

**Minutes
Ordinary Meeting
Thursday, 18 April 2024**



**BYRON
SHIRE
COUNCIL**

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes

18 April 2024

INDEX OF ITEMS DISCUSSED

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

Report No. 13.1	Grants March 2024	10
Report No. 13.2	Council Investments - 1 March 2024 to 31 March 2024	10
Report No. 13.7	PLANNING - DA 10.2016.625.5 - 35-37 Burringbar Street Mullumbimby 2482	10
Report No. 13.10	PLANNING - Report of the Planning Review Committee held 7 March 2024	10
Report No. 13.14	Bangalow Street Trees Succession Plan	11
Report No. 13.15	Draft Litter and Illegal Dumping Prevention Strategy	11
Report No. 14.2	Report of the Water and Sewer Advisory Committee Meeting held on 21 March 2024	12
Report No. 13.12	PLANNING - DA 10.2023.73.1 Demolition and construction of mixed- use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street BYRON BAY 2481	13
Notice of Motion No. 9.1	Diminish STRA precinct at Butler Street.....	14
Notice of Motion No. 9.3	Loan to Byron Bay Football Club.....	14
Report No. 13.5	Information regarding the use of non-trapping investigative methods and monitoring to monitor and trap dingoes, feral/roaming dogs, foxes and cats.....	15
Report No. 13.12	PLANNING - DA 10.2023.73.1 Demolition and construction of mixed- use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street BYRON BAY 2481	16
Report No. 13.6	PLANNING - DA 10.2023.235.1 Demolition and construction of mixed-use development comprising basement parking, ground floor courtyard with commercial premises, food and drink premises, two levels of shop top housing (total of 21), rooftop terraces and pool and associated plant at 119-121 Jonson Street BYRON BAY 2481	19
Report No. 13.8	PLANNING - 26.2023.3.1 - Submissions report - changes to DCP 2014 Chapter E5 - Certain locations in Byron Bay and Ewingsdale.....	21
Report No. 13.9	Wallum Subdivision DA10.2021.575.1 - Response to Council Resolution 23-454 - Stormwater and Cultural Heritage Site Inspection Plan.....	23

BYRON SHIRE COUNCIL

Ordinary Meeting Minutes

18 April 2024

Report No. 13.11	PLANNING - 26.2022.3.1 Planning Proposal - Stage 4 C zone Implementation Program.....	24
Report No. 13.16	Emergency access at Belongil Beach.....	25
Report No. 14.1	Report of the Floodplain Management Advisory Committee Meeting held on 13 February 2024.....	25
Notice of Motion No. 9.2	Visibility of significant DAs.....	26
Report No. 13.3	Public Exhibition of draft 2024/25 Operational Plan, Budget, and Revenue Policy.....	27
Report No. 13.4	Draft Submission - Standing Committee on State Development into the ability of local governments to fund infrastructure and services.....	27
Report No. 13.13	PLANNING - Amendments to Byron Shire DCP 2014 Chapter C2: Areas Affected by Flood - Draft for Exhibition.....	28

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 18 APRIL 2024 COMMENCING AT 9.15AM AND CONCLUDING AT 6.43PM.

I2024/567

PRESENT: Cr M Lyon (Mayor), Cr S Balson (left at 3.50pm), Cr C Coorey, Cr D Dey, Cr A Hunter, Cr S Ndiaye (left at 6.04pm), Cr A Pugh, Cr M Swivel (left at 5.37pm) and Cr P Westheimer.

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Shannon Burt (Director Sustainable Environment and Economy)
Phil Holloway (Director Infrastructure Services)
Chris Larkin (Manager Sustainable Development)
Malcolm Robertson (Manager Open Spaces and Facilities)
Heather Sills (Manager Corporate Services)
Matt Meir (Legal Counsel)
Liz Caddick (Biodiversity Team Leader) – Report 13.5
Patricia Docherty (Team Leader Planning Services, Commercial, Industrial & Tourism) – Report 13.6
Alex Caras (Land Use Planning Coordinator) – Report 13.11
Jess Cutter (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	For/ Against	Name	Representing	Submission via	
9.3	Loan to the Byron Bay Football Club	For	John McKay	Byron Bay Football Club	In person
13.6	DA 10.2023.235.1 Demolition and construction of mixed use development Jonson Street	For	Jason Dunn	JD Property Group	In person
13.8	PLANNING - 26.2023.3.1 - Submissions report - changes to DCP 2014	For	Jack Dods	Community Members of the Moving Byron	In person

