



# Byron Shire Council



## Minutes

Ordinary (Planning) Meeting  
Thursday, 19 November 2020

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
19 November 2020

## INDEX OF ITEMS DISCUSSED

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

Report No. 13.5	PLANNING - Development Application 10.2020.274.1 New dwelling to create dual occupancy (detached) at 590 Booyong Road Booyong .....	7
Report No. 13.6	PLANNING - Development Application 10.2020.296.1 New dwelling to create dual occupancy (detached) in two stages at 665 Coopers Shoot Road Coopers Shoot: Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port. Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area .....	7
Report No. 13.7	PLANNING - Development Application 10.2020.30.1 Dual Occupancy at 20 Prince Street Mullumbimby .....	7
Report No. 13.8	PLANNING - Development Application 10.2020.145.1 Boundary Adjustment and Demolition of Garage and Shed at 35A and 35B Argyle Street Mullumbimby .....	8
Report No. 13.9	PLANNING - Report Exceptions to Development Standards 1 July 2020 to 30 September 2020 .....	8
Report No. 13.10	PLANNING - Report of the 15 October 2020 Planning Review Committee .....	8
Report No. 13.11	PLANNING - Development Application - 10.2020.132.1 - Alterations and Additions to Existing Dwelling House, Swimming Pool, Subdivision of two (2) lots into two (2) lots - 19 Campbell Street Bangalow.....	9
Report No. 13.12	PLANNING - Development Application 10.2020.306.1 Rural Dual occupancy (detached) at 212 Fowlers Lane, Bangalow .....	9
Report No. 13.14	PLANNING - Development Application 10.2020.530.1 Swimming Pool and decks at 36 Roses Road Federal.....	9
Report No. 13.15	PLANNING - 26.2020.5.1 Planning proposal to permit a car park at 158 Jonson Street, Byron Bay .....	10
Report No. 13.17	PLANNING - S4.55 Application to modify Consent 10.2019.616.1 Mixed Use Development, cnr Jonson & Browning Streets Byron Bay .....	10
Report No. 13.18	PLANNING - 26.2020.6.1 Byron Local Environmental Plan 2014 Housekeeping Amendments.....	10
Report No. 13.21	Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire .....	11
Report No. 13.3	PLANNING - Development Application 10.2019.444.1 Dwelling house and swimming pool at 37 Byron Street, New Brighton .....	12
Petition No. 10.1	Against The Kollektive's proposal for Bayside Development in Bayside Brunswick Heads.....	12
Report No. 13.1	Rent relief for business and not-for-profit organisations eligible for JobKeeper.....	12
Report No. 13.2	Amendments to Code of Meeting Practice.....	13
Report No. 13.4	PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal .....	14
Report No. 13.13	PLANNING - Development Application 10.2020.138.1 to establish Multi-Dwelling Housing (7 units) at 8 Kumbellin Glen, Ocean Shores.....	15
Report No. 13.19	PLANNING - 26.2020.7.1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Submission .....	17
Mayoral Minute No. 8.1	Use of public spaces for busking and other activities .....	18
Report No. 13.16	Draft Development Control Plan 2014 Chapter B2 Tree and Vegetation Management .....	19
Report No. 13.20	Update Resolution 20-525- Clarkes and Main Beach Reserves Inter Agency Meeting.....	21

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

### MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 19 NOVEMBER 2020 COMMENCING AT 11.06AM AND CONCLUDING AT 3.50PM

12020/1782

**PRESENT:** Cr S Richardson (Mayor), Cr B Cameron, Cr C Coorey, Cr J Hackett (arrived 11.21am), Cr A Hunter, Cr J Martin, Cr S Ndiaye and Cr P Spooner

**Staff:** Mark Arnold (General Manager)  
Vanessa Adams (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)  
Karen Love (Project Officer)  
Ralph James (Legal Counsel)  
Mila Jones (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
10.1	Against The Kollektive's proposal for Bayside Development in Bayside Brunswick Heads	For	Giles Perryman		In person
13.1	Rent relief for business and not-for-profit organisations eligible for JobKeeper	Against	John Anderson		In person
13.2	Amendments to Code of Meeting Practice	Against	John Anderson	Coorabella Vista P/L	In person
13.3	PLANNING - Development Application 10.2019.444.1 Dwelling house and swimming pool at 37 Byron Street, New Brighton	For	Rob Mills	Rob Mills Architecture & Interiors	In person
			Yvette Middleton	GSA Planning	Zoom
13.4	PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal	Against	Karl Allen		Zoom
13.13	PLANNING - Development Application 10.2020.138.1 to establish Multi-Dwelling Housing (7 units) at 8 Kumbellin Glen, Ocean Shores	Against	Gulcin Cribb		In person
			David Dvash		In person

