

# Agenda Extraordinary Meeting

Thursday, 10 October 2024



**BYRON**  
SHIRE  
COUNCIL

# Agenda Extraordinary Meeting

held at Council Chambers, Station Street, Mullumbimby  
commencing at 9.00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am 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.

---



---

## OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

# BYRON SHIRE COUNCIL

## BUSINESS OF EXTRAORDINARY MEETING

### 1. PUBLIC ACCESS

### 2. APOLOGIES

### 3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

### 4. STAFF REPORTS

#### General Manager

4.1	Oath or Affirmation of Office .....	7
-----	-------------------------------------	---

#### Corporate and Community Services

4.2	Election of Deputy Mayor - 2024-2025 .....	10
4.3	Election of Representatives for Rous County Council .....	15
4.4	Countback for Casual Vacancy within the first 18 months of Term.....	20
4.5	Review of Council Delegations .....	23
4.6	Local Government NSW Annual Conference 2024.....	29

### 5. CONFIDENTIAL REPORTS

#### Corporate and Community Services

5.1	CONFIDENTIAL - Determination of Members of the Audit, Risk and Improvement Committee .....	33
-----	--	----

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

STAFF REPORTS - GENERAL MANAGER

**Report No. 4.1 Oath or Affirmation of Office**

**Directorate:** General Manager

5 **Report Author:** Heather Sills, Manager Corporate Services

**File No:** I2024/1231

**Summary:**

10 [Section 233A](#) of the *Local Government Act 1993* prescribes that “A councillor must take an oath of office or make an affirmation of office at or before the first meeting of the council after the councillor is elected.”

The purpose of this report is to make a formal record of the Oath of Office or Affirmation of Office taken by individual Councillors prior to the commencement of the new Council’s first Meeting.

15

---

**RECOMMENDATION:**

20 **That it be recorded that the following Councillors took either the Oath of Office or Affirmation of Office, before the General Manager, prior to the first Meeting of the new Council on 10 October 2024:**

*List of Councillors*

25

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

4.1

### Report

Councillors will be required to take an Oath of Office or make an Affirmation of Office at the first meeting of Council.

#### Oath

- 5 *I [name of councillor] swear that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.*

#### 10 Affirmation

- 15 *I [name of councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.*

### Strategic Considerations

#### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.9	Deliver the Councillor Onboarding Program following the 2024 Local Government Election

#### Legal/Statutory/Policy Considerations

- 20 [Section 233A](#) of the *Local Government Act 1993* prescribes that a councillor must take an oath of office or make an affirmation of office and that failing to do so, without reasonable excuse, precludes them from attending any meetings as a Councillor.

The minutes of the meeting will record the taking of an oath or making of an affirmation in accordance with Council's obligations under s233(6).

#### Financial Considerations

- 25 Not applicable.



**Consultation and Engagement**

Not applicable.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 4.2 Election of Deputy Mayor - 2024-2025**

**Directorate:** Corporate and Community Services

5 **Report Author:** Heather Sills, Manager Corporate Services

**File No:** I2024/1232

**Summary:**

In accordance with [Section 231](#) of the *Local Government Act 1993* Councillors can elect a Deputy Mayor.

10 The Deputy Mayor can be elected for the Mayoral term (4 years) or a shorter term, as determined by the Council.

The Deputy Mayor is typically elected for a period of approximately 12 months, with an election held at the Ordinary Council meeting in September each year.

15


---

**RECOMMENDATION:**

**That:**

- 20
1. Council elects a Deputy Mayor for the period from 10 October 2024 until the Ordinary Meeting of Council in September 2025.
  2. The method of election of the Deputy Mayor be by way of ordinary ballot.

**Attachments:**

- 25
- 1 Byron Shire Council Nomination Form Deputy Mayor 2024, E2023/91273 

## Report

In accordance with Section 231 of the Local Government Act 1993, a Council may elect a Deputy Mayor to assist the Mayor in the performance of his/her duties.

