



Byron Shire Council



Minutes

Ordinary Meeting

Thursday, 21 June 2018

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes
21 June 2018

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**MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY,
21 JUNE 2018 COMMENCING AT 9.04AM AND CONCLUDING AT 4.18PM**

I2018/1146

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)
Anna Vinfield (Manager Corporate Services)
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:

8.2 General Manager Recruitment

John Anderson addressed Council against the confidentiality.

9.3 Lots Identified

Sara Gloede addressed Council in favour of the recommendation.

13.1 Proposed Amendments to Council's Code of Meeting Practice

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

13.9 CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome

Michael Worrall (Wategos Beach Protection Association) addressed Council in favour of the recommendation.

13.11 CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome

Jane Magnus (Byron Events Industry Association) addressed Council in favour of the recommendation.

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

13.13 Residential Strategy - Accessible Housing Project (Housing Summit Action)

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

13.14 Barrio Eatery and Bar - Update on Resolution 18-170

David Dixon (Bayshore Apartments owners Corporation) addressed Council in favour of the recommendation.

13.25 Development of a Dogs in Public Spaces Strategy

Angela Dunlop addressed Council in favour of the recommendation.

13.27 Biobanking for Byron Bay Bypass - Dedication Of Land

John Anderson addressed Council against the recommendation.

16.3 CONFIDENTIAL - 2017-0050 EOI: Redevelopment of 1 Broken Head Road, Byron Bay

*John Stewart and Harley Graham addressed Council in favour of the recommendation.
Mary Gardner and Liz Levy addressed Council against the recommendation.*

Submission No. 1 Surf School Licencing

Nathan Folks (Mojosurf) made a submission to Council regarding the surf school licencing process in Byron Shire.

Submission No. 2 Positive Feedback

Matthew O'Reilly (CABS) made a submission to Council commending the work of the Acting General Manager.

Question No. 1 Development related information on Council's website

Matthew O'Reilly (CABS) asked the following question:

Byron Council has updated it's website, but the new website has less development related information than the old website. The eServices interface used to allow community members to access conditions of consent for development approvals, construction certificate details, and complying development certificate details; but now this information is completely unavailable. Likewise, just over a year ago the eService interface used to allow searches of Development Applications by development type, this function has since been removed. If Council is trying to improve its communication and build trust with the community, why have these important transparency measures been removed?

The Director Sustainable Environment and Economy noted that there has been feedback given to her Directorate with regard to the website. Her staff, along with the communications team have been proactively working to address these issues. We should have, within this week, some new webpage functionality and some new functionality introduced on our DA tracking system including new links and some new fact sheets. She advised she was more than happy to have another conversation with Mr O'Reilly at another time about whether or not that's working.

Question No. 2 Byron Bay Bypass – Butler Street Residents

John Anderson asked Council the following question:

Late last year Council's lawyers demanded the personal financial details of many members of the Butler Street residents group opposed to the bypass, leading to complaints to Council about intimidation. You Mr Mayor, were quoted in the press as saying you would "look into it" or

something to that effect. What were the results of your enquiries as to who authorised that legal action and why?

The question was taken on notice.

Note: Questions provided but not tabled in person at the meeting will be included in the next available Ordinary Meeting Agenda as a Question with Notice.

The meeting adjourned at 10.32am and reconvened at 11.00am.

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

The Acting General Manager, Mark Arnold, declared a pecuniary interest in Item 8.2. The nature of the interest being that is an applicant for the position. Mr Arnold elected to leave the Chamber during the discussion and vote on the item.

Cr Spooner declared a pecuniary interest in Report 13.3. The nature of the interest being that his employer, Byron Bay Community Association is the license holder for the Artisan Market. Cr Spooner elected to leave the Chamber and will not participate in discussion and the vote.

Cr Spooner declared a non-pecuniary interest in Report 13.18. The nature of the interest being that he manages Byron Community Centre that utilises the park for numerous events. Cr Spooner elected to stay in the Chamber, will participate in the discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

18-347 Resolved:

1. That the minutes of the Ordinary Meeting held 24 May 2018 be confirmed with Part 1 of Resolution 18-298 being amended to read:

‘Forward the revised planning proposal (Attachment 3) to the NSW Department of Planning and Environment to advise of the re-exhibition’.

2. That the minutes of the Byron Shire Reserve Trust Committee meeting held 24 May 2018 be confirmed. (Hunter/Spooner)

The motion was put to the vote and declared carried.

RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

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

STAFF REPORTS**Corporate and Community Services**

- Report No. 13.1 Proposed Amendments to Council's Code of Meeting Practice
Report No. 13.4 Mayor and Councillor Fees 2018/2019
Report No. 13.7 LGNSW Board Vacancy - Vice President (Rural/Regional Councils)

Sustainable Environment and Economy

- Report No. 13.9 CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome
Report No. 13.11 PLANNING - 26.2016.4.1 - Rural Function Centres - Results of Community Engagement
Report No. 13.12 Adoption of Constitution for Strategic Business Panel
Report No. 13.13 PLANNING - Residential Strategy - Accessible Housing Project (Housing Summit Action)
Report No. 13.14 Barrio Eatery and Bar - Update on Resolution 18-170
Report No. 13.18 PLANNING - Status report - Resolution 17-575 - Plan of Management for Railway Park
Report No. 13.21 PLANNING - Development Application 10.2018.110.1 Tourist and Visitor Accommodation (Twelve (12) Cabins including Use of Existing Structures as Storage and Staff Lunchroom and Construction of Day Spa), Camping Ground (Two Hundred and Thirty Nine (239) Sites), Park Entry Office/Kiosk, New Dwelling and Recreation Facility (Indoors) - Yoga Facility at 1897 Coolamon Scenic Drive Mullumbimby
Report No. 13.23 Actions from Agriculture and Farm Consultation

Infrastructure Services

- Report No. 13.27 Biobanking for Byron Bay Bypass - Dedication Of Land
Report No. 13.28 Update on MR 545 Transport Studies

CONFIDENTIAL REPORTS**Infrastructure Services**

- Report No. 16.3 CONFIDENTIAL - 2017-0050 EOI: Redevelopment of 1 Broken Head Road, Byron Bay

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Richardson and seconded by Cr Cameron. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 18-348 and concluding with Resolution No. 18-395.

Note: The vote on this item was recommitted at Resolution No. 18-397 in order for Cr Spooner to leave the Chamber in accordance with his earlier declared pecuniary interest in Report 13.3.

SUBMISSIONS AND GRANTS

- Report No. 11.1** **Byron Shire Council Submissions and Grants as at 30 May 2018**
File No: I2018/1029

18-348 Resolved that Council note the report and attachment (#E2018/45500) for the Byron Shire Council Submissions and Grants as at 30 May 2018. (Richardson/Cameron)

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 **Mayor and Councillors Payment of Expenses and Provision of Facilities Policy Review**

File No: I2017/1012

18-349 Resolved:

1. That in accordance with Section 253 of the Local Government Act 1993, Council adopt the amended Councillor Expenses and Facilities Policy as shown at Attachment 3 (E2018/47331) to be placed on public exhibition for a minimum period of 28 days.
2. That in the event:
 - a) that any submissions are received on the draft Policy, that those submissions be reported back to Council, prior to the adoption of the Policy.OR
 - b) that no submissions are received on the draft Policy, that the Policy be adopted and incorporated into Council's Policy Register. (Richardson/Cameron)

Report No. 13.3 **Temporary suspension of Railway Park artisan markets**

File No: I2018/684

Cr Spooner left the Chamber in accordance with his earlier declared pecuniary interest in this matter.

18-350 Resolved:

1. That Council suspend artisan markets at Railway Park, without payment of rent, during the Railway Park upgrade construction period.
2. That Council consider an expanded market licence area following the upgrade to Railway Park to offset the loss of income to the BBCA during the construction period.
3. That Council approve outside of the Railway Park upgrade schedule, the proposal by the Byron Bay Community Association Inc to:
 - a) permit suspension of artisan markets at Railway Park, without payment of rent, during cooler months commencing from the first Saturday in May and completing on the last Saturday in September for each remaining year of the licence; and
 - b) request a variation of the proposed 5 month suspension by the BBCA, should the BBCA decide to re-start artisan markets at Railway Park before the last Saturday in September but after the first Saturday in May for each remaining year of the licence; and
 - c) to permit non-payment of rent upon cancellation of an artisan market in Railway Park by the BBCA during the months October to April of each remaining year of the licence, where the cancellation is a result of works or an event outside the control of the BBCA (Richardson/Cameron)

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Report No. 13.5 **Community Initiatives Program (Section 356) - 2017/18 funding round applications**
File No: I2018/944

18-351 Resolved:

1. That Council provide \$5,000 from the unallocated Section 356 budget to each of the projects which met the assessment criteria of the Community Initiatives Program 2017/18 funding round and which are recommended for funding in Confidential Attachment 1 (#E2018/48170).
2. That Council advertise the Section 356 Donations proposed to be made in part 1 if approved by Council.
3. That the 2018/19 funding round of the Community Initiatives Program be advertised as soon as practicable following adoption of the 2018/2019 Budget.
4. That Council note that unsuccessful applicants from this funding round will be provided detailed feedback and staff support to work on more complete applications that meet all criteria in future rounds.
5. That Council staff will continue to work with community groups to support them in submitting high quality applications to future rounds of the program. (Richardson/Cameron)

Report No. 13.6 **Public Hearing into Byron Bay Police Actions - outcome**
File No: I2018/1034

- 18-352 Resolved** that Council note the Public Hearing into Byron Bay Police Actions report. (Richardson/Cameron)

Report No. 13.8 **Investments May 2018**
File No: I2018/1041

- 18-353 Resolved** that the report listing Council's investments and overall cash position as at 31 May 2018 be noted. (Richardson/Cameron)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.10 **PLANNING - Draft Employment Lands Strategy for Public Exhibition**
File No: I2018/920

- 18-354 Resolved** that Council place the draft Employment Land Strategy, Attachment 1 (#E2018/47136) on public exhibition for a period of 6 weeks and that the exhibition of the Strategy is accompanied by the Employment Land Strategy Background Report, Attachment 2 (#E2018/47137). (Richardson/Cameron)

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.

