

Minutes Ordinary (Planning) Meeting Thursday, 5 December 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 (Planning) Meeting Minutes
5 December 2024

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 5 DECEMBER 2024 COMMENCING AT 11:05AM AND CONCLUDING AT 5:03PM.

I2024/1608

PRESENT: Cr S Ndiaye (Mayor), Cr J Dods, Cr E Hauge, Cr D Kay, Cr M Lowe, Cr M Lyon, Cr A Pugh, Cr J Swain, Cr D Warth

Staff: Mark Arnold (General Manager)
Esmeralda Davis (Director Corporate and Community Services)
Phil Holloway (Director Infrastructure Services)
Shannon Burt (Director Sustainable Environment and Economy)
Matt Meir (Legal Counsel)
Heather Sills (Manager Corporate Services)
Malcolm Robertson (Manager Open Spaces and Facilities)
Steve Daniels (Senior Planner – Land Use) – item 13.3
Chris Larkin (Manager Sustainable Development) – item 13.12
Claire McGarry (Place Manager) – item 13.1
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	For/ Against	Name	Representing Organisation	Via
13.1 Byron Community Market review	For	Carl Taylor & Louise O'Connell	Byron Community Centre Ltd	In Person
		Brent Wayling	Saltys, Byron Markets Stallholder	To be read by Staff / In Person
	Against	Paul Waters	Fundies Organics Byron Bay	In Person
13.3 26.2022.2.1 Gulgan North Planning Proposal (Business & Industrial Land Strategy, Site 5)	For	Brandon Saul and Steve Connelly	Gulgan Road Property Pty Ltd	In Person

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Report No and Title		For/ Against	Name	Representing Organisation	Via
13.4	26.2024.7.1 - Planning Proposal - 32 Grays Lane Tyagarah	Against	Duncan Dey	Self	In Person
13.8	10.2024.14.1 - Rural Community Title Subdivision Comprising Fifteen (15) Neighbourhood Lots and One (1) Community Lot, Access Roads, Ancillary Works and Ecological Works – 31 Alidenes Road, Wilsons Creek.	For	Luke Houghton	Self	In Person
		Against	Leveda Smith	Self	In Person
13.11	Letter of Offer - Planning Agreement for Gulgan Village, The Saddle Road, Brunswick Heads	For	Brandon Saul and Steve Connelly	Gulgan Road Property Pty Ltd	In Person
13.9	10.2024.20.2 Section 8.2 review of refusal of use of land and existing shed for landscaping material supplies 1178 Myocum Road MYOCUM	Against	Joe Davidson	Town Planning Studio	Zoom

PROCEDURAL MOTION

24-554 Resolved that Public Access be extended.

(Ndiaye/Kay)

The motion was put to the vote and carried unanimously.

Report No and Title		For/ Against	Name	Representing Organisation	Submission Received in form of
13.12	DA 10.2024.230.1 - Staged DA, Consolidation of two allotments into one; dual occupancy (detached) with swimming pools; and strata subdivision – 2 Brownell Drive, Byron Bay 2481	For	Jan Barham	Self	Read by staff
		Against	Pete Kennon	Kennon Architects	In Person
			Chris Pratt	Planning Resolutions	In Person
			Antony Catalano	Self	In Person

Cr Lyon left the Chambers at 12.29pm and returned at 12.35pm.

Cr Hauge left the Chambers at 12.42pm and returned at 12.44pm.

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Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Ministry of Ageing	Anjali Walsh	Self	In Person

Cr Lowe left the Chambers at 12.49pm and returned at 12.51pm.

Question No. 1 Flood Hazard on Main Arm Road

Duncan Dey asked the following question:

In the early hours of Sunday 1 December when I understand four vehicles were washed off Main Arm Road, including two into the River and one driver rescued after some hours in the River, were the newly installed automatically activated flashing lights actually flashing?

The Director Infrastructure Services provided the following response:

Staff have reviewed data from the recently installed activated flood warning system on Main Arm Road. Based on the adopted installation settings, the system is reporting that it was activated between the following periods:

- Saturday at 11:44pm to 6:54am Sunday morning;*
- Sunday afternoon from 2:29pm to 3:04pm; and further more*
- Sunday afternoon from 3:39pm to 7:44pm.*

Question No. 2 Demographics

Anjali Walsh asked the following question:

Does Council know or could Council find out the percentages of pensioners within Byron Shire are renters, as opposed to owners of the home they live in?

