

**Minutes  
Ordinary (Planning) Meeting  
Thursday, 8 September 2022**



# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
8 September 2022

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# BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

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## MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 8 SEPTEMBER 2022 COMMENCING AT 11:08AM AND CONCLUDING AT 5.27PM

I2022/1193

**PRESENT:** Cr M Lyon (Mayor), Cr S Balson, Cr C Coorey (left at 2.50pm), Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr A Pugh (left at 3.36pm), Cr M Swivel (left at 4.18pm), 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)  
Chris Larkin (Manager Sustainable Development)  
Ralph James (Legal Counsel)  
Amber Evans Crane (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	Via
9.1	For	Kathy Norley	South Golden Beach Community Association	In person
9.2	For	Mandy Nolan	No	In person
13.2	For	Avital Sheffer	Northern Rivers Intentional Communities (NRIC)	In person
	Against	John Anderson	No	Read by staff
13.4	For	Ross Tucker	Mullumbimby Ex Services Club	In person

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Report No. and Title		For/ Against	Name	Representing Organisation	Via
	Dalley Street Mullumbimby				
13.5	Section 8.2 Review of Determination 10.2021.693.1 Use of Alterations to Shed and Deck 2 Hamiltons Lane Byron Bay	Against	Jim Mott	No	Zoom
			Christopher Raymond Lonergan	No	In person
13.6	PLANNING - Section 4.55 Modification 10.2014.743.4 to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential 5 development and completion of the Stage 5 driveway as part of Stage 4	Against	Callum Sked	No	Zoom

## Submissions

Subject	Name	Representing Organisation	Via
DRAFT PROPOSAL- consent to use and occupy Council owned land, or part thereof, for the purpose of building a proof-of-concept prototype movable tiny house cluster, permaculture garden and community, to provide affordable housing for a socially diverse group of residents at risk or experiencing homelessness and essential workers	Genevieve Lee	ONE ROOF BYRON INC	In person
Confirming statement re rail corridor by Michael Lyon	Lydia Kindred	Northern Rivers Rail Ltd	Read by staff

### Question No. 1 – Place Planning Collective

Lauren Julian asked the following question:

*Can the new members of the Place Planning Collective be discussed at the next meeting and decided upon so we can resume our meetings please?*

The Mayor responded that:

*We are certainly going to deal with that item today.*

### Question No. 2 – Community Title Sites

John Anderson asked the following question:

*A lot of rural landowners have in recent times constructed huge so called "Machinery Sheds" and immediately fitted them out for comfortable accommodation sometimes with upstairs and downstairs. If the staff proposal for dual occupancy of Community Titles Sites is approved, would Council count such construction as the secondary dwelling or will Council continue to pretend that it's just a machinery shed so that we might end up with 3 dwellings per site?*

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*The Director Sustainable Environment and Economy took the question on notice.*

## **Question No. 3 – LEP and DCP Documents**

John Lazarus asked the following question:

*Can Council give any reason why residents shouldn't just burn these LEP and DCP documents in protest, and act outside of Council to facilitate the actual Community's aspirations for Byron?*

*The Mayor took the question on notice.*

*The meeting adjourned at 12.47pm for a lunch break and reconvened at 1.37pm.*

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## **APOLOGIES**

There were no apologies.

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## **APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK**

There were no applications to attend by audio-visual link.

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## **REQUESTS FOR LEAVE OF ABSENCE**

There were no requests for leave of absence.

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## **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

Cr Lyon declared a not significant non-pecuniary interest in Report 13.2. The nature of the interest being that he lives on an Multiple Occupancy with approval to Community Title which is partly owned by his Aunt. Cr Lyon elected to remain in the Chamber and will participate in discussion and the vote.

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## **TABLING OF PECUNIARY INTEREST RETURNS**

There were no Pecuniary Interest Returns tabled.

**ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

**22-442 Resolved** that the minutes of the Ordinary (Planning) Meeting held 11 August 2022 be confirmed. (Ndiaye/Lyon)

*The motion was put to the vote and declared carried.*

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**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**

**Corporate and Community Services**

Report No. 13.1 Outcome of NSW Flood Inquiries

**Sustainable Environment and Economy**

Report No. 13.2 PLANNING - 26.2022.1.1 Submissions report to permit secondary dwellings and dual occupancies on rural multiple occupancy and community title sites

Report No. 13.4 PLANNING - 10.2021.470.1 Alterations & Additions to Mullumbimby Ex Services Club at Dalley Street Mullumbimby

