c) Unique characteristics for each village and township (which will be developed in partnership with masterplan and guidance groups)
3. Should there be no submissions received, adopt "Our Byron, Our Future", however if submissions are received, a further report will be brought to Council reporting on the submissions with a revised Plan where necessary. (Richardson/Hackett)

Report No. 13.4 **Update on Resolution 17-585 regarding Adani and the Carmichael mine**
File No: I2018/30

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18-076 Resolved that Council:

1. Notes the work done to date to implement Resolution 17-585.
2. Notes that correspondence received from Downer confirms that they have no intention of pursuing contracts for work on the Carmichael mine and Downer is now listed in the "Who's Out" section of the Market Forces website Adani list.
3. Resolves to continue Contract 2015-0026 with Downer EDI for the Supply and Delivery of Emulsion.
4. Resolves to continue Contract 2016-0017 with Skilltech Consulting Services (a subsidiary of Downer) for Water Meter Reading.
5. Resolves to continue Contract 2017-0016 NOROC Road Surfacing Services for asphalt supply and lay, pavement stabilisation and bitumen sealing with Downer P/L, RPQ Group and NSW Spray Seal P/L (a subsidiary of Downer) as panel contractors.
6. Resolves to continue the progressive procurement engagements with GHD for the restoration of landslips funded through the NDRRA Program as detailed in this report.
7. Resolves to continue the existing procurement engagements with GHD for the finalisation of the North Ocean Shores Fire Main Upgrade and Byron STP Odour Control Upgrade Inlet Works Investigation. (Richardson/Hackett)

Report No. 13.7 **Bangalow A&I Hall - new fee 'community rate'**
File No: I2018/72

18-077 Resolved:

1. That the new fees for Bangalow A&I Hall outlined below be placed on public exhibition for 28 days.

Bangalow A&I Hall (community rate)	Proposed fee
Per hour	\$20
Per session/ half day (4 hours)	\$150
Per day	\$300
Backstage hire	\$100
Balcony (premium seating, per day)	\$100
Kitchen hire (per day)	\$160
Kitchen hire (per hour – minimum hire 2 hours)	\$20

2. That if no submissions are received during the public exhibition period, the new fees be adopted and incorporated into Council's fees and charges. (Richardson/Hackett)

Report No. 13.8 **Council Investments January 2018**
File No: I2018/86

- 18-078 Resolved** that the report listing Council's investments and overall cash position as at 31 January 2018 be noted. (Richardson/Hackett)

Report No. 13.9 **Tender Assessment - Legal Services Contract 2017-0054**
File No: I2018/94

- 18-079 Resolved** that Council award Tender Legal Services Contract 2017-0054 in accordance with the recommendation made in the Evaluation Panel Recommendation Report for the Provision of Legal Services (#E2018/3130). (Richardson/Hackett)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.11 **Update on the CZMP for the Eastern Precincts of the Byron Bay Embayment**
File No: I2017/2004

- 18-080 Resolved** that Council note the report. (Richardson/Hackett)

Report No. 13.14 **24.2017.81.1 Amendment to DCP 2014 Chapter E5 - Bayshore Drive (Habitat)**
File No: I2018/31

18-081 Resolved:

1. That Council amend the exhibited Draft Byron DCP 2014 Chapter E5 in accordance with Attachment 1 (E2018/7848) to this report.
2. Adopt the Byron DCP 2014 amendment and give public notice of the decision within 28 days. (Richardson/Hackett)

Report No. 13.15 **PLANNING - Development Application No.10.2017.639.1 dual occupancy (detached), alterations and additions to existing dwelling house and two (2) lot strata subdivision of land at 33 Kallaroo Circuit Ocean Shores**
File No: I2018/33

- 18-082 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application .10.2017.639.1 for construction of a new dwelling house to create a dual occupancy (detached), alterations and additions to existing dwelling house and two (2) lot strata subdivision of land, be Refused for following reasons:

- a) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 4.1E of *Byron Local Environmental Plan 2014*, which sets an 800m² minimum lot size for dual occupancies (detached) in the R2 Low Density Residential Zone.
- b) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 4.1 of *Byron Local Environmental Plan 2014*, which sets a 600m² minimum lot size for new lots.
- c) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the written request accompanying the proposed development fails to comply with clause 4.6 of *Byron Local Environmental Plan 2014*. Insufficient justification has been provided to demonstrate that compliance with development standards is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the standard' or that proposed development is in the public interest.

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- d) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 6.6 of *Byron Local Environmental Plan 2014*, which requires development consent must not be granted to a development unless suitable vehicular access has been provided. The driveway width for the rear dwelling does not meet obstruction clearance requirements in accordance with Australian Standards AS2890.1.
- e) Pursuant to Section 79C (1) (a) (iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with Chapter B9 Landscaping of *Byron Development Control Plan 2014*. The proposal does not comply with the objectives of Part B9.5 Dual Occupancies and Semi Detached Dwellings. Landscape principles to provide a pleasant environment for enjoyment of occupants of each dwelling – lack of deep soil planting in rear yard for use by existing property.
- f) Pursuant to Section 79C (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of *Byron Development Control Plan 2014*. Private open space for the existing dwelling comprises a minimal sized fenced area (34 m²) bound by a driveway on two sides. Insufficient information has been provided to demonstrate how the proposed development can meet the objectives of Part D1.5.4 Private Open Space, privacy fence on a front boundary cannot be supported under Part D.1.2.5; and Part D1.5.2 DCP Character principles – does not provide adequate private open space – conflicts with proposed rear privacy fence, driveway width and interface with vehicles.
- g) Pursuant to Section 79C (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access of *Byron Development Control Plan 2014* in relation to the provision of stacked car parking for both dwellings. Fails to demonstrate it will not adversely affect the use of private open space and width of driveway not meeting obstruction clearance requirements in accordance with Australian Standards AS2890.1.
- h) Pursuant to the provisions of Section 79C (1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered suitable for the development as proposed, as there is insufficient area to accommodate the proposed three bedroom dwelling and associated vehicle access, resulting in an overdevelopment of the site.
- i) Pursuant to the provisions of Section 79C (1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of a development which contravenes Council's adopted development standards and development controls without sufficient justification may set an undesirable precedent and is not in the public interest. Options for an alternative design may exist to achieve better outcomes in relation to private open space, landscaping, fencing vehicle access, and car parking. (Richardson/Hackett)

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.

Report No. 13.18 Cities Power Partnership (CPP) Pledge
File No: I2018/54

18-083 Resolved that Council submit the five pledge items in Table 1, column 2 of this report as the Council's commitment to the Cities Power Partnership. (Richardson/Hackett)

Report No. 13.19 PLANNING - Development Application 10.2017.402.1 - Subdivision to create eighteen (18) residential allotments, a public reserve, a drainage reserve, a residual allotment, associated roads, earthworks,

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landscaping and infrastructure at 77 Tuckeroo Avenue Mullumbimby
File No: I2018/80

- 18-084 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2017.402.1 for Subdivision to create eighteen (18) residential allotments, a residual lot, public reserve, drainage reserve and associated roads and infrastructure works (Stage 6 of Tallowood Ridge Estate) be granted consent subject to the recommended conditions listed in Attachment 2. (Richardson/Hackett)

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.

Report No. 13.20 PLANNING - Development Application 10.2017.364.1 - Boundary adjustment/Subdivision to create two lots at 25 Station Street Mullumbimby

File No: I2018/82

- 18-085 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2017.364.1 for Subdivision (2 into 2 Lots) to Create Two (2) Lots, be granted consent subject to conditions listed in Attachment 2 (#E2018/7107). (Richardson/Hackett)

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.

Report No. 13.21 Policy: Commercial use of road reserves

File No: I2018/83

- 18-086 Resolved** that Council adopt the Commercial Use of Road Reserves Policy (#E2018/9436). (Richardson/Hackett)

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 16 January 2018

File No: I2018/101

- 18-087 Resolved** that Council note the minutes of the Local Traffic Committee Meeting held on 16 January 2018. (Richardson/Hackett)

- 18-088 Resolved** that Council adopt the following Committee Recommendation:

Report No. 6.1 Local Traffic Committee Resolutions and recommendation processes

File No: I2017/2009

Committee Recommendation 6.1

That the advice and comments of the Local Traffic Committee in relation to the procedural processes required to execute its roles and responsibilities be provided to the Council.