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

Report No and Title		For/ Against	Name	Representing Organisation	Submission Received in form of
13.15	PLANNING - 26.2020.5.1 Planning proposal to permit a car park at 158 Jonson Street, Byron Bay	For	Nick Riley		In person
13.18	PLANNING - 26.2020.6.1 Byron Local Environmental Plan 2014 Housekeeping Amendments	Against	Jan Barham		Read out by staff
13.19	PLANNING - 26.2020.7.1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Submission	Against	Eric Freeman	Bayview Land Development Pty Ltd	In person
13.21	Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire	Against	Matthew O'Reilly	CABS	In person
			David Wallace	VOHL	In person

### Submissions

Subject	Name	Representing Organisation	Joining the meeting via
Proposed 5G Upgrades in the Byron Shire	Rinat Strahlhofer	Northern for Safe Technology Group	In person
Making it up as you go along	John Anderson		In person
Compliance	Matthew O'Reilly	CABS	In person

### Question No. 1 Procedural fairness

John Anderson asked the following question:

*In response to a previous question of mine relating to the Mayor's binning of my questions/ submissions because they contained criticism of Council staff, the Mayor is on record as stating that he had merely followed the Code of Meeting Practice. Could Senior Counsel please inform Council whether during the relevant period he advised the Mayor that the Code is not the only relevant statute that limits the Mayor's powers and that it is a serious step to curb a person's free speech without first affording common law procedural fairness such as giving the alleged offender the opportunity to delete the offending material?*

Legal Counsel responded:

*Legal professional privilege prevents me from disclosing the existence or subject of any legal advice which I provide to Councillors or to the General Manager.*

**Question No. 2 Code of Meeting Practice terms**

Coorabella Vista P/L asked the following question:

*Will the Mayor please indicate where in the Code of Meeting Practice the terms “insult” and “personal reflection” occur such that he holds those terms to be applicable to members of the public during a meeting, and is able to use them as a basis for disallowing questions/submissions?*

The question was taken on notice.

**Question No. 3 Enforcement Action**

Matthew O'Reilly asked the following question:

*Can staff please advise what is the compliance process for unauthorised commercial and industrial activities - when they've been identified as unauthorised are they required to cease trading until a DA is processed, or are they permitted to continue trading without a DA approval?*

The Director Sustainable Environment and Economy responded:

*Just to clarify, each and every enforcement action is taken on a case-by-case basis. We're guided by the enforcement policy and any other regulations or legislation that apply. So, it might be that circumstances differ and some premises might be able to continue to operate if there's no risk to health/life/environment as opposed to those that might pose a risk. There are some instances where owner's consent might not have been adequately demonstrated. So there is, as I said, a case-by-case basis.*

*The meeting adjourned at 12.22pm for lunch and reconvened at 1.09pm.*

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**APOLOGIES**

**PROCEDURAL MOTION**

- 20-590 Resolved** that the apology from Cr Lyon be accepted and a leave of absence granted.  
(Richardson/Cameron)  
*The motion was put to the vote and declared carried.*

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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 Richardson declared a pecuniary interest in Report 13.14. The nature of the interest being that he is the property owner. Cr Richardson elected to leave the Chamber and will not participate in discussion and the vote.

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**TABLING OF PECUNIARY INTEREST RETURNS**

In accordance with clause 4.9 of the *Code of Conduct for Councillors*, the Annual Interest Return of Cr Hackett was tabled for the period 2019-2020.



**ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

- 20-591 Resolved** that the minutes of the Ordinary (Planning) Meeting held 15 October 2020 be confirmed. (Hunter/Ndiaye)

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

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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****General Manager**

- Report No. 13.1 Rent relief for business and not-for-profit organisations eligible for JobKeeper  
Report No. 13.2 Amendments to Code of Meeting Practice

**Sustainable Environment and Economy**

- Report No. 13.3 PLANNING - Development Application 10.2019.444.1 Dwelling house and swimming pool at 37 Byron Street, New Brighton  
Report No. 13.4 PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal  
Report No. 13.13 PLANNING - Development Application 10.2020.138.1 to establish Multi-Dwelling Housing (7 units) at 8 Kumbellin Glen, Ocean Shores  
Report No. 13.16 Draft Development Control Plan 2014 Chapter B2 Tree and Vegetation Management  
Report No. 13.19 PLANNING - 26.2020.7.1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Submission  
Report No. 13.20 Update Resolution 20-525- Clarkes and Main Beach Reserves Inter Agency Meeting  
Report No. 13.21 Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire

Cr Richardson left the meeting in accordance with his earlier declared pecuniary interest in Report 13.14. Cr Ndiaye took the Chair.