Report No. 13.7 PLANNING - 10.2020.568.1 - Use of the site for the operation of a Landscaping Material Supplies business including an amenities building and use of shed - 320 McAuleys Lane MYOCUM

Report No. 13.10 PLANNING - Use of zipline ancillary to a primitive camping ground

Report No. 13.11 Place Planning Collective Expression of Interest Candidate Selection

Report No. 13.12 PLANNING - Quarter 2 SEPP Variations April to June 2022

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. 22-443 and concluding with Resolution No. 22-451.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.3**      **PLANNING - 10.2021.458.1 Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure at 99 Alcorn Street Suffolk Park**

**File No:**                I2022/894

**22-443**    **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.458.1 for demolition of existing dwelling house, removal of seven (7) native trees, erection of a new dwelling house and ancillary infrastructure, be granted consent subject to the conditions in Attachment 2.

(Lyon/Hunter)

*The motion was put to the vote and declared carried.*

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

*Nil voted against the motion.*

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**Report No. 13.5**      **PLANNING - Section 8.2 Review of Determination 10.2021.693.1 Use of Alterations and Additions to Shed and Decks at 2 Hamiltons Lane Byron Bay**

**File No:**                I2022/906

**22-444**    **Resolved** that pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, that Council, being the consent authority uphold the refusal of DA 10.2021.693.1, with the reasons for refusal amended as follows:

- a)    The application is not satisfactory pursuant to Section 4.15 (b) of the Environmental Planning and Assessment Act 1979 and Sections 1.3, 6.4, 7.1 and 7.7 of the Biodiversity Conservation Act 2016 because vegetation clearing was undertaken to facilitate its construction without approval and the application fails to provide a Biodiversity Development Assessment Report to demonstrate that the development took adequate steps to avoid or minimise biodiversity impacts on land within the Biodiversity Values Map.
- b)    The application is not satisfactory pursuant to Section 4.1 (a)(i) and (b) of the Environmental Planning and Assessment Act 1979 and Section 12.2.2 and 13.2 of the Byron Coast Comprehensive Koala Plan of Management (CKPoM), as enforced under State Environmental Planning Policy (Koala Habitat Protection) 2021, because the application fails to provide a Koala Habitat Assessment Report and a Koala Habitat Restoration Plan for unauthorised development and clearing of vegetation on land identified as Core Koala Habitat.
- c)    The application is not satisfactory pursuant to Section 4.15 (1) (a) (i) and (c) of the Environmental Planning and Assessment Act 1979 and Appendix 3 of the Byron Coast Comprehensive Koala Plan of Management (CKPoM), because it is considered that there would be insufficient space outside of the development

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footprint to achieve the amount of compensation required as a result of the unauthorised development and clearing of vegetation.

- d) The application is not satisfactory having regard to Section 4.15(1)(a) (i) of the Environmental Planning and Assessment Act 1979 because it does not provide sufficient information to demonstrate the building height has been accurately measured from existing ground level and fails to demonstrate compliance with the limit of 9 metres pursuant to Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 Height of Buildings of the Byron Local Environmental Plan 2014.
- e) The application is not satisfactory pursuant to Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 and Chapter B1 Section 1.2 of Byron Shire Development Control Plan 2014 because ecologically significant areas (red flags) and their setbacks were not identified or considered prior to designing the development; the remaining space outside of the development footprint is insufficient to achieve adequate compensation for unauthorised vegetation removal, failing to demonstrate 'No net loss of biodiversity'; and cannot demonstrate sufficient steps were taken to avoid and minimise biodiversity impacts
- f) The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the development as the development does not comply with the applicable development standards in the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014.
- g) The development is not satisfactory pursuant to Section 4.15 (1)(d) because matters raised in submissions of objection are not addressed in the application.
- h) The development is not satisfactory in relation to the Public Interest under subsection 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 having regards to the unapproved shed, which is not ancillary and subservient to the principal dwelling on the site, impacts on biodiversity due to non-compliance with Biodiversity Conservation Act 2016, and State Environmental Planning Policy (Koala Habitat Protection) 2021 Byron Coast Comprehensive Koala Plan of Management (CKPoM) and failure to address compliance with the applicable height controls under Byron LEP 1988 and Byron LEP 2014.

