

# Minutes Ordinary (Planning) Meeting

Thursday, 16 May 2024



**BYRON**  
SHIRE  
COUNCIL

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes

16 May 2024

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

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# BYRON SHIRE COUNCIL

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16 May 2024

**MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 16 MAY 2024 COMMENCING AT 11:04AM AND CONCLUDING AT 4:40PM.**

I2024/715

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

**Staff:** Mark Arnold (General Manager)  
Esmeralda Davis (Director Corporate and Community Services)  
Phil Holloway (Director Infrastructure Services)  
Chris Larkin (A/Director Sustainable Environment and Economy)  
Malcolm Robertson (Manager Open Spaces)  
Matt Meir (Legal Counsel)  
Heather Sills (Manager Corporate Services)  
Michael Bingham (Environmental Health Officer – Item 13.4)  
James Flockton ( Infrastructure Planning Coordinator – Item 9.2)  
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/<br>Against | Representing<br>Organisation | Submission<br>Received in<br>form of |
|--|-----------------------|-----------------|------------------------------|--------------------------------------|
| 9.1<br>Notice of Motion –<br>Accessible Beaches                                      | Pauline<br>Menczer    | For             | Self                         | In person                            |
|  | Andrew<br>Graeme-Cook |                 |                              |                                      |
| 9.2<br>Notice of Motion – Impact<br>of Urban Stormwater on<br>Receiving Environments | Marie Oliver          | For             | Self                         | In person                            |
|  | Henry<br>Stenning     |                 |                              |                                      |
|  | Jane Amelia<br>Lemon  |                 |                              |                                      |

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| Report No and Title |  | Name              | For/<br>Against | Representing<br>Organisation | Submission<br>Received in<br>form of |
|---------------------|--|-------------------|-----------------|------------------------------|--------------------------------------|
| 13.3                | PLANNING -<br>DA10.2008.565.5 - S4.55<br>modification to modify<br>approved plans for use of<br>alterations and additions –<br>13 Gaggin Street, New<br>Brighton | Michael<br>Grogan | For             | Self                         | In person                            |
|                     |  | Sol Ibrahim       | Against         | Self                         | In person                            |
| 13.4                | PLANNING - DA<br>10.2023.491.1 – Dual<br>Occupancy (detached) –<br>541 Federal Drive,<br>Federal   | Martin Bail       | Against         | Self                         | In person                            |
| 13.6                | PLANNING - DA<br>10.2023.229.1 - Tourist<br>and Visitor<br>Accommodation<br>Comprising Four (4)<br>Cabins – 131 The Tunnell<br>Road, Billinudgel                 | Gina Brough       | For             | Self                         | In person                            |

*The meeting adjourned at 12:35pm for a short break and reconvened at 12:58pm.*

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## APOLOGIES

### PROCEDURAL MOTION

**24-183 Resolved** that the apology from Cr Coorey be accepted and a leave of absence granted. (Lyon)

*The motion was put to the vote and carried unanimously.*

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## APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

There were no applications to attend via audio-visual link.

**REQUESTS FOR LEAVE OF ABSENCE**

There were no requests for leave of absence.

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**DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

Cr Dey declared a non-pecuniary interest in Report 13.4. The nature of the interest being that he knows the neighbour who raised objection to the proposal though both being a member of The Greens. Cr Dey elected to remain in the Chamber and will participate in discussion and the vote.

Cr Ndiaye declared a pecuniary/non-pecuniary interest in Report 13.4. The nature of the interest being that she knows the neighbour who raised objection to the proposal though both being a member of The Greens. Cr Ndiaye elected to remain in the Chamber and will participate in discussion and the vote.

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**TABLING OF PECUNIARY INTEREST RETURNS**

There were no Pecuniary Interest Returns tabled.

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**ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

- 24-184 Resolved** that the minutes of the Ordinary (Planning) Meeting held 14 March 2024 be confirmed. (Balson/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**

**Corporate and Community Services**

Report No. 13.1 Arakwal National Park and Byron Coast Area Management Committees  
– Council nominees

**Sustainable Environment and Economy**

Report No. 13.3 PLANNING - DA10.2008.565.5 - S4.55 modification to modify approved plans for use of alterations and additions – 13 Gaggin Street, New Brighton

Report No. 13.4 PLANNING - DA 10.2023.491.1 - Dual Occupancy (detached) – 541 Federal Drive, Federal

Report No. 13.5 PLANNING - Report of the Planning Review Committee held 4 April 2024

**Infrastructure Services**

**REPORTS OF COMMITTEES**

**Infrastructure Services**

Report No. 14.1 Report of the Local Traffic Committee Meeting held on 16 April 2024

- 6.1 Goonengerry Public School Road Safety Changes
- 6.2 Automated Flood Signage Installation
- 6.3 Transport for NSW Temporary Delegation to Councils
- 7.1 Tuckerroo Avenue Linemarking Upgrade - Local Area Traffic Management

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Swivel. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **24-185** and concluding with Resolution No. **24-187**.



