



Byron Shire Council



Minutes

Ordinary (Planning) Meeting

Thursday, 13 August 2020

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
13 August 2020

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BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

13 August 2020

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 13 AUGUST 2020 COMMENCING AT 11.03AM AND CONCLUDING AT 1.22PM

I2020/1140

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

VIRTUAL: 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	For/ Against	Name	Representing Organisation	Submission Received
13.3 Business and Industrial Lands Strategy staff response to Department of Planning, Industry and Environment	Against	Matthew O'Reilly	Saddle Ridge Local Area Management and Planning Association	In person
13.7 PLANNING - DA 10.2020.220.1 Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House) at 30 Fingal Street Brunswick Heads	For	Kate Singleton & Brett Haylock	Planners North / Brunswick Picture House	In person
	Against	Paul Hoy		In person
13.8 PLANNING - DA 10.2019.643.1 Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached) at 11 Brownell Drive Byron Bay	For	Karina Vikstrom		In person
	Against	Max Chipchase	Chipchase Planning	Pre-recorded video

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Precautionary principle, ecological sustainable development and the community charter for good planning	Matthew O'Reilly	Saddle Ridge Local Area Management and Planning Association	In person

Question No. 1 2018 Byron Employment Lands Background Report

Matthew O'Reilly, on behalf of the Saddle Ridge Local Area Management and Planning Association, asked the following question:

Can Council please explain why they continue to misquote the 2018 Byron Employment Lands Background Report?

Cr Lyon responded:

I don't accept your premise that there's a misrepresentation. It implies that we hoodwink people, or we're not telling the truth and I don't think that staff are doing that at all. I don't see that, but what may be coming out is, we're obviously privy to a lot more information from the time that that report was done. So of that 12ha you're talking about, and it's been in a report since then, there's been subsequent information that it is 9ha of that, is potentially underdeveloped so you're talking about existing land. It's only a small amount that's actually going to be developable; almost enough to say it's negligible. When you look at those growth projections of the three of them, they're not really adding up to much due to existing supply. So that's kind of the basis we've been working on since these reports have come forward.

So there's no game at play here, it's just about us ensuring we have an adequate supply of land, and that's what the consultants have also said. The point that I'm trying to make here is that it's a subjective exercise. There's no fixed number here that you need to come up with and say ok we can solve this.

I don't accept the premise. It's simply a matter of figures have changed and there's been additional information and I'll add on more when that item comes up.

Cr Coorey also responded:

Whatever the mechanism, whether it's by design or by mistake, I concur with Mr O'Reilly, our own background report doesn't support the staff recommendation and I can't explain that. I apologise because it is confusing for a member of the public to read through without background reports, reading through the data and also considering we're probably at the beginning of a massive economic downturn to justify this land.

To answer to your question, I don't know and I also don't know why Cr Lyon said this is a subjective exercise. It absolutely isn't and if he's privy to any more information that's come to light in the last 12 months, he alone has it because it hasn't been shared to me.

Question No. 2 Court Reversals and costs resulting from said loss

John Anderson asked the following question which was read out by a member of staff:

According to the Local Government Act it is the responsibility of the General Manager to regularly update Councillors as to court reversals and costs resulting from said loss. Accordingly could the GM please provide me with the said public documents as they relate to the term of this Council i.e. the past four years? (I refer of course to losses as they come to light, not in terms of cases filed during the past 4 years, many of which would not come to light until next year.)

The General Manager responded:

Legal Counsel provides a report to the Executive Team on a monthly basis. The report is also provided to Councillors as a Confidential Report. Throughout the current term of Council, councillors have been updated on all legal matters involving Council on a monthly basis.

All publicly available information concerning legal services is published in Council's Annual Report. Mr Anderson will be provided with copies of the section of the Annual Report from 2016 to 2020 relating to legal matters and proceedings.

The question focuses on court reversals and costs resulting from those reversals. It is assumed that the question relates to Land and Environment Court proceedings. Since 2016 there have been only 2 matters, out of 60, where an appeal has been allowed on the original application.

