

Minutes Ordinary (Planning) Meeting

Thursday, 8 February 2024



BYRON
SHIRE
COUNCIL

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

Ordinary (Planning) Meeting Minutes
8 February 2024

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ORDINARY (PLANNING) MEETING MINUTES

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 8 FEBRUARY 2024 COMMENCING AT 11:10AM AND CONCLUDING AT 6:03PM.

I2024/133

PRESENT: Cr M Lyon (Mayor), Cr S Balson, Cr C Coorey, Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr A Pugh, Cr M Swivel (left at 4.30pm) 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)
Heather Sills (Manager Corporate Services)
Matt Meir (Legal Counsel)
Chris Soulsby (A/Manager Assets and Major Projects)
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

24-001 Resolved that a representative of the Australian Broadcasting Corporation, Channel 7 and Sharon Shostak be permitted to conduct audio-visual recording during Public Access and any non-confidential session of the 8 February 2024 Council Planning Meeting. (Lyon/Ndiaye)

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

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PUBLIC ACCESS

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

Public Access

Report No and Title		Name	For/ Against	Representing Organisation	Via
9.1	Possible change of road name Hottentot Crescent, Mullumbimby	John Gabriel Alexander Simons	For	Self	In person
9.2	Save the community park in Bayside Brunswick	Peter Tanner	For	Bayside Residents Association	In person
9.3	Interim Heritage Order on works proposed and imminent at 15 Torakina Road (Wallum Estate) in Bayside Brunswick	Jenelle Bowen, Jarvis Assan, Mark Cora and Arabella Douglas	For	Cultural Heritage	In person
13.3	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 road 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	Edwina Hart / Dave Rawlins	For	Tallowood Village Community Group	Video and Zoom
13.4	Update on the Creation of a Byron Shire Council Led Land Trust	Dale Emerson	For	Mullumbimby Residents Association	In person
13.6	Wallum Subdivision DA 10.2021.575.1 – Response to Council Resolution 23-454	James Barrie	Against	Save Wallum	In person
		Eddie Lloyd		Self	In person

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Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Development on Floodplains	Peter McGill	Self	In person

The meeting adjourned at 1.10pm for a lunch break and reconvened at 1.57pm.

APOLOGIES

There were no apologies.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

PROCEDURAL MOTION

24-002 Resolved that Cr Swivel be permitted to attend the meeting held on 8 February 2024 by audio-visual link. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

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 Notices of Motion 9.2, 9.3 and Report 13.6. The nature of the interest being personal relationships and friendships with those opposed to the development and residential issues. Cr Balson elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

24-003 Resolved that the minutes of the Ordinary (Planning) Meeting held 7 December 2023 be confirmed. (Westheimer/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

Sustainable Environment and Economy

- Report No. 13.6 Wallum Subdivision DA 10.2021.575.1 - Response to Council Resolution 23-454
- Report No. 13.4 Update on the Creation of a Byron Shire Council Led Land Trust
- Report No. 13.3 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. 13.1 Status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)
- Report No. 13.7 PLANNING - DA10.2023.332.1 - Dual Occupancy Dwelling – 135 Blindmouth Road, Main Arm

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. **24-004** and concluding with Resolution No. **24-005**.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 PLANNING - Report of the Planning Review Committee held 30 November 2023

File No: I2023/1951

24-004 Resolved that Council endorses the outcomes of the Planning Review Committee meeting held 30 November 2023. (Lyon/Balson)

Report No. 13.5 PLANNING - 10.2023.390.1 Alterations and Additions to Existing Dwelling at 2 Strand Avenue, New Brighton

File No: I2024/4

24-005 Resolved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.390.1 for alterations and additions to existing dwelling house, be granted consent subject to the conditions in Attachment 1 (#E2024/1786). (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

PROCEDURAL MOTION

24-006 Resolved that Council change the order of business to deal with Reports 13.6, 9.1, 9.2, 9.3, 13.4, 13.3, 13.1 and 13.7 next on the Agenda. (Lyon/Balson)

The motion was put to the vote and carried unanimously.

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Report No. 13.6 **Wallum Subdivision DA 10.2021.575.1 - Response to Council Resolution 23-454**

File No: I2024/52

In accordance with her earlier declared interest, Cr Balson left the Chambers at 2.04pm.

