

# Minutes Ordinary (Planning) Meeting Thursday, 14 November 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

14 November 2024

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# BYRON SHIRE COUNCIL

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## MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 14 NOVEMBER 2024 COMMENCING AT 11.06AM AND CONCLUDING AT 4.20PM

I2024/1525

**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)  
Ben Grant (Senior Planner) – Item 13.7  
Patricia Docherty (Team Leader Planning Services) – Item 13.10  
Chris Soulsby (Manager Assets & Major Projects)  
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	Via
9.1 Heritage Buildings in Mullumbimby	For	Aiden Gentle	Queer Family Inc	In Person
		Lydia Kindred	Northern Rivers Rail Ltd	In Person
		Vanessa Mathews	Mullumbimby Chamber of Commerce	Read by staff
9.2 Finding a space for Queer Family	For	Aiden Gentle	Queer Family Inc	In Person
13.7 10.2008.565.6 section 8.2. review of refusal of modification to original consent for use of existing alterations and additions to dwelling house at 13 Gaggin St, New Brighton	For	Michael Grogan	Self	In Person
	Against	Leo & Susan Wilkinson	Self	In Person
		Sol Ibrahim	Solicitor obo Wilkinsons	In Person

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*In accordance with his declaration of interest in relation to item 13.10 and 13.11, Cr Dods left the meeting at 11.44am.*

Report No and Title		For/ Against	Name	Representing	Via
13.10	10.2023.465.1 - Demolition of two (2) existing dwellings and construction multi dwelling housing comprising of twenty four (24) dwellings including three (3) affordable dwellings, tree removal within site and compensatory ecological restoration works within the subject site and adjoining coastal wetlands – 56B, 58 & 60 Bangalow Road Byron Bay	For	Mark Howard	Propel	In Person
			Tony Cromack	Ardill Payne	In person
		Against	William Hayman	Self	In Person
			James Cockayne	Petitioners from Cooper Street	In Person

## PROCEDURAL MOTION

**24-464 Resolved** that Public Access be extended for 1 hour.

(Ndiaye/Lyon)

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

*Cr Lowe left the Chambers at 12.10pm.*

*In accordance with their declarations of interest in relation to item 13.11, Crs Hauge, Lyon, and Warth left the Chambers at 12.11pm.*

*The meeting became inquorate and was therefore adjourned.*

*Cr Lowe returned to the Chambers at 12.13pm and quorum was restored.*

*The meeting recommenced at 12.13pm.*

# BYRON SHIRE COUNCIL

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Report No and Title		For/ Against	Name	Representing	Via
13.11	10.2024.239.1 - Change of use of existing vehicle repair station to a food and drink premises (cafe), and recreation facility (indoor) – 38 Tweed Street, Brunswick Heads	For	Ben Owens	B3 Build Breath Bath	In Person
			Sean Cobbold	Cobbold Building Design	In Person
		Against	Jo Pilgrim & Leone Bolt	Brunswick Heads Progress Assoc	In Person
			Sabina Dodds	Self	In Person

*Crs Dods, Hauge, Lyon, and Warth returned to the Chambers at 12.30pm.*

Report No and Title		For/ Against	Name	Representing	Via
13.13	10.2024.226.1 - Demolition of existing Dwelling House, New Dwelling House to create Dual Occupancy (detached) and Ancillary Works - 158 Skinners Shoot Road Skinners Shoot	For	Anthony Pangallo	Skinners Shoot Residents Group	Zoom

## Submissions

Subject	Name	Representing Organisation	Submission Received in form of
Men's Shed Project Update	Bryan Thomas Frew	Byron Bay Men's Shed Inc	In Person
Footpaths in the Byron A&I Estate	Ann Bernice Reed	Self	In Person

## Question No. 1 - Footpaths in the Byron Arts and Industrial Estate

Ann Bernice Reed asked the following questions:

1. *You have made Centennial Circuit one-way and done some good roadworks and parking works in Bayshore Drive, but where are the footpaths, and cyclepaths? Where are the safe crossings?*
2. *Council said the footpaths would be a second stage. Is there a firm plan? Is it in this year's budget? Is the money secure?*

The Mayor took the questions on notice.