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Ndiaye and seconded by Cr Hunter. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 20-592 and concluding with Resolution No. 20-603.

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.5**      **PLANNING - Development Application 10.2020.274.1 New dwelling to create dual occupancy (detached) at 590 Booyong Road Booyong**  
**File No:**                      I2020/1420

**20-592 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.274.1 for New Dwelling to Create Dual Occupancy (Detached), be granted consent subject to the recommended conditions of approval in Attachment 2 (#E2020/85691). (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

**Report No. 13.6**      **PLANNING - Development Application 10.2020.296.1 New dwelling to create dual occupancy (detached) in two stages at 665 Coopers Shoot Road Coopers Shoot: Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port. Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area**  
**File No:**                      I2020/1453

**20-593 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.296.1 for New dwelling to create dual occupancy (detached) in two stages: Stage 1 – Main dwelling with 2 bedrooms, 2 bathrooms, kitchen, laundry and car port. Stage 2 – Expanded outbuilding with 1 bedroom, 1 bathroom and separate living area, be granted consent subject to the conditions of approval listed in Attachment 2 (#E2020/85108). (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

**Report No. 13.7**      **PLANNING - Development Application 10.2020.30.1 Dual Occupancy at 20 Prince Street Mullumbimby**  
**File No:**                      I2020/1522

**20-594 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.30.1 for Dual Occupancy, be granted consent subject to the conditions listed in Attachment 2 (#E2020/86238). (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

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**Report No. 13.8**      **PLANNING - Development Application 10.2020.145.1 Boundary Adjustment and Demolition of Garage and Shed at 35A and 35B Argyle Street Mullumbimby**  
**File No:**              I2020/1523

- 20-595** **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.145.1 for Boundary Adjustment and Demolition of Garage and Shed, be granted consent subject to conditions listed in Attachment 2 (#E2020/86240).  
(Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.9**      **PLANNING - Report Exceptions to Development Standards 1 July 2020 to 30 September 2020**  
**File No:**              I2020/1588

- 20-596** Resolved that Council adopts the report on exceptions to development standards for the period 1 July to 30 September 2020.  
(Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.10**      **PLANNING - Report of the 15 October 2020 Planning Review Committee**  
**File No:**              I2020/1610

- 20-597** **Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held on 15 October 2020.  
(Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*



# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

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**Report No. 13.11**      **PLANNING - Development Application - 10.2020.132.1 - Alterations and Additions to Existing Dwelling House, Swimming Pool, Subdivision of two (2) lots into two (2) lots - 19 Campbell Street Bangalow**

**File No:**                      I2020/1644

- 20-598 Resolved** that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.132.1 for Alterations and Additions to Existing Dwelling and Swimming Pool, and Subdivision of two (2) lots into two (2) lots be granted consent subject to the conditions listed in Attachment 3 (#E2020/86847) to this report. (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.12**      **PLANNING - Development Application 10.2020.306.1 Rural Dual occupancy (detached) at 212 Fowlers Lane, Bangalow**

**File No:**                      I2020/1650

- 20-599 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.306.1 for Dual Occupancy (Detached), be granted consent subject to the following conditions listed in Attachment 2 (#E2020/84751). (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.14**      **PLANNING - Development Application 10.2020.530.1 Swimming Pool and decks at 36 Roses Road Federal**

**File No:**                      I2020/1600

- 20-600 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.530.1 for Swimming Pool and decks be granted consent subject to conditions listed in Attachment 2 #E2020/85634. (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

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**Report No. 13.15**      **PLANNING - 26.2020.5.1 Planning proposal to permit a car park at 158 Jonson Street, Byron Bay**  
**File No:**                I2020/1603

**20-601 Resolved** that Council:

1. proceed with the planning proposal as attached to this report (Attachment 1 – E2020/83230) to amend LEP 2014 to permit a car park and apply environment protection zones on the subject land;
2. forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;
3. pending a positive Gateway determination and completion of adequate studies and further supporting information, undertake public exhibition of the planning proposal in accordance with the determination requirements; and
4. consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.17**      **PLANNING - S4.55 Application to modify Consent 10.2019.616.1 Mixed Use Development, cnr Jonson & Browning Streets Byron Bay**  
**File No:**                I2020/1567

