

Minutes Ordinary (Planning) Meeting

Thursday, 12 October 2023



DISCLAIMER

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



BYRON
SHIRE
COUNCIL

BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
12 October 2023

INDEX OF ITEMS DISCUSSED

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ORDINARY (PLANNING) MEETING MINUTES

12 October 2023

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 12 OCTOBER 2023 COMMENCING AT 11:05AM AND CONCLUDING AT 5:34PM.

I2023/1541

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

Staff: Shannon Burt (Director Sustainable Environment and Economy)
Esmeralda Davis (Director Corporate and Community Services)
Chris Larkin (Manager Sustainable Development)
Danielle Hanigan (Manager Resource Recovery)
Heather Sills (Manager Corporate and Community Services)
Ralph James (Legal Counsel)
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.

PROCEDURAL MOTION

23-445 Resolved that Council authorises representatives of Prime 7, NBN and ABC to undertake filming during the Public Access session at the Planning Meeting held on 12 October 2023. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

PUBLIC ACCESS

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

Public Access

Report No and Title		For/ Against	Name	Representing	Submission Received in form of
9.2	Notice of Motion No. 9.2 Wallum DA10.2021.575.1 referral and assessment File No:	For	Dave Rawlins	Save Wallum	In person
			James Barrie		
			Karyn Roberts	Widjabul	In person

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Report No and Title		For/ Against	Name	Representing	Submission Received in form of
	I2023/1477			Wia-bal Tribal Council	
		Against	Damian McCann	Australian Wetlands Consulting	In person

PROCEDURAL MOTION

23-446 Resolved that Public Access be extended until 1:30pm. (Lyon)
The motion was put to the vote and carried unanimously.

Public Access Cont.

Report No and Title		For/ Against	Name	Representing	Submission Received in form of
13.2	PLANNING – DA 10.2023.63.1 – Dwelling house to create dual occupancy (detached), recreation building, tennis court and demolition of unauthorised dual occupancy (detached) – 20 Fig Tree Lane, Myocum	For	Chris Pratt	Planning Resolutions	Via Zoom
		Against	Brian Wexham	Self	In person
13.3	13.3 PLANNING - Brunswick Heads Heritage Conservation Area and Heritage Material and Colours Guide 26.2022.9	For	Leone Bolt	Brunswick Heads Progress Association	In person
13.4	PLANNING - 10.2023.103.1 - Use of existing building as a workshop, storage and carport - 484 Upper Wilson's Creek Road	Against	Chris Pratt	Planning Resolutions	Via Zoom

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Report No and Title	For/ Against	Name	Representing	Submission Received in form of
13.6	Against	Michael Hanisch	GLN Planning	Via Zoom
14.1	Against	Kathy Norley	SGB Community Association	In person

Question No. 1 - Operation of CCTV cameras at the Tip Shop

A question from John Anderson was tabled:

An incident occurred in the carpark at the Byron Tip Shop recently. I approached staff and asked for access to footage via the CCTV system. I would like to request access to footage from any of the cameras present at the Tip Shop that might assist me with my inquiry.

The Mayor took the question on notice.

Question No. 2 - Save Wallum 15 Torakina Rd Brunswick Heads

A question from Luciana Bowen, representing Save Wallum, was tabled:

Will the council ask the Federal Environmental Minister Tanya Plibersek to call in the development at 15 Torakina road Brunswick Heads as a controlled action to be assessed under the EPBC ACT for matters of environmental significance? If not why not?

The Mayor took the question on notice.

The meeting adjourned at 1:37pm for a lunch break and reconvened at 2:31pm.

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APOLOGIES

Cr Hunter is an apology in accordance with his prior accepted leave of absence. (Resolution No. **23-405**). Cr Hunter joined the meeting via audio-visual link at 4.06pm (Res 23-458)

PROCEDURAL MOTION

23-447 Resolved that the apologies from Cr Coorey and Cr Balson be accepted and a leave of absences granted. (Lyon)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

No applications for attendance via audio-visual link.

Note: Cr Hunter attended the meeting at a later time. See Resolution **23-458** for attendance via audio-visual link.