(Lyon/Hunter)

*The motion was put to the vote and declared carried.*

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

*Nil voted against the motion.*



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**Report No. 13.6**      **PLANNING - Section 4.55 Modification 10.2014.743.4 to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential development and completion of the Stage 5 driveway as part of Stage 4**

**File No:**                      I2022/962

**22-445**      **Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2014.743.4, for S4.55 Modification to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential development and completion of the Stage 5 driveway as part of Stage 4, be approved by modifying Development consent number 10.2014.743.1 in accordance with the recommended Modifications to Consent in Attachment 1. (Lyon/Hunter)

*The motion was put to the vote and declared carried.*

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

*Nil voted against the motion.*

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**Report No. 13.8**      **PLANNING - Section 4.56 Modification of Court approval to expand area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed use development 4 Marvell Street Byron Bay**

**File No:**                      I2022/1080

**22-446**      **Resolved** that pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2017.588.2, for Section 4.56 Modification of Court approval to expand area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed-use development, be refused for the reasons :

1. Pursuant to section 4.15 (1) (iii), the application is not satisfactory with consideration for Byron DCP 2014 Chapter B4 of the Byron Shire Councils DCP 2014, Parking Supply and Design, and Bicycle Parking Supply and Design
2. Pursuant to section 4.15 (1)(b)(c) &(e), the application is not satisfactory with consideration for the likely impacts of the development arising from the shortfall in on-site parking for cars and bicycles required to meet additional demand. As a result. the site is not suitable for the proposed development and approval of the proposed s4.56 modification to the development would not be in the public interest.

(Lyon/Hunter)

*The motion was put to the vote and declared carried.*

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

*Nil voted against the motion.*

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**No. 13.9**                      **Update - Resolution 22-374 - PLANNING - 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal**  
**File No:**                      I2022/1101

**22-447 Resolved** that Council:

1. Notes that points 1 and 3 of Resolution 22-374 are being progressed.
2. Notes a report as per points 2 and 3 of Resolution 22-374 will be presented to Council at the next available meeting following their completion. (Lyon/Hunter)

*The motion was put to the vote and declared carried.*

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## REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.1**            **Report of the Local Traffic Committee Meeting held on 12 August 2022**  
**File No:**                      I2022/1045

**22-448 Resolved** that Council notes the minutes of the Local Traffic Committee Meeting held on 12 August 2022. (Lyon/Hunter)

**22-449 Resolved** that Council adopts the following Committee Recommendation:

**Report No. 6.1 Proposed Accessible Parking Bay - Jonson St, Byron Bay**  
File No: I2022/916

Committee Recommendation:

That the Local Traffic Committee endorses the installation of an accessible parking space adjacent 103 Jonson Street, Byron Bay as per Attachment 1. (Lyon/Hunter)

**22-450 Resolved** that Council adopts the following Committee Recommendations:

**Report No. 6.2 Byron Writers Festival 2022 - TMP**  
File No: I2022/984

Committee Recommendation:

1. That Council endorses the submitted Traffic Management Plan and considers the Traffic Guidance Scheme to be fit for purpose for the Byron Bay Writers Festival on 26-28 August 2022.
2. That the approval is subject to:
  - a) Separate approvals by NSW Police and Transport for NSW being obtained.
  - b) The Traffic Guidance Scheme is to operate Thursday 25th August to Sunday 28<sup>th</sup> August.

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- c) The Traffic Guidance Scheme be amended to include west bound event traffic arriving from Byron Town Centre is to be directed down Sunrise Blvd, as a contingency, if east bound traffic on Ewingsdale Rd is queued back to the Hospital Roundabout.
  - d) The Traffic Management Plan be amended to document, the persons who are authorised to change the TGS on the day for unforeseen circumstances.
  - e) The Traffic Guidance Scheme to be implemented by those with relevant and current Transport for NSW training and accreditation.
  - f) That the speed limit be amended from 10kph to 40kph from north of the car park entry to the end of Bayshore Drive.
3. That the event organiser must:
- a) Advertise the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect. The notification must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints,
  - b) Notify the public of event details on Council's webpage. Details to be supplied to Council by the event organisers,
  - c) Undertake consultation with community and affected businesses including adequate response/action to any concerns raised,
  - d) Undertake consultation with emergency services and any identified issues addressed including emergency vehicle access,
  - e) Hold \$20m public liability insurance cover which is valid for the event.
4. That the signs and devices necessary to affect the traffic management changes (including all regulatory signage) also be approved.