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## Question No. 2 - Draft Business Strategy Funds

John Anderson asked the following question:

*How much do Council pay Lucid Economics for their role in Councils draft business strategy?*

The General Manager took the question on notice.

*The meeting adjourned at 12.45pm for a lunch break and reconvened at 1:31pm.*

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## APOLOGIES

There were no apologies.

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## APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

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

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## REQUESTS FOR LEAVE OF ABSENCE

There were no requests for leave of absence.

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## DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

Cr Dods declared a non-pecuniary interest in Report 13.8. The nature of the interest being that he has had no involvement in this DA and was not aware of it until reading it on the Agenda. However, Cr Dods has a periodic, minor business relationship with Planners North (PN), who have prepared the Statement of Environmental Effects, and Clause 4.6 Objections Report for this application. His current relationship with PN is infrequent and not particularly close as defined by Clause 5.9 of the Code of Conduct for Councillors Policy. Cr Dods elected to remain in the Chamber and will not participate in the discussion and will vote.

Cr Dods declared a non-pecuniary interest in Report 13.10. The nature of the interest being that he has an active business relationship with Ardill Payne & Partners (APP), and is currently working as a consultant on a number of jobs on which APP are also engaged. APP have provided traffic and civil services for this DA. Although he has no involvement in this DA, his current relationship with APP could be perceived as close as defined by Clause 5.9 of the Code of Conduct for Councillors Policy. Cr Dods elected to leave the Chamber and will not participate in the discussion and the vote.

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Cr Dods declared a non-pecuniary interest in Report 13.11. The nature of the interest being that 1) The owners of the proposed recreation facility (gym) business operate another gym (Social Remedy) at 1A Banksia Dr Byron Bay. 1A Banksia Dr is part-owned by his father. Social Remedy are the primary leaseholder of that address. While his family have no interest in 38 Tweed St (nor in Social Remedy/B3's business), being a close relation to the landlord of Social Remedy's Byron Bay operation, he assessed this as a significant non-pecuniary interest; and 2) His campaign received a political donation from one of the part-owners of Social Remedy. This donation was not a "reportable political donation", as defined by the Electoral Funding Act 2018 - Sect 6 (ie it was less than \$1000). However, for transparency, he is declaring it for the public record. Cr Dods elected to leave the Chamber and will not participate in the discussion and the vote.

Cr Hauge declared a non-pecuniary interest in Report 13.11. The nature of the interest being related to previous employment where she worked on noise/parking studies for this development. Cr Hauge elected to leave the Chamber and will not participate in the discussion and the vote.

Cr Lyon declared a pecuniary interest in Report 13.11. The nature of the interest being that an election donor is one of the associates of the Developer. Cr Lyon elected to leave the Chamber and will not participate in the discussion and the vote.

Cr Warth declared a pecuniary interest in Report 13.11. The nature of the interest being that one of the business partners donated funds to his Council election. Cr Warth elected to leave the Chamber and will not participate in the discussion and the vote.

Cr Dods declared a non-pecuniary interest in Report 13.12. The nature of the interest being that he has had no involvement in this DA and was not aware of it until reading it on the Agenda. However, he has a periodic, minor business relationship with Planners North (PN), who have prepared the Statement of Environmental Effects for this application. His current relationship with PN is infrequent and not particularly close as defined by Clause 5.9 of the Code of Conduct for Councillors Policy. Cr Dods elected to remain in the Chamber and will not participate in the discussion and will vote.

Cr Dods declared a non-pecuniary interest in Report 13.14. The nature of the interest being that part of this Status Report gives an update of 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 considered his 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 not participate in the discussion and will vote.