The only occasion where costs have been awarded against Council since 2016 was in 2019 when Council unsuccessfully appealed a Land and Environment Court Commissioner's judgement. Costs awarded against Council in that matter were \$45,000.

The meeting adjourned at 11.52am and reconvened at 12.05pm.

APOLOGIES

There was apology received from Cr Hackett.

PROCEDURAL MOTION

- 20-361 Resolved** that the apology from Cr Hackett be accepted and a leave of absence granted.
(Richardson/Hunter)

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.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 20-362 Resolved** that the minutes of the Ordinary (Planning) Meeting held 18 June 2020 be confirmed.
(Ndiaye/Coorey)
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 Business and Industrial Lands Strategy staff response to Department of Planning, Industry and Environment
- Report No. 13.7 PLANNING - DA 10.2020.220.1 Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House) at 30 Fingal Street Brunswick Heads
- Report No. 13.8 PLANNING - DA 10.2019.643.1 Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached) at 11 Brownell Drive Byron Bay

The remaining Recommendations and Committee Recommendation 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. 20-363 and concluding with Resolution No. 20-367.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

- Report No. 13.1 PLANNING 26.2019.8.1 - Exhibition Outcomes - Submissions report - 54 Parrot Tree Place Bangalow Planning Proposal**
File No: I2020/723

20-363 Resolved:

1. That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/6094), 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/Hunter)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

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Report No. 13.2 **PLANNING - 26.2019.5.1 Exhibition outcomes - submissions report - rail corridor planning proposal**
File No: I2020/461

20-364 Resolved:

1. That Council forward the planning proposal to amend Byron LEP 2014, as included in Attachment 1 (E2020/32263), 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 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/Hunter)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Report No. 13.4 **Review of submissions on the draft Byron Shire Affordable Housing Contribution Policy and Procedure**
File No: I2020/1095

- 20-365 Resolved** that Council adopt the Byron Shire Affordable Housing Contribution Policy in Attachment 2 (E2020/55585) and accompanying Procedures in Attachment 3 (E2020/55587). (Richardson/Hunter)

Report No. 13.5 **PLANNING - Report of the 11 June 2020 Planning Review Committee**
File No: I2020/925

- 20-366 Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held on 11 June 2020. (Richardson/Hunter)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Report No. 13.6 **PLANNING - Report on Variations to Development Standards 1 April 2020 to 30 June 2020**
File No: I2020/1088

- 20-367 Resolved** that Council adopt the report on variations to development standards for the period 1 April 2020 to 30 June 2020. (Richardson/Hunter)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

PROCEDURAL MOTION

- 20-368 Resolved:** that Council change the order of business to deal with Reports 13.3, 13.7 and 13.8 next on the Agenda. (Richardson/Lyon)

The motion was put to the vote and declared carried.

Report No. 13.3 Business and Industrial Lands Strategy staff response to Department of Planning, Industry and Environment
File No: I2020/1054

20-369 Resolved:

1. That the Business and Industrial Lands Strategy be updated to:
 - a) Include two new actions as follows:
 - i) Prepare a precinct plan for land around the Byron Central Hospital to inform the preparation and assessment of individual development proposals and ensure the long-term functionality of this key service precinct in the Byron Shire.
 - ii) Amend the Byron LEP 2014 B7 Business Park Zone objectives to extend consideration to the retail function of Mullumbimby town centre and Brunswick Heads village centre.
 - b) Add under the Business and Industrial Lands Strategy tables for investigation areas:
 - i) 1 (Billinudgel), 2 (Mullumbimby), 6 (Byron West) and 7 (Bangalow) an additional dot point under 'key issues and further investigations' requiring *'investigations to ensure that any proposed development is consistent with relevant State and regional planning provisions this may include the management of areas of high environmental value, flooding and heritage/cultural significance.'*
 - ii) 2 (Mullumbimby) and 7 (Bangalow) an additional dot point under 'key issues and further investigations' requiring *detailed assessment of agricultural capability and impact on surrounding land will be required as part of any planning proposal consistent with Section 9.1 Direction 5.3: Farmland of State & Regional Significance on the NSW Far North Coast.*
 - c) Insert at the start of the Business and Industrial Suitable Lands Principles a qualifying statement *'the principles set out below are intended to provide additional guidance on land that is suitable for business and industrial purposes in Byron Shire. Should an inconsistency between a relevant State and regional regulatory planning provisions and the principles arise, the investigations are to ensure that any proposed development is consistent with relevant State and regional planning provisions.'*
 - d) Insert under Actions 12 (Gulgan East & West) & 14 (Gulgan North) a requirement to undertake an assessment to evaluate the potential impact of business park development on existing business centres for any proposal incorporating a business park.
 - e) Exclude Lot 50 DP 881232 and southern part of Lot 26 DP 830652 from the Gulgan West investigation area on the basis that it is wholly contained within a significant regional farmland designation and a major part of the land is anticipated to have a depth of flood water in excess of 1.5m in a 100 year flood event, and furthermore the landowners are advised accordingly.

