

# Supplementary Agenda Ordinary Meeting

Thursday, 22 February 2024



**BYRON**  
SHIRE  
COUNCIL

# Supplementary Agenda Ordinary Meeting

held at Council Chambers, Station Street, Mullumbimby  
commencing at 9.00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.

A handwritten signature in black ink, appearing to read "Mark Arnold".

**Mark Arnold**  
**General Manager**

---

---

## 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)

---

---

## 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.

---

---

## 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 ORDINARY MEETING

### 17.1. LATE REPORTS

- 17.1 Late Report as per Res 24-019 - Deferral of Notice of Motion 9.3 from 8 February 2024 Ordinary (Planning) Meeting 'Interim Heritage Order on works proposed and imminent at 15 Torakina Road (Wallum Estate) in Bayside Brunswick'..... 7

*This Agenda supplements the 22 February 2024 Ordinary Council Meeting Agenda published on 13 February 2024 available at [Agenda of Ordinary Meeting - Thursday, 22 February 2024](#).*

***Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the screen at the meeting.***

**LATE REPORTS**

**Report No. 17.1      Late Report as per Res 24-019 - Deferral of  
Notice of Motion 9.3 from 8 February 2024  
Ordinary (Planning) Meeting 'Interim  
Heritage Order on works proposed and  
imminent at 15 Torakina Road (Wallum  
Estate) in Bayside Brunswick'**

5

**Directorate:**                      General Manager

10 **Report Author:**                Shannon McKelvey, Executive Officer

**File No:**                            I2024/211

**Summary:**



15 Notice of Motion 9.3 Interim Heritage Order (Wallum Estate) was considered by Council at the 8 February 2024 meeting, at which time Council resolved to defer the matter, receive a late report to the 22 February 2024 Ordinary Meeting and consult with Bundjalung of Byron Bay Aboriginal Corporation.

---

20 **RECOMMENDATION:**

**That Council notes the report.**

**Attachments:**

- 25 1      Notice of Motion 9.3 to 8 February 2024 Council (Planning) Meeting, I2024/106 , page 17 
- 2      Bundjalung of Byron Bay Aboriginal Corporation Arakwal Cultural Heritage Statement, E2024/13833 , page 25 

30

## Report

Notice of Motion 9.3 brought by Councillor Dey was considered at the 8 February 2024 Council Planning Meeting. A copy of the Notice of Motion 9.3 with Councillor background information and staff comments is included at Attachment 1. At the meeting, Councillors  
5 Dey and Westheimer moved and seconded the below alternate motion:

That Council:

- 10 1. Acknowledges the Wallum site, subject of DA 10.2021.575.1, lies within land in the Arakwal Corporation's Native Title area.
- 15 2. Supports the Aboriginal community members and their representatives who are asking the NSW Minister for Environment and Heritage Penny Sharpe to make an IHO under the Heritage Act 1977 to "safeguard a place or object of heritage significance for a period of up to 12 months", that place being the area known as Wallum as identified in the requests attached to Notice of Motion 9.3 to Council's meeting of 8 February 2024.
- 20 3. Continues to engage in open dialogue and works collaboratively with Aboriginal community members and representatives pursuing the IHO and continues to provide representations to relevant government and non-government agencies in support of this request throughout the duration of the IHO assessment process.

After debate, Council passed **Res 24-019**:

25 *"Resolved that Council defers the matter and receives a late Report for 22 February 2024, and consults with Bundjalung Nation of Byron Bay Aboriginal Corporation (Arakwal)."* (Dey/Westheimer)

## Summary

Detailed information is provided below but in summary:

- 30 a) Council has no role in the current Interim Heritage Order or Aboriginal place declaration applications. State government will consult directly with Aboriginal stakeholders and assess and determine the applications.
- 35 b) Council has long-standing, effective working relationships with Aboriginal stakeholders in the Shire and has endorsed policy positions and consultation arrangements in place, including in relation to Aboriginal Cultural Heritage (ACH). Deviating from the agreed approaches creates risk to those relationships and to Council services and projects.
- c) Council has not seen either of the community applications, or the information they rely on. (Following last week's meeting staff sought a copy but at the time of writing



# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

it had not been provided). It would not be appropriate for Council to support something it has not seen or had the opportunity to review and assess.