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(Richardson/Hackett)

18-089 Resolved that Council adopt the following Committee Recommendation:

Report No. 6.3 Byron Bay Pay Parking Time Limit Review - Endorsement of Council Resolved Changes to Time Limits in Byron Bay

File No: I2017/2071

Committee Recommendation 6.3.1

That the Local Traffic Committee approve the time limits as detailed 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.
- 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. (Richardson/Hackett)

18-090 Resolved that Council adopt the following Committee Recommendation:

Report No. 6.4 Traffic - The Esplanade 13 - Regulatory Signs - Formalise parking in cul-de-sac

File No: I2017/2081

Committee Recommendation 6.4.1

That the Local Traffic Committee recommend to Council to regulate parking in the Southern cul-de-sac end of The Esplanade, New Brighton through the installation of “No Parking” and “Parallel Parking” and other relevant and appropriate signage to improve access for residents and service vehicles. (Richardson/Hackett)

18-091 Resolved that Council adopt the following Committee and Management Recommendation:

Report No. 6.6 Traffic Complaints on Clays Road and Coral Ave

File No: I2018/13

Committee Recommendation 6.6.1

That a Give Way sign not be placed on western approach to the T-junction on Clays Road until traffic counts on Plover Parkway and Southern end of Tuckerroo Ave have been completed. (Richardson/Hackett)

18-092 Resolved that Council adopt the following Committee Recommendation:

Report No. 7.1 DA 10.2017.510.1 - Mixed Use development, Jonson and Browning Streets, Byron Bay

File No: I2017/1906

Moved 7.1.1

That the Local Traffic Committee’s comments relating to DA 10.2017.510.1 be provided to the Council Planning Team. (Richardson/Hackett)

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PROCEDURAL MOTION

- 18-093 Resolved** that Council change the order of business to deal with Reports 8.1, 9.1, 13.17, 13.22, 13.23 and 13.24 next on the Agenda. (Richardson/Lyon)

The motion was put to the vote and declared carried.

MAYORAL MINUTE

Mayoral Minute No. 8.1 Future Use of the Surplus Transport for NSW land in Mullumbimby

File No: I2018/206

- 18-094 Resolved** that Council:

1. Write to the Minister for Transport, requesting time for Council to develop, through a carefully considered, community focused and design led process, preferred future use options for the surplus railway land in Mullumbimby as identified by Transport for NSW (TfNSW). Council also wishes to seek the deferment of any decision or process involved in offering the land for sale prior to any public tender process, so Council in partnership with the community, form and develop a proposal to either purchase the site or pursue a long term Community Title or lease arrangement.
2. When considering best use options for this site, Council notes:
 - a) The strategically important position of the surplus railway land in Mullumbimby;
 - b) The financially and environmentally detrimental impact unsympathetic development at the town's entrance would have on its heritage character and tourist appeal;
 - c) The collaborative and effective work recently undertaken by Council and its resident Guidance Group in considering the masterplan design and functionality of the town, its parking and mobility requirements, the urgent need for more diverse, affordable housing, and the potential to encourage small creative and start-up businesses to locate in the town and redress a significant shortfall in employment opportunities; and
 - d) The rail corridor (either side of the existing rail line) is currently non-operational (as opposed to closed) and the corridor cannot and will not be declared surplus.
 - e) The great opportunity for a partnership between TfNSW, Council and the Byron community to develop a mutually beneficial outcome of value to all.
3. Write to Tamara Smith MLA and Ben Franklin MLC seeking their support and advocacy within NSW Parliament and with TfNSW.
4. That Council write to Transport NSW outlining our desire to be notified as early as possible of any current or future consideration of sale of any surplus Transport NSW land within the Byron Shire. (Richardson)

The motion was put to the vote and declared carried.

NOTICES OF MOTION

Notice of Motion No. 9.1 Byron Bay Historical Walk - Stage 2

File No: I2018/174

Cr Coorey declared a non-pecuniary interest in this matter earlier in the meeting.

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- 18-095 Resolved** that Council extend their support to the Byron Bay Historical Society History Trail expressed in Resolution 15-336 and allocate \$8,000 plus some additional in-kind costs labour and materials to install QR code points on site. (Cameron/Hackett)

Cr Coorey left the meeting at 6.30pm and returned at 6.51pm.

PROCEDURAL MOTION

- 18-096 Resolved** that Cr Richardson be granted a one minute extension to his speech. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

AMENDMENT

Moved that Council:

1. Continue to support a Byron Bay heritage trail and the efforts of the Byron Bay Historical Society to celebrate and share the history of Byron Bay.
2. Defer consideration of establishing a history trail for two months in order for residents and groups to meet to attempt to design a trail with the greatest engagement potential possible. (Richardson/Ndiaye)

The amendment was put to the vote and declared lost.

Crs Lyon, Cameron, Hackett, Spooner and Hunter voted against the amendment.

Cr Coorey did not vote in accordance with her declaration of interest.

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

Cr Ndiaye voted against the motion.

Cr Coorey did not vote in accordance with her declaration of interest.

The meeting adjourned at 6.58pm for dinner and reconvened at 7.45pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.17 PLANNING - 26.2017.3.1 - Update on Planning Proposal for rezoning of land at Saddle and Gulgan Roads between Mullumbimby and Brunswick Heads

File No: I2018/46

Moved:

1. That Council not proceed with the Planning Proposal as submitted for the following reasons.
 - a) is inconsistent with the North Coast Regional Plan Urban Growth Area Variation Principles and process for identification and delivery of urban growth areas;
 - b) pre-empts Council's draft Residential Strategy process and final recommendations regarding this locality;
 - c) pre-empts Council's required engagement with the Bundjalung of Byron bay Aboriginal Corporation (Arakwal) and Tweed Byron Local Aboriginal Council in order to fully appreciate any potential cultural heritage sites and their broader significance within this locality; and
 - d) does not satisfy the 'Strategic Merit Test' or 'Site Specific Merit Test', as outlined in the Department of Planning and Environment's Planning Circular PS 16-004.

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2. That an expression of interest be requested from the proponents of the Brunswick Eco Village be submitted and that it be progressed as part of the category 1 Saddle Road EOI's already submitted, independent of the planning proposal submitted.

PROCEDURAL MOTIONS

- 18-097 Resolved** that Cr Coorey be granted a two minute extension to her speech. (Richardson/Cameron)
The motion was put to the vote and declared carried.

- 18-098 Resolved** that Cr Coorey be granted a two minute extension to her speech. (Lyon/Richardson)
The motion was put to the vote and declared carried.

*The motion (Coorey/Cameron) was put to the vote and declared lost.
Crs Coorey, Martin and Cameron voted in favour of the motion.
Crs Lyon, Ndiaye, Richardson, Hackett, Spooner and Hunter voted against the motion.*

FORESHADOWED MOTION

- 18-099 Resolved** that Council note the report and that the Planning Proposal (26.2017.3.1) will be reported to Council for consideration once further information is available. (Spooner/Hunter)

*The motion was put to the vote and declared carried.
Crs Martin, Lyon, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.
Crs Coorey and Ndiaye voted against the motion.*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.22 PLANNING - Development Application 10.2017.474.1 Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedrooms 70 - 90 Station Street Mullumbimby
File No: I2018/100

- 18-100 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2017.474.1 for multi dwelling housing consisting of twenty five (25) 1 bedroom dwellings (under the Provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009: Infill Affordable Housing, be granted approval subject to the conditions listed in Attachment 2 #E2018/8240. (Spooner/Richardson)

*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.*

FORESHADOWED MOTION

- 18-101 Resolved** that prior to the completion of the contract of sale for 70-90 Station Street Mullumbimby to North Coast Community Housing, Council:

1. consider if there is any legal impediment to entering into an alternative payment arrangement of investing the land into the project in return for an equivalent value of built units (with any

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shortfall to be paid in cash) to be managed by North Coast Community Housing as affordable units on behalf of Council;

2. determine the financial return to Council of entering into the alternative payment arrangement over the estimated lifetime of the constructed units;
3. if there exists no legal impediment to this alternative payment arrangement and Council is no worse off financially, a report is brought to Council on 22 March 2018 for consideration.

(Spooner/Ndiaye)

The motion was put to the vote and declared carried.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.23 **Mafeking Road and other requests to enact Council Policy 4.17**
File No: I2018/17

18-102 Resolved:

1. That Council endorse application of policy 4.17 for residents affected by dust pollution on Mafeking Road and Cedar Road.
2. That the works to seal the roads be incorporated into the 2018/19 capital works program with the funding source to be determined as part of the budget process for 2018/2019.
3. That a review of policy 4.17 be undertaken with Councillors in a Strategic Planning Workshop.
4. That affected residents be thanked for their initiative and good faith proposals.
(Cameron/Coorey)

Cr Ndiaye left the chamber at 9.01pm.

The motion was put to the vote and declared carried.

Cr Ndiaye was not present for the vote.

Report No. 13.24 **Contributions for Secondary Dwellings**
File No: I2018/16

18-103 Resolved:

1. That a draft amendment to the Byron Developer contributions plan be prepared and placed on public exhibition in accordance with the regulations. (The draft plan shall delete clause 2.14 from the plan.)
2. That the draft plan and submissions be reported back to Council for consideration.
3. That Council notify the public and seek submissions on the proposal to terminate the waiver of section 94 and section 64 contributions for secondary dwellings. (Coorey/Lyon)

The motion was put to the vote and declared carried.