Moved that Council:

1. Acknowledges the receipt of Report 13.6 *Wallum Subdivision DA 10.2021.575.1-Response to Council Resolution 23-454* and that a *Subdivision Works Certificate – Early Stage 1* cannot be issued at this time.
2. Notes that Amended Plans submitted in 2023 to satisfy Conditions 6, 7, 8 and 9 of Development Application 10.2021.575.1 have been assessed as they relate to the Early Stage 1 Ecological Rehabilitation Works for the subdivision and notes the exclusion of Cultural Heritage Inspection Plan (Condition 18) from this process.
3. Notes that Conditions 3 and 62 of DA 2021.575.1 have likely been breached by unauthorised slashing including that which took place on 3 November 2023 and that this matter should be investigated and resolved prior to considering issue of a Subdivision Works Certificate, including being investigated as to whether it nullifies the Consent.
4. Notes the critique of the Amended Plans presented by David Milledge dated 5 February 2024 E2024/12306.
5. Notes the following errors in the Amended Plans presented:
 - a) VMP compliance response to condition 6a) being the reference to Eastern Habitat & Rehabilitation Zone Drawing 1-21140007 REV C.2 which isn't provided in the VMP.
 - b) VMP compliance response to condition 6b):
 - i) 5.3.1 should be 6.3.1; and
 - ii) 5.7.1 should be 6.7.1.
6. Notes the Plans' failure to comply with:
 - a) with DA 2021.575.1 Conditions of Consent:
 - Condition 6a): VMP not provided;
 - Condition 6b): no baseline data or survey details are provided for the Mitchells Rainforest Snail and there is no Species Translocation Plan;
 - Condition 7d): no survey maps are provided for the Wallum Froglet and no baseline data;
 - Condition 7e): Wallum Froglet specimen translocation methodology is not provided;
 - Condition 7f): there is no clarity on reporting to Council when the translocated habitat doesn't survive;
 - Condition 8a) Monitoring requirements: there is a lack of analysis of all monitoring and sampling data against baseline data, lack of baseline data , lack of thresholds;
 - Condition 18): failure to provide Cultural Heritage Inspection Plan, despite disturbance of site to be undertaken with Early Works;

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Condition 48: lack of independent environmental audit of CEMP;
Condition 62a): there are no specific survey requirements for ALL fauna on site, prior to works commencing.

b) with Concept Plan conditions:

Concept Plan Condition 6: there is no OEH consultation statement;

c) with Concept Plan commitments:

B1: the widths of road corridors haven't been minimised where roads traverse significant habitats and vegetation eg. SE road/track to Simpsons Creek in wildlife corridor;

B2: Compensatory Replacement Strategy for whole of site compensatory planting strategy and lack of clarity with the information provided;

B4: the Wallum Froglet Plan has not been approved by OEH.

7. Notes other changes required in the Amended Plans:

a) the removal of references to *E.racemosa* and replacement with the correct botanical name *E.signata* in all plans;

b) inclusion of compensatory planting species in Planting Schedules, with numbers for each;

c) inclusion of compensatory planting numbers in VMP Table 6.2 Infill plantings;

d) correction of the Plant Community Type (PCT) mapping in the VMP and WFMP to remove any decommissioned PCTs and replace them with accurate and current PCT's. All the PCT's in the VMP were decommissioned in June 2022 and were incorrect at the time of the DA approval.

8. Requests the applicant consider replacing the proposed offset / compensatory plantings of 300-500mm height for She-Oak and Swamp Mahogany with 1 metre high plantings.

9. Requests that the Scribbly Gum offset / compensatory plantings from the earlier revisions of VMP be reinstated.

10. Requests the applicant to reconsider a higher ratio of 10:1 for compensatory planting as was defined by the 2004 Biodiversity Conservation Strategy.

11. Requests the applicant to address all other issues raised in the critique cited in Part 4 above. (Westheimer/Ndiaye)

PROCEDURAL MOTIONS

24-007 Resolved that Cr Westheimer be granted a two minute extension to his speech.
(Coorey/Lyon)

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

Cr Swivel left the Chambers at 2:32pm.