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Report No. 13.15 **Report of the Planning Review Committee Meeting held on 15 May 2018**

File No: I2018/941

18-355 **Resolved** that Council note the report of the Planning Review Committee meeting held on 15 May 2018. (Richardson/Cameron)

Report No. 13.16 **Local Development Performance Monitoring and DPE Development Assessment Best Practice Guide**

File No: I2018/961

18-356 **Resolved** that Council receive and note the report. (Richardson/Cameron)

Report No. 13.17 **PLANNING - Residential Strategy - Update on responses to relevant state government policy**

File No: I2018/966

18-357 **Resolved** that Council:

1. Formally write to the Department of Planning and Environment to confirm they are considering expanding the areas that SEPP 70 applies and if Council's detailed submission for inclusion in SEPP 70 is warranted at this time.
2. Note that staff have written to the Department of Planning (as requested) to seek a pause on the application of the *Low Rise Medium Density Housing Code* to Byron Shire until the Residential Strategy is finalised. (Richardson/Cameron)

The motion was put to the vote and declared carried.

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

No Crs voted against the motion.

Report No. 13.19 **PLANNING - NSW Planning System Reforms and Community Engagement Obligations for Planning Functions**

File No: I2018/1035

18-358 **Resolved** that Council:

1. Note that further information will be provided to Councillors to assist with the development of a template for 'statement of reasons' for decisions following the release of guidelines from the Department of Planning & Environment.
2. Support the commencement of a review of the existing Byron DCP 2010 & 2014 requirements for public exhibition and notification of development applications by staff as part of the preparation of community participation plan; and receive a further report on this prior to or at the December 2018 meeting of Council.
3. In response to current community concerns about major development notification have staff:
 - a) Prepare a draft amendment to Byron DCP 2010 & 2014 requiring developers to

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consult with members of the community who are affected by proposed 'major development' before any development application is made to Council, and exhibit this draft amendment.

- b) Prepare a draft amendment to Byron DCP 2010 & 2014 requiring site notification for development applications subject to Level 2 notification, and exhibit this draft amendment.
4. Receive a further report on a) and b) above only if submissions are received to the amendments proposed; otherwise upon completion of the notification period approve the amendments to the Development Control Plans as exhibited. (Richardson/Cameron)

The motion was put to the vote and declared carried.

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

No Crs voted against the motion.

Cr Spooner was not present for the vote.

Report No. 13.20 PLANNING - Exceptions to Development Standards - 1 January 2018 to 31 March 2018

File No: I2018/1048

- 18-359 Resolved** that Council note the report on exceptions to development standards for the period 1 January to 31 March 2018. (Richardson/Cameron)

The motion was put to the vote and declared carried.

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

No Crs voted against the motion.

Report No. 13.22 PLANNING - Development Application 10.2018.25.1 Subdivision two lots into three lots at 31 Blackwood Crescent and Ballina Road Bangalow

File No: I2018/1058

- 18-360 Resolved** that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2018.25.1 for Subdivision of two (2) lots into three (3) lots, be granted consent subject to conditions in Attachment 3 #E2018/47431. (Richardson/Cameron)

The motion was put to the vote and declared carried.

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

No Crs voted against the motion.

Report No. 13.24 Byron Visitor Centre

File No: I2018/1067

- 18-361 Resolved:**

1. That Council undertake a consultation process with the Local Area Commander of Police to recommend that Lot 1 DP 827049 being the site of the Byron Visitor Centre be declared an Alcohol Prohibited Area (at all times).

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2. That if no submissions are received from the Local Area Commander of Police during the consultation process, Council declare the Byron Visitor Centre lease site an Alcohol Prohibited Area (at all times).
3. That if declared an Alcohol Prohibited Area, Council install three (3) Alcohol Prohibited Area signs within the Byron Visitor Centre leased site.
4. That Council's Busking Policy 13/002 be amended to include the Byron Visitors Centre leased site as a designated busking area.
5. That the amended Busking Policy 13/002 be placed on public exhibition for a period of 28 days, and that if no submissions are received the Policy be adopted. (Richardson/Cameron)

Report No. 13.25 Development of a Dogs in Public Spaces Strategy
File No: I2018/1071

18-362 Resolved that Council:

1. Note the report and support the preparation of a Byron Shire Dogs in Public Spaces Strategy.
2. Receive a further report on Stage 1 - Byron Shire Dogs in Public Spaces Strategy (Initial information gathering and research) and a Community Engagement Plan once this work is completed. (Richardson/Cameron)

Report No. 13.26 BSC ats Dromore Properties Pty Ltd Land and Environment Court Proceedings
File No: I2018/1059

18-363 Resolved that the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2017.686.1, subject to appropriate conditions to be finalised under delegation. (Richardson/Cameron)

COMMITTEE REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 17 May 2018
File No: I2018/939

18-364 Resolved that Council note the notes of the Finance Advisory Committee Meeting held on 17 May 2018. (Richardson/Cameron)

18-365 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.1 2017/18 Financial Sustainability Plan - Update on the Action Implementation Plan as at 31 March 2018
File No: I2018/453

Committee Recommendation 4.1.1

That the update report to 31 March 2018 on the 2017/2018 Financial Sustainability Plan Action Implementation Plan (E2018/19525) be received and noted. (Richardson/Cameron)

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18-366 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.2 Budget Review - 1 January 2018 to 31 March 2018

File No: I2018/868

Committee Recommendation 4.2.1

That Council note :

1. That Council authorised the itemised budget variations as shown in Attachment 2 (#E2018/39650) which included the following results in the 31 March 2018 Quarterly Review of the 2017/2018 Budget:
 - a) General Fund – \$256,900 increase to the Estimated Unrestricted Cash Result
 - b) General Fund - \$1,734,800 increase in reserves
 - c) Water Fund - \$1,195,100 increase in reserves
 - d) Sewerage Fund - \$2,930,600 increase in reserves
2. That Council adopted the revised General Fund Estimated Unrestricted Cash Result of \$1,145,200 for the 2017/2018 financial year as at 31 March 2018.

At its Ordinary meeting held on 24 May 2018.

(Richardson/Cameron)

18-367 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.3 Quarterly Update - Implementation of Special Rate Variation

File No: I2018/869

Committee Recommendation 4.3.1

That the Finance Advisory Committee note the quarterly update on the Special Rate Variation Implementation as at 31 March 2018.

(Richardson/Cameron)

18-368 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.4 Funding Options for Railway Square Stage 2

File No: I2018/277

Committee Recommendation 4.4.1

That the Finance Advisory Committee recommend to Council that the funding model and budget estimate for the delivery of Railway Square, Stage 2 as set out in Option 3 of this report be adopted.

(Richardson/Cameron)

Report No. 14.2

Report of the Audit, Risk and Improvement Committee Meeting held on 17 May 2018

File No:

I2018/1043

18-369 Resolved that Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 May 2018. (Richardson/Cameron)

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18-370 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.1 Local Government Performance Excellence Program - Byron Shire Council 2017 Performance Results

File No: I2018/655

Committee Recommendation 4.1.1

That the Internal Audit, Risk and Improvement Committee note the Byron Shire Council LG Performance Excellence Program FY17 Report and that future reports be presented to the Committee. (Richardson/Cameron)

18-371 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.2 NSW Audit Office - Local Government 2017 Financial Audit Report

File No: I2018/866

Committee Recommendation 4.2.1

That the Audit, Risk and Improvement Committee note the contents and recommendations made in the Local Government 2017 Financial Audit from the NSW Audit Office at Attachment 1 (#E2018/35811). (Richardson/Cameron)

18-372 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.3 Internal Activity & Progress Report - May 2018

File No: I2018/862

Committee Recommendation 4.3.1

1. That the Audit, Risk and Improvement Advisory Committee note the Internal Audit Activity Report – May 2018 (#E2018/39734).
2. That the Audit, Risk and Improvement Advisory Committee endorse the recommendation to vary the audit program and replace the planned IT User Access Review in Quarter 4 of 2017/2018 year with an audit review of Council's current systems and processes to ensure/test compliance with Council's six Environment Protection Licences in the Sewerage, Landfill and Quarry operations.
3. That the IT User Access review be completed no later than Quarter 2 of 2018/2019 financial year. (Richardson/Cameron)

18-373 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 5.1 2017/2018 External Audit Client Service Plan

File No: I2018/810

Committee Recommendation 5.1.1

1. That Council note the External Audit Client Service Plan prepared by the Audit Office of New South Wales for the year ended 30 June 2018 as outlined in Attachment 1 (#E2018/36320).
2. That the report and Attachment 1 of the closed part of the meeting remain confidential. (Richardson/Cameron)

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18-374 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 5.2 Risk Management Framework & Business Continuity Update

File No: I2018/683

Committee Recommendation 5.2.1

That the Internal Audit, Risk and Improvement Committee note ongoing work undertaken in improving Council's risk management approach and business continuity and disaster recovery efforts across the organisation. (Richardson/Cameron)

18-375 Resolved:

that Council adopt the following Committee Recommendation(s):

Report No. 5.3 Fraud and Corruption Control Audit Review Report

File No: I2018/654

Committee Recommendation 5.3.1

1. That the Audit, Risk and Improvement Committee note the Fraud and Corruption Controls internal audit review report.
2. That the Audit, Risk and Improvement Committee request that management implement the recommendations made in the report identified as Attachment 1 (#E2018/39530), subject to the revaluation of the rating of detailed finding 2.3 – Fraud and Corruption Policy/Framework from Medium to High.
3. That the report and Attachment 1 of the closed part of the meeting remain confidential.
4. That an update on fraud and corruption controls be presented at future meetings. (Richardson/Cameron)

