

Minutes Ordinary Meeting

Thursday, 24 February 2022



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes

24 February 2022

INDEX OF ITEMS DISCUSSED

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| MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 24 FEBRUARY 2022 COMMENCING AT 9:15AM AND CONCLUDING AT 3.31PM |
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I2022/152

PRESENT: Cr M Lyon (Mayor), Cr S Balson, Cr C Coorey, Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr A Pugh, Cr M Swivel and Cr P Westheimer (from 1.34pm)

Staff: Mark Arnold (General Manager)
Vanessa Adams (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Shannon McKelvey (Executive Officer) – item 13.10
Chris Soulsby (Development Planning Officer S64 & S94) – item 13.15
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 | |
|---------------------|---|---------|---------------------------|--|-----------|
| 13.6 | Budget Review - 1 October 2021 to 31 December 2021 | Against | Basil Cameron | | In person |
| 13.7 | Council Resolutions Quarterly Review - Q2 - 1 October to 31 December 2021 | Against | Avital Sheffer | Northern Rivers Intentional Communities (NRIC) | In person |
| 13.14 | Kolora Way - Pedestrian Bridge and Shared Path Project Update | Against | Kate Singleton | | In person |

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Submissions

| Subject | Name | Submission Received in form of |
|----------------------|---------------|--------------------------------|
| Safe Movement Equity | Basil Cameron | In person |

Question No. 1 – Code of Meeting Practice

John Anderson asked the following question:

Considering that it is not the role of staff to participate in debate about policy matters (that being the exclusive domain of the elected Council), and considering also that the changes proposed in the draft code of meeting practice as presented to the early February meeting obviously did not emanate from the deliberations of the present Council, what is the provenance of those proposed changes i.e. who formulated them and decided on their inclusion?

Legal Counsel provided the following response:

The Model Code of Meeting Practice for Local Councils in NSW is made under section 360 of the Local Government Act 1993 and clause 232 of the Local Government (General) Regulation 2021.

On 12 November 2021 the Office of Local Government prescribed a Model Code of Meeting Practice for Local Councils in NSW. The Model Meeting Code contains both mandatory and non-mandatory provisions.

Council's current Code of Meeting Practice already contains many of the mandatory and non-mandatory provisions of the 2021 Model Meeting Code.

Council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code. Council's adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions. Council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code.

OLG describes the non-mandatory provisions as operating to set a benchmark based on what OLG sees as best practice for the relevant area of practice.

The Draft Code 2022 presented to Council on 3 February 2022 included both the mandatory and non-mandatory provisions of the Model Meeting Code which are not already in Council's current Code of Meeting Practice.

The Draft Code 2022 was developed by staff from the Model Meeting Code and was briefed to the Executive Team on 1 December 2021.

All of the above information is contained within the staff report to Council's 3 February 2022 meeting.

The meeting adjourned at 9.45am and reconvened at 10.00am.

APOLOGIES

There were no apologies.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

REMOTE ATTENDANCE

PROCEDURAL MOTION

22-034 Resolved that due to the weather event and local flooding, the following Councillors be permitted to participate in the 24 February Ordinary Meeting by remote attendance:

- Cr Michael Lyon
- Cr Cate Coorey
- Cr Alan Hunter
- Cr Mark Swivel
- Cr Peter Westheimer

(Lyon/Dey)

The motion was put to the vote and declared carried.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Balson declared a non-pecuniary non-significant interest in Report 13.2. The nature of the interest being that she is a board member of the Women's Village Collective, that provided a letter of support. Cr Balson elected to remain in the Chamber and will participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

22-035 Resolved that the minutes of the following meetings be confirmed:

- 4 November 2021 Planning Meeting
- 25 November 2021 Ordinary Meeting
- 3 February 2022 Extraordinary Meeting (Lyon/Dey)

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 items to be reserved for debate, being:

STAFF REPORTS

General Manager

Report No. 13.2 Grant of 5-year licence over Mullumbimby Community Hall (former Mullumbimby Scout Hall) to preferred respondent

Corporate and Community Services

Report No. 13.7 Council Resolutions Quarterly Review - Q2 - 1 October to 31 December 2021

