

Minutes Ordinary (Planning) Meeting

Thursday, 13 October 2022



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
13 October 2022

INDEX OF ITEMS DISCUSSED

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 13 OCTOBER 2022 COMMENCING AT 11.09AM AND CONCLUDING AT 4.22PM.

I2022/1413

PRESENT: Cr M Lyon (Mayor), Cr S Balson, Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr A Pugh, and Cr P Westheimer

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Chris Larkin (Manager Sustainable Development) – Item 13.1, 13.3, 13.4
Renan Solatan (Development Engineer) – Item 13.4
Ralph James (Legal Counsel)
Amber Evans Crane (Minute Takers)

The Mayor opened the meeting and acknowledged that the meeting is being held on Arakwal Country and that we pay our respects to the elders past and present and extend our respect to the Bundjalung clans whose lands and waters are part of the Shire.

PUBLIC ACCESS

Prior to dealing with the circulated reports and associated information, a Public Access Session was held and Council was addressed on the following:

Public Access

Report No. and Title	Name	For/ Against	Representing Organisation	Submission Received in form of	
13.3	PLANNING - Amendments to Byron Local Environmental Plan 2014	Robin Ormerod	For	Wategos Beach Protection Association	In person
13.1	PLANNING - Amendments to Byron Development Control Plan 2014	Oliver Dunne	For	Wategos Beach Protection Association	In person
13.2	PLANNING - S4.55(2) 10.2018.534.2 – Retrospective modification to change	Jim Kalokerinos	For	Self	In person
		Michelle		Self	In person

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Report No. and Title		Name	For/ Against	Representing Organisation	Submission Received in form of
	the approved height of an approved dual occupancy and minor internal changes	Roesler			
		Dwayne Roberts	Against	Ardill Payne and Partners	In person
13.4	PLANNING - 10.2021.582.1 Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising of Six (6) Dwellings at 8 Kumbellin Glen Ocean Shores	John Frank Fraser Walters	Against	Residents of Kumbellin Glen and other concerned Byron Shire residents	In person
		Shane Sylvanspring		Ocean Shores Residents Group	In person
13.6	PLANNING - 10.2022.389.1 Temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility and associated temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022 in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024	J'aimee Skippon-Volke	For	Byron Bay Film Festival	In person

The meeting adjourned at 12.00pm for a short break and reconvened at 12.29pm.

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APOLOGIES

Cr Coorey was an apology in accordance with her earlier approved leave of absence (Resolution No. **22-476**).

PROCEDURAL MOTION

- 22-547 Resolved** that the apology from Cr Swivel be accepted and a leave of absence for the 13 October 2022 Ordinary (Planning) Meeting be granted. (Lyon/Balson)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

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

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 22-548 Resolved** that Cr Hunter be granted a leave of absence from the 27 October 2022 Ordinary Council Meeting. (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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, Annual Returns of Interests of Councillors and Designated Staff for the period 2021 to 2022 were tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

22-549 Resolved that the minutes of the Ordinary (Planning) Meeting held 8 September 2022 be confirmed (Hunter/Lyon)

The motion was put to the vote and carried unanimously.

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

- Report No. 13.1 PLANNING - Amendments to Byron Development Control Plan 2014
- Report No. 13.3 PLANNING - Amendments to Byron Local Environmental Plan 2014
- Report No. 13.4 PLANNING - 10.2021.582.1 Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising of Six (6) Dwellings at 8 Kumbellin Glen Ocean Shores
- Report No. 13.5 PLANNING - Planning Proposal - 26.2021.6.1 - 103 Yagers Lane, Skinners Shoot.

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Hunter and seconded by . Each recommendation is recorded with a separate resolution number commencing at Resolution No. 22-550 and concluding with Resolution No. 22-552 .

