



**Byron Shire Council**



# Minutes

Ordinary (Planning) Meeting

Thursday, 21 May 2020

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
21 May 2020

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# BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

21 May 2020

## MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 21 MAY 2020 COMMENCING AT 9.09AM AND CONCLUDING AT 3.33PM

12020/732

**PRESENT:** Cr S Richardson (Mayor), Cr B Cameron, Cr C Coorey, Cr J Hackett, Cr A Hunter, Cr M Lyon, 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)  
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:

#### Public Access

Report No and Title	Name	For/Against	Representing Organisation	Submission Received in form of	
13.3	PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision	Steve Connelly	For	Planners North	In Person
		Simeon Michaels	Against		Read out by staff member
		Jan Barham			Audio Recording
13.6	PLANNING - 26.2019.10.1 Proposed Rezoning North Beach Byron - Options Report 7	Jeremy Holmes & Kate Singleton	For	Owner and Planners North	In person
13.7	PLANNING - 26.2016.4.1 Submissions to Planning Proposal Rural Events	Jane Magnus	For	Byron Bay Luxury Weddings	Zoom
13.8	PLANNING - DA 10.2019.616.1 Mixed Use Development cnr Jonson & Browning Streets Byron Bay	Graham Dunn Jason Dunn	For	JGD Developments Pty Ltd	In person
		Peter O'Connor	Against	Browning Street Residents Group	In person
13.15	PLANNING - Section 4.55 Application - 10.2019.196.2 - Proposed Modification to amend location of Kitchen and Wet Bar in Building 8 and amend timeframe for	John Anderson	For and Against		Provided in writing

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	Demolition of Buildings 1, 2, 3, 4 and 6 - 541 Friday Hut Road Possum Creek				
13.16	PLANNING - DA 10.2020.110.1 Alterations & Additions to existing dwelling house at 58 Main Arm Road Mullumbimby	Andrew Gianiotis	Against	Barefoot Law	Zoom
		Peter Mack			In person

## Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Public Access	Jan Barham		Audio recording

## Question No. 1 Parking issues

Luke McConell asked the following question:

*Could Council advise if it is aware of the extreme parking situation at Broken Head Reserve Road since the closure of the beach carparks, and the resulting safety issues to pedestrians and cyclists, and damage to infrastructure from vehicles parking and becoming bogged?*

*Further, given the ongoing density of activity in Broken Head Reserve Road, can Council advise if the current arrangements meet COVID-19 requirements and restrictions in light of Council's original intent of closing Broken Head Reserve Road?*

The Director Infrastructure Services responded by saying we implemented the changes to Broken Head Road along with other changes when COVID was first announced and we had orders etc. We've been monitoring that on a daily basis through compliance staff and that's been monitored right through that period. We are aware of parking issues to the west of the original carpark and we have been monitoring that to ensure that it is safe. Staff have been in consultation with residents there and our intent is to make a recommendation to Council shortly to reopen the Broken Head Reserve Road carpark and that should relieve some of the issues that are raised in the submission.

In terms of COVID-19 compliance, that's a matter for Police and certainly we encourage the community that do have concerns with non-compliance with COVID-19 requirements, they should report that to the Police. Council is not the authority to enforce that.

## Question No. 2 Legal Costs

John Anderson asked the following question in writing:

*In response to a recent question of mine the Mayor implied that State and Federal Greens policy somehow guide(sic) his approach to local matters, so could the Mayor please indicate where in Greens Policy-or indeed in the Mayor's own electoral material-it is suggested that developer's wishes be substantially granted in order to save on legal costs and prevent needless confrontation.*

The Mayor took the question on notice.

