

# Minutes

Minutes of the Ordinary Council Meeting held on Tuesday 17 December 2024

I hereby certify that this is a true and correct record of the minutes of the Kempsey Shire Council ordinary meeting held Tuesday 17 December 2024



Mayor K Ring



The meeting commenced at 9:01 am.

**PRESENT:**

Councillors K Ring (Mayor and Chairperson), I A Bain, A M Lawrence, A M Matchett, J A Coburn, B T Paix, D F Saul, N S Selby and A D Wyatt.

General Manager, S M Mitchell; Director Corporate and Commercial, D S Thoroughgood; Director Operations and Planning, M B Jackson; Director Utilities, W J Trotter; Group Manager Governance and Information Services, V A Thomas; and Governance Advisor, T S Randle.

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 Bain provided the opening prayer.

**2 ACKNOWLEDGEMENT OF COUNTRY**

Cr Matchett provided an acknowledgement of country.

**3 ACKNOWLEDGEMENT OF SERVICE MEN, WOMEN AND FAMILIES**

Cr Coburn 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**

**2024.243 RESOLVED (Cr Paix/Cr Lawrence):**

**That the minutes of the Ordinary Meeting of Kempsey Shire Council dated 26 November 2024 be confirmed.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

## 6 DISCLOSURES OF INTEREST

Cr Paix declared a non-pecuniary non-significant interest in item 10.2, Adoption - Lower Macleay Flood Risk Management Study and Plan, for the reason that he resides on the lower Macleay flood plain.

Cr Paix declared a non-pecuniary non-significant interest in item 10.4, South Kempsey Park & Willawarrin Recreation Ground Masterplans, for the reason that he is a user of these facilities and was involved in the consultation process.

Cr Ring declared a non-pecuniary non-significant interest in item 10.4, South Kempsey Park & Willawarrin Recreation Ground Masterplans, for the reason that she is a user of these facilities and was involved in the consultation process.

## 7 ITEMS PASSED BY EXCEPTION

Cr Lawrence left the Chamber at 10:03 am

Cr Lawrence returned to the Chamber at 10:05 am

**2024.244 RESOLVED (Cr Saul/Cr Paix):**

That the recommendations contained in the following items be adopted:

9.1. Local Traffic Committee Meeting Minutes

10.5. Water & Sewer Policy Updates

10.6. Mid North Coast Joint Organisation Update

10.7. Statement of Cash and Investments - November 2024

11.3. Delegates Report - LGNSW Annual Conference

11.4. Delegates Report - Country Mayors Association

12.1. Legal Matters

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

### 9.1 Local Traffic Committee Meeting Minutes

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**Officer** Michael Jackson, Director Operations & Planning

**File Number** F21/1958

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**2024.245 RESOLVED (Cr Saul/Cr Paix):**

That Council notes the minutes and adopts the recommendations of the Local Traffic Committee meeting held 19 November 2024.

**CARRIED UNANIMOUSLY (9 / 0)**

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**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt  
**AGAINST:** Nil

### **10.5 Water & Sewer Policy Updates**

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**Officer** Wes Trotter, Director Utilities

**File Number** F22/1933

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**2024.246 RESOLVED (Cr Saul/Cr Paix):**

**That Council:**

1. **adopts the draft Water Supply Policy effective from 18 December 2024;**
2. **adopts the draft Sewer Services Policy effective from 18 December 2024; and**
3. **adopts the draft ET Determination Policy effective from 18 December 2024**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt  
**AGAINST:** Nil

### **10.6 Mid North Coast Joint Organisation Update**

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**Officer** Craig Milburn, General Manager

**File Number** F22/2143

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**2024.247 RESOLVED (Cr Saul/Cr Paix):**

**That Council receives and notes the report.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt  
**AGAINST:** Nil

### **10.7 Statement of Cash and Investments - November 2024**

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**Officer** Stacey Milligan, Finance Manager

**File No** F22/3106

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**2024.248 RESOLVED (Cr Saul/Cr Paix):**

**That Council receives and notes the report.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt  
**AGAINST:** Nil

### **11.3 Delegates Report - LGNSW Annual Conference**

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**Councillor** Cr Ring, Mayor

**File Number** F22/1720

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**2024.249 RESOLVED (Cr Saul/Cr Paix):**

**That Council receives and notes the report.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

#### **11.4 Delegates Report - Country Mayors Association**

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**Councillor** Cr Ring, Mayor

**File Number** F22/1720

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**2024.250 RESOLVED (Cr Saul/Cr Paix):**

**That Council receives and notes the report.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

#### **12.1 Legal Matters**

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**Officer** Daniel Thoroughgood, Group Manager Governance and Information Services

**File Number** F22/1960

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##### **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.

**2024.251 RESOLVED (Cr Saul/Cr Paix):**

**That Council receives and notes the report.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

## **8 MAYORAL MINUTES**

### **8.1 Revenue and Review Task Force**

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**Councillor** Cr Ring, Mayor

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**2024.252 RESOLVED (Cr Ring):**

**That Council amends the Revenue and Review Taskforce Terms of Reference to include up to three community volunteer positions on the taskforce.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**10 REPORTS TO COUNCIL**

**10.1 DA2400974 Community Title Subdivision creating 29 Lots**

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**Officer** Melissa Ziade, Principal Planner

**File Number** DA2400974

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**2024.253 RESOLVED (Cr Saul/Cr Matchett):**

**That Council grants development consent for DA2400974 for the Community Title Subdivision into 29 Lots at Lot 2 DP1091323 Phillip Drive, South West Rocks, subject to the conditions contained in the attached Draft Conditions of Consent.**

