

Minutes
Ordinary (Planning) Meeting
Thursday, 10 March 2022



BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
10 March 2022

INDEX OF ITEMS DISCUSSED

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

| | | |
|--------------------------|--|----|
| Report No. 13.1 | State government reform: Agritourism option to nominate additional clauses in LEP | 6 |
| Report No. 13.2 | PLANNING - Report of the Planning Review Committee held 10 February 2021 | 7 |
| Report No. 13.3 | PLANNING - DA 10.2021.450.1 - Redevelopment of Bangalow Public School | 7 |
| Report No. 13.4 | PLANNING - DA10.2021.5.1 - Dwelling House, Swimming Pool and Change of Use of Existing Dwelling into Central Facilities Building Including Accommodation Bedrooms for Existing Rural Tourist Facility..... | 8 |
| Report No. 14.1 | Report of the Local Traffic Committee Meeting held on 15 February 2022 | 10 |
| Notice of Motion No. 9.1 | Councillor Representative on Byron Bay Community Association | 10 |
| Notice of Motion No. 9.2 | Rural Neighbourhood Amenity | 10 |

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 10 MARCH 2022 COMMENCING AT 11.07AM AND CONCLUDING AT 1.30PM

12022/205

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

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Acting Director Corporate and Community Services)
Shannon Burt (Director Sustainable Environment and Economy)
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 10.2021.450.1 - Redevelopment of Bangalow Public School | Ian Holmes | For | Bangalow Progress Association | Zoom |
| 13.4 Dwelling House, Swimming Pool and Change of Use of Existing Dwelling into Central Facilities Building Including Accommodation Bedrooms for Existing Rural Tourist Facility | Lisa Ryan | For | Animal Liberation | Zoom |
| 14.1 Report of the Local Traffic Committee Meeting held on 15 February 2022 | Basil Cameron | Against | Transport Justice | Zoom |

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

Submissions

| Subject | Name | Representing Organisation | Submission Received in form of |
|--|---------------|---------------------------|--------------------------------|
| Equitable and safe movement access for pedestrians, cyclists, school children and public transport | Basil Cameron | Transport Justice | Zoom |
| Compliance | John Anderson | | Phone |

Question No. 1 Code of Meeting Practice

John Anderson asked the following question:

In a question put to the 24 February meeting I sought information about the origins of the changes proposed in the Draft Code of Meeting Practice. Council (i.e. Ralph James) replied that the said changes were developed by staff from the Model Meeting Code and briefed to the Executive Team on the 1 December 2021. As the staff have declined to give me access to the agenda/discussion lists for the Strategic Planning Workshop (so-called) of late 2021, I have no choice but to ask for an unambiguous assurance that the proposed changes were not mooted, discussed or workshop in that forum (i.e. the SPW) prior to the issuing of the draft.

Legal Counsel provided the following response:

The proposed changes to Council's Code of Meeting Practice were not mooted, discussed or workshopped in a Strategic Planning Workshop prior to the Draft Code of Meeting Practice being reported to Council on 3 February 2022.

On 3 February 2022 Council resolved to defer the matter until after a workshop had been held. That workshop took place on 10 February 2022.

Arising out of that workshop certain amendments to the Code of Meeting Practice were discussed and a general consensus was reached in respect of matters to be included in the Code of Meeting Practice to be further reported to Council.

It is presently proposed to report the draft Code of Meeting Practice to Council's 24 March 2022 Ordinary meeting.

The meeting adjourned at 11.31am and reconvened at 11.50am.

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

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 Hunter declared a special disclosure of pecuniary interest under Clause 4.25 of the Code of Conduct for Councillors in Report 13.1. The nature of the interest being that he has interest in the land.

Cr Pugh declared a non-pecuniary interest in Report 13.3. The nature of the interest being that his children attend Bangalow Public School. Cr Pugh elected to remain in the meeting and will participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.19 of the Code of Conduct for Staff a First Return of Interests is tabled for Maddy McFadden, Development Engineer.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

22-064 Resolved that the minutes of the Ordinary (Planning) Meeting held 4 November 2021 be confirmed. (Hunter/Lyon)

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:

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

STAFF REPORTS

Sustainable Environment and Economy

Report No. 13.3 PLANNING - DA 10.2021.450.1 - Redevelopment of Bangalow Public School

Report No. 13.4 PLANNING - DA10.2021.5.1 - Dwelling House, Swimming Pool and Change of Use of Existing Dwelling into Central Facilities Building Including Accommodation Bedrooms for Existing Rural Tourist Facility.

REPORTS OF COMMITTEES

Infrastructure Services

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 15 February 2022

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Hunter and seconded by Cr Lyon. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 22-065 and concluding with Resolution No. 22-066.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 State government reform: Agritourism option to nominate additional clauses in LEP

File No: I2022/59

22-065 Resolved that Council:

1. Notes that a preliminary response on the Standard Instrument LEP Agritourism nomination form was submitted to the Department of Planning 25 February 2022.
2. Confirms the following positions on the amendments proposed in the Standard Instrument (LEP) Amendment (Agritourism) Order 2021 to be included in a final submission:
 - i. That 'agritourism' and its subsets of 'farm gate premises' and 'farm experience premises':
 - a) Only applies to the RU1 & RU2 zones, and
 - b) Nominates these uses as 'permitted with consent' in these zones
 - ii. In reference to 'farm gate premises':
 - a) includes optional LEP Order clause 5.24 in Byron LEP 2014
 - b) includes an additional local objective to this clause being - To support and build a Byron Shire brand, provenance, and reputation by sharing the farming story with locals and visitors in the context of people, place and produce.