**20-602 Resolved** that, pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979, Application No. 10.2019.616.2 for modifications to approved mixed use development be approved by modifying Consent Number 10.2019.61.1 as per the amended conditions in Attachment 4 (#E2020/86006). (Ndiaye/Hunter)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

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**Report No. 13.18**      **PLANNING - 26.2020.6.1 Byron Local Environmental Plan 2014 Housekeeping Amendments**  
**File No:**                I2020/1438

**20-603 Resolved** that Council:

1. Submit the planning proposal contained in Attachment 1 (E2020/69360) to the NSW Department of Planning, Industry and Environment for Gateway determination;
2. Subject to the Gateway determination undertake public exhibition of the planning proposal and consult with government agencies as required by the Gateway determination; and

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

3. Receive a report outlining the exhibition outcomes.

(Ndiaye/Cameron)

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

*Crs Coorey, Martin, Ndiaye, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

*Cr Richardson was not present for the vote.*

Cr Richardson returned to the meeting.

### PROCEDURAL MOTION

- 20-604 Resolved** that Council change the order of business to deal with Reports 13.21, 13.3, 10.1, 13.1, 13.2, 13.4, 13.13 and 13.19 next on the Agenda. (Richardson/Ndiaye)

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

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.21 Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire**

**File No:** I2020/1740

- 20-605 Resolved** that Council:

1. Notes the update provided on the status of the planning proposal and state management options for short term rental accommodation in Byron Shire.
2. Agrees to amend the planning proposal to include precinct areas that permit non-hosted STRA for 365 days in those areas that have already been taken up almost exclusively for STRA, and 90 days for those areas that have not. These precinct areas are shown in the maps in Attachment 1(#E2020/89860) with the exception of the Brunswick Heads map, which is to be amended and replaced with a map that deletes the 365 day area from land west of Tweed Street.
3. Authorises staff to submit an amended planning proposal to the Department of Industry and Environment for Gateway determination that satisfies item 2.
4. Pending gateway determination, undertakes public exhibition of the planning proposal and consult with government agencies in accordance with the gateway determination; and
5. Receives a report outlining the public exhibition outcomes. (Coorey/Cameron)

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

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

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**Report No. 13.3**      **PLANNING - Development Application 10.2019.444.1 Dwelling house and swimming pool at 37 Byron Street, New Brighton**  
**File No:**                I2020/1233

**20-606 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.444.1 for Dwelling House and Swimming Pool, be granted consent subject to the conditions of approval in document E2020/92896, and include the following reasons for decision (Schedule 3 of E2020/92896):

“The proposed development is permitted to connect to the sewer to address the environmental constraints and low lying nature of the land.

The proposed development is permitted to connect to the sewer due to the land’s proximity to existing sewer services.” (Hunter/Ndiaye)

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

*Crs Coorey, Martin, Ndiaye, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

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### PETITIONS

**Petition No. 10.1**      **Against The Kollektive's proposal for Bayside Development in Bayside Brunswick Heads**  
**File No:**                I2020/1734

**20-607 Resolved:**

1. That the petition regarding Against The Kollektive's proposal for Bayside Development in Bayside Brunswick Heads be noted.
2. That the petition be referred to the Director Sustainable Environment and Economy.  
(Richardson/Cameron)

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

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### STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1**      **Rent relief for business and not-for-profit organisations eligible for JobKeeper**  
**File No:**                I2020/1639

**20-608 Resolved** that Council delegate to the General Manager the authority to negotiate and enter into arrangements with JobKeeper eligible businesses and not-for-profit organisations identified in this report, and including AFL Queensland Ltd, relating to rental payments due after 31 October 2020 until 28 March 2021 to 25% waived and 75% deferred. (Ndiaye/Richardson)

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

**Report No. 13.2**  
**File No:**

**Amendments to Code of Meeting Practice**  
**I2020/1702**

Moved:

1. That Council endorse the amendments to the Code of Meeting Practice including the following:

4.7 A natural person is permitted one speech in favour of or against one item-on the Agenda.

A community organisation is permitted one speech in favour of or against any items-on the Agenda.

For avoidance of doubt a natural person is permitted to make one speech in favour of or against an item on the agenda. If that natural person also represents a community organisation that natural person is permitted to make one speech in favour of or against the same item on the agenda on behalf of the community organisation, in addition to the speech they make on their own behalf.

