



Byron Shire Council



Minutes Ordinary (Planning) Meeting Thursday, 14 October 2021

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
14 October 2021

INDEX OF ITEMS DISCUSSED

The following items are listed in the order in which they were dealt with.

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ORDINARY (PLANNING) MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 14 OCTOBER 2021 COMMENCING AT 11.08PM AND CONCLUDING AT 4.20PM

I2021/1602

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 (Manager Sustainable Development)
Ralph James (Legal Counsel)
Mila Jones (Minute Taker)

The Mayor opened the meeting and acknowledged that the meeting is being held on Arakwal Country and that we pay our respects to the elders past and present and extend our respect to the Bundjalung clans whose lands and waters are part of the Shire.

PUBLIC ACCESS

Prior to dealing with the circulated reports and associated information, a Public Access Session was held and Council was addressed on the following:

Public Access

Report No and Title	Name	For/ Against	Representing Organisation	Submission Received in form of
13.3 PLANNING - DA 10.2019.343.1 (Deferred) Tourist and Visitor Accommodation Comprising Four (4) Cabins at 150 Tandys Lane, Brunswick Heads	Stephen Eakin / Kate Singleton	For		In person
	Terry Davis	Against	Tandys Lane Community	In person
13.4 PLANNING - Development Application 10.2020.574.1 Farmstay Accommodation comprising Six (6) Cabins and a Central	Peter Westheimer	Against		In person
	Thomas George			Read out by staff member

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	Facility at 219 The Saddle Road Brunswick Heads				
13.5	PLANNING - Development Application 10.2020.109.1 Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots	Nicolette Jackson	For	Tallowood Ridge Community	Zoom
		Peter Kotroni/Chris Loneragan	Against		In person

THE MEETING ADJOURNED AT 12.07PM AND RECONVENED AT 12.38PM.

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 Coorey declared a not significant non-pecuniary interest in Report 13.3. The nature of the interest being that the owner's son is a close friend of her son. Cr Coorey elected to remain in the Chamber and will participate in discussion and the vote.

Cr Ndiaye declared a significant non-pecuniary interest in Report 13.4. The nature of the interest being that the proponent is a fellow Greens candidate in the upcoming Local Government Election. Cr Ndiaye elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.9 of the Code of Conduct, Annual Returns of Interests of Councillors and Designated Staff for the period 2020 to 2021 were tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 21-413 Resolved** that the minutes of the Ordinary (Planning) Meeting held 16 September 2021 be confirmed. (Coorey/Hunter)

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 - Report of the 2 September 2021 Planning Review Committee
- Report No. 13.2 PLANNING - Development Application 10.2020.47.1 Alterations and additions to existing tourist facility in two (2) stages at 1 Cavvanbah Street Byron Bay
- Report No. 13.3 PLANNING - DA 10.2019.343.1 (Deferred) Tourist and Visitor Accommodation Comprising Four (4) Cabins at 150 Tandys Lane, Brunswick Heads
- Report No. 13.4 PLANNING - Development Application 10.2020.574.1 Farmstay Accommodation comprising Six (6) Cabins and a Central Facility at 219 The Saddle Road Brunswick Heads
- Report No. 13.5 PLANNING - Development Application 10.2020.109.1 Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots
- Report No. 13.6 PLANNING - Update to Council resolution 21-284 - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow
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PROCEDURAL MOTION

- 21-414 Resolved** that Council change the order of business to deal with Reports 13.3, 13.4 and 13.5 next on the Agenda. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 **PLANNING - DA 10.2019.343.1 (Deferred) Tourist and Visitor Accommodation Comprising Four (4) Cabins at 150 Tandys Lane, Brunswick Heads**

File No: I2021/1434

21-415 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.343.1 for tourist and visitor accommodation comprising four (4) one-bedroom cabins, be granted consent subject to the conditions shown at Attachment 1 (E2021/118364) and the following additional and amended conditions.

Amend Condition 21 to remove (l) which states:

A four (4) strand post and wire fence with a height of 1.2m to be erected along the western edge of the mapped coastal wetlands under State Environmental Planning Policy (Coastal Management) 2018.

22A Section 88B Instrument

A Section 88B Instrument and one (1) copy are to be submitted with the application for a Construction Certificate. The Section 88B Instrument is to provide for an Easement of Conservation as follows:

A restriction applying to the entirety of the area to which the approved Vegetation Management Plan applies. The restriction on user must prohibit, except as otherwise permissible by law, all of the following within the area covered by the restriction on user:

- a) the destruction or removal of any local native trees, shrubs, grasses or other vegetation, or the planting of any flora other than local native flora.
- b) any act or omission which may adversely affect any local native flora or any native fauna or their related habitats;
- c) any act or omission which may result in the deterioration in the natural state or in the flow, supply, quantity or quantity of any body of water or in the natural moisture regime of the area;
- d) the creation or maintenance of any tracks through the area;
- e) the removal, introduction or disturbance of any soil, rock or other minerals;
- f) any structures or dwellings;
- g) No deposition or accumulation of rubbish or refuse, including garden refuse and weed propagules, nor the use of any of the area for storage of any substance or material.