Report No. 13.9 Draft Community Strategic Plan - Our Byron Our Future 2032

Sustainable Environment and Economy

Report No. 13.10 Main Beach and Denning Park, Byron Bay - Crown Reserve R82000 - clarification of future uses pending adoption of a Plan of Management

Report No. 13.11 Place Planning Collective Update and Expression of Interest for Upcoming Vacancies

Report No. 13.13 Economic Impact Assessment of Planning Proposal for Short-Term Rental Accommodation

Infrastructure Services

Report No. 13.14 Kolora Way - Pedestrian Bridge and Shared Path - Project Update

Report No. 13.15 Request for exemption of developer contributions by Byron Community Centre

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Hunter. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 22-036 and concluding with Resolution No. 22-042.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Lease to Huron Bay Pty Ltd (A.C.N)**
File No: I2021/1952

22-036 Resolved that Council authorises the General Manager, under delegation, to enter into a Head Lease with Huron Bay Pty Ltd (A.C.N. 654 298 405) on the following terms:

- a) over Lot 6 DP836887 Staceys Way Tyagarah,
- b) term five-years,
- c) base rent to be set by an independent market valuation (yet to be received) with rent annually increased thereafter by Consumer Price Index All Groups Sydney,
- d) for the purpose of storage of aircraft,
- e) the Lessor to consent to the Lessee sub-leasing part of the leased land to T & L West for the same term and purpose as the Head Lease,
- f) the Lessor acknowledges that the Lessee and T & L West own all improvements on the Land,
- g) Lessee must, at its cost, be responsible for the following:
 - i) all outgoings payable in respect of the Land,
 - ii) all maintenance of improvements on the Land including but not limited to all buildings, road access and or carpark constructed on the Land,
 - iii) providing a minimum \$20 million public risk insurance cover noting Byron Shire Council as an interested party, and
 - iv) hold all consents, approvals, and others authorisation for storage of aircraft on the Land.
- h) Lessee must, at its cost, removal all improvements from the Land and return the Land as vacant possession to the Lessor on the day the Head Lease ends, unless a new lease is negotiated to commence on the day after the end of the Head Lease.
- i) The Lessee to enter into an Access Licence for the Tyagarah Airfield upon acceptance of a Head Lease over the Land. (Lyon/Hunter)

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.3 Council Investments - 1 November 2021 to 30 November 2021
File No: I2021/1922

22-037 Resolved that Council notes the report listing Council's investments and overall cash position as at 30 November 2021. (Lyon/Hunter)

Report No. 13.4 Council Investments - 1 December 2021 to 31 December 2021
File No: I2022/12

22-038 Resolved that Council notes the report listing Council's investments and overall cash position as at 31 December 2021. (Lyon/Hunter)

Report No. 13.5 Council Investments - 1 January 2022 to 31 January 2022
File No: I2022/43

22-039 Resolved that Council notes the report listing Council's investments and overall cash position as at 31 January 2022. (Lyon/Hunter)

Report No. 13.6 Budget Review - 1 October 2021 to 31 December 2021
File No: I2022/33

22-040 Resolved:

1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2022/11334) which include the following results in the 31 December 2021 Quarterly Review of the 2021/2022 Budget:
 - a) General Fund – \$308,400 decrease to the Estimated Unrestricted Cash Result
 - b) General Fund - \$2,752,400 increase in reserves
 - c) Water Fund - \$21,100 increase in reserves
 - d) Sewerage Fund - \$8,200 increase in reserves
 2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$481,000 for the 2021/2022 financial year as at 31 December 2021. (Lyon/Hunter)
-

Report No. 13.8 Delivery Program 6-monthly Report and 2021/22 Operational Q2 Report - to 31 December 2021
File No: I2022/93

22-041 Resolved that Council notes the Delivery Program 6-monthly Report and 2021/22 Operational Plan second Quarter Report for the period ending 31 December 2021 (Attachment 1 #E2022/10336). (Lyon/Hunter)

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 **Terms of Reference and Membership - Byron Shire Housing and Affordability Committee**

File No: I2022/49

22-042 Resolved that Council:

1. Confirms the terms of reference for, and membership of the Byron Shire Housing and Affordability Committee as presented in the report.
2. Notes that the call for nominations for community representatives/subject matter experts for the committee will be reported back to Council at the April Ordinary Meeting for appointment. (Lyon/Hunter)