### TABLING OF PECUNIARY INTEREST RETURNS

In accordance with section 440AAB of the Local Government Act and clause 4.22 of the Code of Conduct the Mayor tabled Pecuniary Disclosure of Interest Returns for:

- Christopher Mitchell, Community Enforcement Coordinator
  - Zachary Toon, Project Engineer & Property Maintenance
  - Michelle Lowe, Councillor & Teacher
  - Delta Kay, Councillor & Consultant
  - Melissa Jacobs, ARIC Independent Member & Management Consultant
  - Alan Pigott, Consultant
- 

### ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

**24-465 Resolved** that the minutes of the Ordinary (Planning) Meeting held 1 August 2024 be confirmed. (Dods/Swain)

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

*Cr Lyon left the Chambers at 1.37pm.*

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**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. 13.5 PLANNING - Post Exhibition Submissions Report - Planning Proposal - 26.2023.7.1 - West Byron Transition to Local Environmental Plan 2014
- Report No. 13.7 PLANNING - 10.2008.565.6 Section 8.2 Review of refusal of modification to original consent for use of existing alterations and additions to dwelling house at 13 Gaggin Street NEW BRIGHTON
- Report No. 13.10 PLANNING - 10.2023.465.1 - Demolition of two (2) existing dwellings and construction multi dwelling housing comprising of twenty four (24) dwellings including three (3) affordable dwellings, tree removal within site and compensatory ecological restoration works within the subject site and adjoining coastal wetlands – 56B, 58 & 60 Bangalow Road Byron Bay.
- Report No. 13.11 PLANNING - 10.2024.239.1 - Change of use of existing vehicle repair station to a food and drink premises (cafe), and recreation facility (indoor) – 38 Tweed Street, Brunswick Heads

*In accordance with his declaration of interest in relation to item 13.14, Cr Dods left the meeting during the vote on the following items at 1.40pm.*

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Kay. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 24-464 and concluding with Resolution No. 24-472. The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Kay. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **24-466** and concluding with Resolution No. **24-475**.

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## STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1**      **Submission to review of Councillor conduct rules**  
**File No:**              I2024/1460

**24-466**      **Resolved** that Council notes the draft submission to the OLG's Councillor Conduct Framework review. (Ndiaye/Kay)

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## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.2**      **Proposed change to 2024 Council Meeting Schedule**  
**File No:**              I2024/1458

**24-467**      **Resolved** that Council schedules a Planning Meeting on 5 December 2024. (Ndiaye/Kay)

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.3**      **PLANNING - 10.2024.130.1 Dual Occupancy (Detached) including Existing Dwelling and New Dwelling with Swimming Pool at 46 Federal Drive Eureka**  
**File No:**              I2024/985

**24-468**      **Resolved** that:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.130.1 for dual occupancy (detached) including an existing dwelling and a new dwelling with swimming pool, be granted consent subject to the conditions of approval Attachment 1 #E2024/118223.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as House Keeping matters. (Ndiaye/Kay)

*Crs Ndiaye, Pugh, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.  
Nil voted against the motion.  
Crs Lyon and Dods were not present for the vote.*

# BYRON SHIRE COUNCIL

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**Report No. 13.4**      **PLANNING - DA 10.2024.117.1 - Dual Occupancy (Detached) Comprising the Existing Dwelling and a New Dwelling, Tree Removal: Six (6) Trees and Ancillary Works – 497 Coolamon Scenic Drive Coorabell**

**File No:**                      I2024/1420

**24-469**      **Resolved that:**

1. Pursuant to dual occupancy (detached) comprising the existing dwelling and a new dwelling, tree removal: six (6) trees and ancillary works, be granted consent subject to the conditions in Attachment 2 #E2024/126182.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as future LEP and DCP House Keeping matters. (Ndiaye/Kay)