5 Council consulted with the Bundjalung of Byron Bay Aboriginal Corporation Arakwal (BOBBAC) before the last Council meeting and received the following advice from BOBBAC on 6 February 2024 – see Attachment 2:

*“Please be aware when dealing with matters related to Aboriginal Cultural Heritage within the determined Native Title area, the only group that should be consulted with is the recognised Native Title holders.*

10 *The BOBBAC board of directors do not support statements or claims by any other person(s) made about Aboriginal Cultural Heritage on Arakwal determined land. Any discussion, consultation, claim, statement, or negotiation relating to Cultural Heritage within the Arakwal Native Title area, must come before the BOBBAC board of directors for consideration and final comment.”*

BOBBAC were further consulted as per Res 24-019 and the following was provided:

15 *“At this point in time BOBBAC has no update or information in relation to this Interim Heritage Order. Therefore, we have no further comment at this time.”*

### **Detailed Information**

Community have raised a number of matters relating to the community Interim Heritage Order application and detailed information on each is provided below:

20 1. Aboriginal Cultural Heritage (ACH) assessment for Wallum Estate

- ACH assessment is governed by National Parks and Wildlife Act (NSW), Aboriginal Land Rights Act (NSW) and Native Title Act (Cth).
- There are NSW Government processes that must be followed. For Wallum Estate, the Northern Rivers Planning Panel (the determining authority) was satisfied that the  
25 required ACH assessment processes had been followed.
- At the time, calls went out for any ‘interested Aboriginal person’ to register and be part of the ACH assessment. Only Bundjalung of Byron Bay Aboriginal Corporation Arakwal (BOBBAC) and Tweed Byron Local Aboriginal Lands Council (TBLALC) registered. Any individuals could have been part of it, but no one did.
- 30 - The outcomes from the assessment process were agreed to by the registered parties, TBLALC and BOBBAC. Those outcomes were included in the final ACH Report which was considered by the Northern Rivers Planning Panel before they decided to issue the development consent.
- Some community documents quote parts of the ACH report out of context but it  
35 should be read as whole.

# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

- Council has no statutory powers to overturn, reconsider or challenge the ACH Report or the development consent issued by the Northern Rivers Planning Panel.
- Anyone who believes that the ACH assessment processes were not properly followed or that the ACH Report is flawed could have challenged the decisions, and still can but as more time that passes that becomes more difficult. No challenge has been lodged.

5

10

Also, the agreed recommendations from the ACH Report and the usual ACH protections that apply everywhere all the time, continue to apply on this site. For Wallum development that includes measures for the identification and management of ACH during works for example requirements for Arakwal ACH monitoring and usual unexpected finds procedures including stop work, notification and ACH management protocols.

### 2. ACH consultation for private development proposals – Wallum Estate

15

- Generally ACH consultation and assessment needs to be carried out in accordance with [Aboriginal Cultural Heritage Requirements](#)
- Those requirements were developed in consultation with Aboriginal people and confirms that:

*“the Aboriginal people who can provide the information ... are, based on Aboriginal lore and custom, the traditional owners or custodians of the land”.*

20

For Wallum Estate, because it is inside their Native Title determination area, BOBBAC are the traditional owners and custodians of that land.

25

- In addition, BOBBAC, Office of Environment and Heritage and Department of Environment, Climate Change and Water all advise that within the Arakwal Native Title determination area, there is an agreed modified process under the National Parks and Wildlife Act and Indigenous Land Use Agreements, that requires BOBBAC to be “*exclusively consulted*” on ACH matters inside their determination area.

30

- On 6 February 2024, BOBBAC provided the ACH Position Statement at Attachment 2.
- While acknowledging the views of individuals about their connections with this Country, Council’s role is to comply with statutory requirements and in this case, the NSW Government directs that ACH matters inside the Arakwal determination area should be referred to BOBBAC.

### 3. Relationships with Aboriginal stakeholders

35

- It is important for Council to maintain relationships with, and honour commitments to, Aboriginal stakeholders who Council works closely with.
- In 2017, by Res **17-337**, Council adopted the following Aboriginal Cultural Heritage Position Statement subject to ongoing work. This remains the current policy position of Council:

# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

*Byron Shire Council have a long established working relationship with the Bundjalung of Byron Bay Arakwal People which has been developed for over 20 years.*

5 *Through this relationship Byron Shire Council have developed protocols in regards to matters of Aboriginal Cultural Heritage. Byron Shire Council will continue to comply with these protocols in regards to Aboriginal Cultural Heritage matters.*