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## PROCEDURAL MOTION

**24-188 Resolved** that Council change the order of business to deal with Reports 13.3 and 13.4 next on the Agenda. (Lyon)

*The motion was put to the vote and carried unanimously.*

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.3 PLANNING - DA10.2008.565.5 - S4.55 modification to modify approved plans for use of alterations and additions – 13 Gaggin Street, New Brighton**

**File No:** I2024/566

Moved that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Modification No. 10.2008.565.5 for dwelling additions and alterations, be granted consent subject to the amendment of condition 1 and 8 of modified development consent 10.2008.565.1, and endorsement of the plans as follows:

1. Development is to be in accordance with approved plans.

| Plan No.          | Description               | Prepared by              | Dated      |
|-------------------|---------------------------|--------------------------|------------|
| Drawing No 1 of 6 | Site Survey               | Barefoot Building Design | 11/05/2023 |
| Drawing No 2 of 6 | Site Plan                 | Barefoot Building Design | 11/05/2023 |
| Drawing No 3 of 6 | Floor Plan                | Barefoot Building Design | 11/05/2023 |
| Drawing No 4 of 6 | Elevations – East & South | Barefoot Building Design | 11/05/2023 |
| Drawing No 5 of 6 | Elevations – West & North | Barefoot Building Design | 11/05/2023 |
| Drawing No 6 of 6 | Section                   | Barefoot Building Design | 11/05/2023 |

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

8. Flood Planning Level:

The flood planning level for this development is R.L. 3.47m A.H.D.

The plans and specifications to accompany this construction certificate application at to indicate the use of flood compatible materials, fixtures and power outlets were used in the building below the flood planning level.



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The flood compatible materials, materials, fixtures and power outlets must be those components listed as “suitable” in Table 10-Flood Proofing Code of Part K – Flood Liable Lands of Development Control Plan 2002. (Hunter/Ndiaye)

## PROCEDURAL MOTION

**24-189 Resolved** that Cr Hunter be granted a two minute extension to his speech. (Lyon)

*The motion was put to the vote and carried unanimously.*

*The motion was put to the vote and lost.*

*Crs Hunter and Ndiaye voted in favour of the motion.*

*Crs Lyon, Dey, Swivel, Westheimer, Balson and Pugh voted against the motion.*

## FORESHADOWED MOTION

**24-190 Resolved** that:

1. Pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Modification No. 10.2008.565.5 for the Use of Alterations and additions to a dwelling house, be refused for the following reasons:
  - a. Pursuant to section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, the development does not comply with Part C2.5 Building Height Plane under Byron DCP 2010.
  - b. Pursuant to section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, the development does not comply with Part 2.6 Setbacks to Boundaries and Part 4.4 Reduced Boundary Setbacks under Byron DCP 2010.
  - c. Pursuant to Section 4.55(1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development has an adverse impact on the built environment.
  - d. Pursuant to Section 4.55(1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development as constructed is not suitable for the site.
2. Council’s Compliance Team be advised of the outcome of this application. (Swivel/Dey)

*The foreshadowed motion was put to the vote and carried.*

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

*Crs Hunter and Ndiaye voted against the foreshadowed motion.*

*Cr Hunter left the meeting at 1:42pm and did not return.*

*The meeting adjourned at 1:42pm for a lunch break and reconvened at 2.33pm.*

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**Report No. 13.4**      **PLANNING - DA 10.2023.491.1 - Dual Occupancy (detached) –  
541 Federal Drive, Federal**  
**File No:**              I2024/569

Moved that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.491.1 for New Dwelling to create Dual Occupancy (Detached), be granted consent subject to the conditions of approval at the end of this report. (Dey/Lyon)

## AMENDMENT

### **24-191 Resolved that:**

1. That determination of Development Application No. 10.2023.491.1 for New Dwelling to create Dual Occupancy (Detached), be deferred subject to an amended design to be considered with the applicants to relocate the subject dwelling 50 to 80 metres to the north or north west of the proposed site to avoid land slip areas and the water bore/well.
2. The matter to then be reported back to Council at the next available Council meeting prior to the Caretaker period (from 16 August 2024) following those discussions. (Ndiaye/Westheimer)

*The amendment was put to the vote and declared carried.*

*Crs Balson, Westheimer, Ndiaye and Dey voted in favour of the amendment.*

*Crs Pugh, Swivel and Lyon voted against the amendment.*

*Cr Hunter was not present for the vote.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried.*