4.11 A natural person is permitted to register one submission per meeting on matters that are not on the Agenda.

A community organisation is permitted to register a limit of 3 submissions per meeting on matters that are not on the Agenda.

For avoidance of doubt, if that natural person also represents a community organisation that natural person is permitted to register 3 submissions per meeting in addition to the submission they register on their own behalf.

4.12 Two minutes is allocated for submissions to Council on matters that are not on the Agenda.

4.13 A natural person/community organisation is permitted to ask one question per meeting.

A natural person is permitted to ask one question per meeting on matters that are not on the Agenda.

For avoidance of doubt, if that natural person also represents a community organisation that natural person is permitted to register ask three questions per meeting in addition to the submission they register on their own behalf.

2. That a definition of Community Organisation in the following terms be added to the Definitions in Clause 22 of the Code of Meeting Practice.

*'Community Organisation' is 'any organisation engaged in charitable or other community-based activity operating under Australian law and not established for the purpose of making a profit, including organisations engaged in advocacy or other activities that may not be primarily charitable.'*

3. That the Code of Meeting Practice, as amended, be placed on public exhibition for a period of 28 days and:
  - a) should no submissions be received the amended Code of Meeting Practice be adopted, or
  - b) should any submissions be received those submissions be reported to Council at its first meeting in 2021. (Coorey/Cameron)

PROCEDURAL MOTION

**20-609 Resolved** that Cr Coorey be granted a one minute extension to her speech. (Richardson/Ndiaye)

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

AMENDMENT

**20-610 Resolved:**

1. That Council endorse the amendments to the Code of Meeting Practice and place it, as amended, on public exhibition for a period of 28 days and;
2. That a definition of Community Organisation in the following terms be added to the Definitions in Clause 22 of the Code of Meeting Practice.

*'Community Organisation' is 'any organisation engaged in charitable or other community-based activity operating under Australian law operating as a not-for-profit and not established for the purpose of making a profit, including organisations engaged in advocacy or other activities that may not be primarily charitable.'*

3. That:
  - a) should no submissions be received the amended Code of Meeting Practice be adopted, or
  - b) should any submissions be received those submissions be reported to Council at its first meeting in 2021. (Richardson/Hunter).

*The amendment was put to the vote and declared carried.  
Crs Coorey and Cameron voted against the amendment.*

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

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.4 PLANNING - 26.2017.4.1 Lot 22 - Proposed Amendments to the Exhibited Planning Proposal**  
**File No:** I2020/1244

**20-611 Resolved** that Council:

1. Prepare an amended planning proposal for (part) Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby that reflects changes detailed in Table 2 of this report.
2. Forward the amended planning proposal and supporting studies to the Minister for Planning requesting a Gateway determination.
3. Place the amended planning proposal, supporting studies and structure plan on public exhibition in accordance with the Gateway determination.
4. Carry out a community engagement program in addition to the Gateway exhibition requirements.
5. Receive a further report to consider:
  - a) The outcome of the public exhibition and community engagement program.
  - b) The preparation of an amended Plan of Management for Lot 22.



# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

- c) The preparation of Development Control Plan provisions for Lot 22.
- d) The preparation of a holistic traffic and transport study for the Saltwater Creek Precinct. (Richardson/Ndiaye)

### PROCEDURAL MOTION

**20-612 Resolved** that Cr Richardson be granted a two minute extension to his speech. (Ndiaye/Coorey)

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

*The motion (Richardson/Ndiaye) was put to the vote and declared carried.*

*Crs Coorey, Martin, Ndiaye, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*

*No Councillors voted against the motion.*

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**Report No. 13.13 PLANNING - Development Application 10.2020.138.1 to establish Multi-Dwelling Housing (7 units) at 8 Kumbellin Glen, Ocean Shores**  
**File No:** I2020/1710

**20-613 Resolved** that Development Application No. 10.2020.138.1 for Demolition of Existing Dwelling House and Construction of Multi-Dwelling Housing Comprising five (5) Dwellings be granted consent subject to Deferred Commencement Conditions listed in Attachment 2 (E2020/86297) and subject to the following amendments:

Amend Condition No. 1 to read as follows:

### **SCHEDULE 1. DEFERRED COMMENCEMENT CONDITION PURSUANT TO SECTION 4.16(3)**

*The following condition concerns matters as to which the Council must be satisfied before the consent can be issued:*

#### **1. Deferred Commencement Consent – Amendments to the plans required**

This consent does not operate until Council is satisfied that the following amendments have been made to the proposed development:

#### **Amended Plans Required**

Pursuant to Section 4.16(3) of the EPA Act 1979, this consent does not operate until Council is provided with a full set of architectural drawings including floor plans, elevations, sections, landscape plan and site plan. The plans are to be prepared with regard to the submitted site plan, landscape plan, ground floor plan, first floor plan, second floor plan, roof plan, elevations, and sections prepared by Story Design Collective dated 21/10/2020.

