



Byron Shire Council



Agenda Extraordinary Meeting

Thursday, 13 May 2021
held at Council Chambers, Station Street, Mullumbimby
commencing at 11:00am

Public Access relating to items on this Agenda can be made between 11.00am and 11:30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read "Mark Arnold".

Mark Arnold
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:

- (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

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BUSINESS OF EXTRAORDINARY
MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
4. STAFF REPORTS

Corporate and Community Services

- 4.1 Election of Mayor 5

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 Election of Mayor

Directorate: Corporate and Community Services

Report Author: Esmeralda Davis, A/Manager Corporate Services

5 **File No:** I2021/251

Summary:

10 In accordance with Section 318B (7) of the *Local Government Act 1993* Council is required to elect a new Mayor to fill the casual vacancy created by the resignation of the previous Mayor, at a meeting within 14 days of the vacancy occurring. The term of appointment will be until a successor is declared elected to the office of the Mayor following the Local Government election in September 2021. The process for the election is prescribed by Schedule 7 of the Local Government (General) Regulation 2005 which is detailed in this report.

15

RECOMMENDATION:

That

- 20 1. Council determines the method of voting to be used for the Mayoral vote in accordance with the options prescribed by the Local Government (General) Regulation 2005.
2. The period of the Mayoral appointment will be until a successor is declared elected to the office of the Mayor following the Local Government election in September 2021.
- 25 3. If the election of Mayor results in a vacancy in the role of Deputy Mayor, election of the Deputy Mayor be conducted immediately following the election of Mayor using the same process outlined in this report.
4. The newly elected Mayor be appointed as the delegate or alternate delegate for the Advisory Committee, Panel and Regional Committee positions previously held by the outgoing Mayor, as outlined in this report.
- 30 5. Council determines by Preferential Ballot the appointment to the vacant delegate position to Rous County Council.

Attachments:

- 35 1 Byron Shire Council Nomination Form Mayor 2021, E2021/58690 
- 2 Byron Shire Council Nomination Form Deputy Mayor 2021, E2021/58692 

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- 3 Byron Shire Council Nomination Form - Council Delegate to Rous County Council, E2021/59091 

Report

5 The recent resignation of the Mayor, who was elected by the electors in 2016, has resulted in a casual vacancy in the role of Mayor. Due to the postponement of the 2020 Local Government Election, section 318B (7) of the Local Government Act 1993 NSW states *“If while an order under this section is in force a casual vacancy occurs in the office of mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of mayor elected by the councillors.”*

10 The procedure to be followed for the conduct of the Elections is to be in accordance with Schedule 7 of the Local Government (General) Regulation 2005 which is detailed below:

Term of the Mayor

The term of appointment will be until a successor is declared elected to the office of the Mayor following the Local Government election in September 2021.

Returning Officer

15 Schedule 7(1) of the Local Government (General) Regulation 2005 states that the *General Manager (or a person appointed by the General Manager) is the Returning Officer.*

Nomination

Schedule 7(2) of the Local Government (General) Regulation 2005 states that:

- (1) *A councillor may be nominated without notice for election as mayor or deputy mayor.*
- 20 (2) *The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.*
- (3) *The nomination is to be delivered or sent to the returning officer.*
- 25 (4) *The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.*

Nomination forms have been provided as an attachment to this business paper. Any completed nomination forms should be handed to the General Manager prior to the commencement of the Council meeting.

Election

30 Schedule 7(3) of the Local Government (General) Regulation 2005 states:

- (1) *If only one councillor is nominated, that councillor is elected.*
- (2) *If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot; or by open voting.*

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(4) *The election is to be held at the Council meeting at which the Council resolves the method of voting.*

(4) In this clause:

“**ballot**” has its normal meaning of secret ballot;

5 “**open voting**” means voting by a show of hands or similar means.

The following additional information outlines various ballot systems.

Preferential ballot – as per its normal interpretation, the ballot papers are to contain the names of all candidates and Councillors mark their votes 1, 2, 3 and so on against the various names, so as to indicate their order of preference for all of the candidates.

10 If a candidate has an absolute majority (a number that is more than one-half of the number of unexhausted formal ballot-papers) of first preference votes, that candidate is elected. If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers. This process continues until
15 one candidate has received an absolute majority of votes. In the event of a tie, where there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal, the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.

20 Ordinary ballot – this is the usual method adopted in New South Wales. Ballots are secret with only one candidate’s name written on a ballot paper.

Where there are two candidates, the person with the most votes is elected. If the ballots for the two candidates are tied, the one to be elected is to be chosen by lots, with the first name out being declared elected.

25 Where there are three or more candidates, the person with the lowest number of votes is eliminated and the process started again until there are only two candidates. The determination of the election would then proceed as if the two were the only candidates. In the case of three or more candidates where a tie occurs, the one to be excluded will be chosen by lot.

30 Choosing by Lot – to choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed, and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen, on the basis detailed above.

