

# Minutes Ordinary Meeting

Thursday, 23 February 2023



**BYRON  
SHIRE  
COUNCIL**

**DISCLAIMER**

*These minutes are DRAFT minutes and will remain unconfirmed until such time as they are confirmed as a correct record at the subsequent meeting.*



# BYRON SHIRE COUNCIL

Ordinary Meeting Minutes  
23 February 2023

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# BYRON SHIRE COUNCIL

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**MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 23 FEBRUARY 2023 COMMENCING AT 9.11AM AND CONCLUDING AT 12:23PM**

I2023/258

**PRESENT:** Cr M Lyon (Mayor), Cr S Balson, Cr C Coorey, Cr D Dey, Cr S Ndiaye, Cr M Swivel and Cr P Westheimer

**Staff:** Mark Arnold (General Manager)  
Esmeralda Davis (Director Corporate and Community Services)  
Phil Holloway (Director Infrastructure Services)  
Shannon Burt (Director Sustainable Environment and Economy)  
Ralph James (Legal Counsel)  
Heather Sills (Manager Corporate Services)  
Donna Johnston (Grants Coordinator) – Report 11.1  
Judd Cornwall (Traffic and Transport Engineer) – Report 13.13  
Sarah Nagel (Manager Public and Environmental Services) – Report 16.1  
Storm Townsend/ Amber Evans Crane (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:

### Public Access

Report No and Title	Name	For/ Against	Representing	Submission via
9.1 Including Left Bank Road properties in Hospital Site Rezoning	Mary Fox	For	Self	Zoom

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## APOLOGIES

Cr Hunter is an apology in accordance with his prior accepted leave of absence (Resolution No. **23-002**)

### PROCEDURAL MOTION

- 23-018 Resolved** that the apology from Cr Pugh be accepted and a leave of absence granted. (Lyon/Ndiaye)

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

Cr Balson joined the Meeting at 9:24AM.

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## APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

### PROCEDURAL MOTION

- 23-019 Resolved** that Cr Balson be permitted to attend the meeting held on 23 February 2023 by audio-visual link. (Lyon/Ndiaye)

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

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## REQUESTS FOR LEAVE OF ABSENCE

### PROCEDURAL MOTION

- 23-020 Resolved** that Cr Ndiaye be granted a leave of absence from the 23 March 2023 Council Meeting (Lyon/Westheimer)

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

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## DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of pecuniary/non-pecuniary interest.

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## TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.9 of the Code of Conduct, the Mayor tabled Pecuniary Disclosure of Interests Returns for Jenny Hellyer, Resource Recovery Contract Management Officer and Roseanna Meech, Planner.

**ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

**23-021 Resolved** that the minutes of the Ordinary Meeting held on 15 December 2022 be confirmed. (Ndiaye/Westheimer)

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

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

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

**STAFF REPORTS**

**Submissions and Grants**

Report No. 11.1 Grants January 2023

**Corporate and Community Services**

Report No. 13.2 Council Investments - 1 January 2023 to 31 January 2023

Report No. 13.3 Update to Council's Business Ethics Statement

Report No. 13.4 Conduct of the 2024 Local Government Election

Report No. 13.6 Richmond Tweed Regional Library Deed of Agreement 2023 - 2027

Report No. 13.8 Council Resolutions Quarterly Review - Q2 - 1 October to 31 December 2022

Report No. 13.9 Delivery Program 6-monthly Report and Operational Plan 2022/23 - Q2 - to December 2022

Report No. 13.10 Submission - Councillor Misconduct Framework

**Infrastructure Services**

Report No. 13.13 Fees and Charges - Use of car parking spaces for construction purposes

**CONFIDENTIAL REPORTS**

**Sustainable Environment and Economy**

Report No. 16.1 CONFIDENTIAL - Compliance at 8 Grays Lane, Tyagarah

**LATE REPORTS**

The remaining Recommendations and Committee Recommendation were adopted unanimously as a whole, being moved by Cr Lyon and seconded by Cr Ndiaye. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **23-022** and concluding with Resolution No. **22-032**.