The Director Corporate and Community Services provided the following response:

Those statistics should be available through the Australian Bureau of Statistics. I don't have them on hand, but I can certainly get them and circulate them. Question taken on notice.

The meeting adjourned at 12.57pm for a lunch break and reconvened at 2.01pm.

APOLOGIES

There were no apologies.

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.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Kay declared a pecuniary interest in Report 13.1. The nature of the interest being that her business, Explore Byron Bay, is a stall holder. Cr Kay will leave the Chamber and will not participate in discussion and the vote.

Cr Dods declared a non-pecuniary interest in Report 13.3. The nature of the interest being that he has a periodic, minor business relationship with Planners North (PN), who have worked on this planning proposal. His current relationship with PN is infrequent and not particularly close as defined by Clause 5.9 (b) of the Code of Conduct for Councillors Policy. He has also had past minor business engagements with McCartney Young Lawyers who have prepared the VPA for this item. The engagement was minor, and the relationship is not particularly close as defined by Clause 5.9 (b) of the Code of Conduct for Councillors Policy. Cr Dods elected to remain in the Chamber and will participate in discussion and the vote.

Cr Warth declared a non-pecuniary interest in Report 13.4. The nature of the interest being that he has previously engaged Joe Davidson from Town Planning Studio too provide town planning services for a property owned. The relationship is not ongoing. Cr Warth elected to remain in the Chamber and will participate in discussion and the vote.

Cr Dods declared a non-pecuniary interest in Report 13.6. The nature of the interest being that Part of this Status Report gives an update on the assessment of DA 2023.454.1 - Community Title Subdivision at 53 McAuleys Ln Myocum. He was engaged as lead design coordinator during the DA preparation for this application. He has also had some minor engagement during the assessment period. He considers the interest in this particular item to be not significant because: a) It is a public status report; b) It only requires Councillors to note the report; c) The relevant DA is being determined by the NRPP (not Council), and; d) The nature of this item relates to the Status Report, not the respective DA. Cr Dods elected to remain in the Chamber and will participate in discussion but will leave the Chamber and will not participate in the vote.

Cr Dods declared a non-pecuniary interest in Report 13.8. The nature of the interest being that In November 2021 he was engaged to produce a concept design for this site by the landowner. Production of a concept plan was the extent of my engagement, which ended in January 2022. He's had no involvement with this DA. He's had no involvement with the landowner since January 2022. He also have a periodic business relationship with Balanced Systems Planners, who provided town planning services for this DA. He's had

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no engagement with them since 2022, and the relationship is not particularly close as defined by Clause 5.9 (b) of the Code of Conduct for Councillors Policy. As such Cr Dods determined the interest in this item to be not significant. As he previously was engaged by to provide design services on this property. Cr Dods elected to remain in the Chamber and will participate in discussion but will leave the Chamber and will not participate in the vote.

Cr Dods declared a non-pecuniary interest in Report 13.9. The nature of the interest being that Town Planning Studio (the applicant) was engaged to by his father in 2023 to provide minor town planning advice for a property he owns on Banksia Dr, Byron Bay. The engagement was minor, and the relationship is not particularly close as defined by Clause 5.9 (b) of the Code of Conduct for Councillors Policy. As such Cr Dods determined the interest in this item to be not significant. Cr Dods elected to remain in the Chamber and will participate in discussion and the vote.

Cr Dods declared a non-pecuniary interest in Report 13.11. The nature of the interest being that he has a periodic, minor business relationship with Planners North (PN), who have worked on this Letter of Offer. His current relationship with PN is infrequent and not particularly close as defined by Clause 5.9 (b) of the Code of Conduct for Councillors Policy. Also, Cr Dod's mothers de-facto partner sits on the board of the Byron Shire Community Land Trust (BSCLT). His position is voluntary and not paid. The trust is a not-for profit organisation that exists to conserve and manage land in perpetuity for the provision of affordable housing. The BSCLT has no direction in the planning and development of the Gulgan Village site. Cr Dods has had no involvement in any proposals for the Gulgan Village site, or the BSCLT. Cr Dods elected to remain in the Chamber and will participate in discussion and the vote.

Cr Kay declared a non-pecuniary interest in Report 13.11. Cr Kay elected to leave the Chamber and will not participate in discussion and the vote.