**Question No. 3 Report 13.8**

Bronwyn Morris asked the following question:

*This development fails to conform to all 10 of the Apartment Design Principles under SEPP 65- Context, Scale, Built Form, Density, Resource, Energy and Greater Efficiency, Landscape, Amenity, Safety and Security, Social Dimensions and Housing Affordability, and Aesthetics. It fails to conform with the following SEPP 65 principles which prevail over the DCP- Visual Privacy, Solar and Daylight Access, Common Circulation and Spaces, Apartment Size and Layout, Ceiling Heights, Private Balconies and Private Open Spaces and Natural Ventilation. If this proposed development fails to conform with any of these legislative requirements, what would be the specific bases Byron Council would cite for any legitimate approval?*

The Mayor advised his decision will be based on the information that is provided within the requirements.

The Manager Sustainable Development responded by saying that within the body of the report there's some words around the guide. The guide is primarily applicable to residential development, not necessarily to mixed-use development. Although there are some areas where the guide is provided for mixed-use development such as this shop top housing and the like. Basically staff assessed that the proposal was generally consistent with the design principles of the guideline.

**Question No. 4 Report 13.8**

Paul Cholakos asked the following question (wording as submitted in writing):

*Councillors, my question concerns the strong similarity between this DA and the one sought by the same applicant on the same site which the NJRPP rejected outright in 2018. The Mayor spoke forcibly against not only the 4th storey height issue, but other relevant planning requirements. In its rejection of the previous application, the NJRPP specifically noted non-compliances with not only height, but also deep soil zones and other requirements of the SEPP65 Apartment Design Guide. The current application is non-compliant on these items, and the applicant has acknowledged this. Indeed, there is little difference on these measures between the current application and the previous one.*

*How do Councillors view implications of the combination of the significant concessions sought by the Developer, to maximise his returns on a large private investment, that will produce an excessively high density building with failings on height, deep planting, communal space and floor space ratios, individually and collectively failing to meet criteria set under State planning legislation and Byron Shire Council planning documents. If it were to approve the application, what do Councillors consider the implications will be for future developments in, and the character of our town and region?*

The Mayor responded by saying that every DA is taken on its merits, the notion of precedence is a bit of a silly notion. The only thing that actually plays a role or precedent is a like-for-like change. For example if we said "yes because of this" well then someone else could ask for that for that same reason. If there's different reasons or different aspects, there's no precedent. If we supported this today it would be due to legitimate planning decisions. If we don't, it'll be the same case, so it's not some precedent that's going to create anything anywhere else.

Cr Coorey responded by saying her view departs from the Mayor's on this. I think that variations on a DCP should only be allowed if the inaction of the development would be somehow unreasonably or unjustifiably impacted if they were strictly applied. So I don't see that this particular plan at this point that there's anything unfair or unreasonable in asking the proponents to comply with what we already have in our planning instruments.

Cr Cameron responded by saying that the report acknowledges that this site is the lead of what's likely to occur and will set the standard and the context and the amenity of that whole section. So just that in itself is a bit of guide as to what may happen. I have a different view about precedent. I think it's far more complex, the scope of it is much broader, and it does apply and it needs to be considered here.

The Mayor agreed and clarified that he was responding to the question about character of town and region and precedent. It is correct in that part of Jonson Street, it is identified as the first of potentially more developments down that end of town.

**Question No. 5 Report 13.8**

Annette Feletti asked the following question (wording as submitted in writing):

*By way of background the BSC DCP 2014 says:*

- 1. Service Vehicles must enter and leave a site in a forward manner*
- 2. The service vehicles must be able to manoeuvre on-site*
- 3. Using a public road to load and unload trucks is not permitted*
- 4. Only single dwellings and dual occupancy sites can apply for a variation of this rule.*

*Since this DA is non-conforming to the above rules and the recommendation by Council Planners to approve the DA doesn't fully explain this dangerous contravention of the DCP and the requirements of Transport for NSW, will Councillors require a full independent report on the safety and legal consequences of abandoning its well founded and credible DCP before giving any further consideration to the DA. Furthermore, will Councillors not accept that trucks leaving Ruskin Lane in a forward manner is an inadequate justification for breaking the DCP and impacting adversely on my property and the safety of my children and other pedestrians who have every right to use Ruskin Lane and must be protected? Council Planners go a step further and appear to be deliberately obfuscating the truth by implying that because trucks and service vehicles will leave Ruskin Lane in a forward manner this somehow satisfies the rule to leave the site in a forward manner. This is the dangerous contravention of the DCP. Finally have Councillors watched the video by Transport for NSW (Government) Centre for road safety at <https://youtu.be/EhgvdII-QTU> which explains how allowing big HRV trucks to reverse into Ruskin Lane is a self evident and highly dangerous reduction in road safety in front of the only entrance to my family home?*

There were no responses from Councillors to this question.