- 5 (1) *The councillors may elect a person from among their number to be the deputy mayor.*
- (2) *The person may be elected for the mayoral term or a shorter term.*
- (3) *The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.*
- 10 (4) *The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.*

## Term of the Deputy Mayor

Section 231 (2) of the Local Government Act states: “*The person may be elected for the mayoral term or a shorter term*” such as:

- 15 1. For a period of 12 months
2. For the period of the Mayoral Term
3. For another period determined by Council

## Returning Officer

20 Schedule 7(1) of the Local Government (General) Regulation 2021 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 2021 states that:

- 25 (1) *A councillor may be nominated without notice for election as mayor or deputy mayor.*
- (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.*
- 30 (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

Schedule 7(3) of the Local Government (General) Regulation 2021 states:

- (1) *If only one councillor is nominated, that councillor is elected.*
- 5 (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.*
- (3) *The election is to be held at the Council meeting at which the Council resolves the method of voting.*
- (4) *In this clause:*  
10 *“ballot” has its normal meaning of secret ballot;*  
*“open voting” means voting by a show of hands or similar means.*

The following additional information outlines various ballot systems. Traditionally, this Council has determined the election for Deputy Mayor by ordinary ballot.

### Preferential ballot

- 15 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.

### Ordinary ballot or open voting

- 20 Ordinary ballot – ballots are secret with only one candidate’s name written on a ballot paper.

Open voting - open voting is by way of a show of hands or other similar means.

Where there are two candidates, the person with the most votes is elected. If the votes 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 Selection of Method

The Office of Local Government previously released [circular 20-29](#) giving guidance around the voting method required where the meeting is being held by audio-visual link:

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

Should there be any Councillors attending via audio-visual link, the recommendation is that the 'open voting' method be used.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

### **10 Legal/Statutory/Policy Considerations**

The Deputy Mayor will undertake the Mayor's role at the request of the Mayor and in situations where the Mayor is prevented by illness, absence or other reasons from exercising the functions of the position. The role of the Mayor is defined by [Section 226 of the Local Government Act 1993](#).

### **15 Financial Considerations**

Section 249(5) of the Local Government Act 1993 states:

*(5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

Therefore, the Deputy Mayor when acting in the role of Mayor, in instances where the Mayor has leave of absence endorsed by Council, could be paid a fee calculated on a pro-rata basis of the annual Mayoral allowance, which would be deducted from the amount of the monthly Mayoral allowance paid to the Mayor, in accordance with Section 249 of the *Local Government Act 1993*.

## **Consultation and Engagement**

Not applicable.

**BYRON SHIRE COUNCIL**

**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**4.2**

**Report No. 4.3 Election of Representatives for Rous County Council**

**Directorate:** Corporate and Community Services

**Report Author:** Heather Sills, Manager Corporate Services

5 **File No:** I2024/1292

**Summary:**

Rous County Council is constituted under the *Local Government Act 1993* and has three main functions:

- Bulk water supply
- 10 • Weed biosecurity
- Flood mitigation

Rous County Council is made up of eight councillors with two nominated from each of the constituent councils (Ballina, Byron, Lismore and Richmond Valley). Councillors are elected in accordance with the Local Government Council term, with the Chairperson and Deputy Chairperson being elected each year by the councillors nominated by each of the constituent councils.

Rous County Council requires that the Councillor delegates are elected by Preferential Ballot. The legislative requirements for the elections are set out in [Schedule 9 - Election of members of county councils](#) of the Local Government (General) Regulation 2005.



20

---

**RECOMMENDATION:**

25 **That Council determines by Preferential Ballot two delegates to Rous County Council.**

**Attachments:**

- 1 Nomination Form - Council Delegate to Rous County Council, E2021/59091 
- 2 Information Resource - Jumping on Board with Rous County Council, E2021/154802 

30

## Report

5 Rous County Council is constituted under the *Local Government Act 1993*. County Councils are different to local councils; they are specifically set up or delegated to provide one or more functions of a local council. This means that they have specific functions that they undertake for the local councils of the areas within which they operate. These Councils are referred to as 'constituent councils'.