Cr Hauge declared a non-pecuniary interest in Report 13.12. The nature of the interest being that prior to being a Councillor, she had informal conversations/discussions with concerned neighbours regarding the DA. Cr Hauge elected to remain in the Chamber and will participate in discussion and the vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with section 440AAB of the Local Government Act and clause 4.14 of the Code of Conduct for Councillors, a Primary Return of Interests is tabled for Cr Elia Hauge.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

24-555 Resolved that the minutes of the Ordinary (Planning) Meeting held 14 November 2024 be confirmed. (Dods/Ndiaye)

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

General Manager

Report No. 13.1 Byron Community Market review

Sustainable Environment and Economy

Report No. 13.3 26.2022.2.1 Gulgan North Planning Proposal (Business & Industrial Land Strategy, Site 5)

Report No. 13.4 PLANNING - 26.2024.7.1 - Planning Proposal - 32 Grays Lane Tyagarah

Report No. 13.5 Update Resolution 23-056 Short Term Rental Accommodation Consent Conditions

Report No. 13.8 PLANNING - DA 10.2024.14.1 - Rural Community Title Subdivision Comprising Fifteen (15) Neighbourhood Lots and One (1) Community Lot, Access Roads, Ancillary Works and Ecological Works – 31 Alidenes Road, Wilsons Creek.

Report No. 13.11 Letter of Offer - Planning Agreement for Gulgan Village, The Saddle Road, Brunswick Heads

Report No. 13.12 PLANNING - DA 10.2024.230.1 - Staged DA, Consolidation of two allotments into one; dual occupancy (detached) with swimming pools; and strata subdivision. – 2 Brownell Drive, Byron Bay 2481

In accordance with his declaration of interest in relation to items 13.6 and 13.9, Cr Dods left the meeting during the vote on the following items at 2.08pm.

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Swain. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 24-561 and concluding with Resolution No. 24-561. The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Swain. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **24-556** and concluding with Resolution No. **24-561**.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.2 **In principle support for temporary accommodation lease extensions between Council and NSW Reconstruction Authority**

File No: I2024/1577

24-556 **Resolved** that Council authorises the General Manager:

1. To respond to the NSW Reconstruction Authority request to confirm in principle support for the one year lease extension of the Bayside site (*Lots 51 and 69 in Deposited Plan 851902 - Excelsior Circuit and Torakina Road Brunswick Heads*); and
2. To continue, under delegation, discussions with the NSW Reconstruction Authority on the transition plan for both the Tweed Street and Bayside sites. (Ndiaye/Swain)

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.6 **Status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)**

File No: I2024/1491

24-557 **Resolved** that Council notes the status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP). (Ndiaye/Swain)

Report No. 13.7 **PLANNING - Report of the Planning Review Committee held 31 October 2024**

File No: I2024/1506

24-558 **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held 31 October 2024. (Ndiaye/Swain)

Report No. 13.9 **PLANNING - 10.2024.20.2 Section 8.2 review of refusal of use of land and existing shed for landscaping material supplies 1178 Myocum Road MYOCUM**

File No: I2024/1426

24-559 **Resolved** that Council, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority uphold the refusal of application 10.2024.20.1, for the reasons as follows:

1. Pursuant to Section 4.15(1)(a)(i) the proposed development is inconsistent with the objectives of the RU1 Primary Production Zone under Byron LEP 2014 as the

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existing shed and sand stockpile detract from the scenic quality of the locality.

2. Pursuant to Section 4.15(1)(a)(i) the application has not demonstrated compliance with Clause 5.21(2) – “Flood planning” of Byron LEP 2014.
3. Pursuant to Section 4.15(1)(a)(iii) the application has not demonstrated compliance with Chapter C2 – “Areas affected by flood” of Byron DCP 2014.
4. Pursuant to Section 4.15(1)(b) the proposed development has not demonstrated that it will not have a significant adverse impact upon the built environment with respect to potential flood impacts on adjoining land, and the natural environment having regards to the visual amenity impacts of the existing shed and sand stockpile on the locality.
5. Pursuant to Section 4.15(1)(c) the application has not demonstrated that the site is suitable for the proposed development with respect to visual amenity impacts and potential flood impacts on adjoining land. The application did not provide an assessment of the impacts of the existing sand stockpile on the natural flow of flood waters during flood events.
6. Pursuant to Section 4.15(1)(e) the proposed development is not in the public interest having regards to visual amenity impacts, the objectives of the zone, potential flood impacts on adjoining land, and the bonafides of the proposal as a landscaping material supplies business given that concrete batching equipment remains onsite and use of such equipment is prohibited in the zone, and lack of attempt at compliance with the approved DA 10.2020.568.1 which has since lapsed.