35 The method of voting should also consider advice from the Office of Local Government [circular 20-29](#) which states that:

- Open ballots can be undertaken remotely where a council is conducting its meetings by audio visual link.

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- Ordinary and preferential ballots are secret ballots and councillors will need to attend the meeting in person if the election is to be by way of an ordinary or preferential ballot.

Result

5 The result of the election (including the name of the candidate elected as Mayor) is:

(a) to be declared to the Councillors at the Council Meeting at which the election is held by the Returning Officer; and

(b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

10 If the election of Mayor results in a vacancy for the Deputy Mayor position, an election for Deputy Mayor should be carried out using the same process outlined above including the nominations process, Council resolving the method of voting, carrying out the voting process and declaring the results.

Delegate and Alternate Delegate Appointments

15 The previous Mayor was appointed as a delegate on the following Regional Committees, Advisory Committees and Panels:

- Rous County Council*
- Northern Rivers Joint Organisation
- Bangalow Pool Trust Joint Working Group
- 20 • Byron Bay Community and Cultural Centre Management Committee
- Byron Shire Sports Stakeholder Forum
- Chamber of Commerce - Bangalow
- Community Safety Precinct
- North Byron Parklands Regulatory Working Group
- 25 • Finance Advisory Committee
- Strategic Business Panel
- Sustainability and Emissions Reduction Advisory Committee
- Transport and Infrastructure Advisory Committee

30 The previous Mayor was appointed as an alternate delegate on the following Regional Committees, Advisory Committees and Panels:

- Richmond-Tweed Regional Library Committee

35 With the exception of Rous County Council, which requires appointment by election, it is recommended that the newly elected Mayor be appointed as a delegate and alternate delegate to the remaining positions, which are now vacant as a result of the Mayor's resignation, until September 2021.

Depending on the outcome of this Mayoral election, consideration should also be given to the impact on quorum numbers if these appointments result in duplicate membership on

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Committees and Panels, to determine if additional nominations are required. This can be resolved via a report to the next Ordinary Meeting of Council on 27 May 2021.

5 The outgoing Mayor does not hold a formal position on the advisory committees with meetings scheduled between 13 and 27 May, therefore it is proposed that any membership vacancy which may occur for these committees as a result of the election, is also resolved at the Ordinary Council meeting on 27 May 2021.

***Rous County Council Delegate**

10 Councillor representatives to a County Council are required to be elected by Preferential Ballot. The legislative requirements for these elections are set out in *Schedule 9 - Election of members of county councils* of the Local Government (General) Regulation 2005.

Advice from the Office of Local Government is that Councillors must be physically present at the meeting to participate in a preferential vote, therefore those attending virtually will be not be able to vote.

15 The following information is provided on nominations, ballot papers and voting, and results:

Nomination

Schedule 9 Part 2 (5) of the Local Government (General) Regulation 2005 states:

- (1) *A councillor of the constituent council may be nominated for election as a member of the county council.*
- 20 (2) *The nomination:*
- (a) *may be made without notice by any councillor of the council, and*
 - (b) *is to be in writing delivered or sent to the returning officer, and*
 - (c) *is not valid unless the nominee has indicated consent to the nomination in writing.*
- 25 (3) *The returning officer is to announce the names of the nominees at a council meeting.*

Nomination forms have been provided as an attachment to this business paper. Any completed nomination forms should be handed to the General Manager prior to the commencement of the Council meeting.

30 Ballot-papers and voting

Schedule 9 Part 2 (7) of the Local Government (General) Regulation 2005 states:

- (1) *The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the figures 1, 2 and so on against the various*

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names so as to indicate the order of their preference for at least the number of candidates to be elected.

- 5 (2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper is to be rejected at the scrutiny of votes.

Result

Schedule 9 Part 2 (9) of the Local Government (General) Regulation 2005 states:

The result of the election (including the names of the candidates elected as members) is—

- 10 (a) to be declared to the councillors by the returning officer at the council meeting where the election is held, and
- (b) to be delivered or sent to the general manager of the county council and the Secretary.

Strategic Considerations

15 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.4	Support Councillors to carry out their civic duties	5.2.4.3	Provide support to Councillors – including councillor requests, briefing sessions, provision of facilities and payment of expenses, and record keeping

Legal/Statutory/Policy Considerations

The role of the Mayor is defined by [Section 226 of the Local Government Act 1993](#).

The conduct of the elections for Mayor is to be in accordance with [Schedule 7 of the Local Government \(General\) Regulation 2005](#).

The conduct of the elections for a County Council representative is to be in accordance with [Schedule 9 of the Local Government \(General\) Regulation 2005](#).

Financial Considerations

Section 249 of the Local Government Act 1993 states:

- 5 *Fixing and payment of annual fees for the mayor*
- (1) *A council must pay the mayor an annual fee.*
- (2) *The annual fee must be paid in addition to the fee paid to the mayor as a councillor.*
- (3) *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
- 10 (4) *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*

Consultation and Engagement

Not applicable.