Report No. 14.3 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 31 May 2018

File No: I2018/1078

18-376 Resolved that Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 31 May 2018. (Richardson/Cameron)

18-377 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.1 Aboriginal Services Coalition

File No: I2018/821

Committee Recommendation 4.1.1

That the Arakwal Memorandum of Understanding Advisory Committee note the progress of this project and the priorities for 2018. (Richardson/Cameron)

18-378 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.2 Byron Shire Pest Management Plan - Consultation

File No: I2018/822

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Committee Recommendation 4.2.1

1. That the Arakwal Memorandum of Understanding Advisory Committee provide feedback on the attached draft Cultural Impact (#E2018/44646). The feedback is as follows:
 - Change the name of the Plan to include the word "Animal" in the title
2. That feedback on the Plan be sought from the Arakwal Corporation, and received by mid June 2018. (Richardson/Cameron)

18-379 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.3 Illegal Campers at Ironbark Avenue and Vegetation on Council Land
File No: I2018/823

Committee Recommendation 4.3.1

That the Arakwal Memorandum of Understanding Advisory Committee recommend that Council staff conduct a site meeting with Council Engineers (drainage issues) and Arakwal representatives, including discussion on signage, as a matter of priority. The Committee noted there is an allocation in the draft 2018/19 budget for the works. (Richardson/Cameron)

18-380 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.4 Byron Town Centre Masterplan - Ongoing Consultation with Arakwal
File No: I2018/824

Committee Recommendation 4.4.1

1. That the Arakwal Memorandum of Understanding Advisory Committee establish Byron Bay Town Centre Masterplan as a Standing Item on the agenda until the project is implemented.
2. That Claire McGarry attend an Arakwal Corporation Board meeting, on a date to be determined, to discuss the Masterplan. (Richardson/Cameron)

18-381 Resolved that Council adopt the following Committee Recommendation:

Report No. 4.5 Master Plan Mullumbimby
File No: I2018/882

Committee Recommendation 4.5.1

That Council staff attend a Special Board Meeting of the Arakwal Corporation to discuss the Masterplans for Mullumbimby, Bangalow, and Byron Bay. (Richardson/Cameron)

COMMITTEE REPORTS - INFRASTRUCTURE SERVICES

Report No. 14.4 Report of the Local Traffic Committee Meeting held on 16 May 2018
File No: I2018/948

18-382 Resolved that Council note the minutes of the Local Traffic Committee Meeting held on 16 May 2018. (Richardson/Cameron)

18-383 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 7.2 Mercato - Byron Bay Woolworth Site re-development request for variation to traffic management arrangements

File No: I2018/908

RECOMMENDATION:

That Council support the use of Butler Street, Byron Bay for construction access for concrete deliveries until the re-development works are completed or Council commences the construction of the Byron Bay Bypass, which occurs earliest. (Richardson/Cameron)

Report No. 14.5 Report of the Water, Waste and Sewer Advisory Committee Meeting held on 31 May 2018

File No: I2018/1079

18-384 Resolved that Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 31 May 2018. (Richardson/Cameron)

18-385 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.1 Sewage Treatment Plant EPA Licence Sites

File No: I2018/619

Committee Recommendation 4.1.1

1. That the Council note the report.
2. That the Council note that the Oceans Shores Constructed Wetland is a serpentine channel. (Richardson/Cameron)

18-386 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.2 Mullumbimby Sewerage System Inflow and Infiltration Programme - update

File No: I2018/645

Committee Recommendation 4.2.1

1. That Council support the Inflow and Infiltration (I/I) Project as outlined in the report (page 17 of the Agenda) and recognising the social impact on dwellings that are invited to participate, including at least that participants will:
 - (a) provide space for a sewer pump pod;
 - (b) allow connection to the electricity supply;
 - (c) run the risk of water logging of their or their neighbours' yards due to storm water not entering sewers; and
 - (d) participate with Council in remediating in water logging.
2. That Council consider allocating a resource to ensure social and ecological aspects resulting from the project are considered in conjunction with works. (Richardson/Cameron)

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18-387 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.3 Recycled Water Strategic Management Strategy

File No: I2018/646

Committee Recommendation 4.3.1

That Council put the Recycled Water Strategic Management Strategy (Rev 3. Attachment #E2018/43453) on public exhibition for 28 days and, if no submissions are received, adopt it or, if submissions are received, send to Council. (Richardson/Cameron)

18-388 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.4 Data on bins that have fallen over in rural areas

File No: I2018/647

Committee Recommendation 4.4.1

That Council note the report and the subsequent information that 25 rural bins over 3 years period have fallen over prior to collection. (Richardson/Cameron)

18-389 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.5 Legislation relating to the Domestic Waste Management Charge

File No: I2018/897

Committee Recommendation 4.5.1

That Council note the report. (Richardson/Cameron)

18-390 Resolved that Council adopt the following Committee Recommendation(s):

Report No. 4.6 Murtagh Wetlands Report

File No: I2018/952

Committee Recommendation 4.6.1

1. That Council review the state and performance of the West Byron STP Constructed Wetlands and 24 Ha Melaleuca Wetland and advise on future management.
2. That a report on scoping of water sensitive design and whole of catchment plan to integrate all works involving West Byron STP, Cape Byron Marine Park, Union Drain Trust and the community come to the next meeting WWSAC.
3. That the WWSAC receive a report on the current status of the old sand mining drain/path and its impact on the Belongil catchment. (Richardson/Cameron)

Report No. 14.6
File No:

Report of the Local Traffic Committee Meeting held on 31 May 2018
I2018/1106

18-391 Resolved that Council note the minutes of the Local Traffic Committee Meeting held on 31 May 2018. (Richardson/Cameron)

18-392 Resolved that Council adopt the following Committee and Management Recommendation(s):

Report No. 6.1 Events - Byron Writers Festival 2018 - Road Closure

File No: I2018/906

Committee Recommendation 6.1.1

1. That Council endorse the Byron Bay Writers Festival to be held on 3-5 August 2018, that includes the installation of temporary regulatory signage including No Stopping, No Parking and Disability Parking Signs between 8am and 6pm, subject to conditions at:-
 - a. Bayshore Drive, Byron Bay.
2. That the approval provided in Part 1 is subject to:-
 - a. separate approvals by NSW Police and RMS being obtained;
 - b. implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;
 - c. that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;
 - d. the event be notified on Council's webpage;
 - e. the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns;
 - ii. undertake consultation with emergency services and any identified issues addressed; and
 - iii. hold \$20m public liability insurance cover which is valid for the event.

(Richardson/Cameron)

CONFIDENTIAL REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 16.1 CONFIDENTIAL - Mullumbimby Administration Building - Solar Installation

File No: I2018/530

18-393 Resolved:

1. That Council support the installation of approximately 100kW solar panelled structure at Council's Mullumbimby Administration Building car park.
2. That Council allocate an estimated project budget of \$330,000 inclusive of all costs with funding provided by the Employee Leave Entitlements Reserve.
3. That any savings generated from electricity costs related to the Mullumbimby Administration Building be reimbursed to the Employee Leave Entitlements Reserve until such time as the capital investment incurred is recovered.
4. That Council receive a further report on further solar options once the new electricity contract subject to a procurement process has been finalised.
5. That this report and attachment #E2018/47068 remain confidential. (Richardson/Cameron)

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.2 **CONFIDENTIAL - Tender Assessment Report - Belongil Entrance Opening Strategy**

File No: I2018/932

18-394 Resolved:

1. That Council award Tender Belongil Creek Entrance Opening Strategy to Alluvium Consulting Australia Pty Ltd.
2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Richardson/Cameron)

Report No. 16.4 **CONFIDENTIAL - Expression of Interest 20017-0069 Bioenergy Project**

File No: I2018/1052

18-395 Resolved:

1. That Council shortlist the following companies to participate in a tender for a Bankable Feasibility Study for the Byron Bay Bioenergy Facility:
 - a) Aquatec Maxcon
 - b) HZ-Inova
 - c) Opec Systems
 - d) Skala
 - e) Stark Group
2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the *Local Government (General) Regulation 2005*.
3. That Council allocate \$250,000 from the Sewer Section 64 funds for the Bankable Feasibility Study for the Byron Bay Bioenergy Facility.
4. That Council prepare grant applications for the construction phase of the Byron Bay Bioenergy Facility.
5. That Council prepare documents to seek long term contracts to secure Byron Shire's food waste and fats, oils and grease (grease traps) feedstocks. (Richardson/Cameron)

PROCEDURAL MOTIONS

- 18-396 Resolved** that Council change the order of business to deal with items 9.3, 13.1, 13.9, 13.11, 13.13, 13.14, 13.27, 16.3, 8.2 next on the Agenda. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

- 18-397 Resolved** that the vote on Reservation of Items for Debate be recommitted in order to allow Cr Spooner to leave the Chamber in accordance with his earlier declared pecuniary interest in Report 13.3. (Richardson/Ndiaye)

Cr Spooner left the Chamber at 11.12am.

*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 11.13am.

