

Minutes Ordinary Meeting

Thursday, 15 December 2022



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes
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INDEX OF ITEMS DISCUSSED

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 15 DECEMBER 2022 COMMENCING AT 9.15AM AND CONCLUDING AT 5.41PM

I2022/1811

PRESENT: Cr M Lyon (Mayor), Cr S Balson [virtual] (left at 1.30pm), Cr D Dey, Cr A Hunter [virtual], Cr S Ndiaye [virtual], Cr A Pugh, Cr M Swivel and Cr P Westheimer

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Chris Larkin (Manager Sustainable Development)
Sarah Nagel (Manager Public and Environmental Services) – Report 13.15
Malcom Robertson (Manager Open Spaces and Facilities) – Report 16.4
Judd Cornwall (Traffic and Transport Engineer) – Report 13.23
James Flockton (Infrastructure Planning Coordinator) – Report 13.23
Amber Evans Crane / 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	For/Against	Name	Representing	Via
9.1 Busking Policy Amendment	Against	Jason Earlam	Self	In person
10.1 Request to change traffic flow in Bayshore Lane Byron Bay from two way to one way	For	Susan Douglas	Self	In person
13.3 Draft Community Engagement Strategy	For	Ian Holmes	Bangalow Progress Association (Community Group)	In person

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Report No and Title		For/ Against	Name	Representing	Via
		Against	Dale Emersom	Community Association of Byron Shire (Community Group)	In person
			Len Bates	Mullumbimby Residents Association (Community Group)	In person
13.4	Request for financial assistance from the Bangalow Historical Society Incorporated	For	Ian Homes	Bangalow Progress Association (Community Group)	In person

PROCEDURAL MOTION

22-690 Resolved that Public Access be extended until 11.30am. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Westheimer left the Chambers at 9.44am.

Report No and Title		For/ Against	Name	Representing	Via
13.9	Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021 Short-term Rental Accommodation in Byron Shire - Submissions Report	For	Vaughan Connor	Self	Zoom
			Liz Friend	Byron Deserves Balance (Community Group)	In person
			Leone Bolt	Brunswick Heads Progress Association (Community Group)	In person
			Kim Goodrick	Regulate Byron Shire STHL Facebook Page (Organisation)	In person
			David Wallace	VOHL (Community Group)	In person
			Kristen Monty	Self	Read by staff
			Bill Bailey	Self	Read by staff

Cr Westheimer returned to the Chambers at 10.28am.

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Report No and Title		For/ Against	Name	Representing	Via
13.11	Unsolicited proposal to use and occupy Council land for a movable tiny house cluster and Permaculture Garden	Against	Genevieve Lee	ONE ROOF BYRON INC (Organisation)	Read by staff
13.12	PLANNING - Supplementary Report DA 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, FEDERAL 2480	For	Gavin Elterman	DavGav (Business)	In person
		Against	Dr Goetz Bickert	Federal Community Centre Steering Group (Community Group)	In person
			Francesca Hart	Federal Community Centre Steering Group (Community Group)	In person
13.10	After the Floods Discussion Paper - Submission Report	For	Sharmin Musca	Self	Zoom

Cr Ndiaye left the meeting at 11.03am.

Report No and Title		For/ Against	Name	Representing	Via
13.13	Change of use of storage area in the basement of level 1 to restaurant at 139 Jonson Street Byron Bay	For	Jason Dunn	JD Property Group (Business)	In person
13.15	Dogs in Public Spaces Strategy Submission Report	Against	Angela Dunlop	Joint Submission from Residents advocating for the Safety and Protection of Community and Wildlife (Community Group)	In person
13.16	Former Mullumbimby Hospital – Land Use and Development Planning Update	For	Jeanette Martin	Mullum Arts Hub group (Community group)	In person
		Against	Mary Fox	Self	In person
16.2	Changing policy to remove fossil fuel sponsorship	For	Belinda Noble	Comms Declare (Organisation)	Zoom

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Submissions

Subject	Name	Representing	Via
Tallowood walk around 30 November	Anando Heffley	Tallowood Village community Group (Community Group)	In person
DA No 10.2022.137.1 in relation to the development on Clifford St Suffolk Park	Tony Christy	Suffolk Park Progress Association	In Person

Having already extended the time for Public Access once, the Mayor took all questions on notice.

Question No. 1 – Dog Fines

Jan Barham submitted the following question:

In the last five years how many dog related fines issued by council officers have been successfully challenged in court and what was the cost to council?

Question No. 2 – DA 10.2021.306.1 'Fed Sheds'

Peter Garrard submitted the following question:

Given the lack of unambiguous professional support for the proposed 'conceptual' onsite sewage management system, with the best qualified peer reviews highlighting the risks, has Council considered requiring the developer to deposit a substantial performance bond for, say, five years to cover clean-up costs and possible liability claims by neighbours and businesses using the facility, in the event that the system fails?

Question No. 3 – Fed Sheds Development Item 13.12 on the Agenda

Toni Appleton submitted the following question:

How did such a mess of documentation find its way through assessment and recommendation for approval? Particularly the cost of works pro forma that was based on incorrect gross floor areas and serious underestimates for the provision of services on this unserviced site as well as for professional services such as a complete quantity survey of the proposal that would have been required. This is a serious matter that results in significant loss of revenue for council and demonstrates the lack of considered risks and implications in relation to the developer's investment and intentions.