To satisfy Council in this matter the applicant must submit amended plans:

- a) To amended plans must reduce the total number of units within the development to **five (5)** by removing two units; and
- b) To separate the building into two (2) structures with a minimum separation distance of 5m to reflect the built form of the locality; and
- c) To demonstrate a minimum 1.8m boundary setback from the eastern side property boundary; and
- d) Demonstrating that vehicular access/egress to car parking areas is safe and efficient, to Council's Development Engineer's satisfaction; and
- e) The retaining wall at the Goondooloo Drive frontage is either:
  - located not less than 50cm inside the front boundary with the area in front of the fence to be landscaped; or
  - articulated with a minimum of seven (7) recessed sections at a maximum interval

of 5 metres with minimum dimensions of 0.9 x 0.9 metres to allow planting of vegetation to reduce the impact of the retaining structure.

Evidence is required to be submitted of compliance with the above condition, sufficient to satisfy the Council as to those matters, within 2 years of the date of this Notice of Determination. If satisfactory evidence is produced in accordance with this requirement, the Council will give written notice to the applicant of the date from which this consent commences operation.

If Council has not notified the applicant within a period of 28 days after the applicant's evidence is produced to it, the Council is, for the purposes only of Section 97 of the Environmental Planning and Assessment Act 1979, taken to have notified the applicant that Council is not satisfied as to those matters on the date on which that 28 day period expires.

Amend Schedule 5 Notes pertaining to ET charges and s7.11 Contributions as follows:

**Water payments under the Water Management Act 2000**

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

**ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT**  
**(ET Policy 2018)**

Water	2.00 ET
Bulk Water	2.00 ET
Sewer	2.75 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>). These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

**S7.11 Schedule of Development Contributions**

The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The current contribution rates are available from Council offices during office hours. **Payments will only be accepted by cash or bank cheque.**

# BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

Section 7.11 contributions Schedule for DA10.2020.138.1						
Ocean Shores						
Catchment						
This schedule was calculated in spreadsheet #E2018/73086						
1 bedroom units =		0	@	0.55 SDU	=	0
2 bedroom units =		5	@	0.75 SDU	=	3.75
3 bedroom units/dwellings =		0	@	1 SDU	=	0
Allotments =		0	@	1	=	0
Less Site Credits =		1	@	-1	=	-1
Total SDU					=	2.75
Schedule valid until				After this date contact Council for CPI update.		
Local Open Space & Recreation	(OS-OS)	2.75	SDU @	\$ 1,769.39	=	\$ 4,865.82
LGA Wide Open Space & Recreation	(OS-SW)	2.75	SDU @	\$ 765.88	=	\$ 2,106.17
LGA wide Community Facilities	(CF-SW)	2.75	SDU @	\$ 1,121.71	=	\$ 3,084.70
Local Community Facilities	(CF-OS)	2.75	SDU @	\$ 1,527.69	=	\$ 4,201.15
Bikeways & Footpaths	(CW-OS)	2.75	SDU @	\$ 482.42	=	\$ 1,326.66
Shire Wide Bikeways & Footpaths	(CW-SW)	2.75	SDU @	\$ 82.28	=	\$ 226.27
Urban Roads	(R-OS)	2.75	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	2.75	SDU @	\$ 231.75	=	\$ 637.31
Rural Roads	#NA	2.75	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	2.75	SDU @	\$ 1,158.46	=	\$ 3,185.77
<b>Total</b>					=	<b>\$ 19,633.85</b>

(Hunter/Richardson)

The motion was put to the vote and declared carried.

Crs Coorey, Martin, Ndiaye, Richardson, Cameron, Hackett and Hunter voted in favour of the motion.

Cr Spooner voted against the motion.

