

Minutes Ordinary (Planning) Meeting

Thursday, 13 April 2023



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
13 April 2023

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ORDINARY (PLANNING) MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 13 APRIL 2023 COMMENCING AT 9:10AM AND CONCLUDING AT 12:24PM.

I2023/519

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

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Danielle Hanigan (A/Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Ralph James (Legal Counsel)
Donna Johnston (Grants Coordinator) – Item 11.1
Greg Smith (A/Manager Sustainable Development) – Item 11.3
Storm Townsend / 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.

Cr Swivel left the Chambers at 9.11am in accordance with his declared pecuniary interest.

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	Submission Received in form of
8.1 Feros Care	Maree Eddings	For	Friends and Family of the Residents of Feros Care	In person
	Nicholas Towers		Feroscare Member	

Cr Swivel returned to the Chambers at 9:41am.

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Submissions

Subject	Name	Representing	Submission Received in form of
West Byron Flooding	Jo Faith	Community Alliance for Byron Shire (CABS)	In Person
Request to dredge watercourse to Kings Creek	Marie Oliver	Self	Read by Staff

The meeting adjourned at 9.49am for a recess break and reconvened at 10.09am.

APOLOGIES

Cr Pugh was an apology in accordance with his prior accepted leave of absence.
(Resolution No. **23-059**)

PROCEDURAL MOTION

- 23-095** **Resolved** that the apologies from Cr Coorey and Cr Balson be accepted and a leave of absence granted. (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

PROCEDURAL MOTION

- 23-096** **Resolved** that Cr Ndiaye be permitted to attend the meetings held on 13 April 2023 by audio-visual link. (Lyon/Dey)

The motion was put to the vote and carried unanimously.

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 Swivel declared a pecuniary interest in Report 8.1. The nature of the interest being that the Councillor provided professional advice to the residents, families and members of Feros Care United. Cr Swivel elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with section 440AAB of the Local Government Act 1993 and clause 4.22 of the Code of Conduct for Staff, the Mayor tabled Primary Returns of Interests for the following staff:

- John Drobec, Project Officer
 - Katie Hughes, Project Engineer
-

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

23-097 Resolved that the minutes of the Ordinary (Planning) Meeting held 9 March 2023 be confirmed. (Lyon/Hunter)

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

Corporate and Community Services

Report No. 11.1 Growing Regional Economies Fund - project nomination

Sustainable Environment and Economy

Report No. 11.2 PLANNING – Development Application No. 10.2022.159.1 –
Subdivision of Land being a Boundary Adjustment between Two (2)
Lots – 14 Kendall Street and 25 Cavvanbah Street Byron Bay

Report No. 11.6 Policy (New) - Conflicts of Interest for Council related development

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. **23-098** and concluding with Resolution No. **23-105**.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 11.3 PLANNING – Development Application No. 10.2022.247.1 –
Torrens Title Subdivision of One Lot into Two Lots – 135
Jonson Street Byron Bay**

File No: I2023/329

23-098 Resolved that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.247.1 for Torrens Title Subdivision of One Lot into Two Lots, be granted consent subject to the conditions in Attachment 1 (E2023/23526) to this Report. (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

**Report No. 11.4 PLANNING - Report of the Planning Review Committee held 2
March 2023**

File No: I2023/318

23-099 Resolved that Council endorses the outcomes of the Planning Review Committee meeting held on 2 March 2023. (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 11.5 **PLANNING - DA 10.2021.657.1 - Community title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy comprising fifteen (15) dwelling sites – 375 Coorabell Road COORABELL**

File No: I2023/391

23-100 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.657.1 for Community Title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy comprising of fifteen (15) dwelling sites at 375 Coorabell Road, Coorabell be approved subject to the conditions of consent attached to this Report (Council Document #E2023/27114). (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 11.7 **Byron Community Markets Parking Arrangements**

File No: I2023/354

23-101 **Resolved** that Council receive and note this Report on parking options provided for Byron Community Markets Stallholders. (Lyon/Hunter)

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 12.1 **Report of the Local Traffic Committee Meeting held on 14 March 2023**

File No: I2023/410

23-102 **Resolved** that Council notes the minutes of the Local Traffic Committee Meeting held on 14 March 2023. (Lyon/Hunter)

23-103 **Resolved** that Council adopts the following Committee Recommendation:

Report No. 6.1 Rural Fire Brigade - Authorised Parking

File No: I2023/305

Committee Recommendation 6.1.1

That LTC support the installation of a restricted parking zone adjacent the Rural Fire Service building, Alcorn Street, Suffolk Park as shown by attachment 1 (E2023/21961).

