

Minutes

Minutes of the Ordinary Council Meeting held on Tuesday 20 August 2024

I hereby certify that this is a true and correct record of the minutes of the Kempsey Shire Council ordinary meeting held Tuesday 20 August 2024



Mayor K Ring



The meeting commenced at 9:02 am.

PRESENT:

Councillors L J Hauville (Mayor and Chairperson), I A Bain, C S Butterfield, S R A Fergusson, A P Patterson, K A Riddington, K Ring, D F Saul and A D Wyatt.

General Manager, C L Milburn; Director Corporate and Commercial, L A Davies; Director Operations and Planning, M B Jackson; Director Utilities, W J Trotter; and Group Manager Governance and Information Services, D S Thoroughgood.

The Mayor informed all present that Council permits the electronic recording and broadcasting of the proceedings of Council which are open to the public. Your attendance at this meeting is taken as consent of the possibility that your image and your voice may be recorded and broadcast to the public.

1 OPENING PRAYER

Cr Fergusson provided the opening prayer.

2 ACKNOWLEDGEMENT OF COUNTRY

Cr Bain provided an acknowledgement of country.

3 ACKNOWLEDGEMENT OF SERVICE MEN, WOMEN AND FAMILIES

Cr Hauville provided an acknowledgement of service men, women and families.

4 APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE OR ATTENDANCE BY AUDIO-VISUAL LINK BY COUNCILLORS

Nil

5 CONFIRMATION OF MINUTES

2024.160 RESOLVED (Cr Riddington/Cr Fergusson):

That the minutes of the Ordinary Meeting of Kempsey Shire Council dated 16 July 2024 be confirmed.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

6 DISCLOSURES OF INTEREST

Cr Saul declared a pecuniary interest in item 10.2, Planning Proposal - Kemp Street, West Kempsey - PP240009, for the reason that he owns property in the area.

Cr Hauville declared a non-pecuniary non-significant interest in item 10.1, Planning Proposal - 322 Stuarts Point Road, Yarrahapinni - PP2300004, for the reason that he knows the father of the proponent.

7 ITEMS PASSED BY EXCEPTION

2024.161 RESOLVED (Cr Saul/Cr Patterson):

That the recommendations contained in the following items be adopted:

10.9. 2023-24 Financial Statements - Referral to Audit

10.10. Statement of Cash and Investments - July 2024

12.2. Audit, Risk & Improvement Committee Meeting Minutes - 24 July 2024

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

10.9 2023-24 Financial Statements - Referral to Audit

Officer Stacey Milligan, Finance Manager

File Number F19/1907

2024.162 RESOLVED (Cr Saul/Cr Patterson):

That Council:

1. delegates authority to the General Manager to refer the draft 2023-24 financial statements to audit as required under s413 *Local Government Act 1993* and s215 *Local Government (General) Regulation 2021*;
2. notes the governance role played by Council's Audit, Risk & Improvement Committee in overseeing the preparation and finalisation of the audited 2023-24 financial statements;
3. authorises the Statement by Councillors and Management be signed by the Responsible Accounting Officer, the General Manager, the Mayor and a Councillor as required by the *Local Government Act 1993*;
4. notes that the 2023-24 annual financial statements will not be presented to Council prior to finalisation; and

5. notes that Council's external auditor will present the audited 2023-24 financial statements at the November 2024 Council meeting.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

10.10 Statement of Cash and Investments - July 2024

Officer Stacey Milligan, Finance Manager

File No F22/3106

2024.163 RESOLVED (Cr Saul/Cr Patterson):

That Council receives and notes the report.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

12.2 Audit, Risk & Improvement Committee Meeting Minutes - 24 July 2024

Officer Matthew Bentley, Internal Auditor

File Number F24/2510

Section 10A(2)(e) - Maintenance of Law

This report is submitted on a confidential basis as it involves information that would, if disclosed, prejudice the maintenance of law. (*Local Government Act 1993*, section 10A(2)(e))

On balance, the public interest in preserving the confidentiality of the information which relates to matters of law outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

2024.164 RESOLVED (Cr Saul/Cr Patterson):

That Council note the draft meeting minutes from the Audit, Risk & Improvement Committee, 24 July 2024.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

8 MAYORAL MINUTES

2024.165 RESOLVED (Cr Hauville):

The Council includes the preparation of concept plan for Greenhill Lookout in the draft 2025-26 Operational Plan.

