

Minutes Ordinary (Planning) Meeting

Thursday, 9 February 2023



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
9 February 2023

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 9 FEBRUARY 2023 COMMENCING AT 11:06AM AND CONCLUDING AT 3:29PM

I2023/132

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

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Storm Townsend/ Amber Evans Crane (Minute Taker)
Chris Larkin (Manager Sustainable Development)
Annie Lewis (Media Communication Coordinator) – Item 9.2

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.

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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
9.2	Consult about local impacts of 2023 Triathalon	Mike Crawley	Against	NXsports Community Foundation Ltd	In person
9.3	Expression of Interest for land for a Natural Burial Ground	Jeanette Martin & Carol Gamble	For	Natural Burial Grounds Steering Group	In person
13.2	PLANNING - Rural Community Title DCP 2014 Chapter D2 amendments - submissions report	Avital Sheffer	For	Northern Rivers Intentional Communities NRIC	In person

APOLOGIES

PROCEDURAL MOTION

23-001 Resolved that the apology from Cr Balson be accepted and a leave of absence granted.
(Lyon/Dey)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

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

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REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 23-002 Resolved:** that Cr Hunter be granted a leave of absence from the 23 February 2023 Ordinary Council Meeting (Lyon/Coorey)

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

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 23-003 Resolved** that the minutes of the Ordinary (Planning) Meeting held 8 December 2022 be confirmed. (Westheimer/Pugh)

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

Sustainable Environment and Economy

Report No. 13.3 Memorandum of Understanding between Byron Shire Council and The Transport Asset Holding Entity of NSW (TAHE)

Report No. 13.4 PLANNING - DA 10.2022.193.1 - Torrens Title Subdivision of Two (2) Lots into Two (2) Lots 11 Argyle Street MULLUMBIMBY

Infrastructure Services

Report No. 13.7 Planning agreement for the dedication of land at Bayside 15 Torakina Road, Brunswick Heads

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Ndiaye. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **23-004** and concluding with Resolution No. **23-007**.

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SUSTAINABLE ENVIRONMENT AND ECONOMY – DIRECTOR'S REPORTS

Report No. 13.1 **PLANNING - Amendments to Byron Development Control Plan Submissions Report**
File No: I2022/1804

23-004 Resolved that Council

1. Adopts the following Byron Development Control Plan 2014 chapters as amended post exhibition and outlined within this report:
 - Part A: Preliminary (Attachment 2 - E2023/5564)
 - D1: Residential Accommodation in Urban, Village & Special Purpose Zones (Attachment 3 - E2023/5565)
 - D2: Residential Accommodation and Ancillary Development in Rural Zones (Attachment 4 - E2023/5566)
 - D8: Public Art (Attachment 5 - E2023/5567)
 - E2: Bangalow (Attachment 6 - E2023/5568)
2. Adopts Chapter E5: Certain locations in Byron Bay and Ewingsdale as exhibited (Attachment 7 - E2022/91198) (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Report No. 13.2 **PLANNING - Rural Community Title DCP 2014 Chapter D2 amendments - submissions report**
File No: I2022/1892

23-005 Resolved that Council adopts the amended Draft Byron Development Control Plan Chapter D2: Residential Accommodation and Ancillary Development in Rural Zones, Attachment 2 (E2023/5962) permitting additional dwellings on rural community title sites and publishes the amendment on Council's website. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 13.5 **PLANNING - Quarter 4 SEPP Variations October to December 2022**

File No: I2023/76

23-006 **Resolved** that Council adopts the report on exceptions to development standards for the period October 2022 to December 2022. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously

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

Nil voted against the motion.