### Management Comment:

This item has been approved by Council's General Manager under his Council delegated authority (refer Attachment 2). (Lyon/Hunter)

**22-451 Resolved** that Council adopts the following Committee Recommendations:

### **Report No. 6.3 DA10.2021.827.1 - Byron Bay Markets (Proposed Road Closures for Monthly Sunday Market)**

File No: I2022/1020

### Committee Recommendation:

That the Local Traffic Committee recommend that Council support:

1. The temporary road closure in principle to facilitate the Byron Community Markets and to allow the Development Application to be considered.
2. Further reporting to the Local Traffic Committee prior to first event and annually thereafter (Lyon/Hunter)

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## PROCEDURAL MOTION

**22-452 Resolved** that Council change the order of business to deal with Reports 9.1, 9.2, 13.2 and 13.4 next on the Agenda. (Lyon/Coorey)

*The motion was put to the vote and declared carried.*

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## NOTICES OF MOTION

### **Notice of Motion No. 9.1 North Byron Parklands - Splendour in the Grass 2022**

**File No:** I2022/1014

Moved:

1. That Council writes to Anthony John Roberts MP, Minister for Planning and Minister for Homes, and to the Independent Planning Commission as the declared consent authority that approved the development application (SSD 8169) for the North Byron Parklands site (applicant Billinudgel Property P/L) and conveys the following concerns regarding Splendour in the Grass 2022:
  - a) Council notes the claims of negative impacts created by Splendour in the Grass (SITG) event and the effect of the festival on patrons, Byron Shire residents and businesses
  - b) Since the time of the trial period, several resolutions (including 17-376 and 18-834) of Council have expressed multiple concerns surrounding the approval process and the final permanent approval given to the owners of the site to hold increasingly larger, and more frequent, events at the site. These concerns remained unheeded and many of them have now been realised at this latest SITG event
  - c) Council has never supported the use of the site as per the 2019 approval determined by the Independent Planning Commission and in particular wishes to reiterate Resolution 18-834 of 13 December 2018:
    1. *That Council does not currently support the proposal including the increase in attendance numbers, event types, and event days on the North Byron Parklands site beyond what has already been approved until its concerns as raised within its submission are satisfied*
    2. *That Council writes to advise the Department of Planning and the Independent Planning Commission of this position*
    3. *That Council does not support DOP's recommendation with respect to Parklands' self-monitoring of compliance;*
    4. *That Council proposes that any consideration of ongoing events must include an independent monitoring process, with the involvement of Council*

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5. *That Council's costs for monitoring should be funded by the applicants*
6. *That this monitoring needs to be used as part of the Planning Secretary's ongoing compliance*
7. *That the original trial approval was that Council would be the consent authority at the end of the trial period and that this condition should remain;*
- d) Council is deeply concerned by the following unacceptable impacts of SITG 2022 on the Byron Shire community:
  - traffic queues onto the site extending for several kilometres onto the M1 posed a danger to motorists
  - traffic delays of several hours impacted people who had to reach other destinations
  - social amenity was severely affected – traffic blockages inhibited people in several ways including being unable to reach their homes, visit local business and to pick up children from schools – many waited several hours in cars with children -- and school buses were held up for several hours
  - loss of business – businesses in many parts of the Shire's capacity to operate was reduced due to the traffic impacts and inability of customers to reach them
  - businesses who could have relied on SITG patrons reported lost business as the mud and water on the site, and the traffic delays, prevented SITG patrons from visiting other parts of the Shire
- e) Council is concerned about reports of:
  - serious injuries such as broken bones, sprains and staph infections occasioned by the muddy conditions
  - inadequate crowd management in the stage/tent areas resulting in falls, injuries and patrons fainting
  - inadequate provision of first aid or medical support and use of untrained security staff in lieu of first aid personnel
  - lack of readily available drinking water despite the widespread provision of alcohol sales
  - excessive toilet queues and overflowing toilets resulting in widespread urinating and defecating on the ground with the potential for the spread of illness;
- f) Council has concerns about the adequacy and impacts of the onsite sewage management system, given patrons' witnessing of overflowing toilets. Combined with the high water flow across the flooded site, urination and defecation outside of the toilet areas, these factors create the potential for serious contamination of the SEPP (Coastal Management 2018) wetland and resultant deleterious effects on the local ecology;
  - i) That Council and or the EPA, or the Consent Authority - being the Department of Planning - investigate that the conditions of consent for onsite sewage management are being complied with including the S68

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approvals issued by Byron Shire Council.

