

Minutes Ordinary (Planning) Meeting Thursday, 11 May 2023



**BYRON
SHIRE
COUNCIL**

DISCLAIMER

These minutes are DRAFT minutes and will remain unconfirmed until such time as they are confirmed as a correct record at the subsequent meeting.

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes

11 May 2023

INDEX OF ITEMS DISCUSSED

The following items are listed in the order in which they were dealt with.

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ORDINARY (PLANNING) MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 11 MAY 2023 COMMENCING AT 11:04AM AND CONCLUDING AT 1:09PM.

I2023/686

PRESENT: Cr M Lyon (Mayor), Cr S Balson, 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)
James Flockton (Infrastructure Planning Coordinator) – Item 9.2
Kristie Hughes (Natural Disaster Policy Planner) – Item 13.3
Storm Townsend (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:

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Flood Infrastructure at end of Ann Street Mullumbimby	Marie Oliver	Self	In Person
Legropes	Derek Hynd	Self	In Person

APOLOGIES

PROCEDURAL MOTION

- 23-157 Resolved** that the apology from Cr Coorey be accepted and a leave of absence granted.
(Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

There were no attendances by audio visual link.

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 23-158 Resolved** that Cr Coorey be granted a leave of absence from the 25 May 2023 Ordinary Council Meeting.
(Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Balson declared a Not significant non-pecuniary interest in Report 13.3. The nature of the interest being that One of the EOI submissions was by Mercedes Mambort. Mercedes volunteered for an organisation Cr Balson is a Board of Director of, namely: Women's Village Collective Ltd. Mercedes is no longer a volunteer for the organisation. Cr Balson elected to remain in the Chamber and will participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with section 440AAB of the Local Government Act and clause 4.22 of the Code of Conduct for Staff, the Mayor tabled a Primary Return of Interests for Honor O'Harae in the position of Development Support Officer.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

23-159 Resolved that the minutes of the Ordinary (Planning) Meeting held 13 April 2023 be confirmed. (Lyon/Ndiaye)

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

General Manager

Sustainable Environment and Economy

Report No. 13.3 Place Planning Collective Expression of Interest: Selection of Federal Representatives

Report No. 13.4 Byron Music Festival - request to alter Council Resolution 22-509

REPORTS OF COMMITTEES

Infrastructure Services

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 18 April 2023

6.1 A new Pedestrian Refuge at 23 Bayshore Drive, Byron Bay

6.2 2023 Splendour in the Grass Music Festival

6.3 Market Parking - Somerset Street, Byron Bay

6.4 No Parking Area - Scanlons Road (Devines Hill, Lookout)

6.5 Extension of No Parking Area - Bayshore Drive, Byron Bay

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Balson. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **23-160** and concluding with Resolution No. **23-161**.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Byron Music Festival - temporary suspension of alcohol restrictions Denning Park**

File No: I2023/596

23-160 Resolved:

1. That Council notes that the organisers of the Byron Music Festival advise that for the parts of Denning Park R82000 identified on the plan at Attachment 1, they request that alcohol be allowed to be available for sale, supply and consumption on Saturday 17 June 2023 between 11am - 8:30pm.
2. That subject to:
 - a. the Department of Planning and Environment – Crown Lands (DPE-CL) granting a licence to BMF organisers to hold part of the Byron Music Festival on Denning Park R82000; and
 - b. the sale, supply or consumption of alcohol complying with DPE-CL licence and liquor licence requirements; then:

any Council imposed restrictions on alcohol carrying and/or consumption affecting the:

 - i. Byron Bay Surf Life Saving Club;
 - ii. area identified in Attachment 1 as 'Lic. Area Extension 1', adjacent to the Byron Bay Surf Life Saving Club; and
 - iii. area identified in Attachment 1 as 'Lic. Area 15 x 42m';be suspended between the hours of 11am and 8:30pm on Saturday 17 June 2023.
3. That in the event that the DPE – Crown Lands or Liquor and Gaming NSW decline to issue a licence to BMF, or the requirements of any licences issued are inconsistent with the areas set out in Attachment 1, part 2 of this Resolution will not come into effect. (Lyon/Balson)

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Report No. 13.2 **PLANNING - Development Application No. 10.2022.367.1 - Use of studio including alterations and additions - 4/133-141 Broken Head Road Suffolk Park**

File No: I2023/541

23-161 Resolved that:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.367.1 for the Use of studio and alterations and additions to existing studio including a variation to clause 4.4 Floor Space Ratio, be granted consent subject to the conditions of approval in Attachment 1 (E2023/36504).
2. The determination of this Development Application and potential non-compliances within the existing dwelling are to be brought to the attention of Council's Enforcement Team. (Lyon/Balson)

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

Nil voted against the motion..