Cr Ndiaye was not present for the vote.

NOTICES OF MOTION

community interests are best served if an application for a permanent events site were to be assessed, considered and determined by Byron Shire Council in accordance with the statement of the Planning Assessment Commission (PAC) set out in 2 above.

4. The submission to DPE note with concern that the application is proceeding without the following conditions of the concept approval being met.

B4(3) The stage 2 works must be completed prior to any outdoor event after 2017.

C1(2) The stage 2 works must be completed before any outdoor events are held after 2017

Note: Stage 2 works include 'a water treatment facility' and 'a wastewater treatment facility'.

5. The submission notes the unreasonable difficulties that residents and others including community representatives on the Regulatory Working Group (RWG) have experienced in having concerns addressed by DPE and details issues, complaints and submissions, previously raised by Council, residents, businesses and others regarding the application or otherwise of approval conditions during the trial period.
6. The submission states that the proposed increase in numbers or frequency of events is not currently justified given the lack of stage 2 facilities and impacts on the environment, residents and others in the community.
7. The submission notes that the proponents did not meet with Council staff prior to lodgement of the application and details issues raised by staff in meetings with DPE including, but not limited to the following.
 - a) The event operations and associated on-site and off-site impacts at current levels have not being monitored effectively by the Department, yet rigorous oversight is critical to how the site could be managed with up to double or triple the numbers of people on site.
 - i) The Department has only 11 breaches of consent conditions listed in its database, whereas the community has counted over 100 breaches (noise, traffic, ecological monitoring, fireworks on site, and more).
 - ii) Only one Compliance Report has been generated by the DPE (Splendour 2014).
 - iii) Parklands' own performance reports have been relied on heavily to assess compliance rather than having Council or other independent entities participate in the oversight.
 - b) Frequent, unpredictable flooding and high fire risks are major constraints of the site, and the proposed emergency evacuation plans do not reflect the seriousness of these two issues.
 - c) More robust consent conditions are required for any future events. Noise, traffic (on-site and off-site), operating hours, on-site safety (as noted by NSW Police Report on Splendour 2016), off-site safety and amenity of local residents, ecological monitoring, and so on. Permanent approval should not be given as long as all of these issues remain concerns.
 - d) The holding of large outdoor music events on the site is incompatible with the high-conservation value of the site and its immediate surrounds and with the very quiet, rural-residential characteristics of the site. Using the land for festivals is not aligned with the 2010 Far North Coast Regional Conservation Plan or the North Coast Regional Plan 2036. The FNCRCP calls for clear protection of the Wildlife Corridor and Nature Reserve.
 - e) Ecological monitoring has been inadequate to date. Neither baseline data nor KPIs were ever established. Both were required by the PAC approval, and both were needed for adequate assessment. Parklands says events have had no adverse ecological impacts,

but that conclusion is not supported by the data. “Inconclusive” or “can’t tell” is the more accurate conclusion.

- f) The current plans for on-site sewage treatment need expert evaluation. Appendix R points out a number of critical “moderate to major” constraints on the site with regard to the proposed sewage treatment (burial or spraying). Permanent approval should not be given with the uncertainty expressed in that appendix.
- g) Noise remains an issue for residents and noise disturbance is unpredictable. Council supports the use of the Intrusiveness Criteria called for by the NSW Industrial Noise Policy of 2000, which would limit the noise to 35 dB(A) 24 hours a day. Council supports comparably low limits for bass noise. The NSW INP 2000 is the governing policy, according to the SEARs, and the Intrusiveness Criteria are the relevant ones for this development, as noted in the proposal’s Noise Assessment (Appendix L).
- h) The proposal does not account for attendees holding free tickets. *Patron* is now defined as “a member of the general public who purchases a ticket to attend an outdoor event and attends the event on any given day”. Holders of free tickets are not accounted for in the other-people-on-site category, so the proposal allows unlimited holders of free tickets on site for each event.
- i) Amenity for local residents worsens with each event and must be addressed for any future events. Illegal camping, festival-goers’ disorderly behaviour in residential areas, rapid increase in party houses and AirBNB festival rentals, and fires on the beach are examples of serious negative impacts.
- j) The large volume of documents to be reviewed and the complexity of the proposal and variations to the existing development requiring time and specialist staff for this review to occur - e.g. ecology, noise, infrastructure water and sewer, road, stormwater, flooding, traffic - and what specialist staff did the DPE have to do this, particularly noting the following key issues.
- k) The timing and length of exhibition period given the above and council meeting cycle, noting a community desire for an independent review of the trail period and application as well as an extended exhibition period until at least 2 March.
- l) The document entitled *Addendum to NoM-North Byron Parklands* detailing a review of key documents included with the application be included as part of the submission.

(Cameron/Coorey)

PROCEDURAL MOTIONS

- 18-106 Resolved** that Cr Cameron be granted a two minute extension to his speech.

(Richardson/Coorey)

The motion was put to the vote and declared carried.

Cr Spooner was not present for the vote.

- 18-107 Resolved** that this matter rest on the table.

(Cameron/Richardson)

The motion was put to the vote and declared carried.

Cr Spooner was not present for the vote.

Cr Spooner returned to the meeting at 9.42pm.

PETITIONS

Petition No. 10.1 Speed Limits and Signage on The Pocket Road
File No: I2018/107

- 18-108 Resolved:**

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1. That the petition regarding Speed Limits and Signage on The Pocket Road be noted.
2. That the petition be referred to the Director Infrastructure Services.
3. That in accordance with Council Resolution 18-035, Council receive a further report regarding speed limits and signage on The Pocket Road following consideration of the petition by the Local Traffic Committee. (Lyon/Richardson)

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

DELEGATES' REPORTS

There were no delegates' reports.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 **Council Resolutions Quarterly Review - 1 October 2017 to 31 December 2017**
File No: I2018/3

18-109 Resolved:

1. That Council receive and note the information provided in this report on active Council Resolutions in Attachment 1 (#E2018/2576).
2. That Council note the completed Resolutions in Attachment 2 (#E2018/1123).
3. That Council close Resolutions 16-530, 17-121, 17-260, 17-369, 17-386, 17-521 and 17-665, due to them being no longer relevant, superseded by subsequent resolutions, or not resourced. (Lyon/Richardson)

The motion was put to the vote and declared carried.

Report No. 13.5 **Byron Environment Centre**
File No: I2018/57

18-110 Resolved that Council receive and note this report. (Spooner/Hackett)

The motion was put to the vote and declared carried.

Report No. 13.6 **Council Budget Review - 1 October 2017 to 31 December 2017**
File No: I2018/66

18-111 Resolved:

1. That Council authorise the itemised budget variations as shown in Attachment 2 (#E2018/9537) which includes the following results in the 31 December 2017 Quarterly Review of the 2017/2018 Budget:
 - a) General Fund – \$42,300 decrease to the Estimated Unrestricted Cash Result
 - b) General Fund – \$14,700 increase in reserves

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- c) Water Fund – \$106,500 decrease in reserves
 - d) Sewerage Fund - \$799,300 decrease in reserves
2. That Council adopt the revised General Fund Estimated Unrestricted Cash Result of \$888,300 for the 2017/2018 financial year as at 31 December 2017.
 3. That the expenditure referred to on page 600 totalling \$120,334 that has been incurred without a budget line or specific resolution be funded as follows:

General Manager's Office Reserve \$50,000
Risk Management Reserve \$35,000
Legal Services Reserve \$35,334
 4. That the next meeting of the Finance Advisory Committee identify funding to complete the Railway park renewal project as part of the Byron Bay Town Centre Masterplan (BBTCMP) as part of the budget estimate process for 2018/19 and that funding options be identified from existing BBTCMP budgets and other budgets relevant to open space and facilities projects within Byron Bay.
 5. That Council reaffirm that no expenditure is to occur without an approved budget backed by resolution of Council.
 6. That the Byron Street upgrade project be deferred for further consideration at the 2018/19 budget estimates.
 7. That Council agree to withdraw the grant funding application for renewal of Clarkes Beach Amenities under the *Stronger Country Communities* program.
 8. That the Finance Advisory Committee receive a report on how to improve clarity of funding applications, their budget implications and better alignment with current and future budgets.
(Spooner/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.10 Joint Organisation of Councils
File No: 12018/95

- 18-112 Resolved** that Council defer consideration of this matter until the next Ordinary Meeting to consider the draft regulation release on 19 February and to receive a briefing from the Office of Local Government. (Cameron/Richardson)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 PLANNING - 24.2017.82.1 'Housekeeping' Amendment - Byron DCP
File No: 2014 (Various Chapters)
12018/10