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

*Crs Swivel and Lyon voted against the motion.*

*Cr Hunter was not present for the vote.*

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NOTICES OF MOTION

**Notice of Motion No. 9.1 Accessible Beaches**

**File No:** I2024/669

**24-192 Resolved** that Council:

1. Notes that according to Accessible Beaches Australia, no beaches in the Byron Shire are fully accessible to people with disability.
2. Notes that in order to make beaches accessible to members of the community with physical disability, beaches should have:
  - a) Some level of lifeguard service
  - b) A portable mat designed to facilitate wheeled access to the water
  - c) Access to a public specialty wheelchair for use on water, specifically the Hippocampe style, and
  - d) Access to a public child-sized Hippocampe style chair
3. Notes that despite having a beach mat, Torakina Beach is currently not accessible and accessibility needs to consider the parking, pathways and adjacent areas as well as the direct beach access.
4.
  - a) Requests Reflections Holidays Parks Board of Directors (or CEO) commit to ongoing engagement with Byron Community regarding management of Crown Reserves under their control.
  - b) Requests Reflections Holidays Parks' attendance at Council facilitated meeting including representatives from the Access Working Group, the Byron Hospital Community Access Group (CAG), Accessible Beaches Australia, Arakwal Native Title holders and all other key stakeholders for the Torakina reserve to develop an action plan to make the beach fully accessible before November 2024.
5.
  - a) Works with key stakeholders including the Access Working Group, Bundjalung of Byron Bay Aboriginal Corporation (Arakwal), Reflections Byron Bay, Crown Lands, Cape Byron Marine Parks, Cape Byron Trust and NSW National Parks and Wildlife Service to establish prioritised locations for inclusive access at Byron Shire beaches.
  - b) Allocates budget of \$20,000 to facilitate engineering and environmental studies to inform design details of proposed inclusive access.
6. Develops a plan, codesigned with the Access Working Group, for reaching the objective of providing fully accessible beach access on all Byron Shire beaches, including necessary upgrades at 3 beaches with lifeguard services and 1 dog beach within the next 3 years.
7. Seeks out relevant funding opportunities to develop and implement beach accessibility.

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8. Writes to Federal Member for Richmond; Justine Elliot, NSW Minister for Disability Inclusion, Kate Washington; and the NSW Minister for the North Coast, Rose Jackson to request support for any available federal and state funding streams for accessibility upgrades to Byron Shire beaches, including the funding stream created from the three State managed caravan parks in Brunswick Heads.  
(Dey/Balson)

*Cr Swivel left the Chambers at 3:34pm.  
Cr Westheimer left the Chambers at 3:35pm.*

### PROCEDURAL MOTION

- 24-193 Resolved** that Cr Ndiaye be granted a one minute extension to her speech. (Lyon)

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

*Cr Pugh left the Chambers at 3:39pm  
The meeting adjourned due to lack of quorum at 3:39pm.  
Crs Pugh and Westheimer returned to the Chambers at 3:40pm.  
The meeting reconvened at 3:40pm.*

### PROCEDURAL MOTION

- 24-194 Resolved** that Council move into Committee to allow for free debate. (Lyon)

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

*Cr Swivel returned to the Chambers at 3:42pm.  
Cr Ndiaye left the Chambers at 3:58pm and did not return.*

### PROCEDURAL MOTION

- 24-195 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 (Report 9.1) was put to the vote and carried unanimously.  
Crs Hunter and Ndiaye were not present for the vote.*

**Notice of Motion No. 9.2 Impacts of Urban Stormwater on Receiving Environments**

**File No:** I2024/670

Moved:

1. That Council receive a report on a future project to investigate changes in urban stormwater quantity and quality in a pilot catchment namely those parts of Mullumbimby that drain south-east onto neighbouring rural properties, including 75 New City Road and 1B Ann Street.
2. That the investigation use simplistic modelling as follows or similar, to compare before and after scenarios including under full uptake of our growth strategies (including the recently adopted Residential Settlement Strategy):
  - a) DRAINS to examine changes in stormwater quantities, and
  - b) MUSIC to examine changes in stormwater quality.
3. That the investigation then outline options for minimising those changes and for ameliorating the impacts if possible. Options could include:
  - a) annual maintenance of existing drains;
  - b) DCP guidance on retaining a percentage of private open space; and
  - c) new works like: relocating or enlarging drainage channels, adding treatment devices, changing downstream broadacre landforms. (Dey)

*The motion fell away for want of a Secunder.*

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## Notice of Motion No. 9.3 Modular For Affordable Housing Sydney 19-20 June 2024

File No: I2024/678

Moved that Council:

