

Minutes Ordinary (Planning) Meeting

Thursday, 14 September 2023



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

14 September 2023

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 14 SEPTEMBER 2023 COMMENCING AT 11:00AM AND CONCLUDING AT 6:30PM.

I2023/1353

PRESENT: Cr M Lyon (Mayor), Cr S Balson (left at 3.59pm), Cr C Coorey, Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr M Swivel and Cr P Westheimer

Staff: Mark Arnold (General Manager)
James Brickley (A/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)
Chris Larkin (Manager Sustainable Development – Item 9.3)
Malcolm Robertson (Manager Open Space & Facilities – Items 13.2, 13.12)
James Flockton (Infrastructure Planning Coordinator – Item 9.1)
Christopher Soulsby (A/Manager Assets & Major Projects - Item 13.2)
Storm Townsend (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	Via
9.2	Annual expenditure on consultants & conflicts of interest	Lydia Kindred	For	Northern Rivers Railway Ltd	In Person
9.5	Non- Lethal Dingo Management Motion LGNSW Annual Conference 2023	Mat Bell	For	Mid Coast Council	Via Zoom
13.11	Bangalow Sports Field Master Plan	Simon Field	Against	Bangalow Tennis Club	Read by staff
13.5	PLANNING - 10.2022.502.1 Three Rural Tourist Cabins in Two Stages 56 Taylors Road NASHUA 2479	Luke Houghton	For	Balanced Systems Planning Consultants	In person
13.7	PLANNING - S4.55 10.2022.391.2 - Use of Existing and Proposed New	Greg Irvine & Ayesha	Against	Self	In person

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Report No and Title		Name	For/ Against	Representing	Via
	Alterations and Additions to an Existing Dwelling, and New Detached Secondary Dwelling, Driveway 5 and Garage – 27 Paterson Street Byron Bay	Callan			
13.12	Mullumbimby Heritage Park Landscape Masterplan	Matthew Lambourne	Against	Self	In person

PROCEDURAL MOTION

23-372 Resolved that Public Access be extended until 12:30pm. (Lyon)
The motion was put to the vote and carried unanimously.

Submissions

Subject	Name	Representing	Via
Save the Bruns Scribbly Gums	James Barrie	Save the Bruns Scribbly Gums	In person
Preserve protect endangered flora & fauna species.	Luciana Bowen	Self	In person

Question No. 1 – South Golden Beach and Marshall Creek flood areas

Kathy Norley, representing South Golden Beach Community, asked the following question:

When did the North Byron Flood Management Plain with no fill change? Information suggests an “Amendment” was made in Council approximately 2 years ago.

Is there still no fill in the Marshall Creek flood plain, and if not, who changed it, why not and who is going to be responsible for any future flooding that may occur when this has been allowed to happen?

The Mayor took the question on notice.

Question No. 2 – Changing the Criteria for NRRC Funding

Noelle Maxwell, representing Byron Shire Flood Recovery Group, asked the following question:

How can we change the criteria that everyone in the Byron Shire has had to meet for NRRC funding?

The Mayor took the question on notice.

The meeting adjourned at 12:36pm for a lunch break and reconvened at 1:25pm.

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APOLOGIES

Cr Pugh is an apology in accordance with his prior accepted leave of absence.
(Resolution No. **23-322**)

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

PROCEDURAL MOTION

- 23-373 Resolved** that Cr Coorey be permitted to attend the meeting by audio-visual link.
(Lyon/Westheimer)
The motion was put to the vote and carried unanimously.
-

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 23-374 Resolved** that Cr Coorey be granted a leave of absence from the 26 October 2023 Council Meeting.
(Lyon)
The motion was put to the vote and carried unanimously.
-

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Balson declared a non-pecuniary interest in Report 13.7. The nature of the interest being that one of the Applicants is personally known. Cr Balson elected to remain in the Chamber and will participate in discussion and the vote.

Cr Coorey declared a non-pecuniary interest in Report 13.7. The nature of the interest being that one of the Applicants is personally known. Cr Coorey elected to remain in the Chamber and will participate in discussion and the vote.