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Balson declared a significant non-pecuniary interest in Report 9.2. The nature of the interest being friendships with community members opposed. Cr Balson elected to leave the Chamber for public access on this item.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with 440AAB of the Local Government Act and clause 4.22 of the Code of Conduct, Annual Returns of Pecuniary Interests of Councillors, Designated Staff and Audit, Risk and Improvement Committee Members were tabled for the period 2022 to 2023.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

23-448 Resolved that the minutes of the Ordinary (Planning) Meeting held 14 September 2023 be confirmed. (Westheimer/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

Corporate and Community Services

Report No. 13.1 Determination of the Number of Councillors for the 2024-2028 Term of Office

Sustainable Environment and Economy

Report No. 13.2 PLANNING - DA 10.2023.63.1 - Dwelling house to create dual occupancy (detached), recreation building, tennis court and demolition of unauthorised dual occupancy (detached) – 20 Fig Tree Lane Myocum.

Report No. 13.3 PLANNING - Brunswick Heads Heritage Conservation Area and Heritage Material and Colours Guide 26.2022.9.1

Report No. 13.6 PLANNING - 10.2014.361.4 s4.55 modification to relocated cafe from ground floor of the existing Waves Motel to a proposed rooftop terrace at 35 Lawson Street, Byron Bay

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Westheimer. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **23-449** and concluding with Resolution No. **23-452**.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.4 PLANNING - 10.2023.103.1 - Use of existing building as a workshop, storage and carport - 484 Upper Wilsons Creek Road Upper Wilsons Creek

File No: I2023/1257

23-449 Resolved:

1. That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.103.1 for Use of Existing Building as a Workshop, Storage and Carport, be refused for the following reasons:
 - a) Pursuant to section 4.15 (1)(a) of Environmental Planning and Assessment Act 1979, The proposed use is a prohibited land use and is inconsistent with the objectives of the C2 Environmental Conservation Zone of the Byron Local Environmental Plan 2014.
 - b) Pursuant to section 4.15 (1)(a)(i) of Environmental Planning and Assessment Act 1979, The development does not comply with Clause 4.3 Height of Buildings of the Byron Local Environmental Plan 2014.
 - c) Pursuant to section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, the development does not comply with D2.7.2 Farm Buildings, sheds and other structures of the Byron Development Control Plan 2014.
 - f) Pursuant to section 4.15 (1)(c) of Environmental Planning and Assessment Act 1979, the development is not suitable for the site as the application has not provided a geotechnical investigation report that demonstrates that the site is safe from further landslip or subsidence at, above or below the subject structure.
2. That the landowner be advised of an alternative path forward to seek an LEP amendment to legitimise the building as a dwelling house under Pathway 2 of the Unauthorised Dwelling Guidelines 2022. The planning proposal would seek to amend Byron Local Environmental Plan 2014 to include the property in Schedule 1 to enable development consent to be sought for a dual occupancy on the subject land.
3. That the landowner be given 6 months from the date of Council's decision to either lodge a planning proposal as per 2 or a new development application to modify the building such that it is capable of being granted development consent for a lawful use in the C2 Environmental Conservation. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

Crs 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 - Planning Proposal 26.2021.5.1 – 114 Stewarts Road Clunes**
File No: I2023/1326

23-450 Resolved that Council:

1. Proceeds with the planning proposal as attached to this report (Attachment 1 – E2023/99264) to amend LEP 2014 to permit a dwelling with consent on the subject land;
2. Notes that the encroachment of the existing dwelling on Council's road reserve will be addressed as a separate process to the planning proposal;
3. Forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;
4. 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;
5. Considers submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Report No. 13.7 **PLANNING - Report of the Planning Review Committee held 7 September 2023**
File No: I2023/1378

23-451 Resolved that Council endorses the outcomes of the Planning Review Committee meeting held 7 September 2023. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously

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

Nil voted against the motion..