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

Report No and Title		For/against	Name	Representing	Submission via
	subdivision at 9 Marvell Street BYRON BAY				
13.16	Emergency access at Belongil Beach	For	Michael Gudgeon	Byron Bay Surf Club	Speech to be read aloud by staff
14.1	Report of the Floodplain Management Advisory Committee meeting held on 13 February 2024	Against	Matthew Lambourne	Self	In person
9.1	Diminish STRA Precinct at Butler Street	For	Catherine Henniker	Butler St Precinct	In person
13.5	Information regarding the use of non-trapping investigative methods and 5 monitoring to monitor and trap dingoes, feral/roaming dogs, foxes and cats	For	Jodie Vidler, Clinton Brewer, Earnest Healy	Self	Via Zoom
		Against	Scott Mitchell, Zali Jestrinski	Self	

Submissions

Subject	Name	Representing	Submission Received via
Housing	Genevieve Lee	One Roof Byron Incorporated	In person

The meeting adjourned at 12.04pm for a short break and returned at 12.16pm.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

APOLOGIES

PROCEDURAL MOTION

- 24-150** **Resolved** that the apology from Cr Swivel be accepted and a leave of absence granted in accordance with Resolution No. 24-092. (Lyon)

The motion was put to the vote and carried unanimously.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

PROCEDURAL MOTION

- 24-151** **Resolved** that Cr Balson and Cr Ndiaye be permitted to attend the meeting held on 18 April 2024 by audio-visual link. (Lyon/Westheimer)

The motion was put to the vote and carried unanimously.

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

- 24-152** **Resolved** that Cr Coorey be granted a leave of absence from the 23 May Ordinary Council meeting (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Sama Balson declared a significant non-pecuniary interest in Report 13.9. The nature of the interest being that she has significant friendships and professional relationships with those opposed to the Wallum subdivision. Cr Balson elected to leave the Chamber and will not participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

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

- Matthew Nicholas Horan, Planner
 - Greg Yopp, Planner
 - Stephen Jones, Planner
 - Pontus Lindstedt, Strategic Contracts and Procurement Coordinator
 - Jennie Stephenson, Solicitor
-

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

24-153 Resolved that the minutes of the Ordinary Meeting held 28 March 2024 be confirmed.

(Lyon/Westheimer)

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. 13.3 Public Exhibition of draft 2024/25 Operational Plan, Budget, and Revenue Policy

Report No. 13.4 Draft Submission - Standing Committee on State Development into the ability of local governments to fund infrastructure and services

Sustainable Environment and Economy

Report No. 13.5 Information regarding the use of non-trapping investigative methods and monitoring to monitor and trap dingoes, feral/roaming dogs, foxes and cats.

Report No. 13.6 PLANNING - DA 10.2023.235.1 Demolition and construction of mixed-use development comprising basement parking, ground floor courtyard with commercial premises, food and drink premises, two levels of shop top housing (total of 21), rooftop terraces and pool and associated plant at 119-121 Jonson Street BYRON BAY 2481

Report No. 13.8 PLANNING - 26.2023.3.1 - Submissions report - changes to DCP 2014 Chapter E5 - Certain locations in Byron Bay and Ewingsdale

Report No. 13.9 Wallum Subdivision DA10.2021.575.1 - Response to Council Resolution 23-454 - Stormwater and Cultural Heritage Site Inspection Plan

Report No. 13.11 PLANNING - 26.2022.3.1 Planning Proposal - Stage 4 C zone Implementation Program

Report No. 13.12 PLANNING - DA 10.2023.73.1 Demolition and construction of mixed-use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street BYRON BAY 2481

Report No. 13.13 PLANNING - Amendments to Byron Shire DCP 2014 Chapter C2: Areas Affected by Flood - Draft for Exhibition

Infrastructure Services

Report No. 13.16 Emergency access at Belongil Beach

REPORTS OF COMMITTEES

Infrastructure Services

Report No. 14.1 Report of the Floodplain Management Advisory Committee Meeting held on 13 February 2024

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. **24-154** and concluding with Resolution No. **24-162**.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Grants March 2024**
File No: I2023/1978

- 24-154** **Resolved** that Council notes the grant submissions report for the month of March 2024 (Attachment 1 #E2024/35071). (Lyon/Westheimer).