Cr Ndiaye declared a pecuniary interest in Report 9.1. Cr Ndiaye elected to leave the Chamber and will not participate in discussion or vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 23-375 Resolved** that the minutes of the Ordinary (Planning) Meeting held 10 August 2023 be confirmed.
(Lyon/Ndiaye)
The motion was put to the vote and carried unanimously.
-

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 Council Resolutions Quarterly Review - Q4 - 1 April to 30 June 2023

Report No. 13.2 Revised Delivery Program 2022-26

Sustainable Environment and Economy

Report No. 13.3 PLANNING - DA 10.2022.289.1 - Relocation and Raising of Existing Dwelling and Construction of New Dwelling to create Dual Occupancy (Detached) at 97 Main Arm Road Mullumbimby

Report No. 13.4 26.2022.5.1 Submissions report - Byron DCP 2014 - Planning controls for rural tourist and visitor accommodation

Report No. 13.7 PLANNING - S4.55 10.2022.391.2 - Use of Existing and Proposed New Alterations and Additions to an Existing Dwelling, and New Detached Secondary Dwelling, Driveway and Garage – 27 Paterson Street Byron Bay

Report No. 13.8 Update Resolution 22-459 Wallum Place Affordable Housing Investigation

Report No. 13.9 Appointment of Replacement Community Member to the Climate Change and Resource Recovery Advisory Committee

Infrastructure Services

Report No. 13.10 Levels of Service to Heritage Park Arboretum

Report No. 13.11 Bangalow Sports Fields Plan of Management and Landscape Masterplan

Report No. 13.12 Mullumbimby Heritage Park Landscape Masterplan

Report No. 13.13 Update on the Additional Flow Path project - Response to Council Resolutions 23-108 and 23-277

REPORTS OF COMMITTEES

Sustainable Environment and Economy

Report No. 14.1 Report of the Climate Change and Resource Recovery Advisory Committee Meeting held on 29 June 2023

Infrastructure Services

6.1 Chincogan Charge - 16 September 2023

CONFIDENTIAL REPORTS

General Manager

Report No. 16.1 CONFIDENTIAL - Lease to Catholic Healthcare Limited over proposed Lot 50 in unregistered plan of subdivision (presently part Folio 188/728535) request for further holding over.

The remaining Recommendations and Committee Recommendation were adopted 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. 23-376 and concluding with Resolution No. 23-378.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 **PLANNING - 10.2022.502.1 Three Rural Tourist Cabins in Two Stages 56 Taylors Road NASHUA 2479**
File No: I2023/1165

23-376

Resolved that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.502.1 for Three Rural Tourist Cabins in Two Stages, be granted consent subject to the conditions of consent attached to this report.
(Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

Crs Coorey, Hunter, Lyon, Ndiaye, Dey, Swivel, Westheimer and Balson voted in favour of the motion.

Nil voted against the motion.

Report No. 13.6 **PLANNING - Report of the Planning Review Committee held 3 August 2023**
File No: I2023/1170

23-377 **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held 3 August 2023.
(Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

Crs Coorey, Hunter, Lyon, Ndiaye, Dey, Swivel, Westheimer and Balson voted in favour of the motion.

Nil voted against the motion..

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.2 **Report of the Local Traffic Committee Meeting held on 4 September 2023**

File No: I2023/1346

23-378 Resolved:

1. That Council supports the “Chincogan Charge” to be held on Saturday 16 September 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 providing Council with an updated Traffic Management Plan and Traffic Guidance Scheme(s) for the event, if required;
 - 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 and Variable Message Signage (VMS) 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 and social media 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) 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) Not place any signage on the road related area of the Pacific Highway.

(Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.7 **PLANNING - S4.55 10.2022.391.2 - Use of Existing and Proposed New Alterations and Additions to an Existing Dwelling, and New Detached Secondary Dwelling, Driveway and Garage – 27 Paterson Street Byron Bay**

File No: I2023/1223

23-379 **Resolved** that pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979, Modification No. 10.2022.391.2, be granted approval subject to the following:

Amend the following conditions to read:

1. **Approved plans and supporting documentation**

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title	Drawn by	Dated
S1	E	Site Plan	Building Design Centre	To be Amended
S2	E	Secondary Dwelling Floor Plan & Elevations	Building Design Centre	3/05/23
S3	E	Garage Floor Plan & Elevations	Building Design Centre	3/05/23
S4	D	Proposed Balcony Plan	Building Design Centre	3/05/23
S5	D	Existing Dwelling Proposed Balcony Elevations	Building Design Centre	3/05/23

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

3. **Car Parking to be available for the approved use**

Two (2) car parking spaces are to be provided and maintained for the principal dwelling in a stacked arrangement within the garage, together with all necessary access driveways.

11. Amended plans required – garage setback from front boundary

Amended plans are required to demonstrate the relocation of the garage against the edge of the sewer easement (but not encroaching on the easement) to increase the setback of the garage from the front boundary (by approximately 700mm) in accordance with stamp approved plan S1 amended 14/09/23. Such plans must be approved as part of the Construction Certificate.

12. Amended plans required – garage setback to northern boundary

The garage can be sited with a nil setback the northern boundary. No eaves or roof lines are to overhang the boundary and drainage is to be designed such that it drains into the subject property not the property to north. Such plans must be approved as part of the Construction Certificate.

17. Consent required for Works within Road Reserve

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

- a) Driveway A driveway in accordance with Council's Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings.
- b) Driveway Removal The existing driveway layback must be removed and the kerb reinstated to Council's satisfaction.

19. Easement required over pipelines

In all new subdivisions and/or developments, an easement in gross benefitting Byron Shire Council shall be provided for all pipelines in accordance with the Council Policy: Building in the Vicinity of Underground Infrastructure 2020.

The easement in gross terms must be amended to include the terms of Appendix B of Council's Policy for the structure that has been constructed over the sewer pipeline.

Easement documentation shall be prepared in accordance with NSW Land Registry Services requirements over the pipeline/s within the allotment/s. Easement documentation must be submitted to Council for execution, together with a survey showing location, size and depth of the pipeline/s and payment of fees in accordance with Council's adopted fees and charges.

Prior to issue of the construction certificate, proof of lodgement to NSW Land Registry Services must be provided to the Principal Certifying Authority.

The minimum width of the required easement shall be 3.0 metres centred over the pipeline.

20. Compliance required with Building in the Vicinity of Underground Infrastructure Policy

All new development must comply with Policy: Building in the Vicinity of Underground Infrastructure 2020.

The use of displacement and screw pile construction methods will require approval by Council.

Any retaining wall / brick / masonry fence crossing a pipeline requires Council approval. The fence must be supported such that it does not cause loading on the pipes zone-of-influence.

A minimum horizontal clearance of 1.5m from the centre is required around existing sewer shaft as well as minimum vertical clearance of 3m from finished ground level is required.

58. Car Parking to be available for the approved use

Two (2) car parking spaces are to be provided and maintained for the principal dwelling in a stacked arrangement within the garage, together with all necessary access driveways.

Insert the following conditions into the Notice of Determination in appropriate order:

11a. Amended plans required – garage extension

Amended plans and elevations are required to demonstrate the extension of the garage from 10m length to 12m to provide (2) car parking spaces in a stacked arrangement within the garage and in accordance with stamp approved plan S1 amended 14/09/23.

The garage is also to be narrowed to a minimum of 3.2 metres with the laundry to be sited such that it will not interfere with access to the drivers doors when both vehicles have entered in a forward direction consistent with Fig 5.2 of AS2890.1 – 2004.

Such plans must be approved as part of the Construction Certificate.

Delete the following conditions

14. Amended plans required – privacy screening

The upper floor deck has the potential to reduce the level of privacy enjoyed by the occupants of the adjoining dwelling to the north and south.

The plans submitted for approval of the Construction Certificate must be amended to extend privacy screens on the northern and southern elevations of the deck in

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accordance with stamp approved plan S5 dated 03/05/23.

The screen may be constructed from lattice, vertical slats or other similar non-transparent screenings. Where slats are used, they are to be angled to ensure the line of sight is directed away from the adjoining dwelling. The screen must have a minimum height of 1.8m above the floor level of the deck.