PROCEDURAL MOTION

22-043 Resolved

That Council changes the order of business to deal with Reports 13.7 and 13.14 next on the Agenda. (Lyon)

The motion was put to the vote and declared carried.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.7 **Council Resolutions Quarterly Review - Q2 - 1 October to 31 December 2021**

File No: I2022/44

22-044 Resolved:

1. That Council notes the information provided in this report on active Council Resolutions in Attachment 1 (#E2021/155913).
2. That Council notes the completed Resolutions in Attachment 2 (#E2021/155914) except for Resolutions 20-720 (Tallowood PoM) and 21-547 (Belongil dieback research).
3. That Council endorses the closure of the following superseded Resolutions: 20-203 (Linnaeus Estate, this Res now superseded by Res 21-495); 20-727 (Mullumbimby Skate Bowl, this Res now superseded by Res 21-501); 21-273 (Emergency Housing, this Res now superseded by Res 21-496); and 21-275 (MO's & CT's pathways, this Res now superseded by Res 21-498).
4. That, in relation to Resolution 21-250 of 24 June 2021 about Vallances Road (PDF page 211 in Attachment 1), Council considers in March:
 - a) expediting the Byron Shire Natural Burial Ground and Nature Reserve project,

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- as described in Resolution 21-250 and likely in other Resolutions of Council;
- b) creating a Project Reference Group for that purpose composed of Councillors and people connected to the project - Council officers, community representatives from the Natural Burial Committee;
- c) hosting a meeting of the PRG with the purpose of defining a pathway forward for the project. (Dey/Ndiaye)

*The motion was put to the vote and declared carried.
Crs Hunter and Pugh voted against the motion.*

Cr Hunter left the Chambers at 10.45am.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.14 **Kolora Way - Pedestrian Bridge and Shared Path - Project Update**
File No: I2022/10

22-045 Resolved:

1. That the Kolora Way pedestrian bridge and shared path project be prioritised for funding to reach shovel ready status.
2. That Council receives a report at the March meeting that identifies potential sources of the additional funds required for this project. (Pugh/Ndiaye)

*The motion was put to the vote and declared carried.
Cr Hunter was not present for the vote.*

MAYORAL MINUTE

There was no Mayoral Minute.

NOTICES OF MOTION

Notice of Motion No. 9.1 Objectives for some Advisory Committees
File No: I2022/101

The Notice of Motion "Objectives for some Advisory Committees" was withdrawn.

Cr Hunter returned to the Chambers at 11.05am.

Notice of Motion No. 9.2 Development Application Processing Performance

File No: I2022/102

Moved:

1. That Council notes:
 - a) as outlined in Resolution 22-032, that Council determines more Development Applications (DA's) than average in NSW and that Council staff determine more DA's per staff member than the average Council in NSW;
 - b) that recruitment of appropriate skills and staff has been difficult;
 - c) that DA processing times and uncertainty over processing times are matters of significant public frustration;
 - d) incorrect or incomplete paperwork being submitted creates significant workload for assessment staff and often leads to delays and increased complexity.
2. That Council receives a report by April 2022 on measures that may improve performance against existing KPI's, reduce waiting times for DA processing, increase certainty in DA processing times and meet the requirements as set out in the letter from the Minister, including:
 - a) establishing a 'fast lane' for qualifying DA's, with a triage approach for determining if DA's meet the criteria to be 'fast tracked';
 - b) determining guidelines that would qualify DA's to be fast tracked. These guidelines may include simplicity and levels of correct paperwork submitted;
 - c) allocating additional funding towards DA processing; and
 - d) adjusting DA assessment procedures towards refusal with an invitation to re-lodge when DA documentation is deficient, and away from coaching for larger DA's to get inadequate documentation up to speed. (Dey/Pugh)

PROCEDURAL MOTION

22-046 Resolved that Cr Dey be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and declared carried.

The motion (Dey/Pugh) was put to the vote and declared lost.

Crs Ndiaye, Balson, Coorey, Lyon, and Hunter voted against the motion.

FORESHADOWED MOTION

22-047 Resolved:

1. That the matter "Development Application Processing Performance" be brought before the next available Strategic Planning Workshop.
2. In the interim Council provide strong communications and media messaging advising applicants to have a pre-lodgement meeting with Council's development support advisory service. (Coorey/Lyon)

The motion was put to the vote and declared carried.

