



Byron Shire Council



Minutes Ordinary (Planning) Meeting

Thursday, 10 June 2021

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
10 June 2021

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 10 JUNE 2021 COMMENCING AT 9:08AM AND CONCLUDING AT 12:44PM

I2021/958

PRESENT: Cr M Lyon (Mayor), Cr B Cameron, Cr C Coorey, Cr J Hackett, Cr A Hunter, 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)
Chris Larkin (Acting Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Steve Daniels (Planner) – item 13.4
Rob van Iersel (Place Activation Coordinator) – 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.

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 in form of
13.1 PLANNING - Housekeeping planning proposal exhibition outcomes 26.2020.6.1	For	Matthew O'Reilly	CABS	In person
	Against	Chris Pratt		In person
		Michael M Murray	Resilient Byron	In person
13.4 PLANNING - 26.2021.1.1 Planning Proposal to permit Community Title & R5 Large Lot Residential Development - 53 McAuleys Lane, Myocum	For	Matthew O'Reilly		In person

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Report No and Title		For/ Against	Name	Representing Organisation	Submission Received in form of
13.5*	PLANNING - 10.2020.242.1 - Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement at 84 Blindmouth Road Main Arm	For	Luke Houghton		In person
		Against	Duncan Dey	Main Arm Rural Residents Association	In person
			Silvana Smith		In person
13.8	PLANNING - S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing at 23 Lismore Road Bangalow	For	Ian Holmes	Bangalow Progress Association	In person

**Cr Lyon declared an interest in item 13.5 and left the Chamber at 9:40am and returned at 10:12am. The Deputy Mayor took the Chair during this period.*

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Expanding impact of rural tourism development	Matthew O'Reilly	CABS	In person

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Question No. 1 – Cost/benefit analysis of Bioenergy Plant

David Dixon asked the following question:

The Acting Director of Infrastructure Services has confirmed that an economic cost/benefit analysis has been done for the proposed \$15-20 million dollar bioenergy plant but has not been released publicly. Will this cost/benefit analysis be released when a DA is put on exhibition so ratepayers can assess if this expensive project is good value for money?

The Director Infrastructure Services provided the following response:

The project is currently subject to grant applications and because of the commercial in-confidence terms of these processes, it is Council's preference to release further details of the cost benefit analysis following the outcome of that process. In terms of the DA process the cost/benefit analysis is not a planning consideration and due to the size of the project it would be determined by the Joint Regional Planning Panel.

Question No. 2 - Multiple Occupancy and Community Title Dwelling Entitlements

Matthew O'Reilly (CABS) asked the following question:

Can existing authorised MOs and CTs approved under the Byron LEP 1988 and the Rural Settlement Strategy 1998 apply for NEW DA approval for additional dwelling entitlements under the current provisions of the Byron LEP 2014 and DCP 2014 which are more permissive than the previous rules given that all those previous MOs and CTs are not included in the current Byron LEP CTMO Map?

The Acting Director Sustainable Environment and Economy took the question on notice.

Question No. 3 - Code of Meeting Practice – Question Rules

John Anderson asked the following question:

Given that in May you "disallowed" a question of mine that I regarded as entirely consistent with the rules as I then understood them, could you please give some indication of the new regime of criteria which you apply so that I may adapt?

The Mayor provided the following response:

There is no new regime of criteria. The simple matter of that was that the question was inappropriate, it had inappropriate content that had nothing to do with Council business. So in terms of indication of how you may adapt I would suggest asking appropriate questions.

*The meeting adjourned at 10:24am and reconvened at 10:54am.
Cr Spooner did not return at this time.*

APOLOGIES

There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Lyon declared a significant non-pecuniary interest in Report 13.5. The nature of the interest being that he is a neighbour / friend of the proponent, who donated to the Greens Federal campaign when Cr Lyon was the candidate for Richmond. Cr Lyon elected to leave the Chamber and not participate in discussion and the vote.

Cr Martin declared a not significant non-pecuniary interest in Report 13.5. The nature of the interest being that she was a member of the Greens when a donation was made to the Federal campaign by the developer. She received no personal benefit. Cr Martin elected to remain in the Chamber and participate in discussion and the vote.

