



Byron Shire Council



Minutes

Planning Meeting

Thursday, 21 March 2019

BYRON SHIRE COUNCIL

Planning Meeting Minutes
21 March 2019

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BYRON SHIRE COUNCIL

PLANNING MEETING MINUTES

21 March 2019

MINUTES OF THE BYRON SHIRE COUNCIL PLANNING MEETING HELD ON THURSDAY, 21 MARCH 2019 COMMENCING AT 11:06AM AND CONCLUDING AT 1:12PM

12019/429

PRESENT: Cr M Lyon (Acting Mayor), Cr B Cameron, Cr C Coorey, Cr A Hunter, Cr J Martin,
Cr S Ndiaye and Cr P Spooner

Staff: Mark Arnold (General Manager)
Vanessa Adams (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Heather Sills (Minute Taker)

The Acting 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:

6.4 PLANNING - 10.2018.552.1 Multi Dwelling Housing Consisting of Nine (9) Dwellings, Torrens and Strata Title Subdivision and Tree Removal over Multiple Stages

Lyn Ziebarth addressed Council in favour of the recommendation.

6.6 PLANNING - 10.2018.591.1 Multi Dwelling Housing, Argyle Street, Mullumbimby

Aaron Diehm addressed Council against the recommendation.

The meeting adjourned at 11:20am for a break and reconvened at 11:37am.

APOLOGIES

PROCEDURAL MOTION

19-089 Resolved that the apology from Cr Hackett be accepted and a leave of absence granted.
(Lyon/Spooner)

The motion was put to the vote and declared carried.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

19-090 Resolved that the minutes of the Planning Meeting held on 21 February 2019 be confirmed.
(Lyon/Hunter)

The motion was put to the vote and declared carried.

RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

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

STAFF REPORTS

Sustainable Environment and Economy

- Report No. 6.1 PLANNING - DCP 2014 Minor Amendments
- Report No. 6.2 PLANNING - Exceptions to Development Standards 1 October to 31 December 2018
- Report No. 6.3 Report of Planning Review Committee held on 14 February 2019
- Report No. 6.4 PLANNING - 10.2018.552.1 Multi Dwelling Housing Consisting of Nine (9) Dwellings, Torrens and Strata Title Subdivision and Tree Removal over Multiple Stages
- Report No. 6.5 26.2018.5.1 - Planning Proposal to amend Byron LEP 2014 to rezone (Part) Lot 3 DP 592005 and (Part) Lot 1 DP 1124504 to permit large lot residential subdivision and dwellings, 4 Picadilly Hill Road, Coopers Shoot
- Report No. 6.6 PLANNING - 10.2018.591.1 Multi Dwelling Housing, Argyle Street, Mullumbimby

The remaining Recommendations were adopted as a whole, being moved by Cr Lyon and seconded by Cr Cameron. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 19-091 and concluding with Resolution No. 19-095.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 6.1 PLANNING - DCP 2014 Minor Amendments
File No: I2018/2110

19-091 Resolved that Council:

1. Proceed with preparation and public exhibition of the Byron DCP 2014 amendments proposed in this report, as detailed in Attachment 1 (E2019/14452)
2. Receive a further report for consideration of submissions following the statutory public exhibition period
3. Should there be no submissions as of the close of the statutory public exhibition period, adopt the Byron DCP 2014 amendments as exhibited and give public notice of its decision in accordance with the regulations. (Lyon/Cameron)

*The motion was put to the vote and declared carried.
 Crs Cameron, Coorey, Hunter, Lyon, Martin, Ndiaye and Spooner voted in favour of the motion.
 Nil voted against the motion.*

Report No. 6.2 PLANNING - Exceptions to Development Standards 1 October to 31 December 2018
File No: I2019/70

19-092 Resolved that Council note the report on exceptions to development standards for the period 1 October to 31 December 2018. (Lyon/Cameron)

Report No. 6.3 **Report of Planning Review Committee held on 14 February 2019**
File No: I2019/216

19-093 **Resolved** that Council note the report of the Planning Review Committee meeting held on 14 February 2019. (Lyon/Cameron)

Report No. 6.4 **PLANNING - 10.2018.552.1 Multi Dwelling Housing Consisting of Nine (9) Dwellings, Torrens and Strata Title Subdivision and Tree Removal over Multiple Stages**
File No: I2019/257

19-094 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.552.1 for multi dwelling housing consisting of nine (9) dwellings, Torrens and Strata Title Subdivision and tree removal over multiple stages, be refused for the following reasons:

1. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is considered to be incompatible with the objectives of the R2 Low Density Residential zone in Byron LEP 2014.
2. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is considered to be unsatisfactory in relation to clause 6.2 Earthworks of Byron LEP 2014. Insufficient information has been provided to demonstrate that the proposed earthworks will not adversely affect drainage patterns and soil stability in the locality of the development.
3. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy the clause 6.6 Essential Services of Byron LEP 2014. Insufficient information has been provided to demonstrate how essential services can be provided to each stage of the development.
4. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy the matters for consideration under clause 13 of *State Environmental Planning Policy (Coastal Management) 2018*. Given the removal of all native vegetation, the lack of available offset and the filling of natural drainage lines, Council cannot be satisfied that the development will not adversely affect the integrity and resilience of the biophysical, hydrological and ecological environment and coastal environmental values.
5. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy the matters for consideration under clause 14 of *State Environmental Planning Policy (Coastal Management) 2018*. The development is considered to be incompatible with the surrounding coastal and built environment having regard to its bulk, size and scale.
6. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B2 Preservation of Trees, because the proposed offset plantings are not considered to be feasible. The nominated receiving site is already fully allocated with offsets from another development.
7. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B3, Clause

B3.2.3 Stormwater and Clause 3.2.1 Provision of Services. Insufficient information has been provided to demonstrate that stormwater is able to be adequately managed and directed to a lawful point of discharge.

8. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B4, Clause B4.2.3 Vehicle Access and Manoeuvring Areas. The proposed development does not provide for the safe and efficient circulation of vehicles within the site.
9. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B4, Clause B4.2.3 Vehicle Access and Manoeuvring Areas and Clause 4.2.5 Car Parking. Insufficient visitor parking is available to meet the needs of the development
10. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B8 Waste Minimisation and Management. Insufficient information has been provided to demonstrate how waste can be collected from the development in an efficient and orderly manner.
11. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B9 Landscaping. The site layout and subdivision design does not protect and retain existing significant native vegetation on the site or incorporate existing trees into the landscape design. Screen plantings to the driveway and street frontage have not been provided.
12. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B13 Access and Mobility, Clause B13.2.2. Insufficient information has been provided to demonstrate how at least one dwelling within the development is capable of meeting the design requirements for adaptable housing.
13. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter B14 Excavation and Fill, Clause B14.2, because:
 - a) The earthworks will result in a highly modified landform and overall built form that will detract from the existing and desired future character of the surrounding area.
 - b) There is insufficient information to determine if the resulting drainage characteristics of the site will be consistent with Chapter B3 Services and with Water Sensitive Urban Design Principles.
 - c) The design does not minimise the need for engineering works such as retaining walls.
 - d) There is insufficient information to determine the risk of geotechnical instability and there is a known history of landslip in the immediate locality.
14. Pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to satisfy Byron DCP 2014, Chapter D1, Clause D1.2.4 Character and visual impact. The resulting built form, in terms of its height, scale and density will detract from the general attractiveness of the streetscape and does not harmonise with the existing natural or built environment in the surrounding locality.
15. Pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is likely to cause detrimental impacts to flora and fauna as a result of clearing all of the native and non-native vegetation from the site.
16. Pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*,

insufficient information has been provided to demonstrate the site is suitable for the development given the well-known history of land-slip in the immediate locality.

(Lyon/Cameron)

The motion was put to the vote and declared carried.

Crs Cameron, Coorey, Hunter, Lyon, Martin, Ndiaye and Spooner voted in favour of the motion. Nil voted against the motion.

Report No. 6.5 **26.2018.5.1 - Planning Proposal to amend Byron LEP 2014 to rezone (Part) Lot 3 DP 592005 and (Part) Lot 1 DP 1124504 to permit large lot residential subdivision and dwellings, 4 Picadilly Hill Road, Coopers Shoot**

File No: I2019/270

19-095 Resolved that Council:

1. Request that the NSW Department of Planning and Environment issue a Gateway determination for the planning proposal as contained in Attachment 1 (E2019/14770), conditional on the applicant preparing a site specific study on land contamination from past use consistent with SEPP 55. This study must be produced (to Council's satisfaction) prior to public exhibition of the planning proposal.
2. Agree that staff can proceed to obtain further studies from the applicant (if required by the Gateway determination), then undertake the public exhibition of the planning proposal and government agency consultation based on the Gateway determination. (Lyon/Cameron)

The motion was put to the vote and declared carried.