(Lyon/Hunter)

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23-104 Resolved that Council adopts the following Committee Recommendations:

Report No. 7.1 Reconnecting Mullumbimby May 2023
File No: I2023/93

Committee Recommendation 7.1.1

1. That Council support Reconnecting Mullumbimby 2023 be held 6 May 2023 3.00pm to 9.00pm.
2. That Council support in Part 1 is subject to:
 - a) separate approvals by NSW Police and TfNSW being obtained;
 - b) the event organiser providing council with an updated Traffic Management Plan and Traffic Guidance Scheme/s for the event;
 - c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
 - d) the impact of the event be advertised, and charged at cost to the organisers, via a notice in the local weekly paper and appropriate variable message signage a minimum of one week prior to the operational impacts taking effect, noting it 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;
 - e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information.
3. The event organiser to:
 - a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
 - b) arranging for private property access and egress affected by the event
 - c) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
 - d) consulting with emergency services and any identified issues be addressed;
 - e) holding \$20m public liability insurance cover which is valid for the event;
 - f) paying Council's Road Event Application Fee prior to the event;
 - g) not place any signage on the road related area of the Pacific Highway.
4. That provisions are made for safe access for heavy vehicles at the intersections of Stuart Street/Burringbar Street, and Stuart Street/Tincogan Street. (Lyon/Hunter)

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23-105 Resolved that Council adopts the following Committee Recommendations:

Report No. 7.2 Event - Bangalow Billycart Derby May 2023

File No: I2023/55

Committee Recommendation 7.2.1

1. That Council support the Bangalow Billycart Derby to be held on 21 May 2023.
2. That Council support in Part 1 is subject to:
 - a) separate approvals by NSW Police and TfNSW being obtained;
 - b) the event organiser providing council with an updated Traffic Management Plan and Traffic Guidance Scheme/s for the event;
 - c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
 - d) the impact of the event be advertised, and charged at cost to the organisers, via a notice in the local weekly paper and appropriate Variable Message Signage a minimum of one week prior to the operational impacts taking effect, noting it 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;
 - e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information.
3. The event organiser to:
 - a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
 - b) arranging for private property access and egress affected by the event;
 - c) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
 - d) consulting with emergency services and any identified issues be addressed;
 - e) holding \$20m public liability insurance cover which is valid for the event;
 - f) paying Council's Road Event Application Fee prior to the event;
 - g) not place any signage on the road related area of the Pacific Highway.
(Lyon/Hunter)

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MAYORAL MINUTE

Cr Swivel left the Chambers at 10:16am in accordance with his declaration of pecuniary interest.

PROCEDURAL MOTION

23-106 Resolved that Cr Lyon be granted a three minute extension to his speech. (Lyon/Dey)

The motion was put to the vote and carried unanimously.

Mayoral Minute No. 8.1 Feros Care Village

File No: I2023/511

23-107 Resolved that Council:

1. Requests the Board of Feros Care to:
 - a) Abandon plans to close the Feros Care Village in Byron Bay indefinitely.
 - b) Provide a full set of financials for the last three years and the forecast for the current year with line-by-line details of income and expenditure relating to the Byron Bay facility, including projections into the future.
 - c) Detail any improvements required in order for the facility to maintain accredited in its current form.
 - d) Work with residents and their families and interested members of the community to address any funding shortfalls, including by dialogue with State and Federal Governments if there is a systemic issue that is making the facility financially unviable.
 - e) Provide an explanation of the “security of tenure” provisions of the Aged Care Act and how that impacts on the future viability of facilities such as Feros Village.
 - f) Meet with a delegation of Council (Councillors and Staff) to discuss the points above.
2. Seeks information from Crown Lands as to tenure and duration of that tenure on the Crown Land property containing Feros Village.
3. Writes to the Minister for Health and Aged Care (Cwlth) explaining the situation and history and Council's concerns regarding the actions and future proposals for the Feros Care Village at Byron Bay. (Lyon)

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

Cr Swivel returned to the Chambers at 10:52am.

NOTICES OF MOTION

Notice of Motion No. 9.1 Alternative Flow path Bayshore Drive

File No: I2023/490

23-108 Resolved that:

1. Council receives a Report at the 25 May 2023 ordinary meeting outlining the progress of the additional/alternative flow path including:
 - a. How often it is used and in what conditions, i.e. wet weather and dry weather.
 - b. The amount of water transferred down it from the STP under various conditions, including as a percentage of total out flows.
 - c. Any filling that has been done to grade the drain toward west Byron and its effectiveness.
 - d. Performance relative to initial project objectives.
 - e. Impact on the amount of water leaving the STP through the drain on the Flick's property.
 - f. The hydraulic efficacy of the flow path, given the stagnant water apparent in the photographs attached in the Notice of Motion.
2. The Report also goes on the agenda of the next meeting of Council's Water & Sewer Advisory Committee. (Lyon/Hunter)

The motion was put to the vote and carried unanimously.

