

Minutes Ordinary (Planning) Meeting Thursday, 9 November 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
9 November 2023

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ORDINARY (PLANNING) MEETING MINUTES

9 November 2023

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 9 NOVEMBER 2023 COMMENCING AT 11:09AM AND CONCLUDING AT 2:31PM.

I2023/1715

PRESENT: Cr M Lyon (Mayor), Cr S Balson, Cr C Coorey, Cr D Dey, Cr A Hunter, 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)
Chris Larkin (Manager Sustainable Development)
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:

Public Access

Report No and Title	Name	For/ Against	Representing Organisation	Submission Received in form of	
13.4	PLANNING – Planning Proposal 26.2021.7.1 – 55 Settlement Road Main Arm	Kate Singleton	For	Planners North	In person
13.6	PLANNING D.A 10.2022.538.1 – Use and alterations and additions to 156 Stuart St Mullumbimby	Jeanette Martin	For	Mullumbimby Sustainability Education and Enterprise Development	In person
13.10	PLANNING – DA 10.2023.195.1 – 2 Hamiltons Lane Byron Bay	John Hertzberg	For	Self	In person

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Report No and Title	Name	For/ Against	Representing Organisation	Submission Received in form of	
13.11	PLANNING – DA10.2014.417.6 Section 8.2 Review of Determination 10.2014.417.4 – Amendment to Building including roof terrace and pool, 43 Lawson Street Byron Bay	Melissa Griffin	For	Urbis	Via Zoom

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Bundjalung Village	Sarah-Jane McGrath & Chels Hood Withey	No fixed Address & House You Village	In person

The meeting adjourned at 11.54am for a recess and reconvened at 12:26pm.

APOLOGIES

PROCEDURAL MOTION

23-511 Resolved that the apology from Cr Ndiaye be accepted and a leave of absence granted.
(Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

There were no applications to attend the meeting 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 Lyon declared a non-pecuniary interest in Report 13.6. The nature of the interest being that he is the Treasurer of the proponent organisation. Cr Lyon elected to remain in the Chamber and will participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 23-512 Resolved** that the minutes of the Ordinary (Planning) Meeting held 12 October 2023 be confirmed. (Westheimer/Lyon)
The motion was put to the vote and carried unanimously.
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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 PLANNING - 26.2023.7.1 Planning Proposal to transition the West Byron Urban Release Area into LEP 2014
- Report No. 13.6 PLANNING - DA 10.2022.538.1 - Use of, and Alterations and Additions to, existing Food Co-Op structure and Use of associated shade structures, New Cool Room, Use of, and New, shade structures, Men's Shed Additions, Use of existing sheds and Use of existing nursery structures associated with Reforest Now– 156 Stuart Street Mullumbimby
- Report No. 13.7 PLANNING - 10.2020.109.4 - Section 4.55 to Stage 9 for Removal of Existing Exotic and Native Trees to Allow for Construction of Approved Roads and Earthworks, Relocation of Inter-allotment Drainage and Sewer Services and Easement Modifications and Deletion of Local Open Space and Recreation S7.11 Contributions - 86 Tuckeroo Avenue Mullumbimby
- Report No. 13.10 PLANNING - DA 10.2023.195.1 - 2 Hamiltons Lane Byron Bay
- Report No. 13.11 PLANNING - DA10.2014.417.6 Section 8.2 Review of Determination 10.2014.417.4 - Amendment to Building including roof terrace and pool, 43 Lawson Street 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. **23-513** and concluding with Resolution No. **23-519**.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Licence to Byron Bay FC Incorporated
File No: I2023/1499

23-513 Resolved that Council:

1. Considers submissions received from the Public Notice on the proposed licence to Byron Bay FC Incorporated as outlined in this report.
2. Delegates to the General Manager the right to grant a licence to Byron Bay FC Incorporated on the following conditions:
 - a) term 5-years no holding over or renewal options,
 - b) over part Folio 144/758207 for the use of the amenity block, the ground floor canteen, change rooms and access to the building, and for the construction of an upper-floor multi-user clubhouse, a new foyer area and all access to the upper-floor,
 - c) annual rent to be set at \$1 if demanded in recognition of the Club's financial contribution to improvements to the amenity building,
 - d) the Licensee must:
 - i) once constructed, hire out the upper-level multi-user clubhouse for community uses when not required by the Club, excluding all community uses associated with a function centre as defined by the Byron LEP 2014,
 - ii) expend all income derived from the hiring of the (to be constructed) upper-level multi-use clubhouse upon the operational costs and maintenance to the amenity block,
 - iii) undertake all building maintenance to the licenced area,
 - iv) provide public liability and professional indemnity insurance covers and confirmation that all Club officials who work with children hold current working with children checks, and
 - v) pay for all metered utilities connected to the building excluding water usage,
 - e) Council to be responsible for annual fire safety, pest management, the exterior of the building, structural maintenance, the ground floor public amenities and Council storage areas. (Lyon/Balson)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 **Bangalow Streetscape Materials Design Guide for Public Exhibition**