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Report No. 13.2 **PLANNING - S4.55(2) 10.2018.534.2 – Retrospective modification to change the approved height of an approved dual occupancy and minor internal changes.**
File No: I2022/743

22-550 Resolved pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2018.534.2, for S4.55 to Modify Height of Dwelling Number 2 and Internal Changes, be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives of Clause 4.3 Height of Buildings in *Byron Local Environmental Plan 2014*.
 2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives of the R2 Low Density Residential zone.
 3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the modified development is inconsistent with the Objectives and Performance Criteria of Byron Development Control Plan 2014, Parts D1.2.4, D1.5.2, E5.8.3 and E5.8.4.
 4. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is likely to set an undesirable precedent if approved and is contrary to the public interest. (Lyon/Ndiaye)
-

Report No. 13.6 **PLANNING - 10.2022.389.1 Temporary use of land in the Byron Rail Corridor to undertake a pop-up Information and Education Facility and associated temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022 in association with the annual Byron Bay Film Festival and to hold similar events in 2023 and 2024.**
File No: I2022/1295

22-551 Resolved pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.389.1 for Temporary use of the land for an information and education facility including the erection of temporary structures from Wednesday 26 October 2022 to Monday 31 October 2022, and to hold similar events in 2023 and 2024 be granted consent subject to conditions of consent in Attachment 1. (Lyon/Ndiaye)

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Report No. 13.7 **PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)**

File No: I2022/1300

22-552 Resolved:

1. That Council proceeds with a planning proposal as attached to this report (Attachment 1) that seeks to amend Byron LEP 2014 to permit events on certain Council owned land at 249 Ewingsdale Road without the need to obtain development consent;
2. Forward the planning proposal to the NSW Department of Planning and Environment for a gateway determination;
3. That Council, pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
4. That Council considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption. (Lyon/Ndiaye)

PROCEDURAL MOTION

22-553 Resolved that Council change the order of business to deal with Reports 13.1, 13.3, and 13.4 next on the Agenda. (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **PLANNING - Amendments to Byron Development Control Plan 2014**

File No: I2022/854

22-554 Resolved that Council:

1. Proceeds with the public exhibition of the Byron DCP 2014 amendments proposed in this report, as detailed in Attachment (E2022/91228) and includes the following:
 - (i) Remove the 100m maximum separation control from prescriptive measure (2) from D2.5.2 Character and Siting of Dwellings and insert instead a prescriptive measure for dual occupancy (detached) and secondary dwellings to be sited to minimise land use conflicts, support clustering of buildings, prevent fragmentation of primary production, and reduce environmental impacts.
 - (ii) That the proposed prescriptive measure number 2 under E4.3.1 of DCP 2014

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be reworded to remove the word 'discouraged' and replace with the words 'are to be minimised'

2. Receives a further report for consideration on the amendments that receive submissions following the public exhibition period.
3. Should there be no submissions received to certain amendments, that those amendments to the DCP be adopted as of the close of the statutory public exhibition period date and notified accordingly. (Westheimer/Balson)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

The meeting adjourned at 1.22pm for a lunch break and reconvened at 2.07pm.

Report No. 13.3 PLANNING - Amendments to Byron Local Environmental Plan 2014

File No: I2022/1087

22-555 Resolved that Council:

1. Endorses the potential amendments to Byron LEP 2014 and Byron LEP 1988 as detailed within this report for further investigation including the following:
 - (i) Remove subclause 2(c) from clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 in LEP 2014
 - (ii) Amend Item 5 in Table 1 of the Report so that the current Clause 3 is replaced by:
 - (3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—
 - (a) there is, or will be, adequate vehicular access to and from a road, taking into account the scale of the development proposed, and
 - (b) where that road is a classified road, vehicular access to and from the road must be safe, ensure the safety, efficiency and ongoing operations of the classified road, and it must be demonstrated that alternate access from a road other than a classified road is not practicable or safe, and
 - (c) the development is small scale and low impact, and
 - (d) the development is complementary to the rural or environmental attributes of the land and its surrounds, and
 - (e) the development will not have a significant adverse impact on

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agricultural production, amenity or significant features of the natural environment.

2. Requests staff to prepare a planning proposal based on this investigation.
3. Receives a report outlining the particulars of this planning proposal for consideration prior to seeking a gateway determination. (Westheimer/Lyon)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

PROCEDURAL MOTION

- 22-556 Resolved** that Cr Westheimer be granted a two minute extension to his speech. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

Report No. 13.4 PLANNING - 10.2021.582.1 Demolition of Existing Dwelling and Construction of Multi Dwelling Housing comprising of Six (6) Dwellings at 8 Kumbellin Glen Ocean Shores
File No: I2022/1099

Moved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.582.1 to demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings, be granted consent subject to conditions in Attachment 2 and the following amended conditions being inserted in the appropriate order to reduce the number of dwellings to 5.