Plans demonstrating the above are to be approved as part of the Construction Certificate.

15. Amended plans required – fencing

Amended plans are required to include a 1.8m high fence along the northern and eastern boundaries to provide privacy to adjoining lands in accordance with stamp approved plan S1 dated 03/05/23. Any part of the fence located forward of the 4.5m setback to the front boundary must be no higher than 1.2m.

The fence must be constructed of non-combustible materials in accordance with Planning for Bush Fire Protection 2019.

Such plans must be approved as part of the Construction Certificate.

48. Rear deck to be demolished

The rear deck, as shown on stamp approved plan S4 dated 03/05/23, must be demolished. The deck is not approved and has been constructed over Council's sewer pipeline.

50. Boundary fencing to be constructed

A 1.8m high fence along the northern and eastern boundaries to provide privacy to adjoining lands must be constructed in accordance with stamp approved plan S1 dated 03/05/23 and the Construction Certificate. Any part of the fence located forward of the 4.5m setback to the front boundary must be no higher than 1.2m.

The fence must be constructed of non-combustible materials in accordance with Planning for Bush Fire Protection 2019. (Coorey/Hunter)

PROCEDURAL MOTION

23-380 Resolved that Cr Coorey be granted a one minute extension to her speech. (Lyon)

The motion was put to the vote and carried unanimously.

The motion (Coorey/Hunter) was put to the vote and carried unanimously.

Crs Coorey, Hunter, Lyon, Ndiaye, Dey, Swivel, Westheimer and Balson voted in favour of the motion.

Nil voted against the motion.

NOTICES OF MOTION

Notice of Motion No. 9.2 Annual expenditure on consultants & Conflicts of Interest
File No: I2023/1317

23-381 Resolved that Council:

1. Discusses at the next available Councillor Workshop reporting that could be received on the following:
 - a) The amounts Council spends in the second & third quarters of the 2023-24 financial year (for the May report) and in the fourth & first quarters of 2023-24 and 2024-25 respectively (for the November report) on consultants, including but not limited to
 - i) contractors retained in-house;
 - ii) technical, legal and financial advice received;
 - iii) assistance in court or on threats of legal action;
 - iv) planning assessment;
 - v) etc.
 - b) Opportunities to retain such capabilities in-house.
 - c) The advantages & disadvantages of external advice over internal.
 - d) What measures could Council take to improve its management of consultants' potential Conflicts of Interest and related matters.
 - e) Consideration of whether Council could publish the brief that was given to any consultant as part of a Council report that includes the consultant's report.

(Dey/Coorey)

PROCEDURAL MOTION

23-382 Resolved that Cr Dey be granted a one minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

The motion (Dey/Coorey) was put to the vote and carried.

Crs Coorey, Ndiaye, Dey, Westheimer and Balson voted in favour of the motion.

Crs Hunter, Lyon and Swivel voted against the motion.

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Notice of Motion No. 9.5 Non- Lethal Dingo Management Motion LGNSW Annual Conference 2023

File No: I2023/1325

23-383 Resolved that the LGNSW:

1. Recognise that dingoes are native animals with an important ecological role and are worthy of protection and care.
2. Acknowledge the long connection between dingoes and Aboriginal Australians and endeavour to respect this connection in relevant actions of the LGNSW.
3. Recognise that the term 'wild dogs' is frequently and incorrectly used to describe dingoes and dingo-hybrids.
4. Commits to:
 - a) working towards new and updated investigations, community education, research, implementation of non-lethal dingo management; and
 - b) advocating for a statewide ban on the use of 1080 as an inhumane and indiscriminate poison.
5. Explores the recognition and protection of dingoes as a native species in the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

(Balson/Coorey)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.11 Bangalow Sports Fields Plan of Management and Landscape Masterplan

File No: I2023/830

23-384 Resolved that Council:

1. Adopts the Bangalow Sportsfields Plan of Management (Attachment 5) and associated concept Landscape Masterplan (Attachment 6).
2. Also, during the detailed design processes:
 - a) engages with stakeholders, including sports users, to investigate the potential of moving the playground to enable a larger footprint for the Change Rooms; and
 - b) consults with neighbouring residents that may be impacted by the expansion of the Change Rooms. (Dey/Lyon)

Cr Westheimer left the Chambers at 2:51pm

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

Cr Westheimer was not present for the vote.