10 *Byron Shire Council recognises the Bundjalung of Byron Bay Arakwal People as the consent authority in Aboriginal Cultural Heritage over all sites within their Native Title Claim Area.*

15 *Byron Shire Council defers comment regarding the management and protection of Aboriginal Cultural Heritage, including sites and objects, to the Bundjalung of Byron Bay Arakwal People within their tribal boundaries. Byron Shire Council advises that all enquiries regarding this matter be directed to the Bundjalung of Byron Bay Arakwal People.*

*Byron Shire Council acknowledges the role of Local Aboriginal Land Councils and their rights and responsibilities to protect Aboriginal Cultural Heritage within their boundaries.*

20 *Within the Byron Shire Council Local Government area, Council also acknowledges Tweed Byron Local Aboriginal Land Council, Ngulingah Local Area Land Council (based in Lismore) and Jali Local Area Land Council (based in Ballina) and encourages consultation regarding Cultural Heritage matters.*

25 *Byron Shire Council have legal obligations under the Native Title Act 1993 and the Land Rights Act 1984 to consult with and respect the decisions regarding Aboriginal Cultural Heritage to these Aboriginal Stakeholders.*

30 *Byron Shire Council works closely with Aboriginal Stakeholders to promote the protection of Aboriginal Cultural Heritage on private land and are concerned about potential damage to this process. There is concern that actions relating to this matter may have adverse effects and influence over other private land owners with sites on their property.*

- As endorsed by Res **18-794**, and recently again by Res **23-509**, the representative Aboriginal Stakeholders in the Shire, are:

- Bundjalung of Byron Bay Aboriginal Corporation Arakwal
- Widjabul Wia-bal Gurrumbil Aboriginal Corporation
- 35 • Tweed Byron Local Aboriginal Land Council
- Jali Local Aboriginal Land Council
- Ngulingah Local Aboriginal Land Council

# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

- and other registered native title corporations, as more determinations are made covering lands and waters in the Shire.

5 - The Shire's CSP Strategy 2.3 commits Council to "*Respect Aboriginal culture, value cultural knowledge, and acknowledge history*" and Council's Delivery Program Action 2.3.5.3 confirms that Council will refer development matters to "*Arakwal and Local Land Councils for advice and comment where required*".

#### 4. Interim Heritage Order (IHO) Process

- For Wallum, because there is a valid development consent issued by State Government, Council has no IHO powers.

10 - Information on the [process for IHO applications](#) is available from NSW DPE.

- NSW DPE have:

- confirmed that they have received an IHO application from a community member, who has asked that it be processed urgently.

15 - sought from Council, and been provided with, information about the status of the development consent, current status of subdivision certificate application and Council's 8 February 2024 resolutions.

- Council have asked for but have not yet seen a copy of the IHO application or the information that is in it.

20 - NSW DPE will apply their usual processes and they will consult directly with appropriate Aboriginal stakeholders and the applicant before determining the IHO application.

#### 3. Aboriginal Place proposal processes

- Anyone can propose an area of land to be considered for an Aboriginal Place declaration.

25 - Council has no powers in relation to Aboriginal Place declarations and all proposals have to be lodged with State Government. [Information on the Aboriginal Place declaration process](#) is available from NSW DPE

30 - NSW DPE have confirmed that they have received a proposal for an Aboriginal Place declaration from a community member. They will apply their usual processes and they will consult directly with appropriate Aboriginal stakeholders. Council would not usually be involved in this process.

#### 4. Land Environment Court injunction or appeal avenues

- It is open to anyone who believes that a planning or environment law has been, or is going to be breached, or that an administrative decision under a planning or

# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

environment law has been improperly made, to seek relief in the Land and Environment Court.

- 5
- Anyone bringing proceedings they say are in the public interest can self-represent and can also be represented by pro bono (free) legal services or philanthropically or publicly funded community legal services, such as the Environmental Defenders Office.
  - At the time of writing no community Court application had been made as far as staff are aware.

