



# Byron Shire Council



## Minutes

Ordinary (Planning) Meeting  
Thursday, 20 February 2020

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
20 February 2020

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# BYRON SHIRE COUNCIL

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## MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 20 FEBRUARY 2020 COMMENCING AT 11.05AM AND CONCLUDING AT 4.48PM

I2020/172

**PRESENT:** Cr S Richardson (Mayor), Cr B Cameron, Cr C Coorey, Cr J Hackett, Cr A Hunter, Cr M Lyon, 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)  
Ralph James (Legal Counsel)  
Chris Larkin (Manager Sustainable Development)  
Chris Soulsby (Development Planning Officer S94 & S64)  
Rob Van Iersel (Major Projects Planner)  
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:

Report No and Title		For/ Against	Name	Representing Organisation
9.1	Final Business and Industrial Lands Strategy for adoption	For	Rob Doolan	
		Against	Matthew O'Reilly John Anderson	CABS
13.3	PLANNING - Development Application - further report following resolution 19-279 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System 5 at 183 Coopers West Lane Main Arm	For	Wayne Weisse	
		Against	Peta Best	
			Catherine Ruth Feldmann	
			Duncan Dey	
	Ewan Willis			
13.6	Tiny Houses on council land	For	Genevieve Lee	One Roof Byron Inc
13.9	PLANNING - Development Application 10.2019.161.1 - Multi Dwelling Housing - 15 Units, No 23 Lismore Road Bangalow	Against	Ian Holmes	Bangalow Progress Association
13.1 2	PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation	For	David Wallace	VOHL

### Submission No. 1 The meaning of life

John Anderson made a submission to Council regarding Councillors.

**Submission No. 2 Affordable Housing**

Matthew O'Reilly made a submission to Council regarding affordable housing outcomes.

**Question No. 1 Byron Bay bypass construction**

John Anderson asked the following question:

Workers at the Byron Bypass site in October 2019 laid a cluster of thick, high voltage cables beneath the road then being constructed and indicated that some 10 more were to be laid for the purpose of "future proofing".

- (1) on the basis of what delegated authority was a decision made to lay these cables given that they weren't indicated in the construction plans filed with the JR PP and later with the Land & Environment Court
- (2) who is paying for said cables
- (3) and do those cables betray a long-term plan to commercialise the area to the west of Butler St so that it eventually becomes part of the CBD

*The Development Planning Officer S94 & S64 advised the cables aren't in an area that was considered by the Land and Environment Court. The Court case only considered the bypass section of the wetland so the cables are in an area that are considered in the Part 5 activity. It was covered in the REF in the Part 5 approval, so approved under delegated authority by the General Manager. Subsequent to that, detailed plans were provided and approved by Essential Energy to underground the cables including the 11kv cable that runs down the length of Butler Street and then crosses into the town centre. It's both the Byron South feeder and the Byron No. 1 into the town centre as identified by Essential Energy. These are Essential Energy cables.*

*Who is paying for them? Council is paying for the relocation of those cables, so they are existing cables that needed to be relocated because we're undergrounding works, removing power poles. It is being done at our expense. The exception to that is an additional conduit required by Essential Energy. That conduit is at their request and they are paying for it. Council is undertaking the works on their behalf and they haven't told us why. They've simply required us as part of the detail design to put those conduits in at their expense.*

*Those conduits at this point in time do not have any cable in them and as they're a relocation of existing power infrastructure it's certainly not part of a long term plan or required for the provision of any rezoning. As far as staff are concerned, there is no plan to rezone land in that locality.*

**Question No. 2 Tiny Houses**

Matthew O'Reilly asked the following question:

Is there any movement in Council to allow exempt development, complying development, DA approvals for some sort of tiny house development on rural lots in the Shire. Is that moving anywhere because they're already there and if they're on Council land, is Council making any movement in that direction? Because at the moment, Council's Tiny House Fact Sheet says they're not allowed yet they're going in everywhere.