Cr Westheimer returned to the Chambers at 2:53pm.

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Report No. 13.12 **Mullumbimby Heritage Park Landscape Masterplan**
File No: I2023/1083

23-385 Resolved:

1. That Council adopts the Heritage Park Landscape Masterplan (Attachment 1, E2023/78596).
2. That in implementing the Masterplan staff make their best endeavours to ensure the formalisation of parking is kept to a minimum and that effective barriers are installed that inhibit vehicle access to the park (eg bollards or plantings).
3. That Council recognises Heritage Park as a sanctuary and showcase for the flora of the Brunswick, Richmond and Tweed Valleys.
4. That Council requests a safety and solutions report regarding the safety of pedestrians and cyclists at the Brunswick Terrace and Tincogan Street intersection.
(Swivel/Ndiaye)

The motion was put to the vote and carried unanimously.

Cr Swivel left the Chambers at 3:14pm.

Cr Ndiaye left the Chambers at 3:14pm.

Notice of Motion No. 9.1 Murwillumbah Rd Mullumbimby
File No: I2023/1185

23-386 Resolved that Council:

1. Accepts the need to and if necessary, determine or applies to the relevant authority for the existing, above mentioned, road to become a gazetted road.
2. Accepts responsibility for any future upgrade and ongoing maintenance required to provide suitable, standard vehicular access to the adjoining properties.
3. Investigates an extension of the driveway as a footpath to Laurel Avenue,
Mullumbimby. (Hunter/Lyon)

The motion was put to the vote and carried.

Crs Coorey, Hunter, Lyon, Westheimer and Balson voted in favour of the motion.

Cr Dey voted against the motion.

Crs Swivel and Ndiaye were absent for the vote.

Cr Ndiaye returned to the Chambers at 3:41pm.

Cr Swivel returned to the Chambers at 3:41pm.

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Council Resolutions Quarterly Review - Q4 - 1 April to 30 June 2023

File No: I2023/1127

23-387 Resolved that Council:

1. Notes the information provided in this report on active Council Resolutions in Attachment 1 (#E2023/67986).
2. Notes the completed Resolutions in Attachment 2 (#E2023/67999).
3. Does not record Resolutions 23-196 and 23-271 as complete, and returns those resolutions to 'Active Resolutions'.
4. That a report be presented to the December 2023 meeting outlining a program to carry out Resolution 21-240. (Westheimer/Dey)

PROCEDURAL MOTION

23-388 Resolved that Cr Westheimer be granted a one minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Balson left the Chambers at 3:59 pm and did not return.

The motion (Westheimer/Dey) was put to the vote and carried.

Report No. 13.2 Revised Delivery Program 2022-26

File No: I2023/1141

23-389 Resolved that:

1. Council endorses the revised Delivery Program 2022-26 (Attachment 1 #E2023/40277) noting the inclusion of indicators from the Outcomes Measurement Framework (Attachment 2 #E2022/126119) and the list of services as part of the service review process.
2. In relation to DP Section 3.1 - Partner to nurture and enhance biodiversity, ecosystems, and ecology - Bush regeneration (Council land), Council:
 - a) At the Sept QBR makes an adjustment to Utilities Sewer System budget to allow additional allocation of \$28,000 to allow the current Bush Regeneration Program to be extended to cover the Utilities operational lands.
 - b) Requests a future report from Open Space & Facilities on the options to address the Slash Pines plantation and within the Cavanbah Centre Community land. (Westheimer/Lyon)

The motion was put to the vote and carried unanimously.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 **Appointment of Replacement Community Member to the Climate Change and Resource Recovery Advisory Committee**
File No: I2023/1118

23-390 **Resolved** that Council appoints Elizabeth Gray to the Climate Change & Resource Recovery Advisory Committee. (Dey/Lyon)

Cr Westheimer left the Chambers at 4:20pm.

The motion was put to the vote and carried.