And an additional reason for refusal be added, as follows:

7. Pursuant to Section 4.15(1)(a)(i) the proposed development is inconsistent with State Environmental Planning Policy (Resilience and Hazards) 2021, Part 2 Division 3 – Coastal Environment Area – Section 2.10 (1) (a) that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the integrity and resilience of the hydrological (surface and groundwater) environment.

(Ndiaye/Swain)

Crs Ndiaye, Lyon, Pugh, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.

Nil voted against the motion.

Cr Dods was not present for the vote.

Report No. 13.10 PLANNING - DA 10.2024.259.1 - Use of Secondary Dwelling - 80 Vallances Road Mullumbimby

File No: I2024/1545

24-560 Resolved that:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.259.1 for use of secondary welling, be

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granted deferred commencement consent subject to the conditions in Attachment 1 (E2024/134530); and

2. Council's Compliance Services Team is notified of the determination in relation to the outstanding demolition works order. (Ndiaye/Swain)

Crs Ndiaye, Lyon, Pugh, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.

Nil voted against the motion.

Cr Dods was not present for the vote.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.13 Expression Of Interest - Panel of Contractors for Infrastructure Recovery Program Delivery

File No: I2024/1488

24-561 Resolved that Council:

1. Endorses the establishment of a panel of contractors for flood damage repairs, as identified in the Evaluation Report (E2024/135351); and
2. Makes public its decision, including the name and amount of the successful Panel Members, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021. (Ndiaye/Swain)

The motions (Resolutions 24-556 to 24-561) were put to the vote and carried unanimously. Cr Dods was not present for the vote.

Cr Dods returned to the Chambers at 2:09pm.

PROCEDURAL MOTION

24-562 Resolved that Council change the order of business to deal with Reports 13.3, 13.11, 13.12, 13.1, 13.4 and 13.8 next on the Agenda. (Ndiaye/Dods)

The motion was put to the vote and carried unanimously.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 **26.2022.2.1 Gulgan North Planning Proposal (Business & Industrial Land Strategy, Site 5)**

File No: I2024/1235

24-563 Resolved that Council:

1. Amends the exhibited Planning Proposal in Attachment 1 (E2024/116338) to include the following changes as discussed in the report:
 - a) Revise the Minimum Lot Size (MLS) Map for areas F, G and H (Figure 5 in this report) to show the following MLS:
 - Area F – 12 ha MLS
 - Area G – 6 ha MLS
 - Area H – 8 ha MLS
 - b) Revises the Planning Proposal zone boundaries, and other relevant maps, to accommodate the preferred road boundary alignment (Figure 1 in Attachment 16 - E2024/134795)
2. Revises Figure 3 of the Ecological Assessment Report (Attachment 12 - E2023/102499) to clearly delineate existing and proposed Conservation zoned land.
3. Amends the Aboriginal Cultural Heritage Assessment Report (Attachment 3 E2024/116766) in accordance with the recommended management measures noted in the Heritage NSW submission (Attachment 14 - E2024/136008).
4. Forwards the amended Planning Proposal and supporting information to the NSW Department of Planning, Housing & Infrastructure and finalise the plan.
5. Updates the draft Planning Agreement (Attachment 2 - E2024/116632) to reference the final version of the Traffic Impact Study supported by TfNSW.
6. Undertakes a further final legal review of the draft Planning Agreement after changes and administers the signing and registration of the final Planning Agreement.
7. Following finalisation of the Planning Proposal:
 - a) Staff will update the Preliminary Draft DCP (Attachment 9 - E2024/116947) and prepare a report to Council for consideration, including community engagement options for public exhibition of the Draft DCP.
 - b) In updating the Draft DCP, staff will consider relevant matters raised in public submissions (Attachment 16 - E2024/134795).

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8. Ensures that infrastructure design within the boundaries of this planning proposal prioritise people and active transport, including ensuring it is consistent with Council's DCP, PAMP and other plans for active transport. (Dods/Pugh)

The motion was put to the vote and carried unanimously.

Crs Lyon, Ndiaye, Pugh, Dods, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.

Nil voted against the motion..

Report No. 13.11 Letter of Offer - Planning Agreement for Gulgan Village, The Saddle Road, Brunswick Heads

File No: I2024/1553

PROCEDURAL MOTION

- 24-564 Resolved** that this matter rest on the table. (Ndiaye/Dods)

The motion was put to the vote and carried unanimously.