CARRIED (8 / 1)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring and Cr Wyatt

AGAINST: Cr Saul

2024.166 RESOLVED (Cr Hauville):

That Council permits departing Councillors to give valedictory speeches at the conclusion of the meeting.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

9 REPORTS OF COMMITTEES

Nil

10 REPORTS TO COUNCIL

10.1 Planning Proposal - 322 Stuarts Point Road, Yarrahapinni - PP2300004

Officer Marnie Jeffery, Strategic Planning Officer

File Number PP2300004

MOVED (Cr Patterson/Cr Saul):

That Council:

1. notes the amendments to the Planning Proposal PP2300004 which seeks to amend the Zoning and Lot Size Map at Lot 333 DP 805299, 322 Stuarts Point Road, Yarrahapinni;
2. places the amendment to Kempsey Development Control Plan 2013 (draft Chapter D6 - Yarrahapinni Land Release Area) on public exhibition for a minimum period of 28 days;
3. endorses the progression of the Planning Proposal to the making of the amendment the Kempsey Local Environmental Plan 2013;
4. authorises the General Manager to exercise delegation from the Minister for Planning to make the amending instrument; and
5. requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.

AMENDMENT (Cr Wyatt/Cr Riddington):

That Council:

1. notes the amendments to the Planning Proposal PP2300004 which seeks to amend the Zoning and Lot Size Map at Lot 333 DP 805299, 322 Stuarts Point Road, Yarrahapinni;
2. places the amendment to Kempsey Development Control Plan 2013 (draft Chapter D6 – Yarrahapinni Land Release Area) on public exhibition for a minimum period of 28 days with the following amendments to the desired outcomes:
 - a. That the VMP specifically put in place management and monitoring plan for the long term protection of threatened species,
 - b. The VMP include the provision that scenic trees along the road be retained, and
 - c. Mitigate the impacts of obstructing fish passage associated with any water crossing or instream structures in line with the document provided by Ms Ford at Monday's public forum.
3. endorses the progression of the Planning Proposal to the making of the amendment the Kempsey Local Environmental Plan 2013;
4. authorises the General Manager to exercise delegation from the Minister for Planning to make the amending instrument; and
5. requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.

LOST (4 / 5)

FOR: Cr Bain, Cr Hauville, Cr Riddington and Cr Wyatt

AGAINST: Cr Butterfield, Cr Fergusson, Cr Patterson, Cr Ring and Cr Saul

2024.167 RESOLVED (Cr Patterson/Cr Saul):

That Council:

1. notes the amendments to the Planning Proposal PP2300004 which seeks to amend the Zoning and Lot Size Map at Lot 333 DP 805299, 322 Stuarts Point Road, Yarrahapinni;
2. places the amendment to Kempsey Development Control Plan 2013 (draft Chapter D6 – Yarrahapinni Land Release Area) on public exhibition for a minimum period of 28 days;
3. endorses the progression of the Planning Proposal to the making of the amendment the Kempsey Local Environmental Plan 2013;
4. authorises the General Manager to exercise delegation from the Minister for Planning to make the amending instrument; and
5. requests the Department of Planning, Housing and Infrastructure notify the plan on the NSW Legislation webpage upon the making of the Kempsey Local Environmental Plan 2013 amendment.