NOTICES OF MOTION

Notice of Motion No. 9.1 TAHE strategy for preserving a usable rail corridor

File No: I2023/594

23-162 Resolved that Council

1. Writes to TAHE, to Transport for NSW, to the NSW Minister for Transport (Jo Haylen), and to the NSW Minister for Regional Transport and Roads (Jenny Aitchison) regarding preservation of the Casino to Murwillumbah Railway Land (the rail corridor) within Byron Shire and invites TAHE and Transport for NSW to attend a Councillor Workshop to be held in June or August 2023 or, if unable to attend, to respond in writing to the issues we raise below:
 - a) Does TAHE use a strategic approach when selling parts of the rail corridor within Byron Shire, such that minimum widths are maintained at each point along the corridor?
 - b) Does TAHE take account of future transport needs of the corridor such as, for example:
 - i. addition of a shared path for pedestrians and bicycles,
 - ii. possible duplication of tracks for rail transport, and
 - iii. possible connection of new villages that could be enabled by such transport.
 - c) Whether TAHE can adopt an approach to ensure the sale or transfer of corridor assets will not prevent dual tracks between Billinudgel and Bangalow

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plus appropriate sidings where needed.

2. Requests that staff notify Councillors when staff become aware of any impending sale or transfer of railway land. (Westheimer/Dey)

*The motion was put to the vote and carried.
Crs Hunter, Pugh and Swivel voted against the motion.*

Notice of Motion No. 9.2 Lennox Head to Byron recreational coastal pathway

File No: 12023/622

23-163 Resolved that Council supports and joins with Ballina Shire Council in its efforts to improve Active Transport connectivity between the two Shires through the following:

1. Provides in principle support for the continuation of the recreational coastal pathway from Lennox Head to Byron Bay.
2. Seeks a joint funding opportunity for a route options study into routes to link the recreational coastal pathway from Lennox Head to Byron Bay, including active transport linkages to potential future Rail Trails in the Shire. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

MAYORAL MINUTE

Mayoral Minute No. 10.1 Damaging increase in Emergency Services Levy costs

File No: 12023/698

23-164 Resolved that:

1. Council writes to the Treasurer, the Minister for Emergency Services, the Minister for Local Government and local State Member(s):
 - a) Expressing Council's strong opposition to the NSW Government's last minute decision to impose an enormous Emergency Services Levy (ESL) cost increase on councils for 2023/24 by scrapping the ESL subsidy for councils and at a time after Council has publicly advertised its Operational Plan and annual budget to the community;
 - b) Noting that as a consequence of the unannounced 73% increase in the State Emergency Service budget and an 18% increase in the Fire and Rescue NSW budget, Council's 4.6% rate increase to provide essential community services and infrastructure has been significantly eroded.
 - c) Advising that the Government's decision will lead to a reduction in important local services and the deferral or cancellation of necessary infrastructure projects;

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- d) Calling on the NSW Government to take immediate action to:
- i. restore the ESL subsidy in 2023/24
 - ii. urgently introduce legislation to decouple the ESL from the rate peg to enable councils to recover the full cost as a defined levy or charge
 - iii. develop a fairer, more transparent and financially sustainable method of funding critically important emergency services, in consultation with local government
2. Council writes to the Chair of the Independent Pricing and Regulatory Tribunal (IPART) advising that Council's forced emergency services contribution is manifestly disproportionate to the 2023/24 rate cap, which has resulted in additional financial stress.
3. Council writes to the President of LGNSW seeking the Association's ongoing advocacy to bring about a relief in the burden of Councils' emergency services contribution. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Ndiaye left the Chambers at 12:09pm.

Mayoral Minute No. 10.2 Independent Planning Commission (IPC) - Byron Shire Short Term Rental Accommodation Planning Proposal - Advice Report

File No: I2023/717

23-165 Resolved that Council writes to the Minister for Planning, The Hon. Paul Scully:

1. Expressing Council's broad support for all 12 recommendations and noting they are a much better alternative to the planning proposal in its current form.
2. Confirming Council's commitment to work with the Department of Planning on:
 - a. the formulation and implementation of an appropriate regulatory regime to enable Council to plan for and manage non-hosted STRA as per Recommendation 2 of the IPC report, as an immediate priority
 - b. the implementation of the remaining recommendations, noting that there may be a need to fine-tune part or all of some of these recommendations. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Ndiaye was not present for the vote.

Cr Ndiaye returned to the Chambers at 12:13pm.

PETITIONS

There were no Petitions tabled.