**Question No. 6 Tourism Infrastructure Fund**

Jan Barham asked the following question:

*Could council please advise on the criteria used for assessing and determining the allocation of the NSW Government \$25million tourism infrastructure fund for Byron Shire Council and if any community consultation was undertaken or a report to council prior to finalisation of projects?*

The Director Infrastructure Services took the question on notice.

*The meeting adjourned at 11.15am and reconvened at 11.33am.*

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**APOLOGIES**

There were no apologies.

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**REQUESTS FOR LEAVE OF ABSENCE**

There were no requests for leave of absence

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**DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

Cr Ndiaye declared a non-pecuniary interest in Report 13.5. The nature of the interest being that one of the lots listed is the site the high school I teach at sits (PN240038). Cr Ndiaye elected to remain in the Chamber and will participate in discussion and the vote.

Cr Lyon declared a pecuniary in Reports 13.9 and 13.10. The nature of the interest being that one of the applicants is a donor to Federal campaign. Cr Lyon elected to leave the Chamber and will not participate in discussion and the vote.

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**TABLING OF PECUNIARY INTEREST RETURNS**

There were no Pecuniary Interest Returns tabled.

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**ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

- 20-193 Resolved** that the minutes of the Ordinary (Planning) Meeting held 16 April 2020 be confirmed.  
(Richardson/Spooner)  
*The motion was put to the vote and declared carried.*

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**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. 13.3  | PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision                 |
| Report No. 13.4  | PLANNING - Byron Shire Affordable Housing Contribution Scheme and Planning Agreements Policy and Procedure           |
| Report No. 13.6  | PLANNING - 26.2019.10.1 Proposed Rezoning North Beach Byron - Options Report   |
| Report No. 13.7  | PLANNING - 26.2016.4.1 Submissions to Planning Proposal Rural Events   |
| Report No. 13.8  | PLANNING - DA 10.2019.616.1 Mixed Use Development cnr Jonson & Browning Streets Byron Bay                            |
| Report No. 13.9  | PLANNING - DA10.2019.517.1 Mixed Use Development Stage 4 of Habitat  |
| Report No. 13.11 | PLANNING - Place Planning Collective Charter and Nominations   |
| Report No. 13.12 | PLANNING - Update on Resolution 19-266 - Review of DCP 2014 and the introduction of the Low Rise Medium Density Code |

Report No. 13.16 PLANNING - DA 10.2020.110.1 Alterations & Additions to existing dwelling house at 58 Main Arm Road Mullumbimby

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Richardson and seconded by Cr Ndiaye. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 20-194 and concluding with Resolution No. 20-201.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1 PLANNING - Saddle Road affordable housing precinct - Expression of interest**

**File No:** I2020/236

**20-194 Resolved:**

1. That Council note the Expression of Interest received for providing affordable housing in the form of intentional eco-communities within Area 17, The Saddle Road.
2. That Council not proceed with amending the Rural Land Use Strategy to identify The Saddle Road as a site for providing affordable housing in the form of intentional eco-communities.
3. That Council notify those who submitted an Expression of Interest proposal of Council's decision not to proceed with amending the Rural Land Use Strategy. (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.2 PLANNING - 26.2019.7.1 - Submissions Report Old Byron Hospital Planning Proposal**

**File No:** I2020/432

**20-195 Resolved:**

1. That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/23102), to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.
2. That Council liaise with PCO as necessary to finalise the content of the draft LEP and to enable PCO to issue an opinion that the plan can be made.
3. That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website. (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*



