

Minutes
Ordinary (Planning) Meeting
Thursday, 13 February 2025



BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes
13 February 2025

INDEX OF ITEMS DISCUSSED

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MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 13 FEBRUARY 2025 COMMENCING AT 3:05PM AND CONCLUDING AT 6:11AM.

I2025/101

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)
Chris Larkin (Manager Sustainable Development)
Alex Caras (Land Use Planning Coordinator)
Heather Sills (Manager Corporate Services)
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	Submission Received in form of
9.1 Protection of Critical Wildlife Habitat: Upholding No Cat and Dog covenant 146 Old Bangalow Rd	For	Vicki Henricks	Woodlands	In Person
	Against	Caitlin Nowland	Woodlands Community Neighbours	Read by staff
		William Mackay	Woodlands Neighbours	Read by staff
9.2 Community Battery Project	For	Dr Anne Stuart	Zero Emissions Byron	In Person
		Patrick Halliday	Proposed Battery Storage Project	In Person

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9.3	Request for report on reopening of parking at South Beach Lane Brunswick Heads and changes to no parking hours	For	Leone Bolt	Brunswick Heads Progress Association	In Person
13.4	PLANNING - 10.2024.24.1 Restaurant, Artisan Food and Drink Industry, Farm Building, Removal of Two Trees and Associated Works at 103 Yagers Lane Skinners Shoot	For	Maggie Schreiber, Richard Jones & Karina Vikstrom	Yagers Piggery Project Team	In Person
		Against	Anthony Pangallo	Skinners Shoot Residents Group	Zoom
			Pamela Kay Collins	Self	In Person

Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Clifford Street Intersection, Suffolk Park	Jyothi Jaffray	Self	In Person
Traffic Light approval Suffolk Park	Dean Prosser	Keep the Flow in Suffo	Audio recording
Clifford Street Intersection, Suffolk Park	David Fligelman	Keep the Flow in Suffo	In Person

PROCEDURAL MOTION

25-001 Resolved that Public Access be extended.

(Ndiaye/Hauge)

The motion was put to the vote and carried unanimously.

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Question No. 1 Broken Head Road Clifford Street Intersection Signalisation

David Fligelman, on behalf of Keep the Flow in Suffo, asked the following question:

Which of RMS's five general warrants for traffic lights: "Traffic Demand", "Continuous Traffic", "Pedestrian Safety", "Pedestrian Safety – High Speed Road", or "Crashes" does the Broken Head Rd / Clifford St Intersection meet? Noting that the November report states 6 crashes since 2018, is this following removal of the left hand turn lane from Broken Head Road?

The Director Infrastructure Services has taken the questions on notice.

Question No. 2 Community Petition Response

Dean Prosser, on behalf of Keep the Flow in Suffo, asked the following question:

Can the council please provide response to lodged community petition of 1091 signatures lodged on the 9/2. Will the council in response review the approval, add this project as an agenda to their next meeting, accommodate a public meeting with the community specific to this matter & consider alternative more viable solutions.

The Manager Corporate Services responded with the following:

As the petition was lodged on 9 February it is not possible to respond to those questions today. Petitions need to be lodged two weeks prior to the Council Meeting to be included on the Agenda for the meeting so this petition will be included in the Agenda for the 27 February Ordinary Meeting.

Question No. 3 Invitation to Mullumbimby Residents Association meeting

Susan Heffley, on behalf of the Mullumbimby Residents Association, asked the following question:

Did you get the invitation to the meeting and are you coming?

The Mayor requested a show of hands from the Councillors in response to whether the Councillor had received the invitation. The Mayor requested a show of hands from the Councillors to indicate who will be attending the meeting.

The meeting adjourned at 4.24pm for a recess break and reconvened at 4.49pm.

APOLOGIES

No apologies were received for the meeting.

APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

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

REQUESTS FOR LEAVE OF ABSENCE

PROCEDURAL MOTION

25-002 Resolved that the following leaves of absence from the following Council Meetings be granted:

- Cr Swain from the Council Planning Meeting on 10 April 2025;
- Cr Lowe from the Council Ordinary Meeting on 27 February 2025; and
- Cr Pugh from the Council Planning Meeting on 13 March 2025. (Ndiaye)

The motion was put to the vote and carried unanimously.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Dods declared a non-pecuniary interest in Report 13.2. 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. Cr Dods was engaged as lead design coordinator during the DA preparation for this application. Cr Dods also had some minor engagement during the assessment period. Cr Dods 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 will not participate in the debate on this item. Cr Dods will retain the option to vote on the item, as he anticipates the likelihood of it being included in an en-block vote.