### 5. Tweed Byron Local Aboriginal Land Council (TBLALC)

- 10
- Unverified and unsigned information was provided by a community member to Councillors at the last Council meeting that sought to cast aspersions over TBLALC.
  - TBLALC were invited to comment and advised by phone:
    - 15 • The person allegedly named in the document does not speak on behalf of the TBLALC, their Board or their members and TBLALC disagree with the aspersions made.
    - They hope Councillors acknowledge the continual working relationship between Council and TBLALC and are '*fair minded and know TBLALC well enough to dismiss it*'.
  - 20 - TBLALC's current status as an operational council, not under administration, has been confirmed by NSW Aboriginal Land Council. However, it is also worth noting that appointment of an administrator to any local government or lands council is irrelevant to their functions and powers because the very role of an administrator is to keep the council operations going.
  - 25 - TBLALC are committed to the advancement and protection of Aboriginal people, land, heritage, spirituality and culture. Their charter includes protecting cultural assets and they have statutory ACH rights and responsibilities. Their status and their right to participate on behalf of their members and the broader Aboriginal community in ACH assessments is clear.

### 30 **Options**

In relation to the community IHO application, as it is already being assessed by NSW Government:

- Council does not need to do anything and can allow the usual processes to occur; or
- 35 - Council can consider the requests that have been made to resolve to support the IHO application, however, consideration should be given to the appropriateness of Council supporting something unseen or without time to review or assess and the

impacts that could have on Council's work with representative Aboriginal stakeholders.

5 In relation to Aboriginal stakeholder consultation, Council can continue with the existing endorsed policy position, CSP Strategy and DP/OP Actions, which confirm that Council will engage with the representative Aboriginal organisations listed in Res 18-794 and Res 23-509. Deviating from that is not considered a viable option, due to Council's statutory obligations and the impacts any change could have on the important relationships that Council relies on to delivery projects and services to community.

**Strategic Considerations**

10 **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
2: Inclusive Community	2.3: Respect Aboriginal culture, value cultural knowledge, and acknowledge history	2.3.5: Aboriginal history - Increase the economic self-determination of Aboriginal communities	2.3.5.3	Refer development applications to Arakwal and Local land councils for advice and comment where required
2: Inclusive Community	2.3: Respect Aboriginal culture, value cultural knowledge, and acknowledge history	2.3.1: Aboriginal community and First Nations People - Develop strong and productive relationships that empower the Aboriginal community	2.3.1.2	Collaborate with Aboriginal stakeholders to design and establish an Aboriginal engagement governance structure
2: Inclusive Community	2.3: Respect Aboriginal culture, value cultural knowledge, and acknowledge history	2.3.1: Aboriginal community and First Nations People - Develop strong and productive relationships that empower the Aboriginal community	2.3.1.3	Review Arakwal MOU with Arakwal Corporation Board and Executive

**Recent Resolutions**

# BYRON SHIRE COUNCIL

## LATE REPORTS

17.1

- **17-337** endorsed Aboriginal Cultural Heritage Position Statement subject to ongoing work
- **18-794** endorsed formation of a multi stakeholder consultative group under the Land Rights Act and Native Title Act listed in the report (copied above)
- 5 • **23-509** endorsed working with Native Title Corporations and Local Aboriginal Land Councils to deliver Aboriginal housing on country – listing them as Bundjalung of Byron Bay Aboriginal Corporation (Arakwal), Widjabul Wia-bal Corporation and the Tweed Byron, Ngulingah and Jali Local Aboriginal Land Councils.
- 10 • **24-019** deferred consideration of Notice of Motion 9.3 and resolved to receive a late report to the 22 February 2024 Meeting and consult with Bundjalung of Byron Bay Aboriginal Corporation.

## **Legal/Statutory/Policy Considerations**

Relevant legislation includes:

- Native Title Act 1993 (Cth) and equivalent state legislation
- 15 - Aboriginal Land Rights Act 1983 (NSW)
- National Parks and Wildlife Act 1974 (NSW)
- Heritage Act 1977 (NSW)
- Environmental Planning and Assessment Act 1979 (NSW)
- Local Government Act 1993 (NSW)

## 20 **Financial Considerations**

None from preparation of this report.

## **Consultation and Engagement**

25 Refer to body of report. Consultation has occurred with Bundjalung of Byron Bay Aboriginal Corporation, Tweed Byron Local Aboriginal Council, NSW Aboriginal Land Council and NSW Department of Planning and Environment.

