

Minutes Ordinary Meeting

Thursday, 5 September 2024



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 Meeting Minutes

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 5 SEPTEMBER 2024 COMMENCING AT 9.06AM AND CONCLUDING AT 4.24PM.

I2024/1237

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 and Cr P Westheimer

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Sarah Nagel (Acting Director Sustainable Environment and Economy)
Matt Meir (Legal Counsel)
Heather Sills (Manager Corporate Services)
Chris Soulsby (Manager Assets & Major Projects)
Chris Larkin ((Manager Sustainable Development)
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	Name	For/ Against	Representing Organisation	Via	
10.2	Cavanbah Centre	Bria Sydney	For	Byron Bay Basketball Association	In person
9.1	BayFM	Nell Schofield	For	BayFM	In person
9.2	Mullumbimby Civic Hall Courtyard	Julie Williams	Against	Mullumbimby District Neighbourhood Centre	Read by staff
9.4	Grant Application for Lot 22 Masterplan	Techa Beaumont	For	Mullum SEED	In person
10.1	Mayoral Minute – DA 10.2023.465.1 56B Bangalow Road	James Cockayne	Against	Petitioners re DA 10.2023.465.1	In person

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Submissions

Subject	Name	Representing Organisation	Via
Discrimination in Council advertising	Matthew Lambourne	Self	In person

Public Access

Report No and Title	Name	For/ Against	Representing Organisation	Via
Matter of Urgency (2) Urgent Escalation of Federal Main Street Design	Rachel Rowe	For	Goonengerry Public School parents	In person

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Lawson Street Drainage Upgrade	Tomas Ripley Martin	Lawson Street Small Business	In person
Thank you to Councillors	Anthony Pangallo	Self	Zoom

Questions

Question No. 1 - Lavertys Gap

Alan Dickens asked the following question (as read by staff):

There is no Heritage Order on the Laverty's Gap plant. The Heritage Order exists on the weir, race and hydro-electric plant. This needs to be clarified as it is misinformation. There is no Heritage Order preventing the Laverty's Gap water filtration plant from being upgraded. Where did the information as to a Heritage Order preventing an upgrade of the plant come from?

The Director Infrastructure Services provided the following response:

Information on heritage status of existing assets from Section 6.4 of the report :

The hydro-electric power complex, including the weir and channel is listed on the NSW State Heritage Register (listing number 01926).

An investigation of heritage significance (Ellsmore, D., 2007) also found that the WTP has heritage significance at a local level. The original plant that was built in 1940 is the part of highest significance at the site. The heritage advice suggests that the original components constructed in the 1940s must be conserved to retain heritage value. Based on this advice, any new plant constructed on the existing site or refurbishment of the existing plant will need to retain the original plant components.

Based on the question received, staff will undertake further investigation on the matter.

Question No. 2 - Funding for drainage upgrade

Rochelle Debono, on behalf of Miss Brown Vintage Byron Bay, asked the following question (as read by staff):

What is the expiry date for the funding for drainage upgrade and are you able to commence the project close to the expiry date? Local businesses need time to recover financially and the current schedule is leading into and during peak season. Many local businesses are requesting work to commence after Easter next year 2025.

The Manager Assets & Major Projects provided the following response:

There are two funding sources for the works being conducted on Lawson Street. One is the Election Commitment Grant (ECG) Grant. This funding needs to be spent by 30 June 2025.

The other is the Infrastructure Betterment Funding from the NSW State Government. This funding needs to be spent by 20 December 2024. If works were programmed to commence after Easter 2025, this would have significant impacts on the rest of the drainage program, which includes works on Byron Street, Fletcher Street and Lateen Lane. Moving the date of the Lawson Street works would push the deadline of these works out by several years, having adverse impacts on the ability of Council to deliver the works.

The Mayor provided the following response:

There would also be budget implications should the grant funding not be spent.

Question No. 3 – Bypass Offsets – Lilli Pilli Biobanking Agreement

Jan Barham asked the following question (as read by staff):

In relation to Biobanking Agreement BA 352, Lilli Pilli, now translated to a Biodiversity Stewardship Agreement, can an explanation be provided as to why the Mitchells Rainforest Snail Species Credits are not listed and are identified as “no species credits have been created on this site” on BCT website

The Director Infrastructure Services took the question on notice.

The meeting adjourned for a break and returned at 11.00am.

APOLOGIES

There were no apologies.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

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

REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no Declarations of Pecuniary or Non-Pecuniary Interest.

TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 24-429 Resolved** that the minutes of the Ordinary Meeting held 15 August 2024 be confirmed.
(Westheimer/Lyon)
The motion was put to the vote and carried unanimously.
-

RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

The Mayor suspended standing orders to allow for items to be reserved for debate, being:

STAFF REPORTS

Sustainable Environment and Economy

Report No. 13.3 PLANNING – 10.2023.342.1 – Community Title Subdivision Comprising Fifteen Neighbourhood Lots and 1 Association Property – 409 Coorabell Road Coorabell

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Ndiaye. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 24-430 and concluding with Resolution No. 24-437.

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Grants August 2024**
File No: I2024/616

24-430 **Resolved** that Council notes the Grant Submissions Report for the month of August 2024 (Attachment 1 #E2024/97352). (Lyon/Ndiaye).

Report No. 13.2 **Council Investments - 1 July 2024 to 31 July 2024**
File No: I2024/1094

24-431 **Resolved** that Council notes the report listing Council's investments and overall cash position as of 31 July 2024. (Lyon/Ndiaye).

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.4 **PLANNING - Section 4.55 10.2021.511.3 Modification to the eastern dwelling and swimming pool component of an approved dual occupancy at 865 Broken Head Road, Broken Head**
File No: I2024/1211

24-432 **Resolved** that pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2021.511.3 for Modification to the eastern dwelling and swimming pool component of an approved dual occupancy detailed on the architectural plans in Attachment 1 (E2024/60566) of this report, be approved by modifying conditions numbered 1, 5, 6, 15, 17 and 63, under Development consent number 10.2021.511.1, as indicated in Attachment 2 (E2024/99059) of this report. (Lyon/Ndiaye).

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

Nil voted against the motion.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.5 **Tree/Vegetation Vandalism Policy**
File No: I2024/1200

24-433 **Resolved** that having considered the submissions received, Council endorses the Tree/Vegetation Vandalism Policy (Attachment 1 - #E2021/30925) (Lyon/Ndiaye).

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 8 August 2024

File No: I2024/1142

24-434 Resolved that Council notes the minutes of the Finance Advisory Committee Meeting held on 8 August 2024. (Lyon/Ndiaye).

24-435 Resolved that Council adopts the following Committee recommendation:

Report No. 3.1 Adoption of Minutes of the Finance Advisory Committee Meeting held 9 May 2024

File No: I2024/735

Committee Recommendation 3.1.1

That the minutes of the Finance Advisory Committee Meeting held on 9 May 2024 be confirmed. (Lyon/Ndiaye).

24-436 Resolved that Council adopts the following Committee recommendation:

Report No. 4.1 Carryovers for Inclusion in the 2024-2025 Budget

File No: I2024/1089

Committee Recommendation 4.1.1

That Council approves the works and services (with respective funding) shown in Attachment 1 (#E2024/88511) to be carried over from the 2023/2024 financial year and that the carryover budget allocations be adopted as budget revotes for inclusion in the 2024/2025 Budget Estimates. (Lyon/Ndiaye).

24-437 Resolved that Council adopts the following Committee recommendation:

Report No. 4.2 Budget Review - 1 April to 30 June 2024

File No: I2024/1093

Committee Recommendation 4.2.1

1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2024/89025) which include the following results in the 30 June 2024 Quarterly Review of the 2023/2024 Budget:
 - a) General Fund – \$429,000 movement to the Estimated Unrestricted Cash Result
 - b) General Fund - \$54,423,800 increase in reserves
 - c) Water Fund - \$2,734,400 increase in reserves
 - d) Sewerage Fund - \$5,413,800 increase in reserves
2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$429,000 for the 2023/2024 financial year as at 30 June 2024. (Lyon/Ndiaye).

PROCEDURAL MOTION

- 24-438 Resolved** that Council change the order of business to deal with Reports 9.1 and 9.4 next on the Agenda. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

NOTICES OF MOTION

Notice of Motion No. 9.1 BayFM Support
File No: I2024/1095

- 24-439 Resolved** that Council:

1. Takes steps to support the promotion of BayFM as requested by BayFM's Community Engagement Officer, Nell Schofield (attached), namely that Council help secure support for road signage on both entrances to Byron Bay.
2. Explores methods to fund signage on Ewingsdale Road and Broken Head Road sought by BayFM to promote its critical contribution to our community and its culture.
3. Notes that the signage would communicate a positive local message such as "Listen Like a Local", "Cheer up, slow down, chill out." Or "Chill out. Turn on. Tune in".
4. Writes a letter of support to BayFM to support funding applications. (Swivel/Ndiaye)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.4 Grant Application for Lot 22 Masterplan
File No: I2024/1205

Moved that Council:

Supports Mullum SEED's application for a Regional Precinct and Partnerships Program grant in October 2024 for a placemaking initiative partnership with Mullum SEED and other key stakeholders for the purpose of funding collaborative planning, design, and new Masterplan development for Lot 22.