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

*Nil voted against the motion.*

*Crs Lyon and Dods were not present for the vote.*

**Report No. 13.6**      **PLANNING - DA 10.2024.208.1 - Use of, and alterations and additions to, existing dwelling to create dual occupancy (detached) and new swimming pool - 72 Lawlers Lane Bangalow**

**File No:**                      I2024/1421

**24-470**      **Resolved that:**

1. Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application 10.2024.208.1 for Use of, and Alterations and Additions to, Existing Dwelling to create Dual Occupancy (detached) and New Swimming Pool, be granted Deferred Commencement subject to the conditions in Attachment 3 #E2024/124480.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as House Keeping matters. (Ndiaye/Kay)

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

*Nil voted against the motion.*

*Crs Lyon and Dods were not present for the vote.*

# BYRON SHIRE COUNCIL

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**Report No. 13.8**      **PLANNING - 10.2024.159.1 - Dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway- 301 Picadilly Hill Road COOPERS SHOOT**  
**File No:**                      I2024/1308

**24-471**      **Resolved that:**

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.159.1 for Dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway, be granted consent subject to the conditions of approval in Attachment 1 # E2024/114096.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as future LEP and DCP House Keeping matters.
3. Other structures on the land be referred to the attention of Council's compliance team for investigation including structures located southeast of the existing dwelling (access visible on aerial imagery), the carport for the existing dwelling and an existing rainwater tank (both of which may not be wholly located on the subject land). (Ndiaye/Kay)

*Crs Ndiaye, Pugh, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.  
Nil voted against the motion.  
Crs Lyon and Dods were not present for the vote.*

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**Report No. 13.9**      **PLANNING - 26.2024.12.1 - Post Exhibition Submissions Report - Amendment to Chapter D5 Industrial Development and B4 Traffic Planning, Vehicle Parking, Circulation and Access to include new provisions for Artisan Food and Drink Industry**  
**File No:**                      I2024/1309

**24-472**      **Resolved** that Council adopts the draft Byron Development Control Plan Chapters D5: Industrial Development and B4: Traffic Planning, Vehicle Parking, Circulation and Access, as contained in Attachment 1 (E2024/104454) and 2 (E2024/104523), and publishes the amended DCP on Council's website. (Ndiaye/Kay)

*Crs Ndiaye, Pugh, Swain, Warth, Kay, Hauge and Lowe voted in favour of the motion.  
Nil voted against the motion.  
Crs Lyon and Dods were not present for the vote.*



*Cr Dods returned to the Chambers at 1.41pm.*

PROCEDURAL MOTION

- 24-476 Resolved** that Council change the order of business to deal with Reports 9.2, 9.1, 13.7, 13.10 and 13.11 next on the Agenda. (Ndiaye/Hauge)

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

*Cr Lyon returned to the Chambers at 1.43pm.*

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**NOTICES OF MOTION**

**Notice of Motion No. 9.2 Finding a space for Queer Family**

**File No:** I2024/1490

- 24-477 Resolved** that Council:

1. Requests a report that identifies Council-owned or managed properties and their opportunities and limitations for use by community services, groups and non-profit organisations
2. Based on Item 1, convenes a meeting with Council staff, Queer Family representatives and interested Councillors followed by a Report on potential sites that could provide a suitable permanent home for Queer Family, with the report to consider:
  - a) Space requirements to support both community gatherings and confidential service delivery
  - b) Accessibility and safety considerations for service users
  - c) Both immediate temporary and long-term permanent solutions
  - d) Potential locations across the Shire
  - e) Estimated costs and potential funding sources
  - f) Timeline for implementation
3. Receives a briefing from Queer Family representatives about their service delivery needs and current challenges.
4. Considers, if no Council-owned or managed properties are identified, options to support Queer Family to find an alternative home to ensure this vital service can continue to operate in our Shire. (Hauge/Ndiaye)