Links and addresses to additional resources include:

- [Aboriginal Cultural Heritage Requirements](https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Aboriginal-cultural-heritage/aboriginal-cultural-heritage-consultation-requirements-for-proponents-2010-090781.pdf) NSW Department of Environment, Climate Change and Water:  
30 <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Aboriginal-cultural-heritage/aboriginal-cultural-heritage-consultation-requirements-for-proponents-2010-090781.pdf>

## BYRON SHIRE COUNCIL

### LATE REPORTS

17.1

- [Information on the IHO processes](#), NSW Department of Planning and Environment:  
<https://www.environment.nsw.gov.au/topics/heritage/request-a-heritage-listing/interim-heritage-orders>
- 5 • Information on the [Aboriginal Place declaration process](#), NSW Department of Planning and Environment:  
<https://www.environment.nsw.gov.au/topics/heritage/request-a-heritage-listing/propose-an-aboriginal-place-for-declaration>
- 10 • [Resources for community about environmental law options](#) example:  
<https://www.edo.org.au/wp-content/uploads/2022/02/160621-Land-and-Environment-Court-of-NSW.pdf>
- 15 • [Bundjalung of Byron Bay Aboriginal Corporation \(Arakwal\)](#) and their rights and responsibilities as traditional owners of Country in their determination area  
<https://arakwal.com.au/about-us/>
- 20 • [Tweed Byron Local Aboriginal Land Council](#) and some of their award recognised ACH management practices  
<https://www.tblalc.com/activities-projects/>



BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

**Notice of Motion No. 9.3 Interim Heritage Order on works proposed and imminent at 15 Torakina Road (Wallum Estate) in Bayside Brunswick**

5 **File No:** I2024/106

---

I move:

10 **That Council:**

1. **Makes representations to the Minister to either authorise Council to make an IHO or for the Minister to make an IHO under the Heritage Act 1977 to safeguard a place or object of heritage significance for a period of 12 months, that place being the area known as Wallum as identified in attached requests.**
- 15 2. **Then collaborates with first nations people and relevant Government agencies to assesses Wallum's significance and to determine whether permanent heritage listing is warranted.**

20 **Signed: Cr Duncan Dey**

## BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

**Councillor's supporting information:**

5 Councillors received written requests (see copies below) on Monday 15 January, repeating verbal requests to at least two meetings of Council in 2023 for an Interim Heritage Order (IHO) at Wallum. The matter is now urgent as construction / destruction works are likely to commence soon. This area of Wallum heathland is special not only because of its collections of flora and fauna, but also because it is a significant place of cultural and spiritual heritage to first nations people.

According to the following NSW Government website:

10 an interim heritage order made under the Heritage Act 1977 safeguards a place or object of potential heritage significance for a temporary period of up to 12 months.

(<https://www.environment.nsw.gov.au/topics/heritage/request-a-heritage-listing/interim-heritage-orders>)

The site goes on to say:

15 Interim heritage orders (IHOs) allow time to fully assess a place or object's significance and determine if a heritage listing is warranted.

Interim heritage orders can be made by the Minister for Environment and Heritage on the advice of the Heritage Council, or by local councils under authorisation. They are generally only made if there is a threat of harm.

20 There are limited instances where it will be appropriate for the Minister to make an interim heritage order. If you are concerned about the protection of a place or object of potential heritage significance we recommend you discuss it with the local council in the first instance. If the council is unable to make an interim heritage order contact us for further advice.

The email of 15 January requests:

25 To Byron Shire Major, Michael Lyons and Councillor's

On three occasions local Aboriginal constituents have raised their concerns at council meetings regarding the development of the Wallum site in Brunswick Heads.

30 They have advised council that the site is of cultural value and that the Cultural Heritage report provided by Everitts in regards to the development is inadequate and that Wallum Site has significant cultural and spiritual importance to the local tribes of the Northern Rivers.

At the last council meeting in December, Local Aboriginal community members made a request that the BSC make an urgent application for an Interim Heritage Order (IHO).

35 On the 22nd of December 2023, Major Lyons was copied into an email that was sent to Heritage NSW and Minister Piblersik requesting an urgent IHO be placed on the

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

Wallum Site. We have received no correspondence in relation to this request from your

5 This action was taken because, to be honest, we are all so confused by your council's processes. There have been Aboriginal representatives at all meetings since October yet we do not feel the voices of the Aboriginal Community are being heard by council members. We have no idea if council is taking note of our concerns, or even if the cultural significance is being acknowledged by council.

10 We ask you to take a minute and read the below information we are appealing to council that you urgently consider the cultural and spiritual heritage of the Wallum site.

We request that you immediately apply for an IHO to be placed on the Wallum site so that further and more comprehensive cultural assessment can be undertaken, prior approving the start work certificate to Clarence property group.