Rous Country Council has three main functions, further information on each is available on its [website](#):

- 10
- Bulk water supply
  - Weed biosecurity
  - Flood mitigation

15 Rous County Council has eight councillors with two elected representatives from each constituent council (Ballina, Byron, Lismore and Richmond Valley). Councillors are elected at the commencement of a local government term. The Byron Shire councillors elected under the previous term were Cr Michael Lyon and Cr Sarah Ndiaye.

Meetings are held:

20 **When:** Third Wednesday in  
February, April, June, August, October and December  
**Time:** 10.00am  
**Where:** Rous Water Centre  
Level 4, 218-232 Molesworth Street, Lismore

25 Councillors are remunerated in accordance with the [Local Government Remuneration Tribunal Annual Determination](#). These amounts are subject to annual review. The fee payable to each Councillor in 2024/25 is currently set at \$11,280 per annum (the maximum amount payable).

30 Further information about Rous County Council is available in attachment 2.

## Election of Delegates

In the event that more than two Councillors nominate, Councillor delegates are to be elected by Preferential Ballot. A summary of the election process is outlined under the heading Legal/Statutory/Policy Considerations.



## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.3	Provide administrative support to Councillors to carry out their civic duties

### Legal/Statutory/Policy Considerations

5 The legislative requirements for the elections are set out in [Schedule 9 – Election of members of county councils](#) of the *Local Government (General) Regulation 2021 (Regulation)*.

The following information is provided on nominations.

#### 5 **Nomination**

- 10 (1) *A councillor of the constituent council may be nominated for election as a member of the county council.*
- (2) *The nomination:*
- 15 (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.*
- (3) *The returning officer is to announce the names of the nominees at a council meeting.*

20 A nomination form has been included as attachment 1 to this report. The nomination form should be provided to the General Manager as the Returning Officer either prior to or at the start of the meeting to enable the preparation of the ballot papers for the elections to be held as part of the Council’s consideration of this report.

The following information is provided on the ballot papers and voting:

#### 7 **Ballot-papers and voting**

- 25 (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 names so as to indicate the order of their preference for at least the number of candidates to be elected.*
- (2) *The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3

(3) *An informal ballot-paper is to be rejected at the scrutiny of votes.*

Votes will be counted in accordance the preferential system outlined in [Schedule 9](#) of the Regulation.

#### **8 Count**

- 5 (1) *For the election of 1 member, the votes are to be counted in accordance with Schedule 4.*
- (2) *For the election of 2 or more members, the votes are to be counted and the result of the election ascertained in accordance with the following procedures—*
- (a) *one of the candidates is elected in accordance with subsection (1),*
- 10 (b) *all the unrejected ballot-papers are rearranged under the names of the respective candidates in accordance with the first preferences marked on the ballot-papers, except that each ballot-paper on which a first preference for the elected candidate is indicated is placed in the parcel of the candidate next in the order of the voter's preference,*
- 15 (c) *the number of ballot-papers in the parcel of each candidate is counted and the total number of votes counted for each candidate is ascertained,*
- (d) *if a candidate then has an absolute majority of votes, the candidate is elected,*
- 20 (e) *if a candidate does not have an absolute majority of votes, the count proceeds according to Schedule 4, section 3(d), (e) and (f), until 1 candidate has received an absolute majority of votes,*
- (f) *Schedule 4, section 3(d) and (e) are to be read for this section as if a reference in those paragraphs to first preference votes were a reference to all the votes counted to a candidate under this subsection,*
- 25 (g) *the candidate who has received an absolute majority of votes is elected.*
- (3) *If more than 2 candidates are to be elected, the votes are to be counted in accordance with the procedures under subsection (2) until the result of the election of additional candidates is ascertained.*
- 30 (4) *In the process of counting under subsection (1) or (2), exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate.*

#### **Financial Considerations**

As outlined in the report, Councillor delegates to County Councils are remunerated in accordance with the [Local Government Remuneration Tribunal Annual Determination](#).

