



Byron Shire Council



Minutes

Ordinary (Planning) Meeting

Thursday, 19 March 2020

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
19 March 2020

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BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

19 March 2020

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 19 MARCH 2020 COMMENCING AT 11.02AM AND CONCLUDING AT 3.25PM

I2020/424

PRESENT: Cr S Richardson (Mayor), Cr B Cameron, Cr C Coorey, Cr A Hunter, Cr J Martin and Cr S Ndiaye

Staff: Mark Arnold (General Manager)
Vanessa Adams (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Chris Larkin (Manager Sustainable Development)
Mila Jones (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:

Report No and Title		For/ Against	Name	Representing Organisation
13.2	Development Application 10.2019.103.1 Restaurant and Planning Agreement for Upgrade of Public Road and Carpark at 784 Coolamon Scenic Drive Coorabell	For	Karina Vikstrom	Newton Denny Chapelle
			Paschal Grenquist	
		Against	John Anderson	
13.5	Sustainable Visitation Strategy – Public Exhibition	Against	Matthew O'Reilly	CABS
13.9	Further report following resolution 19-569 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy at 16 Short Street Brunswick Heads	For	George Stinson	
			Fay Jackson	

Submissions

Subject	Name	Representing Organisation
Proposed 5G Tower Dalley St Mullumbimby	Tashi Lhamo	Stop 5G Northern Rivers NSW
Sustainability of Byron Shire Versus continued unrestrained growth	Matthew O'Reilly	CABS
The limits of denial	John Anderson	

Question No 1: Café at Scarabellotti's Lookout

[REDACTED] asked the following question:

On parking and vehicular access: Please explain how DCP Chapter 1 Part G 2010's requirement for 15 spaces has been reduced to only 8, of which only 4 are attributable to the 40 seater cafe. There will be increased traffic and inevitable parking on the side of Coolamon Scenic Drive, which is an arterial road with 80kmh speed limit, connecting the major towns and attractions of Bangalow, Federal, Crystal Castle and Mullumbimby. Will Council impose a 60 kmh speed limit? Increased traffic flow along that part of Coolamon Scenic Drive will also endanger koalas; there is a koala blackspot between Crystal Castle and **[REDACTED]**. A 60 kmh speed limit will be desirable starting at the residential area around **[REDACTED]** southwards to the cafe.

The Director Sustainable Environment and Economy responded:

1. Car parking

The assessment of the Development Application required a total of 15 spaces under Byron DCP 2010 as follows.

Parking Assessment

Restaurant – 112m²GFA

Parking Rate – 1 space per 7.5m²GFA

Total Parking required = 15 parking spaces required

It is noted the other assessment tool under the DCP is 1 space per 3 seats which would equate to only 13 spaces, however the DCP requires the greater number of spaces to be used.

Eleven spaces are provided on site with a shortfall of 4 spaces. The applicant seeks to provide a further 8 formed spaces by way of the planning agreement and conditions of consent on Scarabellotti's Lookout.

This equates to a total of 19 spaces.

2. Traffic Speeds

The question asks whether Council will impose a 60 Km/h speed limit.

In terms of access to the property via Scarrabelotti's Lookout, Conditions of consent have been imposed to upgrade the intersection having regard to the current regulated speed environment of 80Km/h within the existing road reserve. This includes widening of the driveway into the Lookout and construction of intersection treatment as per Austroads including the provision of turning lanes from both sides of the road.

The surrounding environment caters for the designated speed limit and there is **no** requirement to reduce the speed limit to 60km/hr.

The relevant conditions of consent in relation to the above matters are 24 and 26.

Question No 2: Byron Coastal Koala Management

Matthew O'Reilly, representing CABS asked the following question:

Will Byron Shire Council be updating the Byron Coastal Koala Plan of Management after the current 2012 Plan is approved by the Department. The 2012 Plan is severely deficient and was gutted by the last Council before it was adopted. While we understand the need to get some sort of plan in place ASAP the community has an expectation that Council will re-exhibit a new updated plan within the next 12 months. Will this be occurring?

The Director Sustainable Environment and Economy responded:

The Byron Coast Koala Plan of Management (CKPoM) was adopted in 2016 and was developed from a baseline study done in 2012 by Dr Stephen Phillips. It identifies Potential Koala Habitat across our coastal management area using five preferred koala food trees specific to Byron Shire. All Potential Koala Habitat that falls within the identified Koala Management Precincts is considered core koala habitat and is subject to the provisions within Part 2 of our CKPoM, but only if the CKPoM is ratified by the Department under Clause 17 of the new SEPP.

