



Byron Shire Council



Minutes

Ordinary (Planning) Meeting
Thursday, 21 November 2019

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
21 November 2019

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 21 NOVEMBER 2019 COMMENCING AT 11.02AM AND CONCLUDING AT 3.30PM

I2019/1888

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)
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	For/ Against	Name	Representing Organisation
13.5	Against	Ronald William, Luis Felio	
		Fay Jackson	
13.6	For	Ronald Stinson	
		Fay Jackson	
13.10	For	Frank Stewart	Architect
	Against	Ben Fawcett	
13.11	For	Stephen Connelly, Tristan Grier, Duncan Band	
	Against	David Dixon	
<i>Cr Lyon left the chamber due to a pecuniary interest in Report 13.11 and returned following the address by David Dixon.</i>			
13.13	For	Victoria Polask	

Submission 1. Housing Affordability

David Brown made a submission to Council regarding housing affordability in this Shire.

Question 1. Development Application for the Byron Bay Bypass

John Anderson asked the following question:

By what process was the DA for the Byron Bypass referred to the JRPP for determination given that the cut-off point for referral generally is \$20 million in construction costs, whereas the construction contract for the Bypass is for \$14 million and the total cost is given as \$17.5 million.

The Director Infrastructure Services advised that The overall project budget for the Byron Bypass is \$24M.

Regional Planning Panels determine development applications (Das) with a capital investment value over \$5M for projects that are Council related.

On this basis the project was referred.

The meeting adjourned at 12.20pm and reconvened at 12.40pm.

APOLOGIES

There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

Cr Ndiaye requested a leave of absence for the Ordinary Meeting of 28 November 2019.

PROCEDURAL MOTION

19-557 Resolved that Cr Ndiaye be granted a leave of absence on 28 November 2019.

(Richardson/Lyon)

The motion was put to the vote and declared carried.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Richardson declared a pecuniary interest in Report 13.7. The nature of the interest being that he is the house owner. Cr Richardson elected to leave the Chamber and will not participate in discussion and the vote.

Cr Ndiaye declared a non-pecuniary interest in Report 13.7. The nature of the interest being that she works closely with the Mayor, the house owner. Cr Ndiaye elected to remain in the Chamber and will participate in the discussion and the vote.

Cr Lyon declared a pecuniary interest in Report 13.11. The nature of the interest being that an associate of the applicant company was a donor to his Federal campaign. Cr Lyon elected to leave the Chamber and will not participate in discussion and the vote.

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Cr Spooner declared a non-pecuniary interest in Report 13.11. The nature of the interest being that he has known people involved with this application through his professional work. Cr Spooner elected to remain in the Chamber and will participate in the discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.19 of the Code of Conduct for Staff:

- an Annual Return of Interests for 2018-2019 is tabled for Jeff Begovic, Development Engineering Supervisor; and
- a First Return of Interests is tabled for Esmeralda Davis, Acting Manager Corporate Services.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

19-558 Resolved that the minutes of the Ordinary (Planning) Meeting held 17 October 2019 be confirmed. (Coorey/Spooner)

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. 13.4 | PLANNING - Planning Proposal to rezone the part of the Rail Corridor in Byron Bay that is subject to Byron Bay Railroad Company licence, to SP2 Infrastructure, Byron Bay 26.2019.5.1 |
| Report No. 13.5 | PLANNING - Development Application 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 (detached) at 16 Short Street Brunswick Heads |
| Report No. 13.8 | 5G Technology |
| Report No. 13.10 | PLANNING - S8.2 Review - Rural Tourist Accommodation 6 Cabins and Swimming Pool, Montecollum Road, Wilsons Creek |
| Report No. 13.11 | PLANNING - Development Application 10.2019.375.1 Alterations and additions to existing commercial development, including extension to outdoor dining area, Porter Street, Byron Bay |

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Hunter and seconded by Cr Cameron. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 19-559 and concluding with Resolution No. 19-567.