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Report No. 13.8 **Amendment to Fees and Charges 2023/24 - Reinstatement of use of Council land/road reserve to enable construction work events or temporary use**
File No: I2023/1484

23-452 **Resolved** that Council adopt the fees for use of Council land/road reserve to enable construction work events or temporary use as exhibited:

- **Application fee - \$215**
(Eg. Hoarding, scaffolding, fencing, works zones, other temporary structures or traffic control device/s)
- **Inspection fee - \$215**
per hour (minimum 2 inspections with application – further inspections to be paid as required, eg. change to work zone)
- **Urgency fee - \$215**
Where use is required within 10 working days of the application being lodged.
- **Low Impact Occupation of Council Land - \$1.00 per m2 / day**
Where pedestrian, cyclist and vehicular traffic are not disrupted, includes public reserves.
- **Footpath / verge closure - \$3.00 per m2 / day**
 - *Where the footpath / verge area is closed to pedestrians and/or cyclists.*
 - *Where an elevated gantry is installed, fees will be charged for the set up and takedown down then charged at a low impact Occupation rate for the period of occupation.*
- **Road Closure (full and partial) \$13.00 per m2 / day**
Where the traffic lanes are closed to traffic. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

23-453 **Resolved** that Council change the order of business to deal with Reports 9.2, 13.2, 13.3, 13.6, 9.1, 9.3 then 13.1 on the Agenda. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

NOTICES OF MOTION

Notice of Motion No. 9.2 Wallum DA10.2021.575.1 Referral and Assessment

File No: I2023/1477

23-454 Resolved that Council:

1. Notes local and broader community concern that this area will be rendered uninhabitable for several Threatened native Species and Ecological Communities by this development, and that many other native Species whose futures point towards becoming “Threatened” also occur on the property, and notes that these concerns include:
 - a) whether the project will have, or is likely to have, a significant impact on any listed threatened species including on: Wallum Sedge Frog; Glossy Black-cockatoo; Koala; Mitchells Rainforest Snail; or Long-nosed Potoroo [refer EPBC Act Part 3 Subdivision C Sections 18 & 18A];
 - b) whether the project will have, or is likely to have, a significant impact on Koala habitat (see Figure 6 of the Byron Coast Comprehensive Koala Plan of Management);
 - c) whether the project will have, or is likely to have, a significant impact on habitat of Glossy Black-cockatoo, which have been recorded feeding and roosting on the site consistently (the so-called “Bruns trio”);
 - d) whether the actions proposed includes any possibility of a “controlled action” [under EPBC Act Part 7 Division 1 Section 68(1)];
 - e) the likelihood of survival of the local population of Wallum Froglet, despite a lack of research or results proving that habitat replacement as currently proposed (“ponds” to be dug in surrounding landforms) is successful;
 - f) the true age of trees such as mature Scribbly Gums that have been allocated an age of 50 years, in conflict with evidence-based studies such as the “growth model method” [they are likely 200 to 400 years old];
 - g) whether any trees that will be impacted by the project are of cultural heritage, through for example scarring on such trees, and would be deemed “intangible cultural assets”;
 - h) any other matters brought to light through for example (i) past submissions to various rounds of public exhibition, and (ii) recent claims of local environmental groups;
 - i) the drainage problem noted under Condition 11b (no slope in the proposed North South Drain) can be overcome at all, and whether the required minimum 0.25% gradient can be achieved (both under current sea levels and under those indicated for the future, including for the year 2100 and beyond and including the possibility that flood levels will be found to be higher after re-