Given the speed of the new Koala Habitat Protection SEPP enactment, the decision to have our coastal koalas and their habitat protected by our own CKPoM is considered most sound. The enactment of the new SEPP and late release of the SEPP guidelines meant the decision was based on providing our coastal koalas immediate protection under the new SEPP, as there was zero confidence that the new SEPP requirements would be better than our own. Please note that having the chance to provide feedback to the Department on the Guidelines only came after much discussion, and at the very last minute before their release.

The first priority AFTER submitting our review of the guidelines will be to develop a Biodiversity DCP as this is the fastest way to protect koalas and habitat in areas that are not covered by the CKPoM. The development of a new KPoM will require extensive survey, one of the points that will be covered in our submission to the Department. The survey requirement is onerous given the large amount of identified area on the mapping. Then of course, it will be followed by extensive public exhibition.

Once we have a clearer picture on the survey component of developing a new KPoM, a decision will likely go to Council regarding whether we do the Hinterland by itself or re-do the entire Shire.

Question No 3

The Mayor advised that the third registered question will not be permitted, giving reasons that reference by a third party to verbal discussions by a Councillor speaking in a private capacity at a private organisation's meeting is fitting for a letter to the editor, rather than a formal question of Council.

The Mayor invited the person registered to reframe the question at a subsequent meeting.

The meeting adjourned at 11.40am and reconvened at 12.03pm.

APOLOGIES

There was a previous leave of absence granted for Cr Spooner, and apologies were received from Crs Hackett and Lyon.

- 20-087 Resolved** that the apologies from Crs Hackett and Lyon be accepted and a leave of absence granted. (Richardson/Cameron)

The motion was put to the vote and declared carried.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest received.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 20-088 Resolved** that the minutes of the Ordinary (Planning) Meeting held 20 February 2020 be confirmed. (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

Sustainable Environment and Economy

- | | |
|-----------------|--|
| Report No. 13.2 | PLANNING - Development Application 10.2019.103.1 Restaurant and Planning Agreement for Upgrade of Public Road and Carpark at 784 Coolamon Scenic Drive Coorabell |
| Report No. 13.4 | PLANNING - Draft Local Strategic Planning Statement |
| Report No. 13.5 | Sustainable Visitation Strategy - Public Exhibition |

The remaining Recommendations were adopted as a whole, being moved by Cr Richardson and seconded by Cr Hunter. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 20-089 and concluding with Resolution No. 20-095.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 PLANNING - DA 10.2019.564.1 Boundary Adjustment - 196 & 220
File No: Friday Hut Road, Possum Creek
I2020/116

20-089 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.564.1 for boundary adjustment two (2) Lots, be granted consent subject to the conditions of approval in Attachment 3 (E2020/12498).
(Richardson/Hunter)

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

Report No. 13.3 Koala Habitat Protection SEPP 2019 and its implications for Byron
File No: Shire
I2020/165

20-090 Resolved:

1. That Council note that the Byron Coast Comprehensive Koala Plan of Management 2016 has been re-submitted to the Department Of Planning, Industry and Environment under Clause 17 of the Koala Habitat Protection State Environmental Planning Policy 2019.
2. That Council note the concerns in the report on the Guideline supporting the Koala Habitat Protection State Environmental Planning Policy 2019, and that these concerns will form the basis of Council's submission, along with any other matters identified during a more detailed staff analysis.
3. That staff finalise and submit a submission on 2 above to the Department of Planning, Industry and Environment by 30 March 2020 and upload a copy of the submission to Council's website.
(Richardson/Hunter)

Report No. 13.6 PLANNING - Design Excellence Panel
File No: I2020/188

20-091 Resolved:

1. That Council support the establishment of a Design Excellence Panel.
2. That Council receive a further report to outline the policy and procedure to facilitate the Design Excellence Panel.
(Richardson/Hunter)

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Report No. 13.7 **Draft Biodiversity Conservation Strategy**
File No: I2020/209

20-092 Resolved:

1. That Council endorse the update to the Byron Shire draft Biodiversity Conservation Strategy vision to:

Biodiversity in Byron Shire is valued, protected and enhanced, through inspiring leadership, community engagement, expert input, urgent action and innovation.

2. That Council exhibit the draft Biodiversity Conservation Strategy (Attachment 1 E2020/14421) from 24 March to 15 May 2020. (Richardson/Hunter)

Report No. 13.8 **PLANNING - Report of the February 2020 Planning Review Committee**
File No: I2020/215

20-093 Resolved that Council endorse the outcomes of the Planning Review Committee meeting held for February 2020. (Richardson/Hunter)

The motion was put to the vote and declared carried.