**Consultation and Engagement**

Not applicable.

**Report No. 4.4      Countback for Casual Vacancy within the first 18 months of Term**

**Directorate:** Corporate and Community Services

**Report Author:** Heather Sills, Manager Corporate Services

5 **File No:** I2024/1233

**Summary:**

[Section 291A](#) of the *Local Government Act 1993* outlines that a countback can be held instead of by-election in certain circumstances.

10 A countback can only be enacted if the council has, at its first meeting following that ordinary election of councillors, resolved that any casual vacancy within the first 18 months of the term is to be filled by a countback of votes cast at the last election for that office.

Councils that do not resolve to fill vacancies using a countback at their first meeting after the election will be required to fill vacancies through a by-election.

15 The purpose of this report is for Council to resolve whether a countback will apply in the event of a casual vacancy in accordance with Section 291A of the *Local Government Act 1993*.

---

20 **RECOMMENDATION:**

**That Council**

25 a) pursuant to section 291A(1)(b) of the *Local Government Act 1993*, declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on 14 September 2024, are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act and;

b) directs the General Manager to notify the Electoral Commissioner for NSW of Council's decision within 7 days of this decision.

**Attachments:**

30 1 NSW Electoral Commission - Countback information fact sheet, E2024/112407 

## Report

The following information has been obtained from [How Voting Works | Local, State & Federal Government Elections - NSW Electoral Commission](#):

5 A countback election is used to elect a councillor to fill a single vacancy, where the vacating councillor was elected under the proportional representation method (i.e. where two or more candidates were elected at a local government ordinary election). If there are multiple vacancies, a separate countback election is held for each vacancy.

10 The returning officer contacts all unelected candidates from the local government ordinary election who may still qualify to be elected to the office of councillor. Where the candidate is interested, they must submit a formal application to the returning officer. All candidates who submit and do not withdraw their application, become eligible candidates.

The timeline for a countback election is:

- 15
1. The Electoral Commissioner is notified of a casual vacancy, within seven days of it occurring.
  2. A returning officer is appointed within 14 days of the notification of the vacancy.
  3. Casual vacancy notices are issued 2 to 14 days from the appointment of the returning officer.

20

  4. Where a candidate is interested, they must submit a formal application to the returning officer. The application period closes after 10 days of the notices being issued.
  5. The countback is conducted within 14 days of the vacancy notices being issued.
  6. It may take up to a month for the results to be declared.

25 A countback election must be completed within 49 days, and applications for candidates to participate is open for 10 days.

If there are no eligible candidates, a by-election must be held. If there is only one eligible candidate, that candidate is elected. If there are multiple eligible candidates, a countback election is conducted.

- 30 In a countback election, the returning officer:
- uses preference data from ballot papers from the previous local government ordinary election
  - uses the same proportional representation method used in the original election
  - effectively re-runs the election making the vacating councillor ineligible and distributing each of their ballot papers to the next preference on the ballot paper

35

  - if a non-eligible candidate would be elected, the election is re-run with that candidate's ballot papers also distributed to their next preference on the ballot paper
  - re-runs the countback until an eligible candidate is elected.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

### **Legal/Statutory/Policy Considerations**

[Section 291A](#) of the *Local Government Act 1993*.

#### **5 Financial Considerations**

Councils that do not resolve to fill vacancies using a countback at their first meeting after the election will be required to fill vacancies using a by-election. The cost of a by-election is expected to be greater than \$150,000; whereas a countback is expected to cost between \$6,000-\$10,000.

- 10 The electoral commission have provided further information in Attachment 1.

### **Consultation and Engagement**

Not applicable.

**Report No. 4.5      Review of Council Delegations**

**Directorate:** Corporate and Community Services

**Report Author:** Mila Jones, Governance and Internal Audit Coordinator

**File No:** I2024/1252

5 **Summary:**

Council is required to review its delegations within the first 12 months of an election. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993.