Report No. 13.6 **PLANNING - DA 10.2021.571.1 Demolition of Existing Dwelling and Construction of Two (2) New Dwellings to create Dual Occupancy (Detached) including Earthworks and Swimming Pool in Two (2) Stages at 212 Fowlers Lane BANGALOW**

File No: I2023/100

23-007 **Resolved** that pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2021.571.1 for Demolition of Existing Dwelling and Construction of Two (2) New Dwellings to create Dual Occupancy (Detached) including Earthworks and Swimming Pool in Two (2) Stages, be granted consent subject to conditions of approval in Attachment 1. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

PROCEDURAL MOTION

23-008 **Resolved** that Council change the order of business to deal with Reports 9.2 and 9.3 next on the Agenda. (Lyon)

The motion was put to the vote and carried unanimously.

MAYORAL MINUTE

There was no Mayoral Minute.

NOTICES OF MOTION

Notice of Motion No. 9.2 Consult about local impacts of 2023 Triathlon

File No: I2023/96

23-009 Resolved that Council:

1. Requests that the proponents of the Triathlon undertake a feedback process with the Byron Bay community and businesses post the 2023 Triathlon to identify improvements that may be made to the event to lessen its impact including variations of routes and/or timing of road closures for future events and provide a report on this feedback to Council.
2. Consults with the community on the Triathlon via a Have Your Say process following the event. (Dey/Coorey)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.3 Expression of Interest for land for a Natural Burial Ground

File No: I2023/97

23-010 Resolved that Council:

1. Engages in March 2023 with interested parties including the 'Natural Burial Grounds Steering Group' to develop an Expression of Interest that will be advertised as described in Part 3 below seeking dedication and public acquisition by donation or by purchase of private land for a Natural Burial Ground in Byron Shire.
2. Develops as part of Part 1 a list of criteria for the land sought, including potentially its size and its location:
 - a) near bushland, so that bush regeneration will follow burial in open ground;
 - b) where road access is or can be made convenient and safe, including traffic and parking requirements.
3. Advertises the Expression of Interest in May, or later if the parties need longer to agree, with responses due six weeks later.
4. Receives a report that evaluates the Expressions of Interest after consultation with parties mentioned in Part 1 above. (Dey/Lyon)

The motion was put to the vote and carried unanimously.

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PETITIONS

Petition No. 10.1 **Petition – Upper Main Arm Pothole Petition**
File No: E2023/14596

The Mayor tabled a petition containing 102 signatures.

Notice of Motion No. 9.1 Timing of removal of fill on bank of Marshalls Creek
File No: I2023/95

PROCEDURAL MOTION

23-011 Resolved that this matter rest on the table. (Lyon)

The motion was put to the vote and carried unanimously.

DELEGATES' REPORTS

There were no Delegates Reports.

The meeting adjourned at 1:00pm for a lunch break and reconvened at 1.47 PM.

*The General Manager did not return at this time and the Director Sustainable Environment and Economy acted as General Manager in his absence.
The General Manager returned to the Chambers at 1:49 PM.*

PROCEDURAL MOTION

23-012 Resolved that Notice of Motion No. 9.1 be lifted from the table. (Lyon)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Notice of Motion No. 9.1 Timing of removal of fill on bank of Marshalls Creek

File No: I2023/95

Moved that Council:

1. Notes:

- a) that large amounts of fill were placed in about October and November 2022 on the bank of Marshalls Creek at 295 Pocket Road, The Pocket;
- b) a Stop Work Order was issued in November 2022;
- c) a Restore Works Order was issued on 7 December 2022 to restore the area back to its original condition by 7 April 2023;
- d) Council have unknowingly disposed of material which has ended up on the site; and
- e) that we are now in this region's wet season, when floods are most likely and erosion of the material into Marshalls Creek is thus more likely than usual.