Report No. 13.12 PLANNING - DA 10.2024.230.1 - Staged DA, Consolidation of two allotments into one; dual occupancy (detached) with swimming pools; and strata subdivision. – 2 Brownell Drive, Byron Bay 2481

File No: I2024/1579

- 24-565 Resolved** pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.230.1 for Staged DA, consolidation of two allotments into one; dual occupancy (detached) with swimming pools; and strata subdivision, 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 is inconsistent with Section 2.1 of State Environmental Planning Policy (Resilience and Hazards) 2021. The proposed development fails to protect the environmental assets of the coastal zone.
2. Pursuant to Section 4.15 (a)(i) of the *Environmental Planning and Assessment Act 1979*, the application does not comply with Section 2.7(4) of State Environmental Planning Policy (Resilience and Hazards) 2021. Sufficient measures have not been taken to protect and enhance the ecological integrity of littoral rainforest.
3. Pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application does not comply with Chapter 2 Coastal Management, Section 2.10(1)(d) of the State Environmental Planning Policy (Resilience and Hazards) 2021. The proposed development impacts negatively on native vegetation.
4. Pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act*

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1979, the application does not comply with Chapter 2 Coastal Management, Section 2.11(1)(c) of the State Environmental Planning Policy (Resilience and Hazards) 2021. The bulk, scale and size of the proposed development impacts negatively on the surrounding coastal and built environment.

5. Pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Clause 1.2(2)(a)(iii) of Byron Local Environmental Plan 2014 as it is inconsistent with the principle of conserving biological diversity and ecological integrity.
6. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Clause 4.3 Height of Buildings of Byron Local Environmental Plan 2014. The proposed development breaches the maximum height of buildings development standard of 9m.
7. Pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application does not comply with Clause 6.2(1) Earthworks of Byron Local Environmental Plan 2014. The proposed earthworks are likely to have a detrimental impact on environmental functions and processes on the surrounding land.
8. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Byron Local Environmental Plan 2014 Clause 6.6(d) Essential Services. Insufficient information has been provided to enable a thorough assessment of the lawful point of discharge of stormwater and adverse stormwater impacts downstream of the site.
9. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Byron Local Environmental Plan 2014 Clause 6.6(e) Essential Services. The proposed development fails to provide a) safe entry and exit from Brownell Drive; and b) inadequate verge width. Moreover, insufficient information was provided to enable a thorough assessment of the proposal. Deficiencies include: a road safety audit of the full Brownell Drive frontage; and a Landslide Susceptibility Risk assessment, including, but not limited to, Brownell Drive.
10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Byron Development Control Plan 2014 Sections B3.2.1(7) Road Access – General (Including Driveways) and B3.2.1(9) Council Controlled Roads. The proposed driveways and adjoining roadworks are inconsistent with the Northern Rivers Development Design and Construction Manual. The proposed development fails to provide a) safe entry and exit from Brownell Drive; and b) inadequate verge width. Moreover, insufficient information was provided to enable a thorough assessment of the proposal. Deficiencies include: a road safety audit of the full Brownell Drive frontage; and a Landslide Susceptibility Risk assessment, including, but not limited to, Brownell Drive.
11. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Byron Development Control Plan 2014 Section B3.2.3 Stormwater Management. Insufficient

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information has been provided to enable a thorough assessment of the lawful point of discharge of stormwater and adverse stormwater impacts downstream of the site.

12. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the application is inconsistent with Section B14.2 of Byron Development Control Plan 2014 Excavation and fill in all zones. The proposed development exceeds the excavation limit of 1m.
13. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section D1.5.2 Character (Dual Occupancy and Semi-Detached Dwellings) and E5.8.4 Character Narratives Pocket C Wategos Beach of Byron Development Control Plan 2014. The bulk and scale of the proposed development is inconsistent with surrounding development.
14. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section D1.2.1 Building Height Plane. The proposed development encroaches into the building height plane.
15. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section D1.2.2 setbacks from Boundaries. The proposed development is inconsistent setback requirements.
16. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section E5.8.3 Design Considerations, Chapter E5 Certain Locations in Byron Bay, and Ewingsdale of Byron Development Control Plan 2014. The proposed development is not small scale.
17. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section E5.10 Wategos Beach Performance Criteria 1 & 2 and Prescriptive Measures 1 & 3 of Byron Development Control Plan 2014. The proposal: fails to minimise site excavation for the basement and garage; fails to avoid removal of native vegetation; exceeds the 50m² maximum for basements and subterranean car parks; and fails to limit excavation.
18. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with Section F1.2.1 Development Envelope Controls, Chapter F1 Biodiversity of Byron Development Control Plan 2014. The proposed Development does not meet the minimum Ecological Setback Requirements from High Environmental Value Vegetation and Threatened and Significant Species Mapping on site.
19. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Section F1.1.3(3) Objectives of Chapter, Chapter F1 Tree, and Vegetation Management of Byron Development Control Plan 2014. The proposed development fails to avoid and minimise wherever possible the unnecessary removal of native vegetation.