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**STAFF REPORTS – GENERAL MANAGER**

**Report No. 13.1      Request to change market day**  
**File No:              I2022/1733**

- 23-022 Resolved** that Council, following no submissions received during the public notice of the proposal, authorises a variation to the Railway Park Artisan Market Licence held by the Byron Bay Community Association Incorporation to move the scheduled Railway Park Artisan Market Day from 8 April 2023 to 7 April 2023. (Lyon/Ndiaye)

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**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.5      Council Investments - 1 December 2022 to 31 December 2022**  
**File No:              I2023/8**

- 23-023 Resolved** that Council notes the report listing Council's investments and overall cash position as of 31 December 2022 (Lyon/Ndiaye)

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**Report No. 13.7      Budget Review - 1 October 2022 to 31 December 2022**  
**File No:              I2023/140**

- 23-024 Resolved:**
1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2023/13829) which include the following results in the 31 December 2022 Quarterly Review of the 2022/2023 Budget:
    - a) General Fund – \$0 movement to the Estimated Unrestricted Cash Result
    - b) General Fund - \$7,342,100 increase in reserves
    - c) Water Fund - \$208,200 decrease in reserves
    - d) Sewerage Fund - \$297,500 decrease in reserves
  2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of (\$205,000) for the 2022/2023 financial year as at 31 December 2022. (Lyon/Ndiaye)

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.11 Application for Revocation of Menacing Dog Order**  
**File No: I2022/1607**

**23-025 Resolved** that Council revokes the Menacing Dog Declaration relating to desexed male Bull Arab 'Simba' microchip number 982000364624792. (Lyon/Ndiaye)

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**Report No. 13.12 Companion Animal Exercise Area Policy**  
**File No: I2023/154**

**23-026 Resolved** that Council adopts the Companion Animal Exercise Area Policy (E2022/103808). (Lyon/Ndiaye)

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**REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 14.1 Report of the Coast and ICOLL Advisory Committee Meeting held on 20 October 2022**  
**File No: I2023/124**

**23-027 Resolved** that Council notes the minutes of the Coast and ICOLL Advisory Committee Meeting held on 20 October 2022. (Lyon/Ndiaye)

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**REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**

**Report No. 14.2 Report of the Local Traffic Committee Meeting held on 7 February 2023**  
**File No: I2023/166**

**23-028 Resolved** that Council notes the minutes of the Local Traffic Committee Meeting held on 7 February 2023. (Lyon/Ndiaye)

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**23-029 Resolved** that Council adopts the following Committee Recommendations:

Report No. 6.1 10.2022.488.1 - Stone and Wood  
File No: I2023/116

Committee Recommendation 6.1.1

1. That Council supports the Byron Bay Triathlon to be held on Saturday 13 May 2023 and the Byron Lighthouse Run to be held on Sunday 14 May 2023.



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2. That Council supports in Part 1 is subject to:
    - a) separate approvals by NSW Police and TfNSW being obtained;
    - b) the event organiser provide council with an updated Traffic Management Plan and Traffic Guidance Scheme/s for the 2023 event;
    - c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
    - d) the impact of the event be advertised, and charged at cost to the organisers, 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;
    - e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information.
  
  3. The event organiser to:
    - a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
    - b) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
    - c) consulting with emergency services and any identified issues be addressed;
    - d) holding \$20m public liability insurance cover which is valid for the event;
    - e) paying Council's Road Event Application Fee prior to the event;
    - f) not place any signage on the road related area of the Pacific Highway.
- (Lyon/Ndiaye)

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**23-030 Resolved** that Council adopts the following Committee Recommendations:

Report No. 7.1 Byron Bay Triathlon and Byron Lighthouse Run May 2023  
File No: I2022/1912

Committee Recommendation 7.1.1

1. That Council supports the Byron Bay Triathlon to be held on Saturday 13 May 2023 and the Byron Lighthouse Run to be held on Sunday 14 May 2023.
2. That Council supports in Part 1 is subject to:
  - a) separate approvals by NSW Police and TfNSW being obtained;
  - b) the event organiser provide council with an updated Traffic Management Plan

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and Traffic Guidance Scheme/s for the 2023 event;

- c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
- d) the impact of the event be advertised, and charged at cost to the organisers, 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;
- e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information;
- f) Access from main beach car park to Fletcher St is to be unrestricted at all times.
- g) Access to Lawson St between Fletcher St and Middleton St to be permitted at all times.

3. The event organiser to:

- a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
- b) arranging for private property access and egress affected by the event;
- c) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
- d) consulting with emergency services and any identified issues be addressed;
- e) holding \$20m public liability insurance cover which is valid for the event;
- f) paying Council's Road Event Application Fee prior to the event;
- g) not place any signage on the road related area of the Pacific Highway.