**Report No. 13.19 PLANNING - 26.2020.7.1 E zone Implementation Program - Planning Proposal STAGE 3 BLEP 2014 – Gateway Submission**  
**File No:** I2020/1576

## 20-614 Resolved that Council:

- Amend the planning proposal contained in Attachment 1 (E2020/85949) to exclude the following land in the 7D Scenic Escarpment Zone, representing 'non-agreed' environmental zoning outcomes that can be collectively considered as part of a future strategic review of remaining 7D land in the Shire:
  - Lot 5 DP 625004, 470 Main Arm Road, Main Arm
  - PT Lot 22 SP 549688, 139 Bangalow Road, Byron Bay
  - Lot 21 DP 859004, 83 Walkers Lane, The Pocket
  - Lot 1 DP 719570, 133 Middle Ridge Road, Upper Main Arm
  - Lot 5 DP 625004, 470 Main Arm Road, Main Arm
  - Lot 11 DP 816147, 689 Left Bank Road, Mullumbimby Creek
  - Lot 285 DP 1198641, 64 Corkwood Cres, Suffolk Park
  - Lot 4 DP 635176, 526 Broken Head Road, Broken Head
- Submit the amended planning proposal to the NSW Department of Planning, Industry and Environment for Gateway determination;

3. Pending Gateway determination, undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination; and
  4. Receive a report outlining the exhibition outcomes. (Hunter/Ndiaye)  
*The motion was put to the vote and declared carried.*  
*Crs Coorey, Martin, Ndiaye, Richardson, Cameron, Hackett, Spooner and Hunter voted in favour of the motion.*  
*No Councillors voted against the motion.*
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### MAYORAL MINUTE

**Mayoral Minute No. 8.1      Use of public spaces for busking and other activities**  
**File No:                              I2020/1759**

- 20-615 Resolved** that Council end the current suspension on the use of public spaces for busking or other activity within the definition, including: tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money from 14 December 2020. (Richardson)

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

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### SUBMISSIONS AND GRANTS

There were no submissions and grants.

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### DELEGATES' REPORTS

#### 1. Rous Meeting on 18 November 2020

Cr Richardson advised:

*We had a workshop with Rous yesterday really trying to flesh out ways forward as far as our future water strategy. As you'd know we had a presentation here about the dam, etc. I put forward a Notice of Motion which was ably supported by Cr Cameron, but not many more others, to just pause on the dam preference and instead also do a whole lot of independent reports on water tanks, recycled water, demand management, etc. Instead the board members were happy to have a workshop to start to flesh out what that could look like which was probably a step too quick and too big for them to support.*

*I'm hopeful that something like my Notice of Motion, if not the exact same thing, will then come to a December meeting. I think would have a significant support from Councillors to seek or am I optimistic? I've got to say there aren't too many that are rusted-on pro-dammers who wake up thinking "I can't wait for a dam;" but the more you know about this space the less comfortable you are of predicting a different outcome.*

*I think there is an appetite to at least get the information in front of the community that the community is looking for. Both Basil and I talked about, in a sense, passing that pub test – does the average person know why or why not we could do water tanks, does the average person know what the cost would be and what the realities of recycled water are? I would say right now no and Rous needs to answer those questions. So let's watch this space - as I said, the December meeting will be one where hopefully we will at least get some other reports started.*

Cr Cameron added:

*I've got no doubt that the community view on what we need to do includes a multiplicity of options and the dam is right down the bottom of them. I think though, even though it's been difficult saying that that is the upfront option at the moment it has had a good impact in that it has actually brought the community back into the discussion.*

*This is actually a discussion that's been going on for 20-25 years, I think in '95 there was a proposal to actually do a dam at Federal which got knocked back. One of the interesting things out of that is that the community at the time said that demand management was the go. Even though we've had substantial growth in our population over that 25 years, we are using, it might even be less water regionally; it's definitely not more water than we were then. So we've actually got a very good track record in achieving what the community wants here.*

*But we have to be clear about this - those gains, the more you get down that demand management curve the harder it gets to get much more out of it because you've already squeezed a lot out of it so we do have to look at other options as well.*

*Just to build on what Cr Richardson said, the real point here is not to have an argument about whether we want a dam or not, the real discussion we need to have is about other options and critically it's important that the community comes to a realistic understanding of what the costs of those alternatives are and then to back us and to say "yes, we understand that and we are prepared to wear those costs because of the benefits we get in protecting the environment, saving the rainforest, looking after aboriginal heritage etc."*

*I'm really hopeful too that we can have that discussion as a community, as a region. I probably have to say that we need to as a constituent council join with the other constituent councils and be part of that conversation. Constituent councils can't sit back and go "okay, well we play this part in this system, we don't want to change". As a water supplier Rous is responsible for the collection of the water and distribution but it's actually the councils that sell it. So we have to be part of the solution, we have to be part of that discussion, and if we all are I'm very hopeful that we will come to a solution that is good for all of us.*

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**Report No. 13.16      Draft Development Control Plan 2014 Chapter B2 Tree and Vegetation Management**

**File No:**                      I2020/1539

Moved:

1. That Council endorses the draft Development Control Plan Chapter B2 Tree and Vegetation Management (Attachment 1 #E2020/67970) for public exhibition for 28 days. with the following amendments:
  - a) Delete the words 'if under 5m tall' from B2.2.1(8)
  - b) Add the words 'Camphor Laurel, *Cinnamomum camphora*' to Table 3 in Appendix 3.
  