*The Director Sustainable Environment and Economy advised that in terms of tiny houses, there's a whole spectrum and it's quite complicated so the planning proposal that is before Council today is just starting to unpack that issue. Part 2 of the recommendation from staff is that we get a working*

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*group together with local government representatives and planning representatives to look at the impediments planning wise and local government wise to the issue of tiny houses.*

*The meeting adjourned at 12.45pm for lunch and reconvened at 1.36pm.*

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## APOLOGIES

There were no apologies.

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## REQUESTS FOR LEAVE OF ABSENCE

Cr Spooner requested a leave of absence for the Ordinary Meeting of 27 February 2020.

### PROCEDURAL MOTION

- 20-001 Resolved** that Cr Spooner be granted a leave of absence from the Ordinary Meeting on 27 February 2020. (Richardson/Ndiaye)

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

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## DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

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## TABLING OF PECUNIARY INTEREST RETURNS

*In accordance with the clause 4.9 of the Code of Conduct, an Annual Interest Return was tabled for Jason Stanley, Inflow and Infiltration Project Manager.*

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## ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 20-002 Resolved** that the minutes of the Ordinary (Planning) Meeting held 21 November 2019 be confirmed. (Spooner/Hunter)

*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

#### Sustainable Environment and Economy

- Report No. 13.3 PLANNING - Development Application - further report following resolution 19-279 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System at 183 Coopers West Lane Main Arm
- Report No. 13.4 Integrated Pest Management Strategy

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Report No. 13.6	Tiny House Development Proposal
Report No. 13.7	PLANNING - 26.2019.4.1 Outcome of Public Exhibition - Planning Proposal to Introduce Minimum Lot Size Standards (BLEP 2014) for Manor House and Multi Dwelling Housing (Terraces)
Report No. 13.9	PLANNING - Development Application 10.2019.161.1 - Multi Dwelling Housing - 15 Units, No 23 Lismore Road Bangalow
Report No. 13.10	PLANNING - 26.2016.6.1 The Farm Planning Proposal, Ewingsdale Road Byron Bay
Report No. 13.12	PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation

The remaining Recommendations were adopted as a whole, being moved by Cr Richardson and seconded by Cr Hunter. Each recommendation is recorded with a separate resolution number commencing at Resolution No. 20-003 and concluding with Resolution No. 20-007.

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1**            **PLANNING - Development Application 10.2019.275.1 Boundary Adjustment 45 Monet Drive Montecollum**  
**File No:**                    I2019/2024

**20-003 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.275.1 for Boundary Adjustment, be granted consent subject to the conditions of approval in Attachment 4 (E2020/3957).                    (Richardson/Hunter)

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

*Crs Coorey, Martin, Lyon, 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. 13.2**            **PLANNING - 26.2019.8.1 Planning Proposal Parrot Tree Place Bangalow to rezone 690m2 of RU1 to R2 low density residential**  
**File No:**                    I2019/1850

**20-004 Resolved:**

1. That Council request the NSW Department of Planning, Industry and Environment (DPIE) to issue a Gateway determination for the planning proposal, as included at Attachment 1 (E2020/6094).
2. That Council obtain any further studies from the applicant if required by the Gateway determination.
3. That Council undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination.
4. That Council receive a report outlining the exhibition outcomes.                    (Richardson/Hunter)

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

*Crs Coorey, Martin, Lyon, 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. 13.5**      **PLANNING - S8.2 Review - Alterations & Additions to Tourist Cabin, Alcorn Street, Suffolk Park**  
**File No:**                      I2019/2141

- 20-005 Resolved** that, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, development application 10.2019.276.1 for alterations and additions to tourist cabin. Alcorn Street, Suffolk Park, be granted consent subject to the conditions listed in Attachment 4 (E2020/4651). (Richardson/Hunter)

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

*Crs Coorey, Martin, Lyon, 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. 13.8**      **PLANNING - 26.2018.5.1 Outcome of Public Exhibition - Planning Proposal to Rezone Land at 4 Picadilly Hill Road, Coopers Shoot**  
**File No:**                      I2020/15