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- calibration of computer models following the 2022 flood event); and
- j) there will be no change in the regime of stormwater flows leaving the developed site (with its impervious surfaces) compared to those that leave the site as is (with its flat gradients and sandy soils) for all frequencies of storms from 1-in-3-month through to rare floods; and
 - k) that the site is flood prone as demonstrated in the February 2022 flood.
2. Notes at least one request has been made (on 14 September 2023) notifying the NSW state Planning Minister Paul Scully and asking the federal Minister for the Environment, Tanya Plibersek, to call in the next development Stages of Bayside Brunswick (DA10.2021.575.1) under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999 and to determine the project's impacts on Matters of National Environmental Significance (MNES) including nationally listed Threatened Species such as:
- a) the critically endangered Mitchells Rainforest Snail; and
 - b) the Wallum Sedge Frog.
- and priority species under the federal Threatened Species Action Plan including:
- a) Koala; and
 - b) Australasian Bittern.
3. Writes to federal Minister for the Environment Tanya Plibersek requesting that she assess this project's impacts on MNES including those in Part 2 above and:
- a) the following EPBC listed fauna: Wallum Sedge Frog; Glossy Black-cockatoo; Koala; Mitchells Rainforest Snail; Long-nosed Potoroo; Eastern Grass Owl; and Collared Kingfisher;
 - b) habitat for the following critically endangered species: Regent Honeyeater and Swift Parrot;
 - c) the EPBC listed Endangered Ecological Community - Swamp Sclerophyll Forest on Coastal Floodplains; and
 - d) the EPBC listed Pink Nodding Orchid (*Geodorum densiflorum*).
4. Writes to the NSW Minister for Planning Paul Scully requesting that he assess whether the project includes actions that are or may be "controlled actions" [under EPBC Act Part 7 Division 1 Section 69(1) and 70(1)].
5. Receives assessments of the Amended Management Plans submitted to Council for the development at Bayside Brunswick (DA10.2021.575.1) to ensure that those Plans comply with Consent Conditions set by the NRPP and with federal, state and local regulations, including separate assessments of Plans for:
- a) Vegetation Management (Condition 6);
 - b) Wallum Froglet Management (Condition 7);
 - c) Construction Environmental Management (Condition 8);
 - d) Updated Surface and Groundwater Management (Condition 9);

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- e) Stormwater Maintenance Management (Condition 12);
 - f) Cultural Heritage Site Inspection (Condition 18).
6. Consults with traditional custodians connected to the site about its cultural significance as also revealed by mapping held under a Memorandum of Understanding with Tweed Byron Local Aboriginal Land Council.
7. Determines at a Council meeting the suitability of those Amended Plans and the efficacy of the proposed stormwater system, as pointed out in the note under consent condition 11b, after considering:
- a) the assessments resulting from Part 5 above; and
 - b) return correspondence from the Federal Government resulting from Parts 2 and 3 above; and
 - c) return correspondence from the State Government resulting from Parts 2 and 4 above.
8. Seeks legal advice on avenues by which an appeal can be made against the approval granted in May 2023 despite being out of time.
9. Seeks clarification from the Department of Planning and Environment around the process and the information on which the issue of the section 34a Certificate was based. (Dey/Ndiaye)

PROCEDURAL MOTIONS

23-455 Resolved that Council move into Committee to allow for free debate. (Pugh/Lyon)

The motion was put to the vote and carried unanimously.

23-456 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon)

The motion was put to the vote and carried unanimously.

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 PLANNING - DA 10.2023.63.1 - Dwelling house to create dual occupancy (detached), recreation building, tennis court and demolition of unauthorised dual occupancy (detached) – 20 Fig Tree Lane Myocum.

File No: I2023/1354

23-457 Resolved:

1. That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.63.1 for dwelling house to create dual occupancy (detached), tennis court and demolition of unauthorised dual occupancy (detached), be granted consent subject to the conditions of approval in Attachment 1 (#E2023/94290) and the following amended conditions to delete the tennis pavilion/ recreation facility and insertion of additional conditions to reflect landscaping requirements and construction timing of tennis court as follows:

a) Amend condition 1 to remove the tennis pavilion plans and strike out the tennis pavilion with red ink on any remaining plans to read:

1. *Approved plans and supporting documentation*

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Plan Title	Drawn by	Dated
1.1	Site	Davis Architects	20/07/2023
2.4	Demolition Plan	Davis Architects	20/07/2023
2.5	Residence Lower Ground	Davis Architects	20/07/2023
2.6	Residence Ground	Davis Architects	20/07/2023
2.7	Residence Roof	Davis Architects	20/07/2023
2.8	Residence Elevations	Davis Architects	20/07/2023
2.9	Residence Elevations	Davis Architects	20/07/2023
2.10	Residence Sections	Davis Architects	20/07/2023
2.11	Residence Sections	Davis Architects	20/07/2023
3.2	Tennis Pavillion Site	Davis Architects	20/07/2023
3.15	Tennis Court Detail	Davis Architects	20/07/2023

Some plans are amended and or annotated in red ink, including but not necessarily limited to, Plans 3.2 Tennis Pavillion Site and 3.15 Tennis Court

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Detail to delete the tennis pavilion.