Question No. 4 – No. 13.12 Supplementary Report DA 10.2021.114.1

Alan Goldstein submitted the following question:

This question relates to Point 3 of Council's resolution from 11 August Planning Meeting, report from report 13.11 - PLANNING -10.2021.114.1 - 'Fed Sheds' Light 10 Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal. "3. That

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Infrastructure Services staff assess the drainage system in Coachwood Court in the next 4 weeks."

Do Councillors know that Federal is amongst the highest rainfall areas in NSW and that Climate Change is predicted (and this is accepted in Council's own planning for adaptation to such) to only worsen this situation? Council's and State modelling sees a prediction of more frequent longer duration rain events.

The DA proposes the transfer of storm runoff off the property at rates and volumes in excess of current rates and volumes, which already cause flooding downstream on Coachwood Court and on properties on Coachwood Court, before these impacts of Climate Change and the interference of this much hard surface within the proposed development.

Staff have relooked at their review of the stormwater management within the development but why has the Stormwater assessment looked only at a short-duration storm, but have not assessed the impact of the development for the longer duration events when the volume of runoff will be much larger. The change in the proposed development since Councillors last saw it does not really change much in regards to our experts comments/concerns of the modelling and development from a flooding perspective.

The fact remains that staff limited their assessment to an assessment of peak flow for a short-duration storm, and have not assessed the impact of the development for the longer duration events when the volume of runoff will be much larger.

The question to Councillors is "are you happy to ignore these deficiencies in the assessment?"

The meeting adjourned at 11.39am for a short break and reconvened at 12.03pm.

APOLOGIES

Cr Coorey was an apology in accordance with her previously granted leave of absence, resolution number **22-476**.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

Cr Balson was previously granted permission to attend by audio-visual link.

PROCEDURAL MOTIONS

- 22-691 Resolved** that Cr Ndiaye be permitted to attend the meeting held on 15 December 2022 by audio-visual link due to caring responsibilities. (Lyon)

The motion was put to the vote and carried unanimously.

- 22-692 Resolved** that Cr Hunter be permitted to attend the meeting held on 15 December 2022 by audio-visual link due to illness. (Lyon)

The motion was put to the vote and carried unanimously.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Westheimer declared a pecuniary interest in Report 13.9. The nature of the interest being that his principal place of residence is a hosted STRA 40-50 days a year. Cr Westheimer elected to leave in the Chamber and will not participate in discussion and the vote.

Cr Balson declared a pecuniary interest in the proposed urgency motion. The nature of the interest being that she is on the board of the Women’s Village Collective Ltd. Cr Balson elected to leave the Chamber and will not participate in discussion and the vote.

Cr Dey declared a **special disclosure** of pecuniary interest under Clause 4.25 of the Code of Conduct for Councillors in Report 13.9. The nature of the interest being that he owns land within the subject land of the planning proposal.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.9 of the Code of Conduct for Staff, the Mayor tabled a Pecuniary Disclosure of Interests Return for Joshua Walton, Project Engineer.

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ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

22-693 Resolved that the minutes of the Ordinary meeting held on 24 November 2022 be confirmed. (Swivel/Westheimer)

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

General Manager

Report No. 13.3 Draft Community Engagement Strategy

Corporate and Community Services

Report No. 13.5 Council Advisory Committee Meeting schedule 2023

Sustainable Environment and Economy

- Report No. 13.9 Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021
Short-term Rental Accommodation in Byron Shire - Submissions Report
- Report No. 13.10 After the Floods Discussion Paper - Submissions Report
- Report No. 13.12 PLANNING - Supplementary Report DA 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, FEDERAL 2480
- Report No. 13.15 Dogs in Public Spaces Strategy Submission Report
- Report No. 13.16 Former Mullumbimby Hospital - Land Use and Development Planning Update
- Report No. 13.18 Annual Emissions Inventory and update on Net Zero Emissions goal

Infrastructure Services

Report No. 13.23 Preferred Alignment Mullum to Bruns Cycleway

REPORTS OF COMMITTEES

Infrastructure Services

Report No. 14.7 Report of the Moving Byron Advisory Committee Meeting held on 2 December 2022

DEFERRED ITEMS

- Report No. 16.1 PLANNING - DA 10.2021.685.1 - New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property – 2 Keats Street, Byron Bay
- Report No. 16.2 Changing policy to remove fossil fuel sponsorship
- Report No. 16.3 Roadworks on Ewingsdale Road
- Report No. 16.4 Update on Resolution 22-361

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URGENCY MOTIONS

Matter of Urgency No. 1 Managing the L&E Court case appealing Council's refusal of Development Application 10.2022.137.1

Matter of Urgency No. 2 Fill on bank of Marshalls Creek

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Swivel. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 22-694 and concluding with Resolution No. 22-725.