The Mayor left the chamber in accordance with his earlier declared pecuniary interest in Report 13.7. The Deputy Mayor took the Chair at 12.47pm. The Mayor returned to the Chair following the vote at 12.47pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 Community Participation Plan - Submissions Report
File No: I2019/1388

19-559 Resolved:

1. That Council adopt the Community Participation Plan as attached (Attachment 1 E2019/77091) and upload the plan to the NSW Planning Portal by 1 December 2019.
2. That staff review Part A of the Byron DCP 2014 and DCP 2010 to reference the Community Participation Plan and remove overlapping content and proceed to exhibition with any amendments. (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.2 Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach
File No: I2019/1203

19-560 Resolved:

1. That Council upload the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach (Attachment 1 – E2019/80086) for public comment to 10 January 2020.
2. That Council send the draft CMP Stage 1 Scoping Study for Cape Byron to South Golden Beach (Attachment 1– E2019/80086) to key stakeholders and state agencies for their review and comment. Agencies with a role or responsibility associated with recommended actions/studies/components in the Forward Plan are requested to provide formal support and clarification of their role and/or responsibility.
3. That staff report back to Council in February 2020 on the outcomes of public comment, key stakeholder and state agency review. (Hunter/Cameron)

Report No. 13.3 PLANNING - Planning Proposal for the former Byron Hospital Site
26.2019.7.1
File No: I2019/1444

19-561 Resolved:

1. That Council forward the planning proposal for the former Byron Hospital Site (Attachment 1 #E2019/78939) to the Department of Planning, Industry and Environment for Gateway determination.
2. That the planning proposal be put on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made. (Hunter/Cameron)

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The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.6 **PLANNING - Development Application 10.2019.349.1 Stage 1: De-commissioning of existing dual occupancy to form one (1) dwelling, Stage 2: Construction of new dwelling house to form a dual occupancy and alterations & additions to existing dwelling house at 14 Short Street Brunswick Heads**

File No: I2019/1632

- 19-562 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.349.1 for Stage 1: De-commissioning of existing residential flat building to form one (1) dwelling and construction of new dwelling to form a dual occupancy. Stage 2: Alterations and additions to existing dwelling, be granted consent subject to the conditions listed in Attachment 2 (E2019/78359). (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.7 **PLANNING - Development Application 10.2019.516.1 Alterations & additions to existing dwelling, 36 Roses Road, Federal**

File No: I2019/1685

Cr Richardson left the chamber in accordance with his earlier declared pecuniary interest in this matter.

- 19-563 Resolved** that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.516.1, for alterations and additions to an existing dwelling house, be granted consent subject to the conditions of approval in Attachment 2 (#E2019/75226). (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.9 **PLANNING - Development Application 10.2019.345.1 Subdivision of Five (5) Lots into Four (4) Lots at 46 Bay Vista Lane Ewingsdale**

File No: I2019/1713

- 19-564 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.345.1 for subdivision of five (5) lots into four (4) lots, be granted consent subject to the conditions of approval in Attachment 2 (E2019/76646). (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.12 **Memorandum of Understanding between Byron Shire Council and North Coast Community Housing**

File No: I2019/1760

- 19-565** **Resolved** that Council endorse the Memorandum of Understanding and approve of its signing by the Mayor along with North Coast Community Housing to facilitate work with Council on affordable housing issues affecting the Byron Shire (S2019/7504). (Hunter/Cameron)

Report No. 13.13 **PLANNING - Development Application 10.2019.196.1 Use of Existing Buildings as a Detached Dual Occupancy and Demolition / Removal of Five (5) buildings at 541 Friday Hut Road Possum Creek**

File No: I2019/1807

- 19-566** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application 10.2019.196.1 Use of existing buildings as a Detached Dual Occupancy and Demolition / Removal of five (5) building, be granted Deferred Commencement Consent (deferral period 12 months) subject to conditions (Attachment 2 E2019/79037). (Hunter/Cameron)

The motion was put to the vote and declared carried.

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

No Councillors voted against the motion.

Cr Richardson was not present for the vote.

Report No. 13.14 **Byron Shire Local Heritage Grants Program 2019-20**

File No: I2019/1813

- 19-567** **Resolved:**

1. That Council endorse the staff recommended funding allocations of the Byron Shire Local Heritage Grants Program 2019-20 as provided below:
 - 2 applications (Attachments 2 & 4) will receive \$1,000 each on the proviso that the properties are heritage listed.
 - 2 applications (Attachments 1 & 3) will receive \$2000 each.
 - 2 applications (Attachments 5 & 6) will receive \$3000 each.
2. That staff notify all of the grant applicants of Council's decision. (Hunter/Cameron)

PROCEDURAL MOTION

- 19-568** **Resolved** that Council change the order of business to deal with Reports 13.5, 13.10 and 13.11 next on the Agenda. (Richardson/Cameron)

The motion was put to the vote and declared carried.