2. That staff provide a post-exhibition report to Council on item 1 that,
  - a) gives consideration to and makes recommendations on submissions received during the exhibition period, and
  - b) provides a new section that ensures landholder revegetation projects including ongoing projects in R5, E2 and E3 zones do not have to incur additional costs or barriers that act as a disincentive to responsible land management that restores, expands and enhances biodiversity.
  
3. That staff update Development Control Plan 2014 Part A to include the definitions contained

# BYRON SHIRE COUNCIL

## ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

within Development Control Plan Chapter B2 Tree and Vegetation Management post public exhibition.

4. That the public exhibition draft referred to in (1) include information regarding the proposed amendment referred to in 2(b) in order that submitters have the opportunity to make comment. (Cameron/Coorey)

### PROCEDURAL MOTION

- 20-616 Resolved** that Cr Cameron be granted a two minute extension to his speech. (Richardson/Coorey)
- The motion was put to the vote and declared carried.*

### AMENDMENT

**20-617 Resolved:**

1. That Council endorses the draft Development Control Plan Chapter B2 Tree and Vegetation Management (Attachment 1 #E2020/67970) for public exhibition for 28 days.
2. That staff provide a post-exhibition report to Council on item 1 that:
  - a) gives consideration to and makes recommendations on submissions received during the exhibition period, and
  - b) provides a new section that ensures landholder revegetation projects including ongoing projects in R5, E2 and E3 zones do not have to incur additional costs or barriers that act as a disincentive to responsible land management that restores, expands and enhances biodiversity.
3. That staff update Development Control Plan 2014 Part A to include the definitions contained within Development Control Plan Chapter B2 Tree and Vegetation Management post public exhibition.
4. That the public exhibition draft referred to in (1) include information regarding the proposed amendment referred to in 2(b) in order that submitters have the opportunity to make comment.
5. That an agenda item on this matter be included for a Strategic Planning Workshop. (Richardson/Spooner)

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

*Crs Coorey, Martin, Cameron and Hackett voted against the amendment.*

*The Mayor used his casting vote in favour of the amendment and declared the amendment carried.*

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



# BYRON SHIRE COUNCIL

ORDINARY (PLANNING) MEETING MINUTES

19 November 2020

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Report No. 13.20      Update Resolution 20-525- Clarkes and Main Beach Reserves Inter  
Agency Meeting  
File No:                I2020/1596

**20-618 Resolved** that Council notes the report on the outcome of the Clarkes and Main Beach Reserves with the following amendment:

From Page 217 of Report No. 13.20:

“DPIE – Environment, Energy and Sciences Group

Confirmed that the general understanding of the processes occurring at Clarkes is based on staff interpretation ***of observed coastal processes, a basic interpretation of the Byron Shire Coastline Hazards Assessment Update (BMT WBM, 2013)***, and not on any recent coastal hazard or technical beach profile data assessment. ***It is thought that*** the recent persistent erosion trend ~~has and is occurring due to a general lack of southerly swell regime over the past 4 years and influences of east and/or north-east swell which results~~ ***may be due to a general reduction in the littoral transport regime from south to north around Cape Byron from a possible reduction in frequency of moderate to large S/SE swell events over the past few years up until winter 2020. An apparent increase in sand supply around Cape Byron into Byron Bay has been observed since winter 2020. Given the complexity of the processes, the erosion trend may also be due to the influence of the East Australian Current, and/or the impact of recent moderate-to-large ENE swell events such as those generated by ex-TC OMA ( Feb 2019), The 'Black Nor'Easter' swell of June 2016, and ex-TC Oswald (Jan 2013). The combination of these and other physical processes may have impacted the sediment transport regime around Cape Byron into Byron Bay over the past few years resulting*** in more sand leaving the embayment ***towards the north*** than is entering....”.

(Ndiaye/Richardson)

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

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*There being no further business the meeting concluded at 3.50pm.*

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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 10 December 2020.



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Mayor Simon Richardson