PETITIONS

Petition No. 10.1 **Request to change traffic flow from two way to one way in Bayshore Lane Byron Bay**

File No: I2022/1789

22-694 **Resolved** that the petition in Attachment 1 (E2022/119099) regarding Request to change traffic flow from two way to one way in Bayshore Lane Byron Bay be noted. (Lyon/Swivel)

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Lease for Massinger Street Children's Treehouse Artwork**

File No: I2022/1535

22-695 **Resolved:**

1. That Council considers all submissions received in attachment 1 (E2022/112642) from the Public Notice on the proposed lease to Ms Coppin over an unused portion of road reserve adjoining 77 Massinger Street, Byron Bay; and
 2. That Council delegates the General Manager authority to enter into a lease with Ms Coppin over an unused section of Massinger Street adjoining the property at 77 Massinger Street, Byron Bay in accordance with Resolution (22-546). (Lyon/Swivel)
-

Report No. 13.2 **Request to change market day**

File No: I2022/1560

22-696 **Resolved** that Council, having considered any submissions received following public notice of the proposal, authorises a variation to the Railway Park Artisan Market Licence held by the Byron Bay Community Association Incorporation to move the scheduled Railway Park Artisan Market Day from 24 December 2022 to 23 December 2022.
(Lyon/Swivel)

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STAFF REPORTS – SUSTAINABLE ENVIRONMENT & ECONOMY

Report No. 13.11 Unsolicited Proposal to use and occupy Council owned land for a movable tiny house cluster and permaculture garden

File No: I2022/1633

22-701 Resolved that Council:

1. Declines to progress with the One Roof Proposal for the reasons outlined in this report but acknowledges the positive intent of the proposal and encourages the organisation to continue to develop their service delivery model to consider and incorporate best practice approaches.
 2. Notes staff will undertake an audit of Council owned or managed properties which may meet the stated requirements for crisis and transitional supported accommodation, to be able to give due consideration to future opportunities or proposals in a holistic manner.
 3. Notes the proposed amendments to the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) will, when in effect, streamline consideration of Temporary Supported Accommodation on Council operational land/buildings to provide for housing for people experiencing, or at risk of homelessness, managed by an appropriate provider.
 4. Notes subject to 2 and 3 above, if suitable properties are identified, it may be possible to undertake an Expression of Interest to identify and assess (based on robust criteria) appropriate uses by suitable organisations of these properties, which could include One Roof. (Lyon/Swivel)
-

Report No. 13.13 PLANNING - 10.2022.165.1 Change of Use of Storage Area in The Basement of Level 1 to Restaurant at 139 Jonson Street BYRON BAY

File No: I2022/1688

22-702 Resolved that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.165.1 for Change of Use of Storage Area in Basement of Level 1 to Restaurant, be approved subject to the conditions of consent in Attachment 2 (#E2022/118594). (Lyon/Swivel)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 13.14 **Proposed Wildlife Protection Area - 'Old New Brighton Road, Ocean Shores'**

File No: I2022/1539

22-703 **Resolved** that Council:

1. Endorses the public exhibition of a proposed Wildlife Protection Area on the area known as 'Old New Brighton Road, Ocean Shores' for a minimum 6 weeks to allow for community feedback and submissions.
 2. Receives a submissions report following the public exhibition referred to in point 1.
(Lyon/Swivel)
-

Report No. 13.17 **Update Resolution 22-595 - State Imposed land use planning changes for Agritourism and Implications for Council**

File No: I2022/1672

22-704 **Resolved** that Council:

1. Urgently informs the NSW Government that Council insists that the new 'Agritourism', 'Farm experience premises' and 'Farm gate premises' land use terms be prohibited across all zones in the Byron LEP 2014, including in the RU1, RU2 and C3 zones.
2. Reminds the DPE of its many assurances via the Explanation of Intended Effect, statements on the Planning Portal and various emails that councils could "*identify zones in which they wish to allow the new farm events and farm gate land uses*", and "*councils could decide to amend their LEPs to prohibit these new uses in all zones.*"
3. Strongly objects to the ambiguity and quasi mandating of 'Agritourism' and its sub terms as permissible with consent in the Byron LEP 2014 from 1 December 2022 and February 2023.
4. Strongly objects to the significant weakening of the development standards in the exempt and complying provisions that were exhibited in 2021 and have been amended and notified without any meaningful consultation with Council.
5. Notes Council's strong disappointment with the lack of meaningful or transparent consultation with local constituents and communities, and the disregard for the LGNSW President Darriea Turley's letter outlining serious concerns (dated Oct 13, 2022).
6. Should the NSW Government persist with effectively mandating 'Agritourism' in certain zones in Byron Shire:
 - a. Opt-in to the 'Farm gate premises' optional clause (only) for Byron LEP 2014;
 - b. Commence a review of the existing Byron LEP and DCP controls relevant to 'Agritourism' and 'Farm stay accommodation' and report back to Council on any consequential changes to these, in due course.
 - c. Strongly request a deferral from the commencement of the Agritourism Reforms until February 2024, to enable the preparation, exhibition and

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finalisation of local planning controls (as required), that will establish additional Byron Shire specific development standards for the range of agritourism land uses.