**Report No. 13.5**            **PLANNING - 26.2018.4.1 Environmental Zone Implementation Program: Stage 2 Planning Proposal 'Submissions Report'**  
**File No:**                    I2020/403

**20-196 Resolved:**

1. That Council adopt the property-specific LEP mapping amendments identified in Table 1 of this report.
2. That Council forward a revised Stage 2 Environmental Zoning planning proposal (incorporating Table 1 mapping amendments) to the NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.
3. That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.
4. That Council request that the NSW Department of Planning and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.
5. That Council note when Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property. (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.10**            **PLANNING - 24.2020.15.1 Habitat Stage 5 DCP Amendment; Chapter E5 Certain Locations in Byron Bay and Ewingsdale**  
**File No:**                    I2020/611

**20-197 Resolved:**

1. That Council proceed to exhibit the draft DCP 2014 Chapter E5 amendment as shown in Attachment 1 (E2020/31046) for a period of 28 days.
2. That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the amended Chapter and give notice of its decision in accordance with the Environmental Planning and Assessment Regulation, subject to and concurrent with any approval of development application 10.2020.87.1. (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

*Cr Lyon did not vote on this matter in accordance with is earlier declared pecuniary interest in this matter.*

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**Report No. 13.13**      **PLANNING - DA 10.2019.451.1 Subdivision of Two (2) Lots into Two (2) Lots at 62 and 64 Corkwood Crescent, Suffolk Park**  
**File No:**                      I2020/552

- 20-198 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.451.1 for Subdivision Two (2) Lots into Two (2) Lots, be granted consent subject to the conditions of approval in Attachment 2 (E2020/26155).  
(Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.14**      **PLANNING - Report of the 9 April 2020 Planning Review Committee**  
**File No:**                      I2020/565

- 20-199 Resolved** that Council endorse the outcomes of the Planning Review Committee meeting held on 9 April 2020.  
(Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.15**      **PLANNING - Section 4.55 Application - 10.2019.196.2 - Proposed Modification to amend location of Kitchen and Wet Bar in Building 8 and amend timeframe for Demolition of Buildings 1, 2, 3, 4 and 6 - 541 Friday Hut Road Possum Creek**  
**File No:**                      I2020/642

- 20-200 Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2019.196.2:
1. Be part approved to change the location of kitchen and wet bar in Building 8 by modifying Development Consent Number 10.2010.196.1 subject to amended conditions (Attachment 2); and
  2. Be part refused and not change the timeframe for Demolition of Buildings 1, 2, 3, 4 and 6 by modifying Development Consent Number 10.2010.196.1 as in the circumstances of the case there is no demonstrated need for amendment of Conditions 2 and 5 and it is not the public interest.  
(Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.17**      **PLANNING - 10.2016.625.2 - S4.55 Minor Modifications to Design and Conditions**  
**File No:**                      I2020/657

- 20-201 Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2016.625.2, for S4.55 Minor Modifications to Design and Conditions, be approved by modifying Development consent number 10.2016.625.1 and modified subject to conditions listed in Attachment 2 (E2020/31526). (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

PROCEDURAL MOTION

- 20-202 Resolved** that Council change the order of business to deal with Reports 13.3, 13.6, 13.7, 13.8 and 13.16 next on the Agenda. (Richardson/Lyon)

*The motion was put to the vote and declared carried.*

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**Report No. 13.3**      **PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision**  
**File No:**                      I2020/301

- 20-203 Resolved:**

1. That Council:

- a) Note the report PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision.
- b) Support the preparation of an amended planning proposal for Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate) that rectifies the issues noted in this report.
- c) Require the proponent to provide a current coastal hazard study that informs the amended planning proposal to Council's satisfaction.
- d) Receive a further report that considers (i) proposed amendments to the planning proposal, (ii) the outcomes of the coastal hazard study, and (iii) submissions that were received during the public exhibition period.