Report No. 13.5 PLANNING - Development Application 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 (detached) at 16 Short Street Brunswick Heads

File No: I2019/1631

19-569 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 deferred until the next available Council Meeting and that:

- a) Staff are requested to further consider the Building Height Plane encroachment and shadow impact on adjoining properties as a result of the development proposal.
- b) Shadow diagrams that meet the requirements of Council's Shadow Diagram Fact Sheet are to be provided by the applicant for this purpose.
- c) The proponents are requested to consider amending the designs for the building height encroachment.
- d) The condition regarding use as dual occupancy be redrafted to make it clear that short term holiday letting is a prohibited use. (Ndiaye/Richardson)

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. 13.10 PLANNING - S8.2 Review - Rural Tourist Accommodation 6 Cabins and Swimming Pool, Montecollum Road, Wilsons Creek

File No: I2019/1715

19-570 Resolved that, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, development application 10.2018.483.1 for rural tourist accommodation six (6) cabins and swimming pool, be granted consent subject to the conditions listed in Attachment 4 (E2019/79269) with the following amendments:

- Delete and replace condition 17 (c) with:
 - c) Provision of sealed surface at all access points, longitudinal grades 10° or greater, and a minimum of 20m before and after the dwelling houses at No 70 Montecollum Road (Lot 1 DP 615329) and No 80 Montecollum Road (Lot 3 DP 621548).
- Insert the following to condition 17 after (c):
 - d) The junction between Montecollum Road and Cedar Road must be upgraded for safety, including signage and road-marking.
 - e) The junction between Montecollum Road and the existing driveway to Nos 56 and 58 Montecollum Road must be upgraded for safety, including surface upgrading and remodelling, signage and road-marking.

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- f) Safety signage must be provided at the junction between the new driveway and Montecollum Road at chainage 1070m.
- Delete and replace condition 61 with:
 - 61. Noise limitations of the Pool Amenities Building The noise level emitted from the pool amenities building must not exceed the background noise level plus 5dB(A) between the hours of 7:00am and 9:00pm at the nearest affected residence. The noise level emitted from the pool amenities building between 9.00 pm and 7:00 am must not exceed the background noise level at the nearest affected residence. No correction for tonality is applied. In assessing noise levels at residences, the noise level is to be assessed at the most affected point on or within the residential property boundary or, if this is more than 30m from the residence, at the most affected point within 30m of the residence. (Lyon/Cameron)

PROCEDURAL MOTIONS

19-571 Resolved that Cr Coorey be granted a one minute extension to her speech. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

19-572 Resolved that Cr Richardson be granted a two minute extension to his speech. (Coorey/Ndiaye)

The motion was put to the vote and declared carried.

19-573 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 (Lyon/Cameron) 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 voted against the motion.

Report No. 13.11 PLANNING - Development Application 10.2019.375.1 Alterations and additions to existing commercial development, including extension to outdoor dining area, Porter Street, Byron Bay

File No: I2019/1752

Cr Lyon left the chamber at 1.25pm in accordance with his earlier declared pecuniary interest in this matter.

Moved:

1. That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.375.1 for alterations and additions to existing commercial development, including expanded outdoor dining area, 1 Porter Street Byron Bay (Habitat), be granted consent subject to conditions in Attachment 3 (#E2019/79222) with the following change:

Delete and replace condition 22 with the following:

22. Total Number of Patrons

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The total number of patrons utilising the Outdoor Dining area in association with the restaurant in Building C1 is limited to 150 people combined.

2. That Council be provided with a report on compliance with condition 18. Operational Noise Management at 12 months from the issue of an Occupation Certificate. The report to include the details of any changes made to the Noise Management Plan and implemented to achieve compliance with the relevant noise guidelines in place at that time.
(Coorey/Cameron)

PROCEDURAL MOTION

- 19-574 Resolved** that Cr Richardson be granted a one minute extension to his speech. (Hackett/Hunter)

The motion was put to the vote and declared carried.