This support is subject to the following conditions:

1. That new stakeholders may only be brought into the project governance committee with the consent of Council and Council retains the authority to appoint representatives of other community stakeholders (e.g. Department of Education and Sporting organisations) to the governance of the project where it views this as essential to ensure equity, transparency and fairness and meet its statutory obligations.
2. That if the grant is successful the further development of partnership will be requirement to be based on principles outlined in Byron Shire Council's Strategic

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Partnership Policy.

The motion was put to the vote and declared lost.

Crs Coorey and Westheimer voted in favour of the motion.

Crs Dey, Swivel, Ndiaye, Lyon, Balson, Pugh and Hunter voted against the motion.

FORESHADOWED MOTION

24-440 Resolved that Council write to Mullum SEED advising it to consider lodging a formal proposal under Council's Strategic Partnerships Policy with a view to applying for funding under the Regional Precincts and Partnerships Grant Program for a Place Plan for Lot 22 DP 1073165 in Mullumbimby, so that Council can assess the proposal under the Policy and any other applicable Policies and Guidelines. (Dey/Hunter)

The motion was put to the vote and carried

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

Crs Coorey and Westheimer voted against the motion.

The meeting adjourned for lunch at 12.20pm and reconvened at 1.37pm.

Notice of Motion No. 9.2 Mullumbimby Civic Hall Courtyard

File No: I2024/1195

Moved that Council:

1. Engages with Council's Public Space Liaison Officers and Byron Assertive Outreach workers to increase patrols and outreach in that area.
2. As an interim measure, reviews the current courtyard design to Identify features that may inadvertently encourage rough sleeping and apply principles of Crime Prevention Through Environmental Design (CPTED) to reduce the risks.
3. Seeks legal advice on the excision of the courtyard from the Mullumbimby District Neighbourhood Centre (MDNC) lease in future and, subject to this advice, considers excising the courtyard from future sublease arrangements of the site post 2027.
4. Investigates the use of fencing with gates around the courtyard to protect the functional viability and safety of hall patrons, hirers and workers.
5. Investigates improved soundproofing of the hall adjacent to the courtyard between the neighbourhood centre and the hall. (Westheimer)

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PROCEDURAL MOTION

24-441 Resolved that Cr Westheimer be granted a two minute extension to his speech. (Lyon)

The motion was put to the vote and carried unanimously.

Notice of Motion Item 9.2 fell away for want of a seconder.

Notice of Motion No. 9.3 Bus Shelters in Tallowood Estate

File No: I2024/1203

24-442 Resolved that Council:

1. Identifies the optimal locations for bus shelters within the Tallowood Estate, ensuring that at least one shelter is fully accessible.
2. Identifies appropriate funding for the construction of these shelters through available contributions 7.12 (fixed levy) or grants. (Ndiaye/Balson)

The motion was put to the vote and carried unanimously.

Cr Swivel left the meeting at 2.10pm.

Notice of Motion No. 9.5 CONFIDENTIAL - Rent rise for resident of Holiday Park

File No: I2024/1206

24-443 Resolved that:

1. Pursuant to Section 10A(2)(b) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Rent rise for resident of Holiday Park.
2. The reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) discussion in relation to the personal hardship of a resident or ratepayer
3. On balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as it contains information about the rental agreement with a long-term resident of the holiday park. (Dey)

The motion was put to the vote and carried.

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

Nil voted against the motion.

Cr Swivel was not present for the vote.

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Cr Swivel returned to the meeting at 2.15pm.

Notice of Motion No. 9.5 CONFIDENTIAL - Rent rise for resident of Holiday Park
File No: I2024/1206

24-444 Resolved that Council:

1. Recognises the shortfall in affordable and public housing in Byron Shire and hence the value to society of permanent residency in our Holiday Parks;
2. Recognises the gratitude felt by many Holiday Park residents for that housing, including in buildings upgraded at public cost to current standards;
3. Discuss this matter at a Councillor Workshop before the end of 2024. (Dey/Ndiaye)

The motion was put to the vote and carried.

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

PROCEDURAL MOTION

24-445 Resolved that the meeting move out of confidential session.

(Lyon)

The motion was put to the vote and carried unanimously.

MAYORAL MINUTE

Mayoral Minute No. 10.1 DA 10.2023.465.1 56B Bangalow Road

File No: I2024/1214

Cr Lyon withdrew Mayoral Minute No. DA 10.2023.465.1 56B Bangalow Road.

Mayoral Minute No. 10.2 Cavanbah Centre

File No: I2024/1255

24-446 Resolved that Council:

1. Investigates expanding the Cavanbah Centre building eastwards in order to enable two extra basketball courts, including potential grant funding opportunities.
2. Investigates including a hydrotherapy warm water pool as part of the expansion.
3. Receives a report on the above by December 2024.