- 18-113 Resolved** that this matter be deferred to the Ordinary Meeting of 22 March 2018. (Coorey/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.13 **Draft Constitutions for new Biodiversity Advisory Committee and Sustainability and Emissions Reduction Advisory Committee**

File No: I2018/19

18-114 Resolved:

1. That Council nominate Crs Martin, Ndiaye and Coorey for the Biodiversity Advisory Committee, and Crs Richardson, Lyon and Ndiaye for the Sustainability and Emissions Reduction Advisory Committee.
2. That Council invite the previous Biodiversity and Sustainability Panel members to nominate for one or both of the committees and extend an invitation to Zero Emissions Byron for their nominated representative to participate in the Sustainability and Emissions Reduction Advisory Committee.
3. That the draft Terms of Reference for the Biodiversity Advisory Committee (Attachment 1 E2017/2233), and Sustainability and Emissions Reduction Advisory Committee (Attachment 2 E2017/2239) be confirmed at their respective first meetings.
4. That Council adopt the meeting scheduled for both advisory groups as follows:

Sustainability and Emissions Reduction Advisory Committee
 - First week of March 2018 subject to nominated councillor availability
 - 11.30am 29 March 2018
 - 11.30am 28 June 2018
 - 11.30am 30 August 2018
 - 11.30am 25 October 2018
Biodiversity Advisory Committee
 - First week of March 2018 subject to nominated councillor availability
 - 2pm 12 April 2018
 - 2pm 14 June 2018
 - 9am 11 October 2018
 - 9am 20 December 2018
5. That an amount of \$3,000 is considered in the 2018/19 budget to support the committee meetings. (Ndiaye/Richardson)

The motion was put to the vote and declared carried.

Report No. 13.16 **PLANNING - 24.2018.6.1 - Car Share Policy and Draft Amendments to Byron Development Control Plan 2014 Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access.**

File No: I2018/36

18-115 Resolved that Council:

1. Endorse the principles of the report to develop a pilot project for car share;

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2. Request staff to exhibit the draft Policy and the suggested DCP 2014 amendments together for a period of 28 days;
3. Note that, if no submissions are received, the amendments are to be adopted as at the date of the close of exhibition and notified accordingly;
4. Support progression of an expression of interest from car share companies for a pilot project in Byron and Mullumbimby, and that a further workshop and report to Council to occur following the EOI process. (Cameron/Richardson)

The motion was put to the vote and declared carried.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 16 January 2018

File No: I2018/101

18-116 Resolved that Council adopt the following Committee Recommendation:

Report No. 6.5 Traffic - Cowper St 34 - Regulatory Signage - No Parking 1am - 6am

File No: I2018/11

Committee Recommendation 6.5.1

That Council regulate parking around the Byron Recreation Ground including Tennyson, Carlyle and Cowper Streets by installing 'No Parking 1am to 6am' signage. (Spooner/Richardson)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

18-117 Resolved that Item No. 9.3 be lifted from the table. (Richardson/Cameron)

The motion was put to the vote and declared carried.

NOTICES OF MOTION

Notice of Motion No. 9.3 Submission: North Byron Parklands

File No: I2018/193

continued

Cr Spooner left the chamber at 10.35pm in accordance with his earlier declared interest in this matter.

Moved:

1. That Council notes the Final Determination Report ('determination approval'), Final Concept Approval ('concept approval') and Final Project Approvals ('project approval') of 24 April 2012 in relation to the Yelgun site (North Byron Parklands).
2. That Council notes the statement of the Final Determination Report on page 11 as follows:

After the trial period, the Commission considers that a new application should be lodged with Council for events to continue. In considering any future project applications, the Council must take into consideration the performance of events during the trial, the effectiveness of the management plans, the monitoring results of environmental conditions and the completion of Stage 2 works (on-site sewerage and water infrastructure).

3. Council prepares a submission in relation to *Cultural Events Site - State Significant Development Application (SSD 8169)* ('the application') affirming that the environmental and community interests are best served if an application for a permanent events site were to be assessed, considered and determined by Byron Shire Council in accordance with the statement of the Planning Assessment Commission (PAC) set out in 2 above.
4. That the submission to DPE note with concern that the application is proceeding without the following conditions of the concept approval being met.

B4(3) The stage 2 works must be completed prior to any outdoor event after 2017.

C1(2) The stage 2 works must be completed before any outdoor events are held after 2017

Note: Stage 2 works include 'a water treatment facility' and 'a wastewater treatment facility'.

5. That the submission notes the difficulties that residents and others including community representatives on the Regulatory Working Group (RWG) have experienced in having concerns addressed by DPE and details issues, complaints and submissions, previously raised by Council, residents, businesses and others regarding the application or otherwise of approval conditions during the trial period.
6. That the submission states that the proposed increase in numbers or frequency of events is not currently justified given the lack of stage 2 facilities and impacts on the environment, residents and others in the community.
7. That the submission notes that the proponents did not meet with Council staff prior to lodgement of the application and details issues raised by staff in meetings with DPE including, but not limited to the following.
 - a) The event operations and associated on-site and off-site impacts at current levels have not being monitored effectively by the Department, yet rigorous oversight is critical to how the site could be managed with up to double or triple the numbers of people on site.
 - i) The Department has only 11 breaches of consent conditions listed in its database, whereas the community has counted over 100 breaches (noise, traffic, ecological monitoring, fireworks on site, and more).
 - ii) Only one Compliance Report has been generated by the DPE (Splendour 2014).
 - iii) Parklands' own performance reports have been relied on heavily to assess compliance rather than having Council or other independent entities participate in the oversight.
 - b) Frequent, unpredictable flooding and high fire risks are major constraints of the site, and the proposed emergency evacuation plans do not reflect the seriousness of these two issues.
 - c) More robust consent conditions are required for any future events. Noise, traffic (on-site and off-site), operating hours, on-site safety (as noted by NSW Police Report on Splendour 2016), off-site safety and amenity of local residents, ecological monitoring, and so on. Permanent approval should not be given as long as all of these issues remain concerns.
 - d) The holding of large outdoor music events on the site is incompatible with the high-conservation value of the site and its immediate surrounds and with the very quiet, rural-residential characteristics of the site. Using the land for festivals is not aligned with the

2010 Far North Coast Regional Conservation Plan or the North Coast Regional Plan 2036. The FNCRCP calls for clear protection of the Wildlife Corridor and Nature Reserve.

- e) Ecological monitoring has been inadequate to date. Neither baseline data nor KPIs were ever established. Both were required by the PAC approval, and both were needed for adequate assessment. Parklands says events have had no adverse ecological impacts, but that conclusion is not supported by the data. "Inconclusive" or "can't tell" is the more accurate conclusion.
- f) The current plans for on-site sewage treatment need expert evaluation. Appendix R points out a number of critical "moderate to major" constraints on the site with regard to the proposed sewage treatment (burial or spraying). Permanent approval should not be given with the uncertainty expressed in that appendix.
- g) Noise remains an issue for residents and noise disturbance is unpredictable. Council supports the use of the Intrusiveness Criteria called for by the NSW Industrial Noise Policy of 2000, which would limit the noise to 35 dB(A) 24 hours a day. Council supports comparably low limits for bass noise. The NSW INP 2000 is the governing policy, according to the SEARs, and the Intrusiveness Criteria are the relevant ones for this development, as noted in the proposal's Noise Assessment (Appendix L).
- h) The proposal does not account for attendees holding free tickets. *Patron* is now defined as "a member of the general public who purchases a ticket to attend an outdoor event and attends the event on any given day". Holders of free tickets are not accounted for in the other-people-on-site category, so the proposal allows unlimited holders of free tickets on site for each event.
- i) Amenity for local residents worsens with each event and must be addressed for any future events. Illegal camping, festival-goers' disorderly behaviour in residential areas, rapid increase in party houses and AirBNB festival rentals, and fires on the beach are examples of serious negative impacts.
- j) The large volume of documents to be reviewed and the complexity of the proposal and variations to the existing development requiring time and specialist staff for this review to occur - e.g. ecology, noise, infrastructure water and sewer, road, stormwater, flooding, traffic - and what specialist staff did the DPE have to do this, particularly noting the following key issues.
- k) The timing and length of exhibition period given the above and council meeting cycle, noting a community desire for an independent review of the trial period and application as well as an extended exhibition period until at least 2 March.
- l) The document entitled *Addendum to NoM-North Byron Parklands* detailing a review of key documents included with the application be included as part of the submission.

(Cameron/Coorey)

AMENDMENT

18-118 Resolved:

1. That Council notes the Final Determination Report ('determination approval'), Final Concept Approval ('concept approval') and Final Project Approvals ('project approval') of 24 April 2012 in relation to the Yelgun site (North Byron Parklands).
2. That Council notes the statement of the Final Determination Report on page 11 as follows:

After the trial period, the Commission considers that a new application should be lodged with Council for events to continue. In considering any future project applications, the Council must take into consideration the performance of events during the trial, the effectiveness of the management plans, the monitoring results of environmental conditions and the completion of Stage 2 works (on-site sewerage and water infrastructure).