DELEGATES' REPORTS

Cr Lyon provided a Delegate's Report on his attendance at the Community Housing Conference.

Cr Ndiaye provided a Delegate's Report on her attendance, on behalf of the General Manager, at the M-Arts event wherein the re-visited Arts Policy was discussed.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3	Place Planning Collective Expression of Interest: Selection of Federal Representatives
File No:	I2023/571

PROCEDURAL MOTION

23-166 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, namely (subject of report).
2. That the reasons for closing the meeting to the public to consider this item be that:
 - (a) personnel matters concerning particular individuals (other than councillors)
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 disclose personnel information under Local Government Act (Clause 10A(2)(a)). (Ndiaye/Swivel)

Cr Swivel left the Chambers at 12:19pm.

*The motion was put to the vote and carried unanimously.
Cr Swivel was absent for the vote.*

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PROCEDURAL MOTION

23-167 Resolved that Council move into Committee to allow for free debate. (Lyon)

*The motion was put to the vote and carried unanimously
Cr Swivel was absent for the vote.*

Cr Swivel returned to the Chambers at 12:22pm.

**Report No. 13.3 Place Planning Collective Expression of Interest: Selection of
Federal Representatives**

File No: I2023/571

23-168 Resolved:

1. That Council selects two community representatives from the nominations received in Attachment 1 (E2023/38502), to the Place Planning Collective being Alan Goldstein and Mercedes Mambort.
2. That the appointed Place Planning Collective representatives be notified of their appointment to the Collective and be provided with a copy of the Place Planning Collective Charter and Code of Conduct.
3. That unsuccessful nominees be thanked for their submission. (Ndiaye/Lyon)

PROCEDURAL MOTION

23-169 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon)
The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

23-170 Resolved that the meeting move out of confidential session. (Lyon/Ndiaye)
The motion was put to the vote and carried unanimously.

The motion (Ndiaye/Lyon) was put to the vote and carried unanimously.

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Report No. 13.4 **Byron Music Festival - request to alter Council Resolution 22-509**

File No: I2023/637

23-171 **Resolved** that Council:

1. Lifts the requirement on Byron Music Festival to undertake dune stability geotechnical assessment as specified in resolution 22-509.
2. Supports a licence period that does not exceed 4 days.
3. Supports an additional bar bringing the total number of bars serving alcohol to 3.
4. Notes that certain documents are still required under the terms of the Crown Licence to be submitted by the applicant for approval by Council, to support the event, including a Traffic Control/Management Plan.
5. Upon receipt of a Traffic Control Plan/Management Plan from the applicant, convenes an extraordinary Local Traffic Committee meeting to consider it as part of the supporting documents for Byron Music Festival 2023.
6. Delegates to the General Manager pursuant to the Local Government Act 1993, the authority to approve any Minutes issued following the extraordinary Local Traffic Committee referred to in 5.
7. Advises the Byron Music Festival (BMF) event organisers that it does not support future events that limit public access to or within Denning Park and does support them seeking another venue for future BMF events. (Dey/Ndiaye)

AMENDMENT:

Moved that Council:

1. Lifts the requirement on Byron Music Festival to undertake dune stability geotechnical assessment as specified in resolution 22-509.
2. Supports a licence period that does not exceed 4 days.
3. Supports an additional bar bringing the total number of bars serving alcohol to 3.
4. Notes that certain documents are still required under the terms of the Crown Licence to be submitted by the applicant for approval by Council, to support the event, including a Traffic Control/Management Plan.
5. Upon receipt of a Traffic Control Plan/Management Plan from the applicant, convenes an extraordinary Local Traffic Committee meeting to consider it as part of the supporting documents for Byron Music Festival 2023.
6. Delegates to the General Manager pursuant to the Local Government Act 1993, the authority to approve any Minutes issued following the extraordinary Local Traffic Committee referred to in 5. (Pugh/Hunter)

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*The amendment was put to the vote and declared lost.
Crs Dey, Westheimer, Ndiaye and Lyon voted against the amendment.*

*The motion (Dey/Ndiaye) was put to the vote and declared carried.
Cr Hunter voted against the motion.*

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 18 April 2023

File No: I2023/605

23-172 Resolved that Council notes the minutes of the Local Traffic Committee Meeting held on 18 April 2023. (Dey/Lyon)

23-173 Resolved that Council adopts the following Committee Recommendation:

Report No. 6.1 A new Pedestrian Refuge at 23 Bayshore Drive, Byron Bay

File No: I2023/406

Committee Recommendation 6.1.1

That LTC support the traffic control devices, regulatory signage and line markings associated with the New Pedestrian Refuge on Bayshore Drive, as shown in attachment 1 (E2023/28327) (Dey/Lyon)