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: *an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.*

- b) Amend condition 15 to: delete reference to recreation building in (b); and include and new section (c) to delete tennis pavilion from Construction Certificate plans

Amendment to the plans required

The plans submitted for approval of the Construction Certificate must be amended to demonstrate that:

- a) *A laundry is to be included in the proposed dwelling house.*
- b) *Earthworks associated with the tennis court are to be terraced with a maximum height of 1m and a minimum distance of 1m between each terrace.*
- c) *Tennis pavilion is deleted*

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

- c) Amend condition 49 to remove reference to the recreation building

Private tennis court

The tennis court is only to be used for private use and is not to be used in conjunction with any commercial activity or let to the general public.

- d) Amend Condition 22 to remove reference to a recreation building

On-site stormwater detention required

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater drainage for the proposed tennis court must be conveyed via an on-site stormwater detention system by gravity to a dispersion trench or trenches complying with the requirements of Council's Comprehensive Guidelines for Stormwater Management.

Plans must be designed and certified by a suitably qualified engineer and must consider the existing stormwater discharge point and upstream flows.

Such plans and specifications must be approved as part of the Construction Certificate.

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- e) Insertion of a new Condition 7a)

7a) Tennis court

The tennis court is to be constructed and completed at the same time as the dual occupancy dwelling. No staging of the development is permitted.

- f) Insertion of new Condition 9a)

9a) Landscape buffer

A landscape plan to be submitted with the application for a Construction Certificate. The landscaping is to be adjacent to the south western boundary (side) with planting 10m wide and 65m long along the south western boundary. The strip of landscaping is to begin 30m from the south eastern boundary (front) and is to finish 40m before the north western boundary (rear). Plantings are to consist of local rainforest species in order to achieve screening/privacy along the south western boundary.

- g) Insertion of new Condition 47a)

47a) Landscaping buffer

The landscaping buffer is to be planted and established in accordance with the approved landscape plan.

2. Commence proceedings to amend Byron DCP 2014 to include new provisions for such ancillary residential facilities such as gyms, yoga facilities, pool rooms, tennis pavilions, private recreation facilities and the like to be similar to studios to limit the floor area of such buildings to 60 m². (Westheimer/Ndiaye)

Cr Swivel left the Chambers at 4:04pm and did not return.

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

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

Nil voted against the motion.

Cr Swivel was not present for the vote.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

PROCEDURAL MOTION

- 23-458 Resolved** that Cr Hunter be permitted to attend the meetings held on 12 October 2023 by audio-visual link. (Lyon)

The motion was put to the vote and carried unanimously.

Cr Swivel was not present for the vote.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 **PLANNING - Brunswick Heads Heritage Conservation Area and Heritage Material and Colours Guide 26.2022.9.1**
File No: I2023/1231

23-459 **Resolved** that Council:

1. Notes community feedback on the heritage colours and supports the further development of a heritage colour palette for heritage conservation areas and items;
2. Proceeds with a Planning Proposal that seeks to amend Byron LEP 2014 to the Department of Planning & Environment for gateway determination by submitting an amended Planning Proposal seeking to amend Byron LEP 2014 to introduce 17 new heritage items.
3. Forwards the Planning Proposal to the NSW Department of Planning and Environment for a gateway determination;
4. Pending a positive gateway determination, undertakes public exhibition of the Planning Proposal in accordance with the determination requirements;
5. Considers a submissions report post exhibition that includes any recommended changes to the Planning Proposal for final adoption. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

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

Cr Dey voted against the motion

Cr Swivel was not present for the vote.

Cr Pugh left the Chambers at 4:38pm and did not return.