AMENDMENT

- 19-575 Resolved** that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2019.375.1 for alterations and additions to existing commercial development, including expanded outdoor dining area, 1 Porter Street Byron Bay (Habitat), be granted consent subject to conditions in Attachment 3 (#E2019/79222). (Richardson/Ndiaye)

PROCEDURAL MOTIONS

- 19-576 Resolved** that Cr Hackett be granted a one minute extension to her speech. (Richardson/Ndiaye)

The motion was put to the vote and declared carried.

- 19-577 Resolved** that Cr Coorey be granted a one minute extension to her speech.
(Richardson/Cameron)

The motion was put to the vote and declared carried.

The amendment was put to the vote and declared carried.

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

*The amendment upon becoming the substantive motion was put to the vote and declared carried.
Crs Martin, Lyon, Ndiaye, Richardson, Hackett, Spooner and Hunter voted in favour of the motion.
Crs Coorey and Cameron voted against the motion.*

The meeting adjourned at 2.03pm for lunch and reconvened at 2.40pm.

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no petitions tabled.

DELEGATES' REPORTS**1. Meetings with Ministers, Sydney**

Cr Richardson advised about the meeting that was held in Sydney with the General Manager, Shannon Burt and I. We met with four ministers. Overall, the day was fantastic. If we can achieve 80% of what we were hoping was committed during the day, it would have been quite a profound meeting really. The first one was with Minister Toole, where we got really productive conversation about the rail corridor, about the outcome of our feasibility for a shuttle alongside the rail trail. He was very open to opening their mind on that, particularly when the tram solar technology is now being exported to countries around the world and it comes from his electorate. He fully understand the capacity that Byron perhaps may have for both and that for the first time in many years we are, as a region, united in activating it. He was also very supportive of finalising the funding for the bus interchange and the carpark in and around the Rails Hotel. That was really pleasing.

The second meeting was with Minister Kean from the Environment. We shared our bio-energy investigative work which he was really interested in learning more, but more importantly we were resolving on the Seven Mile Beach issues as far as management and control of. He was very supportive of our request to give it to National Parks to find a way to limit or control at least the vehicular access.

We then had a meeting with Minister Ward to talk about the homeless problem. One of the things that I think was very clear was that the three ministers we spoke to had really good prior knowledge of us and our needs and this particular Minister didn't so really had no idea about the exceptional circumstances at Byron and, pretty much, most things we said he basically said that's the same as Kiama; which I'm not too sure he's been to Byron or he'd acknowledge we're a fair bit different to Kiama when it comes to housing pressure, affordability and rough sleeping. But, to his credit was still open to getting the regional representative of FACS in front of our staff and with Ben Franklin there. So hopefully even just getting some attention to this with some clear ministerial pressure for them to consider Byron and get up to speed with Byron, could lead to good outcomes.

Then the last meeting was with Minister Stokes from a planning point of view, talking about the tiny house problems when it came to planning. How with wheels they become that sort of mobile home which therefore limits the length of stay for example. Whereas if it doesn't have wheel mobility it then has different constraints. He was very open to exploring with us how we might be able to land some housing outcomes with tiny houses. Particularly with our commitment of us being, in a sense, the developer alongside of community housing groups of a not for profit type outcome. He was obviously a bit concerned about the developers getting their teeth in too deep into the idea of many houses on small bits of land. And, ultimately he informed us that he wanted to do it through the local strategic planning statement that we all got the update on last week. He basically said to us, when we said we were going to look to doing it in July but we'd like this tiny house thing done earlier, he said that gives us some incentive to finish that before July. We took that medicine as bitter as it was and therefore commit to finish that document earlier so we can get a clear partnership with the state government for a tiny house planning provision, particularly for Byron specific.

Ultimately, four really good meetings. Three pretty exceptional meetings and as I said if we can get some outcomes from what came from them, it would have been a really, really successful one. Credit goes to Ben Franklin for facilitating and organising and then getting us in front of the Members.

2. NSW Coastal Conference 2019, Terrigal

Cr Hackett advised:

We went to the Coastal Conference at Terrigal and it was very full and very busy. Belongil and the Bay were mentioned a lot in a lot of the papers. So, they've definitely got their eye on us, as maybe, a what can go wrong example.

Of particular interest amongst the hundreds of papers were a whole lot of presentations on estuarine health. These were the titles: monitoring estuarine health; climate change in estuaries; moving beyond the high tide; getting the best out of your ICOLL; co-engineering climate change; adaption on coastal wetlands.