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- f) Support:
 - i) maintaining of a maximum building height control for the southern end of Jonson Street at 9 metres.
 - ii) further consideration of applying SEPP 70 Affordable housing contribution scheme within the Byron Bay Town Centre.
- 2. That the Department of Planning, Industry and Environment be advised that Council:
 - a) has updated the Business and Industrial Lands Strategy as per the Council endorsed recommendations under item 1 above.
 - b) intends to retain the business and industrial suitable land principles as stated in the Business and Industrial Lands Strategy.
 - c) intends to retain the Gulgan North as an investigation area, independent to Gulgan East and West.
 - d) does not support the use of the term 'preliminary investigation areas' and intends to retain all 'investigation areas' as identified, subject to the adjustment of Gulgan West boundary as per item 1. Above.
 - e) prefers the use of 'anticipated delivery timeframe' to a rigid land release program for the Byron Shire. (Hunter/Richardson)

PROCEDURAL MOTION

20-370 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.

AMENDMENT

Moved: That Council redrafts the Business and Industrial Lands Strategy according to the qualifications and amendments as listed in the DPIE letter dated 12 May 2020 – attached to the agenda of this meeting. (Coorey/Cameron)

PROCEDURAL MOTION

20-371 Resolved that Cr Lyon be granted a one minute extension to his speech. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

Crs Coorey and Cameron voted against the motion.

The amendment was put to the vote and declared lost.

Crs Coorey, Ndiaye and Cameron voted in favour of the amendment.

Crs Martin, Lyon, Richardson, Hunter and Spooner voted against the amendment.

The motion (Hunter/Richardson) was put to the vote and declared carried.

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

Crs Coorey, Ndiaye and Cameron voted against the motion.

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Report No. 13.7 **PLANNING - DA 10.2020.220.1 Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House) at 30 Fingal Street Brunswick Heads**
File No: I2020/1030

20-372 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.220.1 for Alterations and Additions to Existing Entertainment Facility (Brunswick Picture House), be granted consent subject to the conditions of approval attached to this report (E2020/54768). (Cameron/Richardson)

*The motion was put to the vote and declared carried.
Crs Coorey, Martin, Lyon, Ndiaye, Richardson, Cameron, Spooner and Hunter voted in favour of the motion.
No Councillors voted against the motion.*

Report No. 13.8 **PLANNING - DA 10.2019.643.1 Demolition of Existing Dwelling House and Construction of Dual Occupancy (Attached) at 11 Brownell Drive Byron Bay**
File No: I2020/1050

20-373 Resolved: that pursuant to Section 4.16(3) of the Environmental Planning & Assessment Act 1979, development application 10.2019.643.1 for demolition of an existing dwelling house and the construction of an attached dual occupancy be granted a deferred commencement consent subject to the following conditions listed in Attachment 2 (E2020/56220). (Cameron/Lyon)

*The motion was put to the vote and declared carried.
Crs Coorey, Martin, Lyon, Ndiaye, Richardson, Cameron, Spooner and Hunter voted in favour of the motion.
No Councillors voted against the motion.*

There being no further business the meeting concluded at 1.22pm.

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

.....
Mayor Simon Richardson