

Minutes Ordinary (Planning) Meeting

Thursday, 12 May 2022



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes

12 May 2022

INDEX OF ITEMS DISCUSSED

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ORDINARY (PLANNING) MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 12 MAY 2022 COMMENCING AT 11.20AM AND CONCLUDING AT 1.06PM

I2022/511

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)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Ivan Holland (Planner) – item 13.5
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	Name	For/ Against	Via
13.5 PLANNING - Development Application 10.2022.71.1 Use of Lot 30 as a tourist facility / tourist accommodation	Christine Ahern	For	Zoom
	Hannah Hopkinson	For	In person

Question No. 1 – Strategic Planning Workshop

John Anderson submitted the following question which was read by staff:

Could the staff please help out Cr Swivel and incidentally advance the cause of glasnost (transparency and accountability) by explaining when and by what formal process the "Strategic Planning Workshop" became a de facto secret meeting that canvass matters which appear least to obsessives like myself-to have exactly zero to do with either planning or strategy?

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The Mayor provided the following response:

By resolution 13-241/3 of 9 May 2013 that Strategic Planning Workshops were established. It read:

That the Strategic Planning Committee be abolished and be replaced with regular Strategic Planning Workshops which commence from 30 May 2013, to be held whenever possible on Thursdays.

The Report to Councillors at that meeting read:

Discussions with Councillors have disclosed a preference for regular Strategic Planning workshops where potential solutions and strategies for complex issues are formulated through discussions between Councillors and senior staff and these outcomes are reported to the next available Council meeting for consideration and adoption.

It is worth noting that the Code of Meeting Practice makes it clear that the Strategic Planning Workshop is aimed at briefing Councillors on business which will be considered at a future meeting. Business is not restricted to Planning or Strategy.

For my part I can say that these workshops are invaluable, in terms of dealing with Council business. It gives Councillors an opportunity to ask questions on items in an unrestricted format and environment and to critically analyse the direction and observations and assertions that are being put forward and to work on things together before going through to a formal Council process. It is that sort of collaboration and teamwork that enables a lot of understanding and communication problems to be removed from the process so that we can concentrate on the really critical issues as part of a Council meeting.

Thank you for that question.

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APOLOGIES

PROCEDURAL MOTION

- 22-175 Resolved** that the apology from Cr Coorey be accepted and a leave of absence granted.
(Lyon/Balson)
The motion was put to the vote and declared carried.
-

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Hunter declared a significant non-pecuniary interest in Report 13.2. The nature of the interest being that he had personally assisted a candidate with their application for the position on ARIC. Cr Hunter elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 22-176 Resolved** that the minutes of the 14 April Ordinary Meetings confirmed.
(Lyon/Westheimer)
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

General Manager

Report No. 13.1 Temporary accommodation leases between Council and Resilience NSW

Corporate and Community Services

Report No. 13.2 Appointment of Community Representatives to the Audit, Risk and Improvement Committee

Sustainable Environment and Economy

Report No. 13.5 PLANNING - Development Application 10.2022.71.1 Use of Lot 30 as a tourist facility / tourist accommodation

The following Recommendations 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. 22-177 and concluding with Resolution No. 22-180.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.3 Endorsement of Integrated Planning and Reporting documents for public exhibition: Delivery Program, Operational Plan, Budget, and Revenue Policy

File No: 12022/423

22-177 Resolved:

1. That the following draft Integrated Planning and Reporting documents be placed on public exhibition for a period of 28 days:
 - a) Delivery Program 2022-26 (Attachment 1 E2022/19411)
 - b) Operational Plan 2022/23 (Attachment 2 E2022/41016) and associated Budget (Attachment 3 E2022/41016), Statement of Revenue Policy, and Fees and Charges (Attachment 4 E2022/412563)
2. That an Extraordinary Meeting be held on 30 June 2022 to adopt the final documents, giving due consideration to any submissions received during the public exhibition period. (Lyon/Hunter)

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Report No. 13.4 **Endorsement of Disability Inclusion Action Plan 2022-2026 for public exhibition**

File No: I2022/402

22-178 Resolved:

1. That Council endorses the draft Disability Inclusion Action Plan 2022 - 2026 (E2022/36931) be placed on public exhibition for a period of 28 days.
2. That the final Disability Inclusion Action Plan 2022-2026 be adopted at the 30 June 2022 Extraordinary Meeting, giving due consideration to any submissions received during the public exhibition period. (Lyon/Hunter)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.6 **PLANNING - Report of the Planning Review Committee held 7 April 2022**