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3. That Council prepares a submission in relation to *Cultural Events Site - State Significant Development Application (SSD 8169)* ('the application') affirming that the environmental and community interests are best served if an application for a permanent events site were to be assessed, considered and determined by Byron Shire Council in accordance with the statement of the Planning Assessment Commission (PAC) set out in 2 above.
4. That the submission to DPE note with concern that the application is proceeding without the following conditions of the concept approval being met.

B4(3) The stage 2 works must be completed prior to any outdoor event after 2017.

C1(2) The stage 2 works must be completed before any outdoor events are held after 2017

Note: Stage 2 works include 'a water treatment facility' and 'a wastewater treatment facility'.

5. That the submission notes the difficulties that residents and others including community representatives on the Regulatory Working Group (RWG) have experienced in having concerns addressed by DPE and details issues, complaints and submissions, previously raised by Council, residents, businesses and others regarding the application or otherwise of approval conditions during the trial period.
6. That the submission states that the proposed increase in numbers or frequency of events should not be supported at least until all required KPI's are met for two consecutive years as verified by independent consultants.
7. That the submission also acknowledge issues regarding noise, traffic, flooding, fire, terrorism and other safety issues alongside employment, cultural enrichment, economic development and financial support for wider community organisations and projects. (Richardson/Ndiaye)

PROCEDURAL MOTION

18-119 Resolved that Cr Cameron be granted a one minute extension to his speech.

(Richardson/Ndiaye)

The motion was put to the vote and declared carried.

The amendment (Richardson/Ndiaye) was put to the vote and declared carried.

Crs Coorey, Cameron and Hackett voted against the amendment.

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

Crs Coorey, Cameron and Hackett voted against the motion.

QUESTIONS WITH NOTICE

Question With Notice No. 15.1 Bangalow Parking Strategy

File No: I2017/1899

At Council's Ordinary Meeting held on 23 November 2017, Jenny Coman asked the following question which was taken on notice:

Given the strong opposition to paid parking in Bangalow, as demonstrated in the various consultation forums, and the unreliability of revenue predictions based on inadequate and biased data;

- a) why did Council decide to introduce paid parking before the trial of changed parking time limits, recommended by Council's consultants as the first option, was held,
- b) why was a clause requiring consultation with Bangalow's Guidance (Master Planning) Group,

passed as part of the relevant motion on 24th August, not actioned while there was ample time thus rendering it meaningless and denying community input and
c) whom should the community hold responsible for both of the above ?

At the same Ordinary Council Meeting, Joanne Millar asked the following question which was taken on notice:

Why has Council ignored recommendations from the commissioned report into traffic and parking issues in Bangalow, and advice from Council staff, relating to the introduction of paid parking in the Bangalow CBD?

Response Director Infrastructure Services:

Council staff undertook community consultation in May 2017 in combination with the Movement and Parking review, which involved street stalls, workshops with relevant stakeholders and an online survey. The information gathered through these outlets indicated that the majority of respondents would support a Pay Parking scheme if Council resolved to spend all net revenue raised in Bangalow.

Staff then recommended that Council proceed direct to Pay Parking with the proviso that all revenue would be spent in Bangalow as this was on the basis that the majority would be supportive of Pay Parking if extra revenue would be spent in Bangalow. Whilst it is true that the majority on base merit indicated they would not support Pay Parking in Bangalow, most agreed that it would be a valuable source of revenue that is much needed for the community and would support the scheme if the funds were spent in Bangalow.

Staff have not consulted with the Bangalow Village Plan Guidance Group yet regarding the identification of projects that Pay Parking could fund, as it was deemed not relevant until after it is introduced and there is an idea of the amount of revenue that could be allocated.

Question With Notice No. 15.2 Sewer inspection reports

File No: I2017/1784

Patricia Warren asks the following question:

What and where, as identified by Council document reference or otherwise, are the findings of the follow-up inspection reports on the repairs to illegal domestic and/or industrial connections, identified by Water and Recycling engineers in Mullumbimby, done by either Council or private contractors in the 2000s?

Response Manager Utilities:

Below is an excerpt from the Mullumbimby Sewerage System Inflow and Infiltration Programme PRP 1 Integrated Strategy Final Project Review June 2010 report to Council in August 2010. Attached is a list of all inspections undertaken up to and including July 2011.

Overflow Relief Gully "Pop Tops" were installed in boundary shafts throughout catchment 4002 during November and December 2007.

Inspections of the private sewerage infrastructure commenced in February 2008. The process was as follows:

- enter the property;
- undertake a physical above ground inspection of the plumbing system;

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- undertake a CCTV inspection of the underground pipes and fittings;
- identify defects (note it cannot be guaranteed that all defects will be identified as in some cases a defect is not noticeable unless it is raining at the time);
- send the property owner a letter advising of defects found and requesting repairs to be undertaken;
- if repairs not done, a follow up letter advising repairs must be done within 28 days;
- if repairs not done a follow up letter with a quote for Council to effect the repairs;
- once repairs done, a follow up inspection undertaken by Council.

In total, there are 766 properties in catchments 4001, 4002 and 4003a and b. Since February 2008, 704 properties were inspected. The results are:

Week Ending 30/07/10		
Total Inspections	704	
Defective	321	46%
Repaired	239	74%
Repairs in progress	34	11%
No response	48	15%

A critical point from this data is that 46% of the properties had defects that permitted the ingress of stormwater. This statistic gives credibility to the statement that private sewerage infrastructure can potentially contribute up to 60% of stormwater inflow and infiltration in a sewerage system.

Please find attached the database identifying the properties inspected and whether defects were found.

Question With Notice No. 15.3 General Manager delegations

File No: I2018/104

At Council's Ordinary Meeting held on 1 February 2018, John Anderson asked the following question which was taken on notice:

Would any councillor who was at the relevant Council meeting last Sept who was aware that it was the intent of the relevant staff report to that meeting for Council to give all Council powers to the GM that it could legally give him, to give this meeting reasons for supporting that recommendation, or, alternatively to provide such reasons for publication in the next agenda; given that the public has a right to know the reason for your decision?

Response Legal Counsel:

Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993. It is therefore within Council's power to delegate to the General Manager some or all of the power it could "legally give him".

A report as to the General Manager's delegation came, inter-alia, before Council at its Ordinary Meeting on 21 September 2017.

The report was put to that meeting because Council is required to review its delegations within the first 12 months of an election.

Also included in the report was information as to the General Manager's authority in respect of the approval of tenders. Under changes brought about by the *Local Government Amendment (Governance and Planning) Act 2016* the authority to accept a tender can be delegated to General Managers, other than for services currently provided by Council staff members.

It was the intention of the Government, gleaned from the second reading speech that “*more routine tendering functions will be delegated to General Managers, while ensuring that any major decision on outsourcing that might affect current Council staff remains a decision for the Councillors*”.

The intention of the amended clause was to remove the prohibition on delegation by a council of the acceptance of any tender but, at the same time prohibit delegation of the function of accepting tenders to provide services currently provided by council staff.

It remains a requirement that all accepted tenders are required to be publically reported on Council’s notice board and website.

Additionally under the 2016 amendment, the General Manager can be empowered to provide financial assistance under certain circumstances as per below:

- (a) the financial assistance is part of a specified program, and
- (b) the program is included in the council’s draft operational plan for the year in which the financial assistance is proposed to be given, and
- (c) the program’s proposed budget for that year does not exceed 5 per cent of the council’s proposed income from the ordinary rates levied for that year, and
- (d) the program applies uniformly to all persons within the council’s area or to a significant proportion of all the persons within the council’s area.

In addition, staff recommended a minor modification to limitations previously imposed on the General Managers delegations, namely an increase of the financial limit on bad debt write offs. This was in order to improve processing efficiency.

Council debated the report and resolved to revoke its previous delegations and adopt:

- b) Instrument of Delegation to the General Manager amended as follows:
 - i) under Tender Acceptance, that the upper limit of projects is set at \$250,000

The best way to glean what was in the mind of Councillors, when debating the matter is to go to the meeting transcript. The transcript is reproduced as follows:

Cr Cameron: 13.8 – which is a review of Council delegations. That’s with me. I’ll put the staff recommendation up to start with. Thank you. And looking for a seconder, there are a couple of questions and slight adjustments I’ll probably be making. Cr Coorey, thank you.

Cr Ndiaye: Do we know what they are?

Cr Cameron: Yes. Now that I’ve got a seconder. I have been seeking advice on this today, so lets just have a quick look here umm Mila can you just have a look at 1A where it’s got that revoke the previous delegation and adopt instrument of Delegation for - sorry 1B – instrument of delegation for the General Manager as per attachment 2 and amended as follows.