- h) Council has concerns about self-monitoring of the site by its owners, which is not independent. Compliance monitoring of events on the site as compliance reports, provided by the North Byron Parklands under NBP's self-monitoring regime, are at odds with local residents' and patrons' reports of compliance breaches.
2. That Council requests the Minister to:
- a) instigate an independent review of SITG 2022 with reference to, but not limited to, ecological impacts, health and safety, social impacts, public amenity, business impacts, and any other impacts on the Shire;
  - b) recognise that Council is the key stakeholder for the community and should contribute to the formulation of the terms of any review;
  - c) consider the findings of the review as a basis for the manner in which further events may occur on the site (Coorey/Lyon)

## AMENDMENT:

### **22-453 Resolved:**

1. That Council requests the Minister to:
- a) instigate an independent review of Splendour in the Grass 2022 with reference to, but not limited to, ecological impacts, health and safety, social impacts, public amenity, business impacts, and any other impacts on the Shire;
  - b) recognise that Council is the key stakeholder for the community and should contribute to the formulation of the terms of any review;
  - c) consider the findings of the review as a basis for the manner in which further events may occur on the site.
2. That Council and or the EPA, or the Consent Authority - being the Department of Planning - investigate that the conditions of consent for onsite sewage management are being complied with including the S68 approvals issued by Byron Shire Council.
3. That Council considers a planning agreement or Memorandum of Understanding to address the issues experienced on the site. (Pugh/Swivel)

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

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

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## PROCEDURAL MOTION

### **22-454 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, Fines imposed on house in Stuart Street.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains confidential information and attachments relating to a person.
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 raise personal matters concerning particular individuals (other than councillors) (Pugh/Lyon)

*The motion was put to the vote and declared carried.*

*Cr Coorey left the meeting at 2.50pm and did not return.*

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### **Notice of Motion No. 9.2 Fines imposed on house in Stuart Street**

**File No:** I2022/1015

### **22-455 Resolved** that Council:

1. revokes the \$3,000.00 fine imposed on Nicole Haberecht over the painting of her (now former) house in Stuart Street, on compassionate and hardship grounds;
2. advises Revenue NSW that the fine has been revoked and that all instalments paid by Ms Haberecht be reimbursed;
3. reviews the colour restrictions applying to houses in the general heritage conservation area with a view to liberalising the range of colours from which a home owner may choose;
4. advises home owners of the free "Minor Works and Maintenance Application" set out in Council's Fact Sheet titled "Consent requirements for Heritage Items and Heritage Conservation Areas" in any future colour disputes. (Lyon/Balson)

*The motion was put to the vote and declared carried.*

*Cr Coorey was not present for the vote.*

## PROCEDURAL MOTION

### **22-456 Resolved** that the meeting move out of confidential session. (Lyon/Ndiaye)

*The motion was put to the vote and declared carried.*

*Cr Coorey was not present for the vote.*

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.2**      **PLANNING - 26.2022.1.1 Submissions report to permit secondary dwellings and dual occupancies on rural multiple occupancy and community title sites**

**File No:**                      I2022/876

**22-457 Resolved** that Council:

1. Adopts the amended planning proposal to permit secondary dwellings and dual occupancies on multiple occupancies and rural community title sites as attached to this report (Attachment 1 - #E2022/73196), and forwards this to the Department of Planning and Environment for finalisation.
2. Request staff to review and amend Byron DCP 2014 to reflect secondary dwellings and dual occupancies are now permitted with consent and to clarify Vegetation Management Plan (VMP) requirements and development application process and proceed to public exhibition with these changes.
3. Notes Resolution 22-152 where Council is to receive a report on its ability to enforce consent conditions existing or in the future which limits short term rental use of residential accommodation
4. Council confirms its intention that secondary dwellings and dual occupancies on rural multiple occupancy and community title sites should be used for long term residential purposes (Ndiaye/Westheimer)

*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.*

*Cr Coorey was not present for the vote..*

*Cr Pugh left the meeting at 3.36pm and did not return.*



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**Report No. 13.4**      **PLANNING - 10.2021.470.1 Alterations & Additions to Mullumbimby Ex Services Club at Dalley Street Mullumbimby**  
**File No:**                      I2022/895

**22-458 Resolved** that Development Application No. 10.2021.470.1 for Alterations and Additions to the Mullumbimby Ex-Services Club Ltd, be deferred, and the applicant requested to enter into a Planning Agreement with Council for a financial contribution towards the on-site car parking shortfall instead of providing these car spaces on street (Tincogan Street) as a street upgrade. (Dey/Hunter)

*The motion was put to the vote and declared carried.*

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

*Nil voted against the motion.*

*Crs Coorey and Pugh were not present for the vote..*

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## MAYORAL MINUTE

There was no Mayoral Minute.