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

**Notice of Motion No. 9.1 Heritage buildings in Mullumbimby**

**File No:** I2024/1482

**24-478 Resolved** that Council:

1. Does everything in its power to retain, control, and restore the (old stationmaster's) house and the train station building in the rail corridor in Mullumbimby.
2. Receives a report on the progress of the licence negotiations with TfNSW and TAHE, that will see a significant section of rail corridor coming into Council hands, including next steps on how to determine the mix of open space and parking as per the Mullumbimby Masterplan.
3. Receives an independent assessment on the contamination of the Station Master's Cottage and Mullumbimby Station prior to any transfer.
4. Investigates the possibility of TfNSW or Flickerfest remediating the station through their insurance prior to any transfer. (Lyon/Ndiaye)

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

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.7 PLANNING - 10.2008.565.6 Section 8.2 Review of refusal of modification to original consent for use of existing alterations and additions to dwelling house at 13 Gaggin Street NEW BRIGHTON**

**File No:** I2024/1307

PROCEDURAL MOTION

**24-479 Resolved** that this matter (Report 13.7) rest on the table. (Ndiaye/Hauge)

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



# BYRON SHIRE COUNCIL

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**Report No. 13.10 PLANNING - 10.2023.465.1 - Demolition of two (2) existing dwellings and construction multi dwelling housing comprising of twenty four (24) dwellings including three (3) affordable dwellings, tree removal within site and compensatory ecological restoration works within the subject site and adjoining coastal wetlands – 56B, 58 & 60 Bangalow Road Byron Bay.**

**File No:** I2024/1312

*In accordance with his declared interest in this item, Cr Dods left the Chambers at 2.29pm.*

**24-480 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.465.1 for demolition of two existing dwellings and construction of multi dwelling housing comprising of 24 Dwellings including three Affordable Dwellings, be granted consent subject to conditions located at Attachment 1 #E2024/119605 of this report and inclusion of the following condition 61A to be inserted in appropriate order:

**Restriction on use - keeping of cats and dogs for protection of native fauna species**

Documentary evidence is to be provided with the application for an occupation certificate that a restriction on user, pursuant to the provisions of s88B of the Conveyancing Act 1919 has been registered on the title of the land.

The keeping of cats and dogs on the subject property is to be managed to ensure protection of native fauna species. The restriction on user must restrict, except as otherwise permissible by law, all of the following within the area covered by the restriction on user.

- a. Keeping of cats and dogs in any part of the property is to be managed at all times:
  - i. The erection and maintenance of dog-proof fencing enclosing the private open space for each unit.
  - ii. Dogs may only be permitted outside private fenced areas of each unit if they are on a leash and suitably controlled under the supervision of a responsible person; and
  - iii. The keeping of cats within all units unless cats are confined to suitable enclosures at all times.

The s88B Instrument must contain a provision identifying Byron Shire Council as the only person or authority having the power to revoke, vary or modify the restriction on user. (Lowe/Lyon)

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

*Crs Lyon, Ndiaye, 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.*

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*The meeting adjourned at 2.45pm for recess and reconvened at 3.06pm.  
Cr Dods returned to the Chambers at 3.06pm.*

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## PROCEDURAL MOTION

**24-481 Resolved** that Report No. 13.7 be lifted from the table. (Ndiaye)

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

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**Report No. 13.7 PLANNING - 10.2008.565.6 Section 8.2 Review of refusal of modification to original consent for use of existing alterations and additions to dwelling house at 13 Gaggin Street NEW BRIGHTON**

**File No:** I2024/1307

**24-482 Resolved** that Council, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority uphold the refusal of modification application 10.2008.565.5, with the reasons for refusal amended as follows:

1. Pursuant to Section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, The development does not comply with Chapter 1 Part G of Byron Development Control Plan 2010 in relation to carparking.
2. Pursuant to Section 4.55(1)(b) of the Environmental Planning & Assessment Act 1979, the development has an adverse impact on the built environment.
3. Pursuant to Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development as constructed is not suitable for the site.
4. Pursuant to Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development is likely to set an undesirable precedent and is not in the public interest. (Lyon/Dods)