Cr Ndiaye declared a not significant non-pecuniary interest in Report 13.5. The nature of the interest being that the proponent made a donation to Michael Lyon's campaign for the Federal seat of Richmond a number of years ago. Cr Ndiaye does not know the man and has not met him and was made aware of the donation during the meeting. Cr Ndiaye elected to remain in the Chamber and participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

21-170 Resolved that the minutes of the Ordinary (Planning) Meeting held 13 May 2021 be confirmed. (Coorey/Hackett)

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. 13.1 PLANNING - Housekeeping planning proposal exhibition outcomes 26.2020.6.1
- Report No. 13.4 PLANNING - 26.2021.1.1 Planning Proposal to permit Community Title & R5 Large Lot Residential Development - 53 McAuleys Lane, Myocum
- Report No. 13.5 PLANNING - 10.2020.242.1 - Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement at 84 Blindmouth Road Main Arm
- Report No. 13.12 Place Planning Collective - Additional Community Members

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Cameron. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 21-171 and concluding with Resolution No. 21-178.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 **Water extractive industries**
File No: I2021/551

- 21-171** **Resolved** that Council notes the information provided in this report about the permissibility of water extraction industries in Byron Shire. (Lyon/Cameron)
-

Report No. 13.3 **PLANNING - DA 10.2020.142.1 for Removal of existing commercial premises (approved real estate office) at 6 Strand Avenue, New Brighton and construction of commercial premises and new recreation facility**
File No: I2021/264

- 21-172** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.142.1 for removal of the existing approved real estate office building and construction of new commercial premises and new recreation facility be approved subject to the conditions of deferred commencement consent (deferral period 12 months) recommended in Attachment 3. (Lyon/Cameron)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

Report No. 13.6 **PLANNING - Deferred 10.2014.417.2 - S4.55 to Modify Staging. Stage 1: Conversion of Existing Garage to Temporary Sales and Display Office for On-site Marketing of Approved Residential Flat Building. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building at 43 Lawson Street, Byron Bay**
File No: I2021/618

- 21-173** **Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2014.417.2, for S4.55 to Modify Staging - Stage 1: Conversion of Existing Garage to Temporary Sales and Display Office for On-site Marketing of Approved Residential Flat Building. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building, be approved by modifying Development consent number 10.2014.417.1 as detailed in Attachment 2 (E2021/56626). (Lyon/Cameron)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

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Report No. 13.7 **Byron LEP 2014 Rural Subdivision Provisions**
File No: I2021/783

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- 21-174** **Resolved** that Council receive a report on any proposed amendments to clause 4.1C, 4.1F and similar rural subdivision clauses in LEP 2014, as part of a future Council initiated housekeeping planning proposal once the implications of the proposed State wide rural planning reforms are known. (Lyon/Cameron)
-

Report No. 13.8 **PLANNING - S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing at 23 Lismore Road Bangalow**
File No: I2021/743

- 21-175** **Resolved** that:
1. Pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2019.161.2, for S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing, be approved by modifying Development consent number 10.2019.161.1 as indicated in Attachment 3 to this Report; and
 2. A copy of the notice of determination be sent to each person who made a submission in respect of the application. (Lyon/Cameron)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

Report No. 13.9 **PLANNING - Development Application 10.2020.257.1 Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House at 113A Paterson Street, Byron Bay**
File No: I2021/747

- 21-176** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.257.1 for Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House, be granted consent subject to the conditions of approval in Attachment 1 (E2021/63714). (Lyon/Cameron)

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

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**Report No. 13.10 PLANNING - Development Application 10.2020.251.1
Alterations and Additions to the Commercial development
(Book Room) comprising coffee cart and ancillary works
(pergola) at 27-31 Fletcher Street Byron Bay**

File No: I2021/759

21-177 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.251.1 for Alterations and Additions to the Commercial development (Book Room) comprising coffee cart and ancillary works (pergola) be approved subject to conditions of consent in Attachment 2 (E2021/72034).

(Lyon/Cameron)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

**Report No. 13.11 PLANNING - Development Application 10.2021.178.1 Studio at 1
Beach Avenue South Golden Beach**

File No: I2021/778

21-178 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.178.1 for Studio, be granted consent subject to the conditions of approval listed in Attachment 2 (E2021/66707).