File No: I2023/206

23-514 **Resolved** that Council:

1. Places on public exhibition, the draft Bangalow Streetscape Materials Design Guide (Attachment 1, E2023/95853) and proposed accompanying amendment to the Byron Development Control Plan 2014, Part E, Chapter E2 Bangalow (Attachment 2, E2023/109098) for a minimum of 28 days.
 2. Receives a further report on the outcomes from the consultation process.
(Lyon/Balson)
-

Report No. 13.4 **PLANNING - Planning Proposal 26.2021.7.1 – 55 Settlement Road Main Arm**

File No: I2023/1494

23-515 **Resolved** that Council:

1. Proceeds with the planning proposal as attached to this report (Attachment 1 – E2023/105727) to amend LEP 2014 to permit a dual occupancy (detached) with consent on the subject land;
2. Forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;
3. Pending a positive Gateway determination and completion of further studies (if required) and a draft Planning Agreement by the applicant, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
4. Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 13.5 **PLANNING - Report of the Planning Review Committee held 5 October 2023**

File No: I2023/1539

23-516 **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held 5 October 2023. (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Report No. 13.8 **Byron Shire Local Heritage Grants Program 2023-24**

File No: I2023/1569

23-517 **Resolved** that:

1. Council endorses the recommended funding allocations of the Byron Shire Local Places Heritage Grants Program 2023-24 for landowners to complete building repairs, enhancements, and maintenance to prominent local heritage items in main towns such that each application in Attachments 1 to 4 receive \$3,000 each.
2. The grant applicants be notified of Council's decision. (Lyon/Balson)

Report No. 13.9 **PLANNING - DA 10.2023.116.1 - New Dwelling to create dual occupancy (detached), clause 4.6 variation for second driveway, and use of existing building as farm storage shed and studio – 149 Friday Hut Road Coorabell**

File No: I2023/1590

23-518 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.116.1 for new dwelling to create dual occupancy (detached), clause 4.6 variation for second driveway, and use of existing building as farm storage shed and studio, be granted Deferred Commencement subject to the conditions of Deferred Commencement Consent in Attachment 1 (#E2023/105891). (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

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Report No. 13.6 **PLANNING - DA 10.2022.538.1 - Use of, and Alterations and Additions to, existing Food Co-Op structure and Use of associated shade structures, New Cool Room, Use of, and New, shade structures, Men's Shed Additions, Use of existing sheds and Use of existing nursery structures associated with Reforest Now– 156 Stuart Street Mullumbimby**
File No: I2023/1544

PROCEDURAL MOTION

23-522 **Resolved** that this matter rest on the table. (Lyon)
The motion was put to the vote and carried unanimously.

Report No. 13.11 **PLANNING - DA10.2014.417.6 Section 8.2 Review of Determination 10.2014.417.4 - Amendment to Building including roof terrace and pool, 43 Lawson Street Byron Bay**
File No: I2023/1619

23-523 **Resolved** that, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979, that Section 8.2 Application 10.2017.417.6 be refused for the following reasons:

1. Pursuant to section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Section 2.11 of State Environmental Planning Policy - Resilience and Hazards.
2. Pursuant to section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Clause 4.3 Height of building under Byron Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Chapter C3 Byron Development Control Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Chapter D1 of Byron Development Control Plan 2014.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Chapter E5 of Byron Development Control Plan 2014.
6. Pursuant to Section 4.15 (1) (a) (iv) the application for the proposed modification of an approved residential flat building does not comply with section 102 of the Environmental Planning and Assessment Regulation 2021.
7. Pursuant to Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to result in adverse environmental

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impacts on both the natural and built environments, and social impacts in the locality and the occupants of that environment.

8. Pursuant to Section 4.15(1)(d) of the Environmental Planning & Assessment Act 1979 the proposed development is not in the public interest with regards for relevant matters for consideration raised in properly made submissions received by Council.
9. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979 the proposed development is not in the public interest for the reasons outlined above. (Pugh/Dey)

Cr Swivel left the Chambers at 1:09pm.