NOTICES OF MOTION

Notice of Motion No. 9.3 Lots Identified
File No: I2018/1089

- 18-398 Resolved** that an amendment to Chapter B14.2 of DCP 2014 be prepared as part of the next House Keeping DCP amendment/s by adding the following clause to the Prescriptive Measure in DCP – Chapter B14 – Excavation and Fill:

Lots that are identified as having stability problems either on Council's GIS mapping or through the development assessment process (slopes greater than 15 degrees, land that has historically been used for uncontrolled filling, or land that has is constrained by springs or wet areas etc.) are to adequately address geotechnical constraints through the submission of a detailed geotechnical report prepared by a suitably qualified professional. The development application shall also incorporating preliminary design detail for footings, driveways and storm water management to demonstrate how the risk is can be adequately managed. In certain circumstances the geotechnical constraints will prevent properties from being developed for infill development and applications will not be approved. (Coorey/Richardson)

The motion was put to the vote and declared carried.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Proposed Amendments to Council's Code of Meeting Practice
File No: I2018/789

- 18-399 Resolved** that Council:

1. Note the attached submissions received in relation to the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice (E2018/16039).
2. Adopt the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice with the following amendments:
 - *22.6 A person/organisation is permitted to speak in favour of or against up to 2 items on the agenda.*
 - *22.8 the mayor will invite councillors to ask questions of speakers at the conclusion of their speech in favour of or against an item on the agenda, or on a submission.*
3. Incorporate the adopted draft amendments into the Code of Meeting Practice.

4. Update Council's Corporate Documents Register with the revised Code of Meeting Practice and update the associated procedure (DM804466). (Lyon/Coorey)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 **CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome**
File No: I2018/632

- 18-400 Resolved** that the matter rest on the table. (Richardson/Coorey)

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

Report No. 13.11 **PLANNING - 26.2016.4.1 - Rural Function Centres - Results of Community Engagement**
File No: I2018/798

Moved that Council:

1. Not proceed with the Planning Proposal for the following reasons.
 - a) The proposal for a wedding function use and other uses are inconsistent with the zoning objectives for the RU2 zone as the proposed uses are not 'associated with primary production and environmental conservation'.
 - b) The proposal introduces a range of uses other than wedding functions that are inconsistent with RU2 zone objectives and that these additional uses and impacts have not been adequately addressed in the planning proposal.
 - c) The draft controls in the proposed clause are unnecessarily qualified with the potential to further erode the amenity of rural residents when standards need to be unambiguous, prescriptive and clearly stated.
 - d) The proposal for weddings and other functions is an imposition on rural amenity that can not be reasonably 'balanced'.
 - e) The proposed controls do not adequately consider impacts on community infrastructure especially roads.
2. Engage with community and the wedding industry to develop a 'well managed and sustainable industry for all' that particularly examines existing facilities in zones with objectives that can accommodate weddings and other functions. (Cameron/Coorey)

PROCEDURAL MOTION

- 18-401 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.

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AMENDMENT

Moved that Council:

1. Forward the Planning Proposal at Attachment 2 (#E2018/46690) to the NSW Department of Planning and Environment for a Gateway determination, to amend Byron Local Environmental Plan 2014 to permit function centres in the RU2 Rural Landscape Zone with development consent and subject to appropriate controls relating to site suitability and management.
2. In keeping with the commitment to value, protect and enhance farming in the Shire, not proceed with allowing function centres in the RU1 Primary Produce Zone.
3. Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway determination issued by the NSW Department of Planning and Environment, and report back to Council as part of post-exhibition reporting.
4. Investigate the possibility of implementing a registration system for approved rural function centres, and report back to Council as part of the post-exhibition reporting.

(Richardson/Spooner)

Cr Hunter declared a non-pecuniary interest in this matter during the meeting. The interest being that a part of his property is in the RU1 zone. He elected to remain in the Chamber, participate in the discussion and vote.

PROCEDURAL MOTIONS

18-402 Resolved that Cr Richardson be granted a two minute extension to his speech.

(Ndiaye/Cameron)

The motion was put to the vote and declared carried.

18-403 Resolved that Cr Coorey be granted a two minute extension to her speech.

(Richardson/Hackett)

The motion was put to the vote and declared carried.

The amendment (Richardson/Spooner) was put to the vote and declared lost.

Crs Ndiaye, Richardson, Spooner and Hunter voted in favour of the amendment.

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

The motion (Cameron/Coorey) was put to the vote and declared lost.

Crs Coorey, Richardson, Cameron and Hackett voted in favour of the motion.

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

FORESHADOWED MOTION

18-404 Resolved that Council:

1. Forward the Planning Proposal at Attachment 2 (#E2018/46690) with the following amendment to 6(10) 2 (c) and (d), to the NSW Department of Planning and Environment for a Gateway determination, to amend Byron Local Environmental Plan 2014 to permit function centres in the RU2 Rural Landscape Zone with development consent and subject to appropriate controls relating to site suitability and management.

- 6(10) 2 (c) ensure that all amplified music will cease no later than 8.00pm; and

- 6(10) 2 (d) ensure that all event attendees will be off-site no later than 8.30pm; and

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2. In keeping with the commitment to value, protect and enhance farming in the Shire, not proceed with allowing function centres in the RU1 Primary Produce Zone.
3. Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway determination issued by the NSW Department of Planning and Environment, and report back to Council as part of post-exhibition reporting.
4. Investigate the possibility of implementing a registration system for approved rural function centres, and report back to Council as part of the post-exhibition reporting. (Lyon/Spooner)

The motion (Lyon/Spooner) was put to the vote and declared carried.

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

The meeting adjourned at 12.37pm for lunch and reconvened at 1.30pm.

PROCEDURAL MOTION

- 18-405 Resolved** that Council change the order of business to deal with Reports 13.14 and 9.2 next on the Agenda. (Richardson/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.14 Barrio Eatery and Bar - Update on Resolution 18-170
File No: I2018/907

18-406 Resolved:

1. That Council note the report.
2. That council request further reports from Council staff in another three months and six months to ensure all promised works have been carried out and that sound levels now comply with the NSW Industrial Noise Policy, per the DA . (Lyon/Richardson)

The motion was put to the vote and declared carried.

NOTICES OF MOTION

Notice of Motion No. 9.2 Support for the Uluru Statement from the Heart
File No: I2018/1086

18-407 Resolved that Council:

1. Supports the Uluru Statement from the Heart
2. Will be a signatory to the ACOSS statement of support for the Uluru Statement
3. Acknowledges Aboriginal and Torres Strait Islander people as the Traditional Owners of this country and pay respect their ongoing spiritual and cultural connections with it.
4. Recognises the need for constitutional change that goes beyond the symbolic and the

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benefits that a treaty offers all Australians.

5. Thanks those who gathered at the 2017 National Constitutional Convention in Uluru for your persistence and patience, under the guidance of the co-chairs of the referendum Counsel, Ms Pat Anderson AO and Mr Mark Leibler AC.
6. Lodge a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.
7. That Council provide a press release including the Uluru Statement from the Heart and our support for it. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 18-408 Resolved** that Report No 13.9 be lifted from the table. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome

File No: I2018/632

CONTINUED

18-409 Resolved:

1. That, subject to the receipt and consideration of the legal advice referred to in the body of this report, Council adopts the draft CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) as amended in accordance with the recommendations outlined in Attachment 2 (#E2018/45410) of this report.
2. That the CZMP as adopted be submitted to the Minister for certification.
3. That Council note the timeframes for delivery of the draft CZMP. (Hackett/Richardson)

The motion was put to the vote and declared carried.

Report No. 13.13 PLANNING - Residential Strategy - Accessible Housing Project (Housing Summit Action)

File No: I2018/889

18-410 Resolved that Council:

1. Note the report and thank staff for the work to date on the Accessible Housing Project initiative.
2. Endorse, subject to budget allocation in the 2018/19 Budget, the allocation of \$50,000 to fund a 6 month planning position to prioritise the finalisation of the residential strategy by end of year.
3. Note that staff will further refine and tailor for Byron Shire the accessible housing planning mechanisms (principles/objectives/roles/terms and conditions in the report) as part of the

finalisation of the residential strategy in conjunction with experts across relevant fields.

4. Research the economic, social and construction benefits of adopting a minimum 15-30% of developable area to all land dedications made for the purposes of Accessible Housing provision.
5. Notify Accessible Housing Project initiative land owners of 1-3 above. In particular land owners of sites 2 and 5 to be advised of the prerequisites for their land being considered by Council for potential rezoning should they seek to lodge stand alone planning proposals for this land ahead of the residential strategy. (Spooner/Lyon)

PROCEDURAL MOTION

- 18-411 Resolved** that Cr Spooner be granted a one minute extension to his speech. (Richardson/Cameron)

The motion was put to the vote and declared carried.

The motion (Spooner/Lyon) 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.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.27 Biobanking for Byron Bay Bypass - Dedication Of Land
File No: I2018/1051

- 18-412 Resolved** that Council dedicates lots:

- Lot 7, DP 809005
- Lot 24, DP 845454
- Lot 46, DP 848543
- Lot 47, DP 854800

In addition to Lot 66, DP 863772 Lilli Pilli Drive, Byron Bay for the purposes of BioBanking as an offset to the impact of the construction of the Byron Bay Bypass. (Coorey/Lyon)

The motion was put to the vote and declared carried.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.3 CONFIDENTIAL - 2017-0050 EOI: Redevelopment of 1 Broken Head Road, Byron Bay
File No: I2018/867

Moved:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2017-0050 EOI: Redevelopment of 1 Broken Head Rd, Byron Bay are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
2. That Council decline to invite tenders for the Sth Byron STP site

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3 That Council begin an engagement process for improved transparency that enables community input into the process

4. That a report be presented back to Council. (Coorey/Cameron)

PROCEDURAL MOTION

18-413 Resolved that Cr Ndiaye be granted a one minute extension to her speech. (Richardson/Cameron)

The motion was put to the vote and declared carried.

AMENDMENT

18-414 Resolved:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2017-0050 EOI: Redevelopment of 1 Broken Head Rd, Byron Bay are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.

2. That Council short-list the following proponents to participate in the selective request for tender process:

- a) The Living School Byron Bay Pty Ltd
- b) National Affordable Housing Consortium Ltd
- c) Powerwrap Limited (Archiblox Pty Ltd)
- d) The Trustee for Harrison Developments Discretionary Trust (The Village Retirement Group)

3. That those submissions focused on environmental education and showcasing be invited to work alongside Council to see if this outcome can be achieved at either the West Byron STP or the Vallances Road Sustainability Precinct. (Spooner/Ndiaye)

Cr Martin left the meeting at 2:25pm and did not return.