- 20-006 Resolved** that Council forward the planning proposal in Attachment 1 (E2020/7587) to the Department of Planning, Industry & Environment requesting finalisation. (Richardson/Hunter)

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

*Crs Coorey, Martin, Lyon, 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. 13.11**      **Coastal Management Program (Stage One) Scoping Study for Cape Byron to South Golden Beach - status and update**  
**File No:**                      I2020/70

**20-007 Resolved:**

1. That Council note the update provided on the Coastal Management Program Stage 1 Scoping Study for Cape Byron to South Golden Beach.
2. That Council note that once the Department of Planning, Industry and Environment detailed assessment has been received a further report will be tabled at the next available Council meeting. (Richardson/Hunter)

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**PROCEDURAL MOTION**

- 20-008 Resolved:** that Council change the order of business to deal with items 9.1, 13.3, 13.6, 13.9 and 13.12 next on the Agenda. (Richardson/Hackett)

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



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

**20-014 Resolved** that Cr Spooner be granted a one minute extension to his speech. (Richardson/Martin)

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

*The motion (Coorey/Cameron) was put to the vote and declared lost.*

*Crs Martin, Lyon, Ndiaye, Richardson, Spooner and Hunter voted against the motion.*

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.3**      **PLANNING - Development Application - further report following resolution 19-279 10.2018.384.1 Alterations and Additions to existing Dwelling House, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System at 183 Coopers West Lane Main Arm**

**File No:**                      I2019/1124

**20-015 Resolved:**

1. That Council defer this matter until such time as a meeting is arranged and held with the Rural Fire Service (RFS), staff, applicants and objectors to the DA to discuss issues relating to access and bushfire protection for Lot 2, including but not limited to the following points of contention:
  - a) increases in bushfire risk, as highlighted this Spring and Summer;
  - b) clarification as to whether RFS inspectors were made aware of the narrow legal width of the 630 metre section of the RoC and the unacceptability to the owner of Lot 3 to increasing the legal width on which they have based their assessment;
  - c) explanation of why several seemingly insurmountable access issues have not been addressed in fire reports or reports to Council;
  - d) why the 30-degree slope north-west of the proposed building does not rule out that location;
  - e) why Section 3.3 of the RFS Guide does not apply, where it states "a combination of poor access, rugged topography, remote location and an inability to provide an adequate APZ would pose an unacceptable bush fire risk, even if the building was constructed in accordance with the strictest construction standards. In these cases, there is a strong argument for refusal of the development application.
2. That Council, once the above has been actioned, report the matter back to the first available Council meeting. (Lyon/Cameron)

AMENDMENT

Moved: That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No.10.2018.384.1 for Alterations and Additions to existing Dwelling House Use, Alterations and Additions to existing structure to create Dual Occupancy (detached) and Upgrade Wastewater System, be approved subject to the recommended amended conditions shown in E2020/12081 including a new point, 13(f):

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## 13. Dwelling Access & Parking

- f) *This includes road widening as identified on the plan prepared by Heath and McPhail Surveying No. HM18147 – 2 Issue B, dated 14/10/19 in the vicinity of chainage 120 plus additional widening between Chainage 300 and 400 within a 5.03 width easement for a minimum length of 20 metres. The existing gravel passing bay between Chainage 650 and 700 to be sealed.*

*Such plans and specifications must be approved as part of the Construction Certificate.*

*NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".*

*(Spooner/Hunter)*

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

*Crs Spooner and Hunter voted in favour of the amendment*

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

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

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

*Crs Spooner and Hunter voted against the motion.*

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## **Report No. 13.6      Tiny House Development Proposal**

**File No:**                      I2019/2143

### **20-016 Resolved** that Council support:

1. The preparation of an amendment to the Byron Local Environmental Plan 2014 to facilitate Tiny House Development on Council owned and or managed land for the provision of supported housing for people experiencing (or at risk of) homelessness.
2. The Planning proposal being drafted on the basis of the definitions and draft local provision outlined in the report.
3. The Planning proposal once prepared by staff is submitted to the Department of Planning for a gateway determination to enable public exhibition.
4. Staff writing to the Planning and Local Government departments to request formation of a working group with Byron Council and others (including industry) to further examine the tiny house spectrum and recommend changes to the planning and local government legislation to enable this type of development more flexibly and permanently. (Ndiaye/Richardson)