(Lyon/Cameron)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

PROCEDURAL MOTION

21-179 Resolved that Council change the order of business to deal with Reports 13.1, 13.4, and 13.5 next on the Agenda.

(Lyon/Ndiaye)

The motion was put to the vote and declared carried.

Cr Spooner was not present for the vote.

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Report No. 13.1 PLANNING - Housekeeping planning proposal exhibition outcomes 26.2020.6.1

File No: I2021/471

21-180 Resolved that Council:

1. Forwards the planning proposal to amend Byron LEP 2014, as revised in Attachment 1 (E2021/65655) to include the changes recommended in this report to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;
2. Pending receipt of PCO opinion that the plan can be made, forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.
3. Holds a Strategic Planning Workshop to consider and clarify issues around ambiguity in some of the uses on rural properties including;
 - a) the definition of small scale industry;
 - b) function centres;
 - c) artisan food and drink premises;
 - d) roadside food stalls in R5 (Large Lot Residential Zones); and
 - e) any others that require clarification. (Coorey/Ndiaye)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Spooner was not present for the vote.

Cr Spooner returned to the meeting at 11:25am.

Report No. 13.4 PLANNING - 26.2021.1.1 Planning Proposal to permit Community Title & R5 Large Lot Residential Development - 53 McAuleys Lane, Myocum

File No: I2021/474

21-181 Resolved that Council:

1. Accept the applicant's letter of offer to enter into a Voluntary Planning Agreement (VPA) (Attachment 6 E2021/69988) with Council as part of this planning proposal subject to the letter of offer being amended to include:
 - a) Safety upgrades to accommodate pedestrian and cycle links from the development site to Mullumbimby Road.
 - b) Integration of pedestrian and cycle links with the proposed McAuleys Lane / Mullumbimby Road intersection upgrade.
 - c) provision of a slip lane for turning into Saddle Road from Mullumbimby Road that provides better safety and access for cyclists, pedestrians, and all road users.

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2. Require that a draft VPA be prepared in accordance with the amended letter of offer.
3. Amend the Planning Proposal (Attachment 1 E2021/72620) to reflect the recommendations contained in this report and as shown below:
 - a) Reposition the northern boundary of the proposed R5 zone to ensure no encroachment within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (i.e. 20m from the top of the stream bank or wetland edge); and
 - b) Make consequential amendments to the minimum lot size map and subdivision concept plan.
4. Forward the amended planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.
5. Prior to public exhibition, update the stormwater and onsite waste management assessment reports to reflect maximum development that assumes dual occupancy dwellings on proposed lots.
6. Undertake public exhibition of the planning proposal in accordance with the Gateway determination requirements.
7. Consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Cameron/Coorey)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

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Report No. 13.5 **PLANNING - 10.2020.242.1 - Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement at 84 Blindmouth Road Main Arm**
File No: I2021/550

In accordance with his earlier declared interest in this item Cr Lyon left the Chamber at 11:44am. The Deputy Mayor took the Chair.

21-182 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.242.1 for Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement, be granted deferred commencement consent

1. With Blindmouth Road works, causeway upgrade and relevant conditions completed within three years of date of determination; and
2. Council authorise the General Manager under delegation to finalise the deferred commencement consent based on the conditions of approval listed in Attachment 2 (E2021/60582) with Condition No.12 being amended to read as follows and insert landscape condition in the appropriate order.

12)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.

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

Driveway (Typical Rural Property Access Standard)	A driveway(s) in accordance with Type 1 driveway of RMS drawing 19.07.2016. The works are to include the adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities.
Access Treatment	Provision of a BAR & BAL turning treatment in accordance with AUSTROADS.
Blindmouth Road Upgrade	Blindmouth Road including the causeway on Blindmouth Road linking the sealed section of the road must be upgraded in accordance with Chapter D1.22 to D1.29 of D1.0 - Geometric Road Design - Northern Rivers Local Government (NRLG).