PROCEDURAL MOTIONS

18-415 Resolved that Cr Spooner be granted a two minute extension to his speech. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

18-416 Resolved that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Cameron)

The motion was put to the vote and declared carried.

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

Crs Coorey and Cameron voted against the amendment.

The amendment upon becoming the substantive motion was put to the vote and declared carried. Crs Coorey and Cameron voted against the motion.

MAYORAL MINUTE

Mayoral Minute No. 8.1
File No:

Update - Short Term Holiday Let Government Announcement
I2018/1096

18-417 Resolved that Council:

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1. Acknowledges the legitimate role short term holiday letting can play as part of the suite of visitor accommodation provision;
2. Note the disappointing lack of planning clarity thus far shared via press releases concerning short term holiday letting;
3. Note the disappointing absence of engagement of any form with Byron Shire in the 8 months since the close of the formal consultation period in October 2017;
4. Reinforce that, due to the disproportionate percentage of dwellings being used for short term holiday letting within the Byron Shire, a blanket approach to planning regulation via a state policy is a major cause for concern;
5. Request support from MP's Ben Franklin and Tamara Smith to assist in convening a meeting with the Minister for Planning in order for council to seek a deferral of Byron Shire from the new state wide planning policy (pause to implementation). (Richardson)

The motion was put to the vote and declared carried.

Mayoral Minute No. 8.2 General Manager Recruitment
File No: I2018/1101

Mark Arnold, Acting General Manager, left the meeting in accordance with his earlier declared pecuniary interest in this matter.

18-418 Resolved:

1. That Council note the report at Confidential Attachment 1 (E2018/49761) and appoint Candidate #4 on a 5-year senior staff contract, at the current total remuneration package (TRP), in accordance with the Office of Local Government's Standard Contract for the Employment of General Managers.
2. That Attachment 1 become publicly available. (Richardson)

The motion was put to the vote and declared carried.

Mark Arnold, Acting General Manager, returned to the Chamber at 3.08pm.

NOTICES OF MOTION

Notice of Motion No. 9.1 A Zero Waste Target for Byron Shire
File No: I2018/1076

18-419 Resolved:

1. Adopts a 'Zero Waste Target' across the Shire and includes this objective in our Integrated Waste Strategies and Management Plans.
2. Supports a circular economy model approach to manage its resource recovery, with an expressed desire for an innovative waste management strategic focus (with zero waste to landfill aspirations).
3. Seeks regional support, through the Northern Rivers Joint Organisation, and other regional

waste bodies, to encourage or incentivise businesses that will manufacture or create product from the recycled product in the region and to develop a region wide zero waste target.

4. Support the Northern Rivers Joint Organisation identified priority in waste management to proceed with and complete a detailed feasibility study for a regional AWT facility.
5. Write to the Relevant Minister, requesting:
 - a) That the NSW Government investigate further options for reforming the waste levy grant system, including providing greater flexibility in the grant guidelines for waste management projects.
 - b) That the NSW Government investigate opportunities to enhance the collaborative powers of Regional Organisations of Councils to encourage investment in waste facilities, to be funded by the waste levy.
 - c) That the NSW Environment Protection Authority provide additional support to local councils and resource recovery organisations to meet recycling targets and manage issues such as stream contamination, bureaucratic barriers, lack of product stewardship, and limited market opportunities.
 - d) That the NSW Environment Protection Authority urgently investigate, identify and implement alternative solutions to the ban on the importation of recyclable plastics by China
 - e) That the NSW Environment Protection Authority, in collaboration with stakeholders, investigate opportunities to embed zero waste strategies and the circular economy in New South Wales.
6. Write to Tamara Smith MLA and Ben Franklin MLC seeking their support and advocacy within NSW Parliament. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

PETITIONS

1. Non-Chemical Means of Weed Control in Byron Shire

The Mayor tabled the following petition with 202 signatures which states:

“We, the undersigned, request that Byron Shire Council replace its use of glyphosate products with non-chemical weed control. Council has been presented with scientifically documented information regarding the negative impact of glyphosate on human, animal and environmental health and also supplied with information on alternative products used by other councils.”

DELEGATES' REPORTS

**Delegate's Report No. 12.1 Law Enforcement Conduct Commission Hearing Operation
Tambora - 26-28 March 2018**
File No: I2018/1099

Delegate notes provided by Nicqui Yazdi for the Law Enforcement Conduct Commission Hearing Operation Tambora, held 26-28 March 2018 in Sydney, are included as Attachment 1 to the Report titled “Public Hearing into Byron Bay Police Actions – outcome” in this Agenda.

Signed: Cr Simon Richardson

2. Future of Local Government - Smart Councils, Strong Communities, 30-31 May 2018

Cr Coorey advised Council:

The Future of Local Government National Summit, which Anna Vinfield attended as well, was really great, really inspiring, and the future of Local Government seems to suggest that the community works harder and we will work with them rather than us doing all the work. I am paraphrasing, that's not the case but it was really very much about engagement as you can probably imagine and there was some really innovative and exciting things there. One that I liked especially was by a man from Victoria, who has developed a sharing economy platform called B-Hive but it is a sharing economy that is limited to the local area. So it has the effect of rather than Airbnb or Amazon or those companies that don't create anything in the neighbourhood they just are a retail platform for taking away funds, this is actually one that you have membership of. It is a sharing economy for a variety of possibilities. I won't go into the entire model here, I'd actually probably like to bring that man up here. But it is a way we can share accommodation, it's a way we can share cars, it's a way we can share tasks, like Airtasker does, but at a local level which is really about returning the economy of sharing back to the local area.

There was some really interesting ideas about how we talk to the community, especially with regards to Council business. One was actually about having open source policy documents so that people could write into them. So that you have the input as it is being drafted. Someone might hate that, I thought it was kind of exciting. You know you could end up with a "dog's breakfast" but maybe it's a point where people can put things in like a Wikipedia entry, or Google Doc, and it is just a way of collaborating with your community. Maybe you don't let everyone do it but it was an interesting way of looking at things.

A lot of people spoke about a model of Councillors as a board of directors is very out-dated and we shouldn't really be looking to be that but rather community connectors and I think that was a nice way of thinking about that and I think most of us probably do feel we are community connectors but sometimes it is easy to feel like you are the board of directors and you take responsibility for everything.

The other interesting thing I like, which possibly is counter intuitive to some of the things we are doing with the Joint Councils Organisation was actually localising procurement, but there are ways that you can return funds to your local area. We do that with some of our providers but that was one thing that I thought was interesting.

Some of these things are possibly what Council staff are already looking at and I think one of the things that I did take away from that was that Byron Councillors are way ahead of most other people in the game in so much of the stuff that was brought up I thought "yeah we are already doing that", "don't need to hear this speech, we are already doing that". So that was really good as well. I think next time it would be really good for some of us to go down and present on how we went with the CSP process, because there are other people that haven't done that sort of thing yet and it would be good to have a good report on that.

The other thing I liked that I mentioned earlier was having a Councillor cafe, which one of the councils was doing, I think it was one of the inner city councils of Melbourne. The week after business papers come out, you set aside a time and people come and talk to you about stuff, so that might be another way of looking at engaging our people rather than just the imperfect and somewhat blinded instrument that public access is.

There are a few other things but some of them require longer than the 3 minutes I have been given so I will put it in a written report. But thank you, it was a great experience.

Cr Martin provided the following report:

While organised by the Municipal Association of Victoria, Future of Local Government National Summit was attended by councillors and staff from every state in Australia.

Two days of presentations on a wide variety of topics were focussed on how many councils are experimenting with innovation and collaboration with their communities. Due to the rapidly changing expectations of the public across the country, the courageous councils that are listening are reinventing their services to include greater participative processes, greater transparency and clearer communication channels with their constituents.

I now understand to a greater degree, how fortunate the population of the Byron Shire are to currently have a council that is ahead of its game in so many areas in comparison to many others. There is, however, still room for improvement and new ideas.

The issue that echoed through the whole event to me was that, while many councils are offering more scope for community consultation and this is already evident in Byron Shire with the Community Solutions Panel, Masterplan groups and the various panels and committees that exist already, the challenge lies in council letting go and not micromanaging projects.

Transformation can only be successful when the General Manager, executive staff and councillors work as a team to develop a shared vision of community collaboration and most importantly, are prepared to take risks.

As reiterated at the summit, there is no roadmap that will meet the needs of every community. There will be trials and there will be errors from time to time. Council staff need to be supported with open, honest and robust conversations, training and removing the threat to jobs if a process perhaps doesn't initially work exactly how we had hoped. We all need to be constantly questioning our own practices but also taking confidence in our decisions as transformation leaders. We need to acknowledge that it is a just process of continuous improvement. No doubt, our Byron Shire Community will certainly let us know when they perceive we have tripped up.

Of the many great ideas presented at the Summit, one suggestion that could have great benefit to council and our community would be to include the details of how the community was consulted with each report – when, where, which stakeholders were involved etc. When the comments come in of “why wasn't I consulted” or “council didn't consult” councillors and staff can have this information at hand.

Another suggestion was referring to our community members as “citizens”. This is an empowering term that encourages involvement in civic life rather than the all too common expectation of “we pay – you fix”.

While we do currently have annual community awards - a regular – perhaps monthly or quarterly “Local Legend award” can recognise citizens who are actively engaged – possibly even the more challenging and vocal ones. An award on a more timely basis could promote our vision of community collaboration. A simple certificate, photo with the Mayor and perhaps a Byron Shire reusable coffee cup could accompany the promotion of each winner and what they have done to earn the award in the local newspapers, Council's facebook, and website etc.