### PROCEDURAL MOTION

### **20-017 Resolved** that Cr Ndiaye be granted a one minute extension to her speech. (Richardson/Coorey)

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

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

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**Report No. 13.9**      **PLANNING - Development Application 10.2019.161.1 - Multi Dwelling Housing - 15 Units, No 23 Lismore Road Bangalow**

**File No:**                      I2020/20

- 20-018 Resolved** that Council authorise the General Manager to enter into a section 34 Conciliation Agreement approving development application 10.2019.161.1, subject to the conditions of consent agreed to in Attachment 8 (E2020/7293), and subject to a negotiation process that seeks an improved car parking outcome by providing additional on-site parking spaces and alleviation of privacy issues affecting neighbours. (Cameron/Coorey)

## AMENDMENT

Moved: That Council authorise the General Manager to enter into a section 34 Conciliation Agreement approving development application 10.2019.161.1 subject to the conditions of consent agreed to in Attachment 8 (E2020/7293). (Spooner/Hunter)

## PROCEDURAL MOTIONS

- 20-019 Resolved** that Cr Spooner be granted a one minute extension to his speech. (Richardson/Ndiaye)

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

- 20-020 Resolved** that the motion be put. (Ndiaye)

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

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

*Crs Martin, Spooner and Hunter voted in favour of the amendment.*

*Crs Coorey, Lyon, Ndiaye, Richardson, Cameron and Hackett voted against the amendment.*

*The motion (Cameron/Coorey) was put to the vote and declared carried.*

*Crs Coorey, Martin, Lyon, 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. 13.12**      **PLANNING - 26.2020.1.1 - Planning Proposal for Short Term Rental Accommodation**

**File No:**                      I2020/111

- 20-021 Resolved:**

1. That Council forward the Planning Proposal (Attachment 1 #E2020/9498) to NSW Department of Planning for a Gateway determination after making the following adjustments:

- a) replace the words "on the premises" with "in the dwelling" wherever they occur.
- b) change the words in the first paragraph of 3.1.6 from:

"Adequate monitoring and enforcement of the planning controls will be extremely difficult without a STRA register to provide information to Council about which properties are used for STRA and the number of days that properties are let."

to:

“Adequate monitoring and enforcement of the planning controls will be impossible without a locally-operated STRA register to provide information to Council about which properties are used for STRA and the number of days that properties are let.”

- c) add a section/table in Appendix 1, 2.4 which shows the percentage that listings in each suburb/area are of total dwellings in that area, and where relevant elsewhere in the document, to justify the 90-days being implemented shire-wide.
  - d) include a mention of our rental vacancy rate at a relevant point in the document to further justify the need for these measures in Byron Shire
  - e) indicate that effective compliance will require as part of the registration process, the 90-days the short-term rental accommodation will be available to be specified in advance, or at least a portion thereof up to the maximum of 90 days and reflect this in the Planning Proposal.
2. That, following the issue of a Gateway determination, the Planning Proposal be publicly exhibited in accordance with the requirements of it and the Byron Shire Community Participation Plan.
3. That following public exhibition, a further report is put to Council on the results of the public exhibition and next steps for the finalisation of the Planning Proposal. (Lyon/Richardson)

**PROCEDURAL MOTION**

**20-022 Resolved** that Cr Lyon be granted a two minute extension to his speech. (Richardson/Hunter)

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

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

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

*Cr Hunter voted against the motion.*

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**MAYORAL MINUTE**

There was no mayoral minute.

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**PETITIONS**

There were no petitions tabled.

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**SUBMISSIONS AND GRANTS**

There were no submissions or grants tabled.

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**DELEGATES' REPORTS**Melbourne National Climate Emergency Summit 2020

Cr Ndiaye advised:

Last week, three of us travelled to Melbourne for the National Climate Emergency Summit 2020. It was attended by over 2000 people that included 150+ Council representatives including staff and Councillors. It also had school groups and community citizens. There was a great array of speakers.