Report No. 13.2 **Council Investments - 1 March 2024 to 31 March 2024**
File No: I2024/467

- 24-155** **Resolved** that Council notes the report listing Council's investments and overall cash 15 position as of 31 March 2024. (Lyon/Westheimer)

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.7 **PLANNING - DA 10.2016.625.5 - 35-37 Burringbar Street**
Mullumbimby 2482
File No: I2024/62

- 24-156** **Resolved** that Council notes that s4.55 Application No.10.2016.625.5, for Modification to Condition 65 to Extend Operating Hours has been withdrawn from the Planning Portal with the following reason: Withdrawn as requested by applicant and owner. (Lyon/Westheimer)

Report No. 13.10 **PLANNING - Report of the Planning Review Committee held 7**
March 2024
File No: I2024/364

- 24-157** **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held 7 March 2024. (Lyon/Westheimer)

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.14 **Bangalow Street Trees Succession Plan**
File No: I2024/282

24-158 **Resolved** that Council:

1. Approves for the proposed Succession Plan for Trees in Bangalow Village Streetscape to be placed on public exhibition, as detailed in this report with Option 2 as the preferred Council option; and.
 2. Receives a further Report to consider any submissions received from the community during the exhibition period. (Lyon/Westheimer)
-

Report No. 13.15 **Draft Litter and Illegal Dumping Prevention Strategy**
File No: I2024/480

24-159 **Resolved** that:

1. The Draft Litter and Illegal Dumping Prevention Strategy 2024-2029 (Attachment 1 E2024/32361) be placed on public exhibition for a minimum of 28 days.
 2.
 - a) Should there be no submissions, the Draft Litter and Illegal Dumping Prevention Strategy 2024-2029 is endorsed from the date after the close of the exhibition period and;
 - b) Should submissions be received, the Draft Litter and Illegal Dumping Prevention Strategy be reported back to Council noting the submissions and any amendments made as a result of the feedback received (Lyon/Westheimer)
-

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.2 **Report of the Water and Sewer Advisory Committee Meeting held on 21 March 2024**

File No: I2024/448

24-160 **Resolved** that Council notes the minutes of the Water and Sewer Advisory Committee Meeting held on 21 March 2024. (Lyon/Westheimer)

24-161 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 4.1 IS Utilities Status Report - November 2023 - January 2024
File No: I2024/341

Committee Recommendation 4.1.1

That the Committee:

1. Notes the report.
2. Receives more detailed info on times per ET assessment and on the impact of that on planning assessment time, and on how times can be reduced.
3. Receives a copy of the Incident Response Plan and information on responses in January and February 2024. (Lyon/Westheimer)

24-162 **Resolved** that Council adopts the following Committee Recommendations:

Report No. 4.2 Response to Questions - Future Water Strategy
File No: I2024/435

Committee Recommendation 4.2.1

That the Committee:

1. Notes Council staff response to questions.
2. Includes Water Northern Rivers Alliance as a stakeholder.
3. Has a workshop early in the process where committee can express their views on res 23-120. (Lyon/Westheimer)

PROCEDURAL MOTION

24-163 **Resolved** that Council change the order of business to deal with Reports 13.12, 9.1, 9.3, 13.5, 13.6, 13.8, 13.9, 13.11, 13.16, and 14.1 next on the Agenda. (Lyon)

The motion was put to the vote and carried unanimously.

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 PLANNING - DA 10.2023.73.1 Demolition and construction of mixed-use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street BYRON BAY 2481

File No: I2024/429

Moved that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.73.1 for Demolition and construction of mixed-use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop 5 top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street, Byron Bay 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 Clause 4.3 Height of Building under Byron Local Environmental Plan 2014.
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 4.6 Exception to Development Standards under Byron Local Environmental Plan 2014 and has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case nor are there sufficient environmental planning grounds to justify the contravention of the development standards, considering roof top facilities and the generous floor to ceiling heights proposed within the lower floor levels.
3. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with the Housing SEPP 2021 in relation to deep soil plantings as required under Apartment Design Guide.
4. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to result in adverse impacts on the built environments, through the cumulative impact of approving development with a non-compliant height in Byron Bay.
4. Pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development with its non-compliant height is not suitable for the site.
5. 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 (Dey)

The motion fell away for want of a seconder.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

PROCEDURAL MOTION

24-164 Resolved that the foreshadowed motion (Report 13.12) rest on the table. (Lyon)

The motion was put to the vote and carried unanimously.