In a packed program the presentations that stood out for me were:

- *Tiny House Villages as a solution to the affordable housing crisis being experienced all around the nation – particular reference to Victorian models at Wallan, Mt Alexander, Wallan and Maribynong.*
- *Forming small working groups on a particular subject with up to three meetings to acknowledge the experience, passion and skills that exist in the community and gather their ideas on a subject.*
- *Youth Leadership program where 40 kids were given \$5000 to run their own project (understanding that the process was as important as the outcome)*

- *The term – “Messy democracy” and the courage required in learning how to be community led.*
- *The value of councils supporting their own local economy rather than seeking the best price.*
- *The Banyule Transition movement – changing focus from an industrial growth society to a life sustaining Society.*
- *The BHive Share Economy project in Bendigo again with a focus on localisation.*
- *LogoNet Australian networking with individuals working on Local Government and community governance models – exploring new ideas and also the recognition that there are State Government barriers to local government giving more control over to communities.*

I am very grateful for the opportunity to attend this conference and suggest that next year – Byron Shire Council could present at the summit reporting on the myriad of ways we are engaging with our community – the challenges and the benefits.

3. National General Assembly, Canberra, June 2018

Cr Lyon advised Council:

I went to Canberra and had some good fun. I do enjoy conferences and networking with other Local Government people and just understanding how/where people are coming from. I've got to say we are certainly in the minority when it comes to certain issues. The coal debate is one, the Uluru Statement, just some things that show that we have a really big leadership role here because we are in the right and they are in the wrong and we have to keep shining that light. We are the leaders of progressive change and you can see that. Things that we were talking about 20 years ago, the policies that are enacted today, so we need to keep those efforts up.

I appreciated the opportunity to go. Thanks for that.

Cr Ndiaye advised Council:

Thank you for the opportunity to go down from 22 degrees to 2 degrees, for 5 days. It was very heartening to meet up with people from across the country and see what issues are burning in their neck of the woods, but also see the commonalities. While it looks, first of all I thought gosh this is going to be stacked very conservatively but when it came to some crucial issues that maybe 10 years ago wouldn't have gone through, I thought we got through a whole heap. All the stuff around waste management is right at the forefront. Stuff about constitutional recognition came forward. We got a fairly good speech from Bill Shorten which was very engaging; less so Malcolm (Turnbull).

But throughout, there was some incredible presentations, one particularly that stood out was about representation of women in Local Government and that at the CEO and managerial level, despite 20 years of effort, we are still sitting at around 10-15% representation, at that level and throughout Local Government. Some areas are better than others, but it was a good wake up call for us all to help support some of our young and up-and-coming women to continue to speak up and have their say within our community. I think we are doing a good job here. Of course, those science presentation that we got from Dr Veena Sahajwalla, she is a presenter on the SBS, on her micro-factories that she has been working on and some accelerated progress in that area that is really exciting. Solar technology taking off across the country where it wasn't before. Conversations about all sorts of things that I thought were quite inspiring. Thank you for the opportunity.

4. NOROC Meeting

Cr Richardson advised Council:

Tomorrow NOROC will be holding a meeting which will be to transfer into a Joint Organisation. The difference that will be, other than the stationery rebranding, is yet to be determined. But just to flag, anyone is more than welcome to come along to that at Lismore Chambers.

5. Arakwal MoU

Cr Richardson advised Council:

One committee meeting that might be worth sharing is the Arakwal MoU Committee. We have to recommit ourselves to keep engaging with the Arakwal mob, earlier rather than later. I know we have been hearing this a bit today. One of the concepts, traditionally what we did was to make sure that every committee has an invitation for the Arakwal to come, so they are a member; if they don't come we just think 'oh well, that's the way it goes, we are trying'. It was pretty clear there, they don't come, they won't come, they don't like to come in that way, so we need to adjust how we engage. Whether it is every 6 months giving them a 3-4 hour more personalised briefing. They used the example of the Masterplan in Byron as a great example of that, that we went to them, met them a lot, talked them through the issues, and they were content; as opposed to some of the Mullumbimby Masterplan conversations where, even though they are technically a member, and they haven't been, they are saying 'well, don't just dump it on us now and get our tick and then flick us,' so to speak. That came out again too that different people need to be engaged with in different ways. So from the Arakwal mob I think we need to just get a bit more in the habit of going to them, rather than expecting them to come to us.

Cr Ndiaye further advised Council:

One of the things they are really clear on is that for us to all be aware of how many things we are inviting them to engage on and the amount of paperwork and all that other stuff associated. Also, the knowledge and understanding that goes with that. Not only that, but inviting them into a meeting where they then need to fight with all the other community groups for space to talk about things, was just not a great way to go. The other thing that came out of that meeting which was incredible was the work that Belle Arnold has been doing around identifying the other groups and agencies in the area, outside of our area, that get funding to cover this area for health, for mental health, accommodation, etc. They might be based in Ballina, Lismore, Coffs, Tweed, and they are funded to cover this area but they are currently not. There is a great injustice going on there and some brilliant work being done to try and address that, which I thought was quite inspiring. Saddening, firstly, but great to see that it was making headway in that area. I wonder how many other things outside of the Indigenous realm where that is also happening.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.4 **Mayor and Councillor Fees 2018/2019**
File No: I2018/890

18-420 Resolved:

1. That Council fix the fee payable to each Councillor under Section 248 of the Local Government Act 1993 for the period 1 July 2018 to 30 June 2019 at \$19,790.
2. That Council fix the fee payable to the Mayor under section 249 of the Local Government Act 1993, for the period from 1 July 2018 to 30 June 2019 at \$43,170.
3. That Council in accordance with its current practice not determine a fee payable to the Deputy Mayor.
4. That a letter be sent from Council to the Local Government Remuneration Tribunal requesting that superannuation be included in Mayor and Councillor Fees.

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5. That Council write to Tamara Smith MLA and Ben Franklin MLC requesting advocacy on this matter. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Report No. 13.7 **LGNSW Board Vacancy - Vice President (Rural/Regional Councils)**
File No: I2018/1039

- 18-421 Resolved** that Council nominate Crs Ndiaye, Spooner and Cameron as voting delegates in the election to fill the casual vacancy in the office of the Vice President (Rural/Regional Councils) on the Board of the Local Government and Shires Association of New South Wales. (Ndiaye/Richardson)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 **Adoption of Constitution for Strategic Business Panel**
File No: I2018/835

- 18-422 Resolved** that Council adopt the Constitution of the Strategic Business Panel at Attachment 1 (#E2018/2442) with the following amendment to 2. Purpose:

The purpose of the Strategic Business Panel is to discuss various themes or strategic topics relevant to the business community in the Byron Shire to generate and sustain employment and business investment that will strengthen the local economy in a sustainable manner by:

- A. Identifying regulatory issues that impede or otherwise restrict the business community.
- B. Developing strategies and policies that could assist local businesses and non performing council owned assets achieve their goals.

Four key areas:

- 1. Emerging industries
- 2. Public Private Partnerships
- 3. Enabling infrastructure
- 4. Planning and Design

(Hunter/Spooner)

Cr Ndiaye left the meeting at 3.48pm.

The motion was put to the vote and declared carried.

Cr Ndiaye was not present for the vote.

Report No. 13.18 **PLANNING - Status report - Resolution 17-575 - Plan of Management for Railway Park**
File No: I2018/973

- 18-423 Resolved:**

- 1. That a Strategic Planning Workshop be arranged to allow staff to brief Councillors on the recommended Plan of Management and the process for its adoption.
- 2. That, unless otherwise agreed at that Strategic Planning Workshop, staff arrange for the

public exhibition of the draft Plan of Management, in accordance with the requirements of the *Local Government Act 1993*; including arrangements for an independently chaired Public Hearing at the completion of the exhibition period.

3. That a post-exhibition report be brought to Council, including conclusions and recommendations from the Public Hearing, to allow the adoption of a Plan of Management for Railway Park by the end of the calendar year.
4. That if Council determines the rotunda remains within Railway Park the Plan of Management to include provision for an Expression of Interest process for use of the rotunda by community groups. (Spooner/Hunter)

Cr Ndiaye returned to the meeting at 3.54pm.

The motion was put to the vote and declared carried.

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

Cr Cameron voted against the motion.

Report No. 13.21 **PLANNING - Development Application 10.2018.110.1 Tourist and Visitor Accommodation (Twelve (12) Cabins including Use of Existing Structures as Storage and Staff Lunchroom and Construction of Day Spa), Camping Ground (Two Hundred and Thirty Nine (239) Sites), Park Entry Office/Kiosk, New Dwelling and Recreation Facility (Indoors) - Yoga Facility at 1897 Coolamon Scenic Drive Mullumbimby**

File No: I2018/1050

Moved: That Council defer consideration of Development Application 10.2018.110.1 until the 2 August 2018 Ordinary Meeting to enable the applicant to amend the application to satisfy current reasons for refusal as listed below:

- 1) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal conflicts with State Environmental Planning Policy Coastal Management.
- 2) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal will not conflict with State Environmental Planning Policy No. 44 – Koala Habitat.
- 3) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal conflicts with State Environmental Planning Policy Rural Lands (2008).
- 4) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy No. 55 Remediation of Land.
- 5) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal plans are inconsistent with the Basix Certificate submitted and therefore does not comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 6) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy – Infrastructure 2007.
- 7) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the

- proposal is a permissible use as stipulated in the land use table and does not achieve the objectives of the 1(a) zone of the Byron LEP 1988.
- 8) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, a kiosk is not a permissible use as stipulated in the land use table and does not achieve the objectives of the zone of the Byron LEP 2014.
 - 9) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.3 Flood Planning and 6.4 Flood Risk Management, Clause 6.2 Earthworks and Clause 6.6 Services of the Byron LEP 2014.
 - 10) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to address Clause 5.10 Heritage Conservation of the Byron LEP 2014 in relation to Aboriginal Cultural Heritage
 - 11) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy
 - 12) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.8 Rural and nature Based Tourism of the Byron LEP 2014, having regards to the size and scale of the development.
 - 13) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies with the applicable chapters of the Byron Shire Development Control Plan (BSDCP) 2010.
 - 14) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be reasonably conditioned to comply with Chapter 11 Mullumbimby of the Byron Shire Development Control Plan (BSDCP) 2010.
 - 15) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be conditioned to comply with:
 - Chapter B2 Preservation of Trees and Other Vegetation
 - Chapter B3 Services.
 - Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access
 - Chapter B5 Providing for Cycling
 - Chapter B7 Mosquitoes and Biting Midges
 - Chapter B8 Waste Minimisation and Management
 - Chapter B9 Landscaping
 - Chapter B12 Social Impact Assessment Landscaping
 - Chapter B13 Access and Mobility
 - Chapter B14 Excavation and Fill
 - Chapter D2 Residential Accommodation and Ancillary Development
 - Chapter D3 Tourist Accommodation
 - Chapter D4 Commercial and Retail Development
 - Chapter E3 Mullumbimby
 of the Byron Shire Development Control Plan (BSDCP) 2014.
 - 16) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development will have an adverse cumulative impact on the intended rural context, setting, streetscape and public domain.
 - 17) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development on the natural environment.