Insert the following deferred Commencement conditions

CONDITIONS OF CONSENT:

SCHEDULE 1. DEFERRED COMMENCEMENT CONDITION PURSUANT TO SECTION 4.16(3)

The following condition concerns matters as to which the Council must be satisfied before the consent can be issued:

1. Deferred Commencement Consent – Amendments to the plans required

This consent does not operate until Council is satisfied that the following amendments have been made to the proposed development:

Amended Plans Required

Pursuant to Section 4.16(3) of the EPA Act 1979, this consent does not operate until Council is provided with a full set of architectural drawings including floor plans, elevations, sections, landscape plan and site plan. The plans are to be prepared with regard to the submitted site plan, landscape plan, ground floor plan, first floor plan, second floor plan, roof plan, elevations, and sections prepared by Story Design Collective dated 07/07/2022.

To satisfy Council in this matter the applicant must submit amended plans:

- a) To reduce the total number of units within the development to **five (5)** by removing one unit; and
- b) To separate the building into two (2) structures with a minimum separation distance of 5m to reflect the built form of the locality.

2. Amended BASIX Certificate

An amended Basix Certificate is required to accompany any amended plan set.

Evidence is required to be submitted of compliance with the above condition, sufficient to satisfy the Council as to those matters, within 2 years of the date of this Notice of Determination. If satisfactory evidence is produced in accordance with this requirement, the Council will give written notice to the applicant of the date from which this consent commences operation.

If Council has not notified the applicant within a period of 28 days after the applicant's evidence is produced to it, the Council is, for the purposes only of Section 97 of the Environmental Planning and Assessment Act 1979, taken to have notified the applicant that Council is not satisfied as to those matters on the date on which that 28 day period expires.

Amend Condition 22 to read

22. Amended Plans required for the Construction Certificate

The application for a Construction Certificate is to include plans and specifications that:

- provide effective insect screening to all windows, doors and other openings to all parts of the development used for habitable purposes.
- The upper level window on the northern elevation in Unit 1 Master

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bedroom to be screened or the glass replaced with frosted or opaque glass.

- Include a 1.8 metre timber paling or colorbond fence to the northern and eastern boundary
- A single TV Antennae is to serve all five dwellings.
- Retaining walls to be offset from the side boundaries a minimum of 200 mm to facilitate construction and drainage.

Such plans are to be approved as part of the Construction Certificate.

Amend Schedule 4 Notes pertaining to ET charges and s7.11 Contributions as follows:

Water payments under the Water Management Act 2000

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT **(ET Policy 2018)**

Water	2.00 ET
Bulk Water	2.00 ET
Sewer	2.75 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>). These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

S7.11 Schedule of Development Contributions

The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The current contribution rates are available from Council offices during office hours. **Payments will only be accepted by cash or bank cheque.**

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Section 7.11 contributions Schedule for Ocean Shores Catchment						
This schedule was calculated in spreadsheet #E2018/73086						
1 bedroom units =	0	@	0.55 SDU	=		0
2 bedroom units =	5	@	0.75 SDU	=		3.75
3 bedroom units/dwellings =	0	@	1 SDU	=		0
Allotments =	0	@	1	=		0
Less Site Credits =	1	@	-1	=		-1
Total SDU						= 2.75
Schedule valid until		26 Oct 2022	After this date contact Council for CPI update.			
Local Open Space & Recreation	(OS-OS)	2.75	SDU @	\$ 1,876.40	=	\$ 5,160.10
LGA Wide Open Space & Recreation	(OS-SW)	2.75	SDU @	\$ 812.20	=	\$ 2,233.55
LGA wide Community Facilities	(CF-SW)	2.75	SDU @	\$ 1,189.55	=	\$ 3,271.26
Local Community Facilities	(CF-OS)	2.75	SDU @	\$ 1,620.08	=	\$ 4,455.22
Bikeways & Footpaths	(CW-OS)	2.75	SDU @	\$ 511.59	=	\$ 1,406.87
Shire Wide Bikeways & Footpaths	(CW-SW)	2.75	SDU @	\$ 87.26	=	\$ 239.97
Urban Roads	(R-OS)	2.75	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	2.75	SDU @	\$ 245.77	=	\$ 675.87
Rural Roads	#N/A	2.75	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	2.75	SDU @	\$ 1,228.52	=	\$ 3,378.43
Total						= \$ 20,821.27