1. Recognises the value of Councillors attending conferences to expand and update their knowledge in fields relevant to Council's activities.
2. Acknowledges that we are in a housing crisis and that modular housing may be one of the primary ways we are able to deliver housing to meet needs in a timely and cost-effective manner.
3. Supports the registration, travel, and accommodation for Cr Ndiaye to attend the Modular for Affordable Housing 2024 Conference in Sydney from 19 to 20 June 2024.
4. Registers Cr Ndiaye before the early-bird fee offer ends on 31 May 2024.  
(Dey/Balson)

*The motion was put to the vote and declared lost.*

*Crs Dey and Balson voted in favour of the motion.*

*Crs Lyon, Swivel, Westheimer and Pugh voted against the motion.*

*Crs Hunter and Ndiaye were not present for the vote.*

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## Notice of Motion No. 9.4 Northern Rivers Compact

File No: I2024/702

- 24-196 Resolved** that Council endorses the Northern Rivers Compact for signing by the Mayor, in his role as Chair of the Northern Rivers Joint Organisation. (Lyon/Balson)

*The motion was put to the vote and carried.*

*Cr Dey voted against the motion.*

*Crs Hunter and Ndiaye were not present for the vote.*

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## MAYORAL MINUTE

There was no Mayor Minute provided.

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## PETITIONS

There were no Petitions tabled.

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**DELEGATES' REPORTS**

Cr Balson provided a Delegates Report on her attendance at the Kaleidoscope Mullumbimby Laneway Festival.

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*Cr Swivel left the Chambers at 4:32pm and did not return.*

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**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1      Arakwal National Park and Byron Coast Area Management Committees – Council nominees**

**File No:**                      I2024/595

**24-197      Resolved:**

1. The Council nominates Cr Michael Lyon, Cr Sarah Ndiaye and Cr Asren Pugh for consideration by the National Parks and Wildlife Service for the appointment of one Councillor to both Committees - Arakwal National Park Management Committee and the Byron Coast Area Management Committee.
2. That nomination forms, completed by the nominated Councillors, be provided to the General Manager along with each nominee's CV by 2pm on 20 May 2024, in order for staff to collate and lodge the nominations with the National Parks and Wildlife Service by the due date. (Lyon/Balson)

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

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.5 PLANNING - Report of the Planning Review Committee held 4 April 2024**  
**File No: I2024/577**

**24-198 Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held 4 April 2024 other than for DA 10.2023.465.1 at 56B Bangalow Road BYRON BAY which will come to Council for determination due to:

1. The number of public submissions received;
2. The validity of matters (traffic) raised in submissions; and
3. The perceived public significance of the application. (Dey/Pugh)

*The motion was put to the vote and carried unanimously.*

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

*Nil voted against the motion.*

*Crs Hunter, Ndiaye and Swivel were not present for the vote.*

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## REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.1 Report of the Local Traffic Committee Meeting held on 16 April 2024**  
**File No: I2024/613**

**24-199 Resolved** that Council notes the minutes of the Local Traffic Committee Meeting held on 16 April 2024. (Dey/Balson)

**24-200 Resolved** that Council adopts the following Committee Recommendation:

**Report No. 6.1 Goonengerry Public School Road Safety Changes**  
File No: I2024/436

### **Committee Recommendation 6.1.1**

That the Local Traffic Committee recommends Council endorse the road safety changes documented in Attachment 1 Goonengerry School Road Safety Design Plans - LTC March 2024, E2024/30389. (Dey/Balson)

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**24-201 Resolved** that Council adopts the following Committee Recommendation:

**Report No. 6.2 Automated Flood Signage Installation**

File No: I2024/447

**Committee Recommendation 6.2.1**

That the Local Traffic Committee and Council supports the installation of automated flood signage on Main Arm Road, Main Arm, Left Bank Road, Mullumbimby and Myocum Road, Myocum as shown in this report. (Dey/Balson)

**24-202 Resolved** that Council adopts the following Committee Recommendation:

**Report No. 6.3 Transport for NSW Temporary Delegation to Councils**

File No: I2024/455

This report has been deferred to the next available LTC meeting. (Dey/Balson)

**24-203 Resolved** that Council adopts the following Committee Recommendation:

**Report No. 7.1 Tuckeroo Avenue Linemarking Upgrade - Local Area Traffic Management**

File No: I2024/481

**Committee Recommendation 7.1.1**

That the Local Traffic Committee recommends Council endorse the proposed treatment to Tuckeroo Avenue as outlined in the design provided at Attachment 1 Tuckeroo Ave Linemarking Upgrade Design (E2024/36269). (Dey/Balson)

*The motions (24-199 to 24-203) were put to the vote and carried unanimously.  
Crs Hunter, Ndiaye and Swivel were not present for the vote*

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*There being no further business the meeting concluded at 4:40pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 13 June 2024.



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Mayor Michael Lyon