NOTICES OF MOTION

Notice of Motion No. 9.1 Diminish STRA precinct at Butler Street

File No: I2024/471

Moved that Council:

1. Acknowledges the Petition of 61 residents with three urban blocks inside the Short Term Rental Accommodation (STRA) Precinct at Butler Street Byron Bay, in which those residents ask for their sub-area to be extracted from the Precinct.
2. Contacts property owners within the urban blocks as shown below (west of Butler Street and south of Somerset Street) informing them in April of the above request and asking them to respond within 28 days on whether they wish to be included or excluded from the STRA Precinct.
3. Informs the NSW Department of Planning that Council is investigating this minor change with a view to asking for the sub-area's removal from the STRA Precinct.
4. Receives a report in June on the above consultation and asks for the change.
(Dey/Balson)

The motion was put the vote and declared lost.

Crs Coorey, Westheimer, Pugh, Lyon, Hunter and Ndiaye voted against the motion.

Notice of Motion No. 9.3 Loan to Byron Bay Football Club

File No: I2024/541

24-165 Resolved that Council lends the Byron Bay Football Club \$200,000 over ten years fixed at the current TCorp interest rate and delegates responsibility to the General Manager to negotiate the terms subject to Council's financial interests being addressed. (Lyon/Pugh)

The motion was put to the vote and carried unanimously.

The meeting adjourned for lunch at 1.31pm and resumed at 2.19pm.

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 **Information regarding the use of non-trapping investigative methods and monitoring to monitor and trap dingoes, feral/roaming dogs, foxes and cats.**

File No: I2023/1968

24-166 **Resolved** that Council:

1. Engages with community stakeholders (traditional custodians, farmers, landholders, government agencies, dingo advisory groups and scientists) regarding the risks and impacts of dogs/dingoes and alternate management strategies, as part of the Pest Animal Management Plan review.
2. In revising the Pest Animal Management Plan, prioritises community engagement and education regarding roaming domestic dogs and considers methods of coexisting with dingoes.
3. a) Continues to fulfil its general Biosecurity duty under the Biosecurity Act 2015, by carrying out monitoring on Council land of animals that are listed as a biosecurity matter.

 b) Collects and sends DNA from any trapped or culled dingoes or dogs for ancestry analysis.
4. Continues to work with the University of NSW and other funding agencies to seek funding for a dingo monitoring project to understand the behaviour, risks and impacts of dingoes/wild dogs in Byron Shire in order to guide future management, including the use of targeted cameras, sand traps, and if necessary, specific cage trapping.
5. Continues to work with the Humane Society International and others to seek funding for a livestock guardian animal trial in Byron Shire.
6. Continues to seek further written clarification from Local Land Services, including their Coordinator of Aboriginal Engagement and Programmes and other Indigenous stakeholders regarding Council and community obligations with regard to discharging general biosecurity duty in relation to dingoes, and acceptable options to prevent, minimise or eliminate the risk of negative impacts of biosecurity matters.
7. Requests that item 6 above be tabled at the next available Northern Rivers Joint Organisation of Councils' meeting to see if there is collective interest in receiving this advice from Local Land Services and other stakeholders. (Balson/Ndiaye)

The motion was put to the vote and carried unanimously.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

PROCEDURAL MOTION

24-167 Resolved that Report No.13.12 be lifted from the table. (Lyon)

The motion was put to the vote and carried unanimously.