(Lyon/Ndiaye)

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**23-031 Resolved** that Council adopts the following Committee Recommendations:

Report No. 7.2 Event - Westpac Helicopter Byron Coastal Charity Walk – April 29  
File No: I2023/52

Committee Recommendation 7.2.1

- 1. That Council supports the Westpac Life Saver Rescue Helicopter fundraiser, Byron Coast Charity Walk, to be held Saturday 29 April 2023 from 5.00am – 5.00pm.
- 2. That Council supports in Part 1 is subject to:

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- a) The development of a Traffic Guidance Scheme (TGS) and Traffic Management Plan(s) for the 2023 event by those with relevant and current TfNSW accreditation. The TGS(s) and Traffic Management Plan is to include, but is not limited to, the following:
  - b) Signage, which specifies the date, hours and nature of the event, be positioned at the entrance and exit of Seven Mile Beach Road one week prior to the event;
  - c) On the day of the event, at 500m intervals on Seven Mile Beach Road, and facing both directions of travel, signs advising of “ Special Event – Charity Walk Ahead” (or similar) are installed prior, and removed after, the event occurs;
  - d) A safety induction for participants advising of hazards be provided.
  - e) Implementation of the Traffic Management Plan and Traffic Guidance Scheme/s as designed by those with appropriate accreditation and implemented by people with appropriate accreditation, including traffic controllers.
3. The event organiser to:
  - a) Advertise the impact of the event, via a Variable Message Sign on site and 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;
  - b) Arrange for the event to be notified on Council’s webpage a minimum one week prior to the TGS being implemented;
  - c) Undertake consultation with affected community and businesses including adequate response/action to any raised concerns.
  - d) Undertake consultation with emergency services and any identified issues addressed.
  - e) Holding \$20m public liability insurance cover which is valid for the event.
  - f) Paying Council’s Road Event Application Fee prior to the event.
  - g) Not place any signage on the road related area of the Pacific Highway  
(Lyon/Ndiaye)

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**23-032 Resolved** that Council adopts the following Committee Recommendation:

Report No. 7.3 Byron Community Markets - Temporary Road Closure  
File No: I2023/106

Committee Recommendation 7.3.1

That Council notes there has been no substantive changes since the approval was given and the first market will be in March.  
(Lyon/Ndiaye)

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## MAYORAL MINUTE

There was no Mayoral Minute.

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## NOTICES OF MOTION

### Notice of Motion No. 9.1 Including Left Bank Road properties in hospital site rezoning

File No: I2023/164

**23-033 Resolved** that Council:

1. recognises that rezoning of the ex-hospital site, on the corner of Azalea Street and Left Bank Road Mullumbimby, may enable development that is likely to impact amenity of properties bordering the site to its south;
2. invites landholders of the four properties (2, 4, 12 and 16 Left Bank Road Mullumbimby; currently zoned R5) to prepare an owner-initiated planning proposal to rezone their properties to a zone the same as or at least compatible with zoning proposed on their neighbouring property, the ex-hospital site. (Dey/Balson)

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

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### Notice of Motion No. 9.2 Extend non-disruption by roadworks

File No: I2023/172

**23-034 Resolved** that Council:

1. Remembers its Resolution 22-741 of December 2022 adopting “policy” not to conduct disruptive roadworks during heavy traffic times on various important non-motorway routes in the Shire, recommits to the two routes named in that Resolution (listed as 1 and 2 below) and adds a third route (listed as 3 below):
  - 1) Ewingsdale Road, during daylight hours;
  - 2) Bangalow / Broken Head Roads, during morning and afternoon peak hours; and
  - 3) Mullumbimby from Jubilee Avenue to the Showground, on Mullumbimby Farmers Market mornings.
2. And also recommits to:
  - a) writing to all relevant authorities, such as Essential Energy, requesting that they adhere to the same policies for work within the road corridor; and
  - b) noting that emergency road works are exempt from the above policies.

(Dey/Ndiaye)

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

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## PETITIONS

There were no petitions to be tabled.

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## SUBMISSIONS AND GRANTS

**Report No. 11.1**      **Grants January 2023**  
**File No:**              I2023/184

**23-035**   **Resolved** that Council:

1. Notes the report and Attachment 1 (#E2023/14683) for Byron Shire Council's grant submissions as at 31 January 2023.
2. Undertakes a proactive communication strategy within current resourcing to educate the community on the role of grant funding and celebrates the successes of securing funding from state and federal government and other sources.

(Swivel/Ndiaye)

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

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## DELEGATES' REPORTS

Cr Ndiaye gave a report on the Rous County Council Meeting held on 15 February 2023.

Cr Lyon gave a report on the 2023 LGNSW Rural and Regional Forum and the Country Mayors Political Leaders Forum

Cr Lyon and Cr Ndiaye gave a report on the Independent Planning Commission Hearing on Byron Shire STRA.

Cr Westheimer gave a report on a discussion with Kristy McBain, Federal Minister for Regional Development, at the LGNSW Rural and Regional Forum.

Cr Ndiaye gave a report on the annual V-Day event in Byron Bay and Flickerfest held in Bangalow.

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**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

Cr Balson left the Meeting at 10:57AM.

