



# Byron Shire Council



## Minutes

Ordinary (Planning) Meeting

Thursday, 15 August 2019

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
15 August 2019

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## ORDINARY (PLANNING) MEETING MINUTES

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<b>MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 15 AUGUST 2019 COMMENCING AT 11:04AM AND CONCLUDING AT 2:05PM</b>
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I2019/1205

**PRESENT:** Cr S Richardson (Mayor), 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)  
Shannon Burt (Director Sustainable Environment and Economy)  
Ralph James (Legal Counsel)  
Phil Warner (Manager Assets and Major Projects) – Public Access  
Chris Larkin (Manager Sustainable Development) – items 8.7, 8.1  
Ben Grant (Planner) – item 8.1  
Heather Sills (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.*

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### 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:

**8.1 PLANNING - Update on Resolution 19-209 Development Application 10.2018.483.1 Rural Tourist Accommodation Eight (8) Cabins and Swimming Pool at 58 Montecollum Road Wilsons Creek**

*Frank Stewart addressed Council in favour of the recommendation.  
Ben Fawcett addressed Council against the recommendation.*

**8.2 Bangalow Village Implementation Plan**

*Ian Holmes addressed Council in favour of the recommendation.*

**8.4 PLANNING - DCP 2014 Minor Amendments Submissions Report 24.2018.65.1**

*Matthew O'Reilly, on behalf of Community Alliance for Byron Shire, addressed Council against the recommendation.*

**8.7 PLANNING - Development Application 10.2019.20.1 Multi Dwelling Housing, Five (5) Dwellings - Lot 14 DP 792128 Bangalow Road, Byron Bay**

*Paul Young addressed Council against the recommendation.*

**Questions No. 1 – Tree Removal**

Matthew Lambourne asked the following question:

*Does the design of the proposed roundabout at the corner of Shirley, Lawson and Butler Streets, shown on the preliminary drawing dated 08/05/15 in the GHD EIS including the removal of one of the Norfolk Pines in front of the police station still the current proposal?*

Council's Manager Assets and Major Projects provided the following response:

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*The proposed upgrade of the Shirley Street intersection is currently under investigation and design. The need for tree removal is not yet finalised.*

*The meeting adjourned at 11:36am and reconvened at 11:59am.*

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### APOLOGIES

#### PROCEDURAL MOTION

- 19-356 Resolved** that the apology from Cr Cameron be accepted and a leave of absence granted.  
(Richardson/Ndiaye)  
*The motion was put to the vote and declared carried.*

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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

There were no declarations of interest.

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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

- 19-357 Resolved:** that the minutes of the Planning Meeting held on 20 June 2019 be confirmed.  
(Richardson/Hackett)  
*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. 8.1  | PLANNING - Update on Resolution 19-209 Development Application 10.2018.483.1 Rural Tourist Accommodation Eight (8) Cabins and Swimming Pool at 58 Montecollum Road Wilsons Creek |
| Report No. 8.2  | PLANNING - Bangalow Village - Implementation Plan  |
| Report No. 8.4  | PLANNING - DCP 2014 Minor Amendments Submissions Report 24.2018.65.1   |
| Report No. 8.7  | PLANNING - Development Application 10.2019.20.1 Multi Dwelling Housing, Five (5) Dwellings - Lot 14 DP 792128 Bangalow Road, Byron Bay   |
| Report No. 8.10 | PLANNING - 10.2018.425.1 Alteration and Additions to Existing Dwelling House, Swimming Pool and Tree Removal   |

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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. 19-358 and concluding with Resolution No. 19-363.

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 8.3**                      **PLANNING - Submissions Report for Amendment to Byron DCP - Public Art 24.2018.48.1**  
**File No:**                              I2019/843

**19-358 Resolved** that Council:

1. Adopt the draft Byron DCP 2010 and draft Byron DCP 2014 Chapters appended to this report as Attachments 1 – 5 (#E2018/59059, #E2019/6129, #E2019/50709, #E2019/52406, #E2019/52418).
2. Notify the public as required by the Environmental Planning and Assessment Regulation 2000. (Richardson/Hunter)

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**Report No. 8.5**                      **Report of Planning Review Committee held on 13 June 2019**  
**File No:**                              I2019/941