7. Requests that the NSW Government commit to:
 - a. Arranging public information sessions, as a matter of urgency, to explain the reforms to the public and interested communities; and
 - b. Depending on what eventuates, undertaking a 12-month review of the reforms to enable them to be refine, improve or adjust if needed or appropriate.
 8. Sends a copy of this resolution to relevant local members of the NSW Parliament and relevant Ministers and Shadow Ministers. (Lyon/Swivel)
-

Report No. 13.19 **Update Resolution 22-552 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)**

File No: I2022/1740

22-705 Resolved that Council:

1. Notes the update provided on Resolution 22-552 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre);
2. Supports an amendment to the Planning Proposal (Attachment 1 #E2022/93749) such that the proposed events clause will now seek to permit a defined LEP land use (like function centre) as development without consent;
3. Authorises staff to make the amendment in point 2;
4. Supports the submission of the amended Planning Proposal to the Department of Planning Industry and Environment for gateway determination;
5. Pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
6. Considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption. (Lyon/Swivel)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 13.20 **PLANNING - Report of the Planning Review Committee held 1 December 2022**

File No: I2022/1793

22-706 **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held on 1 December 2022. (Lyon/Swivel)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.21 **Request For Tender Outcome - Rifle Range Road Intersection Upgrade**

File No: I2022/1102

22-707 **Resolved:**

1. That Council awards Tender 2022-1314– Lismore Road and Rifle Range Road Intersection Upgrade to Durack Civil as identified in the tender evaluation report (Attachment 1 #E2022/118145).
 2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021. (Lyon/Swivel)
-

Report No. 13.22 **Planning agreement between Billinudgel Pty Ltd and Byron Shire Council**

File No: I2022/1727

22-708 **Resolved** that Council agrees to enter into the Planning Agreement provided as Attachment 1 (E2022/117451) to this report. (Lyon/Swivel)

Report No. 13.24 **Renaming of a Park in Bangalow**

File No: I2022/1790

22-709 **Resolved:**

1. Council approves the proposed name Piccabeen Park to be placed on public exhibition for 28 days in first quarter of 2023.
2. A further report be provided to Council advising on outcomes of the public exhibition. (Lyon/Swivel)

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REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 **Report of the Finance Advisory Committee Meeting held on 17 November 2022**

File No: I2022/1714

22-710 **Resolved** that Council notes the Minutes of the Finance Advisory Committee Meeting held on 17 November 2022. (Lyon/Swivel)

22-711 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 4.1 Budget Review - 1 July 2022 to 30 September 2022

File No: I2022/1648

Committee Recommendation 4.1.1

1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2022/109971) which include the following results in the 30 September 2022 Quarterly Review of the 2022/2023 Budget:
 - a) General Fund – \$0 movement to the Estimated Unrestricted Cash Result
 - b) General Fund - \$3,005,900 decrease in reserves
 - c) Water Fund - \$1,536,100 decrease in reserves
 - d) Sewerage Fund - \$278,600 decrease in reserves
2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of (\$207,000) for the 2022/2023 financial year as at 30 September 2022.
3. That a memo be brought to a Councillor Workshop identifying options to refocus the intent of Resolution No. 22-586 part 5 to reallocate operational funding with a view to continuing a drainage maintenance focus for the second half of the financial year. (Lyon/Swivel)

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Report No. 14.2 **Report of the Audit, Risk and Improvement Committee Meeting held on 17 November 2022**

File No: I2022/1730

22-712 **Resolved** that Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 November 2022. (Lyon/Swivel)

22-713 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 4.1 Internal Audit Plan 2023-2024

File No: I2022/1115

Committee Recommendation 4.1.1

1. That Council endorses the revised Internal Audit Plan 2023-2024 (E2022/104827).
2. That Council notes that the Audit, Risk and Improvement Committee will receive a detailed version of the Internal Audit Plan 2023-2024 at the first meeting in 2023 to allow for any refinement of the Plan. (Lyon/Swivel)

22-714 **Resolved** that Council adopts the following Committee Recommendation:

Report No. 4.2 2023 Agenda Schedule

File No: I2022/1440

Committee Recommendation 4.2.1

That Council endorses the Agenda Schedule for 2023 (Attachment 2 E2022/98398). (Lyon/Swivel)

22-715 **Resolved** that Council adopts the following Committee Recommendation:

Report No. 4.4 Business Continuity Plan Review 2022

File No: I2022/1476

Committee Recommendation 4.4.1

That Council endorses the revised Business Continuity Plan Part 1 – Manual (E2022/100219). (Lyon/Swivel)

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22-716 Resolved that Council adopts the following Committee Recommendations:

Report No. 5.1 Internal Audit Report Quarter 1 2022-23 including Open Space Review

File No: I2022/863

Committee Recommendation 5.1.1

That Council:

1. Notes the Summary of Internal Audit Recommendations for Quarter 1 2022-2023 at Attachment 1 (E2022/102222).
2. Endorses the recommendations from the Executive Team to close off four internal audit recommendations from Quarter 1 2022-2023 as listed in Table 1 of this report (which is a summary from Attachment 2 E2022/E2022/96912).
3. Endorses that management implement the recommendations made in the Internal Audit of Open Space (September 2022) (Attachment 3 E2022/102322).
(Lyon/Swivel)

22-717 Resolved that Council adopts the following Committee Recommendations:

Report No. 6.1 Draft 2021/2022 Financial Statements

File No: I2022/1701

Committee Recommendation 6.1.1

1. That the Audit, Risk and Improvement Committee note the Audit Engagement Closing Report for the year ended 30 June 2022 provided by the Audit Office of NSW provided at Confidential Attachment 3 (#E2022/113308).
2. That Council:
 - (a) adopts the Draft 2021/2022 Financial Statements incorporating the General Purpose Financial Statements (#E2022/112363) and Special Purpose Financial Statements (#E2022/112364).
 - (b) approves the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 in relation to the 2021/2022 Draft Financial Statements.
 - (c) endorsed that the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 15 December 2022 in accordance with Section 418(1) of the Local Government Act 1993.
(Lyon/Swivel)

