

# Notice of Meeting

## Arakwal Memorandum of Understanding Advisory Committee Meeting

An Arakwal Memorandum of Understanding Advisory  
Committee Meeting of Byron Shire Council will be held as  
follows:

Venue	Byron Bay Library
Date	Friday, 21 April 2023
Time	10.00am

Esmeralda Davis  
Director Corporate and Community Services

I2023/595  
Distributed 14/04/23



**BYRON**  
**SHIRE**  
**COUNCIL**

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## CONFLICT OF INTERESTS

**What is a “Conflict of Interests”** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

**Committee members are reminded that they should declare and manage all conflicts of interest in respect of any matter on this Agenda, in accordance with the [Code of Conduct](#).**

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## RECORDING OF VOTING ON PLANNING MATTERS

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

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## OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

**BYRON SHIRE COUNCIL**

**BUSINESS OF MEETING**

**1. APOLOGIES**

**2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

**3. STAFF REPORTS**

**Corporate and Community Services**

3.1 Arakwal MOU review ..... 6

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 3.1 Arakwal MOU review**

**Directorate:** Corporate and Community Services

5 **Report Author:** Robert Appo, Project Officer (Aboriginal), CCS - Social & Cultural Planning

**File No:** I2023/569

**Summary:**

10 The timeframe of the second Arakwal MoU has now expired and a draft review has been prepared for input and discussion by the Arakwal MOU Advisory Committee.

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**RECOMMENDATION:**

15 **That the Arakwal MoU Advisory Committee:**

1. **Notes the Arakwal MoU draft review attachment (#E2021/52551).**
2. **Provides input to the draft review and discusses next steps and possible options.**

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**Report**

**Background:**

25 The first Arakwal Memorandum of Understanding (MoU) was formally adopted in 2013 and completed in 2018 between Byron Shire Council (Council) and the Bundjalung of Byron Bay Arakwal People (BBBAC). The MOU follows from the 1998 Heads of Agreement between Byron Shire Council and the Arakwal People.

The purpose of the MOU was to establish a clear process and timetable for the delivery of priority projects and to support strategic partnership between Council and Arakwal People.

30 Council formed the Arakwal MoU Advisory Committee to identify and implement the priority projects identified in the MOU for each 12-month period.

The time frame for the second Arakwal MoU was 2 years, 2018 to 2020, and is due for review. The shorter duration than the usual 5 years MOU was in recognition of the rapidly

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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changing environment, and the need to work together to jointly deliver outcomes, build trust and celebrate success.

The second MOU was simplified and developed around areas under Council's influence and control and with a view to success and achievement of key goals.

5 The Arakwal MoU is grouped into 5 key areas of action:

- Culture and Heritage
- Participation in governance
- Cultural and economic development
- Caring for Country
- 10 • Social justice and community development

### **Draft Review:**

The draft review of the MoU is being undertaken to enable Council and BBBAC to discuss the outcomes of the MOU and next steps forward.

15 In providing input and feedback to the draft review, the Arakwal MOU Advisory Committee could consider:

- What are the concrete developments or benefits achieved through the MOU?
- What were the factors that impacted outcomes of the MOU (i.e. enabling factors or limiting factors)?
- 20 • Does the arrangement continue to fit with both organisations' strategic priorities and capacity?
- Have there been any changes in the political/cultural environment in the region that will inform next steps?

### 25 **Key issues**

A number of key issues have been identified during the review of the Arakwal MoU which have had an impact on some of the operational aspects of action items. These include:

- Vacancy in Council's Project Officer-Aboriginal role, 2019-2020
- 30 • Disruptions in operations impacting BBBAC and Council including Covid-19 2020-2021, Flood Disaster events 2022, and changes in personnel/leadership.

**Next steps**

The Arakwal MOU Advisory Committee could consider options for next steps, including but not limited to the following:

1. To renew the current MoU (up to a maximum of five years);
- 5 2. To develop an updated MOU reflecting current priorities (up to a maximum of five years);
3. To terminate the MoU and consider another form of agreement which would support BBBAC and Council’s relationship and current strategic priorities.

**10 Strategic Considerations**

**Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.4	Support Aboriginal cultural vibrancy within the Shire	2.1.4.2	Implement Arakwal MOU in partnership with Arakwal

**Legal/Statutory/Policy Considerations**

NA

**15 Financial Considerations**

NA

**Consultation and Engagement**

20 BBBAC and Council have been consulted and have agreed with the need to conduct a review of the MOU. Consultation has been ongoing with BBBAC and Council staff for the duration of the MoU.