Cr Westheimer was absent for the vote.

Cr Westheimer returned to the Chambers at 4:24pm.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.13 **Update on the Additional Flow Path project - Response to Council Resolutions 23-108 and 23-277**
File No: I2023/1160

23-391 **Resolved** that Council:

1. Notes the responses in this Report to its Resolutions 23-108 and 23-277 about the Additional Flow Path for STP effluent.
2. Acknowledges that the gradient of the Flow Path is extremely flat, at about 0.1% or 1-in-1000, as described in BMT's draft report "AFP Discharge Drain Modelling" (Attachment 4; E2020/35472).
3. Puts an item on the next Water and Sewer Advisory Committee meeting Agenda to consider finalisation of the BMT report "AFP Discharge Drain Modelling" (E2020/35472) to consider:
 - a) extending the study area to at least the Belongil Estuary (ie flat surface in dry weather); and
 - b) including the changes in hydrology that will occur when West Byron reaches full development. (Dey/Lyon)

Cr Swivel left the Chambers at 4:35pm.

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

Crs Swivel was absent for the vote.

Cr Swivel returned to the Chambers at 4:39pm.

The meeting adjourned at 4.40pm for a break and reconvened at 4.51pm.

Report No. 13.10 **Levels of Service to Heritage Park Arboretum**
File No: I2023/768

23-392 **Resolved** that Council notes current Levels of Service to the Heritage Park Arboretum. (Westheimer/Lyon)

The motion was put to the vote and carried unanimously.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.1 **Report of the Climate Change and Resource Recovery
Advisory Committee Meeting held on 29 June 2023**
File No: I2023/1042

23-393 **Resolved** that Council:

1. Notes the Minutes of the Climate Change and Resource Recovery Advisory Committee Meeting held on 29 June 2023;
 2. Adopts the Committee's advice on Report 4.2 "Regional Waste Strategy and Waste to Energy" of that June meeting, namely the following Parts 3 to 6;
 3. Opposes any incineration or waste treatment that results in worse environmental outcomes than current operations;
 4. Supports the approach in the "NSW Energy from Waste Policy Statement 2022", that incineration facilities for the destruction of waste not be permitted;
 5. Supports maintaining an open, investigative approach to long term waste management including alternative waste treatment, ensuring options are assessed transparently (to ensure the best outcome for the environment and our communities);
 6. Continues to update the Committee (as part of the Resource Recovery Update to each Committee meeting) on regional waste management initiatives and any progress or changes in "energy from waste" status locally or at state level; and
 7. Notes that Council has improved the energy efficiency of our wastewater network and thereby produced verifiable annual savings of over 1GWh or \$250,000 per year and that these projects included:
 - i) the installation of solar PV farms at three Sewage Treatment Plants (STPs) with a combined capacity of 303kW
 - ii) upgrading to energy efficient blowers at Byron STP,
 - iii) energy efficiency upgrades to the sewer pump station (SPS) network, and
 - iv) the creation of the position of Sustainability Officer Utilities (SOU).
- (Dey/Swivel)

The motion was put to the vote and carried unanimously.

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CONFIDENTIAL REPORTS - GENERAL MANAGER

Report No. 16.1 **CONFIDENTIAL - Lease to Catholic Healthcare Limited over proposed Lot 50 in unregistered plan of subdivision (presently part Folio 188/728535) request for further holding over.**

File No: I2023/1111

23-394 Resolved:

1. That pursuant to Section 10A(2)(d)(i) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Lease to Catholic Healthcare Limited over proposed Lot 50 in unregistered plan of subdivision (presently part Folio 188/728535) request for further holding over.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
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 all discussions have proceeded on a commercial in confidence basis. Commercial in confidence must be maintained. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

No. 16.1 **CONFIDENTIAL - Lease to Catholic Healthcare Limited over proposed Lot 50 in unregistered plan of subdivision (presently part Folio 188/728535) request for further**

File No: I2023/1111

23-395 Resolved that Council:

1. Confirms its commitment to the continued provision of residential aged care on and from proposed Lot 50 in unregistered plan of subdivision (presently part Folio 188/728535) (the site).
2. Delegates to the General Manager the authority to offer Catholic Healthcare Limited (A.C.N 064 946 318) an additional twelve-months holding over on its two leases to occupy the site at annual rent payable at the value of rent calculated, in accordance with the leases, on 15 November 2023. Both leases to end 14 November 2024.
3. Provides in-principle approval to Catholic Healthcare Limited to nominate to Council a potential new residential aged care provider to take over responsibility for the provision of residential aged care on the site under terms to be negotiated between Council and the new provider.
4. Expresses the community's appreciation of Catholic Healthcare Limited for
(i) continuing to support the residents of Coolamon Villa and
(ii) helping seek a replacement service provider.
5. Informs the public of the above outcomes and of the challenges of the financial

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viability of residential aged care in Australia and in the Shire.

6. Investigates options by which Council can assist transition to a new service provider. (Dey/Ndiaye)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

- 23-396 Resolved** that the meeting move out of confidential session. (Lyon)

The motion was put to the vote and carried unanimously.

NOTICES OF MOTION

Notice of Motion No. 9.3 Notice to LGNSW Annual Conference regarding Ethical Investments

File No: I2023/1323

- 23-397 Resolved** that the NSW Local Government Conference:

1. Recognises the importance of Council autonomy in making investment decisions with ratepayer funds.
2. Requests that the NSW Government directly create more ethical and fossil fuel free investment options for Councils. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.4 Changing policy to remove fossil fuel sponsorship

File No: I2023/1324

- 23-398 Resolved:**

1. The NSW Local Government Conference:
 - a) Recognises that fossil fuels are the main driver of climate change and that we are in a climate emergency.
 - b) Recognises that the marketing of high emissions products, such as petroleum and gas through sponsorships or advertising increases demand and delays behaviour changes in the community that are required to reduce emissions.
 - c) Notes that the Federal Government has a responsibility to implement restrictions on fossil fuel advertising through national laws, as was done with tobacco advertising, which saw a proven reduction in tobacco consumption per capita, therefore reducing the health burden of tobacco use.
2. That Local Government NSW
 - a) writes to the Federal Minister for Communications, The Hon Michelle Rowland MP, to ask the Federal Government to pass national laws that restrict fossil fuel advertising; and

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- b) Updates relevant policies to prohibit accepting sponsorships from companies whose business is the extraction, production or sale of coal, petroleum and gas.
 - i) Reviews other policies as appropriate to remove support for companies whose business is the extraction, production or sale of coal, petroleum and gas.
 - ii) Lobbies the NSW Government to support NSW councils to also adopt the banning of fossil fuel sponsorships and advertising. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

MAYORAL MINUTE

Mayoral Minute No. 10.1 Compliance at 160 Koonyum Range Road, Wilsons Creek

23-399 Resolved that Council:

1. Notes the Mayoral Minute on compliance at 160 Koonyum Range Road, Wilsons Creek.
2. Invites the property owner to attend an independent mediation within 14 days with Council staff.
3. Failing a successful outcome, pursues and completes enforcement action against the property owner in response to the illegal development and earthworks at 160 Koonyum Range Road, Wilsons Creek in accordance with Council's Enforcement Policy and Council's 2023 Environment and Safety Priorities Program.
4. Notes that 3 does not prevent the landowner seeking approval for the additional dwelling on a permitted part of the property.
5. Shares with the public an appropriate precis of this matter in the form of a media release.
6. Contacts the occupant, or their advocate, to explain the process above. (Lyon)

PROCEDURAL MOTIONS

23-400 Resolved that the Meeting be extended until 6:30pm. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Ndiaye left the Chambers at 5:42pm

23-401 Resolved that Cr Swivel be granted a two minute extension to his speech. (Lyon)

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

Cr Ndiaye returned to the Chambers at 5:57pm.

The motion (Lyon) was put to the vote and carried unanimously.

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PETITIONS

There were not petitions tabled.