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REPORTS OF COMMITTEES – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.3 **Report of the Biodiversity Advisory Committee Meeting held on 17 November 2022**

File No: I2022/1722

22-718 **Resolved** that Council notes the minutes of the Biodiversity Advisory Committee Meeting held on 17 November 2022. (Lyon/Swivel)

Report No. 14.4 **Report of the Climate Change and Resource Recovery Advisory Committee Meeting held on 17 November 2022**

File No: I2022/1723

22-719 **Resolved** that Council notes the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting held on 17 November 2022. (Lyon/Swivel)

22-720 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 3.1 **Sustainability Project Updates**

File No: I2022/1426

Committee Recommendation 3.1.1

1. That the Climate Change and Resource Recovery Advisory Committee notes the report.
2. That Council continues the annual membership with Climate Emergency Australia.
3. That Council notes that the report on Council's Annual Emissions will also be tabled with the Climate Change and Resource Recovery Advisory Committee for further consideration and input. (Lyon/Swivel)

22-721 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 3.2 Revised Constitution of Climate Change and Resource Recovery Advisory Committee

File No: I2022/1661

Committee Recommendation 3.2.1

1. That Council supports an invitation to Mullum Cares to participate in the Climate Change and Resource Recovery Advisory Committee, include Cr Dey as an alternate Councillor and endorse the constitution at Attachment 1 (E2021/148037) as amended pending Mullum Cares acceptance.
2. That Cr Pugh be alternate Chair in Cr Ndiaye's absence. (Lyon/Swivel)

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Report No. 14.5 **Report of the Housing and Affordability Advisory Committee Meeting held on 17 November 2022**
File No: I2022/1796

22-722 **Resolved** that Council notes the minutes of the Housing and Affordability Advisory Committee Meeting held on 17 November 2022. (Lyon/Swivel)

REPORTS OF COMMITTEES – INFRASTRUCTURE SERVICES

Report No. 14.6 **Report of the Local Traffic Committee Meeting held on 30 November 2022**
File No: I2022/1785

22-723 **Resolved** that Council notes the minutes of the Local Traffic Committee Meeting held on 30 November 2022. (Lyon/Swivel)

22-724 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 6.1 Tincogan Street/Dalley Street Reprioritisation (including zebra pedestrian crossing facility)
File No: I2022/1735

Committee Recommendation 6.1.1

That the Local Traffic Committee support the installation of the zebra (pedestrian) crossing shown in Attachment 2 (E2022/117476). (Lyon/Swivel)

22-725 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 6.2 Belongil Parking Scheme Review - New parking limits
File No: I2022/1537

Committee Recommendation 6.2.1

That the Local Traffic Committee supports proposed regulatory items for Belongil Beach on Childe, Border and Kendall Streets as shown in Attachment 1 (E2022/117545). (Lyon/Swivel)

PROCEDURAL MOTION

22-726 **Resolved** that Council change the order of business to deal with Reports 9.1, 13.3, 13.9, 13.12, 13.15, 13.16, 13.10, 16.2, 16.3, and 16.4 next on the Agenda. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Ndiaye returned to the meeting at 12.27pm.

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NOTICES OF MOTION

Notice of Motion No. 9.1 Busking Policy Amendment

File No: I2022/1780

22-727 Resolved that Council addresses the issues with busking in the town centre, specifically the use of large speaker systems and busking in non-designated areas, by revising the policy and providing better guidance for the benefit of all concerned. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.3 Draft Community Engagement Strategy

File No: I2022/1738

22-728 Resolved that Council:

1. Notes the seven submissions (Attachment 1 E2022/119582) received during the public exhibition of the Draft Community Engagement Strategy and responses as outlined in this report except on the matter of Submission #4 where the approach in Part 2 below will be taken;
2. Receives a report in the first Quarter of 2023 on the roles and responsibilities of Community Engagement / Liaison Officers in Councils, and on the potential for Byron Shire Council to incorporate such a role that provides a meaningful focus through which our community can engage;
3. Adopts the Community Engagement Strategy (Attachment 2 E2022/119684); and
4. Repeals the current Community Engagement Policy (Attachment 3 E2018/10445) as it is now superseded by the Community Engagement Strategy. (Dey/Ndiaye)

The motion was put to the vote and carried unanimously.

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STAFF REPORTS – SUSTAINABLE ENVIRONMENT & ECONOMY

Report No. 13.9 **Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021 Short-term Rental Accommodation in Byron Shire - Submissions Report**

File No: I2022/1432

In accordance with his earlier declared interest in this item Cr Westheimer left the Chambers at 12.40pm

22-729 Resolved that Council:

1. Amends the planning proposal to:
 - a) include in the 365-day cap precinct, the area as per the maps in the body of this report, namely:
 - i) Shirley Lane and south of Shirley Street and precinct west of bus interchange around Somerset Street, Byron Bay
 - ii) Byron Bay central business area
 - b) remove from the 365-day cap precinct the areas as per the maps in the body of this report, namely:
 - i) Suffolk Park
 - ii) area south of Booyun Street, Brunswick Heads
2. Adopts the amended planning proposal to amend State Environmental Planning Policy (Housing) 2021 to:
 - a) increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180-day cap to a 365-day cap for areas in set mapped precincts in the Brunswick Heads and Byron Bay localities; and
 - b) reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180-days cap to a 90-day cap.
3. Forwards the adopted planning proposal to Department of Planning Industry and Environment requesting that the amendment to the Housing SEPP 2021 be finalised. In doing so, acknowledges that the Minister for Planning is to seek the advice of the Independent Planning Commission before the planning proposal is finalised.
4. Invites the Independent Planning Commission to meet with Council about the adopted planning proposal as soon as possible and practical;
5. Notes staff will report to Council in 2023 on:
 - a) an updated STRA risk mitigation and monitoring strategy that reflects the finalised planning proposal and mapped precincts; and
 - b) STRA enforcement strategy.