2. Seeks advice from two sources, (i) from Council's Legal Services Team or from Council's external legal services provider and (ii) relevant state government departments, on:

- a) whether fill of the quantum and location filled in this case could ever gain approval to be placed,
- b) if so, what state or other referrals would be made and what conditions might come back as requirements for the project,
- c) whether such conditions can be achieved after the event as is the case here,
- d) whether retrospective approval is possible, and
- e) if approval can never be gained, why not. (Dey/Ndiaye)

PROCEDURAL MOTION

23-013 Resolved that Cr Dey be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

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AMENDMENT

23-014 Resolved that Council notes:

1. that large amounts of fill were placed in about October and November 2022 on the bank of Marshalls Creek at 295 Pocket Road, The Pocket;
2. a Stop Work Order was issued in November 2022;
3. a Restore Works Order was issued on 7 December 2022 to restore the area back to its original condition by 7 April 2023;
4. Council have unknowingly disposed of material which has ended up on the site; and
5. that we are now in this region's wet season, when floods are most likely and erosion of the material into Marshalls Creek is thus more likely than usual.
(Lyon/Westheimer)

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

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

Cr Ndiaye left the Chambers at 2:48 PM and did not return.

Report No. 13.3 **Memorandum of Understanding between Byron Shire Council
and The Transport Asset Holding Entity of NSW (TAHE)**
File No: I2023/5

23-015 Resolved that Council:

1. Notes the non-binding Memorandum of Understanding between Byron Shire Council and The Transport Asset Holding Entity of NSW (refer Attachment 1, E2023/951).
2. Communicates with TAHE that regarding its MOU with Byron Shire Council that Council places high priority on public transport initiatives. This is to ensure that the current rail corridor not be compromised so that there is no impediment to a functioning rail service at Mullumbimby. The corridor may need to retain its width to the extent that there are dual tracks and room for a siding. (Westheimer/Coorey)

*The motion was put to the vote and declared carried.
Cr Dey voted against the motion.
Cr Ndiaye was not present for the vote.*

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Report No. 13.4 **PLANNING - DA 10.2022.193.1 - Torrens Title Subdivision of Two (2) Lots into Two (2) Lots 11 Argyle Street MULLUMBIMBY**
File No: I2023/18

23-016 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.193.1 for Torrens Title Subdivision of Two (2) Lots into Two (2) Lots, be granted consent subject to the conditions of consent in Attachment 1. (Lyon/Hunter)

The motion was put to the vote and declared carried.

Cr Dey voted against the motion.

Cr Ndiaye was not present for the vote.

Crs Swivel, Pugh, Westheimer and Dey left the meeting at 3:15pm.

The meeting adjourned due to lack of quorum at 3.15pm for 3 minutes and reconvened at 3.18pm.

Councillors present Lyon, Hunter, Coorey, Westheimer and Dey.

Crs Swivel and Pugh did not return to Chambers.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.7 **Planning agreement for the dedication of land at Bayside 15 Torakina Road, Brunswick Heads**
File No: I2023/94

23-017 **Resolved** that Council enters into the planning agreement as provided at Attachment 1, subject to:

- a) the satisfactory resolution of the drainage issues at the development site; and
- b) approval of the development by the planning panel; and
- c) the agreement being generally amended to remove Council as the authority to be satisfied with the public positive covenants and replace these references with the Department of Planning and Environment. (Dey/Lyon)

The motion was put to the vote and carried unanimously.

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

QUESTIONS WITH NOTICE

Question With Notice No. 14.1 Upgrades on Main Arm Road
File No: I2023/98

Cr Duncan Dey asks the following question:

Council's press release on 9 September 2022 announced:

"Major roadworks on Main Arm Road are due to start on 12 September 2022.

"Council has received \$3.45 million in grant funding from Transport for NSW to improve safety for people travelling on Main Arm Road, especially the section from Mullumbimby to Sherrys Bridge.

"Additional funding of \$1.3 million from the NSW Government will allow for reconstruction work on the one-kilometre section of Main Arm Road, west of Sherrys Bridge. This work will commence early in 2023, weather permitting".