2. That any planning proposal and/or development application consultation and engagement period reflects the Community Participation Plan namely that:

Before the lodgement of a planning proposal and/or development application for community significant development, the applicant must:

- carry out a community meeting or workshop to be facilitated by Council;
- notify adjoining and surrounding landowners and known community groups; and
- ensure the community has adequate time to consider and comment on the proposal.

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3. That Council request the proponent to submit a current audit of buildings, structures and works on site to enable Council staff to review against existing consents and approvals to assess compliance. This audit is to be submitted within three months. (Richardson/Coorey)

*The motion was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.6**      **PLANNING - 26.2019.10.1 Proposed Rezoning North Beach Byron - Options Report**

**File No:**              I2020/321

Moved:

That Council proceed with a Planning Proposal to rezoning the land, consistent with the approach requested by the applicant, which is:

- apply the E4 Environmental Living zone to all of the cleared parts of the land, including the land seaward of the 100 year 1% coastal hazard line; and
  - manage future development within the identified coastal risk area through the application of DCP provisions which mirror the current controls within Part J of DCP 2010
- (Hunter/Hackett)

## AMENDMENT

- 20-204 Resolved** that this matter be deferred for discussion at a Strategic Planning Workshop and a report be provided at the first available Ordinary Planning Meeting after the winter recess.
- (Ndiaye/Coorey)

*The Mayor left the meeting at 12.23pm and the Deputy Mayor took the Chair. The Mayor returned at 12.24pm.*

*The amendment was put to the vote and declared carried.*

*Crs Martin, Lyon, Ndiaye, Richardson, Cameron, Coorey and Spooner voted in favour of the amendment.*

*Crs Hackett and Hunter voted against the amendment.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.*

*Crs Martin, Lyon, Ndiaye, Richardson, Cameron, Coorey and Spooner voted in favour of the motion.*

*Crs Hackett and Hunter voted against the motion.*

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**Report No. 13.7**      **PLANNING - 26.2016.4.1 Submissions to Planning Proposal Rural Events**

**File No:**              I2020/462

- 20-205 Resolved:**

1. That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/26186), to the NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP Instrument be prepared with an amendment to Appendix A Proposed LEP Amendments to limit events on weekends to one only as provided for below as an extract:

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### 6.11 Temporary Use - Rural Event Site in RU2

(1) Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years, with a maximum of one event per Rural Event Site on weekends.

2. That Council liaise with PCO as necessary to finalise the content of the draft LEP and to enable PCO to issue an opinion that the plan can be made.
3. That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.
4. That Council upon the LEP being made, adopt the amendment to Byron DCP 2014, as included in Attachment 2 (E2020/26188), and give notice of this decision in accordance with the Environmental Planning and Assessment Regulation. (Lyon/Spooner)

*The motion was put to the vote and declared carried.*

*Crs, Martin, Lyon, Ndiaye, Richardson, Hackett and Spooner voted in favour of the motion.*

*Crs Cameron, Coorey and Hunter voted against the motion.*

*The meeting adjourned at 12.43pm for lunch and reconvened at 1.35pm.*

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**Report No. 13.8**      **PLANNING - DA 10.2019.616.1 Mixed Use Development cnr Jonson & Browning Streets Byron Bay**

**File No:**              I2020/599

Moved:

That Council defers consideration of the application until further consultation with the proponent, affected neighbours and Council is undertaken to address the following issues:

- measures to ameliorate loss of privacy and amenity on neighbouring properties;
- re-appraisal of Jonson Street rather than Ruskin Lane as the main access point to the development, paying regard to amenity for residents and safety;
- application of BLEP Cl. 4.6 to vary development standards with respect to floor space ratio and SEPP 65 planning rules for design standards;
- consideration of traffic safety and potential conflicts between vehicles, pedestrians and cyclists; and
- consideration of access issues and Local Traffic Committee comments in light of the Committee recommendation not to endorse regulatory arrangements. (Coorey/Cameron)

### AMENDMENT

**20-206 Resolved** that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.616.1 for a mixed use development, be granted consent subject to the conditions of approval in Attachment 3 (E2020/29438) with the following amendment:

1. Delete and replace condition 24 with the following:

24. Consent required for works within the road reserve

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

must accompany the application for consent for works within the road reserve.