10

---

**RECOMMENDATION:**

**That Council:**

- 15
1. **Revokes its previous delegations to the Mayor and General Manager and adopts the following:**
    - a) **Instrument of Delegation to the Mayor shown at Attachment 1 (E2024/111385); and**
    - b) **Instrument of Delegation to the General Manager at Attachment 2 (E2024/111364).**

20

  2. **Reconfirms that it delegates its functions as a Local Control Authority for noxious weeds under s370 of the Biosecurity Act 2015 to Rous County Council until such time as the delegation is revoked or re-delegated.**



25

  3. **Reconfirms its delegations to Council's Special Purposes Committee, i.e., the Planning Review Committee, as set out in Council's Code of Meeting Practice at clause 21 (E2022/60532).**


30

  4. **Reconfirms its acceptance of delegation of functions from other agencies as set out at Attachment 3 (E2024/111419).**

**Attachments:**

- 30
- 1 Delegation of Functions to the Mayor - for adoption for new term of Council, E2024/111385 
  - 2 Delegation of Functions to the General Manager - for adoption for new term of Council, E2024/111364 


35

  - 3 Delegations accepted by Council (Food Act 2003, Plumbing and Drainage Act 2012) - for adoption following new term of Council, E2024/111419 

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.5

- 4 Byron Shire Council - Food Act 2003 - Instrument of appointment 2024 (Delegation to Council), E2024/108345 



## Report

Section [380](#) of the *Local Government Act 1993* states that each council must review all its delegations during the first 12 months of each term of office. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section [377](#) of the *Local Government Act 1993*. These matters are included in the Statutory and Policy Implications section of this report.

## Mayor

Council's current delegation to the Mayor was adopted on 23 June 2022 via Resolution **22-311**. Minor amendments have been made to wording to bring it in line with Council's Delegations Register. The intention of each delegation has not been affected. The recommended instrument is included in this report as Attachment 1.

## General Manager

Council's current delegation to the General Manager was adopted on 13 June 2024 via Resolution **24-261**. The recommended instrument is included in this report as Attachment 2, with proposed changes marked in red text, and outlined below.

**DEG088e)** provides the limitation of the delegation to determine applications under Part 4 of the *Environmental Planning and Assessment Act 1979*. The proposed amendments to the limitations aim to streamline the development application process. The changes proposed are to:

- **increase the estimated value from “\$10,000,000” to “\$15,000,000”** - DPHIs' 'Faster Assessment program' and the Ministers Statement of Expectations requires council to improve assessment times, predominantly around residential housing targets. This is where we need to improve our assessment times, regardless of whether it is for a single or multi-dwelling development. By increasing delegations from \$10M to \$15M this can assist in reducing assessment timeframes where residential development is proposed that meets development standards. There are existing mechanisms in place to ensure that controversial or non-compliant developments are reviewed by the full Council, these include:
  - Where a variation to a development standard greater than 10% or contravenes a non-numerical standard, an application is required to be determined by the full Council. This would ensure developments that comply can be assessed and determined more efficiently.
  - Based on community feedback and the submission volumes, Councillors can request to review any DAs at a Planning Review Committee. Where it is decided a DA does not require determination by Council, this could reduce the assessment time for these applications by four weeks.
  - The Director has the discretion to withhold delegation and report DAs where circumstances warrant it.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.5

- **increase the number of subdivision lots from “10 or more” to “20 or more” -**

5 similar to the rise in estimated value, will help the Council meet assessment timeframes and the mandated housing targets outlined in the Byron Shire Residential Strategy. The same procedures will remain in place, allowing the Council to refer an application to the Planning Review Committee if deemed necessary.

- **proposed addition of a clause to enable refusal of an application –**

10 An application is considered ‘fatally flawed’ if it cannot be approved. Currently, any development over \$10M must be reported to Council for determination, regardless of whether it can be approved or not. This consumes valuable time for assessment and referral staff, as well as the Manager and Director. Providing the Director authority to refuse these applications will help reduce assessment times and allow staff to focus on properly prepared applications.