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20. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application does not satisfactorily address the likely impacts of the proposed development, including environmental impacts on natural environments in the locality. The biodiversity assessment is inconsistent with the Section 7.1.1 of the Biodiversity Assessment Method (BAM) and is therefore inconsistent with Section 6.12 of the *Biodiversity Conservation Act 2016* as the proposed development fails to avoid or minimise direct and indirect impacts on littoral rainforest.
21. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application does not satisfactorily address the likely impacts of the proposed development, including environmental impacts on natural environments in the locality. The proposed development is inconsistent with Section 1.3(a) of the *Biodiversity Conservation Act 2016* as it fails to conserve the biodiversity values of the littoral rainforest.
22. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development can potentially negatively impact the natural and built environments. Insufficient information has been provided to enable a thorough assessment of slope stability to ensure the proposed development will not adversely impact the site and its surrounds.
23. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not suitable for the subject site. The proposed development will have detrimental impacts on littoral rainforest and high environmental value vegetation within the site.
24. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest. The proposed removal of littoral rainforest and the large scale of the development in a residential area will negatively impact the natural and built environment. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

24-566 Resolved that Report No. 13.11 be lifted from the table. (Ndiaye)

The motion was put to the vote and carried unanimously.

Report No. 13.11 Letter of Offer - Planning Agreement for Gulgan Village, The Saddle Road, Brunswick Heads

File No: I2024/1553

Moved that Council:

1. Agrees to provide in principle support to the terms in the Letter of Offer to enter into a Planning Agreement (PA) for Gulgan Village, The Saddle Road, Brunswick Heads

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Attachment 1 (#E2024/137961) subject to the amendments shown in Tables 1 and 2 of the report; with the following additions / changes where appropriate to Table 2:

- a) The planning agreement will require the proponent to provide affordable housing at a rate at 10%;
 - b) The planning agreement recognises that the proponent would prefer that the Gulgan Village Planning Agreement be used to address the mechanism for the provision of affordable housing rather than this aspect being incorporated into the Affordable Housing Contributions Scheme.
2. Requests the developer to prepare a draft Planning Agreement (PA) on the basis of the Council resolution and resubmit this to staff;
 3. Receives a report on the Planning Proposal for Gulgan Village along with the draft Planning Agreement in February 2025 for gateway determination. (Lyon)

PROCEDURAL MOTION

24-567 Resolved that Cr Lyon be granted a two minute extension to his speech. (Ndiaye/Dods)

The motion was put to the vote and carried unanimously.

The motion (Lyon) fell away for the want of a Seconder.

Report No. 13.11 Letter of Offer - Planning Agreement for Gulgan Village, The Saddle Road, Brunswick Heads

File No: I2024/1553

24-568 Resolved that Council:

1. Agrees to provide in principle support to the terms in the Letter of Offer to enter into a Planning Agreement (PA) for Gulgan Village, The Saddle Road, Brunswick Heads Attachment 1 (#E2024/137961) subject to the amendments shown in Tables 1 and 2 of the report; with the following additions / changes where appropriate to Table 2:
 - a) The planning agreement will require the proponent to provide affordable housing at a rate to be determined following receipt of the expert report(s), prepared at the cost of the proponent, containing the independent viability testing undertaken generally in accordance with the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) and agreed to by Council.
 - b) The planning agreement recognise an arrangement with the Bundjalung of Byron Bay (Arakwal) Aboriginal Corporation (BoBBAC) that will see a 5% dedication of the lots and or area on the Gulgan Village Site.

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That this contribution is part of the affordable housing contribution proportion in point a.

- c) The planning agreement recognises that the proponent would prefer that the Gulgan Village Planning Agreement be used to address the mechanism for the provision of affordable housing rather than this aspect being incorporated into the Affordable Housing Contributions Scheme.
2. Requests the developer to prepare a draft Planning Agreement (PA) on the basis of the Council resolution and resubmit this to staff;
3. Receives a report on the Planning Proposal for Gulgan Village along with the draft Planning Agreement in February 2025 for gateway determination. (Ndiaye/Hauge)

PROCEDURAL MOTION

- 24-569 Resolved** that Council move into Committee to allow for free debate. (Pugh/Dods)
The motion was put to the vote and carried unanimously.