The S88B Instrument must contain a provision identifying Byron Shire Council as the only person or authority having the power to revoke, vary or modify the restriction on user.

Amend Condition 48 to read:

Manager of tourist and visitor accommodation cabins

The tourist and visitor accommodation must be managed and operated by the principal owner or a delegated representative living on the property at all times.

Replace condition 60 with the following wording

No boat craft requiring a licence is to be launched from the property

61 Window screening

To minimize the risk of bird strikes, measures to prevent the reflection of sky and adjacent vegetation on windows must be retained in perpetuity.

62 Native vegetation is not permitted to be cleared under Schedule 5A and/or Division 5 of the Local Land Services Act 2013

Clearing of native vegetation that would be authorised under Schedule 5A and Division 5 of the *Local Land Services Act 2013* (LLS Act) is not permitted to be carried out without development consent under part 4 of the *Environmental Planning and Assessment Act 1979*.

Note: In accordance with the Objects of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 1.3(e) of that Act the purpose of this condition is “to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats”.

Section 60Q(2) of the LLS Act provides that “Schedule 5A does not permit clearing or any other activity—

- a) without an approval or other authority required by or under another Act or another Part of this Act (or in anticipation of the grant of any such approval or other authority), or
- b) in contravention of any provision of or made under (or in contravention of any agreement made under) another Act or another Part of this Act.”
Similarly, Section 60S(4) of the LLS Act provides that “A land management (native vegetation) code does not permit clearing or any other activity—
 - Without an approval or other authority required by or under another Act or another Part of this Act, or
 - In contravention of any provision of or made under another Act or another Part of this Act”.

As this condition is imposed under section 4.17 of the EP&A Act, sections 60Q and 60S of the LLS Act apply and the clearing of native vegetation under Schedule 5A and Division 5 of the LLS Act is not permitted.

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New condition 63

Should the property ever be stocked with livestock a four (4) strand post and wire fence with a height of 1.2m to be erected along the western edge of the mapped coastal wetlands under State Environmental Planning Policy (Coastal Management) 2018. (Hunter/Lyon)

The motion was put to the vote and declared carried.

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

Cr Hackett voted against the motion.

The meeting adjourned at 1.20pm and reconvened at 2.10pm.

Report No. 13.4 **PLANNING - Development Application 10.2020.574.1 Farmstay Accommodation comprising Six (6) Cabins and a Central Facility at 219 The Saddle Road Brunswick Heads**
File No: 12021/1514

Cr Ndiaye left the chamber in accordance with earlier declared significant non-pecuniary interest in this matter.

21-416 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.574.1 for Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility, be granted consent subject to the conditions of approval listed in Attachment 2 (E2021/120195) with the following amendments:

Amend condition 7 to read:

Mezzanine in Cabins

The storage mezzanine shown within the roof space of each cabin is to be removed from the plans and amended plans to be submitted with the construction certificate to reflect this.

Amend condition 67 to read:

The farmstay accommodation cabins must be managed by the principal owner or a delegated representative living on the property at all times.

New Condition 73 to read:

Central facility and use of cabins

Central facilities to be used by guests staying at the farm stay accommodation only.

New condition 74 to read:

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Cabins limited to two adult guests at all times.

(Coorey/Cameron)

PROCEDURAL MOTIONS

21-417 Resolved that Cr Coorey be granted a two minute extension to her speech.
(Lyon/Cameron)

The motion was put to the vote and declared carried.

21-418 Resolved that Cr Spooner be granted a two minute extension to his speech.
(Lyon/Hunter)

The motion was put to the vote and declared carried.

The motion (Coorey/Cameron) was put to the vote and declared carried.

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

Crs Lyon, Spooner and Hunter voted against the motion.

Cr Ndiaye was not present for the vote.

Cr Ndiaye returned to the chamber at 3.47pm.

**Report No. 13.5 PLANNING - Development Application 10.2020.109.1 Stage 9
Tallowood Ridge Estate Subdivision to Create Forty-Seven (47)
Residential Lots**

File No: I2021/1523

21-419 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.109.1 for Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Eight (48) Residential Lots, of which Seven (7) of these Lots are a Community Title subdivision, and a Community Title Common Property Lot, be granted consent subject to the conditions in Attachment 2 (E2021/118644) with the following modifications:

A) Add the following, in the appropriate order, to condition 47:

j) Restricting development

Restricting residential development within 20 metres of the northwestern boundary of proposed Lots 256 to 262 inclusive, being the boundary shared with Lot 1 DP 608876.