Umm lets just find the right one. Reference... Was half was there. Ok. Does that table in there have a number, that general table in that? I just want to put a reference number in there. Ah, ok. That’s not referenced to this, so look what I’m going to say, as follows under tender acceptance that the value of projects - the upper limit of projects- let’s put it that way - be set to \$250,000. Now that’s my, that was one thing I had and I think there might be a couple of us, maybe my seconder will have some issues in a minute, but I’ll just talk to this one at the moment. This is actually - I was really trying to look back on the history of it - advice I have is that there has been

a change to the legislation which provides for this type of delegation to be given, so there is actually no history on it in the past, there is no comparable, there's no going back, so I'm thinking that the figure that I have put in there is a good start for umm testing this delegation. I'm noticing, you know, I see that a lot on the tenders that do come before us are if there not up to about that there a little bit over that. Umm the requirement for tender starts at \$150,000, so it does provide scope for those small tenders to be accepted under delegation but I think at this stage until it settles in that that upper limit should be set at that quarter of a million and we'll see how we go. That's my feeling on it, that's what I'm moving and as I say Councillor Coorey might have some other questions in a minute but before we go there I will ask if there speeches against.
Cr Coorey, did you want to –

Cr Coorey: Yes, I did have a question, umm just with regards to the delegation I have to say I'm not, I feel a little bit under umm informed on this process somewhat and back in November when we first came in we had a late report with regards to the General Manager delegation and it went from 3 million to 10 million, umm and I wasn't sure about the understanding around that, so I'm wondering if because I don't necessarily have a problem with it, but I would of liked to have understood it better. So I'm just wondering could someone kinda give me some information on that, whether that needs review or... thank you.

Ms Burt: Now I suppose the importance for that report was that we have had an increasing cost of development and as a consequence of I suppose just bigger developments and of construction costs increases, umm and that increase in delegation enables to deal with dwelling houses and alterations and additions under delegation, rather than report them to Council, that was the intent of that. I mean the planning review committee still can call any application for review at this stage as well.

Cr Coorey: But if the planning review – so we have to see a DA – the DA would come in the DA's listing. But we don't get the costing's on those usually when they come up in the list if I recall.

Ms Burt: No you normally –

Cr Coorey: In the schedule of DA's I don't think we get the value of them.

Ms Burt: No you just normally get the property description and the applicant details.

Cr Coorey: Yeah

Ms Burt: We can provide the cost of development –

Cr Coorey: Look, I think that would be helpful, because I think that sometimes things come through and we don't know what they're going to cost and umm I, you know, like some clarity around this, I don't necessarily have an issue with it. But I feel that there's some oversight required as to expenditures of those kind.

Ms Burt: Just to clarify that information is publicly available on the website in any case, so the actual application forms and all the relevant details are there as well, so we're not disclosing it, it is available

Cr Coorey: I know you're not disclosing it but we also need, as Councillors, we need it to make decisions that are informed and it's very, if I have to look at every DA to see what it costs every time it comes up, that's kind of rather tricky in terms of the amount of work we already do. So, I feel that somehow, that there might need to be some alteration around this situation. I don't feel that it's, it works that well, maybe we can put the dollar value on the DA's and when they come up, because when you put in a DA you have to put the dollar value in then, yeah. So maybe umm,

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we don't necessarily need to have that in this. It's just something that you could do as a department, thank you. Umm, so that was my only question, thank you.

Cr Hunter: Question, to the mover.

Cr Cameron: Cr Hunter, yes.

Cr Hunter: Umm, with the tender acceptance, is your intention to reduce it from \$500,000 project to a \$250,000 that gets automatically reported to Councillors. Is that what it is?

Cr Cameron: Yeah –

Cr Hunter: Anything over \$250,000. Today, that's not much more than a granny flat.

Cr Coorey: I don't know what kind of granny flats you're building.

Cr Cameron: Yes, I appreciate what you're saying Councillor and umm, I get that taking it as a question I would say that as this is – that's the point I made before – this is a new delegation, it's not something that was there before. So, all tenders above \$150,000 were coming to us before today. In effect, we're actually moving it up to \$250,000 but given this is a new level and a new delegation, I'm just being cautious to say well let's see how it works because I still think there's probably an appetite for the bigger tenders to be provided to Council for determination. That's my feeling. That's what the motion is proposing in effect. I hope that answers your question. So, where are we?

Cr Coorey: I'm – I just wanted to see if I could make a small addition Cr Cameron?

Cr Cameron: Yes

Cr Coorey: Umm. I note that in the guidelines for the appointment and oversight of general managers in delegations, it says that um, it's important that councils governing body ensure that proper records are kept of applications that are determined under delegation, and that there is regular reporting on the implementation of delegated functions. So could I perhaps put some wording in there along that we get, say a quarterly assessment of how the delegation is used, that way, at the moment I feel like we're flying blind here, we're making decisions about delegations without understanding of how they've been used in the past year. So could I add in the following wording –

Cr Cameron: Yes. We can work on some words. I'm going to ask staff for how this might be dealt with already if it's not dealt with already? Mr Arnold, do we report, do we have a reporting regime on delegations?

Mr Arnold: There's no formal reporting regime. I'm not sure how you would deal with that because every day there would be hundreds of decisions made under delegation through the General Managers delegation to staff, so I'm just, I'm not even, I don't even know where you'd start to collect that. If it was in relation to a particular exercise of delegation, such as in relation to planning, you might be able to do it but for instance, every time we sign a purchase order, that is a delegation through from the delegation from the General Manager. Now it could be 50, 60 100 of those a day.

Cr Cameron: That's exactly why I'm asking, you know, if it's sort of went into the system somewhere and you could just go, press the button, and every time a delegation was exercised it would pop up for you, that's great, but if you have to go and compile it, that's a different story. Umm, so Cr Coorey, you might want to re-think that and General Manager –

Cr Coorey: I'm happy to re-think that but can I also ask can we amend a delegation because it is something that again, I must convey, this is again a rather last minute way to be dealing with delegations that we were supposed to have dealt with in the first year and we were supposed to have had a strategic planning workshop on this that didn't eventuate, so, my, we're asked –

Cr Cameron: The General Manager's ready to answer your question –

Cr Coorey: *laughs* Could the General Manager please answer my question?

Mr Gainger: Oh, look, I was just going to suggest that we'd be happy to bring a report back on, I mean, I think the point has been made that there are some of the delegations where there would be a limited number of decisions made using those delegations, there are others, such as Mr Arnold referred to, the delegations under the Act, delegations, Council can only delegate to the General Manager, so basically the General Manager then is the front of delegations throughout the staff of the organisation. So, no one can do anything without those delegation. And, you know, a lot of it's about day to day, week to week, operations, hundreds of decisions a day, it would be impossible to report those up but there are some such as the one that you're considering for tenders, there would be limited number of decisions made using that. Similarly the one under the planning legislation amendment that you raised earlier. So, I mean, what we could do is maybe have a look at the delegations and come back to you with a report which suggests which of those would be relevantly straight forward for us to report back to you and we can periodically come back to you and give you a summary of decisions made under those particular delegations.

Cr Coorey: Thank you. I mean it is under the guidelines in the department of premier and cabinet that we do this, so I'm assuming a way can be found of us. For the larger decisions where council would likely have an interest, we could find and get something about that. So, um, we can amend, my other question was we could amend a delegation if that alone at a date we can work out some reporting, so that we put that into this motion? This recommendation for the review of delegation?

Mr Gainger: Through you chair, delegations can be amended or changed at any time. They're not fixed for 12 months or whatever, so, you know, we can, Councillors can bring a matter forward or staff can bring a report to council at any time suggesting variations to the delegations.

Cr Coorey: Ok. Thank you.

Cr Cameron: So, maybe Councillor Coorey, number 6, to pick up on what the General Manager's saying, could say that council receive a report with advice on how delegations that are exercised can be reported to council, I'm going to use that term, efficiently and effectively, but I think it serves what we need to say here. Ok, umm, so where are we up to with the speeches, because I've spoken for. We've had a lot of questions. You've spoken. Did you question or speak, Cr Coorey? Ok, in that case, it's up to an against. Do we have an against? No further discussion. Right of reply. No. so I'll put that to a vote. Those in favour? And yes, we're all in favour. Thank you.

Question With Notice No. 15.4 Sewer Pump Station 5004
File No: I2018/109

Alan Dickens asked the following question which was taken on notice:

What was the total cost of the rebuild of sewer pump station 5004 in Tarrara Court Ocean Shores? Why is all the electrical equipment raised above flood level? Why hasn't the pump well been similarly raised above flood level?

Response Director Infrastructure Services:

The sewer pump station in Terrara Court Ocean Shores is pump station 5012 – not 5004.

Council resolved 17-016 in February 2017 to award the contract for this work to Ledonne Construction. The total budget allocated is \$1,250,000.