15 **BSC091** provides the limitations imposed on legal proceedings. It is recommended that references to “or defending” be removed to recognise the obligation to defend any legal action taken against Council.

### **Rous County Council**

20 Council adopted on 23 June 2022 via resolution **22-311** that Council “reconfirms that it delegates its functions as a Local Control Authority for noxious weeds under s370 of the Biosecurity Act 2015 to Rous County Council until such time as the delegation is revoked or re-delegated.”

It is proposed to reconfirm this delegation.

### **Special Purpose Committee endorsed under Council’s Code of Meeting Practice**

25 Council’s Planning Review Committee is a Special Purpose Committee which is endorsed under Council’s Code of Meeting Practice. The delegation to this Committee is shown at clause 21 of the Code.

It is proposed to reconfirm this delegation until such time as the delegation is revoked or re-delegated.

### **Acceptance of delegation of functions from other agencies**

30 Pursuant to s381 of the Local Government Act 1993, and by every other Act conferring a power of delegation, Council reconfirmed at the Ordinary Meeting on 23 June 2022, its acceptance of functions and powers to Council. It is proposed to reconfirm acceptance of these functions and powers shown at Attachment 3.

35 In relation to the delegation from the Food Authority, this delegation is subject to two statutory conditions, namely section 109E(4) of the Food Act, which requires the written consent of Council for the functions to be delegated to the General Manager; and section 381(3) of the Local Government Act which requires that such delegations to the General Manager be approved by Council.

Note also, the NSW Food Authority’s latest instrument of appointment to Council as an enforcement agency under the NSW *Food Act 2003* which takes effect from 1 July 2024. Refer to Attachment 4.

**5 Strategic Considerations**

**Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.2	Maintain, publish and report on relevant registers including delegations, Councillors and designated staff disclosures of interests, Councillor and staff gifts and benefits, and staff secondary employment

**Recent Resolutions**

- Not applicable

**Legal/Statutory/Policy Considerations**

10 The Local Government Act 1993 establishes the statutory framework for the delegation of Council’s authority. In relation to delegations:

[Local Government Act 1993 - Part 3 Delegation of functions](#)

- *s377 General power of the council to delegate*
- *s378 Delegations by the general manager*
- 15 • *s379 Delegation of regulatory functions*
- *s380 Review of delegations*
- *s381 Exercise of functions conferred or imposed on council employees under other Acts*

20 If staff delegations are out of date and actions carried out under them, they could be subject to legal challenge.

**Financial Considerations**

Nil

**Consultation and Engagement**

Consultation with Councillors is via this report.

**Report No. 4.6      Local Government NSW Annual Conference  
2024**

**Directorate:** Corporate and Community Services

**Report Author:** Jessica Cutter, Governance Support Officer

5 **File No:** I2024/1138

**Summary:**

The Local Government NSW Annual Conference 2024 will be held from Sunday 17 November to Tuesday 19 November 2024 at the Tamworth Regional Entertainment and Conference Centre.

10 Council is entitled to three voting delegates in the debating session. In accordance with the Councillor Expenses and Facilities Policy, *“A resolution of Council is required to authorise attendance of Councillors at LGNSW Conference(s) as a voting delegate.”*

15

---

**RECOMMENDATION:**

**That Council:**

- 20
1. **Authorises the attendance of Crs \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ as voting delegates at the Local Government NSW Annual Conference 2024, to be held from 17 to 19 November 2024.**
  2. **Notes that LGNSW members are encouraged to submit motions by Sunday 20 October 2024.**

25

## Report

The Local Government NSW Annual Conference 202 will be held from Sunday 17 November to Tuesday 19 November 2024 at the Tamworth Regional Entertainment and Conference Centre.

- 5 The Conference brings together delegates of member councils to submit, debate, and vote on motions relating to strategic local government issues. Resolutions form the LGNSW advocacy priorities for the year ahead.