As a Council we were the first in NSW to declare a climate emergency and there were others there that had only just in the process of, so when we got together with the other council groups we did a half day workshop on the Saturday, it was a chance to meet and discuss where we're up to and steps forward and how we can work together to potentially lobby federal government further given their inaction in this space and that the cost shift of all the mitigation has fallen on local councils, and the initiatives on all of our communities as well.

Rebecca Huntley offered us some really interests insights from her research on how to engage the disengaged. We heard from Michael Mann. Often the impromptu stuff is what we get more from at these conferences but it was a great chance to be amongst people that all have a similar desire to make positive changes in this space and protect the environment as Green councillors do consider consistently.

Cr Coorey advised:

I think that some of the more powerful things that I saw were the Mayor of Glenn Innes talking about the impact of bush fire on her area and what they were doing. I think it was also good to see Clover Moore speaking about the relationship Sydney had because obviously they can't just plant trees to offset their carbon burden. The opportunities for rural and regional areas to work with urban areas to do a lot more in carbon draw down was quite good as well.

Overall there's capacity for councils to advocate together and we've had so much cost shifting in our direction without very much leadership at high levels of government but I think critical mass of councils will be a good thing.

It was nice to see how advanced we are in terms of the initiatives this Council has taken with reducing our own greenhouse gases and getting to zero emissions as a Council. And I think we were well ahead of the game on that front which is fantastic. And we're doing some really good things already.

All in all, it was pretty good with a few lessons to learn and nice to know that we were moving forward already.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.4**      **Integrated Pest Management Strategy**  
**File No:**            I2019/2136

**20-023** **Resolved** that Council adopt the Integrated Pest Management Strategy 2019-2029 at Attachment 1 (E2020/6168). (Richardson/Cameron)

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

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**Report No. 13.7**      **PLANNING - 26.2019.4.1 Outcome of Public Exhibition - Planning Proposal to Introduce Minimum Lot Size Standards (BLEP 2014) for Manor House and Multi Dwelling Housing (Terraces)**

**File No:**                      I2020/14

**20-024 Resolved:**

1. That Council forward the planning proposal in Attachment 1 (E2020/7569) to the Department of Planning, Industry & Environment requesting that the Department finalise the plan by 30 June 2020.
2. That Council continue to lobby our State representatives as well as the Department of Planning, Industry and Environment to have exclusion zones from the Low Rise Medium Density Code. (Ndiaye/Richardson)

PROCEDURAL MOTION

**20-025 Resolved** that Cr Ndiaye be granted a one minute extension to her speech.

(Richardson/Cameron)

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

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

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**Report No. 13.10**      **PLANNING - 26.2016.6.1 The Farm Planning Proposal, Ewingsdale Road Byron Bay**

**File No:**                      I2020/47

**20-026 Resolved:**

1. That Council forward the amended Planning Proposal (Attachment 1 E2020/6032) to NSW Department of Planning, Industry and Environment for an amended Gateway Determination, to provide an approval mechanism for the nominated unauthorised land uses at The Farm.
2. That the text of the amended Planning Proposal be revised to clarify that the proposed SP2 zone is for a strip of land up to 15 metres wide as shown in the proposed zoning map attached to the draft Planning Proposal.
3. That, following Gateway Determination, the Planning Proposal be publicly exhibited for a period of 28 days and; following this time a further report be put to Council.
4. That Council concurrently exhibit the draft amendment to Chapter E5 of Byron DCP 2014 - Certain Locations in Byron Bay and Ewingsdale (Attachment 2 E2020/6033) and report on submissions received. (Hackett/Richardson)

PROCEDURAL MOTION

**20-027 Resolved** that Cr Hackett be granted a two minute extension to her speech.

(Richardson/Cameron)

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

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

*There being no further business the meeting concluded at 4.48pm.*

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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 19 March 2020.

.....  
Mayor Simon Richardson