TfNSW's concurrence is required prior to Council's approval of works on classified (Regional) roads under Section 138 of the *Roads Act 1993*.

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

Ruskin Lane Upgrade:

Kerb and gutter, road pavement and associated drainage construction, including any necessary relocation of services, as follows:

- Full frontage of the development;
- Upgrade all neighbouring driveways in accordance with Council's standard;
- Relocation of all essential services infrastructure;
- Upright kerb and gutter along the eastern side boundary to transition at the corner and connect onto the existing concrete edge strip in Ruskin Lane running in east/west direction;
- Concrete edge strip along the western side boundary to transition at the corner and connect onto the existing upright kerb & gutter in Ruskin Lane running in east/west direction;
- Full road reserve width asphalt past the loading bay area;
- Drainage upgrade in accordance with NRLG Development Design and Construction Guidelines;
- Intersection with Browning St in accordance with Planit drawing J170-1300 Rev C dated 9/3/20, except for the following:
  - “No Right Turn” signage is to comply with the relevant standards of Transport for NSW;
  - a “No Right Turn” sign is to be located on the eastern side of Ruskin Lane opposite the basement access ramp, so as to be clearly visible to southbound vehicles within the lane;
  - a “No Right Turn” sign is to be located on the western side of Browning Street opposite the Ruskin Lane intersection;
  - a “Left Turn Only” sign is to be located either on the central median in Browning Street, or at junction of Ruskin Lane and Browning Street, to be clearly visible to vehicles exiting the lane;
  - the left arrow and words “no right turn” proposed to be painted on the Ruskin Lane pavement are not approved.
- Upgrade of the street lighting in accordance with AS1158 from Browning St and along the full frontage of the development in of Ruskin Ln;
- Ruskin Ln pavement is to be concrete for approximately from the intersection with Browning St to 15m past the loading bay;
- Pedestrian crossing along Browning St road reserve, the location of the pedestrian crossing must be supported with a Road Safety Audit Assessment; and
- Signage and linemarking;

Note: the provision of convex mirror is not supported.

Driveway (commercial areas):

A driveway in accordance with Council's standard “Northern Rivers Local Government

Development Design & Construction Manuals and Standard Drawings". The footpath crossing must be designed to provide a cross fall of 1% or 1:100 (maximum 2.5% or 1 in 40) for a width of at least 2.4 metres to provide for pedestrians with access disabilities.

- Provision must be made to prevent the ingress of flood waters into the basement carpark. Driveway ramps that allow for the ingress of rainwater are to be predominantly covered, with a maximum area of 60m<sup>2</sup> only that is exposed to direct rainfall.
- Provision must be made to prevent vehicles from turning left into Ruskin Ln using raised island and linemarking; and
- Provision must be made to prevent commercial vehicles from entering the basement carpark.

Footpaths:

A 2.5m wide (minimum) footpath/cycleway is to be constructed for the full Browning St and Jonson St frontage of the site, at a crossfall of 1% or 1:100 (maximum 2.5% or 1 in 40).

The footpath formation, including any necessary relocation of services, as follows:

- Works are to tie in with elevations adopted within the latest version of the Byron Bay Bypass engineering plans adopted by Council to ensure no localised flooding will occur within the road verge adjacent to the north east corner of the bypass roundabout post construction of the bypass roundabout.

2. Amend Condition 5 to read:

# Use of dwellings

The residential dwellings are not to be used as tourist and visitor accommodation or holiday Let. Should the development be Strata Subdivided the By-Laws to include provisions specifying the above.