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PETITIONS

There were no petitions.

SUBMISSIONS AND GRANTS

Report No. 11.1 **Grants January 2022**
File No: I2022/48

22-048 Resolved that Council notes the report and Attachment 1 (#E2022/9955) for Byron Shire Council's grant submissions as of 31 January 2022. (Dey/Lyon)

The motion was put to the vote and declared carried.

DELEGATES' REPORTS

Cr Ndiaye and Cr Lyon provided an update on the Rous County Council Meeting held on Wednesday, 16 February 2022.

STAFF REPORTS - GENERAL MANAGER

PROCEDURAL MOTIONS

22-049 Resolved:

1. That pursuant to Section 10A(2)(d) refer to relevant part of Act below) of the Local Government Act 1993, Council resolves into Confidential Session to discuss the following report, namely "Grant of 5-year licence over Mullumbimby Community Hall (former Mullumbimby Scout Hall) to preferred respondent."
2. That the reasons for closing the meeting to the public to consider this item be that it contains commercial in confidence information.
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential information could compromise the commercial position of the applicants.

(Lyon/Ndiaye)

The motion was put to the vote and declared carried.

22-050 Resolved that Council moves into Committee to allow for free debate. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

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Report No. 13.2 **Grant of 5-year licence over Mullumbimby Community Hall
(former Mullumbimby Scout Hall) to preferred respondent**

File No: I2021/1954

22-051 Resolved:

1. That Council notes that no submissions were received from public notice of a proposed five-year licence over the Mullumbimby Community Hall advertised between 4 January and 2 February 2022.
2. That Council awards a five-year licence over the Mullumbimby Community Hall to the Mullum District Neighbourhood Centre with the following terms:
 - a) part Folio 321/755692 being the building known as the Mullumbimby Community Hall,
 - b) The garage building adjoining the Premises is included in this Licence and the Licensee must use the garage building only for the purpose of storage.
 - c) term of five-years,
 - d) purpose of a community building as defined by the Byron Local Environmental Plan 1988,
 - e) base rent to be set at \$490 per annum exclusive of GST and increased thereafter annually by Consumer Price Index All Groups Sydney,
 - f) Council to subsidise rent to the value of \$16,790 (exclusive GST),
 - g) Council to subsidise fixed rates and charges payable in accordance with Policy Section 256 Donations – Rates and Charges 2021,
 - h) Licensee to pay all other outgoings and must provide public liability insurance to the minimum value of \$20 million noting Byron Shire Council as an interested party.
 - i) The Licensee provides access to and space within the Mullumbimby Community Hall for the Library of Stuff managed by Mullum Cares Inc.
3. That Council makes public its decision, including the name of the successful Respondent.
4. That Council thanks the Mullumbimby Scout Group for its contribution and long-term commitment to the Mullumbimby community. (Lyon/Ndiaye)

PROCEDURAL MOTIONS

22-052 Resolved: that Council moves out of Committee and resumes the Ordinary Meeting.
(Lyon)

The motion was put to the vote and declared carried.

22-053 Resolved that this matter rest on the table until after lunch. (Lyon)

The motion was put to the vote and declared carried.

*The meeting adjourned at 12.30pm for a lunch break and reconvened at 1.34pm.
Cr Westheimer joined the meeting at 1.34pm.*

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*The motion (Lyon/Ndiaye) was put to the vote and declared carried.
Cr Westheimer voted against the motion.*

PROCEDURAL MOTION

22-054 Resolved that the meeting moves out of confidential session. (Lyon/Coorey)

The motion was put to the vote and declared carried.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.9 Draft Community Strategic Plan - Our Byron Our Future 2032
File No: I2022/94

22-055 Resolved that Council:

1. That the draft Community Strategic Plan (Attachment 1) be amended as follows:
 - a) Title – *Byron Shire Community Strategic Plan 2032*
 - b) Remove “our” from the five Community Objectives
 - c) Replace “protected” with “nurtured” in the “Environment” Community Objective
2. Endorses the *Byron Shire Community Strategic Plan 2032* (Attachment 1 #E2022/7986), as amended by Part 1 for public exhibition.
3. Endorses the Community Engagement Strategy (Attachment 2 #E2021/63492) and undertakes further consultation with community on the development of the underpinning Delivery Program.
4. That the outcomes of the exhibition and engagement be reported back to Council in April 2022, with the other components of the Integrated Planning and Reporting framework. (Ndiaye/Balson)

PROCEDURAL MOTION

22-056 Resolved: that the motion be put. (Hunter/Pugh)

The motion was put to the vote and declared carried.