DELEGATES' REPORTS

There were no Delegates' Reports presented.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 **PLANNING - DA 10.2022.289.1 - Relocation and Raising of Existing Dwelling and Construction of New Dwelling to create Dual Occupancy (Detached) at 97 Main Arm Road Mullumbimby**
File No: I2023/21

- 23-402** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.289.1 for Relocation and Raising of Existing Dwelling and Construction of New Dwelling to create Dual Occupancy (Detached), be granted consent subject to the conditions of approval at the end of this report.
(Dey/Lyon)

Cr Westheimer left the Chambers at 6:09pm and did not return

*The motion (Dey/Lyon) was put to the vote and carried unanimously.
Crs Coorey, Hunter, Lyon, Ndiaye, Dey and Swivel voted in favour of the motion.
Nil voted against the motion.*

Report No. 13.4 **26.2022.5.1 Submissions report - Byron DCP 2014 - Planning controls for rural tourist and visitor accommodation**
File No: I2023/1108

- 23-403** **Resolved** that Council adopts the following amendments to Byron DCP 2014 Part A and Chapter D3: Tourist Accommodation:
- a) Part A - amend Rural Tourist Accommodation definition to reflect proposed changes shown on page 36 of Attachment 2 (#E2023/50568)
 - b) Chapter D3 (Attachment 3 – #E2022/34439) – reinstate updated Table D3.1 'Density of Rural Tourist Accommodation', as exhibited within the Prescriptive Measures of D3.3.4
 - c) Chapter D3 (Attachment 3 – #E2022/34439) – add an additional Table D3.2 to regulate farm stay accommodation densities, as exhibited within the Prescriptive Measures of D3.3.4 (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

Report No. 13.8 **Update Resolution 22-459 Wallum Place Affordable Housing Investigation**

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File No: I2023/1240

23-404 Resolved that Council:

1. Notes the update of Resolution 22-459 Wallum Place Affordable Housing Investigation and the documented opportunities and constraints relative to development of this site.
2. In response to 1, investigates the potential viability of establishing a Biodiversity Stewardship Agreement over the bulk of the site, except for the operational area around the existing nursery in the western corner of the property.
3. Pending completion of the investigations in '2', support rezoning the bulk of the site to C2 Environmental Conservation Zone, except for the operational area around the existing nursery in the western corner of the property. (Ndiaye/Lyon)

The motion was put to the vote and carried unanimously.

QUESTIONS WITH NOTICE

Question With Notice No. 13.1 Mullumbimby Gravity Sewer Condition

File No: I2023/1250

Cr Hunter asks the following question:

I note in the Willow Sparrow Report (2019) of the Mullumbimby Gravity Sewer Condition within the catchment 4001, that of the 109 mains that were assessed, 22 were recommended for immediate replacement in addition to another 22 recommended for immediate minor rectification works and the remaining 87 mains were recommended for re-assessment prior July 2020.

Could staff please provide:

1. *Further information on how many of the 22 mains recommended for replacement have been completed and how many of the 22 recommended for immediate minor rectification have been attended to and rectified.*
2. *An explanation of the risk that, in times of heavy rain events storm water or untreated sewerage could enter the decaying system and ultimately into the Brunswick River?*

Response Director Infrastructure Services

- 1) The sewer mains required to have structural relining are detailed within the Willow and Sparrow conditions report (attachment 1).

A total of 44 sewer lines required remedial works of which 27 had structural relining. While 17 had minor rectification works carried out.

- 2) The rectification works took a risk and condition assessment approach to minimise

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untreated sewage entering the Brunswick River. This is the purpose of the program.

It would be highly unlikely that this would occur where rectification works have been carried out. Attachment 2 is the scope maps showing the sewer main locations.

In summary, the sewer mains in question have been relined.

URGENCY MOTIONS

PROCEDURAL MOTION

Moved that the submission as to the Wallum Estate at Bayside, Brunswick Heads be dealt with at the meeting as various Reports have been lodged with Council, with the assessment to be completed shortly, resulting in any approval issuing Subdivision Works Certificate, enabling tree removal and earthworks to start on the next Stages of residential development at Bayside, Brunswick Heads. (Dey/Ndiaye)

The Mayor did not declare the item urgent.

There being no further business the meeting concluded at 6:30pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 12 October 2023.



.....
Mayor Michael Lyon