

Minutes Ordinary (Planning) Meeting

Thursday, 9 June 2022



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
9 June 2022

INDEX OF ITEMS DISCUSSED

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 9 JUNE 2022 COMMENCING AT 11.11AM AND CONCLUDING AT 3.06PM

I2022/669

PRESENT: Cr M Lyon (Mayor), 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)
James Flockton (Infrastructure Planning Coordinator) – item 9.2
Scott Moffett (Flood and Drainage Engineer) – item 9.2
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 | Submission received |
|--|------|-------------------|---------------------|
| 9.2 South Golden Beach west side flooding and drainage | For | Matthew Lambourne | In person |

Question No. 1 - 90 day Cap on STRA

David Wallace on behalf of VOHL submitted the following question which was read by staff:

At the 25 November 2021 Council meeting, VOHL asked a question about Council's application for a 90 day cap on STRA. It was stated in the response that the DPIE would not allow an extension of Council's application beyond 24 June 2022. Is this application still active and if so please provide details of work undertaken in the last 6 months?

The Mayor took the question on notice.

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Question No. 2 – Interest Rates

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

Recently Cr Lyon moved that Council extend a loan to the Byron Markets at 3.5% per annum interest. How does this compare with the interest rate which Council itself pays on its loans, specifically the loan for the Tyagarah Solar Farm and the loan for the completion of the Butler St Bypass?

The General Manager provided the following response:

Interest rates Council would pay on any new loan borrowings would depend upon three things:

- 1. Timing ie when the borrowing was undertaken and interest rates available at the time the borrowing is undertaken.*
- 2. The amount borrowed and the loan term.*
- 3. Market approach at the time borrowings are proposed to be undertaken to test competition between lenders.*

Council has not borrowed any funds for a Tyagarah Solar Farm or any solar farm. The Tyagarah Solar Farm is an unknown project? For the Butler Street Bypass, Council borrowed \$1.750million on 25 June 2021 over a 20 year term at a fixed interest rate for 20 years of 2.31% per annum. This is 1.19% below the interest rate proposed for the Byron Bay Community Association but the proposed line of credit also has a different term approximately no more than 4-5 years.

The funding source for the proposed line of credit is via the Property Development Reserve which otherwise Council has invested. At this point the maximum interest rate Council can achieve on any investment currently in its portfolio is between 0.20% and 3.00%. Currently a 3 month term deposit with a Bank Council is permitted to invest with is 1.75% per annum. As an alternative use of the invested funds, the line of credit to the Byron Bay Community Association may achieve a greater revenue return to Council than currently Council is receiving via investments.

APOLOGIES

PROCEDURAL MOTION

22-235 Resolved that the apology from Cr Balson be accepted and a leave of absence granted.
(Lyon/Hunter)

The motion was put to the vote and declared carried.

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REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with clause 4.9 of the Code of Conduct, the Mayor tabled a primary Return of Interests for Alexandra Keen, in the position of Strategic Contracts and Procurement Coordinator.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

22-236 Resolved that the minutes of the Ordinary (Planning) Meeting held 12 May 2022 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:

STAFF REPORTS

General Manager

Report No. 13.1 Adoption of a Code of Meeting Practice

Sustainable Environment and Economy

Report No. 13.2 Rural Land Use Strategy Action Audit

Report No. 13.3 Residential Strategy and Lot 22 Update

Report No. 13.6 Proposal for a Discussion Paper - After the 2022 Floods: Working Out Possibilities Together

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. 22-237 and concluding with Resolution No. 22-240.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.4 **PLANNING - Quarter 4 SEPP Variations October to December 2021**

File No: I2021/1937

22-237 **Resolved** that Council adopts the report on exceptions to development standards for the period October to December 2021. (Lyon/Hunter)

Report No. 13.5 **PLANNING - Quarter 1 SEPP Variations January to March 2022**

File No: I2022/452

22-238 **Resolved** that Council adopts the report on exceptions to development standards for the period January to March 2022. (Lyon/Hunter)

CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 15.1 **CONFIDENTIAL - Emergency Procurement - Flood Event 2022**

File No: I2022/484

22-239 **Resolved** that Council approves the procurements undertaken in Attachment 1 on the basis of emergency procurement pursuant to s55(3)(k) of the *Local Government Act 1993* for the reasons detailed in this report. (Lyon/Hunter)

PROCEDURAL MOTION

22-240 **Resolved** that Council change the order of business to deal with Reports 9.2 next on the Agenda. (Lyon)

The motion was put to the vote and declared carried.

NOTICES OF MOTION

Notice of Motion No. 9.2 South Golden Beach west side flooding & drainage

File No: I2022/570

22-241 **Resolved** that Council receives a report on the following projects whether already under way or not in South Golden Beach west of Capricornia Canal, including how they can be funded and executed in the 2022-23 financial year and noting that more project detail appears in Councillor Dey's report attached to this Notice of Motion:

- a) investigate the sub-catchment of Marshals Creek that drains through South Golden Beach west side into Capricornia Canal, to determine capacities of its sub-surface and overland drainage networks, especially in the downstream area (SGB). That investigation should lead to upgrades in the piped network, to identification of

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overland flow-paths and to their upgrade.

- b) investigate whether South Golden Beach west of Capricornia Canal could benefit from a flood pump system similar to the one serving the east side.
- c) revitalise and complete the backyard easement project that commenced after the AWC Environmental Assessment of 2015.
- d) create a standing annual task for just prior to each wet season around routine inspection and maintenance of the flood gates in South Golden Beach.
- e) inspect the flood gates in South Golden Beach and carry out maintenance including (i) reinstalling a seal on gate #2 of 4 and (ii) removing mud accumulated on the concrete apron downstream of gate #4 of 4.
- f) consider in conjunction with the SES appointing a local warden to inspect those flood gates when flood warnings are issued.
- g) repair and restore the displaced concrete cover on the stormwater pit in the central road reserve of Shara Boulevard near Palmer Avenue, but preferably replace it with a steel grated cover.
- h) investigate and overcome the causes of persistent sewer pump failure at the pump station near #13 Elizabeth Street, South Golden Beach and setup communication with neighbours to monitor success of these measures for a year after their implementation.
- i) investigate and overcome the causes of persistent stagnant stormwater on the corner of Elizabeth and Clifford Streets, South Golden Beach and setup communication with neighbours to monitor success of these measures for a year after their implementation. (Dey/Pugh)

The motion was put to the vote and declared carried.

MAYORAL MINUTE

There was no mayoral minutes.

NOTICES OF MOTION

**Notice of Motion No. 9.1 Council submission to NRPP on Linnaeus DA
10.2021.170.1**

File No: I2022/505

Moved:

1. That Councillors receive, on the day after it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the "Linnaeus Estate" at Broken Head.
2. That staff outline a method and timeframe by which Council could make a submission to the Panel on future DA's going to the Panel, in line with the state procedure described in clause 11.12 of the operational procedures.
3. That the elected Council note that 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.
4. That Council write on 10 June 2022 to the NRPP with the following:

Byron Shire Council wishes to submit the following opinions, in line with the state procedure described in clause 11.12 entitled "Council representation to the Planning Panel" in the Panel's operational procedures. We ask the Panel to recognise the following:

- a) the significant ecological values of the site and that it includes the EPBC listed Critically Endangered Littoral Rainforest community plus a number of threatened and endangered flora and fauna.
- b) the high level of community interest in the DA with 2623 submissions received, of which only 42 were in support.
- c) that amendments to the proposal have not been advertised and that submitters are unaware of the changes and therefore have not been able to comment.
- d) that, as recognised in the NRPP Record of Briefing dated 20 April 2022, there are still unresolved issues regarding compliance with past consents, specifically related to the implementation of environmental repair works and upgrade to the OSSMS.
- e) the concerns regarding the lack of detailed assessment of the ecological values and potential impacts posed by the intensified use of the site, including failure to consider the range of feed trees and potential habitat for the endangered koala, and a lack of detailed assessment of potential impacts on at least four threatened fauna species (as listed under the NSW BC Act 2016 and being the White-eared Monarch, Common Planigale, Eastern Blossom-bat and the Eastern Long-eared Bat).