3. Amend Condition 28 to include part (f):

(f) the landscape maintenance regime for the landscape areas and green walls for a period of 5 years after the final occupation certificate. (Spooner/Hunter)

PROCEDURAL MOTIONS

**20-207 Resolved** that Cr Coorey be granted a two minute extension to her speech. (Richardson/Ndiaye)

*The motion was put to the vote and declared carried.*

**20-208 Resolved** that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Lyon)

*The motion was put to the vote and declared carried.*

**20-209 Resolved** that Cr Cameron be granted a two minute extension to his speech. (Richardson/Lyon)

*The motion was put to the vote and declared carried.*

**20-210 Resolved** that Cr Ndiaye be granted a two minute extension to her speech. (Richardson/Lyon)

*The motion was put to the vote and declared carried.*

# BYRON SHIRE COUNCIL

*The amendment was put to the vote and declared carried.*

*Crs Martin, Lyon, Ndiaye, Richardson, Spooner, Hunter and Hackett voted in favour of the amendment.*

*Crs Cameron and Coorey voted against the amendment.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.*

*Crs Martin, Lyon, Ndiaye, Richardson, Spooner, Hunter and Hackett voted in favour of the motion.*

*Crs Cameron and Coorey voted against the motion.*

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**Report No. 13.16**      **PLANNING - DA 10.2020.110.1 Alterations & Additions to existing dwelling house at 58 Main Arm Road Mullumbimby**

**File No:**                      I2020/651

- 20-211 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.110.1 for Alteration & Additions to existing Dwelling House, be granted consent subject to the conditions of approval listed in Attachment 3 (#E2020/30239).  
(Richardson/Cameron)

*The motion was put to the vote and declared carried.*

*Crs Coorey, Martin, Lyon, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*Cr Ndiaye Councillors voted against the motion.*

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## MAYORAL MINUTE

**No. 8.1**                      **Reopening Carparks**

**File No:**                      I2020/777

- 20-212 Resolved** that in relation to the carpark closures implemented in response to COVID-19, Council:

1. Reopen Clarkes Beach Carpark on Friday 22 May 2020;
2. Subject to consultation with NSW Police and NPWS:
  - a) Reopen Captain Cook Carpark, Broken Head Reserve Carpark, The Pass Carpark and Tallow Beach Carpark on Friday 29 May 2020;
  - b) Reopen Main Beach Carpark following completion of planned resurfacing and maintenance;
3. That the change time restrictions at South Beach Road, Brunswick Heads remains unchanged and remains in accordance with Res 20-188:
4. Endorses that Scarrabelottis Carpark and Council carparks within 7 Mile Beach Road remain closed. (Richardson)

*The motion was put to the vote and declared carried.*

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## PETITIONS

There were no petitions tabled.



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**SUBMISSIONS AND GRANTS**

There were no submissions

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**DELEGATES' REPORTS**

There were no delegates' reports.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.4**      **PLANNING - Byron Shire Affordable Housing Contribution Scheme and Planning Agreements Policy and Procedure**  
**File No:**                      I2020/402

**20-213 Resolved:**

1. That Council adopt the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359) and place the documents on public exhibition for minimum a period of 28 days with the following amendments:
  1. Delete and replace point 9 in section 4 statement of intent in the Policy with:

*9. supports an aspirational target of up to 140 rental units for very low to moderate income households via development affordable housing contribution schemes in the urban areas over the next 15 to 20 years.*
  2. Delete and replace the greenfield an infill investigation area paragraphs from Section 2. Affordable Housing Contribution Rates of the Procedure with:

*Greenfield Investigation Areas*

    - *Mullumbimby private land greenfield housing contribution areas: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses*
    - *Mullumbimby Council land greenfield housing contribution areas: 30% of the additional lots or developable area whichever the greater that is to be used for residential uses.*
    - *Bangalow greenfield housing contribution areas: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses.*
    - *Belongil greenfield housing contribution area: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses.*