File No: I2022/334

22-179 Resolved that Council endorses the outcomes of the Planning Review Committee meeting held on 7 April 2022. (Lyon/Hunter)

Report No. 13.7 **PLANNING - DA10.2022.14.1 - Alterations and Additions to an Existing Recreation Area (Sandhills Estate) including Upgrade to Existing Footpath, New Sandstone Seating and Landscaping Areas and New Informative Signage**

File No: I2022/401

22-180 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.14.1 for Alterations and Additions to an Existing Recreation Area (Sandhills Estate) including Upgrade to Existing Footpath, New Sandstone Seating and Landscaping Areas and New Informative Signage be granted consent subject to the conditions of approval shown at Attachment 1 (E2022/36287)

(Lyon/Hunter)

The motion was put to the vote and declared carried.

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

Nil voted against the motion.

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PROCEDURAL MOTION

- 22-181 Resolved** that Council change the order of business to deal with Reports 13.5 next on the Agenda. (Lyon)

The motion was put to the vote and declared carried.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 PLANNING - Development Application 10.2022.71.1 Use of Lot 30 as a tourist facility / tourist accommodation
File No: I2022/397

- 22-182 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.71.1 for Use of Lot 30 as a Tourist Facility/Tourist Accommodation, be granted consent subject to the conditions of approval shown at Attachment 3 (E2022/36478). (Lyon/Hunter)

The motion was put to the vote and declared carried.

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

Nil voted against the motion..

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no petitions.

SUBMISSIONS AND GRANTS

There were no submissions and grants.

DELEGATES' REPORTS

Cr Hunter provided a delegates' report on the Mullumbimby Showground Committee.

Cr Ndiaye provided a delegates' report on the Rous County Council Meeting held yesterday and will provide an updated to the next Council Meeting about the outcomes from that meeting.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Temporary accommodation leases between Council and Resilience NSW

File No: I2022/449

Moved:

1. That Council provides its in principle support to the proposed leases over Lot 1 in Deposited Plan 560486 (125 Tweed Street Brunswick Heads) and Lots 51 and 69 in Deposited Plan 851902 (Excelsior Circuit and Torakina Road Brunswick Heads) to Resilience NSW.

2. That Council authorises the General Manager, under delegation, to negotiate the final form of a lease and enter into a lease with Resilience NSW (ABN 11 518 338 739) on the following terms:
 - a) over Lot 1 in Deposited Plan 560486 (125 Tweed Street Brunswick Heads).
 - b) for a term of 3 years, with 2 x 1 year options to renew,
 - c) for rental of \$136,213 per year,
 - d) for the purpose of construction, maintenance, and operation of temporary housing, and making good the site at the end of the lease but providing that base eligibility criteria for the pop-up village pod allocation is to be expanded to include additional criteria - primary place of residence inaccessible, unusable, or unliveable as a result of the February and March 2022 flood events
 - e) Lessee must, at its cost, be responsible for the following:
 - i) all outgoings payable in respect of the Land,
 - ii) providing a minimum \$20 million public risk insurance cover noting Byron Shire Council as an interested party, and
 - f) Lessee must, at its cost, remove all improvements from the Land and return the Land as vacant possession to the Lessor on the day the Lease.

3. That Council authorises the General Manager, under delegation, to negotiate the final form of a lease and to enter into a lease with Resilience NSW (ABN 11 518 338 739) on the following terms:
 - a) over Lots 51 and 69 in Deposited Plan 851902 (Excelsior Circuit and Torakina Road Brunswick Heads).
 - b) for a term of 3 years, with 2 x 1 year options to renew,
 - c) for rental of \$19,459 per year,
 - d) for the purpose of construction, maintenance, and operation of temporary housing, and making good the site at the end of the lease but providing that base eligibility criteria for the pop-up village pod allocation is to be expanded to include additional criteria - primary place of residence inaccessible, unusable, or unliveable as a result of the February and March 2022 flood events
 - e) Lessee must, at its cost, be responsible for the following:
 - i) all outgoings payable in respect of the Land,
 - ii) providing a minimum \$20 million public risk insurance cover noting Byron Shire Council as an interested party, and
 - f) Lessee must, at its cost, remove all improvements from the Land and return the Land as vacant possession to the Lessor on the day the Lease ends,

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unless a new lease is negotiated to commence on the day after the end of the Head Lease.