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.12 PLANNING - DA 10.2023.73.1 Demolition and construction of mixed-use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision at 9 Marvell Street BYRON BAY 2481

File No: I2024/429

24-168 Resolved that Council:

1. Approves the variation requested to clause 4.3 Height of Buildings and additional provisions in clause 4.3A Measurement of height of buildings in accordance with clause 4.6 'Exceptions to Development Standards' of the Byron Local Environmental Plan 2014; and
2. Considers entering a planning agreement for a monetary value of \$80,000 inclusive of GST offered by the developer for the provision of public art (Doc #E2024/14957); and
3. Grants Consent subject to recommended conditions of consent in Attachment 2 (Doc #E2024/33552) pursuant to Section 4.16 (3) of the Environmental Planning and Assessment Act 1979, to Development Application 10.2023.73.1 for demolition and construction of mixed use development comprising basement parking, ground floor cafe/restaurant and retail, two levels of shop top housing (total of eight), rooftop pool, decking and associated plant and strata subdivision subject to the following amended conditions:

7A Amended plans to be submitted with the construction certificate lowering building heights

Amended plans are to be submitted with the construction certificate lowering the building heights in accordance with the following plans:

Plan No.	Revision No.	Title	Drawn by	Dated
DA.23	CC3 roof height change	Long Section (Council Doc #E2024/41852)	Harley Graham Architects	17/04/2024
.25	CC3 roof height change	Height Plane Area Plan (Council Doc #E2024/41853)	Harley Graham Architects	17/04/2024

Details to be submitted with the construction certificate.

74. Site Location and Construction Survey

The location of the building on the site and the height of the building to be established by a suitably qualified Surveyor and must comply with this approval including any required setbacks to boundaries.

89A. Final Survey

A suitably qualified surveyor to certify that the building complies with height of the development as approved under Condition 7A.

40. Developer Contributions to be paid

Dependent on cost of construction at time of paying the developer contributions either S7.11 contributions are to be paid as per (a) or S7.12 contributions are to be paid as per (b) if the S7.12 levy will be greater than the S7.11 contributions.

(a) Section 7.11 Contributions

Contributions set out in the schedule below are to be paid to Council prior to the release of a construction certificate. Contributions are levied in accordance with the Byron Shire Developer Contributions Plan 2012 (as amended). The Plan may be viewed on line at www.byron.nsw.gov.au or during office hours at the Council Offices located at Station Street, Mullumbimby. These contributions are to fund public amenities and services as listed in the schedule. Additional details on the specific amenities are to be found in the Byron Shire Developer Contributions Plan 2012 (as amended).

*The contributions in the schedule are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The schedule contains a date for which the schedule remains valid, after this date you will have to contact Council for an updated schedule.*

Or

(b) Section 7.12 Levy to be paid

Prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

The levy will be calculated as follows:

Levy payable = %C x \$C

- **%C** is the levy rate applicable as set out in the latest Ministerial Direction issued under section 7.17.
- **\$C** is the proposed cost of carrying out the development.

The rate of **%C** is:

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

The cost of development must be calculated in accordance with clause 25J of the Regulation. The Cost Summary Report (copy attached) as set out in schedule 2 of the Section 7.12 contributions plan must be submitted to Council with the payment. The cost summary report must be prepared by a quantity surveyor. Copies of Cost Summary Report are available at Council's main office or may be downloaded from Council's website.

Section 2 of current Byron Developer Contributions Plan 2012 Amendment 4 as adopted provides exemptions to the 7.12 Levy: (b) Where a development proposal contains both a residential component and a non-residential component, then Council will calculate the levy for the residential component under the adopted section 7.11 plan and the levy for the non-residential component under this section 7.12 plan. The levy finally imposed on the development consent will be which ever the greater amount is. .(Lyon/Hunter)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Report No. 13.6 **PLANNING - DA 10.2023.235.1 Demolition and construction of mixed-use development comprising basement parking, ground floor courtyard with commercial premises, food and drink premises, two levels of shop top housing (total of 21), rooftop terraces and pool and associated plant at 119-121 Jonson Street BYRON BAY 2481**

File No: I2024/430

24-169 Resolved that Council:

1. Approves the variation requested to clause 4.3 Height of buildings, clause 4.3A Measurement of height of buildings and clause 4.4 Floor space ratio in accordance with clause 4.6 Exceptions to development standards of the Byron Local Environmental Plan 2014; and
2. Grants consent subject to the recommended condition in Attachment 2 (#E2024/35180) pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, to Development Application No. 10.2023.235.1 for demolition and construction of mixed-use development comprising basement parking, ground floor courtyard with commercial premises, food and drink premises, two levels of shop top housing (total of 21), rooftop terraces and pool and associated plant, subject to condition 50 being amended to read:

50. Developer Contributions to be paid

Dependent on cost of construction at time of paying the developer contributions either S7.11 contributions are to be paid as per (a) or S7.12 contributions are to be paid as per (b) if the S7.12 levy will be greater than the S7.11 contributions.