CARRIED (6 / 3)

FOR: Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Ring and Cr Saul

AGAINST: Cr Bain, Cr Riddington and Cr Wyatt

10.2 Planning Proposal - Kemp Street, West Kempsey - PP2400009

Officer Simon Morrison, Strategic Planning Officer

File Number PP2400009

Cr Saul declared a pecuniary interest in item 10.2, Planning Proposal - Kemp Street, West Kempsey - PP240009, for the reason that he owns property in the area and left the Chamber at 10:19 am.

MOVED (Cr Patterson/Cr Bain):

That Council:

1. submits the planning proposal which seeks to amend the Land Zoning and Lot Size Maps at Lots 1-3, DP1124599 on the Corner of North and Kemp Streets West Kempsey, to the Minister for Planning & Public Spaces for gateway consideration pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979;
2. requests that the Secretary of the Department of Planning, Housing & Infrastructure to issue Council with written authorisation to exercise plan making delegations in relation to this proposal; and
3. undertakes, subject to the gateway determination, community consultation for the planning proposal as required.

At this stage 10:33 am the meeting adjourned for morning tea.

Upon resumption of the meeting at 11:00 am all present at the adjournment were in attendance.

Cr Saul remained absent from the Chamber.

2024.168 RESOLVED (Cr Patterson/Cr Bain):

That Council:

1. submits the planning proposal which seeks to amend the Land Zoning and Lot Size Maps at Lots 1-3, DP1124599 on the Corner of North and Kemp Streets West Kempsey, to the Minister for Planning & Public Spaces for gateway consideration pursuant to section 3.34 of the Environmental Planning and Assessment Act 1979;

2. requests that the Secretary of the Department of Planning, Housing & Infrastructure to issue Council with written authorisation to exercise plan making delegations in relation to this proposal; and
3. undertakes, subject to the gateway determination, community consultation for the planning proposal as required.

CARRIED UNANIMOUSLY (8 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring and Cr Wyatt

AGAINST: Nil

Cr Saul returned to the Chamber at 11:11 am.

2024.169 RESOLVED (Cr Wyatt/Cr Riddington):

That Council considers a motion regarding Grassy Head Playground as a matter of urgency, as construction will commence before the next ordinary meeting of Council.

CARRIED (7 / 2)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Riddington, Cr Ring and Cr Wyatt

AGAINST: Cr Patterson and Cr Saul

MOVED (Cr Wyatt/Cr Bain):

That Council:

1. is provided a detailed analysis of the decision-making process, criteria and weighting used in determining the final outcome for the location of the Grassy Head playground;
2. receives a report to the October Council meeting; and
3. suspends works on constructing the Grassy Head playground.

LOST (2 / 7)

FOR: Cr Bain and Cr Wyatt

AGAINST: Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring and Cr Saul

Cr Bain foreshadowed a motion.

2024.171 RESOLVED (Cr Bain/Cr Riddington):

That Council:

1. is provided a detailed analysis of the decision-making process, criteria and weighting used in determining the final outcome for the location of the Grassy Head playground; and

2. receives a report to the October Council meeting that makes recommendations for improving the consultation process.

CARRIED (7 / 2)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

AGAINST: Cr Ring and Cr Saul

2024.172 RESOLVED (Cr Riddington/Cr Bain):

The Council determine under clause 17.2 of the Kempsey Shire Council Code of Meeting Practice that this meeting conclude no later than 4.00 pm, rather than 1.00 pm.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

10.3 Proposed Dwelling - 492 Fishermans Reach Road, Fishermans Reach - DA2300826

Officer Leigh Cave, Town Planner

File Number DA2300826

2024.173 RESOLVED (Cr Bain/Cr Saul):

That Council:

1. supports variation to the height of buildings development standard in Clause 4.3 of Kempsey Local Environmental Plan 2013; and
2. grants development consent to DA2300826 for a single dwelling house subject to the conditions attached.

CARRIED (8 / 1)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Cr Hauville

At this stage 12:27 pm the meeting adjourned for lunch.

Upon resumption at 1:19 pm all present at the adjournment were in attendance.