The motion (Ndiaye/Balson) was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.10 **Main Beach and Dening Park, Byron Bay - Crown Reserve R82000 - clarification of future uses pending adoption of a Plan of Management**

File No: I2022/9

22-057 **Resolved** that Council resolve that:

1. Pending adoption of a new Plan of Management, Council as Crown Land Manager will not issue temporary licences for use of the Main Beach Reserve for activities that:
 - (a) are inconsistent with the gazetted purpose of Public Recreation,
 - (b) are of an enclosed commercial nature (except as referred to in part 2)
 - (c) involve liquor licencing, and/or
 - (d) exclude members of the public from free use of the Reserve.
2. Council will continue to manage Low-Impact Commercial Recreation Activities on Main Beach Reserve consistent with Licence RI564194 and Council's adopted Policy *Commercial Activities on Coastal and Riparian Crown Reserves*.

(Coorey/Dey)

The motion was put to the vote and declared carried.

PROCEDURAL MOTION

22-058 **Resolved** that Cr Coorey be granted a one minute extension to her speech. (Lyon)

The motion was put to the vote and declared carried.

Report No. 13.11 **Place Planning Collective Update and Expression of Interest for Upcoming Vacancies**

File No: I2021/1425

22-059 **Resolved:**

1. That Council notes the 2021 update from the Place Planning Collective.
2. That Council thanks the community members on the Place Planning Collective for their time and contributions made throughout 2021.
3. That Council endorses an Expression of Interest process to select new community representatives to replace members who have reached the end of their term.
4. That Council nominates Cr Lyon, Cr Swivel, and Cr Ndiaye to be members of the Place Planning Collective and Cr Dey be nominated as an alternate.

(Ndiaye/Westheimer)

The motion was put to the vote and declared carried.

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Report No. 13.13 Economic Impact Assessment of Planning Proposal for Short-Term Rental Accommodation

File No: I2022/98

22-060 Resolved that Council:

1. Notes the findings and recommendations of the Economic Impact Assessment and that of the Peer Review of the Economic Impact Assessment by Dr Peter Phibbs in Attachments 1 and 2.
2. Notes the Planning Proposal Timeline including delays to it due to the changing State Government requirements placed on Council in Attachment 3.
3. Supports wholeheartedly the existing 90-day/365-day cap option and instructs staff to amend the current Planning Proposal to meet the requirements of the Gateway Determination in Attachment 4, except for Condition 1(b), point 3, which requires the Planning Proposal to reflect the recommendations of the DPIE endorsed Economic Impact Assessment.
4. Authorises staff to submit the Peer Review with the amended Planning Proposal to the Department of Planning and Environment for a revised Gateway Determination to enable public exhibition of the Planning Proposal.
5. Requests the Department of Planning and Environment to extend the Gateway Determination date to 31 December 2022 or to when the Planning Proposal is determined and/or notified. (Lyon/Ndiaye)

PROCEDURAL MOTIONS

22-061 Resolved that Cr Lyon be granted a two minute extension to his speech. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

22-062 Resolved that Cr Ndiaye be granted a two minute extension to her speech. (Lyon)

The motion was put to the vote and declared carried.

*The motion (Lyon/Ndiaye) was put to the vote and declared carried.
Crs Hunter and Swivel voted against the motion.*

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STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.15 **Request for exemption of developer contributions by Byron Community Centre**

File No: I2022/63

22-063 Resolved:

1. That Council advises the developer that the contributions required by condition 7 of development consent 10.2021.59.1 will not be waived; and
2. That Council grants delegated authority to the General Manager to determine an application made by the Byron Community Centre to waive the water and sewer levies required by condition 6 of development consent 10.2021.59.1 provided that the developer demonstrates that they meet the requirements of section 2.7 of the Development Servicing Plan. (Swivel/Lyon)

The motion was put to the vote and declared carried.

There being no further business the meeting concluded at 3.31pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 24 March 2022.



.....
Mayor Michael Lyon