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## NOTICES OF MOTION

**Notice of Motion No. 9.3 Wallum Place Affordable Housing Investigation**  
**File No:**                      I2022/1104

**22-459 Resolved** that Council:

1. Receives a report into the suitability of the B4 Mixed Use part of Council-owned land at 42 Wallum Place (Lot 4 DP1004514) (excluding the Byron Herb Nursery), for an affordable housing development to provide much needed housing supply for key workers and low – moderate income residents living in Byron Shire.
2. Funds this investigation to the amount of \$10,000 from the Property Development Reserve. (Lyon/Balson)

*The motion was put to the vote and declared carried.*

*Crs Coorey and Pugh were not present for the vote.*

**Notice of Motion No. 9.4 Stormwater Investigation Requirements**

**File No:** I2022/1111

**22-460 Resolved:**

1. That Council acknowledges the values of:
  - a) infiltration of rainfall into the soil profile in all parts in the Shire, both for its provision of soil moisture for plant growth and for its reduction of stormwater runoff; and
  - b) in rural parts in the Shire, dealing with the impacts of impervious surfaces on the property itself, rather than shedding those impacts onto a downstream “receiving” environment.
  
2. That Council accommodates within presentations proposed under Resolution 21-548, a further presentation on options to amend the DCP and other guiding documents in relation to stormwater investigations to require:
  - a) that the receiving catchment is investigated far enough downstream from any development site that development impacts on stormwater have become insignificant. Where this distance downstream cannot be otherwise determined, a test is made for a catchment of at least 10 times the catchment area on which runoff characteristics are proposed to be altered;
  - b) that no urban property can make impervious more than a certain percentage (eg 80%) of the property area; and
  - c) that no rural property (ie one with onsite sewage management) can make impervious more than a certain percentage (eg 60%) of the property area.

(Dey/Ndiaye)

*The motion was put to the vote and declared carried.  
Crs Coorey and Pugh were not present for the vote.*

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**DELEGATES' REPORTS**

Splendour in the Grass Regulatory Working Group (RWG) Meeting

Cr Swivel gave a delegates report on a recent Splendour in the Grass RWG meeting. Cr Swivel noted that various stakeholders and Council and Community representatives were present. Issues discussed included safety, accessibility, and capacity of the festival.

State Resilience 2030 Meeting

Cr Ndiaye gave a delegates report on a recent State Resilience 2030 meeting. Attendees included Resilience NSW and local council area representatives. A discussion took place regarding the 2030 vision for social, economic, natural and built forms of resilience strategy.

*Cr Swivel left the meeting at 4.18PM.*

**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1**      **Outcome of NSW Flood Inquiries**  
**File No:**              I2022/1109

**22-461 Resolved:**

1. That Council notes the recommendations of the two NSW Flood Inquiry reports and that staff have commenced work to identify relevant actions to be pursued through Local, State and Federal avenues.
2. That Council puts this Report 13.1 on the agenda for its Floodplain Advisory Committee, at its meeting scheduled for 29 September. (Dey/Ndiaye)

PROCEDURAL MOTION

**22-462 Resolved** that Cr Dey be granted a two minute extension to his speech. (Dey/Ndiaye)

*The motion was put to the vote and declared carried.  
Cr Westheimer voted against the motion.  
Crs Coorey, Pugh, and Swivel were not present for the vote.*

*The motion (Dey/Ndiaye) was put to the vote and declared carried.  
Crs Coorey, Swivel, and Pugh were not present for the vote.*

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.7**      **PLANNING - 10.2020.568.1 - Use of the site for the operation of a Landscaping Material Supplies business including an amenities building and use of shed - 320 McAuleys Lane MYOCUM**  
**File No:**              I2022/1076

**22-463 Resolved:**

1. That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.568.1 for use of land and existing shed for landscaping material supplies, be granted consent subject to the recommended conditions of approval in Attachment 2 #E2022/78130 subject to the following amendments:

Impose a 12 month period to comply with the five deferred commencement consent conditions with the following wording to be inserted after deferred condition 5:

*Evidence of compliance with the above condition(s), sufficient to satisfy the Council as to those matters, must be provided within 12 months of this notice. If satisfactory evidence is produced in accordance with this requirement, the Council will give notice to the applicant of the date from which the consent operates.*

*If 12 months has passed since the issue of this Deferred Commencement Consent and the deferred commencement conditions have not been complied with, the Consent lapses.*

Amend Condition 2 to read

2. *Use of the site – landscaping material supplies only*

*The development is to be carried out strictly as a 'defined landscape material supplies' business only. Sales are limited to Sand, Gravel, Cobble, Road base, Soil, Cracker-Dust, Blue metal, Rock and Stone. Any other materials than those listed above are not permitted for sale, or storage onsite.*