Cr Hauge declared a non-pecuniary interest in Report 13.4. The nature of the interest being Cr Hauge's previous employment with GAA Consultant who prepared OSHS and SWMD report. Cr Hauge did not have any knowledge of this project at that time. Cr Hauge elected to remain in the Chamber and will participate in the discussion and will vote.

TABLING OF PECUNIARY INTEREST RETURNS

In accordance with 440AAB of the Local Government Act and clause 4.22 of the Code of Conduct, Annual Returns of Pecuniary Interests of Councillors and Designated Staff were tabled for the period 2024 to 2025.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

25-003 Resolved that the minutes of the Ordinary (Planning) Meeting held 31 December 2024 be confirmed. (Ndiaye/Dods)

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. 13.4 PLANNING - 10.2024.24.1 Restaurant, Artisan Food and Drink Industry, Farm Building, Removal of Two Trees and Associated Works at 103 Yagers Lane Skinners Shoot

Report No. 13.5 PLANNING - Post Exhibition Submissions Report - Planning Proposal 26.2023.5.1 for 68 Rankin Drive, Bangalow - Rezone land for Housing and activate the dedication of land for Affordable Housing under Byron Shire Affordable Housing Contribution Scheme 01

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Dods. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **25-004** and concluding with Resolution No. **25-007**.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.1 **PLANNING - 26.2024.6.1 - Planning Proposal for 40 The Tunnell Road, Billinudgel**
File No: I2024/1708

25-004 **Resolved** that Council:

1. Proceeds with the Planning Proposal (Attachment 1), that would amend Byron LEP 2014 to rezone the subject land from RU2 Rural Landscape to E4 General Industrial and apply other relevant planning controls;
2. Forwards the Planning Proposal, as updated to include a Floor Space Ratio map for the proposed E4 General Industrial area, to the NSW Department of Planning Housing and Infrastructure for Gateway determination;
3. Pending a positive Gateway determination and completion of adequate studies and further supporting information, undertakes public exhibition of the planning proposal in accordance with the determination requirements;
4. Considers a Submissions Report post-exhibition that includes any recommended changes to the Planning Proposal for final adoption. (Ndiaye/Dods)

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

Nil voted against the motion.

Report No. 13.2 **Status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)**
File No: I2024/1717

25-005 **Resolved** that Council notes the status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP). (Ndiaye/Dods)

Report No. 13.3 **PLANNING - DA 10.2024.425.1 - Subdivision of Road Reservation to Rectify Building Encroachment – 144 Jonson Street, Byron Bay**
File No: I2024/1722

25-006 **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.425.1 for Staged Development - Subdivision of Road Reservation to Rectify Building Encroachment, be granted consent subject to the conditions contained in attachment 1 (#E2025/4498). (Ndiaye/Dods)

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

Nil voted against the motion.

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Report No. 13.6 **PLANNING - Determination of certain s4.55 Applications during the Council recess**

File No: I2025/42

25-007 **Resolved** that Council notes the details of the DA approvals made under delegation during the Council recess. (Ndiaye/Dods)

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

Nil voted against the motion.

The motions (Resolutions **25-004** to **25-007**) were put to the vote and carried unanimously.

Report No. 13.4 **PLANNING - 10.2024.24.1 Restaurant, Artisan Food and Drink Industry, Farm Building, Removal of Two Trees and Associated Works at 103 Yagers Lane Skinners Shoot**

File No: I2025/1

25-008 **Resolved** that:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.24.1 for Restaurant, Artisan Food and Drink Industry, Farm Building, Tree Removal 1 x Umbrella Cheese Tree and 1 x Guioa and Associated Works, be granted consent subject to the conditions of approval attached to this report (Doc # E2025/6619) and subject to the conditions 6, 22, 80, 87, 93 being amended and inserting new condition 106 as follows:

6. Final Operational Management Plan

Draft Operational Management Plan must be updated to incorporate all relevant requirement of these conditions of consent prior to the issue of the Occupation Certificate including those matters listed under Condition 106.

22. Consent required for Works within Road Reserve

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

Consent required for Works within Road Reserve

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within

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the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

Driveways in Yagers Ln A driveways in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

Yagers Ln upgrade The full length of Yagers Ln from Skinners Shoot Rd up to the development site must be upgraded in accordance with Table 1.27 of Chapter D1 in Northern Rivers Local Government Design and Construction Guidelines.

Adjustment of Services Works are to include the adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities and to ensure that the services are constructed flush with the finished surface levels.

Intersection of Yagers Ln and Skinners Shoot Rd

- New stop line and associated STOP sign on Yagers Lane approach of the intersection.
- Vegetation clearing within the verge to the east and west of Yagers Lane to achieve 73m sight line in accordance with Austroads design guidelines for 50kph posted speed limit roads.
- Provision of flag lighting in accordance with AS1158

Regulatory devices, linemarkings and signage The design and construction of regulatory devices, linemarkings and signage but not limited to, be referred to Local Traffic Committee and approved by a Council Resolution.