Phil Holloway left the Chambers at 3.01pm.

PROCEDURAL MOTION

- 24-570 Resolved:**
That Council move out of Committee and resume the Ordinary Meeting. (Ndiaye/Hauge)
The motion was put to the vote and carried unanimously.

Malcolm Robertson joined the meeting at between 3.13pm.

PROCEDURAL MOTION

- 24-571 Resolved** that this matter rest on the table. (Ndiaye/Hauge)
The motion was put to the vote and carried unanimously.

*The meeting adjourned at 3.23pm for a recess break and reconvened at 3.44pm.
Cr Kay did not return to the meeting at this time.*

The Mayor tabled Cr Kay's Declaration of Interest in Report 13.11.

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PROCEDURAL MOTION

24-572 Resolved that Report No. 13.11 be lifted from the table. (Ndiaye)

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

*The motion (13.11) was put to the vote and declared carried.
Cr Lyon voted against the motion.
Cr Kay was not present for the vote.*

Cr Kay returned to the Chambers at 3.50pm.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Byron Community Market review**
File No: I2024/1522

24-573 Resolved that Council:

1. Notes the comprehensive impact analysis undertaken by Destination Research in relation to the Byron Community Markets' location in the Byron town centre;
2. Works with the Byron Community Market managers and Byron Bay Chamber of Commerce to improve the market's operations in this location as per the actions in the table on page 9 of this report;
3. Supports Byron Community Centre Management to undertake any required changes within the approved footprint to more sustainably manage markets operations;
4. Works with market managers to maximise capacity within the market footprint in the rail corridor, Railway Park and Lawson St south carpark in place of Jonson St stalls if funding is unable to be secured for traffic management; and
5. Continue to look at options to activate pedestrian precincts in Byron and other town centres in the Shire. (Warth/Hauge)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

24-574 Resolved that Council move into Committee to allow for free debate. (Hauge/Kay)

The motion was put to the vote and carried unanimously.

Crs Kay and Pugh left the Chambers at 4.08pm.

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PROCEDURAL MOTION

24-575 Resolved that Council move out of Committee and resume the Ordinary Meeting.
(Ndiaye/Dods)

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

Cr Pugh returned to the Chambers at 4.13pm.

*The motion (13.1) was put to the vote and declared carried.
Cr Kay was not present for the vote.*

Cr Kay returned to the Chambers at 4.16pm.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.4 PLANNING - 26.2024.7.1 - Planning Proposal - 32 Grays Lane
Tyagarah**
File No: I2024/1424

24-576 Resolved that Council:

1. Proceeds with the planning proposal as attached to this report (Attachment 1 – E2024/134068) to amend LEP 2014 to permit a dwelling house with consent on the subject land;
2. Forwards the planning proposal, draft Planning Agreement and supporting information to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination;
3. Pending a positive Gateway determination and completion of further studies (if required), undertakes public exhibition of the planning proposal and draft Planning Agreement in accordance with the determination requirements; and
4. Considers submissions in a report post-exhibition that includes any recommended changes to the planning proposal for final adoption.
5. Requests the applicant provide a more detailed flood assessment (including 2100 flood levels under climate change, and inundation study) to support exhibition should the proposal pass gateway determination. (Hauge/Lyon)

The motion was put to the vote and carried unanimously.

Crs Lyon, Ndiaye, Pugh, Dods, Swain, Warth, Kay and Hauge voted in favour of the motion.

Cr Lowe voted against the motion.

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Report No. 13.8 **PLANNING - DA 10.2024.14.1 - Rural Community Title Subdivision Comprising Fifteen (15) Neighbourhood Lots and One (1) Community Lot, Access Roads, Ancillary Works and Ecological Works – 31 Alidenes Road, Wilsons Creek.**
File No: I2024/1431

Cr Dods left the Chambers at 4.19pm in accordance with his tabled Conflict of Interest Declaration.