Crs Cameron, Coorey, Hunter, Lyon, Martin, Ndiaye and Spooner voted in favour of the motion. Nil voted against the motion.

Report No. 6.6 **PLANNING - 10.2018.591.1 Multi Dwelling Housing, Argyle Street, Mullumbimby**

File No: I2019/291

19-096 Resolved:

1. That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application no. 10.2018.591.1 for construction of multi dwelling housing comprising eight (8) dwellings under State Environmental Planning Policy (Affordable Rental Housing) 2009, be refused for the following reasons:
 - a) Having regard to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 in that:
 - i) the density and scale of the development is inconsistent with the character of the area; and
 - ii) the proposed development is inconsistent with *Seniors Living Policy Urban design guidelines for infill development*.
 - b) Having regard to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with Byron Development Control Plan 2014, in that:
 - i) street boundary setbacks do not comply with the standard contained at Chapter D1.2;

- ii) the proposed development encroached into the Building Height Plane on northern and eastern boundaries, resulting in impacts on neighbouring residential properties;
 - iii) inadequate useable private open space is provided to the units, with most private spaces proposed within the front setbacks of the two street frontages; and
 - iv) the internal unit design does not provide adequate internal amenity for future residents.
2. That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2018.591.1, subject to review of amended plans that address the reasons for refusal and appropriate conditions to be finalised under delegation. (Coorey/Spooner)

The motion was put to the vote and declared carried.

Crs Cameron, Coorey, Hunter, Lyon, Martin, Ndiaye and Spooner voted in favour of the motion. Nil voted against the motion.

URGENCY MOTIONS

PROCEDURAL MOTION

- 19-097 Resolved** that the matter of ANZAC day arrangements be dealt with as a matter of urgency due to the need for certainty for ANZAC day arrangements as well as certainty of future bookings for the Civic Hall. (Cameron/Coorey)

The motion was put to the vote and declared carried.

No. 1 Matter of Urgency - ANZAC Day Arrangements

19-098 Resolved:

That Council waive hire fees for use of the Civic Hall as a potential wet weather venue by Mullumbimby Ex Services Club on ANZAC day 2019. (Cameron/Spooner)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 19-099 Resolved:** that the matter of a filming request by ITV Studios Australia and Every Cloud Productions be dealt with as a matter of urgency due to the necessity for a decision before the next Ordinary Meeting of Council. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

No. 2 Matter of Urgency - Filming Request - ITV Studios Australia and Every Cloud Productions for the television series "SeaChange"

19-100 Resolved:

1. That Council note the request of ITV Studios Australia and Every Cloud Productions for the

use of sites in Mullumbimby as production office space for the television series "SeaChange".

2. That Council note the terms of the Local Government Filming Protocol in respect of cost recovery/fees and charges and authorise the General Manager to impose such fees and charges and recover such costs as are in accordance with the Filming Protocol
3. That Council note the offer of ITV Studios Australia and Every Cloud Productions of a donation to a community project and that the acceptance of that offer is reflected in 4c below.
4. That Council authorise the Acting Mayor or his nominee, to negotiate a licence with ITV Studios Australia and Every Cloud Productions to occupy Lot 3 Sec 8 DP 758725 known as the Cook Pioneer Hall 32 Gordon Street Mullumbimby for the purpose of a filming production office on the following terms:
 - a. For the period 1 April 2019 to 26 July 2019,
 - b. The Licensor to pay all outgoings in relation to the premises for the term of the licence.
 - c. ITV Studios Australia and Every Cloud Productions make a donation of \$15,000 to Council and that these funds be used for the purpose of funding an action or actions from the Mullumbimby MasterPlan.
5. That Council authorise the publication of the proposed licence for a period of 7 days in accordance with s47AA(2) of the Local Government Act 1993 (NSW) calling for written submissions.
6. That in the event no written submissions are received, that Council delegate to the Acting Mayor or his nominee the authority to enter into the licence referred to in 4 above.
7. That if written submissions are received that a report be brought to the Acting Mayor to consider all submissions in accordance with s47(4) of the Local Government Act 1993 (NSW). (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

*The meeting adjourned at 11:53pm for a lunch break and reconvened at 1:12pm.
Cr Ndiaye and Cr Coorey did not return to the meeting.*

There being no further business the meeting concluded at 1:12pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 11 April 2019.

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Acting Mayor Michael Lyon