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- f) legal issues regarding the proposal meeting the requirements of the Mixed Use Zone for two or more uses, when all aspects of the application are for the purpose of the single use of the land as an Ecotourism facility, despite various components like a restaurant and gym.
- g) that neither the original nor the amended proposal complies with BSC DCP D3.3.5 Eco-Tourist Facility Prescriptive Measures in relation to density that specifies a maximum of 12 bedrooms.
- h) that community concern exists regarding the 2015 zone label change from Education Facility to Mixed Use Development that is facilitating this application.
- i) the lost opportunity for this site to continue in its approved use as an Education Facility. (Dey/Ndiaye)

PROCEDURAL MOTIONS

22-242 Resolved that Council move into Committee to allow for free debate. (Dey)

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

22-243 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon)

The motion was put to the vote and declared carried.

AMENDMENT

22-244 Resolved:

1. That Councillors receive, on the day after it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the "Linnaeus Estate" at Broken Head.
2. That the elected Council note that 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. (Lyon/Westheimer)

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

AMENDMENT

Moved:

1. That Councillors receive, on the day after it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA

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10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the "Linnaeus Estate" at Broken Head.

2. That staff outline a method and timeframe by which Council could make a submission to the Panel (on this and in future any other DA going to the Panel) in line with the state procedure described in clause 11.12 of the operational procedures.
3. That the elected Council note that 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. (Dey/Ndiaye)

The amendment was put to the vote and declared lost.

Crs Lyon, Westheimer, Pugh, and Hunter voted against the amendment.

The amendment (Lyon/Westheimer) upon becoming the substantive motion was put to the vote and declared carried.

PETITIONS

There were no petitions.

SUBMISSIONS AND GRANTS

There were no submissions and grants.

DELEGATES' REPORTS

Cr Ndiaye advised that it is World Oceans Day. Last week she met with Karl Goodsell from Positive Change For Marine Life and had a presentation - specifically about work done on Bringing Back the Bruns and the story mapping that has been done in relation to the health of the river and carbon sequestration. Council has been one of the partners along with Arakwal, DPI and Marine. A great example of a simple local project that has turned into something sophisticated and with positive consequence for our rivers and oceans. I look forward to further work in this area.

Cr Lyon provided a Delegates' Report on the NSW Coastal Conference last week and other activities he has been engaged in over the last few weeks.

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STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Adoption of a Code of Meeting Practice**
File No: I2022/492

22-245 **Resolved** that Council defers the matter 'Adoption of a Code of Meeting Practice' to the 23 June Ordinary Meeting of Council. (Dey/Lyon)

The motion was put to the vote and declared carried.

The meeting adjourned at 1.04pm for a lunch break and reconvened at 2.01pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 **Rural Land Use Strategy Action Audit**
File No: I2022/125

22-246 **Resolved** that Council:

1. Notes the substantial progress made to date on the actions contained within the Rural Land Use Strategy (Attachment 1 - E2022/34118).
2. Receives a report by end of November 2022 that details the scope of works and budget estimate needed to undertake a comprehensive five-year Rural Land Use Strategy review, with this report to inform a forward budget bid for this work to progress.
3. Requests staff to prioritise delivery of Rural Land Use Strategy Action 21 in the 2022/23 financial year, being: Investigate capacity for re-subdivision within existing Large Lot Residential estates.
4. Requests the preparation of an options paper on the potential for additional land to be nominated for rural lifestyle living opportunities and/or other emerging housing types in peri-urban areas e.g. villages as part of the 2022/23 work program.
5.
 - a) includes options for more community title and intentional community lands in the scope of works as per Council resolution 21-221 and;
 - b) Puts to the Northern Rivers Joint Organisation (NRJO) that carbon sequestration and carbon farming be added to its Renewable Energy prospectus. (Westheimer/Ndiaye)

The motion was put to the vote and declared carried.