15 We would like to also draw your attention to the attached letter from Jahvis Loveday who highlights the cultural and spiritual significance of the Wallum area and the on-going use of this sacred site for cultural purposes.

**REQUEST FOR IHO**

20 The Minjungbal people, Original Custodians of the Brunswick River and Tweed Heads region, and our non-indigenous community members, are deeply concerned about the "Wallum development" (15 Torrakina Rd Brunswick Heads, DA 10.2021.575.1), taking place on our traditional lands.

25 We as a collective have worked tirelessly to draw attention to our local Shire Council that the "Wallum" development is detrimental to our native flora and fauna and that the **Cultural Heritage Assessment (CHA) conducted by Everick Heritage Consultants, in 2010, is inadequate and does not give a true and honest representation of the cultural, spiritual and ecological value of this site.**

At the December 2023 Byron Shire council meeting, independent Elders, cultural leaders and cultural educators who undertook a preliminary site-walk advised council that the CHA is missing important and vital content.

30 Subsequently, a request was made by apical descendants that our local council consider applying for an IHO on this sacred site so further assessment and consultation can be undertaken.

35 **We have received no correspondence from Council and do not know your stance on this or what action you will be willing to take to protect the cultural and spiritual heritage of Wallum.** We are very concerned as the community has already campaigned for the council to put a one month pause on issuing a commence work order over the Christmas period. Once issued the destruction to this site will be ecologically irreparable and our cultural heritage will be lost for our future generations.

## BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

5 We are deeply troubled as the CHA only discusses the trees on the development site - namely the scribbly gums and banksias, as part of the environment and ecology and makes no reference to the cultural scarring on many of them. Independent ecologists have dated these trees as 100-300+ years old, local Indigenous elders and leaders also confirm this.

10 **We are strongly advocating and request your support for these sacred trees to be further assessed for their cultural, spiritual, and ecological value.** Some of the eldest trees with significant cultural markings are zoned to be destroyed for a carpark and for an environmental interpretation centre. They are at immediate risk of harm and complete destruction as soon as stage one of construction commences. Their importance as habitat also puts multiple endangered species at further risk.

15 The spiritual importance of the site was not mentioned in the report. This area is related to many of the dreamtime and creation stories including stories of the Creator Nuthungully, the Three Brothers and the story of the Goanna and Snake all of which exist and belong to this area.

20 **The site is also abundant with medicinal plants, traditional food sources and is home to many of our endangered animal totems.** We have grave concern for the Wallum Sedge Froglet, the Glossy Black Cockatoo, the Long-nosed Potoroo, the Rainbow Bee Eater, and the Mitchell's Rainforest Snail. The development will have a direct impact on threatened species, including 9 federally-listed Matters of National Environmental Significance and 15 species listed under the Biodiversity Conservation Act (2016).

25 Yvonne Stewart, the Arakwal representative who participated in the CHA, notes in her report that an **important pathway runs through the area that "requires further assessment"**. **There is no evidence documented that further assessment was completed as recommended.** This site is a connected part of a songline that is integral to well-documented ceremonial grounds of the region, known to be the largest of their kind across all nations. Attention was also drawn in the original report to a known sacred site only 400 meters from the development footprint, with still no  
30 mention of the significance of the development site.

The assessment makes several references to the lack of ground visibility. Areas were not adequately assessed, were overlooked, and no proper investigation was made on the majority of the site for the reason of ground visibility.

35 Cultural fire lore and practice was strong across the Northern Rivers region. This area has not burned in 75 years. We believe that if cultural burns were to occur that cultural artifacts and heritage of the area would be exposed.

40 We also consider the interruption to cultural flow of water from existing developments has already had a detrimental impact on the natural state of the area. **Pre-colonisation, this area held great importance due to its lagoons and access to freshwater springs and creeks that have been noted as integral to the traditional usage of the area to sustain the many clans and tribes who frequented the region for ceremonial purposes.**

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

5 Ashley Moran our local Aboriginal Heritage Cultural Officer reported in the ECHO in 2017, “.. there are potentially thousands of undiscovered Aboriginal sites across the northern rivers region. A lot of these sites are not recorded”. We consider this site as one of these area’s that has not been thoroughly assessed for its cultural and spiritual significance.