*The motion (Pugh/Dey) was put to the vote and declared carried.
Crs Coorey, Lyon, Dey, Balson and Pugh voted in favour of the motion.
Crs Hunter and Westheimer voted against the motion.
Cr Swivel was not present for the vote.*

*The meeting adjourned at 1:11pm for a lunch break and reconvened at 2.00pm.
Cr Swivel returned at this time.
Cr Pugh did not return to the meeting following the lunch break.*

NOTICES OF MOTION

Notice of Motion No. 9.1 Mayoral Fund 2023-2024 - Allocation of Funding
File No: I2023/1635

23-524 Resolved that Council confirms the donations from the Mayor's Discretionary Allowance 2023/2024 as per the recommendation in Confidential Attachment 1 (E2023/109567), including applications partially supported. (Lyon/Balson)

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

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no petitions tabled.

DELEGATES' REPORTS

There were no Delegates' Reports presented.

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Report No. 13.7 **PLANNING - 10.2020.109.4 - Section 4.55 to Stage 9 for Removal of Existing Exotic and Native Trees to Allow for Construction of Approved Roads and Earthworks, Relocation of Inter-allotment Drainage and Sewer Services and Easement Modifications and Deletion of Local Open Space and Recreation S7.11 Contributions - 86 Tuckeroo Avenue Mullumbimby**

File No: I2023/1555

23-526 **Resolved** that Council:

1. Pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2020.109.4, for S4.55 to Stage 9 for Removal of Existing Exotic and Native Trees to Allow for Construction of Approved Roads and Earthworks, Relocation of Inter-allotment Drainage and Sewer Services and Easement Modifications and Deletion of Local Open Space and Recreation S7.11 Contributions, defers this matter to a future meeting of Council.
2. Obtains a preliminary land valuation or appraisal of Lot 281 as proposed, and that it be provided to Council in confidence. (Dey/Lyon)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Cr Pugh not present for the vote.

PROCEDURAL MOTION

23-527 **Resolved** that Report No. 13.6 be lifted from the table.

(Lyon)

The motion was put to the vote and carried unanimously.

Cr Pugh not present for the vote.

Report No. 13.6 **PLANNING - DA 10.2022.538.1 - Use of, and Alterations and Additions to, existing Food Co-Op structure and Use of associated shade structures, New Cool Room, Use of, and New, shade structures, Men's Shed Additions, Use of existing sheds and Use of existing nursery structures associated with Reforest Now– 156 Stuart Street Mullumbimby**

File No: I2023/1544

23-528 Resolved that:

1. Council grants landowners' consent for the subject application.
2. Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.538.1 for Use of, and Alterations and Additions to, existing Food Co-Op structure and Use of associated shade structures, New Cool Room, Use of, and New, shade structures, Men's Shed Additions, Use of existing sheds and Use of existing nursery structures associated with Reforest Now, be granted consent subject to the revised recommended conditions (#E2023/116992), and conditions 6 and 31 being amended to read:

6. **Building Information Certificate**

A Building Information Certificate must be obtained from Council for structure B9 and B23 as indicated on the stamp approved Plan 1 Site Plan Received 04/09/23 (unless previously approved by Council under separate development consent). Prior to issue of the Building Information Certificate the applicant is to demonstrate to Councils satisfaction with evidence in the form of detailed report/s from suitably qualified and experienced professionals the constructed works satisfies

1. *A land survey from a registered surveyor is required with the Building Information Certificate application identifying all structures located upon the subject property.*
2. *Any recommended works identified in this report/s or identified by Council must be completed prior to issue of the Building Information Certificate;*
3. *The following Performance Provisions of the Building Code of Australia.*

Performance Requirement of the Building Code of Australia

H1P1 Structural stability and resistance to actions (including glazing)

H2P1 Rainwater management

H4P2 Room heights

H5P1 Movement to and within a building.

31. **Building / engineers certification required**

Building / Engineers Certification is required for structures B6, B7, B8, and B14, as indicated on the stamp approved Plan 1 Site Plan Received 04/09/23 (unless previously approved by Council under separate development consent). Certification must demonstrate compliance with the relevant deemed-to-satisfy provisions of the Building Code of Australia, or if there are no such provisions, must be demonstrated to be structurally adequate.

If any structures cannot comply with this requirement, they must be demolished / removed from the site prior to issue of an Occupation Certificate.

3. The Plan of Management applicable to the site be amended as a priority to reflect the intended use of the site. (Lyon/Dey)

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The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Cr Pugh was not present for the vote..

There being no further business the meeting concluded at 2:31pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 7 December 2023.

.....
Mayor Michael Lyon