24-577 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 30 1979, Development Application No. 10.2024.14.1 for Rural Community Title Subdivision comprising fifteen (15) neighbourhood lots and one (1) community lot, access roads, ancillary works, and ecological works, be granted consent subject to the conditions in Attachment 1, and Condition 20 being amended to include:

i) Passing Bay

A Passing Bay shall be provided on the western access road to the south of the culvert over Yankee Creek and the adjoining property to the south known as 57 Alidenes Road, Wilsons Creek in the vicinity of the intersection to the internal road to Lots 13, 14 and 15. The passing bay combined with the road to be a minimum of 6 metres wide and 20m long. Details to be submitted in the Engineering Construction Plans for approval.

j) Access to 57 Alidenes Road, Wilsons Creek

A management plan to be provided for approval demonstrating temporary access is maintained to the subject property to the south described as Lot 1 DP 701525, 57 Alidenes Road, Wilsons Creek during the construction of the Internal access road. (Lyon/Ndiaye)

Phillip Holloway returned to the Chambers at 4.20pm.

Malcolm Roberts left the Chambers at 4.20pm.

The motion (13.8) was put to the vote and declared carried unanimously.

Crs Lyon, Ndiaye, Pugh, Swain, Lowe, Warth, Kay and Hauge voted in favour of the motion.

Nil voted against the motion.

Cr Dods was not present for the vote.

The Mayor tabled Cr Kay's Declaration of Interest in Report 13.1.

Cr Dods returned to the Chambers at 4.24pm.

NOTICES OF MOTION

Notice of Motion No. 9.1 No parking signage in Piccabeen Park

File No: I2024/1581

24-578 Resolved that Council:

1. Reconsiders the installation of no parking 1am-5am signs at Piccabeen Park.
2. Consults with relevant stakeholders including Police, Piccabeen Park group, Historical Society, the Bangalow Mens Shed and the Bangalow Farmers Market operators and report back to Council. (Pugh/Hauge)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.2 Flexible use of Colab on Arakwal Country

File No: I2024/1582

24-579 Resolved that Council notes that:

1. Council has already declared that our Local Government area is in the middle of a housing crisis and welcomes the operation of the Assertive Outreach Program in the Shire;
2. We have a deficit of community housing and transitional housing in our Council area which is impacting the ability of people sleeping rough to access shelter and support in their own community and that limits referral pathway options;
3. The financial viability of the Colab on Arakwal Country project is dependent on getting an anchor tenant for the rear of the property;
4. There were significant restrictions placed on the use of the property as part of the conditions of sale that were not placed on the Mullumbimby site; and
5. The NSW Government has concerns about maintaining the site for community use and not providing a windfall profit to Council into the future.

Accordingly, Council **resolves** that:

1. The General Manager be authorised to commence discussions with the State Government to determine whether social, not for profit accommodation use could be supported on the Byron CoLab on Arakwal Country property; and
2. This change is not seeking to enable future for profit development of the site. (Pugh/Hauge)

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PROCEDURAL MOTION

24-580 Resolved that Cr Pugh be granted a two minute extension to his speech. (Ndiaye/Dods)

The motion was put to the vote and carried unanimously.

The motion (9.2) was put to the vote and carried.

Crs Lyon and Dods voted against the motion.

MAYORAL MINUTE

No Mayoral Minutes was presented.

PETITIONS

No Petitions were tabled.

DELEGATES' REPORTS

Cr Dods provided a Delegates Report on his attendance at the opening of Council's adoption of the Sunflower initiative supporting people with a hidden disability on the International Day of People with Disability.

Mayor Ndiaye presented a Delegates Report on her attendance at a meeting with Tamara Smith MP, Member for Ballina, the General Manager, Ballina Shire Council Mayor at a meeting with Ron Hoenig, Minister for Local Government. Mayor Ndiaye reported on her attendance, with Crs Pugh, Swain, Dods and Warth at the announcement of the \$28 million Emergency Precinct project.

Cr Hauge presented a Delegates Report on her attendance at a meeting in Bangalow with Torres Straight Island Uncles discussing Climate Change.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.5 Update Resolution 23-056 Short Term Rental Accommodation
Consent Conditions**

File No: I2024/1380

24-581 Resolved that Council:

1. Supports an updated approach, which is consistent with current legislation, to include specific conditions in relevant development consents in order to accurately reflect the use of dwellings in the relevant zones (i.e. 60-day cap or 365-day cap); and
2. Receives further updates on STRA monitoring and compliance actions as part of the annual Environment and Safety Priorities Program, or as otherwise deemed appropriate by staff. (Lyon/Ndiaye)

The motion was put to the vote and carried unanimously.

There being no further business the meeting concluded at 5.03pm..

I hereby certify that these are the true and correct Minutes of this Meeting as confirmed at Council's Ordinary Meeting on 31 December 2024.

.....
Mayor Sarah Ndiaye