80. **Asbestos Clearance Certificate**

An Asbestos Clearance Certificate demonstrating that all Asbestos Containing

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Material (ACM) have been removed from the site location of approved building works must be provided to the PCA prior to the issue of an Occupation Certificate for the approved buildings. The Asbestos Clearance Certificate must be prepared by an accredited Asbestos Assessor in accordance with Safe Work NSW requirements.

Note. This does not apply to any structures or works not approved by this development consent.

87. **Approved Uses**

This consent approves the following legally defined uses under Byron LEP 2014:

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—

- (a) a retail area for the sale of the products,
- (b) the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,
- (c) facilities for holding tastings, tours or workshops.

farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.

business identification sign means a sign—(a) that indicates—

- (i) the name of the person or business, and
- (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

that may include the address of the premises or place and a logo or other

symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

The site is not approved as a function centre and must not be used as a rural function centre unless otherwise approved under separate consent.

Any uses not approved under this consent will require a separate development application or complying development certificate unless otherwise exempt development.

93. Maximum patron capacity & trading hours

The maximum dining numbers and trading hours for the premises may operate as follows:

a) Patron/Seating Capacity

(i) Artisan Food Industry

Patron numbers within the artisan cafe are limited to 15 persons and no more than 75 persons per day. A maximum of 5 staff are permitted on site to service the Artisan Food Industry.

(ii) Restaurant

Patron numbers within the restaurant are limited to 60 persons at anyone sitting and no more than 120 persons per day. A maximum of 25 staff are permitted on site to service the Restaurant.

b) Trading Activities and Business Hours

(i) Artisan food industry and ancillary activities

- Picking
Daily: 6am to 10am
- Cooking & Packing
Monday to Friday: 10am to 4pm
- Packing
Saturday and Sunday: 10am to 12pm (noon)
- Tastings / Café / Sales
Monday to Sunday, 10am - 3pm

(ii) Restaurant

Undertake all activities associated with the operation of the restaurant prior to 11pm. The restaurant to be open to patrons between the hours of:

- Wednesday to Saturday: 12pm (noon) to 11pm; and
- Sunday: 12pm (noon) to 10pm.

106. Transport Options – Management Plan

To encourage and provide an alternative to personal vehicle travel to and from the site, the Operational Management Plan to be updated and to include:

Details for provision of private transfers to be made available to patrons at the time of booking and practical options for sustainable travel methods to shuttle patrons and staff employed on the site.

End of trip facilities are to be provided to enable staff to choose to cycle to and from the site if it is their preferred means of travel.

All alternative travel options for patrons and staff are to be detailed and implemented via the updated Operational Management Plan.

2. Council invite the land owner to enter into discussions with staff to identify appropriate locations and mechanisms for the provision of signage and safe wildlife crossing across Skinners Shoot Road. (Lowe/Ndiaye)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

Report No. 13.5 **PLANNING - Post Exhibition Submissions Report - Planning Proposal 26.2023.5.1 for 68 Rankin Drive, Bangalow - Rezone land for Housing and activate the dedication of land for Affordable Housing under Byron Shire Affordable Housing Contribution Scheme 01**

File No: I2025/6

25-009 Resolved that Council:

1. Adopts the Planning Proposal in Attachment 1 (E2025/8346), as revised to:
 - a) include a reference to the *Affordable Housing Contribution Scheme Map* in 'Part 2 Explanation of provisions'; and
 - b) apply no FSR controls to the proposed R3 Medium Density Residential zone on the subject land, consistent with Resolution 24-058.
2. Forwards the adopted Planning Proposal and supporting information to the NSW Department of Planning Housing and Infrastructure requesting finalisation. (Dods/Lyon)

The motion was put to the vote and carried unanimously.

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

Nil voted against the motion.

NOTICES OF MOTION

Notice of Motion No. 9.1 Protection of Critical Wildlife Habitat: Upholding No Cat and Dog Covenant at 146 Old Bangalow Road (Woodlands)

File No: I2025/51

25-010 Resolved that Council:

1. Affirms its support for maintaining the existing covenant prohibiting cats and dogs at 146 Old Bangalow Road (Woodlands), recognizing the property's crucial role in local biodiversity conservation.
2. Writes to the NSW Minister for the Environment, Penny Sharpe, requesting:
 - a) Recognition of "exceptional circumstances" for communities situated within significant wildlife corridors and containing threatened species habitat;
 - b) Support for maintaining existing environmental protection covenants that prohibit domestic animals in ecologically sensitive areas; and
 - c) Acknowledgment that such covenants provide vital wildlife sanctuaries and are essential for preserving threatened species and avoiding the biodiversity crisis that the Minister has acknowledged in Parliament.
3. Reaffirms its commitment to upholding Development Approval conditions (DA 10.2003.422.1) that were specifically designed to protect the site's ecological values.
4. Obtains legal advice on the question of whether or not a repeal or invalidation of By-Law 27 in the Neighbourhood Management Statement for 146 Old Bangalow Road (Woodlands) by the NSW Civil and Administrative Tribunal or otherwise would result in the Neighbourhood Association of Woodlands contravening the conditions of Development Consent No. 10.2003.422.1 particularly condition 28 requiring a by-law to be included in the Neighbourhood Management Statement prohibiting the keeping of cats and dogs in Woodlands.
5. Write to the Minister for Better Regulation and Innovation and the Commission for Fair Trading, Department of Customer Service, for their attention to the problems for Woodlands created by the recently introduced section 129A of the Community Land Management Act 2021 (NSW) and request that they, with a matter of urgency, propose a Bill to the NSW Parliament seeking to amend section 129A so that it will not have a detrimental impact on the ability of communities such as Woodlands to prohibit the keeping of cats and dogs when it is not appropriate for those domestic animals to be kept in those communities where they are in ecologically sensitive areas. (Lowe/Warth)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.2 Community Battery Project

File No: I2025/36

25-011 Resolved that Council:

1. Establishes a Community Battery Working Group as a working group of the Climate Change and Resource Recovery Advisory Committee and invite representatives of key community groups (e.g. Zero Emissions Byron, Bayside Community Group, Electrify 2479-83, Plan C), Essential Energy, interested Councillors and Council staff, to initiate a Community Battery Project, empower this group to call on subject experts for advice, and partner with this group for parts 2-4 of this motion;
2. Considers the allocation of funding of \$40,000 in the next Quarterly Budget Review to undertake a feasibility study into installing a community battery for Byron Shire, including options for equitable operating models, technologies and sites within the Shire;
3. Identifies and applies for appropriate grants to support the feasibility study and project; and
4. Plans for community engagement and education based on the results of the feasibility study. (Hauge/Lowe)

The motion was put to the vote and carried unanimously.

Notice of Motion No. 9.3 Request for Report on Reopening of Parking at South Beach Lane, Brunswick Heads and changes to No Parking Hours

File No: I2025/52

25-012 Resolved that Council requests a report from staff regarding:

1. The feasibility of reopening South Beach Lane, Brunswick Heads, for public parking and incorporating it into the existing pay parking scheme, including consideration of:
 - a) Installing 11pm-6am No Parking restrictions
 - b) Implementing time-limited parking options (2P or 4P) during operational hours
 - c) Required maintenance works and associated costs
 - d) Integration with existing paid parking infrastructure
2. The process and implications of delegating authority to the General Manager for:
 - a) Implementation of regulatory signage through the Local Traffic Committee (LTC)
 - b) Coordination of maintenance works
 - c) Alignment of operational hours with existing Brunswick Heads paid parking zones
3. The impacts of adjusting the current No Parking hours from 1am-6am to 11pm-6am across relevant areas to the East of Simpsons Creek in Brunswick Heads or suggests other times that may better suit Brunswick and the particular circumstances
4. A proposed framework for reviewing the effectiveness of any implemented changes, including:
 - a) Revenue projections and infrastructure reinvestment opportunities
 - b) Traffic management and congestion impacts
 - c) Enforcement strategies and compliance monitoring
 - d) Safety and behavioural considerations
5. The report should include consultation with relevant stakeholders and assess any financial, social, or operational implications of the proposed changes.

(Ndiaye/Lyon)

The motion was put to the vote and carried unanimously.

PROCEDURAL MOTION

25-013 Resolved that Cr Ndiaye be granted a two minute extension to her speech.

(Hauge/Lowe)

The motion was put to the vote and carried unanimously.

The motion (*Resolution 25-012*) was put to the vote and carried unanimously

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MAYORAL MINUTE

There was no Mayoral Minute presented.

PETITIONS

There were no Petitions tabled at the meeting.

DELEGATES' REPORTS

Cr Pugh provided a Delegates Report on his attendance the first meeting of the the Arakwal National Park Joint Management Committee.

Cr Lyon provided a Delegates Report on his attendance at the Planning Meeting on 13 February 2025.

Cr Kay provided a Delegates Report on her attendance at the Survival Day in Byron Bay.

Cr Hauge provided a Delegates Report on her attendance at a Community Engagement Workshop on 30 January 2025.

There being no further business the meeting concluded at 6.11pm.

I hereby certify that these are the true and correct Minutes of this Meeting
as confirmed at Council's Ordinary Meeting on 13 March 2025.



.....
Mayor Sarah Ndiaye