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

Notes:

Replacement of aluminium windows on Block A

Consideration shall be given to replacing the aluminium windows on the western annexe of Block A with timber sash windows or similar that are like the historic windows used throughout the building as part of the renovation of the building.

Toilets

Consideration shall be given to the provision of a unisex/non-binary toilet for students as part of the redevelopment of the school.

Traffic and Safety

Consideration shall be given to collaborating with Council on traffic and safety around the school that is generated by school activities. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Crs Lyon, Balson, Coorey, Dey, Hunter, Ndiaye, Pugh, Swivel and Westheimer voted in favour of the motion.

No Councillors voted against the motion.

Report No. 13.4 PLANNING - DA10.2021.5.1 - Dwelling House, Swimming Pool and Change of Use of Existing Dwelling into Central Facilities Building Including Accommodation Bedrooms for Existing Rural Tourist Facility.

File No: I2022/140

22-069 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.5.1 for new dwelling house, swimming pool, cabana, shed and change of use of existing dwelling into a central facility building including 5 individual bedroom accommodations for the existing rural tourist facility, be refused for the following reasons:

1. The proposed development is inconsistent with the objectives of the RU1 Primary Production zone because the proposed development is not small scale and may have an adverse impact on the scenic quality of the locality. The location of the new dwelling also has the potential to fragment remaining agricultural land on the property.
2. The proposed development does not comply with the requirements of Byron LEP 2014 Clause 6.8, because it is not small scale and low impact, and is not complementary to the rural and environmental attributes of the land and its surrounds.
3. The proposed development is inconsistent with the provisions for rural tourist and visitor accommodation in Part D3.3.4 of Byron DCP 2014, In particular:
 - a) The proposed central facility and accommodation building has a floor area

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

greater than 60m² and contains more than two bedrooms.

- b) The development is to be low scale and designed and located to be compatible with the surrounding rural environment and of minimal environmental impact.
4. The proposed development is inconsistent with the provisions for tourist accommodation in rural zones in Part D3.2.3 of Byron DCP 2014. In particular:
 - a) The central facility and accommodation are non-compliant with the guidelines in Chapter 7 of the Byron Rural Settlement Strategy 1998 because the building has a floor area greater than 60m² and contains more than two bedrooms.
 - b) The proposal is not considered to be low scale and is inconsistent with the relevant Aims, Guiding Principles Best Practice Guidelines and Performance Standards contained in the Byron Rural Settlement Strategy 1998.
 - c) The location of the new dwelling could adversely affect the conduct and productivity of agricultural operations on the site.
 5. The proposed new dwelling house is likely to adversely impact scenic qualities of the locality due to its location at the peak of a hill at the northern end of the property. A Visual Impact Assessment has not been provided in accordance with Chapter C3 of Byron DCP 2014.
 6. The characterisation and use of the existing dwelling as a part central facility building is not considered to be genuine and is not adequately demonstrated in the application.
 7. Insufficient information has been provided to demonstrate the proposed development will not have an adverse impact on threatened species, ecological communities and their habitats including impacts on the local koala population.
 8. The proposed development is not considered to be in the public interest for the following reasons:
 - a) The proposed development is inconsistent with the provisions of Byron LEP 2014 and Byron DCP 2014 which have been the subject of extensive community consultation. Approving the application in such circumstances is likely to set an undesirable precedent.
 - b) Numerous public submissions were received objecting to the proposed development, and the issues raised in submission have not been adequately addressed or deemed capable of being addressed through conditions of consent.
 - c) The proposed development is inconsistent with Council resolution 20-691 which aims to limit such developments to four accommodation buildings and eight bedrooms only. (Coorey/Pugh)

The motion was put to the vote and declared carried.

Crs Lyon, Balson, Coorey, Dey, Hunter, Ndiaye, Pugh, Swivel and Westheimer voted in

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

favour of the motion.

No Councillors voted against the motion.

PROCEDURAL MOTION

- 22-070 Resolved** that Cr Coorey be granted a two minute extension to her speech.
(Lyon/Ndiaye)
The motion was put to the vote and declared carried.
-

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 15 February 2022

File No: I2022/133

- 22-071 Resolved** that this matter be deferred to the 24 March 2022 Ordinary meeting.
(Lyon/Ndiaye)
The motion was put to the vote and declared carried.
-

MAYORAL MINUTE

There was no mayoral minute.

NOTICES OF MOTION

Notice of Motion No. 9.1 Councillor Representative on Byron Bay Community Association

File No: I2022/134

- 22-072 Resolved** that Council appoints Cr Asren Pugh as a Councillor representative, with Cr Balson as the alternate, for the Byron Bay Community Association as per their constitution.
(Pugh/Lyon)

The motion was put to the vote and declared carried.

Notice of Motion No. 9.2 Rural Neighbourhood Amenity

File No: I2022/153

Moved:

That when Council next updates the Shire's Development Control Plan (DCP), the update includes variations to ensure that the location of a proposed Dual Occupancy dwelling / Secondary dwelling is closer to the primary dwelling than to any other dwelling approved

BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

10 March 2022

or proposed on neighbouring properties.

(Dey/Coorey)

The motion was put to the vote and declared lost.

Crs Westheimer, Ndiaye, Lyon, Hunter, Pugh, Balson and Swivel voted against the motion.

PETITIONS

There were no petitions.

SUBMISSIONS AND GRANTS

There were no submissions and grants.

DELEGATES' REPORTS

Councillors and the General Manager provided comments and updates on the flood event.

Cr Coorey left the meeting at 1.07pm and did not return.

There being no further business the meeting concluded at 1.30pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary (Planning) Meeting on 14 April 2022.



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Mayor Michael Lyon