The pump station has been set at the 1 in 100 year flood level. The electrical cabinet is required to be set at this level plus 600mm minimum in accordance with Country Energy requirements.

There is no justification to raise the pump station wet well higher as the pumps are submersible pumps and are designed to work under water and the existing pump well has not been flooded in any recent significant events. From an engineering perspective the 1 in 100 year flood level is an efficient design basis.

The electrical equipment however, cannot be submerged without failure. The safety factor in relation to height location is much higher.

Question With Notice No. 15.5 Crown Recreation Reserve 33876 (Lot 407 DP728640)
File No: I2017/1816

Virginie Hemmery asks the following question:

Council staff have repeatedly denied conducting tree removal and vegetation management activities in land zoned 7(b) Coastal Habitat Zone and W1 Natural Waterways and on Crown Recreation Reserve 33876 (Lot 407 DP728640) including provided false and misleading information to Councillors in Record No. E2017/61432 on the 6th of June. Given that this position is untenable and cannot be sustained in the face of clear and compelling aerial imagery will: (a) Council now admit its error and submit the appropriate Development Application that cover these activities retrospectively and undertake compensatory plantings for the trees removed and (b) will Council engage with the Arakwal Native Title claimants of the land in relation to Councils activities and its failure to properly notify them of Council proposed future act under the Native Title Act and begin negotiations to properly compensate them for Councils unauthorised activity and (c) will Council notify the NSW Marine Parks Authority and NSW Fisheries in relation to their unauthorised in Cape Byron Marine Park and in a gazetted Key Fish Habitat.

Response Director Infrastructure Services:

Council undertook vegetation works, referred to as stage 1 in May 2016. No treatment of vegetation was scheduled or undertaken within Lot 407 on 728640. Please note the assertions made at public access on the 23 November 2017 that Council staff had treated vegetation as presented in photos is false. Please also note that the Photos as displayed and dated, pre-date stage 1 treatment works undertaken by Council staff / contractors and that no tree works was undertaken by Council or its contractors between the dates as presented within the Crown Recreation Reserve 33876.

Council will continue to assess and follow the appropriate approval pathways for airfield safety vegetation treatment work.

Question With Notice No. 15.6 Simpsons Creek
File No: I2017/1817

Matthew O'Reilly asks the following question:

Why has Byron Council never implemented the Simpsons Creek Rehabilitation Review of Environmental Factors and Detailed Design Document which was publicly exhibited by Byron Council in September and October 2010? <http://www.byron.nsw.gov.au/public-exhibition/2010/10/07/simpson-s-creek-rehabilitation-detailed-design-and-community-information>. The Simpson's Creek Site is also registered as Site 14 in the Brunswick Estuary Management Plan 2007. Further why has Council not required the recommendations and detailed designs of this report be integrated into the Vegetation Management Plan for the Terrace Reserve Holiday Park or the Terrace Reserve Holiday Park Plan of Management. Council spent significant time and resources preparing this design and review and community members from Brunswick Heads provided input into its drafting yet it has never been implemented.

Response Director Sustainable Environment and Economy:

In 2009, Council received funding through the NSW Environmental Trust for the Simpsons Creek Site 14 Bank Stabilisation and Rehabilitation Project. A detailed Concept Design and Costing, and Review of Environmental Factors (REF) were completed along with a community consultation program. The consultation program included public exhibition of the draft concept design and REF for public and State Government agency comment.

The proposed project area spans two land allotments. One of the land allotments is managed by Council; the other is managed by NSW Crown Holiday Parks Trust (NSWCHPT).

For many months Council staff, whilst progressing this project, attempted to negotiate a funding commitment to this project from NSWCHPT, as per their verbal commitment at the time Council applied for the grant. As 80% of the project site included land owned by NSCHPT, it was hoped that NSWCHPT would up to 80% of the project costs.

A commitment from NSWCHPT to part fund the project (as land owners of a significant section of the proposed project area) was not forthcoming. In addition, variation to the scope of works was also requested by NSWCHPT which was denied by funding body. Hence, in 2012 Council management ceased progression of this project.

Council's Brunswick Estuary Management Plan (re-named *Coastal Zone Management Plan for the Brunswick Estuary*) has recently been updated and re-submitted to the Minister for certification. Site 14 is currently a management action in the plan for on-ground works being bank stabilisation, formalisation of public access and revegetation. This project is pending Council resources and funding.

The Plan of Management for Brunswick Heads Foreshore Public Reserves (NSWCHPT, 2014) outlines the principal issues to be addressed within Simpsons Creek Reserve (p. 32), being bank erosion, foreshore access and vegetation management. As detailed in section 5.2.1 (page 41) reference is made to advice provided to Council from Australian Wetlands Consulting Pty Ltd, being the Simpsons Creek Rehabilitation Review of Environmental Factors (incl. Concept Designs) completed 2010.

Question With Notice No. 15.7 Ocean Shores STP and Brunswick Valley STP
File No: I2018/110

Patricia Warren asked the following question which was taken on notice:

What easements and when, have been purchased by BSC across private property between Ocean Shores STP and Brunswick Valley STP, under what authority, from what budget at what total cost and for what purpose?

Response Director Infrastructure Services:

In February 2010, Council considered a report on the potential to procure easements for the proposed pipeline to transfer Ocean Shores STP effluent to the new Brunswick Valley STP for use within the Mullumbimby effluent reuse scheme and resolved:

10-90

Resolved that in relation to affected private property parcels 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 crown seal to all necessary documents that affect the acquisitions.*

Staff arranged professional independent valuations of the easements and proposed the valuations to all four private property owners. Three of the four private property owners provided signed agreements to compensation, which were reported to Council at the 15 December 2011 meeting.

The matter was dealt with in a Confidential session due to the commercial nature of the report. Council resolved:

11-1086

- 1. That Council resolve to delegate to the General Manager authority to negotiate the purchase of the 3 properties, in accordance with and up to the amounts described in this report.*
- 2. That Council authorise the affixing of the Council seal to all documents necessary to acquire the properties.*
- 3. That the report is to remain confidential until Council becomes the registered proprietor.*

The total cost for the 3 easements was \$60,000.

The budget for the purchase of these easements was the Brunswick Area Sewage Augmentation Scheme.

Question With Notice No. 15.8 Drain Clearing at Billinudgel
File No: I2018/111

At Council's Ordinary Meeting held on 1 February 2018, Matthew Lambourne asked the following question which was taken on notice:

Why has there been no apparent progress on drain clearing at Billinudgel since the SES meeting at Billinudgel on 24 September 2017 at which SES reports that "Council rep looking at drains and work out a plan for cleaning up?"

Response Director Infrastructure Services:

To date trees have been removed from the drain along Wilfred Street to allow the drains to be cleaned using the excavator which has been completed. This work is now planned to be undertaken annually. A drain cleaning truck has cleared many of the side entry pits in the industrial estate of sediment and rubbish - this work is ongoing following inspections.

An example of a township listed as State Significant on the State Heritage Register is 'Braidwood and its setting'.

Question With Notice No. 15.10 Rural Accommodation Figures**File No:** I2018/112

At Council's Ordinary Meeting held on 1 February 2018, Matthew O'Reilly asked the following question which was taken on notice:

Can Council please provide figures for the number of new dwelling or rural tourist accommodation approvals in the 2015, 2016 and 2017 calendar years. Can these figures be divided into:

- Rural primary dwellings
- Rural dual occupancies
- Rural secondary dwellings
- Urban detached dwellings
- Urban secondary dwellings
- Urban dual occupancies
- Urban multi dwelling housing approved as strata title developments
- Shop top housing
- Rural tourist cabins, farm stay accommodation or eco tourism accommodation

NB please count total dwellings not total approvals as often multiple dwellings are included in a single approval such as multi dwelling housing dual occupancies or a new house and secondary dwelling

Response Director Sustainable Environment and Economy:

There are various sources of information already publicly available that contain demographic and housing information about Byron Shire relevant to the above queries.

Links to these are provided below:

- Supporting documents for the residential strategy - <http://www.byron.nsw.gov.au/residential-strategy>
- Demographic and Housing data – ABS based <https://profile.id.com.au/byron>
- Department of Planning local development performance monitoring statistics <https://www.planningportal.nsw.gov.au/local-development-performance-monitoring>
- Department OF Planning North Coast Plan <http://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans/North-Coast>

Should the above links and documents not specifically address all of the above queries, then a written planning request needs to be lodged for this information, and a fee for service under Council's adopted Fees and Charges paid for a staff member to undertake the appropriate research to respond to the queries.

Question With Notice No. 15.11 Byron Bay Bypass**File No:** I2017/1844

At Council's Ordinary Meeting held on 23 November 2017, John Anderson asked the following question which was taken on notice:

- 1) Is it the case that the figure given in the agenda for the 'latest' cost estimate for the Butler Street Bypass actually predates the recent court cases about this matter and that it therefore

fails to take into account costs flowing from the conditions attached to the wetlands consent by the Court?