2. That Council refers the issues associated with the landscaping materials supplies use to the enforcement team for their review and action as appropriate (Dey/Ndiaye)

*The motion was put to the vote and declared carried..*

*Crs Hunter, Lyon, Ndiaye, Dey and Westheimer voted in favour of the motion.*

*Cr Balson voted against the motion.*

*Cr Coorey, Pugh, and Swivel were not present for the vote*

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**Report No. 13.10 PLANNING - Use of zipline ancillary to a primitive camping ground**

**File No:** I2022/684

Moved that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 2019, Development Application No. 10.2021.683.1 for Use of Zipline Ancillary to a Primitive Camping Ground, be refused for the following reasons:

1. The application is not satisfactory having regards to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with Clause 6.8 Rural and Nature Based Tourism of Byron LEP 2014.
2. The application is not satisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the proposal will have a detrimental impact on the built and natural environment.
3. The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development and conflict with the operation of the primitive camp ground operating on the same site.
4. The development is not satisfactory having regard to subsection 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 because approval of the proposal is not in the public interest. (Westheimer/Dey)

*The motion was put to the vote and declared lost.*

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

*Crs Coorey, Swivel, and Pugh were not present for the vote.*

## FORESHADOWED MOTION

A foreshadowed motion had been moved by Cr Lyon.

## PROCEDURAL MOTIONS

**22-464 Resolved** that this matter (13.10) rest on the table. (Lyon)

*The motion was put to the vote and declared carried.*

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**22-465 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, Place Planning Collective Expression of Interest Candidate Selection.
2. That the reasons for closing the meeting to the public to consider this item be that it contains personnel matters concerning particular individuals (other than councillors)
3. That on balance it is considered that receipt and discussion of the matter in open

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Council would be contrary to the public interest, as disclosure of the confidential information could disclose personal information. (Lyon/Ndiaye)

*The motion was put to the vote and declared carried.*

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**22-466 Resolved** that Council move into Committee to allow for free debate. (Lyon)

*The motion was put to the vote and declared carried.*

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**Report No. 13.11 Place Planning Collective Expression of Interest Candidate Selection**

**File No:** 12022/872

**22-467 Resolved:**

1. That Council appoints nine Place Planning Collective members from the following: Attachment 1 (E2022/65420 CONFIDENTIAL Place Planning Collective applicant summary 2022), Attachment 2 (E2022/63168 CONFIDENTIAL Place Planning Collective EoI submission forms).

2. That selected members are distributed as follows:

Four members representing Mullumbimby are: David Brown, Madeleine Faught, Elle Davidson, and Dale Emerson.

Three members representing Bangalow are: Meredith Wray, Jenny Bird, and Joanne Millar

Three members representing Byron Arts & Industry Estate are: Jack Dods, Brooke Crowle, and Pippa Noble (Lyon/Hunter)

## PROCEDURAL MOTIONS

**22-468 Resolved** that Council move out of Committee and resume the Ordinary Meeting. (Lyon)

*The motion was put to the vote and declared carried  
Crs Coorey, Swivel, and Pugh were not present for the vote.*

**22-469 Resolved** that the meeting move out of confidential session. (Lyon/Ndiaye)

*The motion was put to the vote and declared carried  
Crs Coorey, Swivel, and Pugh were not present for the vote.*

*The motion (Lyon/Hunter) was put to the vote and declared carried.  
Crs Coorey, Swivel, and Pugh were not present for the vote.*

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## PROCEDURAL MOTION

**22-470 Resolved** that Report No. 13.10 be lifted from the table. (Lyon)

*The motion was put to the vote and declared carried  
Crs Coorey, Swivel, and Pugh were not present for the vote.*

## FORESHADOWED MOTION

**Report No. 13.10 PLANNING - Use of zipline ancillary to a primitive camping ground**

**File No:** I2022/684

**22-471 Resolved:**

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 20 1979, Development Application No. 10.2021.683.1 for Use of Zipline Ancillary to a Primitive Camping Ground, be granted as a deferred commencement consent subject to the conditions in Attachment 3 subject to the following amendments.

Amend Condition 5 to read

### 5. Pre-use certification of zipline

A detailed report and certification from a suitably qualified and experienced professional engineer must be provided the confirms and demonstrates that the zipline and all associated structures, platforms, anchors, nets and the like are constructed in accordance with relevant Australian Standards and guidelines including, but not limited to:

- a) AS 2316.2.1- 2016 – Flying foxes and challenge ropes courses- Construction and safety requirements ( EN 15567-1:2007, MOD)
- b) AS 2316.2.2- 2016 – Flying foxes and challenge ropes courses- Operation requirements ( EN 15567-2:2007, MOD)
- c) NSW Government Code of Practice Safe design of Structures August 2019
- d) The safety of campers and the camp sites underneath the zipline.