More details can be found at:

<https://www.byron.nsw.gov.au/Services/Roads-and-parking/Road-works-and-closures/Main-Arm-road-improvements>

While these roadworks are very welcome, they are not flood related. There remains fundamental flood-proofing measures that need attention on Main Arm Road. One of these bridges sits between the two sections of Main Arm Road that received these grants:

- 1. at what stage will the inadequacy of the waterway opening beneath Williams Bridge to withstand the 2022 flood be reported to higher authorities, who must then ensure the waterway is enlarged before a repeat flood causes a repeat washout of the approach embankments?*
- 2. will the adequacy or otherwise in the waterway area beneath Sherrys Bridge be examined as part of the design for \$1.3million grant for reconstructing the flood-prone section of Main Arm Road west of the Bridge, given that raising the road will likely exacerbate the inadequacy?*

In addition, the proposed roadworks match a 6 km route that should but doesn't yet support safe cycling. Community in Main Arm have put together a concept design for a 1.5km cycle route on low-use and closed roads to bypass the dangerous section of Main Arm Road (west of Coopers Lane and past Settlement Road). The 6km route funded by the two grants could make cycling feasible on this important and desirable route from Mullumbimby to Main Arm:

- 3. do the two upgrades include provision for cycling, either on or off road?*
- 4. If not, can one or both of the designs be upgraded to include provisions for cycling?*

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Response Director Infrastructure Services:

1. Staff have not made comment to suggest the damage that occurred to Williams Bridge in 2022 was caused by inadequacy of the waterway opening beneath Williams Bridge.

Staff had indicated previously that a review could be undertaken however funding has not been available to resource this. Therefore, staff have not proposed any reporting to higher authorities at this stage.

The scour repairs completed are considered to be the permanent solution and provide a similar waterway area to pre-2022. Should Council wish to investigate the adequacy of the waterway opening beneath Williams Bridge, funding would need to be provided to engage a consultant to model and provide a report. Professional advice based on modelling is required before the waterway opening could be considered inadequate.

2. The flood modelling completed to date for this section of road includes the waterway area beneath Sherry's Bridge.

All future modelling will also consider the waterway area beneath Sherry's Bridge.

3. All civil road works completed by Council consider provisions for cycling. Design and construction outcomes hinge upon; design standards, site constraints, project funding amounts and any funding constraints if grant funded.

Where feasible improvements will be made, where not feasible no worsening will be made.

Question With Notice No. 14.2 Triathlon sponsor's not-for-profit status.

File No: I2023/99

Cr Duncan Dey asks the following question:

On 24 March 2022 Council resolved (Res 22-101) that Council:

1. *Notes the importance of the Byron Triathlon event to the local community and businesses, as well as the Australian sporting community in general.*
2. *Supports the 2022 Byron Triathlon and future events using a similar route to the 2021 event as per attachment 2, and that this route is endorsed by Council, on the basis that the route is supported by the Local Traffic Committee at its April meeting.*
3. *Communicates its position to the local community via media release.*
4. *Requests the community and businesses respect this decision and support the organisers in the delivery of the 2022 Byron Triathlon.*
5. *Council requests that the Byron Triathlon and NX Sports provide to Council evidence of their status as a not-for-profit including registration with the Australian Charities and not-for-profit commission (ACNC) and any details of disbursement of*

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funds to charities or other financial details that give evidence of their status as a not-for-profit organisation.

Has Part 5 of this Resolution been executed and what is the result?

Response A/Director Sustainable Environment and Economy:

On the 22 March 2022, Staff requested NX Sports provide information in accordance with Part 5 of Resolution **22-101**. NX Sports advised the next day that they are not a charity, they are not-for-profit. NX Sports have offered to provide a copy of their constitution and staff have requested they do. At the time of writing, receipt of a copy was pending.

Detail of the monies NX Sports distribute in Byron Shire have been provided as part of their 2022 post-event debrief, refer to Confidential Attachment 1.

There being no further business the meeting concluded at 3:29 PM.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 9 March 2023.



.....
Mayor Michael Lyon