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

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

*Crs Ndiaye and Lowe voted against the motion.*

# BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

14 November 2024

**Report No. 13.11**     **PLANNING - 10.2024.239.1 - Change of use of existing vehicle repair station to a food and drink premises (cafe), and recreation facility (indoor) – 38 Tweed Street, Brunswick Heads**

**File No:**                I2024/1328

*In accordance with their declared interest in this item Crs Dods, Lyon, Warth, and Hauge left the Chambers at 3.21pm.*

## PROCEDURAL MOTIONS

**24-483**     **Resolved** that Cr Ndiaye be granted a two minute extension to her speech. (Ndiaye/Pugh)

*The motion was put to the vote and carried unanimously.  
Crs Dods, Lyon, Warth and Hauge were not present for the vote.*

**24-484**     **Resolved** that this matter (Report 13.11) rest on the table. (Ndiaye/Kay)

*The motion was put to the vote and carried unanimously.  
Crs Dods, Lyon, Warth and Hauge were not present for the vote.*

*Cr Dods, Lyon, Warth and Hauge returned to the Chambers at 3.47pm*

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**Report No. 13.5**     **PLANNING - Post Exhibition Submissions Report - Planning Proposal - 26.2023.7.1 - West Byron Transition to Local Environmental Plan 2014**

**File No:**                I2024/1259

**24-485**     **Resolved** that Council:

1.     Revise the West Byron transition to Byron LEP 2014 planning proposal (Attachment 1 E2024/60126) to include zoning changes as described in Table 1 of this report and forward the planning proposal to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;
2.     Requests confirmation from the NSW Department of Planning, Housing and Infrastructure that the changes made to the planning proposal post-exhibition are of such a minor nature that re-exhibition is not required; and
3.     Pending receipt of PCO opinion that the plan can be made, forwards the plan to the NSW Department of Planning, Housing and Infrastructure requesting notification on the NSW Government legislation website. (Dods/Lyon)

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

**MAYORAL MINUTE**

There was no Mayoral Minute.

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**PETITIONS**

There were no petitions tabled.

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**DELEGATES' REPORTS**

Cr Warth provided a Delegates Report on his recent visit to the Tenterfield Water Treatment Plant.

Cr Swain provided a Delegates Report on her attendance, with Cr Kay, at the Richmond Tweed Regional Library Committee meeting. It was noted Cr Chate of Ballina Shire Council was elected as the Chair of the Committee with Cr Dalton-Earls of Lismore City Council as the Deputy Chair.

The Mayor provided a Delegates Report advising:

- The Governor General attended a meeting with herself and the General Manager wherein the Governor General announced 300 bravery awards will be awarded locally in response to the floods
- The Mayor attended the Opening of the Lights in Bangalow with Lismore MP, Janelle Saffin.
- The Mayor attendance the first Rous County Council meeting with Cr Hauge. It was noted Cr Mustow of Richmond Valley Council was elected as the Chair of the Committee with Cr Cadwallader of Ballina Shire Council was elected as Deputy Chair.
- The Mayor attended first Northern Rivers Joint Organisation (NRJO) meeting at which Mayor Cherry was elected to be the Chair.

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

PROCEDURAL MOTION

**24-486 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 PLANNING - 10.2024.239.1 - Change of use of existing vehicle repair station to a food and drink premises (cafe), and recreation facility (indoor) – 38 Tweed Street, Brunswick Heads**

**File No:** I2024/1328

*In accordance with their declared interest in this item Crs Dods, Hauge, Warth and Lyon left the Chambers at 4.03pm and did not return.*

**24-487 Resolved** that:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.239.1 for change of use of existing vehicle repair station to a food and drink premises (café) and a recreation facility (indoor), and associated works to formalise thirty parking spaces in the public road reserve, be granted consent subject to the relevant conditions attached (Doc# E2024/125302) to this report including the need for a Roads Act application to be lodged within six months of consent, including the following new condition and amended condition:

**1A. Conditional and restricted opening, pending road works and parking completion**

This condition applies for a period of 12 months from the date of this consent and the relevant parts of this condition prevails over any other relevant condition in this consent for the limited operating period.