DELEGATES' REPORTS

Cr Dey referred to his Delegates Report on the 14 March 2023 Far North Coast BFMC meeting published in the Agenda for this meeting.

Cr Swivel gave a report on the North Byron Parklands Regulatory Working Group

The Mayor provided a Public Notice regarding flood recovery. The Mayor and Northern Rivers Reconstruction Corporation are hosting a Community Roundtable session via Zoom on 18 April 2023 at 5pm. The purpose of the session is to further inform the community on the Resilient Homes Program and Resilient Lands Program and to allow an open discussion to take place between local residents and the Northern Rivers Reconstruction Corporation. Further details will be available on Council's Website.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 11.1 **Growing Regional Economies Fund - project nomination**
File No: I2023/482

23-109 Resolved that Council:

1. Endorses an application for Lot 12 Bayshore Drive under the NSW Government's Growing Regional Fund.
2. Receives a report showing how the co-contribution will be financed and the impact on Council's current and future budgets.
3. Staff provide a report to Councillors on the above prior to accepting any offer of any financial support for the above mentioned application. (Hunter/Dey)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 11.2 **PLANNING – Development Application No. 10.2022.159.1 –
Subdivision of Land being a Boundary Adjustment between
Two (2) Lots – 14 Kendall Street and 25 Cavvanbah Street
Byron Bay**
File No: I2023/321

23-110 Resolved that, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.159.1 for Subdivision of Land being a Boundary Adjustment between Two (2) Lots, be granted consent subject to the recommended conditions in Attachment 1 (E2023/22601) to this Report.

(Westheimer/Dey)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Cr Ndiaye left the Chambers at 12:19pm and did not return.

Report No. 11.6 **Policy (New) - Conflicts of Interest for Council related development**

File No: I2023/392

23-111 Resolved that Council:

1. Notes that the NSW State Government introduced on 3 April 2023, new requirements into the Environmental Planning and Assessment Regulation 2021, to address potential conflicts of interest in Council-related development.
2. Notes that Council must now have an adopted policy to manage development applications where Council is the developer or landowner, or where Council holds a commercial interest in the land that is subject of an application.
3. Adopts, as a consequence of 1 and 2, the Conflicts of Interest for Council-Related Development Applications Policy (Attachment 1 #E2023/22323) with minor changes as follows:
 - Reference now to General Manager and or delegate instead of Director Sustainable Environment and Economy.
 - And minor wording edits section 3.1.
4. Places the adopted Conflicts of Interest for Council-Related Development Applications Policy (Attachment 1 #E2023/22323) on exhibition for a minimum period of 28 days, with any significant submissions received to be reported back to Council. If no significant submissions are received, then the Policy be adopted, with no further action required.
5. Notes that this is the process followed by other Councils, including Ballina Shire.

(Dey/Lyon)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

QUESTIONS WITH NOTICE

Question With Notice No. 13.1 **Bamboo on the bank of the Brunswick River**
File No: I2023/388

Cr Dey asks the following question:

There are several large clumps of mature bamboo on the north bank of the Brunswick River, on public land at the rear of properties located on the 'bulb' end of Kamala Court. Bamboo is not native here.

Pictures below show (1) a large root ball that recently collapsed into the River leaving its culms (the official word for the poles) in the river where they may capture other debris and cause hydraulic resistance to flow; and (2) the bank vacated by that fall, showing that it is being undercut and that more failures are likely.

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My cursory assessment is that this is the first of what will be many collapses over time, and that the right solution is for the bamboo to be removed and replaced with endemic species compatible with the river's natural functions of flow, flood, fish, for example, and with residential use of the general area.

- 1. to whom should residents report concerns of this nature, for example concerns that flooding will be exacerbated if rehabilitation is not undertaken within a reasonable timeframe?*
- 2. if Council is the agent best equipped to receive such reporting, what is the process from here? Can rehabilitation works on the riverbank be designed with expert assistance, put into a list of works that would assist to keep the river channel free and unimpeded as well as to stabilise the bank, and put forward for the significant amount of funding needed to execute them in a timely manner?*

Picture 1 - large clumps of bamboo on the riverbank with one fallen in and partially blocking the channel:



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Picture 2 – further clumps of bamboo ready to fall into the river channel:



Response Director Infrastructure Services:

Response to Question 1

Concerns of this nature are multi-faceted:

- concern regarding perceived impact of bamboo to flooding of the river and associated impact to adjacent property.
- concern of bamboo being an environmental weed and needing removal.
- concern of large bamboo clumps impacting the values of the Brunswick River through de-stabilisation of the riverbank and sedimentation.

As such, there are various agencies who residents report concerns to, however mostly these concerns are forwarded back to Council staff. Council is responsible for flood mitigation and development of flood plans; we suggest that Council is the appropriate authority to receive concerns regarding flooding matters.