Ashley Moran also states that the Office of and Environment and Heritage (OEH) “.. they are the only ones who should be engaged to interpret the heritage.” There is no evidence within the cultural assessment OEH actively participated in the CHA.

10 **We know within our being that this place is of great importance to Minjungbal, our neighbouring tribal groups, the 13 tribes of the Northern Rivers Region, as well as holding national significance.** We know that the stories and sites exist as our elders speak of them.

15 There is widespread support to “Save Wallum” by the broader community. It is with a great sense of foreboding of irreplaceable loss that we urge you to please assist us. **We request Byron Shire Council apply for an urgent Interim Heritage Order (IHO) so a more detailed cultural assessment can be completed.**

The email of 15 January is accompanied by an attachment also addressed to Council and saying:

20 I am Jahvis Loveday, a young aboriginal filmmaker, storyteller, and dancer from Bundjalung country in the far north of NSW, we sit within the Byron Shire. Our brother's late father's people are that of the people of Brunswick Heads River NSW and the people of the Tweed Heads River, and the honour of protecting our country, our waters, and our community, has now fallen upon us, the next generation.

25 When I was only young, that man took us to dance upon the hill in Ocean Shores, one of the many men's initiation sites that lies within this country - Round house place Ocean Shores overlooking the Brunswick River. He fought and fought to preserve that place, yet, we lost it to housing development, now \$8 million houses sit upon that site. The Cape Byron lighthouse sits upon one of the most sacred initiation sites in our country, the final one, where boys will become men. Our Bora grounds 30 were destroyed, rumoured to be some of the oldest in Australia, and now lies beneath a cricket ground and bowls club in Brunswick Heads. Our Grandmother's Hill - which Mullumbimby is named after, fades away under a farmhouse, taken. Our bora grounds that connect the songline from the east coast of Australia to the west coast, 35 starting at Nuthungulli/Julian Rocks, and moving west through Billinugel Nature Reserve, were damaged. When we were little, we used to camp on either side of the south arm of Brunswick Heads River, now under threat from the Wallum housing development. All up and down that creek there were/are middens, thousands of years old, where them old people would sit, and where we would sit as kids, and 40 learn to fish, learn to become who we are meant to be. We learned that the land the Wallum housing development is supposed to go is very sacred, almost never talked about. Either side of that river, running down towards Tyagarah, holds many stories, and many sacred connections that run back up towards the high country of the border ranges.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

5 I am 23 years old now, and as I grow up, our people before us will pass, and it will be up to me, my brothers, and my sisters, to pass down what we know, what we learned, to our kids, and to our community. When I have kids, I dread taking them to all these sacred sites, only to show them a \$6 million house, a bowls club, or a lighthouse, an empty field, or a fence that we cannot pass, we cannot connect to.

10 We have little left here, in the Byron Shire of our cultural sites, it's heartbreaking for me as a young man, trying to do my part in continuing Australia's culture, trying to step up and become a man, whilst witnessing the destruction of all that we hold sacred to us. All I want is to be able to show my kids those trees, that are over 300 years old, I want to show them as we walk from the river, only across a 100m radius, we have over five different types of country, that hold so much life, so many threatened species, that we will lose if all these houses go in.

15 Here, you sit at a crossroads, you can make a decision that will benefit stories and culture that have come to us thousands of years before we both existed, and maybe, just maybe, if this place is protected, these stories can exist thousands of years into our future, long after we go.

I urge you to please take direct and immediate action to save Wallum and support our application and grant an Interim Heritage Order.

20 We will forever strive to look after this place and continue our connection! For our people before us, for our people of tomorrow

Kind Regards

Jahvis Assan Loveday

Staff advised by email on 20 January amongst other things that:

25 ..... council is unable to make an IHO due to limitations under the Ministerial Order. It may if it considers it appropriate having regard to the Act, make representations to the Minister to either authorise council to make an IHO or for the Minister to make an IHO. Either way a resolution of council to do so is required.

30 As such, the most expeditious pathway available to community for an IHO, is to seek an IHO through their own application and representations to the Minister directly under the Act. Separate and independent legal advice however should be sought by the community first on this to understand the required information they need to submit to the Minister to consider.

I am following that advice in asking Councillors' support to progress this matter.

**Staff comments**

35 **By, Director Sustainable Environment and Economy:**

Council (if authorised by the Minister) may make an IHO for a place, building, work, relic, moveable object, or precinct in the council's area that the Council considers may, on

## BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.3

further inquiry or investigation, be found to be of local heritage significance, and that the Council considers is being or is likely to be harmed.