(Dey/Westheimer)

Cr Pugh left the Chambers at 03:04 PM and did not return.

PROCEDURAL MOTION

22-557 Resolved that Cr Dey be granted a two minute extension to his speech. (Dey/Lyon)

*The motion was put to the vote and carried unanimously
Cr Pugh was not present for the vote.*

AMENDMENT

22-558 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.582.1 to demolish an existing dwelling house and to construct a multi dwelling housing development containing 6 dwellings, be granted consent subject to conditions in Attachment 2.
(Hunter/Balson)

*The amendment (Hunter/ Balson) was put to the vote and declared carried.
Crs Westheimer and Dey voted against the amendment.
Cr Pugh was not present for the vote.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.
Crs Hunter, Lyon, Ndiaye and Balson voted in favour of the motion.*

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*Crs Dey and Westheimer voted against the motion.
Cr Pugh was not present for the vote.*

NOTICES OF MOTION

Notice of Motion No. 9.1 Council report to NRPP on Linnaeus DA 10.2021.170.1
File No: I2022/1322

22-559 Resolved:

1. That Councillors receive, as a standard procedure, a copy of the Assessment Report prepared by Council staff for any DA that is to be determined by the Northern Regional Planning Panel on the next working day after it is lodged on the Planning Portal.
2. That Council seeks advice from the NSW Department of Planning and Environment a method and timeframe by which a Council could make a timely submission to a Planning Panel in line with the procedure described in the Department's own Sydney and Regional Planning Panels operational procedures (clause 11.12).
(Dey/Ndiaye)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 PLANNING - Planning Proposal - 26.2021.6.1 - 103 Yagers Lane, Skinners Shoot
File No: I2022/1198

22-560 Resolved that Council:

1. proceeds with the planning proposal as attached to this report (Attachment 1) to amend LEP 2014 to permit a dual occupancy (detached) with consent on the subject land;
2. forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;
3. pending a positive Gateway determination and completion of further studies by the applicant (if required), undertakes public exhibition of the planning proposal in accordance with the determination requirements;
4. considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer and Balson voted in favour of the motion.
Nil voted against the motion.
Cr Pugh was not present for the vote.*

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PROCEDURAL MOTION

22-561 Resolved that the vote on Resolution 22-552 be recommitted (Lyon/Westheimer)

*The motion was put to the vote and carried unanimously
Cr Pugh was not present for the vote.*

Report No. 13.7 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)

File No: I2022/1300

22-552 Resolved:

1. That Council proceeds with a planning proposal as attached to this report (Attachment 1) that seeks to amend Byron LEP 2014 to permit events on certain Council owned land at 249 Ewingsdale Road without the need to obtain development consent;
2. Forward the planning proposal to the NSW Department of Planning and Environment for a gateway determination;
3. That Council, pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
4. That Council considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption.

(Westheimer/Lyon)

The motion was put to the vote and carried unanimously.

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

Cr Pugh was not present for the vote.

MAYORAL MINUTE

No. 8.1 Byron Community Market parking assistance

22-562 Resolved:

1. That Byron Community Market stallholders be exempt from permissive and paid parking requirements in Cowper St, north of Carlyle St, for the remainder of their tenure on the Byron foreshore (Reserve 82000).
2. Request staff to facilitate the appropriate permits and approvals to enable point 1. (Lyon/Ndiaye)

*The motion was put to the vote and carried unanimously
Cr Pugh was not present for the vote.*

There being no further business the meeting concluded at 4.22PM.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 10 November 2022.



.....
Mayor Michael Lyon