In assessing a Councillor request to attend a conference, Clause 6.40 of the Policy asserts the following factors must be considered:

- 10
1. *relevance of the topics and presenters to current Council priorities and business and the exercise of the Councillor's civic duties*
  2. *cost of the event in relation to the total remaining budget.*

### **Conference voting delegates**

- 15 Council is entitled to three voting delegates in the debating session. This number is determined by population, further information is available [here](#).

As per Clause 6.37 of the [Councillor Expenses and Facilities Policy 2022](#), "A resolution of Council is required to authorise attendance of Councillors at... LGNSW Conference(s) as a voting delegate".

### **Conference motions**

- 20 All LGNSW member councils are invited to submit motions in accordance with the [2024 Motion Submission Guide](#).

The LGNSW criteria for motion submission specifies that motions must:

1. Be consistent with the objects of the LGNSW Rules (Rule 4).
2. Demonstrate that the issue concerns or is likely to concern a substantial number of local governments in NSW.
3. Seek to establish or change a policy position of LGNSW and/or improve governance of the association (noting that the LGNSW Board is responsible for any decisions around resourcing and campaigns or operational activities, and any necessary resource allocations will be subject to the LGNSW budgetary process).
- 30 4. Be strategic.
5. Be concise, clearly worded and unambiguous.
6. Not be focussed on just a small specific part of NSW.
7. Not encourage violation of prevailing laws.
8. Not seek to advantage one or several members at the expense of other members.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.6

As per clause 6.40 of the [Councillor Expenses and Facilities Policy 2022](#), motions to the Local Government NSW Annual Conference must first be endorsed by Council prior to submission.

- 5 Councillors received information about conference submissions via a memo from Director Corporate and Community Services on 14 August 2024, requesting motions be submitted to Council at its 5 September meeting.

### **Key deadlines:**

Date (2024)	Due
20 October	Latest date motions can be submitted to LGNSW for inclusion in the business paper.
6 November (5pm)	Due date for notification to LGNSW of council voting delegates.

### **Delegate report**

- 10 Following the Conference, Councillor/s are requested to submit a delegate's report in writing to an Ordinary Meeting of Council on the aspects of the conference, seminar, workshop, or function relevant to Council business and or the local community.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.3	Provide administrative support to Councillors to carry out their civic duties

### Legal/Statutory/Policy Considerations

- 15 [Councillor Expenses and Facilities Policy 2022](#)

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.6

### **Financial Considerations**

The 2024/25 budget provides an allocation of \$30,000.00 for Councillor attendance at conferences throughout the financial year.

Costs (*per delegate*) expected to be incurred are as follows:

5	Registration Fee	\$1,485.00
	Conference Dinner	\$230.00
	Travel / Flights*	\$300.00
	Accommodation (3 nights)*	\$600.00
10	<b>Total</b>	<b>\$2,615.00</b>

*\*Approximate*

### **Consultation and Engagement**

Not applicable.



CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 5.1 CONFIDENTIAL - Determination of Members of the Audit, Risk and Improvement Committee**

5 **Directorate:** Corporate and Community Services  
**Report Author:** Mila Jones, Governance and Internal Audit Coordinator  
**File No:** I2024/1293

**Summary:**

10 The *Local Government Act 1993* and the *Local Government (General) Regulation 2021* require each council in NSW to have an Audit, Risk and Improvement Committee.

This report enables the appointment of the Committee's independent members. It also provides for the appointment of one non-voting Councillor representative should the Council elect to appoint a representative.

15

---

**RECOMMENDATION:**

- 20
1. That pursuant to Section 10A(2)(a) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Determination of Members of the Audit, Risk and Improvement Committee.
  2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
    - a) personnel matters concerning particular individuals (other than councillors)
  - 25 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

the information is of a personal nature.

**Attachments:**

- 30
- 1 Confidential - ARIC Member Applications 2024, E2024/114242