Report No. 13.6 **PLANNING - 10.2014.361.4 s4.55 modification to relocated cafe from ground floor of the existing Waves Motel to a proposed rooftop terrace at 35 Lawson Street, Byron Bay**
File No: I2023/1344

23-460 **Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2014.361.4, for S4.55 to Relocate Part of a Food and Drink Component previously Approved within an Existing Motel Development from the Ground Floor to a Roof Terrace Area, be deferred to enable public exhibition and assessment of the recently lodged amended Plans and reported to Council to the next available meeting. (Westheimer/Lyon)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Status reporting on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)

File No: I2023/1472

23-461 Resolved that Council:

1. Notes that:
 - a) Council was not the determining authority for DA10.2021.575.1 (lodged in September 2021, proposing residential subdivision into 127 Lots on sensitive low-lying land at Bayside Brunswick) but did evaluate the proposal and did in April 2023 provide the determining authority Northern Regional Planning Panel with a recommendation to approve;
 - b) The Council elected in December 2021 received staff emails about the DA in December 2022 and April 2023 but missed the significance of the ecological risks of the proposal until they were highlighted by concerned community members in August 2023, well after approval of the DA on 16 May 2023.
 - c) A scenario in 2022 over another DA (10.2021.170.1) determined by the NRPP on the “Linnaeus Estate” at Broken Head included an alert also by community members and led to Council resolving in June 2022 (Res 22-244):
 - i. That Councillors receive, on the day after it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the “Linnaeus Estate” at Broken Head.
 - ii. That the elected Council note that Council’s submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.
2. Receives status reports monthly to each Ordinary (Planning) Meeting on all DA’s that are being processed by Council for determination by other bodies such as the Northern Regional Planning Panel or the Independent Planning Commission.

(Dey/Ndiaye)

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

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The meeting adjourned at 5.04pm for a break and reconvened at 5.11pm.

Notice of Motion No. 9.3 Waiver of contributions on secondary dwellings

File No: I2023/1480

- 23-462 Resolved** that Council receives a report by December outlining the mechanisms, if any, whereby we could constrain the future use of both dwellings for the purposes of providing affordable and/or permanent accommodation, in exchange for a full or partial waiver of contributions on the secondary dwelling. (Lyon/Ndiaye)

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

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no Petitions tabled.

DELEGATES' REPORTS

Cr Ndiaye provided a Delegates Report regarding her attendance at the 2023 Minister's Awards for Women in Local Government at which she won the NSW Government's Elected Representative Award – Regional/Rural award.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Determination of the Number of Councillors for the 2024-2028
Term of Office**
File No: I2023/1455

Moved that in accordance with section 224(2) of the *Local Government Act 1993* Council determines the number of Councillors for the 2024-2028 term of office to reduce to 7 (including the Mayor). (Dey)

The motion fell away for want of a seconder.

FORESHADOWED MOTION

23-463 **Resolved** that in accordance with section 224(2) of the *Local Government Act 1993* Council determines the number of Councillors for the 2024-2028 term of office to remain as 9 (including the Mayor). (Ndiaye/Lyon)

The motion was put to the vote and carried.

Cr Dey voted against the motion.

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

QUESTIONS WITH NOTICE

**Question With Notice No. 14.3 Wallum Development Application at Bayside
Brunswick Heads**

File No: I2023/1476

Cr Dey asks the following questions:

The NRPP determined DA 10. 2021.575.1 in May 2023 after public exhibition garnered 13 submissions against the proposal as submitted in 2021. Since then several ecologists and others have raised issues about the development. Some of these go to processes which are now complete but there is still value in responding to such questions. I therefore ask:

- 1. Page 11 of the DA assessment report states that a BDAR (Biodiversity Development Assessment Report) is required. I understand that that BDAR was completed by AWC in 2022. Is the BDAR publicly available?*
- 2. Are the offsets described in the BDAR on land which will be newly conserved or on land already due for conservation (for instance, conservation as proposed in the Coastal SEPP or in DCP2010)? Unless land is offset off the property, the overall site suffers a net loss of biodiversity.*
- 3. Page 33 of the DA assessment report states "prior to the issue of a Construction Certificate for each stage...". In May was "Stage 1 for 26 Lots in an approved concept plan" approved or was the whole "Staged Subdivision to create One Hundred and Twenty Seven lots"?*
- 4. Did Council have a suitably qualified ecologist review the ecological aspects of the DA, especially Plans like the Vegetation Management Plan (VMP)?*
- 5. Will consideration of the Mitchells Rainforest Snail be included in the Amended VMP required under Consent Condition 6 and will this aspect be reviewed by a suitably qualified ecologist?*
- 6. Does the requirement articulated in the 2010 DCP for the site still hold sway in requiring that the development "Retain as many scribbly gums as practical as landscape features"? Why is this requirement not factored into the development footprint?*
- 7. Has the downstream land owner given permission for the disposal of stormwater from the approved development? I understand National Parks once refused permission to allow the release of stormwater into the nature reserve.*

Response Director Sustainable Environment and Economy:

- 1. Page 11 of the DA assessment report states that a BDAR (Biodiversity*

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Development Assessment Report) is required. I understand that that BDAR was completed by AWC in 2022. Is the BDAR publicly available?

*BDAR was lodged as a contingency in case Clause 34a application was not successful. Transitional arrangements are provided by Clause 34A, Biodiversity Conservation Savings & Transition Regulation (S&T Regulation) to recognise past offsetting agreements secured as part of a concept plan approval or a relevant planning arrangement. These offsets were established in the Concept Plan. Accordingly, **the BDAR was not ultimately required and hence formed no part of the assessment process.***

*Open access information for **councils** includes information about development applications made on or after 1 July 2010 including associated documents and records of decisions.*

Link here for [Access to information - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/access-to-information)

2. Are the offsets described in the BDAR on land which will be newly conserved or on land already due for conservation (for instance, conservation as proposed in the Coastal SEPP or in DCP2010)? Unless land is offset off the property, the overall site suffers a net loss of biodiversity.

Offsets for the project were established in the Concept Plan Approval and are entirely contained within the subject site.

3. Page 33 of the DA assessment report states "prior to the issue of a Construction Certificate for each stage...". In May was "Stage 1 for 26 Lots in an approved concept plan" approved or was the whole "Staged Subdivision to create One Hundred and Twenty-Seven lots"?

The Development Consent covers all stages of the subdivision, with the SWC to be also completed in stages.

4. Did Council have a suitably qualified ecologist review the ecological aspects of the DA, especially Plans like the Vegetation Management Plan (VMP)?

Yes, a suitably qualified ecologist reviewed the ecological aspects of the DA.

5. Will consideration of the Mitchells Rainforest Snail be included in the Amended VMP required under Consent Condition 6 and will this aspect be reviewed by a suitably qualified ecologist?

Consent conditions did not require consideration of the Mitchells Rainforest Snail. The BDAR report did not identify this as a candidate species and noted that 'potential habitat... is highly degraded and lacks typical rainforest elements associated with the species'.

Requirements under Condition 6 will be reviewed by a suitably qualified ecologist.

6. Does the requirement articulated in the 2010 DCP for the site still hold sway in requiring that the development "Retain as many scribbly gums as practical as landscape features"? Why is this requirement not factored into the development

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footprint?

Clause 3B (2)(f) of Schedule 2 to the Part 3A transitional provisions applies to Concept Plan approvals and provides that, "any environmental planning instrument or any development control plans do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan". Reference is also made to the fact the DCP provides considerably larger residential footprint than that approved by the JRPP. In this regard, the DCP provides for residential housing and public roads to be developed into the western and eastern areas of the site which are now set for conservation and an Environmental Protection land zoning at the request of the Proponent. To this end, it is worth noting that significant areas of residential zoned land (approx. 9.5ha) are not being developed in the approved layout.

- 7. Has the downstream land owner given permission for the disposal of stormwater from the approved development? I understand National Parks once refused permission to allow the release of stormwater into the nature reserve.

The subdivision is designed so as to preserve the pre-development flow and water quality. Hence, whilst a drainage easement exists to drain water to the southern property, the approved subdivision does not direct any increase in the current level of stormwater entering the southern property.

There being no further business the meeting concluded at 5:34pm

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



.....
Mayor Michael Lyon