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- a) Road design upgrade to provide a 6m seal and 1m sealed shoulders with table drains to cater for a minor road with traffic 150-500 AADT (D1.27 - Table T1.27 of NRLG) including line marking of the edge lines and appropriate RMS warning signs for cyclist/ pedestrians.
- b) Scope of Works
 - Works specified in SDS Civil drawing C1; and
 - Extension the works in SDS Civil drawing C1 to link the sealed section of Blindmouth Road including the causeway over Blindmouth Creek south of the development.
- c) The upgrade of the causeway on Blindmouth Road over Blindmouth Creek to Austroads standards. The floodway must be designed to provide flood free access for at least the 1 in 2 year ARI storm event and safe vehicle access for at least the 1 in 50 year ARI storm event. Detailed design and documentation, including erosion protection works and safety measures, for the creek crossing. Flood warning signs and flood gauges to show depth of flooding must be installed for both approaches to the floodway.

Landscaping Plan

A Landscape Plan to be submitted to Council for approval prior to the issue of the Construction certificate providing a landscape screen to Blindmouth Road in front of dwelling sites D1 and D2 and up to driveway entrance. Plant species are to be natives endemic to the North Coast of NSW with maturity height of at least 2 metres.

(Cameron/Ndiaye)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

Cr Lyon was not present for the vote.

Cr Lyon returned at 11:52am and resumed the Chair.

MAYORAL MINUTE

Mayoral Minute No. 8.1 Relaxation of restrictions on the sale and consumption of alcohol - Denning Park Byron Bay

File No: I2021/990

21-183 Resolved:

1. That any restrictions affecting the sale and consumption of alcohol in that part of Denning Park Byron Bay highlighted in red in the following aerial be suspended for the duration of the Byron Music Festival on 19 June 2021.



2. That the Police and any other relevant authorities be notified of Council's resolution.
3. That Council make clear that this event in this location being free of alcohol restrictions is a one-off and in no way to be relied upon as a precedent. (Lyon)

*The motion was put to the vote and declared carried.
Crs Spooner and Hackett voted against the motion.*

NOTICES OF MOTION

There were no notices of motion.

PETITIONS

There were no petitions.

SUBMISSIONS AND GRANTS

There were no submissions and grants.

DELEGATES' REPORTS

1. Federal Masterplan Group

Cr Cameron provided the following delegates' report:

The Federal Masterplan Group has been steaming ahead and held a public meeting last night for residents. The purpose was to have a workshop and in effect to bring together and present the data that has been collected by an incredible group of people doing a lot of work. They presented the survey results to the community and used that for a visioning process.

50-60 residents came out, on a night when apparently there was something else big happening. There was a real buzz in the room, and a real excitement - it was a really great night.

There is definitely some magic happening out there at Federal and it's really good news that our commitment to hand over to the community is showing such great results. This is community empowerment on steroids. It would be remiss of me if I didn't say right now that there's an incredible group of people who are putting in an incredible effort to make this happen and they need to be thanked, and will be thanked I'm sure, in the future.

I'd also like to acknowledge the participation of staff who came out - Rob, Isabelle, and Andrew - thank you very much for your presence last night. I know it was greatly appreciated and from what I can see there is a great relationship evolving between staff and community here and that's exactly what we want and exactly how we'll get the best results.

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PROCEDURAL MOTIONS

21-184 Resolved:

1. That pursuant to Section 10A(2)(a) refer to relevant part of Act below) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely *Place Planning Collective - Additional Community Members*.
2. That the reasons for closing the meeting to the public to consider this item be that it contains personnel matters concerning particular individuals (other than councillors)
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest. (Martin/Lyon)

The motion was put to the vote and declared carried.

21-185 Resolved that Council move into Committee to allow for free debate. (Martin/Lyon)

The motion was put to the vote and declared carried.

21-186 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

21-187 Resolved that the meeting move out of confidential session. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

Report No. 13.12 Place Planning Collective - Additional Community Members
File No: I2021/806

21-188 Resolved that Council:

1. Nominates the following two representatives from the expressions of interest contained in Attachment 2 (E2021/69485) to be part of the Place Planning Collective: Lauren Julian for Bangalow, Ben Wallace and Bronwyn Bancroft for the Byron Arts and Industry Estate.
2. Endorses the update to the Place Planning Collective Charter as detailed in the report.
3. Writes to those people not selected thanking them for their Expression of Interest. (Martin/Lyon)

The motion was put to the vote and declared carried.

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There being no further business the meeting concluded at 12:44pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 5 August 2021.

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Mayor Michael Lyon