**19-359 Resolved** that Council note the report of the Planning Review Committee meeting held on 13 June 2019. (Richardson/Hunter)

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**Report No. 8.6**                      **PLANNING - Community Participation Plan**  
**File No:**                              I2019/1055

**19-360 Resolved:**

1. That Council endorse the draft Community Participation Plan (Attachment 1 E2019/53186) for public exhibition.
2. That Council delegate to the General Manager the making of minor edits including phrase clarification and or grammar corrections prior to exhibition.
3. That the draft plan is placed on exhibition for a minimum of 28 days and a report be presented to Council after the exhibition period. (Richardson/Hunter)

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**Report No. 8.8**                      **PLANNING - Exceptions to Development Standards 1 April to 30 June 2019**  
**File No:**                              I2019/1084

**19-361 Resolved** that Council note the report on exceptions to development standards for the period 1 April to 30 June 2019. (Richardson/Hunter)

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**Report No. 8.9**                      **PLANNING - Development Application 10.2019.129.1 Subdivision Two Lots at 480 -544 Coolamon Scenic Drive Coorabell**  
**File No:**                              I2019/1122

- 19-362** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application no. 10.2019.129.1 for Subdivision two (2) lots, be granted subject to the conditions of approval in Attachment 2 (# E2019/53236). (Richardson/Hunter)

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**Report No. 8.11**                      **Update on the Planning Status of Short Term Rental Accommodation in Byron Shire**  
**File No:**                              I2019/1171

- 19-363** **Resolved** that Council note the update provided on the current planning status of Short Term Rental Accommodation in Byron Shire. (Richardson/Hunter)

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### PROCEDURAL MOTION

- 19-364** **Resolved** that Council change the order of business to deal with Reports 8.7, 8.1, 8.2, and 8.4 next on the Agenda. (Richardson/Ndiaye)

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

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**Report No. 8.7**                      **PLANNING - Development Application 10.2019.20.1 Multi Dwelling Housing, Five (5) Dwellings - Lot 14 DP 792128 Bangalow Road, Byron Bay**  
**File No:**                              I2019/1076

**Moved** that, pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, development application 10.2019.20.1, for multi dwelling housing comprising five (5) two-bedroom dwellings, be approved subject to the conditions contained in Attachment 3 (#E2019/54343), with the addition of the following conditions:

#### **Remediation of Contaminated Land**

The application for a construction certificate must be accompanied by a Detailed Contaminated Land Assessment and (where required) a Remedial Action Plan must be prepared by a suitably qualified contaminated land specialist with experience in the remediation of contaminated land. The Remedial Action Plan must conform to NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites 1997*, and include (but not be limited to) soil sampling for asbestos material. All other applicable standards apply.

The Detailed Contaminated Land Assessment and Remedial Action Plan (if required) must be submitted to and approved by Council prior to the issue of a Construction Certificate.

#### **Remediation of Contaminated Land (where required)**

Prior to the commencement of any works associated with this development consent, if a Remedial Action Plan has been approved, the following is required:

- a) A suitably qualified contaminated land specialist with experience in the remediation of contaminated land must be engaged by the proponent to oversee and be responsible for all works associated with the implementation of the Remedial Action Plan and subsequent site and soil validation.



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- b) A notice of commencement of the remediation work and a copy of the Remedial Action Plan must be provided to Council's Health and Environment Section at least 7 days prior to commencement of the work.
- c) The notice of commencement must include contact details of the responsible person, including an emergency 24-hour phone number.

### **Remediation of Contaminated Land (where required)**

Remedial works must be undertaken in conformance with the approved Remedial Action Plan and NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites 1997* and all other applicable standards.