23-174 Resolved that Council adopts the following Committee Recommendations:

Report No. 6.2 2023 Splendour in the Grass Music Festival

File No: I2023/495

Committee Recommendation 6.2.1

1. That LTC note the Traffic Guidance Schemes for the 2023 Splendour in the Grass to be held between 21st-23rd July, 2023. This includes:
 - a) The installation and enforcement of No Stopping signs every 75m on:-
 - i) Tweed Valley Way through to the shire boundary in the north;
 - ii) Brunswick Valley Way from Shara Blvd intersection in the south through to Tweed Valley Way intersection;
 - iii) Yelgun Road, from Tweed Valley Way and extending for 300m;
 - iv) Billinudgel Rd from Tweed Valley Way and extending for 280m.
 - b) An alternate temporary pick up and drop off Bus Zone (with associated signage and works) on the northern side of Fawcett St, between Mona Lane and the War Memorial, Brunswick Heads.

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2. That the event organisers are to undertake the following:
 - a) Separate approvals by NSW Police and TfNSW being obtained, noting that the event is on a state road or may impact the state road network;
 - b) The Traffic Management Plan and Traffic Guidance Schemes be implemented by those with appropriate accreditation and the holding of current and appropriate levels of insurance and liability cover;
 - c) That the impact of the event be advertised via a notice in the local weekly paper 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.
 - d) The event be notified on Council's webpage with event details supplied to Council by the event organiser.

3. That the event organiser:
 - 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) undertake consultation with emergency services and address any identified issues/concerns.
 - c) arranging for private property access and egress affected by the event;
 - d) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
 - e) holds \$20m public liability insurance cover which is valid for the event.
 - f) not place any signage on the road related area of the Pacific Highway.
 - g) undertake an event debrief within one month following the festival which includes but is not limited to Council, TfNSW and Police representatives.

(Dey/Lyon)

23-175 Resolved that Council adopts the following Committee Recommendation:

Report No. 6.3 Market Parking - Somerset Street, Byron Bay

File No: I2023/522

Committee Recommendation 6.3.1

That the Local Traffic Committee support the implementation of the Byron Bay Community Markets two-hour parking area implementation for market days only in Somerset Street, Byron Bay.

(Dey/Lyon)

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23-176 Resolved that Council adopts the following Committee Recommendation:

Report No. 6.4 No Parking Area - Scanlons Road (Devines Hill, Lookout)

File No: I2023/523

Committee Recommendation 6.4.1

That the local Traffic Committee support the implementation of a No Parking (1am to 6am) Area for the access road for Devines Hill (Scanlons Road) to help prevent/enforce nuisance camping. (Dey/Lyon)

23-177 Resolved that Council adopts the following Committee Recommendation:

Report No. 6.5 Extension of No Parking Area - Bayshore Drive, Byron Bay

File No: I2023/527

Committee Recommendation 6.5.1

That the Local Traffic Committee endorse the proposed extension of the existing no stopping area in Bayshore Drive from Wallum Place to the end of Bayshore Drive. (Dey/Lyon)

The motions commencing at Resolution No. 23-172 and concluding with Resolution No. 23-177 were put to the vote and carried unanimously.

QUESTIONS WITH NOTICE

Question With Notice No. 15.1 Council's herbicide usage

File No: I2023/617

Cr Duncan Dey asks the following question:

1. Does Council keep records of our herbicide usage, and if so what categories or types of herbicides are recorded?
2. Are our records calendar or financial year based, so that comparisons can be made over time?
3. If not volumes of each herbicide at various concentrations, do we keep records of say annual expenditure on herbicides, or are there other ways of tracking our usage?
4. If we don't keep usage or purchase records, are there other ways Council's usage can be assessed?

Response Director Infrastructure Services:

Council staff seek to maintain registers of chemical application for Parks, Drains and Open Spaces and Bush Regeneration projects. Improved recording was implemented from mid-2022.

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Data collated includes;

- Date and Time of application
- Quantities of Glyphosate
- Quantities of Metsulfuron
- Quantities of Surfactant
- Method of application
- Target Weeds

Council Stores record quantities of Glyphosate and Metsulfuron purchased, however this cannot be related to actual usage.

Comparison of recorded usage on an annual basis can be problematic as individual projects have varying requirements depending on the management processes in place or emergent issues.

Council's Bush Regeneration projects provide the most valuable data in relation to the reduction in chemical usage over time in relation to management practices.

There being no further business the meeting concluded at 1:09pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 8 June 2023.

.....
Mayor Michael Lyon