Crs Coorey, Martin, Ndiaye, Richardson, Cameron and Hunter voted in favour of the motion.

Nil Councillors voted against the motion.

Report No. 13.9 **PLANNING - Further report following resolution 19-569 10.2019.301.1 demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy at 16 Short Street Brunswick Heads**
File No: I2020/229

20-094 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.301.1 for demolition of existing dwelling house and construction of two (2) new dwellings and two (2) swimming pools to create dual occupancy (detached), be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with D1.2.1 Building Height Plane of the Byron Shire Development Control Plan 2014 as the development will intrude into the Building Height Plane and will overshadow adjoining properties.
2. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development generates adverse amenity impacts on the built environment in terms of overshadowing.
3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. (Richardson/Hunter)

The motion was put to the vote and declared carried.

Crs Coorey, Martin, Ndiaye, Richardson, Cameron and Hunter voted in favour of the motion.

Nil Councillors voted against the motion.

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Report No. 13.10 **PLANNING - Resolution 19-553 Review of Council's Signage Policy**
File No: **I2020/242**

- 20-095** **Resolved** that Council note the report on the review of Council's current signage policy and that engagement with the business community and amendments to the current Signage Policy as discussed in the report will now follow. (Richardson/Hunter)

PROCEDURAL MOTION

- 20-096** **Resolved** that Council change the order of business to deal with Reports 13.2 and 13.5 next on the Agenda. (Richardson/Cameron)

The motion was put to the vote and declared carried.

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no petitions tabled.

SUBMISSIONS AND GRANTS

There were no submissions and grants.

DELEGATES' REPORTS

There were no delegates' reports.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 **PLANNING - Development Application 10.2019.103.1 Restaurant and Planning Agreement for Upgrade of Public Road and Carpark at 784 Coolamon Scenic Drive Coorabell**
File No: **I2020/132**

Moved:

1. That Council not enter into the Planning Agreement as per Attachment 2 (E2020/14763) as it is not satisfied that a sufficient public benefit accrues to allow for the use of public land for parking for the restaurant.
2. That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application 10.2019.103.1 for restaurant and associated works be refused for the following reasons:

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1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Chapter 1 Part G of the Byron Shire Development Control Plan 2010 in relation to car parking.
2. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development generates adverse impacts on both the natural and built environments, and social and economic impacts in the locality.
3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed development.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. (Cameron/Coorey)

PROCEDURAL MOTIONS

20-097 Resolved that Cr Cameron be granted a two minute extension to his speech. (Richardson/Ndiaye)
The motion was put to the vote and declared carried.

20-098 Resolved that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Cameron)
The motion was put to the vote and declared carried.

AMENDMENT

Moved:

1. That Council not enter into the Planning Agreement as per Attachment 2 (E2020/14763) as it is not satisfied that a sufficient public benefit accrues to allow for the use of public land for parking for the restaurant.
2. That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application 10.2019.103.1 for restaurant and associated works be refused for the following reasons:
 1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Chapter 1 Part G of the Byron Shire Development Control Plan 2010 in relation to car parking. (Richardson/Ndiaye)

The amendment was put to the vote and declared lost.
Crs Richardson and Ndiaye voted in favour of the amendment.
Crs Coorey, Martin, Cameron and Hunter voted against the amendment.

The motion (Cameron/Coorey) was put to the vote and declared lost.
Crs Coorey and Cameron voted in favour of the motion.
Crs Martin, Ndiaye, Richardson and Hunter voted against the motion.

The meeting adjourned at 12.35pm for lunch and reconvened at 1.15pm.

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PROCEDURAL MOTION

20-099 Resolved that the vote on this matter be recommitted. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

The Cameron/Coorey motion was put to the vote again and declared lost.

Crs Coorey and Cameron voted in favour of the motion.

Crs Martin, Ndiaye, Richardson and Hunter voted against the motion.

FORESHADOWED MOTION

20-100 Resolved that the matter be deferred to provide an opportunity for the proponent and staff to reconsider an amended carparking plan in relation to the Planning Agreement and the Development Application 10.2019.103.1. (Richardson/Hunter)

The motion was put to the vote and declared carried.

Crs Martin, Ndiaye, Richardson and Hunter voted in favour of the motion.

Crs Coorey and Martin voted against the motion.