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24-008 Resolved that Council move into Committee to allow for free debate. (Lyon)

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

24-009 Resolved that Council move out of Committee and resume the Ordinary Meeting. (Lyon)

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

24-010 Resolved that Cr Ndiaye be granted a two minute extension to her speech. (Ndiaye/Lyon)

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

24-011 Resolved that Cr Pugh be granted a two minute extension to his speech. (Lyon)

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

Moved that the motion (Westheimer/Ndiaye) be put. (Dey)

*The motion was put to the vote and declared lost.
Crs Coorey, Hunter, Lyon, Ndiaye and Pugh voted against the motion.
Crs Swivel and Balson were not present for the vote.*

24-012 Resolved that Cr Lyon be granted a two minute extension to his speech. (Lyon)

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

24-013 Resolved that this matter rest on the table. (Lyon)

*The motion was put to the vote and carried.
Crs Dey and Westheimer voted against the motion.
Crs Swivel and Balson were not present for the vote.*

*The meeting adjourned at 4.02pm for a recess reconvened at 4.25pm.
Cr Swivel returned to the Meeting at 4.25pm.*

24-014 Resolved that Report No. 13.6 be lifted from the table. (Lyon)

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

*The motion (Westheimer/Ndiaye) was put to the vote and declared a tie.
Crs Coorey, Ndiaye, Dey and Westheimer voted in favour of the motion.
Crs Hunter, Lyon, Swivel and Pugh voted against the motion.
Cr Balson was absent for the vote.*

The Mayor used his casting vote and declared the motion lost.

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24-015 Resolved that Council:

1. Notes the report Wallum Subdivision DA 10.2021.575.1 - Response to Council Resolution 23-454.
2. Notes that the relevant plans under Conditions 6, 7, 8 and 9 DA 10.2021.575.1 as submitted have been assessed as compliant as they relate to the Early Stage 1 Ecological Rehabilitation Works for the subdivision.
3. Notes that staff will now issue the Subdivision Works Certificate for the Early Stage 1 Ecological Rehabilitation Works for the subdivision to commence, subject to discussions to be held to clarify some potential errors including:
 - a) The VMP being updated to replace references to *Eucalyptus Racemosa* where mentioned with *Eucalyptus Signata*.
 - b) VMP compliance response to condition 6a) being the reference to Eastern Habitat & Rehabilitation Zone Drawing 1-21140007 REV C.2 which isn't provided in the VMP.
 - c) VMP compliance response to condition 6b):
 - i) 5.3.1 should be 6.3.1; and
 - ii) 5.7.1 should be 6.7.1.
 - d) the removal of references to *E.racemosa* and replacement with the correct botanical name *E.signata* in all plans;
 - e) inclusion of compensatory planting species in Planting Schedules, with numbers for each;
 - f) inclusion of compensatory planting numbers in VMP Table 6.2 Infill plantings;
 - g) correction of the Plant Community Type (PCT) mapping in the VMP and WFMP to remove any decommissioned PCTs and replace them with accurate and current PCT's. All the PCT's in the VMP were decommissioned in June 2022 and were incorrect at the time of the DA approval.
4. That the Mayor invite the applicant to meet within 28 days at council to: a. Explore further modifications to the proposed development at Wallum Estate to save as much of the habitat on site as is feasible; b. Allow the ecologist experts for the applicant and other stakeholders to explain their positions; and to work in good faith to resolve the anomalies identified in the expert reports in submissions to Council. (Pugh/Lyon)

PROCEDURAL MOTIONS

- 24-016 Resolved** that Cr Pugh be granted a two minute extension to his speech. (Lyon)
The motion was put to the vote and carried unanimously.
Cr Balson was not present for the vote.
- 24-017 Resolved** that Cr Lyon be granted a one minute extension to his speech. (Lyon)
The motion was put to the vote and carried unanimously
Cr Balson was not present for the vote.

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*The motion (Pugh/Lyon) was put to the vote and declared a tie.
Crs Hunter, Lyon, Swivel and Pugh voted in favour of the motion.
Crs Coorey, Ndiaye, Dey and Westheimer voted against the motion.
Cr Balson was absent for the vote.*

The Mayor used his casting vote and declared the motion carried.

PROCEDURAL MOTION

- 24-018 Resolved** that Council change the order of business to deal with Reports 9.3, 13.4, 9.1, 9.2, 13.3, 13.1 and 13.7 next on the Agenda. (Lyon)

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

Cr Swivel left the Chambers at 4.30pm and did not return.