(c) Section 7.11 Contributions

Contributions set out in the schedule below are to be paid to Council prior to the release of a construction certificate. Contributions are levied in accordance with the Byron Shire Developer Contributions Plan 2012 (as amended). The Plan may be viewed on line at www.byron.nsw.gov.au or during office hours at the Council Offices located at Station Street, Mullumbimby. These contributions are to fund public amenities and services as listed in the schedule. Additional details on the specific amenities are to be found in the Byron Shire Developer Contributions Plan 2012 (as amended).

*The contributions in the schedule are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The schedule contains a date for which the schedule remains valid, after this date you will have to contact Council for an updated schedule.*

Or

(d) S.12 Levy to be paid

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

Prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

The levy will be calculated as follows:

Levy payable = %C x \$C

- **%C** is the levy rate applicable as set out in the latest Ministerial Direction issued under section 7.17.
- **\$C** is the proposed cost of carrying out the development.

The rate of **%C** is:

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

The cost of development must be calculated in accordance with clause 25J of the Regulation. The Cost Summary Report (copy attached) as set out in schedule 2 of the Section 7.12 contributions plan must be submitted to Council with the payment. The cost summary report must be prepared by a quantity surveyor. Copies of Cost Summary Report are available at Council's main office or may be downloaded from Council's website.

Section 2 of current Byron Developer Contributions Plan 2012 Amendment 4 as adopted provides exemptions to the 7.12 Levy: (b) Where a development proposal contains both a residential component and a non-residential component, then Council will calculate the levy for the residential component under the adopted section 7.11 plan and the levy for the non-residential component under this section 7.12 plan. The levy finally imposed on the development consent will be which ever the greater amount is. (Lyon/Balson)

Cr Pugh left the meeting at 3.10pm.

The motion was put to the vote and declared carried.

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

Cr Dey voted against the motion.

Cr Pugh was absent for the vote.

Cr Pugh returned to the meeting at 3.15pm.

Report No. 13.8 **PLANNING - 26.2023.3.1 - Submissions report - changes to DCP 2014 Chapter E5 - Certain locations in Byron Bay and Ewingsdale**

File No: I2024/273

24-170 **Resolved** that Council adopts the amended Draft Byron Development Control Plan Chapter E5: Certain Locations in Byron Bay and Ewingsdale, as contained in Attachment 1 (E2023/129893), which includes provisions for 'Precinct 3 – Environmental Living' and publishes the amended DCP on Council's website subject to the following additional provisions being included in the DCP:

Protection of native animals

Objectives

1. To protect native fauna from predation from cats and dogs or other pets.
2. To prevent the keeping of cats and dogs from being kept on the site and limit the movement of cats and dogs through the site.

Performance criteria

1. Cats and dogs are not permitted to be brought onto, through or kept within the residential lots.

Prescriptive measures

1. A development application for the subdivision of the land provides details of signage to be installed within entrances to the property to identify the restriction on animals within this area.
2. Any development application for the subdivision of land within precinct 3 will include a condition of consent that requires a restriction as to user be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919, stating;

“No cats, or dogs are permitted to be kept on; brought onto or through the site, other than an animal registered as a service animal as defined within the Commonwealth law Disability Discrimination Act 1992”.

3. Where a registered service animal is kept on the property, a suitably fenced enclosure must be provided to ensure the service animal cannot roam freely.

Provision of Cycleways within Precinct 3 - Environmental Living

Objectives

1. To augment and implement the existing and proposed cycleways identified by the Byron Bike plan 2019 where these cycle paths intersect with the Precinct 3 - Environmental Living.
2. To ensure that development applications accommodate, and where required provide cycleways and related facilities identified by the Byron Bike plan 2019.

Performance criteria

1. The development is to keep as public open space, a route sufficient for a pedestrian / cycleway through the subdivision to link Bayshore Drive through the adjacent Tyagarah Nature Reserve to Grays Lane (cycle route IT005). Details of the cycleway link to be provided with the Development Application.