10.4 Corporate Performance Report - Quarter 4 2023-24

Officer Carissa Graham, Integrated Planning and Reporting Manager

File Number F24/3642/04

Cr Butterfield left the Chamber at 2:07 pm.

2024.174 RESOLVED (Cr Patterson/Cr Saul):

That Council:

1. notes the provisional full year financial result for the year ending 30 June 2024, in advance of the 2023-24 Annual Financial Statements being finalised and referred to audit;
2. notes the Financial Sustainability Program status report;
3. notes the 2023-24 Key Performance Indicators report;
4. notes the progress achieved in delivering the 2023-24 Delivery Program and Operational Plan;
5. notes the Grants Status Summary; and
6. notes the Councillor Expenses Report.

CARRIED UNANIMOUSLY (8 / 0)

FOR: Cr Bain, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

Cr Butterfield returned to the Chamber at 2:08 pm.

10.5 Carry Over and Revote Budgets

Officer Wayne Douglass, Group Manager Corporate Performance

File Number F23/3642

2024.175 RESOLVED (Cr Bain/Cr Ring):

That Council:

1. approves the rollover of unspent 2023-24 budget for the proposed carry-over; and
2. revotes projects outlined in this report and in the attachment for inclusion in the 2024-25 budget.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

10.6 Naming of Fields - Terry Giddy OAM

Officer Michael Jackson, Director Operations & Planning

File Number F12/1944

2024.176 RESOLVED (Cr Hauville/Cr Patterson):

That Council:

1. notes the unanimous support of the Condolence Mayoral Minute for Terry Giddy OAM at the September 2023 Meeting;
2. notes the unanimous support of the June 2024 Mayoral Minute requesting this report;

3. endorses the naming of the Kemp Street Sport Complex as the “Terry Giddy Sports Fields” and places the naming on Public Exhibition; and
4. subject to community support,
 - a. lodges a proposal with the Geographical Names Board, and
 - b. installs appropriate signs and a suitably inscribed plaque outlining the extensive achievements of Terry Giddy OAM at the fields.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

10.7 LGNSW Annual Conference 2024

Officer Daniel Thoroughgood, Group Manager Governance and Information Services

File Number F22/1720

MOVED (Cr Bain/Cr Butterfield):

That Council:

1. authorises the attendance of the Mayor and other delegates as nominated by Council;
2. determines that the Mayor, Deputy Mayor and one other Councillor will be voting delegates;
3. authorises the attendance of any other Councillors wishing to attend the conference, including Councillors newly elected at the September 2024 Local Government Election; and
4. endorses the following Notices of Motion to be submitted to LGNSW for inclusion in the conference Business Paper:
 - a. Tropical Soda Apple,
 - b. Group Voting,
 - c. Term Limits for LGNSW Board, and
 - d. Disaster Recovery.

AMENDMENT (Cr Hauville/Cr Fergusson):

That Council:

1. authorises the attendance of the Mayor and other delegates as nominated by Council;
2. determines that the Mayor, Deputy Mayor and one other Councillor will be voting delegates;
1. authorise the attendance of newly elected Councillors at the 2024 LGA Election, with the expectation of their full three-day attendance; and
3. endorses the following Notices of Motion to be submitted to LGNSW for inclusion in the conference Business Paper:
 - a. Tropical Soda Apple,

- b. Group Voting,
- c. Term Limits for LGNSW Board, and
- d. Disaster Recovery.

The amendment was accepted by the mover and became the motion.

2024.177 RESOLVED (Cr Bain/Cr Butterfield):

That Council:

1. authorises the attendance of the Mayor and other delegates as nominated by Council;
2. determines that the Mayor, Deputy Mayor and one other Councillor will be voting delegates;
1. authorise the attendance of newly elected Councillors at the 2024 LGA Election, with the expectation of their full three-day attendance; and
3. endorses the following Notices of Motion to be submitted to LGNSW for inclusion in the conference Business Paper:
 - a. Tropical Soda Apple,
 - b. Group Voting,
 - c. Term Limits for LGNSW Board, and
 - d. Disaster Recovery.