- 2) Either way would Council please be kind enough to provide individual estimates for the works specified by the Court, including:
 - i. baseline modelling and studies of existing water flow
 - ii. measures to ensure that the road works do not affect drainage from the C.B.D
 - iii. height clearance below the road dock to allow for flightless fauna & bridges or tunnels
 - iv. assessment and management of geotech issues such as acid sulphate
 - v. measures to capture and filter contaminated runoff from the road dock
 - vi. the purchase of bio-banking off-set credits
- 3) In the interests of transparency (and in the absence of a cost-benefit analysis) might Council also please give a breakdown of costs in relation to the Butler Street section of the Bypass and the non-wetland section?
- 4) Does the General Manager intend to seek delegated authority to spend these further monies?

Response Director Infrastructure Services:

- 1) The report to the 14 December 2017 meeting of Council advises that the current total cost for the project is \$22.5M
- 2) Subject to the consideration and resolution of Council on 14 December 2017, further work will be completed on the proposed implementation of the works in association with RMS.
- 3) Subject to the consideration and resolution of Council on 14 December 2017, further work will be completed on the proposed implementation of the works in association with RMS.
- 4) It is anticipated the resolution of Council on 14 December 2017 will direct further implementation of the project.

Question With Notice No. 15.12 Council Compliance regarding Tree Removal

File No: I2017/1847

At Council's Ordinary Meeting held on 23 November 2017, John Lazarus asked the following question which was taken on notice:

Regarding the removal of trees in Railway Park. What is the proposed Council compliance action against the developer regarding the developers breach of his DA Consent Conditions to protect the adjacent park trees, and what is the proposed compliance action against Council for Council cutting down the trees in breach of Councils own DA Consent Conditions?

Response Director Sustainable Environment and Economy:

Railway Park is zoned RE 1 (Public Recreation) under the Byron Local Environmental Plan 2014.

The removal of vegetation in Railway Park is guided by Byron Shire Development Control Plan 2014, Chapter B2 Preservation of Trees and Other Vegetation.

Within table B2.1 of Chapter B2 "Vegetation removal required to construct, maintain or protect public infrastructure" does not require development consent.

There is no development consent relevant to the land in which works were performed. Therefore no consent conditions were breached.

Council carried out tree works in accordance with an approval pursuant to the Tree Removal for Public Infrastructure Permit Form, issued under Chapter B2 – Preservation of Trees and other vegetation of the Byron Shire Development Control Plan 2014.

No compliance (enforcement) action is presently contemplated.

Question With Notice No. 15.13 Tyagarah Aerodrome

File No: I2017/2083

At Council's Ordinary Meeting held on 14 December 2017, Matthew O'Reilly asked the following question which was taken on notice:

I can find no record of Development Consent ever being applied for or granted relating to the operation of an aerodrome at Tyagarah. As the crown land for the aerodrome was leased to Byron Council in 1971 and construction of the aerodrome commenced after that can Council please provide evidence of development consent being granted to construct the aerodrome. Additionally, I can find no record of Byron Council ever going through the formal process to convert the Council owned land and the Crown owned land at Tyagarah aerodrome from Community Land to Operational Land. Given that the formal conversion from Community Land to Operational land is a requirement before land can be sub-divided and that if the land is still Community Land then a Management Plan is required can Council please provide evidence that both Council and Crown owned land at Tyagarah Aerodrome is not Community Land.

Response Director Infrastructure Services:

Historical Aerial photography confirms that the airfield was in existence in 1971.

Council at this time has not determined the exact age of Airfield, however it has been suggested that it was constructed around the time of the Ocean Shores Development and may have been constructed as early as 1969.

Because of the airfield's age, it is not surprising you can 'find no record of development consent'. The EP&A Act did not commence until 1979. However, the absence of EP&A development consent doesn't indicate the airfield is unlawful. In the absence of any other substantive claim, Council presumes that the airfield was lawfully constructed under the planning regime which applied at the time.

Regarding the airfield's land classification, based on Council's asset management system, Council confirms that Lot 49 on DP881232 is Council Owned Operational Land and Lot 181 is Crown Land Special Lease Aerodrome. Under the Local Government Act, Crown Land cannot be classified.

Question With Notice No. 15.14 Byron Bypass

File No: I2017/2084

At Council's Ordinary Meeting held on 14 December 2017, John Anderson asked the following question which was taken on notice:

To what extent were you, the Mayor, and/or Shannon McKelvey involved in the decision to finance the Butler Street Bypass defend to the tune of well over \$500k to date, and, if you weren't

actually involved, to what extent were you at least aware of the ongoing proposed expenditures after the appeal was served on Council?

Response Legal Counsel:

Q1.To what extent were you, the Mayor, and/or Shannon McKelvey involved in the decision to finance the Butler Street Bypass defend to the tune of well over \$500k to date?

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

Both the JRPP and GHD filed submitting appearances.

Council's active role in the proceedings was authorised by the General Manager who was, in the relevant period, delegated (emphasis added):

to give effect to the provisions made by or under the Act and any other Act and any ordinance, regulation and by-law conferring powers or imposing duties on the Council including the exercise of any power and discretion conferred thereby and the performance of any duty imposed thereby, and **to give effect to any resolution**, minute, report, or policy **which has been passed** or adopted **by the Council**;

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.**

Council had resolved twice to progress with the preferred by pass route along Butler Street. The General Manager and staff at his direction were obliged to implement Council's resolutions.

Q2.To what extent were you at least aware of the ongoing proposed expenditures after the appeal was served on Council?

The Class 1 Application in respect to the Byron Bay Bypass DA was served on Council on 3 August 2016. Judgement was delivered on 2 June 2017

Councillors and the Executive Team, of which Ms McKelvey is a member, were informed of the appeal on 12 August 2016.

Thereafter the Councillors and the Executive Team were updated as to the matter and as to the ongoing costs incurred on 9 September 2016, 17 October 2016, 11 November 2016, 16 December 2016, 10 February 2017, 10 March 2017, 18 April 2017, 12 May 2017 and 22 June 2017.

Councillors and the Executive Team were updated as to Councils costs application concerning a failed Notice of Motion on 14 July 2017 and 15 September 2017.

All of the above information is tabled in attachment 1 hereto.

In addition Councillors and the Executive Team were provided with the following memoranda updating the proceedings in greater detail:

Memorandum dated 9 November 2016-attachment 2 hereto.

Memorandum dated 16 November 2016. This memorandum is not attached as it reports on the conciliation conference which was held on 2 December 2016. Matters raised at a conciliation conference are confidential between the Commissioner, the legal representatives, the expert witnesses involved and the parties. This update was detailed, running to 5 pages.

Memorandum dated 2 June 2017-attachment 3 hereto.

In all, over the 10 month life of the proceedings, the Councillors and the Executive Team received 10 reports updating the proceedings and the costs incurred together with 3 additional detailed memoranda.

Question With Notice No. 15.15 Brunswick Valley STP

File No: I2017/2085

At Council's Ordinary Meeting held on 14 December 2017, Patricia Warren asked the following question which was taken on notice:

What are the daily inflow and rainfall figures for Brunswick Valley STP at EPA Monitoring Point 5 from 31.5.17 to date and why is this data no longer on line for all STPs?

Response Director Infrastructure Services:

Monitoring data for the period requested is provided (attached).

The content of Council's website is currently under review and the merits of posting daily data will be reported to Council's Water Sewer and Waste Advisory Committee.

Staff have advised that this data was not previously available as live data on the website and that with the implementation of the new web site there would need to be an assessment on how existing data can be incorporated into the website.

Question With Notice No. 15.16 Byron Bay Ballooning

File No: I2017/2086

Virginie Hemmery asked the following question which was taken on notice:

Can Council please advise on whether the new owner of Byron Bay Ballooning will be required to submit a Development Application to operate the business from Tyagarah Airfield or if Development Consent exists or is required for the existing operations of Byron Bay Ballooning from its current take off point adjacent to Tyagarah Airfield?

Response Director Infrastructure Services:

The following planning advice has been received by Infrastructure Services in relation to this question.

'Hot air ballooning' is not specifically covered by Council planning controls. Only aeroplanes and helicopters.

Any 'hot air balloon' launching, landing or tethering must be operated by a licensed commercial balloon pilot.

Legislation specific to the operation of 'hot air balloons' is regulated by the Civil Aviation Safety Authority (CASA) including but not limited to CASR Part 101. Adherence to all EPA noise level standards is also required.

Balloons may be launched from land only with the landowner's permission.

There is also an Australian Ballooning Federation's 'Code of Conduct for Landowner Relations' which applies generally to balloon operations.

There being no further business the meeting concluded at 11.17pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 22 March 2018.

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Mayor Simon Richardson