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6. Notes should the planning proposal be adopted by Council, there will be a 12-month transition period for any changes to commence. This means any changes will likely not come into effect until 2024.
7. Requests staff write to the NSW government advocating for changes in response to the alternative policy measures shared by many stakeholders including:
 - a) differential rating of STRA properties
 - b) establishing a levy to generate funds to cover enforcement and infrastructure demands
 - c) assigning the STRA register to Council to administer with appropriate fees for servicing
8. Appoints the Audit Risk and Improvement Committee to review and regularly advise Council on matters of compliance, risk management, financial management, governance, community service, data collection and the overall performance of the proposed planning STRA amendment 26.2020.1.1.
9. Recognises the submissions made during public access that identified specific areas in need of further investigation as part of the monitoring strategy for potential inclusion in the 90 day cap precinct such as in Brunswick Heads (Hunter/Lyon)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTIONS

22-730 Resolved that Cr Hunter be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

22-731 Resolved that Cr Lyon be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

22-732 Resolved that Cr Swivel be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

22-733 Resolved that Cr Pugh be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

22-734 Resolved that Cr Ndiaye be granted a two minute extension to her speech. (Lyon)

The motion was put to the vote and carried unanimously.

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

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

Nil voted against the motion.

The meeting adjourned at 1.30pm for a lunch break and reconvened at 2.13pm.

Crs Ndiaye and Balson did not return at this time.

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Report No. 13.12 **PLANNING - Supplementary Report DA 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, FEDERAL 2480**

File No: I2022/1658

22-735 **Resolved** that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.114.1 for 'Fed Sheds' light industry excluding artisan food & drink premises at 467 Federal Drive, Federal be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development is inconsistent with the objectives of the RU5 Village Zone under Byron LEP 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development is inconsistent with Clause 6.6 of the Byron LEP 2014 in terms of services to the property including stormwater management.
3. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development is inconsistent with the provisions under Chapter B3 Services under Byron DCP 2014 in terms of onsite sewage management system (including the covered nature of the application area, the lack of allocation of land for a reserve application area, and the inadequate buffer to boundaries) and stormwater management (including stormwater being piped to a locality with pre-existing flood problems).
4. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development is inconsistent with the provisions under Chapter E6 Federal under Byron DCP 2014 in terms of character, bulk and scale, and the village centre area provisions.
5. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979 the proposed development will have an unacceptable environmental impact in terms of the onsite sewage management system.
6. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979 the proposed development is out of character with the built environment and is not compatible with the Village Character of Federal.
7. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979 the site is not suitable for the development.
8. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979 the proposed development is not in the public interest having taken into account the Federal Village Masterplan.
(Swivel/Westheimer)

PROCEDURAL MOTION

22-736 **Resolved** that Cr Westheimer be granted a one minute extension to his speech. (Lyon)

*The motion was put to the vote and carried unanimously.
Crs Balson and Ndiaye was not present for the vote.*

Cr Ndiaye returned to the meeting at 2.35pm.

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*The motion (Swivel/Westheimer) was put to the vote and declared carried.
Crs Dey, Swivel, Westheimer, Pugh and Hunter voted in favour of the motion.
Crs Ndiaye and Lyon voted against the motion.
Cr Balson was not present for the vote.*

Report No. 13.16 **Former Mullumbimby Hospital - Land Use and Development
Planning Update**

File No: I2022/1640

22-737 **Resolved** that Council:

1. Thanks all community members who gave feedback during the consultation period on the draft Site Strategy and Urban Design Protocol.
2. Notes that submissions have been used to improve the exhibited document and will be used as inputs into future planning and design stages.
3. Endorses the revised Site Strategy and Urban Design Protocol (Attachment 1 E2022/113329) for the former Mullumbimby Hospital site to be used as a guiding document for the project.
4. Requests staff to prepare a draft planning proposal informed by the Site Strategy and Urban Design Protocol and any required Baseline Studies and Advice and report this to Council for consideration prior to seeking a gateway determination.
5. Requests staff to arrange an Enquiry by Design process (inclusive of community, industry and Councillor engagement) to underpin Concept Masterplan and Development Control Plan drafting.
6. Requests staff to report the Concept Masterplan, Development Control Plan, and associated development options to Council.
7. Requests that an arts facility / hub or artist in residence program be integrated as a core part of the community facilities. (Westheimer/Lyon)

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

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Report No. 13.15 Dogs in Public Spaces Strategy Submission Report

File No: I2022/1606

Moved:

1. That Council adopts the Dogs in Public Space Strategy (E2022/106874), amended as a result of submissions received during public exhibition.
2. That Council adopts the Guide to Dog Areas in the Byron Shire (E2022/106845), amended as a result of submissions received during public exhibition, with the proposal to remove Map 13 from the Guide to be placed on public exhibition for 28 days to allow for submissions.
3. That Council endorses the Companion Animal Exercise Area Policy – as updated and shown in track changes at E2022/103808 to be placed on public exhibition for 28 days to allow for submissions.
4. That:
 - a) Should there be no submission received for the amendment listed in 2 above, the update be endorsed for this policy; and
 - b) Should submissions be received on the amendment listed in 2 above, that the amendment be reported back to Council noting the submissions and any amendment made as a result of the submissions received.
 - c) Should there be no submission received for the policy listed in 3 above, the update be endorsed for this policy; and
 - d) Should submissions be received for the policy listed in 3 above, that the policy be amendment be reported back to Council noting the submissions and any amendments made as a result of the submissions received. (Westheimer/Lyon)

AMENDMENT

22-738 Resolved:

1. That Council adopts the Dogs in Public Space Strategy (E2022/106874) and Guide to Dog Areas in the Byron Shire (E2022/106845), amended as a result of submissions received during public exhibition.
2. That Council endorses the Companion Animal Exercise Area Policy – as updated and shown in track changes at E2022/103808 - to be placed on public exhibition for 28 days to allow for submissions.
3. That:
 - a) Should there be no submission received for the policy listed in 2 above, the update be endorsed for this policy; and
 - b) Should submissions be received on the policy listed in 2 above, that the policy be reported back to Council noting the submissions and any amendments made as a result of the submissions received. (Pugh/Ndiaye)

The amendment was put to the vote and declared carried.

Crs Dey and Westheimer voted against the amendment.

Cr Balson was not present for the vote.

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*The motion was put to the vote and declared carried.
Crs Dey and Westheimer voted against the motion.
Cr Balson was not present for the vote.*

Report No. 13.10 After the Floods Discussion Paper - Submissions Report
File No: I2022/1433

22-739 Resolved that Council:

1. Notes the Settlement Discussion Paper's engagement report 'After the Floods: Settlement Discussion Paper, Engagement Report' (Attachment 1 E2022/119447).
2. Recognises the findings report which summarises community feedback on long-term planning for how and where people will live and work in the future, and captures it in twenty Principles in 'After the Flood: Settlement Discussion Paper, Findings Report' (Attachment 2 E2022/119445).
3. Further recognises that other post-flood consultation processes like the two NSW Flood Inquiries (Independent and Parliamentary) will guide long-term planning for how and where people will live and work in the future.
4. Recognises that bushfire risks must be considered along with flood risks in that planning.
5. Considers all the above input and more in our strategic land use planning framework, including for the preparation and / or review of:
 - Residential Strategy
 - Rural Land Use Strategy
 - Business and Industrial Lands Strategy
 - Place Plans
6. Thanks all who participated in the 'After the Flood Discussion Paper' engagement process. (Dey/Lyon)

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

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Notice of Motion No. 16.3 Roadworks on Ewingsdale Road

File No: I2022/1665

22-741 Resolved:

1. That Council implements a policy of only conducting roadworks on Ewingsdale Road at night noting that minor maintenance works that can be easily ceased is not to be included in this prohibition.
2. That Council implements a policy of not conducting roadworks on Bangalow Road and Broken Head Road during morning and afternoon peak hours.
3. That Council writes to all relevant authorities, such as Essential Energy, requesting that they adhere to the same policies for work within the road corridor.
4. That the emergency road works be exempt from the above policies.
5. That Council receives a report to update Council on Transport for NSW plans to fix the Ewingsdale Highway interchange. (Pugh/Dey)

The motion was put to the vote and carried.

Cr Hunter voted against the motion.

Cr Balson was not present for the vote.

Cr Ndiaye left the meeting at 4:01pm.

Notice of Motion No. 16.4 Update on Resolution 22-361

File No: I2022/1739

22-742 Resolved that Council:

1. Notes the recent vote of members of the Bangalow Bowling and Sports Club to support amalgamation with North Sydney Leagues Club.
2. Notes that North Sydney Leagues Club had pre covid (2019) revenue of over \$58 million and does not need financial support from Council.
3. Rescinds the budget allocation of \$2,000 established via Resolution 22-361.
4. Continues to ensure that the Bangalow Bowling Club be engaged in the Plan of Management process for the Bangalow Sports Fields as per the rest of Resolution 22-361. (Pugh/Lyon)

The motion was put to the vote and declared carried.

Cr Hunter voted against the motion.

Cr Balson and Ndiaye were not present for the vote.

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MAYORAL MINUTE

Mayoral Minute No. 8.1 Declaration of Statewide Road Emergency

File No: I2022/1716

22-743 Resolved that Council joins with Local Government NSW and the Country Mayors Association of NSW in declaring a Statewide Road Emergency. (Lyon)

*The motion was put to the vote and carried unanimously.
Crs Balson and Ndiaye were not present for the vote.*

DELEGATES' REPORTS

Delegate's Report No. 12.1 Tallowood walk around 30 November 2022

File No: I2022/1802

Following a request at the Tallowood Village Community Group's meeting with Council on 21 November, I accompanied Group members to view two sites the group is considering for a Community Centre for their Village.