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Report No. 13.3 **Residential Strategy and Lot 22 Update**
File No: I2022/132

22-247 Resolved that Council:

1. Not progress the Planning Proposal for Lot 22 on DP 1073165, Mullumbimby at this time until the implications of the 2022 Flood Events and any further potential natural disasters are understood on the suitability of this land for future development.
2. Supports, subject to funds being allocated, the adopted Residential Strategy being updated as per the peer review report Option 1 (Attachment 2 - E2022/27777) and clarified by the Department of Planning and Environment correspondence (Attachment 1 - E2022/40467).
3. Requests a draft of the updated Residential Strategy be reported back to Council.
(Swivel/Lyon)

PROCEDURAL MOTION

22-248 Resolved that Cr Swivel be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and declared carried.

The motion (Swivel/Lyon) was put to the vote and declared carried.

Cr Pugh left the Chambers at 2.57pm and did not return.

Report No. 13.6 **Proposal for a Discussion Paper - After the 2022 Floods:
Working Out Possibilities Together**
File No: I2022/578

22-249 Resolved:

1. That Council notes that staff will be preparing a high-level discussion paper *After the Floods – Working Out Possibilities Together* for presentation to Council and community engagement later in 2022.
2. That Council submits a request to the Department of Planning and Environment (DPE) for assistance with extra staff. (Westheimer/Ndiaye)

The motion was put to the vote and declared carried.

Cr Pugh was not present for the vote.

QUESTIONS WITH NOTICE

Question With Notice No. 14.1 Permanent Sites at Council Operated Caravan Parks

File No: I2022/576

Cr Dey asks the following questions:

1. *Given that the occupant of a permanent site at a Caravan Park like at Suffolk Park does not actually own the site, by what method or arguments is the right to a site recognised?*
2. *In the case of a site being 'on-sold' how is the new owner's right to occupy established?*
3. *In the case of the passing of an occupier, how is the new owner's right to occupy established?*
4. *In cases where such transfers are contested, how does Council examine and determine the validity of each claim?*

Response Director Infrastructure Services:

1. The Residential Community (Land Lease) Act 2013 (the RCLL Act) regulates sites in caravan parks that are leased for residential purposes. It does this by creating a statutory 'site agreement' between the caravan park operator and a person who has a moveable dwelling on a site within a caravan park. The site agreement gives the dwelling owner the right to occupy a space within the caravan park via their dwelling, in exchange for the payment of site fees to the park operator.
2. The RCLL Act requires a park operator to enter a new site agreement with the purchaser of a moveable dwelling, unless:
 - the operator declines to enter the proposed agreement on reasonable grounds (what counts as reasonable grounds are not set out under the Act), or
 - the operator and purchaser cannot agree on the terms of the proposed agreement.
3. The RCLL broadly defines a dwelling 'owner'. The meaning of owner includes a person:
 - who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who owned a dwelling subject to a site agreement immediately before they died, or
 - another successor in title of a person who owned a dwelling subject to a site agreement immediately before they died.
4. Council relies on people claiming to be a beneficiary of a deceased's person estate to act in good faith and not mislead Council.

Estate law is complex and there isn't a duty on Council to decide estate disputes. Within these limits, where a dwelling owner with a site agreement in a Council caravan park dies, Council asks for evidence of an incoming person's role as an

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estate representative or claim to title for a dwelling. But there are some estate claims Council can't verify (for instance, a person claiming that they were verbally promised certain things from a deceased person's estate).

There being no further business the meeting concluded at 3.06pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 11 August 2022.

.....
Mayor Michael Lyon