There were a few keynote addresses but there was a very interesting one which was about Climate, Coastlines and Culture – Which Will Change First? It was suggesting that a lot of changes that we want to put in place or protections we want to put in place maybe can't be done until the culture changes. So that's very much a part of what we have to consider, not just what's happening in climate change and what we're expecting to happen along the coastlines with erosion but how is our coastal culture going to respond and be part of the process. So that was a great keynote address.

A lot of things about dunes, which you all know I'm interested in like sand, nature's defences, dune behaviour and management at the Stockton Bite. That was really interesting. Moving on from rock, more natural approach to bank stability using logs and revegetation which is what they used to do at Byron Bay before we were resettled here, and new people came in; foreshore rehabilitation, what's best for the ecology.

After that, a lot of the papers were about the coastal management plans and I just wanted to show you a few slides today there from Angus Gordon, who I'm a particular fan of. He presented this very interesting thing titled "Section 27, the enigma section of the 2016 Coastal Management Act". He said:

"...regarding the granting of development consents, is proving to be the least understood provision within the Act. It isn't the wording, as such, that is misunderstood but rather the reasons, and opportunities behind, and provided by the Section.

Some consent authorities see s27 as an impediment and a provision that makes the granting of consent all but impossible. Instead however s27, if correctly understood and utilised, [and this applies particularly to us and our history] provides a pathway for councils to both satisfy s773 of the Local Government Act and to minimise our exposure to Common Law cases for damages while at the same time providing a mechanism to allow for consent to be granted."

So in his paper he was looking at why Section 27 is necessary and he discussed the exposure councils potentially have to Common Law actions as we've been getting from Belongil residents. Unless councils understand and utilise Section 27. So that's going to be there for our benefit. It will also discuss how to satisfy the granting of consent conditions of Section 27. Section 27 is actually a friend not a foe for consent authorities if properly understood and used correctly. So we are going to have to go there.

It flags the potential changes to the Local Government Act that would make it far easier and more practical for councils to implement management strategies and in particular those involving consents for protective structures for private properties.

So his slides started off with Section 27:

“Development consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works unless the consent authority is satisfied that: a) the works will not, over the life of the works:

unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or pose or be likely to pose a threat to public safety...”

So this is something that we’ve been dealing with in regard to Belongil.

“...and b) Satisfactory arrangements have been made (by conditions imposed on consent) for the following life of the works:

The restoration of a beach or land adjacent to the beach if any increased erosion of the beach or adjacent land is caused by the presence of the works, the maintenance of the works.

So then he went through a number of slides:

Slide 1: Access to and along beaches with growing population pressures and erosion recession complicated by climate change.

Slide 2: There is always a solution. Recent LEC decision at Belongil reinforced access issue.

Slide 3: Where impact issues all started – important Case Law in 1968 and 1974, no council exercising its powers would reasonably have appreciated the matters litigated, their complexity.

Slide 4: End effects of piecemeal protection. (A photo shows end effects of erosion at Main Beach, Byron Bay.)

Slide 5: The unlawful user of land should gain no advantage from having established an unlawful use. (A photo on the slide shows Belongil.)

Slide 6: Coastal protection works are best undertaken as a wholistic solution. Where coastal protection works are included in a certified CMP they cannot be undertaken by a public authority without requiring a DA. If undertaken by private individuals, such works require a DA.

Slide 7: Some may feel that some authorities go “over the top” but it depends on the asset being protected.

Slide 8: Of course sometimes an individual can come up with a solution that only impacts on their own property.

Slide 9: [Slide shows image of a lone house on stilts out in the water and showing other works that have gone on behind the house]. What happens when a whole of coastal compartment is not adopted. [If you just work on one part of the coast and not the rest.]

There are solutions, and to keep us out of court and litigation, this Section 27 is our friend and we’ll get [our Coastal and Biodiversity Coordinator] on top of that.

Cr Coorey further advised about the Coastal Conference:

Probably by now you'll be aware that Byron Shire Council and Tweed Shire Council's are sharing the next Coastal Conference so it'll be held at Salt I believe. Byron obviously features so much in discussions on the coast so we will be featuring that. I'd like to flag that I'd like to be involved in that. I think it's an exciting opportunity for us as a Shire.