- 18) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that ensures the proposal complies with Management of Contaminated Land Policy.
- 19) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposal will not be compatible with the desired streetscape within and adjoining the site, and has failed to adequately address bushfire affecting the site.
- 20) Pursuant to the provisions of Section 4.15 (1)(d) of the *Environmental Planning and Assessment Act 1979*, submissions made in accordance with this Act or the regulations identified issues relevant to the development application that cannot be reasonably conditioned to ensure adverse impacts can be mitigated.
- 21) Pursuant to the provisions of Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*, in the circumstances of the case, the proposal is an overdevelopment of the site and approval of such would set an undesirable precedent and is therefore not in the public interest.
- 22) Pursuant to the provisions of Section 4.12 of the *Environmental Planning and Assessment Act 1979*, the development is likely to result in a significant affect on the local population of a threatened ecological community. (Richardson/Hunter)

Cr Ndiaye left the meeting at 4.05pm and did not return.

AMENDMENT

18-424 Resolved that pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, Development Application no. 10.2018.110.1 for a Tourist and Visitor Accommodation (twelve (12) cabins including use of existing structures as storage and staff lunchroom and construction of day spa), camping ground (two hundred and thirty nine (239) sites), park entry office/kiosk, new dwelling and recreation facility (indoors) - yoga facility, be recommended for refusal subject to the following reasons:

- 1) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal conflicts with State Environmental Planning Policy Coastal Management.
- 2) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal will not conflict with State Environmental Planning Policy No. 44 – Koala Habitat.
- 3) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal conflicts with State Environmental Planning Policy Rural Lands (2008).
- 4) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy No. 55 Remediation of Land.
- 5) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal plans are inconsistent with the Basix Certificate submitted and therefore does not comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 6) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy – Infrastructure 2007.
- 7) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal is a permissible use as stipulated in the land use table and does not achieve the objectives of the 1(a) zone of the Byron LEP 1988.

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- 8) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, a kiosk is not a permissible use as stipulated in the land use table and does not achieve the objectives of the zone of the Byron LEP 2014.
- 9) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.3 Flood Planning and 6.4 Flood Risk Management, Clause 6.2 Earthworks and Clause 6.6 Services of the Byron LEP 2014.
- 10) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to address Clause 5.10 Heritage Conservation of the Byron LEP 2014 in relation to Aboriginal Cultural Heritage
- 11) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy
- 12) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.8 Rural and nature Based Tourism of the Byron LEP 2014, having regards to the size and scale of the development.
- 13) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies with the applicable chapters of the Byron Shire Development Control Plan (BSDCP) 2010.
- 14) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be reasonably conditioned to comply with Chapter 11 Mullumbimby of the Byron Shire Development Control Plan (BSDCP) 2010.
- 15) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be conditioned to comply with:
 - Chapter B2 Preservation of Trees and Other Vegetation
 - Chapter B3 Services.
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 - Chapter B5 Providing for Cycling
 - Chapter B7 Mosquitoes and Biting Midges
 - Chapter B8 Waste Minimisation and Management
 - Chapter B9 Landscaping
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 - Chapter B14 Excavation and Fill
 - Chapter D2 Residential Accommodation and Ancillary Development
 - Chapter D3 Tourist Accommodation
 - Chapter D4 Commercial and Retail Development
 - Chapter E3 Mullumbimbyof the Byron Shire Development Control Plan (BSDCP) 2014.
- 16) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development will have an adverse cumulative impact on the intended rural context, setting, streetscape and public domain.
- 17) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development on the natural environment.
- 18) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that ensures the proposal complies with Management of Contaminated Land Policy.
- 19) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposal will not be compatible with the desired streetscape

within and adjoining the site, and has failed to adequately address bushfire affecting the site.

- 20) Pursuant to the provisions of Section 4.15 (1)(d) of the *Environmental Planning and Assessment Act 1979*, submissions made in accordance with this Act or the regulations identified issues relevant to the development application that cannot be reasonably conditioned to ensure adverse impacts can be mitigated.
- 21) Pursuant to the provisions of Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*, in the circumstances of the case, the proposal is an overdevelopment of the site and approval of such would set an undesirable precedent and is therefore not in the public interest.
- 22) Pursuant to the provisions of Section 4.12 of the *Environmental Planning and Assessment Act 1979*, the development is likely to result in a significant affect on the local population of a threatened ecological community. (Cameron/Spooner)

The amendment (Cameron/Spooner) was put to the vote and declared carried.

Crs Coorey, Lyon, Richardson, Cameron, Hackett and Spooner voted in favour of the amendment. Cr Hunter voted against the amendment.

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

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

Report No. 13.23 Actions from Agriculture and Farm Consultation
File No: I2018/1063

18-425 Resolved that Council:

1. Note the appointment of a Farm Liaison Officer is included in the 2018/19 draft budget and recruitment is progressing.
2. Endorse the establishment of a Farming Industry Cluster that ensures members are representative of their farming sector and reports through to the Strategic Business Panel.
3. Note that agricultural specialist planner training will be provided to planning staff to assist with farm specific Development Applications. (Hunter/Spooner)

The motion was put to the vote and declared carried.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.28 Update on MR 545 Transport Studies
File No: I2018/1053

18-426 Resolved:

1. That Council note the update on MR 545 Transport Studies; and
2. That Council allocate a budget of \$60,000 from the Byron Bay urban roads developer contributions account to undertake design work for fauna fencing and underpasses on Ewingsdale Road section of the MR545. (Coorey/Cameron)

The motion was put to the vote and declared carried.

QUESTIONS WITH NOTICE

Question With Notice No. 15.1 Brunswick Valley Sewerage Treatment Plant
File No: I2018/1036

At Council's Ordinary Meeting held on 24 May 2018, Patricia Warren tabled the following question which was taken on notice:

What were the design parameters for the successful tender/contract for the construction of the Brunswick Valley Sewerage Treatment Plant with specific reference to:

- a) *Average Dry Weather Flow (ADWF) in ML/day and how was this determined?*
- b) *Design Capacity:-*
 - (i) *ADWF in ML/day*
 - (ii) *buffer in ML/day above ADWF and how was this determined and for what purpose?*
 - (iii) *total design capacity in ML/day*
- c) *hydraulic design capacity in volume and velocity (litres/sec) at the head of the plant?*

Response Director Infrastructure Services:

- a) *Average Dry Weather Flow (ADWF) in ML/day and how was this determined?*

The design inflows for the Brunswick Valley STP were based on population and flow projections for the Mullumbimby and Brunswick Heads townships for the year 2025.

The Average Dry Weather Flow (ADWF) calculated on this basis is 3.8 ML/day.

The following table was included in the Tender Documents:

Table 1 Population and flow projections for Mullumbimby-Brunswick Heads STP (MBHSTP)

Population Group	2002	2025	ADWF (ML/day)
Permanent Population	5143	8805	2.70
Overnight Guests	2453	4502	0.90
Day Trippers	2250	4750	0.14
TOTAL	9846	18057	3.80

- b) *Design Capacity:-*
 - (i) *ADWF in ML/day*

The ADWF is 3.8 ML/day

- (ii) *buffer in ML/day above ADWF and how was this determined and for what purpose?*

The design report for the facility states the STP is capable to provide full biological treatment at the maximum sustained flow rate of 22 ML/day (5.8 x ADWF) and the maximum instantaneous flow rate of 27 ML/day (7.1 x ADWF).

The 5.8 ratio was derived by applying a Peak Wet Weather Flow to Average Dry Weather Flow ratio of 7 x ADWF for the Mullumbimby Catchment and 5 x ADWF for the Brunswick Heads catchment.

When applied to the differing ADW flows in each catchment an average of 5.8 x ADWF for the combined catchments is obtained.

(iii) total design capacity in ML/day

The design capacity for the Brunswick Valley STP is 3.8 ML/day for Average Dry Weather Flow and a Peak Wet Weather Flow capacity of 22 ML/day (3.8 x 5.8) and an instantaneous flow rate of 27 ML/day (3.8 x 7.1).

Since the Brunswick Valley STP has been in operation the plant has never been hydraulically overloaded and remains comfortably within its design parameters.

Council, however, has been monitoring the flow patterns and has included in its latest business plan a dedicated flow mitigation project for Mullumbimby and other areas in the Shire. This project has been included in the latest budget which is currently on exhibition.

c) hydraulic design capacity in volume and velocity (litres/sec) at the head of the plant?