(Ndiaye/Coorey)

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

*Cr Coorey left the meeting at 3:45pm.
Cr Balson left the meeting at 3.50pm and did not return.
Cr Coorey rejoined the meeting by audio visual link at 3:56pm.*

PROCEDURAL MOTION

24-171 Resolved that Cr Coorey and Cr Swivel be permitted to attend the meeting by audio-visual link. (Lyon/Ndiaye)

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

Cr Coorey left the meeting at 4.01pm.

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

Cr Westheimer left the meeting at 4.09pm.

*The meeting adjourned at 4.10pm for a short break and re-commenced at 4.15pm.
Cr Coorey rejoined the meeting at this time.
Cr Swivel joined the meeting via audio-visual link.*

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

Report No. 13.9 **Wallum Subdivision DA10.2021.575.1 - Response to Council Resolution 23-454 - Stormwater and Cultural Heritage Site Inspection Plan**

File No: I2024/260

Moved that Council defers the report Wallum Subdivision DA 10.2021.575.1 - Response to Council Resolution 23-454 - Stormwater and Cultural Heritage Site Inspection Plan to a future meeting of Council. (Ndiaye/Coorey)

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

FORESHADOWED MOTION

24-172 **Resolved** that Council notes the report Wallum Subdivision DA 10.2021.575.1 - Response to Council Resolution 23-454 - Stormwater and Cultural Heritage Site Inspection Plan. (Lyon/Hunter)

AMENDMENT

Moved that Council:

1. Notes the inappropriateness of the Wallum site for urban subdivision for housing as reflected in
 - (i) having to fill the site up to two metres deep
 - (ii) the difficulty of providing services such as stormwater drainage
 - (iii) the tragic loss of habitat for flora and fauna, including several threatened species.

2. Finds suitable the Amended Stormwater Maintenance & Management Plan for the Existing Channel as required under Consent Condition 12 and the Cultural Heritage Site Inspection Plan as required under Consent Condition 18. (Dey/Ndiaye)

PROCEDURAL MOTION

24-173 **Resolved** that Cr Ndiaye be granted a 30 second extension to her speech. (Lyon)

The motion was put to the vote and carried unanimously.

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

Cr Swivel left the meeting at 5.37pm and did not return.

**Report No. 13.11 PLANNING - 26.2022.3.1 Planning Proposal - Stage 4 C zone
Implementation Program**

File No: I2024/427

24-174 Resolved that Council:

1. Submits the Planning Proposal contained in Attachment 1 (E2024/32968) to the NSW Department of Planning, Housing and Infrastructure for Gateway determination;
2. Pending Gateway determination, undertakes public exhibition of the Planning Proposal and consults with government agencies in accordance with the Gateway determination; and
3. Receives a Report outlining the exhibition outcomes. (Hunter/Coorey)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Crs Balson, Swivel and Westheimer were absent for the vote.

Cr Westheimer joined the meeting by audio visual link at 5.41pm.

PROCEDURAL MOTION

24-175 Resolved that the meeting be extended to 6.30pm. (Lyon)

The motion was put to the vote and carried.

Cr Dey voted against the motion.

Crs Balson and Swivel were absent for the vote.

STAFF REPORTS – INFRASTRUCTURE SERVICES

Report No. 13.16 Emergency access at Belongil Beach
File No: I2024/534

24-176 Resolved that Council:

1. Notes the project aims, objectives and urgency.
2. Notes the Review of Environmental Factors (Attachment 1; E2024/30353) which has been Determined under delegation on 8 April 2024.
3. Allocates \$80,000 from Crown Paid Parking to fund the construction of the preferred option 4 to provide emergency access at Belongil Beach.
4. Investigates options to improve accessible pathways to beaches.