Report No. 13.5

Sustainable Visitation Strategy - Public Exhibition

File No:

I2019/2138

20-101 Resolved:

1. That Council endorse the draft Sustainable Visitation Strategy, Attachment 1 (E2020/9477), to proceed to public exhibition subject to:
 - a) the inclusion of a more detailed summary of the key findings of the Southern Cross University Short Term Rental Accommodation Research Reports in Theme 6 Planning for Visitor Accommodation.
 - b) the augmentation of the comments made in Theme 5 Transport, Infrastructure and Open Spaces about the Multi Use Rail Corridor and the potential for the Corridor to deliver tourism opportunities and benefits Shire wide and to the region more widely.
 - c) any necessary design changes to meet Council's style guide and national accessibility and vision guidelines for the purpose of public exhibition.
 - d) the inclusion of more detailed findings of the engagement and research informing the strategy in section 2.
2. That Council authorise the Director Sustainable Environment and Economy (through the General Manager) to undertake the changes required to meet point 1 to ensure a suitable standard for public exhibition. (Ndiaye/Coorey)

The motion was put to the vote and declared carried.

PROCEDURAL MOTIONS

20-102 Resolved that Cr Coorey be granted a two minute extension to her speech. (Richardson/Cameron)

The motion was put to the vote and declared carried.

20-103 Resolved that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Coorey)

The motion was put to the vote and declared carried.

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20-104 Resolved that Cr Cameron be granted a two minute extension to his speech.

(Richardson/Ndiaye)

The motion was put to the vote and declared carried.

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

Report No. 13.4

PLANNING - Draft Local Strategic Planning Statement

File No:

I2020/178

20-105 Resolved:

1. That Council endorse the draft Byron Shire Local Strategic Planning Statement (LSPS), as contained in Attachment 1 (E2020/15696), for public exhibition subject to the addition of an explicit reference and action to include the desire and opportunity to activate the rail corridor, both on and off track, as a tourism and economic driver, and also a significant transport and mobility benefit in the 'Support through partnership, a network of integrated sustainable transport options' section of the document.
2. That Council authorise the Director Sustainable Environment and Economy (through the General Manager) to undertake the changes required to meet point 1, and any necessary formatting, grammatical edits, diagrams and/or other 'non-policy' updates to ensure a suitable standard for public exhibition;
3. That Council publicly exhibit the draft Local Strategic Planning Statement during April-May 2020 and undertake the actions/tasks identified in the Community Engagement Plan (as contained in Attachment 2 (#E2020/15697));
4. That Council receive a submissions report and final draft Local Strategic Planning Statement for adoption prior to the 1 July 2020.

(Richardson/Ndiaye)

The motion was put to the vote and declared carried.

URGENCY MOTIONS

PROCEDURAL MOTION

20-106 Resolved that the matter of 'Public Access and public attendance at Council Meetings' be dealt with as a matter of urgency due to the current and rapidly changing advice on measures to prevent the spread of COVID-19.

(Richardson/Coorey)

The Mayor ruled the matter to be of great urgency.

The motion was put to the vote and declared carried.

Urgency Motion No. 1 Public access and public attendance at Council meetings

20-107 Resolved that Council, in the interest of public health and safety of Community members:

- a) Makes provisions adjunct to its *Code of Meeting Practice* to accept public access 'speeches' via written or video submission which will be circulated to Councillors and presented to the meeting.

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- b) Encourage the public to not attend Council Meetings during the pandemic period, but instead to listen to the recording of the meetings, which are posted on Council's website.
- c) That we expedite a consideration of providing a live stream of Council meetings.
(Richardson/Coorey)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 20-108 Resolved** that the matter of the making of a late submission to Telstra regarding 5G technology be discussed as a matter of urgency; the urgency being that though the submission period closed on 17 March 2020, indications have been given that a late submission may be accepted.
(Ndiaye/Richardson)

The Mayor ruled the matter to be of great urgency.

The motion was put to the vote and declared carried.

Urgency Motion No. 2 Making of a late submission to Telstra regarding 5G Technology

20-109 Resolved:

1. That Council contact Telstra immediately after the meeting and request that they consider a late submission on behalf of council due to the fact that council had not met since the submission period commenced.
2. That Council does not currently support the proposed upgrade that will facilitate 5G technologies and continues to support a moratorium on the installation of 5G technology infrastructure until the previously requested information is provided, including:
 - a) identification of and commitment by a State or Federal Government body to do a comprehensive review of the cumulative impacts of the 5G technology,
 - b) identification of who holds responsibility for the on-going monitoring of any cumulative impacts,
 - c) commitment from the State Government to review the current planning processes for the installation of small cells and consideration of any possible improvements.

(Ndiaye/Coorey)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

- 20-110 Resolved** that Cr Ndiaye be granted a two minute extension to her speech. (Richardson/Coorey)

The motion was put to the vote and declared carried.

There being no further business the meeting concluded at 3.25pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 16 April 2020.

.....
Mayor Simon Richardson