CARRIED (7 / 2)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington and Cr Ring

AGAINST: Cr Saul and Cr Wyatt

2024.178 RESOLVED (Cr Wyatt/Cr Saul):

That Council brings forward valedictory speeches by Councillors Patterson, Riddington and Hauville to be heard immediately.

CARRIED (6 / 3)

FOR: Cr Butterfield, Cr Fergusson, Cr Patterson, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Cr Bain, Cr Hauville and Cr Riddington

Councillors Patterson, Riddington and Hauville each gave valedictory speeches at this time.

10.8 Slim Dusty Centre Annual Report 2024

Officer Ashley Gray, A/Economic Development and Tourism Manager

2024.179 RESOLVED (Cr Ring/Cr Riddington):

That Council:

1. notes this report in line with the Council resolution (2023.3) of 14 February 2023;
2. notes the information provided in the Slim Dusty Centre Annual Report; and
3. acknowledges the Slim Dusty Centre as a valuable community asset for which we continue to improve programming, optimise operations and explore revenue-generating opportunities.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

11 REPORTS FROM COUNCILLORS

11.1 Notice of Motion - Riverside Park Foreshore Stabilisation Project

Councillor Cr Bain, Councillor

File Number F23/3082

MOTION (Cr Bain/Cr Riddington):

That Council defers the tender process for the Riverside Park Foreshore Stabilisation Project pending a review of the project by the newly elected Council.

LOST (3 / 6)

FOR: Cr Bain, Cr Riddington and Cr Wyatt

AGAINST: Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Ring and Cr Saul

Cr Wyatt foreshadowed a motion.

2024.180 RESOLVED (Cr Wyatt/Cr Riddington):

That Council provides a fact sheet that outlines project development (e.g. history, approval process, need and outcomes of the assessment) and uploads it to Council's website on the major project page for the foreshore stabilisation project.

CARRIED (7 / 2)

FOR: Cr Bain, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring and Cr Wyatt

AGAINST: Cr Butterfield and Cr Saul

11.2 Delegates Report - Canberra 2 July to 5 July 2024

Councillor Cr Hauville, Mayor

File Number F22/1720

2024.181 RESOLVED (Cr Hauville/Cr Wyatt):

That Council receives and notes the report.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

12 CONFIDENTIAL MATTERS

2024.182 RESOLVED (Cr Fergusson/Cr Ring):

That Council form itself into the Confidential Session, and at this stage, the meeting be closed to the public to permit discussion of the confidential business items listed for the reasons as stated in the agenda.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

12.1 Legal Matters

Officer Daniel Thoroughgood, Group Manager Governance and Information Services

File Number F22/1960

Section 10A(2)(g) - Legal Proceedings

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (*Local Government Act 1993, section 10A(2)(g)*)

On balance, the public interest in preserving the confidentiality of the advice, outweighs the public interest in openness and transparency in Council decision making by discussing the matter in open meeting.

2024.182 RESOLVED (Cr Patterson/Cr Saul):

That Council receives and notes the report.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

2024.184 RESOLVED (Cr Bain/Cr Fergusson):

That the ordinary Council meeting be resumed.

CARRIED UNANIMOUSLY (9 / 0)

FOR: Cr Bain, Cr Butterfield, Cr Fergusson, Cr Hauville, Cr Patterson, Cr Riddington, Cr Ring, Cr Saul and Cr Wyatt

AGAINST: Nil

11.3 Delegates Report - Country Mayors Association - 9 August 2024

Councillor Cr Hauville, Mayor

File Number F22/1962

This item of business was not dealt with as in accordance with Council's adopted Code of Meeting Practice the meeting could not conclude later than 4.00 pm and at this time this matter had not yet been dealt with.

13 CONCLUSION OF THE MEETING

There being no further business, the Mayor then closed the meeting, the time being 4:00 pm.