The design report for the facility states hydraulic design capacity for the inlet works in volume and velocity (litres/sec) at the head of the plant is 7.1 x ADWF + 150 l/s for the Return Activated Sludge (RAS).

This is equivalent to 27 ML/day which is equivalent to 314 litres per second plus 150 litres per second for the RAS.

The total design velocity is therefore 464 litres per second.

Question With Notice No. 15.2 Potholes
File No: I2018/1037

At Council's Ordinary Meeting held on 24 May 2018, Matthew Lambourne asked the following question which was taken on notice:

If a pothole 1 metre long by 1.8 metre wide across the middle of a 4.8m seal is not big enough to be repaired by Council, how much longer does it need to get before Council will repair it?

Response Director Infrastructure Services:

The issue raised in Mr Matthew Lambourne's question has been investigated and has identified inconsistencies in several processes at Council, both at Mullumbimby office and the depot, as follows:

1. receipt of hard copy customer request taken at the counter at Mullumbimby office
2. handover by operational staff when taking leave of completed and uncompleted works

Mr Lambourne lodged hard copy customer request forms at the customer service area at the Mullumbimby office on two separate occasions being, 12 April and 4 May 2018.

After the lodgement of the customer request on 12 April 2018:

- CRM #59822 was created on 12 April, which was initially actioned by depot staff on 13 April; an inspection undertaken and a defect with a calculated target date for completion entered into the electronic system, Reflect, used to manage the identification and accomplishment of such defects.
- The formal customer request was not saved into Council's document management system until 18 April

After the lodgement of the customer request on 4 May 2018:-

- no additional CRM was raised
- the formal customer request was saved into the document management system and viewed by depot staff within five days, where it was determined that a defect in Reflect had already been raised and a second defect record was not required.

It is a performance target of the Draft 2018/19 Delivery Plan and Operational Plan to have all separate customer requests entered into the CRM system, even if multiple requests are received from the same person or there are multiple requests about the same matter.

On 21 April 2018, Council's normal operator of the pothole patching machine commenced leave and there was an incomplete handover to the relief operator, who was unaware that all the potholes on Main Arm Road had not been completed. Unfortunately the relief operator was directed to other roads to fill potholes not knowing that the large pothole on Main Arm Road was uncompleted.

Mr Lambourne was advised on Friday 25 May, the day after the Council meeting, of the two issues that resulted in this pothole being missed. The pothole was filled on Tuesday 29 May 2018.

The investigation of the issues raised has allowed revised procedures to be implemented to stop these problems re-occurring in the future.

Question With Notice No. 15.3 Report 13.9 of 24 May 2018 Ordinary Meeting Agenda
File No: I2018/1038

At Council's Ordinary Meeting held on 24 May 2018, John Anderson asked the following question which was taken on notice:

Could either Shannon Burt or Ralph James please provide:

- An explanation of item 13.9 of today's agenda in terms of what is meant by "Strict compliance with the provisions of Clause 4.6 will result in no change to the built form on the site and will merely prevent the sale of individual dwellings on the allotment"*
- A legal precedent for allowing variations to development standards far greater than 10% (i.e. decisions made on upheld by the Land and Environment Court).*
- Some clue as to the identity of the author of report 13.9.*

Response Director Sustainable Environment and Economy:

- An explanation of item 13.9 of today's agenda in terms of what is meant by "Strict compliance with the provisions of Clause 4.6 will result in no change to the built form on the site and will merely prevent the sale of individual dwellings on the allotment"*

Clause 4.6 of the Standard Instrument allows a consent authority to grant consent to a proposed development "even though the development would contravene a development standard". In circumstances where it applies, clause 4.6 replaces the power previously found in State Environmental Planning Policy No. 1 – Development Standards.

The consent may only be granted if:

- the applicant has prepared a written request demonstrating that (clause 4.6(3)):
- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- there are sufficient environmental planning grounds to justify contravening the development

standard; and

- the consent authority is satisfied that (clause 4.6(4)):
- the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3), and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The development standard as varied is the minimum lot size planning control of 600m² applicable to this site under LEP 2014 clause 4.1. The development proposal was deemed compliant with all other built form controls for a multi dwelling development, except for this. In the circumstances, following an assessment under clause 4.6, and having regard to the applicable case law at the time, the variation was deemed acceptable. Note that determination of clause 4.6 variations over 10% are made by the council and not staff.

Link below to Department of Planning circular to advise councils of arrangements for when councils may assume the Secretary's concurrence to vary development standards, and clarify requirements around reporting and record keeping where that concurrence has been assumed. <http://www.planning.nsw.gov.au/~media/Files/DPE/Circulars/planning-circular-ps-18-003-variations-to-development-standards-2018-02-21.ashx?la=en>

- b) *A legal precedent for allowing variations to development standards far greater than 10% (ie decisions made on upheld by the Land and Environment Court).*

It had been widely assumed that the minimum lot size development standard in clause 4.1 of the *Standard Instrument – Principal Local Environmental Plan* ('Standard LEP') does not apply to strata subdivision.

However the Land and Environment Court held that this is not the case. Unless the proposed subdivision is of a lot in an existing strata plan or community development scheme, the proposed subdivision will be subject to the minimum lot size standard.

The case of *DM & Longbow Pty Ltd v Willoughby City Council [2017] NSWLEC 1358* concerned a development application seeking consent to subdivide an existing two-storey house into two dual occupancy units. The minimum lot size for the land imposed by clause 4.1 of the *Willoughby Local Environmental Plan 2012* ('WLEP') was 650 m². The proposed subdivision would have resulted in two strata lots each having an area of approximately 300m².

The question for the Court was whether the minimum lot size development standard in clause 4.1 of WLEP applied to the proposed strata subdivision.

Clause 4.1 of WLEP relevantly provided that:

- '(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

...

- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.'*

The Applicant submitted that the minimum lot size development standard contained in clause 4.1(3) of WLEP was not directed to strata subdivision but rather to the ordinary subdivision of land and that clause 4.1(4) should be read as applying to the proposed strata subdivision thus

having the effect of making it exempt from compliance with the minimum lot size development standard.

The Council, on the other hand, argued that because the definition of '*subdivision of land*' contained in s4B (2) (b) of the EPA Act includes '*the procuring of the registration in the office of the Registrar-General... of a strata plan or a strata plan of subdivision*', it must follow that the words '*subdivision of any land*' appearing in cl4.1 (2) of WLEP operated to make the proposed strata subdivision subject to the minimum lot size development standard in clause 4.1(3) of WLEP unless it was exempted by clause 4.1(4).

Despite some reluctance about the lack of any planning logic to cl4.1(4), Commissioner Dixon agreed with the Council's interpretation.

The Court held that the exemption in clause 4.1(4) only applies where there is an existing strata plan. A strata plan only comes into existence when the requirements set out in the *Strata Schemes Development Act 2015* are satisfied. As there was no existing strata plan in the present case, the proposed strata subdivision did not relevantly involve the subdivision of any individual lot or lots in a strata plan within the meaning of clause 4.1(4) of WLEP.

The decision was affirmed on appeal by Preston CJ in December 2017.

However, the *Standard Instrument – Principal Local Environmental Plan* ('Standard Instrument') has now been amended to clarify that the minimum lot size development standard does not apply to either the subdivision of land by the registration of strata or community plans, or the subdivision of lots within an existing strata or community scheme.

This changes the position back to what many councils thought the position was before the Court's decision in *Longbow*.

However, the *Standard Instrument (Local Environmental Plans) Amendment (Minimum Subdivision Lot Size) Order 2018* (Order) amends clause 4.1 (4) so it states:

This clause does not apply in relation to the subdivision of any land:

- (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) by any kind of subdivision under the Community Land Development Act 1989.*

This makes it unambiguously clear that the minimum lot size standard does not apply to a subdivision effected by the registration of a strata plan or community plan.

The Order also amends clause 4.1AA which continues to apply to community title schemes in certain zones despite the amended clause 4.1.

Under s 3.20(4) of the *Environmental Planning and Assessment Act 1979*, the amended clause 4.1 will immediately be incorporated into those LEPs around the state which include a declaration that they adopt the provisions of the Standard LEP. These LEPs will not require any further amendment to incorporate the amended clause 4.1.

However, the change will not apply to development applications lodged but not determined before the Order commenced. The Order commenced on 20 April 2018.

c) *Some clue as to the identity of the author of report 13.9.*

Report No. 13.9 PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 October 2017 to 31 December 2017 prepared by Manager Sustainable Development – Chris Larkin.

Report No. 7.7 PLANNING - 10.2017.270.1 Multi dwelling housing comprising eight (8) dwellings, Strata Title subdivision to create eight (8) Strata Lots and Common Property and Tree Removal (17 trees) at 6 and 6A Canowindra Court South Golden Beach was reported to the ordinary meeting of council 28 November 2017 prepared by Team Leader Planning Services – Greg Smith.

Question With Notice No. 15.4 Brunswick Valley STP Overflow
File No: I2018/1080

Alan Dickens asks the following question:

With regards to the overflow incidents at the Brunswick Valley STP in 2012 and 2015, what action and/or repairs were carried out so this cannot occur again?

Response Director Infrastructure Services:

The walls of the inlet chamber to the UV plant were raised by 590mm.

This provides two benefits:

- The top of the chamber is a localised high point and cannot overflow if similar circumstances presented again; and
- The increased head provides a self cleaning function for the UV tubes.

The weekly lubrication and inspection maintenance task for the site was updated to include:

- *Check the **UV water tube** entrances in the UV feed box for algae etc. blocking the tubes;*
- *Sweep the entry plate clean after any high rainfall/flow event or if dirty; and*
- *Remove debris from the feed box.*

There being no further business the meeting concluded at 4.18pm.

I hereby certify that these are the true and correct Minutes of this Meeting as confirmed at Council's Ordinary Meeting on 2 August 2018.

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Mayor Simon Richardson