(Lyon)

The motion was put to the vote and carried unanimously.

PETITIONS

There were no Petitions tabled.

DELEGATES' REPORTS

There were no Delegate's Reports tabled.

STAFF REPORTS – SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 **PLANNING – 10.2023.342.1 – Community Title Subdivision
Comprising Fifteen Neighbourhood Lots and 1 Association
Property – 409 Coorabell Road Coorabell**

File No: I2024/1209

24-447 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.342.1 for Community Title Subdivision Comprising Fifteen Neighbourhood Lots and 1 Association Property, be granted consent subject to the conditions of approval in Attachment 1 to this Report (E2024/98437) and condition 38(b) is amended to read as follows:

38 (b) Dwelling Envelope

Restrictions to limit the erection of dwellings to:

- i within the nominated indicative building envelope for Lot 13 as indicated on the approved Subdivision Comparison and Subdivision Layout plans or to the south or south west of that indicative building envelope;
- ii within the nominated indicative building envelope for Lot 14 as indicated on the approved Subdivision Comparison and Subdivision Layout plans or to the south, south west or west of that indicative building envelope; and
- iii for Lots 9 and 10, within the RU2 zoned part of those lots which is located to the south of the C2 zoned part of those lots, as indicated on the approved Subdivision Comparison plans;

except as otherwise approved by Council.

(Dey/Ndiaye)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

URGENCY MOTIONS

No. Urgency 1 Matter of Urgency - Lawson Street Drainage Works

24-448 Resolved that Council considers the matter of the Lawson Street Drainage Works urgent and deals with it at the meeting as works are due to commence on Monday 9 September 2024. (Coorey/Ndiaye)

The motion was put to the vote and carried unanimously.

The Chairperson ruled that the matter was of great urgency.

24-449 Resolved that:

1. Noting the short notice that business owners were given regarding the commencements of drainage works in Lawson Street, that Council staff and the contractor meet with affected business owners to find ways to reduce negative impacts including, but not limited to, consideration of the following:
 - dust and noise management; and
 - possible extension/variation of business hours to avoid concurrence with drainage works; and
 - possible temporary locations for 'pop-up' shops so that businesses have alternative selling locations; and
 - signage that announces 'business as usual' and directs people to the businesses; and
 - deferral of footpath dining licence fees; and
 - advertising program by Council to promote the businesses; and
 - other activities such as entertainment or special activities that draw people to the area; and
 - ways to expedite works, including time of day for various works.
2. That this meeting occur as soon as possible because the works are due to commence on Monday 9 September. (Coorey/Ndiaye)

The motion was put to the vote and carried unanimously.

**No. Urgency 2 Matter of Urgency - Immediate Investigation and
Implementation of Temporary Safety Measures on Federal
Main Street**

- 24-450** **Resolved** that Council considers the matter of the Immediate Investigation and Implementation of Temporary Safety Measures on Federal Main Street urgent and deals with it at the meeting due to safety risks identified, including a near-miss incident involving a child on Tuesday 3 September 2024. (Ndiaye/Coorey)

The motion was put to the vote and carried unanimously.

The Chairperson ruled that the matter was of great urgency.

Cr Swivel left the Chambers at 03:28PM and did not return.

- 24-451** **Resolved** that in relation to road safety issues raised by the community at Federal Village, Council:

1. Conducts an immediate investigation into temporary safety measures to address the heightened risks associated with Federal Main Street.
2. Focus this investigation on solutions that can be implemented swiftly to enhance pedestrian safety and manage traffic effectively during peak times, especially around school drop-off and pick-up periods.
3. Based on the findings of the investigation, implement necessary interim safety measures to mitigate current dangers.
4. Receive a report on the investigation and implementation of temporary safety measures, detailing actions taken and any further recommendations for long-term safety improvements.
5. Seek funding to progress with the safety and traffic measures included in the Federal Masterplan. (Ndiaye/Dey)

The motion was put to the vote and carried unanimously.

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No. Urgency 3 Matter of Urgency - Developer Contributions to Wildlife Crossings

24-452 Resolved:

That Council considers the matter of Developer Contributions to Wildlife Crossings urgent and deals with it at the meeting due to the recent increase in wildlife deaths.

(Balson/Ndiaye)

The motion was put to the vote and carried unanimously.

The Chairperson ruled that the matter was of great urgency.

24-453 Resolved that Council staff investigate any potential mitigation measures that can be implemented swiftly to help avoid more wildlife deaths on our roads. (Dey/Ndiaye)

The motion was put to the vote and carried unanimously.

There being no further business the meeting concluded at 4.24pm.

I hereby certify that these are the true and correct Minutes of this Meeting as confirmed at Council's Ordinary Meeting on 24 October 2024.

.....
Mayor Michael Lyon