Both sites are public reserves on the downhill (east) side of the main drag Tuckeroo Avenue. Both are zoned Residential - the Group is asking whether this adequately protects their open spaces.

Both sites are flood prone and would require a building to be elevated but this could facilitate parking underneath. The southern of the two sites (Tallowood Park, near Corella Crescent) is deeper flooded than the northern one (with tennis & basketball courts, opposite Lorikeet Lane). Were the proposed Centre to function as a flood refuge, only the northern site would have access during flood (as experienced in 2022).

Existing uses at each site would be compromised by the addition of a community building. Those uses at Tallowood Park are good shade and a modern playground. The other site is more 'crowded' with those sports, a stormwater treatment pond and a Sewer Pump Station.

The Group will work up options at the sites and consider which best suits the community. They will bring a proposition to Council next year, for endorsement and partnering.

Signed: Cr Duncan Dey

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.5 **Council Advisory Committee Meeting schedule 2023**
File No: I2022/1719

22-744 Resolved:

1. That Council adopts the schedule of Advisory Committee Meetings shown in Attachment 1 (#E2022/117305), with meetings generally held in the Conference Room, Mullumbimby.

2. That Committee meetings are generally held on the third or fifth Tuesday or Thursday of the month, excluding during Council recess, at the following times:
 - 9:00am
 - 11.30am
 - 2.00pm
 - 4.30pm

(Dey/Lyon)

*The motion was put to the vote and carried unanimously.
Crs Balson and Ndiaye were not present for the vote.*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.18 **Annual Emissions Inventory and update on Net Zero Emissions goal**
File No: I2022/1715

22-745 Resolved that Council:

1. Notes the annual emissions inventory, (Attachment 1 #E2022/114369), and Council's progress toward meeting the net zero emissions target.

2. Notes the progress update on the Net Zero Emissions Action Plan for Council Operations 2025.

3. Notes that the annual emissions report will be tabled at the next available Climate Change & Resource Recovery Advisory Committee Meeting. (Dey/Lyon)

*The motion was put to the vote and carried unanimously.
Crs Balson and Ndiaye were not present for the vote.*

Cr Ndiaye returned to the meeting at 4.30pm.

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STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.23 Preferred Alignment Mullum to Bruns Cycleway
File No: I2022/1736

Moved that Council:

1. Notes that option 1 was preferred by the community in the consultation process “Tell us what you think” survey for the Mullum to Bruns Cycleway; and
2. Undertakes investigation on this alignment and on that of option 2 so that they can be compared. (Westheimer/Dey)

The motion was put to the vote and declared lost.

Crs Lyon, Pugh, Swivel, and Hunter voted against the motion.

Cr Balson was not present for the vote.

FORESHADOWED MOTION

22-746 Resolved that Council supports option 1 (from the community “Tell us what you think” survey) Mullum to Bruns Cycleway and endorse Council staff in progressing with the investigation of this general alignment. (Lyon/Pugh)

The motion was put to the vote and carried unanimously.

Cr Balson was not present for the vote.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.7 Report of the Moving Byron Advisory Committee Meeting held on 2 December 2022
File No: I2022/1803

22-747 Resolved that Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 2 December 2022. (Dey/Westheimer)

22-748 Resolved that Council adopts the following Committee Recommendations, as amended:

Report No. 4.1 Moving Byron Strategy - Revised Submission Summary and Transport for New South Wales Feedback

File No: I2022/1410

Council Recommendation 4.1.1

1. That Council receives and considers via its Moving Byron Advisory Committee:
 - a) an authorised draft of the TfNSW Integrated Transport Planning Framework (Planning and Strategy Development Initiation Document – Byron Shire); and
 - b) the planning framework itself, incorporating the Moving Byron Transport Plan and recognising council’s settlement strategies
2. That Council extends to TfNSW an open invitation to continue as part of Moving

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Byron Advisory Committee.

3. That Council adopts the Moving Byron Strategy. (Dey/Westheimer)

22-749 Resolved that Council adopts the following Committee Recommendation:

Report No. 4.2 E Bus Proposal

File No: I2022/1721

Committee Recommendation 4.2.1

That Council seeks support from Transport for NSW (TfNSW) to hold a workshop in early 2023 to explore ways of improving the current bus network in Byron Shire as discussed in Moving Byron Strategy. (Dey/Westheimer)

*The motions (22-747 to 22-749) were put to the vote and declared carried unanimously.
Cr Balson was not present for the vote.*

Cr Dey left the Chambers at 5.00pm.

DEFERRED REPORTS

Report No. 16.1 PLANNING – DA 10.2021.685.1 – New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property – 2 Keats Street, Byron Bay

File No: I2022/1814

22-750 Resolved that, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, Development Application No. 10.2021.685.1 for New Dwelling to Create Dual Occupancy (Detached), Swimming Pool and Strata Subdivision to create Two (2) Lots and Common Property, be granted consent subject to conditions attached to this report, with an amendment to Condition 7 to read 24 months. (Hunter/Lyon)

The motion was put to the vote and carried unanimously.

Crs Swivel, Ndiaye, Lyon, Westheimer, Pugh and Hunter voted in favour of the motion.

Nil voted against the motion.

Crs Balson and Dey were not present for the vote.

Cr Dey returned to the Chambers at 5.03pm