4. That as part of the negotiations in 2 and 3, staff continue to work with the Government Architect Office to optimise the temporary housing proposals to address best practice design in relation to the site and neighbouring properties.
5. That Council seeks the consent of Resilience NSW to draft and issue a joint media statement setting out the proposed use of the sites for temporary housing.
6. That Councillors be provided with weekly updates by Memorandum as to the progress toward negotiating the leases and as to the final form of the leases.
(Ndiaye/Balson)

AMENDMENT:

22-183 Resolved:

1. That Council provides its in principle support to the proposed leases over Lot 1 in Deposited Plan 560486 (125 Tweed Street Brunswick Heads) and Lots 51 and 69 in Deposited Plan 851902 (Excelsior Circuit and Torakina Road Brunswick Heads) to Resilience NSW.
2. That Council authorises the General Manager, under delegation, to negotiate the final form of a lease and enter into a lease with Resilience NSW (ABN 11 518 338 739) on the following terms:
 - a) over Lot 1 in Deposited Plan 560486 (125 Tweed Street Brunswick Heads).
 - b) for a term of 3 years, with 2 x 1 year options to renew,
 - c) for rental of \$136,213 per year,
 - d) for the purpose of construction, maintenance, and operation of temporary housing, and making good the site at the end of the lease but providing that base eligibility criteria for the pop-up village pod allocation is to be expanded to include additional criteria - primary place of residence inaccessible, unusable, or unliveable as a result of the February and March 2022 flood events
 - e) Lessee must, at its cost, be responsible for the following:
 - i) all outgoings payable in respect of the Land,
 - ii) providing a minimum \$20 million public risk insurance cover noting Byron Shire Council as an interested party, and
 - f) Lessee must, at its cost, remove all improvements from the Land and return the Land as vacant possession to the Lessor on the day the Lease.
3. That Council authorises the General Manager, under delegation, to negotiate the final form of a lease and to enter into a lease with Resilience NSW (ABN 11 518 338 739) on the following terms:
 - a) over Lots 51 and 69 in Deposited Plan 851902 (Excelsior Circuit and Torakina Road Brunswick Heads).
 - b) for a term of 3 years, with 2 x 1 year options to renew,
 - c) for rental of \$19,459 per year,
 - d) for the purpose of construction, maintenance, and operation of temporary housing, and making good the site at the end of the lease but providing that base eligibility criteria for the pop-up village pod allocation is to be expanded to

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- include additional criteria - primary place of residence inaccessible, unusable, or unliveable as a result of the February and March 2022 flood events
- e) Lessee must, at its cost, be responsible for the following:
 - i) all outgoings payable in respect of the Land,
 - ii) providing a minimum \$20 million public risk insurance cover noting Byron Shire Council as an interested party, and
 - f) Lessee must, at its cost, remove all improvements from the Land and return the Land as vacant possession to the Lessor on the day the Lease ends, unless a new lease is negotiated to commence on the day after the end of the Head Lease.
4. That as part of the negotiations in 2 and 3, staff continue to work with the Government Architect Office to optimise the temporary housing proposals to address best practice design in relation to the site and neighbouring properties.
 5. That Council seeks the consent of Resilience NSW to draft and issue a joint media statement setting out the proposed use of the sites for temporary housing.
 6. That Councillors be provided with weekly updates by Memorandum as to the progress toward negotiating the leases and as to the final form of the leases.
 7. That Council requests Resilience NSW to undertake consultation with nearby properties, in such a way that doesn't delay the project. (Pugh/Westheimer)

*The amendment was put to the vote and declared carried.
Crs Ndiaye and Balson voted against the amendment.*

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

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Cr Hunter left the meeting at 12.37pm.

PROCEDURAL MOTIONS

22-184 Resolved:

1. That pursuant to Section 10A(2)(a) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely (subject of report).
2. That the reasons for closing the meeting to the public to consider this item be that:
 - (a) 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, as it involves discussion about individual nominees. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

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22-185 Resolved that Council move into Committee to allow for free debate. (Ndiaye)

The motion was put to the vote and declared carried.

22-186 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

22-187 Resolved that the meeting move out of confidential session. (Lyon/Ndiaye)

The motion was put to the vote and declared carried.