Council has an active Bush Regeneration Team that work within riparian habitats and can provide advice on the priority of bamboo removal and logistics for consideration. We are currently researching alternative methods of eradicating large-scale Bamboo while limiting collateral damage.

The Brunswick River is a Crown Waterway with responsibility and management resting with the Department of Crown Lands, and any works within the river would require a Crown Lands Licence which can take up to 6 months.

Response to Question 2

At present Council is working closely with Local Land Services (LLS) to address priority river erosion sites within the Brunswick Catchment as part of a recent funding allocation under the North Coast Riparian Restoration Program. LLS have an active database of landowners who have lodged requests regarding flood impacts to private property and who receive advice and support from LLS. The database is used to assess and evaluate sites for future funding that improve flood resilience and stabilise sites in an order that reflects their priority and recovery potential within the landscape.

Council staff are working closely with LLS staff to deliver priority projects funded under this program before the end of June 2023. As part of the assessment process a Multi-Criteria Analysis Tool has been developed to assess integrated information on the biological and physical characteristics of the waterbody, the potential for integrating agencies and efforts, and the potential success of a site based on landholder compliance, risk of failure and project costs.

Question With Notice No. 13.2 Mayor diary and delegate reports
File No: I2023/480

Cr Dey asks the following question:

Council's website has a page, as linked and screenshot below, claiming to display the Mayor's diary:

<https://www.byron.nsw.gov.au/Council/Mayor-and-councillors/Mayor-and-General-Manager-diary>

Byron Shire Council homepage / Council / Mayor and councillors / Mayor and General Manager diary

Mayor and General Manager diary

Details about meetings held with the Mayor and General Manager are published on this page.

Meeting diary summaries

Meeting diary summaries will be published here each quarter. The January to March summary will be published in early April 2022.

- Mayor and General Manager Meeting Diary Summary – January to March 2022

Request a meeting with the Mayor or General Manager

If you would like a meeting with the Mayor or General Manager, please complete the Meeting Request form before the date of the requested meeting.

In the interest of transparency, please be aware that some information disclosed in the form will be made public in the diary summaries on this page.

[Meeting Request form](#)

Contact
02 6626 7000
council@byron.r

I made a similar commitment when running for Mayor in 2021, that my diary would be made public. Reasons for a public diary include:

- (i) that the office of Mayor is a public office, and*
- (ii) that this office should represent the views of the elected Council and thereby of the Shire, not the Mayor's personal views.*

Sadly, many bodies and most state government officials think that a chat with the Mayor fulfils their obligations to "consult with the Local Government Area". This is incorrect.

Post flood examples of such consultation include meetings between the Mayor and various Resilience NSW officials, and between the Mayor and the CEO of Northern Rivers Reconstruction Corporation.

An extreme example of representation was the Mayor becoming the main spokesperson presenting a 2022 Flood Impact Assessment on behalf of Resilience NSW. The FIA was

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about fill placed on rail corridor land at Prince Street Mullumbimby. This fill has no support from the elected Council and yet has the full support of the Mayor.

As the Shire's only delegate on bodies like Northern Rivers Joint Organisation, the Mayor could be reporting to the Council and hence to the public via a Delegate Report. According to the NRJO's website, it "meets quarterly to address matters of regional significance". Matters that it regards as within its purview include the Incinerator project at Casino. The NRJO publishes Agendas and Minutes at:

<https://www.northernriversjo.nsw.gov.au/about-us/meetings>

Minutes from the "board meeting" of August 2022 are attached. Those for December are not published, as of 27 March 2023. Byron Shire would benefit from knowing how our Shire's needs are brought to and dealt with by NRJO. As with our own meeting Minutes, the thinking behind the Resolution is not recorded.

- 1. Why is the Mayor's online diary a blank, as above?*
- 2. When will the Mayor report on the substance of his meetings with state and other officials?*
- 3. When will the Mayor report on his representation for our Shire to the NRJO?*

Response General Manager, Mark Arnold

1. The Mayor and General Manager 2023 diary summaries will be available on Council's website prior to the Council Planning Meeting held on Thursday 13 April 2023. Staff will then work to make the Mayor and General Manager diary summaries from 2022 available as soon as practical.
2. The Mayor and General Manager diary summaries show the individual/organisation that they met with, the date, and the meeting topic. It is a matter for the Mayor and at his discretion to determine when and how best to report on these meetings.
3. All NRJO Meeting Minutes and Agendas are publicly available for any other Councillor or members of the public to read. The NRJO Meeting Minutes are uploaded to NRJO's website after they have been adopted. It is at the Mayor's discretion as to how, when and if he provides a Delegates Report to Council on the NRJO Board meetings.