*Infill Investigation Areas*

    - *Mullumbimby old hospital Council land housing contribution area: 30% of the additional dwellings or total gross floor area that is to be used for residential uses*
    - *Byron Bay Town Centre housing contribution area: 6% of the additional total gross floor area that is to be used for residential uses and 2% of non- residential total gross floor area*
2. That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

21 May 2020

the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359) as amended above. (Spooner/Lyon)

### PROCEDURAL MOTION

- 20-214 Resolved** that Cr Spooner be granted a two minute extension to his speech. (Richardson/Cameron)

*The motion was put to the vote and declared carried.*

*The motion (Spooner/Lyon) was put to the vote and declared carried.*

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

*No Councillors voted against the motion.*

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**Report No. 13.9**      **PLANNING - DA10.2019.517.1 Mixed Use Development Stage 4 of Habitat**  
**File No:**              12020/523

*Cr Lyon left the meeting in accordance with his earlier declared pecuniary interest in this matter.*

Moved:

That Development Application No. 10.2019.517.1 for a mixed use development be deferred to seek an amended application that does not breach the height standard in cl. 4.3 of BLEP.

(Cameron/Coorey)

### PROCEDURAL MOTION

- 20-215 Resolved** that Cr Cameron be granted a two minute extension to his speech. (Richardson/Coorey)

*The motion was put to the vote and declared carried.*

### AMENDMENT

- 20-216 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.517.1 for a mixed use development, be granted consent subject to the conditions of approval in Attachment 2 (E2020/24920). (Richardson/Spooner)

*The amendment was put to the vote and declared tied.*

*Crs Richardson, Hunter, Hackett and Spooner voted in favour of the amendment.*

*Crs Martin, Ndiaye, Cameron and Coorey voted against the amendment.*

*The Mayor used his casting vote in favour of the amendment and declared the amendment carried.*

*Cr Lyon was not present for the vote.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.*

*Crs Martin, Richardson, Spooner, Hunter and Hackett voted in favour the motion.*

*Crs Ndiaye, Coorey and Cameron voted against the motion.*

*Cr Lyon was not present for the vote.*

**Report No. 13.11**      **PLANNING - Place Planning Collective Charter and Nominations**  
**File No:**              I2020/548

**20-217 Resolved:**

1. That Council endorse the Place Planning Collective Charter as per Attachment 1 (E2020/31059).
2. That Council nominate Crs Lyon, Cameron and Hackett to be members of the Place Planning Collective. (Lyon/Richardson)

*The motion was put to the vote and declared carried.*

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**Report No. 13.12**      **PLANNING - Update on Resolution 19-266 - Review of DCP 2014 and the introduction of the Low Rise Medium Density Code**  
**File No:**              I2020/549

**20-218 Resolved:**

1. That Council write to the Minister to reiterate its concerns about the Low-rise Medium Density Code and its negative impact on Byron Shire and its community as previously resolved and to request a further pause to the Code's implementation.
2. That due to the potential impact of the Low-rise Medium Density Code, Council endorse an amendment to Byron Shire DCP 2014, to:
  - a) include *Residential Locality Narratives* (Attachment 1 E2020/29897); and
  - b) cross reference Chapter D1, Residential Accommodation in Urban, Village and Special Purpose Zones with *Residential Locality Narratives* and Design Verification Statements.
3. That Council request staff to proceed with preparation and public exhibition of the Byron DCP 2014 amendments proposed in this report.
4. That Council receive a further report for consideration of submissions following the statutory public exhibition period.
5. That Council agree that should there be no submissions as of the close of the statutory public exhibition period, adopt the Byron Shire DCP 2014 amendments as exhibited and give public notice of this decision in accordance with the Environmental Planning and Assessment Regulation 2000.
6. That Council note that for certain design criteria further discussion is required with the Department of Planning, Industry and Environment as to how standards are to be interpreted. (Lyon/Richardson)

*The motion was put to the vote and declared carried.*

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*There being no further business the meeting concluded at 3.33pm.*

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**BYRON SHIRE COUNCIL**

I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 18 June 2020.

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Mayor Simon Richardson