The Recreation Facility (indoor) and Café may operate on a conditional and restricted basis for a period of no greater than 12 months following the date of approval while road works including vehicle parking in Fingal Street is completed. Following this 12 month period, use of the site must cease until the road works required under this consent are completed to the satisfaction of Council.

In this regard, the following conditions apply:

1. **Hours of operation café:** 7:00am to 5:00pm - 7 days a week – takeaway service as kiosk only.
2. **Hours of operation recreation facility:** In accordance with Plan of Management (E2024/115189)
3. **Recreation facility:** limited to 20 patrons on the premises at any one time.
4. **Acoustic certification report:** An acoustic compliance report prepared by a

# BYRON SHIRE COUNCIL

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suitably qualified person shall be submitted to Council for approval ([development related advice](#)) (fees apply).

5. The report shall certify that the development has been designed and constructed in accordance with the established noise criteria and recommendations outlined in the Final Environmental Noise Impact Assessment Report submitted to council.
6. **No Stopping Slessor Lane:** A minimum of two (2) 'No Stopping' signs must be placed on the building within Slessor Lane.
7. **Slessor Lane Sliding door:** Must be acoustically treated and feature acoustic perimeter seals. This door cannot be used for staff or patron access and must be closed while the gym is operating.
8. **Noise mitigation:** A silencer / baffle acoustic treatment is to be installed between the bath / pool heating & cooling plant and the outlet vent on the southern wall prior to operation.
9. **Access to gym:** Must only be through the front Tweed Street entry.
10. **Use of rooms:** The room labelled 'recreational facility' in the NE corner of the building must not be used for any activities other than meditation and yoga without prior approval from council.
11. **Contact information for complaints:** Nearby resident must be provided with the contact details of staff that will be on site if a noise complaint is to be made, and a sign erected in a highly visible location informing residents where the contact details can be found.

**Amend current draft condition number 56 which reads as follows:**

## **Slessor Lane Sliding door**

Must be acoustically treated and feature acoustic perimeter seals and to remain closed during gym activities, this door cannot be used for staff or patron access and must be closed while the gym is operating.

To be amended to the following:

## **Slessor Lane doors**

All doors including sliding doors and emergency exit doors facing Slessor Lane to the south must be acoustically treated and feature acoustic perimeter seals and to remain closed during gym activities. Doors facing Slessor Lane cannot be used for staff or patron access and must be closed while the gym is operating.

2. Staff are authorised to review all conditions of consent prior to the issue of the final notice of determination to ensure their consistency with this recommendation.

(Ndiaye/Lowe)

**BYRON SHIRE COUNCIL**

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PROCEDURAL MOTIONS

**24-488 Resolved** that Council move into Committee to allow for free debate. (Ndiaye/Lowe)

*The motion was put to the vote and carried unanimously.  
Crs Dods, Lyon, Warth, and Hauge were not present for the vote.*

**24-489 Resolved** that Council move out of Committee and resume the Ordinary Meeting. (Ndiaye/Lowe)

*The motion was put to the vote and carried unanimously.  
Crs Dods, Lyon, Warth, and Hauge were not present for the vote.*

*The motion (24-487) was put to the vote and carried unanimously.  
Crs Ndiaye, Pugh, Swain, Kay, and Lowe voted in favour of the motion.  
Nil voted against the motion.  
Crs Dods, Lyon, Warth, and Hauge were not present for the vote.*

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*There being no further business the meeting concluded at 4.20pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 5 December 2024.

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Mayor Sarah Ndiaye