- 5 Council can only issue IHOs in accordance with the conditions of the authorisation conferred by the Minister. The current authorisation for Councils is an order which was gazetted in 2013 (Ministerial Authorisation).

When making an IHO, Council must exercise its power strictly in accordance with the conditions prescribed in Schedule 2 of the Ministerial Order (the Schedule). A failure to do so can lead to invalidity of an IHO and may result in an adverse costs order against the Council if the IHO is challenged and found to be invalid.

- 10 While all the conditions in the Schedule must be complied with in the making of an IHO, a key requirement is that Council must consider a preliminary heritage assessment prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the Council prior to making the IHO. The preliminary assessment must address whether:

- 15 (i) the item is or is likely to be found, on further inquiry and investigation, to be of local heritage significance; and
- (ii) the item is being or is likely to be harmed; and
- (iii) the proposed IHO is confined to the item determined as being under threat.

- 20 Council must find that each of those requirements are met, based on the preliminary assessment, before it makes the IHO. If the preliminary assessment is subsequently found to be inadequate in material respect, then the Council's decision to make the IHO may be susceptible to legal challenge.

- 25 In addition to the above, there are other important limitations in the Ministerial Order which must be observed. In summary, Council cannot make an IHO over an item where (emphasis added):

- it doesn't have a heritage schedule in its LEP derived from a heritage study;
- the item is already listed as a heritage item, or is within a heritage conservation area;
- the item is covered by an order made under s. 136 of the Heritage Act;
- 30 • an IHO has been placed on the item previously;
- **a development consent (other than a complying development certificate) has been granted authorising that the item can be harmed;**
- if the item is a dwelling, a complying development certificate has been issued for its demolition and the erection of a new 1 or 2 storey house;
- 35 • the item is located on Crown Land, Land being developed by the Crown, or which is subject to development for which the Minister for Planning is the Consent Authority; and

**BYRON SHIRE COUNCIL**

NOTICES OF MOTION

9.3

- another approval has been given by the Crown that requires or authorises the item to be harmed.

**If Council issues an IHO contrary to these limitations, it may lead to the IHO being found to be invalid.**

5 Having regard to the above, a [development consent](#) has been issued for the subject site with inter alia aboriginal cultural heritage assessments undertaken, consultation with the Arakwal and Tweed Byron Land Councils completed, and relevant conditions included in the development consent.

10 In the circumstances Council is unable to make an IHO due to limitations under the Ministerial Order. It may, as the Motion seeks, if it considers it appropriate having regard to the Act, make representations to the Minister to either authorise Council to make an IHO or for the Minister to make an IHO.

15 Respectfully, the most expeditious pathway available to community for an IHO, is to seek an IHO through their own application and representations to the Minister directly under the Act. Separate and independent legal advice however should be sought by the community first on this to understand the required information they need to submit to the Minister to consider.

**Financial/Resource/Legal Implications:**

Ministerial Order -Authorisation for Local Councils to make Interim Heritage Orders, 2013

20 Heritage Act 1977.

**Is the proposal consistent with any Delivery Program tasks?**

Collaborating with first nations people is in the CSP.

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community	2.3: Respect Aboriginal culture, value cultural knowledge, and acknowledge history	2.3.1: Aboriginal community and First Nations People - Develop strong and productive relationships that empower the Aboriginal community	2.3.1.1	Continue working with Traditional owners on land management matters





BUNDJALUNG OF BYRON BAY ABORIGINAL CORPORATION (ARAKWAL) ICN: 2663  
Po Box 1555, Byron Bay NSW. 2481.  
Phone: 0266 858746 Fax: 0266 858726  
ABN: 99 508 925 629

6<sup>th</sup> February 2024

To Whom It May Concern,

I am writing on behalf of the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) board of directors.

Please be aware when dealing with matters related to Aboriginal Cultural Heritage within the determined Native Title area, the only group that should be consulted with is the recognised Native Title holders.

The BOBBAC board of directors do not support statements or claims by any other person(s) made about Aboriginal Cultural Heritage on Arakwal determined land. Any discussion, consultation, claim, statement, or negotiation relating to Cultural Heritage within the Arakwal Native Title area, must come before the BOBBAC board of directors for consideration and final comment.

Sincerely,

Brent Emmons

BOBBAC General Manager