Amend Condition 8 to read

### 8. Annual certification of zipline and structures

The zipline and all associated structures, platforms, anchors, nets and the like must be inspected annually by a suitably qualified and experienced professional engineer and certified as being constructed and maintained in accordance with relevant Australian Standards and guidelines including, but not limited to:

- a) AS 2316.2.1- 2016 – Flying foxes and challenge ropes courses- Construction

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and safety requirements ( EN 15567-1:2007, MOD)

- b) AS 2316.2.2- 2016 – Flying foxes and challenge ropes courses- Operation requirements ( EN 15567-2:2007, MOD)
- c) NSW Government Code of Practice Safe design of Structures August 2019
- d) The safety of campers and the camp sites underneath the zipline.

Records of inspections must be kept and provided to Council on request. (Lyon/Hunter)

*The motion was put to the vote and declared carried.*

*Crs Hunter, Lyon, Ndiaye, Dey and Balson voted in favour of the motion.*

*Cr Westheimer voted against the motion.*

*Crs Coorey, Pugh and Swivel were not present for the vote.*

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**Report No. 13.12 PLANNING - Quarter 2 SEPP Variations April to June 2022**

**File No:** 12022/903

**22-472 Resolved** that Council adopts the report on exceptions to development standards for the period April to June 2022. (Dey/Lyon)

*The motion was put to the vote and declared carried.*

*Crs Coorey, Pugh, and Swivel were not present for the vote.*



**QUESTIONS WITH NOTICE**

**Question With Notice No. 15.1 A Lesser Landslip on Federal Drive**

**File No:** I2022/1103

Cr Dey asks the following questions:

1. Is Council aware of the additional landslip that parallels the roadway on its eastern side, immediately above the residence at 532 Federal Drive?
2. Has a geotechnical assessment been made of this landslip, which is 200m south of the dominant landslip between #532 and the Kings Road intersection?
3. If so, does that geotechnical assessment consider causes of the landslip and therefore ways in which future similar landslips can be avoided, or at least ways in which the risk of future landslips can be minimised?
4. If it does consider such causes, has it considered the impact of long-term land-clearing and recent earthmoving including redirecting water flows on uphill properties immediately west of the site?

**Response Director Infrastructure Services:**

Council's Works team are aware of this landslip issue in this locality.

Staff and Geotechnical consultant have met with residents on site and discussed the proposed way forward which staff understand have the residents support.

Whilst geotechnical assessments have been carried out on Federal Drive and monitoring is continuing in this locality, for this specific slip, the first action requires removal of dense lantana covering the slip area to enable a proper geotechnical assessment to be undertaken. Once that happens the Geotechnical consultant will be in a better position to understand the extent and nature of the slip and what remediation works may be required.

This action has commenced and will inform the bigger remediation design work currently being carried out to remediate the site and adjoining properties where required to provide road support and will include consideration of drainage impacts and future management of water flows. Once the Geotechnical results are received, staff will be in a better position to address the individual questions above more specifically.

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## **Question With Notice No. 15.2 Peer Review of Lot 22 Planning Proposal.**

**File No:** I2022/1108

Cr Dey asks the following question:

A letter of 24 December 2021 from Brett Whitworth of the NSW *Department of Planning, Industry and Environment* was attached to Report 13.3 in the Agenda for Council's meeting of 9 June 2022. On page 1 of the letter, DPIE describes the content of a final peer review report for Council's Lot 22 Planning Proposal by Judith Stubbs and Associates. That report was completed on 24 August 2021 and is attached to the letter.

1. Has the Stubbs peer review report been made public?
2. If not, can it be please?

### **Response Director Sustainable Environment and Economy:**

Council received a Report No. 13.3 Residential Strategy and Lot 22 Update [Agenda of Ordinary \(Planning\) Meeting - Thursday, 9 June 2022 \(infocouncil.biz\)](#)

The Peer Review Report by Judith Stubbs and Associates (as stated above) was referenced in the materials presented to Council, but the full report was inadvertently not attached to the agenda report.

A copy of the report will be made available with all other relevant material relating to the Lot 22 Planning Proposal on the project web page as updated to reflect recent resolutions of Council.

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*There being no further business the meeting concluded at 5.27pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting

as confirmed at Council's Ordinary Meeting on 13 October 2022.



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Mayor Michael Lyon