I very much enjoyed that Conference. I liked the way it was organised across three sections, so there was engineering, technology and innovation. And then there was governance and community and lastly coastal and estuarine science. There was one that Jan didn't mention that I'd like also to mention which actually looked at indigenous rights and public access. Some interesting cases with regard to Native Title and access to the beach which may have an impact down the track and it's worth having a look at. Other than that I was really excited by a lot of the papers on shellfish, particularly oyster restoration in our estuaries and fortunately also I think with the engineers, a lot of them were talking about green engineering – soft engineering, the non-hard response. Which of course in Byron we've been trying to do for a long time but some of the others are catching up to us. But I think there are more opportunities for that and there's people doing it here and elsewhere. We can certainly take some of those examples to the next conference. It'll be fun and it'll be around about this time next year. I think we can do it better than ever. That's my determination.

3. Meeting with Dept Planning, Industry and Environment

Cr Ndiaye advised Council:

I had the opportunity with Shannon and the team to meet with Dept of Planning, Industry and Environment when they were here visiting. First of all, there was a discussion with our neighbouring councils and we had the opportunity to voice some of the challenges that have been coming up around different requirements and then later on had a meeting and talked through some of the things similar to what the Mayor was talking about. The challenges with short term rental accommodation, and how the concerns around a register that may or may not work. As well as stuff around affordable housing and the challenges with having a ten year provision or whether there's any provision or possibility of extending that.

Also, challenges with the low rise medium density code and things like manor houses and how that kind of blanket approach would have a negative effect on our Shire.

It was a really positive and productive meeting.

4. A word of thanks to Council staff regarding fire communications

Cr Ndiaye advised:

Although this is outside of the delegates' reports, I wanted to take the opportunity to say to Council staff – a big thank you – given the big fire issues we've had recently. It was great to see staff implementing so many of the changes that we tried to put through after the floods and the challenges that came up then. Although it's a really challenging space and it's hard to get the right information, but the flow of information to us and the community was so much better and it made the whole process much easier, I think, for the whole community. It was great to see we had a 1300 people or so turn up to the community meeting. What's come out of that, and what I'm hearing is with the summer ahead a lot of people really are new to the area and didn't really know what to do. I'm wondering if in the debrief of this event, we can look at helping the RFS facilitate some workshops of what to do if you're going to stay or any of those sorts of things.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.4 **PLANNING - Planning Proposal to rezone the part of the Rail Corridor in Byron Bay that is subject to Byron Bay Railroad Company licence, to SP2 Infrastructure, Byron Bay 26.2019.5.1**
File No: I2019/1536

19-578 Resolved:

1. That Council forward the planning proposal to rezone a section of the rail corridor located between Bayshore Drive and Lawson Street, Byron Bay (Attachment 1 E2019/71925) to the Department of Planning, Industry and Environment for Gateway determination.
2. That the planning proposal be put on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made. (Spooner/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. 13.8 **5G Technology**
File No: I2019/1697

Moved:

1. That Council note the update provided in the report on 5G technology.
2. That Council acknowledge the divergent views in the community about 5G technology.
3. That Council recognise the limitation of NSW land use planning policies over 5G infrastructure.
4. That Council not proceed with a public information event due to not receiving acceptance to attend by any pro 5G experts.
5. That Council write again to local Federal Member for Richmond Justine Elliot MP seeking assurance that community concerns with respect to 5G network technologies are being assessed and taken into consideration.
6. That Council reiterates its request to the State Government, local member Tamara Smith, and LGNSW to undertake a review of the cumulative impacts and to identify who holds responsibility for monitoring cumulative impacts of microwave frequency technologies of 'small cell installations' on the residential community and, in light of the findings of this review, request the State Government to re-consider the appropriate planning process for the installation of small cells. (Richardson/Ndiaye)

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

21 November 2019

AMENDMENT

Moved:

1. That Council note the update provided in the report on 5G technology.
2. That Council not proceed with a public information event.

The amendment was put to the vote and declared carried.

Crs Martin, Lyon, Ndiaye and Richardson voted against the amendment.

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

Crs Martin, Lyon, Ndiaye, Richardson and Cameron voted against the motion.

There being no further business the meeting concluded at 3.30pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 12 December 2019.

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Mayor Simon Richardson