NOTICES OF MOTION AND RESCISSION

Notice of Motion No. 9.3 Interim Heritage Order on works proposed and imminent at 15 Torakina Road (Wallum Estate) in Bayside Brunswick

File No: I2024/106

In accordance with her earlier declared interest, Cr Balson did not rejoin the Meeting for this item.

- 24-019 Resolved** that Council defers the matter and receives a late Report for 22 February 2024, and consults with Bundjalung Nation of Byron Bay Aboriginal Corporation (Arakwal). (Dey/Westheimer)

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

Cr Balson returned to the Meeting at 5.25pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.4 **Update on the Creation of a Byron Shire Council Led Land Trust**

File No: I2024/3

24-020 **Resolved** that Council:

1. Confirms its support for, and commitment to, the establishment of a Byron Shire Council-Led Land Trust.
2. Confirms the preferred model of Council-Led Land Trust to be a company limited by guarantee and licensed with Council being the majority shareholder, consistent with the key components discussed in the report.
3. Requests staff to prepare a new application on the basis of Part 2 of this Resolution, to form an entity under Section 358 of the Local Government Act 1993 as per the 2022 Guidelines for 'Formation of Corporations and Entities.
4. Receives and considers the new application as per Part 3 at a future Council meeting.
5. Writes to The Hon. Rose Jackson in her capacity as Minister for Housing and Minister of the North Coast seeking her support for this application as it is directly aligned with Actions in the NSW Housing Strategy 2041 in relation to working with Local Government to deliver housing solutions to meet community needs.
6. Continues to engage with a broad range of community stakeholders, including community members, community organisations and indigenous groups to ensure that a diverse range of housing outcomes are delivered within any future Byron Shire Council-Led Land Trust. (Balson/Ndiaye)

Cr Westheimer left the chambers at 5.29pm.

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

Cr Westheimer returned to the chambers at 5:41pm.

NOTICES OF MOTION

Notice of Rescission Motion No. 9.1 Possible change of road name Hottentot Crescent, Mullumbimby

File No: I2023/1981

The notice of rescission motion was withdrawn.

Notice of Motion No. 9.2 Save the community park in Bayside Brunswick

File No: I2024/104

In accordance with her earlier declared interest, Cr Balson left the Chambers at 5.42pm. Moved that Council removes from consideration, as a Housing Option for the Shire's Residential Strategy, Lot 69 DP 851902 (Bayside Park) so that the Park returns as soon as possible to its original intended use as open space for the local community.

(Dey/Coorey)

*The motion was put to the vote and declared lost.
Crs Hunter, Lyon, Ndiaye and Pugh voted against the motion.
Crs Balson and Swivel were not present for the vote.*

Cr Balson returned to the Chambers at 5.53pm

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 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: I2023/1858

24-021 Resolved that Council defers the determination of 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 and receives a briefing at the next available Councillor Workshop. (Ndiaye/Balson)

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

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PROCEDURAL MOTION

24-022 Resolved to extend the time of the meeting by 30 minutes, to 6.30pm. (Lyon)

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

MAYORAL MINUTE

There was no Mayoral Minute.

PETITIONS

There were no Petitions tabled.

DELEGATES' REPORTS

There were no Delegate's Reports.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **Status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)**
File No: I2023/1975

24-023 Resolved that Council notes the status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP). (Pugh/Lyon)

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

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Report No. 13.7 **PLANNING - DA10.2023.332.1 - Dual Occupancy Dwelling –
135 Blindmouth Road, Main Arm**
File No: I2024/85

24-024 **Resolved** that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.332.1 for Dual Occupancy Dwelling, be granted consent subject to the conditions of approval in Attachment 1 (E2024/6057) and the following additional conditions be inserted in the consent as follows:

2A. Existing Shed adjacent to entrance to the property at 135 Blindmouth Road.

The shed to be inspected by Council officers prior to the issue of the Occupation certificate to ensure it is not being used for residential accommodation.

Any Kitchen and bathroom facilities are to be removed prior to the Issue of the Occupation certificate if located within the shed.

47. Use of Sheds

Existing sheds on the property are not to be used for residential accommodation and/or short term rental accommodation at any time.

(Dey/Lyon)

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

There being no further business the meeting concluded at 6:03pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 14 March 2024.

.....
Mayor Michael Lyon