Report No. 13.2 Appointment of Community Representatives to the Audit, Risk and Improvement Committee

File No: I2022/393

In accordance with his earlier declared interest in item 13.2, Cr Hunter left the meeting and was not present for the debate and vote.

22-188 Resolved:

1. That Phoebe Mwanza be appointed to the Audit, Risk and Improvement Committee for the 2022-2024 term ending September 2024.

2. That the appointed Committee member:

- a) be notified of their appointment to the Committee; and
- b) complete induction, Code of Conduct, and confidentiality requirements.

3. That unsuccessful nominees be notified. (Ndiaye/Lyon)

The motion was put to the vote and declared carried.

Cr Hunter was not present for the vote.

Cr Hunter returned to the Chambers at 1.05pm.

QUESTIONS WITH NOTICE

Question With Notice No. 14.1 Development on “Linnaeus” at Broken Head.
File No: I2022/411

Cr Dey asks the following questions:

1. What is the assessment status of DA 2021.170.1 for 27 New Tourist Cabins, 7 Ancillary Buildings, Addition of Deck to Existing Centre and Associated Earthworks & Vegetation Removal, and Change of Use of 14 Private Education Units to Tourist Units?
2. Why do major amendments subsequent to the proposal that was advertised in April 2021 not constitute a new DA or, alternatively, why were the amendments not shared with objectors?
3. Will staff be preparing the Assessment for the NRPP, and will it be reported to Council, so that Council can determine its approach to the DA?
4. Is a Determination Date yet set, for the NRPP to determine the DA?
5. Is there a Department of Planning circular on such procedures and could it be shared please?

Response Director Sustainable Environment and Economy:

- 1. What is the assessment status of DA 2021.170.1 for 27 New Tourist Cabins, 7 Ancillary Buildings, Addition of Deck to Existing Centre and Associated Earthworks & Vegetation Removal, and Change of Use of 14 Private Education Units to Tourist Units?**

PPSNTH-83/DA10.2021.170.1 Mixed Use Development comprising Twenty-Seven (27) New Eco Tourist Facility Cabins, Seven (7) Ancillary Buildings including Wellness Facility, Refuges, Depot, Addition of Deck to Existing Centre and Associated Earthworks and Vegetation Removal, and Change of Use of Fourteen (14) Private Education Accommodation Units to Eco Tourist Facility Units is under assessment.

- 2. Why do major amendments subsequent to the proposal that was advertised in April 2021 not constitute a new DA or, alternatively, why were the amendments not shared with objectors?**

The applicant provided a response to Council’s request for further information on 21 October 2021 which included an amended application. The amended application is available to submitters/the public via Council’s DA Tracker: [DA Tracker - Byron Shire Council \(nsw.gov.au\)](#).

The Northern Regional Planning Panel (NRPP) members were briefed by Council staff on the amended application on 20 April 2022. A link to the record of briefing of the NRPP members is here: [Mixed Use Development | Planning Portal -](#)

[Department of Planning and Environment \(nsw.gov.au\)](https://www.nsw.gov.au/planning-and-environment)

In April 2022, the NRPP set a final timeframe for the applicant to respond to information in connection with the application to enable a report to be prepared for the determination of the application. The Panel has not required the application to be re-notified.

Information pertaining to the development application is otherwise uploaded to the DA tracker link above and is available to submitters/the public.

3. Will staff be preparing the Assessment for the NRPP, and will it be reported to Council, so that Council can determine its approach to the DA?

The application falls under the definition of 'Regionally Significant Development' being 'Eco-tourism development' with a capital investment value (CIV) over \$5 million.

The NRPP is the determining authority.

As per the Sydney and Regional Planning Panels operational procedures, staff prepare a report for the NRPP to determine. The assessment report is not to be endorsed or presented to the elected council before being sent to the Panel secretariat. Should councillors wish to make a submission on the DA to the NRPP they can do so as per below.

11.12 Council representation to the Planning Panel

An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

After the assessment report is sent to the secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

4. Is a Determination Date yet set, for the NRPP to determine the DA?

A tentative determination date has been scheduled by the Panel for June 2022.

5. Is there a Department of Planning circular on such procedures and could it be shared please?

A link to the Planning Panels publications is here: [Planning Panel Publications | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](https://www.nsw.gov.au/planning-and-environment)

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There being no further business the meeting concluded at 1.05pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 9 June 2022.

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Mayor Michael Lyon