B) Amend condition 13 to read:

13) Amended Landscaping Plan required

Prior to the issue of a Construction Certificate, an amended Landscaping Plan must be submitted to, and approved by, Council. The amended Landscaping Plan must include the street trees in the approved Landscaping Plan (1002-ST9-DA32 Issue A, 20.02.20) in addition to the following:

- All native trees and vegetation to be retained and incorporation of retained native trees and vegetation with the landscaping of the site;

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- Vegetation buffers and 1.8m high fencing between the subdivision and adjoining RU2 zoned properties to the north; and
- Landscaping of the access handle to Lots 254 and 255 including screening vegetation and a 1.8m high solid fence.
- Landscaping of the area between proposed Road 1-2 and the boundary of Lot 2 DP 608876 including screening vegetation and a 1.8m high solid fence.

The amended Landscaping Plan must not include species that represent translocation of native plants outside their geographic range, potential or known environmental weeds or species with potential for genetic pollution. The landscaping plan must indicate:

- a) proposed location for planted shrubs and trees;
- b) botanical name of shrubs and trees to be planted;
- c) mature height of trees to be planted;
- d) location of grassed and paved areas, and
- e) location of native trees and vegetation identified for retention;
- f) timing for planting of landscape vegetation; and
- g) maintenance of landscaped areas.

The amended Landscaping Plan must demonstrate consistency with the General Terms of Approval from the NSW Rural Fire Service dated 13 July 2021 and must comply with Council's Building in the Vicinity of Underground Infrastructure Policy.

The plan is to be prepared by a suitably qualified landscape architect / ecologist who has appropriate experience and competence in landscaping.

C) Amend condition 6) g) to read:

g) Inter-allotment Drainage (IAD)

Inter-allotment drainage to an approved public drainage system for each of the proposed new allotments where it is not possible to provide a gravity connection of future roof water to the kerb and gutter. Provision must be made to provide a drainage swale with reinforced turf or concrete invert surface above the IAD 300mm wide x 200mm deep. Design of rear of allotment drainage in accordance with the following tables in QUDM:

- Table 7.13.4 - Design recommendations for the rear of allotment drainage system: and
- Table 7.13.7 - Design considerations for the connection of allotment drainage to the trunk
- drainage system

The Inter-allotment drainage system for proposed Lots 244 to 253 is to be amended to divert treated stormwater into the drainage channel along the southern boundary of Lot 3 DP 608876.

Amend condition 14 to include a point (f) to read:

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Consideration will be given to non-standard lighting that is less intrusive and wild life friendly, subject to approval by Council. (Ndiaye/Coorey)

PROCEDURAL MOTION

21-420 Resolved that Cr Ndiaye be granted a two minute extension to her speech. (Lyon/Martin)

The motion was put to the vote and declared carried.

The motion (Ndiaye/Coorey) 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.

MAYORAL MINUTE

Mayoral Minute No. 8.1 Use of public spaces for busking or other activity within the definition

File No: I2021/1572

21-421 Resolved that Council in relation to a response to COVID-19, reinstate a suspension on the use of public spaces for busking or other activity within the definition, including tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money until 31 October 2021 or until the Public Health Order outdoor gathering restriction is increased to at least 50 persons. (Lyon)

The motion was put to the vote and declared carried.

PETITIONS

There were no petitions tabled.

SUBMISSIONS AND GRANTS

There were no submissions or grants.

DELEGATES' REPORTS

There were no delegates' reports.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **PLANNING - Report of the 2 September 2021 Planning Review Committee**

File No: I2021/1441

21-422 **Resolved** that Council endorses the outcomes of the Planning Review Committee held on 2 September 2021 subject to Item 1 being amended and it to be reported to Council for determination. (Coorey/Lyon)

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.

Report No. 13.2 **PLANNING - Development Application 10.2020.47.1 Alterations and additions to existing tourist facility in two (2) stages at 1 Cavvanbah Street Byron Bay**

File No: I2021/755

21-423 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.47.1 for Alterations and additions to existing tourist facility in two (2) stages, be granted consent subject to the conditions of approval shown at Attachment 3 (E2021/115692), subject to:

Condition 13 e being amended to read:

e) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment for driveway and manoeuvring areas. Car Parks to be treated with pervious materials (water sensitive urban design).

(Coorey/Ndiaye)

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.

Report No. 13.6 **PLANNING - Update to Council resolution 21-284 - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow**

File No: I2021/1465

21-424 **Resolved** that Council notes the information contained in this report and receives a further report on the new planning proposal lodged for Lot 261 DP 1262316 and Lot 11 DP 807867 in Bangalow. (Lyon/Ndiaye)

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.

There being no further business the meeting concluded at 4.20pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 4 November 2021.



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Mayor Michael Lyon