(Ndiaye/Lyon)

*The motion was put to the vote and carried unanimously.
Crs Balson and Swivel were absent for the vote.*

Cr Ndiaye left the meeting at 6.04pm and did not return.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 Report of the Floodplain Management Advisory Committee
Meeting held on 13 February 2024
File No: I2024/268

24-177 Resolved that Council defers the report on the Floodplain Management Advisory Committee Meeting held on 13 February 2024. (Coorey/Lyon)

*The motion was put to the vote and carried unanimously.
Crs Swivel, Ndiaye and Balson were absent for the vote.*

NOTICES OF MOTION

Notice of Motion No. 9.2 Visibility of significant DAs

File No: I2024/474

Moved:

1. That Council prepares a report that considers improving the visibility of significant DAs and other events happening at Council and in Byron Shire, including more regular advertising in the local newspaper and on local radio.
2. That the report considers how to reach the greatest number of community members to advise them of:
 - a) non-complying DAs that are likely to have an impact beyond their immediate neighbours
 - b) public notices or similar from State and Federal agencies such as Planning Panels
 - c) items usually put on the ‘Your Say’ page of Council’s website
 - d) other significant issues that affect Byron Shire residents and businesses
 - e) any other items of public significance. (Coorey/Dey)

AMENDMENT

24-178 Resolved:

1. That Council prepares a report that considers improving the visibility of significant DAs and other events happening at Council and in Byron Shire.
2. That the report considers how to reach the greatest number of community members to advise them of matters like:
 - a) DAs that are likely to be of public interest
 - b) public notices or similar from State and Federal agencies such as Planning Panels
 - c) items usually put on the ‘Your Say’ page of Council’s website
 - d) other significant issues that affect Byron Shire residents and businesses
 - e) any other items of public significance (Lyon/Pugh)

The amendment was put to the vote and declared a tie.

Crs Coorey, Westheimer and Dey voted against the amendment.

Crs Balson, Ndiaye and Swivel were absent for the vote.

The Mayor used his casting vote in favour of the amendment and the amendment was declared successful.

BYRON SHIRE COUNCIL

ORDINARY MEETING MINUTES

18 April 2024

PROCEDURAL MOTION

24-179 Resolved that the motion (Lyon/Pugh) be put. (Pugh/Lyon)

*The motion was put to the vote and carried.
Cr Westheimer and Dey voted against the motion.
Crs Balson, Ndiaye, and Swivel were absent for the vote. .*

*The amendment upon becoming the substantive motion was put to the vote and declared carried unanimously.
Crs Balson, Ndiaye, and Swivel were absent for the vote.*

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.3 Public Exhibition of draft 2024/25 Operational Plan, Budget, and Revenue Policy

File No: I2024/419

24-180 Resolved that the Draft Operational Plan 2024/25 (Attachment 1 #E2024/31007) and associated Draft 2024/25 Budget Estimates (Attachment 2 #E2024/34913), Draft 2024/25 Statement of Revenue Policy including Fees and Charges and Option 2 rating structure (Attachment 3 #E2024/34797) be placed on public exhibition for a period of 28 days. (Dey/Lyon)

*The motion was put to the vote and declared carried.
Crs Coorey and Westheimer voted against the motion.
Crs Swivel, Ndiaye and Balson were absent for the vote.*

Report No. 13.4 Draft Submission - Standing Committee on State Development into the ability of local governments to fund infrastructure and services

File No: I2024/470

24-181 Resolved that Council:

1. Amends as follows the draft submission to the NSW Parliament's Standing Committee on State Development inquiry into the ability of local governments to fund infrastructure and services as per Attachment 1 (E2024/28530):

add a point responding to point g) in the Terms of Reference, that consideration be given to the potential for rates to be based on the improved value of properties, rather than the current unimproved capital value

2. Endorses the submission as amended in Part 1 above. (Dey/Lyon)

*The motion was put to the vote and carried unanimously.
Crs Swivel, Ndiaye and Balson were absent for the vote.*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.13 PLANNING - Amendments to Byron Shire DCP 2014 Chapter C2: Areas Affected by Flood - Draft for Exhibition

File No: I2024/437

24-182 Resolved that Council:

1. Proceeds to exhibit the draft DCP 2014 Chapter C2: Areas Affected by Flood, as contained in Attachment 1 (E2023/129624) for a minimum period of 28 days; and
2. Arranges a community meeting with residents in the north of the shire to inform and discuss the draft DCP Chapter C2 proposal flood affected areas in the north.
3. Following exhibition, receives a further report detailing submissions made and any recommended changes. (Hunter/Pugh)

*The motion was put to the vote and carried unanimously.
Crs Swivel, Ndiaye and Balson were absent for the vote.*

There being no further business the meeting concluded at 6.43pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 23 May 2024.



.....
Mayor Michael Lyon