**Report No. 13.2 Council Investments - 1 January 2023 to 31 January 2023**  
**File No: I2023/141**

- 23-036 Resolved** that Council notes the report listing Council's investments and overall cash position as of 31 January 2023. (Dey/Ndiaye)

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

Cr Balson returned to the Meeting at 10:58AM

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**Report No. 13.3 Update to Council's Business Ethics Statement**  
**File No: I2022/1815**

- 23-037 Resolved** that Council endorses the updated Business Ethics Statement 2022 (E2022/122254 version 2) with minor edits. (Dey/Lyon)

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

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Cr Balson left the Meeting at 11:12AM.

**Report No. 13.4 Conduct of the 2024 Local Government Election**  
**File No: I2022/1838**

- 23-038 Resolved** that:

1. Pursuant to s. 296(2) and (3) of the *Local Government Act 1993* (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.
2. Pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a Council poll arrangement be entered into by contract for the Electoral Commissioner to administer all Council polls of the Council.
3. Pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.
4. Council writes to the NSW Electoral Commission, the NSW Minister for Local Government, and the NSW Shadow Minister for Local Government:
  - a) expressing Council's concerns for the increasing costs of administering the election and asking them to consider the staffing levels and the length of pre-polling and whether savings in these and other areas could be made, and
  - b) in light of the recent floods and the impacts on the community, Council's budget and staffing issues that the State Government pay for the election costs (Westheimer/Coorey)

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

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Cr Balson returned to the Meeting at 11:17AM.

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**Report No. 13.6**      **Richmond Tweed Regional Library Deed of Agreement 2023 - 2027**

**File No:**                I2023/23

**23-039**   **Resolved** that in relation to the Richmond Tweed Regional Library Deed of Agreement for the period 1 July 2023 to 30 June 2027, Council:

1.    Adopts the Deed of Agreement (Attachment 1 E2023/334)
2.    Delegates the General Manager to execute the Deed on behalf of the Byron Shire Council
3.    Appoints Lismore City Council to continue as the Executive Council for the Richmond Tweed Regional Library (Ndiaye/Lyon)

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

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**Report No. 13.8**      **Council Resolutions Quarterly Review - Q2 - 1 October to 31 December 2022**

**File No:**                I2023/146

**23-040**   **Resolved** that Council:

1.    Notes the information provided in this report on active Council Resolutions in Attachment 1 (#E2022/129525).
2.    Notes the completed Resolutions in Attachment 2 (#E2022/129526). (Westheimer/Lyon)

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

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**Report No. 13.9**      **Delivery Program 6-monthly Report and Operational Plan 2022/23 - Q2 - to December 2022**

**File No:**                I2023/147

**23-041**   **Resolved** that Council:

1.    Notes the 2022/23 Operational Plan Quarter 2 Report for the period ending 31 December 2022 (Attachment 1 #E2023/11308).
2.    Adopts the proposed amendments to the Operational Plan 2022/23 outlined in Attachment 2 (#E2022/126473). (Westheimer/Lyon)

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

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## PROCEDURAL MOTION

**23-042 Resolved** that Cr Coorey be granted a two minute extension to her speech. (Lyon)

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

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**Report No. 13.10 Submission - Councillor Misconduct Framework**  
**File No:** I2023/155

**23-043 Resolved** that Council endorses the submission to the Office of Local Government on the Councillor Misconduct Framework, as provided in Attachment 1 (E2022/125019).

(Coorey/Westheimer)

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

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## STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.13 Fees and Charges - Use of car parking spaces for construction purposes**  
**File No:** I2023/56

**23-044 Resolved:**

1. That Council endorses the proposed fees for "Use of Council land/road reserve to enable construction work, events or temporary use" be placed on public exhibition for a period of 28 days in accordance with s610F of the Local Government Act 1993.
2. That any submissions received are reported to Council prior to adoption of the proposed fees.
3. That if no submissions are received during the public notice period Council adopts the fees from 1 April 2023. (Dey/Lyon)

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



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**CONFIDENTIAL REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 16.1**      **CONFIDENTIAL - Compliance at 8 Grays Lane, Tyagarah**  
**File No:**              I2023/65

**23-045 Resolved:**

1. That pursuant to Section 10A(2)(e) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Compliance at 8 Grays Lane, Tyagarah.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) information that would, if disclosed, prejudice the maintenance of law
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

Report contains information that would prejudice legal action. (Lyon/Ndiaye)

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

**23-046 Resolved that Council:**

1. Notes the report on compliance at the nursery and landscaping business beside the Pacific Motorway at 8 Grays Lane, Tyagarah.
2. Discusses this matter at a Councillor Workshop in April or May 2023.

(Lyon/Westheimer)

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

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**PROCEDURAL MOTION**

**23-047 Resolved** that the meeting move out of confidential session. (Lyon/Westheimer)

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

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*There being no further business the meeting concluded at 12:23PM.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 23 March 2023.



.....  
Mayor Michael Lyon

DRAFT