### **Removal of asbestos and other wastes (where required)**

All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licensed Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with *NSW DECC Waste Classification Guidelines (2014)* [www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf](http://www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf)

### **Remediation of Contaminated Land – Validation Report required**

A notice of completion must be provided to Council's Health and Environment Section within 30 days of completion of the remediation work. The notice of completion must be accompanied by a Validation Report prepared by a suitably qualified person with experience in the remediation of contaminated land. (Coorey/Ndiaye)

## PROCEDURAL MOTIONS

- 19-365 Resolved** that this matter rest on the table to allow Sam Kanjo an opportunity to address Councillors on the matter. (Richardson/Lyon)

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

- 19-366 Resolved** that Report No. 8.7 be lifted from the table. (Richardson/Lyon)

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

## AMENDMENT

- 19-367 Resolved** that, pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, development application 10.2019.20.1, for multi dwelling housing comprising five (5) two-bedroom dwellings, be approved subject to the conditions contained in Attachment 3 (#E2019/54343). (Spooner/Lyon)

*The amendment was put to the vote and declared carried.  
Crs Coorey and Ndiaye voted against the amendment.*

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

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**Report No. 8.1**                      **PLANNING - Update on Resolution 19-209 Development Application 10.2018.483.1 Rural Tourist Accommodation Eight (8) Cabins and Swimming Pool at 58 Montecollum Road Wilsons Creek**  
**File No:**                              I2019/974

**19-368 Resolved** that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2018.483.1 for Rural Tourist Accommodation Seven (7) Cabins and Swimming Pool, be refused for the following reasons:

1. The proposed development is not supported having regard to the relevant matters for consideration under clause 6.8 of Byron Local Environmental Plan 2014. The number of cabins, their location and access arrangements result in an increase in the intensity of development on the site and is considered to be inappropriate given the rural character of the property and the location generally.
2. The proposed development is considered to be inconsistent with the objectives of the RU2 Rural Landscape Zone in Byron Local Environmental Plan 2014 and is not supported for the same reasons as those listed in Reason 1 above.
3. The proposed development is considered to be inconsistent with controls in Development Control Plan 2014 including but not limited to: cabin aspect, cabin orientation, number of driveways to the property, cabin clustering arrangements, and potential road safety impacts as a result of the development.
4. The significant contravention of Development Control Plan 2014 is without justification and is likely to set an undesirable precedent for rural cabin development generally.
5. The site is not considered to be suitable for the development proposed given the same reasons listed in Reasons 1 - 4 above, and is not in the public interest. (Coorey/Ndiaye)

### PROCEDURAL MOTIONS

**19-369 Resolved** that Cr Coorey be granted a two minute extension to her speech. (Richardson/Lyon)

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

**19-370 Resolved** that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Hackett)

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

**19-371 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.*

**19-372 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.*

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

*Crs Richardson, Hackett, Spooner and Hunter voted against the motion.*

*The Mayor used his casting vote and declared the motion carried.*

*The meeting adjourned at 1:08pm for a lunch break and reconvened at 1:57pm.*



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**Report No. 8.2**                      **PLANNING - Bangalow Village - Implementation Plan**  
**File No:**                              I2019/842

- 19-373 Resolved** that Council adopt Part B of the Bangalow Village Plan – Implementation Plan (Attachment 1 #E2019/54316) to complement the previously adopted Part A – Visions and Initiatives with the additional dot point below added to key priority project 1 in the 'Linking the town' section on page 4:
- provide a new walk/cycle path connections between Showgrounds and sports-fields, including bridge(s) across Byron Creek (Richardson/Ndiaye)

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

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**Report No. 8.4**                      **PLANNING - DCP 2014 Minor Amendments Submissions Report**  
**24.2018.65.1**  
**File No:**                              I2019/909

- 19-374 Resolved** that Council:
1. Adopt the DCP 2014 Chapters, with the changes as a result of the public exhibition period which are detailed in the body of this report and included in Attachments 1 to 10 (#E2019/29634, #E2019/31383, #E2019/29557, #E2019/29556, #E2019/29415, #E2019/29404, #E2019/29393, #E2019/29392, #E2019/29357, #E2019/28932) and including item 13 (affecting Chapters D2 and D3) as exhibited.
  2. Notify the public as required by the Environmental Planning and Assessment Regulation 2000. (Lyon/Ndiaye)

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

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**Report No. 8.10**                      **PLANNING - 10.2018.425.1 Alteration and Additions to Existing Dwelling House, Swimming Pool and Tree Removal**  
**File No:**                              I2019/1134

- 19-375 Resolved** that Council notes that DA 10.2018.425.1 has been withdrawn by the applicant. No determination by Council is required. (Lyon/Ndiaye)

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

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*There being no further business the meeting concluded at 2:05pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Planning Meeting on 19 September 2019.

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Mayor Simon Richardson