**LOST (4 / 5)**

**FOR:** Cr Matchett, Cr Paix, Cr Ring and Cr Saul

**AGAINST:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Selby and Cr Wyatt

**2024.260 RESOLVED (Cr Saul/Cr Matchett):**

**That Council, under the clause 16.12 of Council's Code of Meeting Practice, urgently reconsider item 10.1 DA2400974 Community Title Subdivision creating 29 Lots as by neither approving nor refusing the application may provide grounds for action to be commenced for a deemed refusal before Council's next scheduled ordinary meeting on 18 February 2025.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**2024.261 RESOLVED (Cr Saul/Cr Matchett):**

**That Council form itself into the Confidential Session, and at this stage, the meeting be closed to the public to permit discussion of item 10.1 DA2400974 Community Title Subdivision creating 29 Lots to receive advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and, if necessary, Council's solicitor in relation to these proceedings be permitted to join the Confidential Session.**

**CARRIED (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

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**AGAINST: Nil**

**2024.262 RESOLVED (Cr Saul/Cr Matchett):**

**That the ordinary Council meeting be resumed.**

**CARRIED (8 / 1)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul and Cr Selby

**AGAINST:** Cr Wyatt

**Cr Wyatt left the Chamber at 2:26 pm.**

**2024.263 RESOLVED (Cr Saul/Cr Matchett):**

**That Council grants development consent for DA2400974 for the Community Title Subdivision into 29 Lots at Lot 2 DP1091323 Phillip Drive, South West Rocks, subject to the conditions contained in the attached Draft Conditions of Consent.**

**CARRIED (6 / 2)**

**FOR:** Cr Bain, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring and Cr Saul

**AGAINST:** Cr Coburn and Cr Selby

**Cr Wyatt returned to the Chamber at 2:26 pm.**

## **10.2 Adoption - Lower Macleay Flood Risk Management Study and Plan**

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**Officer** Grant Dennis, Design and Investigation Manager

**File Number** F20/2679

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**2024.254 RESOLVED (Cr Matchett/Cr Saul):**

**That Council:**

- 1. notes the Lower Macleay Flood Risk Management Study was approved by Council in December 2023,**
- 2. adopts the Lower Macleay Flood Risk Management Study and Plan (2024) and its proposed actions to demonstrate commitment to implementing the Plan as required by the NSW Floodplain Development Manual, and**
- 3. acknowledges the contributions of the Flood Risk Reference Group and the community in shaping the Plan.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**At this stage 10:45 am the meeting adjourned for morning tea.**

Upon resumption of the meeting at 11:01 am all present at the adjournment were in attendance.

### **10.3 Kempsey Development Control Plan 2013 - Chapter E4 - Yarrahapinni Land Release Area**

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**Officer** Peter Orr, Strategic and Environmental Planning Manager

**File Number** PP2300004

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**2024.255 RESOLVED (Cr Matchett/Cr Bain):**

**That Council:**

1. approves the Kempsey Development Control Plan 2013 Chapter E4 – Yarrahapinni Land Release Area;
2. publishes notice of its decision to proceed, on its website, within 28 days of this decision being made; and
3. incorporates the new chapter into the Kempsey Development Control Plan 2013.

**CARRIED (8 / 1)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul and Cr Selby

**AGAINST:** Cr Wyatt

### **10.4 South Kempsey Park & Willawarrin Recreation Ground Masterplans**

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**Officer** Steve Pellen, Coordinator Civic Services

**File Number** F24/3669

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**2024.256 RESOLVED (Cr Bain/Cr Selby):**

**That Council:**

1. adopts the Willawarrin Recreation Ground Masterplan; and
2. adopts the South Kempsey Park Masterplan.

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

## **11 REPORTS FROM COUNCILLORS**

### **11.1 Notice of Motion - Horseshoe Bay Holiday Park Units**

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**Councillor** Cr Coburn, Councillor

**File Number** F12/566-03

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**MOVED (Cr Coburn/Cr Selby):**

**That Council:**

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1. does not continue with DA2300893 consent for replacement of amenities block and addition of three tourist accommodation units;
2. replaces the amenities block; and
3. provides a new estimate of cost for amenities block.

**2024.257 RESOLVED (Cr Coburn/Cr Bain):**

**That Council move into Committee of the Whole.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**MOVED (Cr Saul/Cr Matchett):**

**That the ordinary Council meeting be resumed.**

**LOST (4 / 5)**

**FOR:** Cr Lawrence, Cr Matchett, Cr Ring and Cr Saul

**AGAINST:** Cr Bain, Cr Coburn, Cr Paix, Cr Selby and Cr Wyatt

**Cr Matchett left the Chamber at 12:10 pm.**

**Cr Matchett returned to the Chamber at 12:11 pm.**

**Cr Lawrence left the Chamber at 12:13 pm.**

**Cr Lawrence returned to the Chamber at 12:13 pm.**

**2024.258 RESOLVED (Cr Paix/Cr Bain):**

**That the ordinary Council meeting be resumed.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**2024.259 RESOLVED (Cr Coburn/Cr Selby):**

**That Council:**

1. does not continue with DA2300893 consent for replacement of amenities block and addition of three tourist accommodation units;
2. replaces the amenities block; and
3. provides a new estimate of cost for amenities block.

**CARRIED (5 / 4)**

**FOR:** Cr Bain, Cr Coburn, Cr Paix, Cr Selby and Cr Wyatt

**AGAINST:** Cr Lawrence, Cr Matchett, Cr Ring and Cr Saul

**2024.269 RESOLVED (Cr Paix/Cr Matchett):**

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 Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

At this stage 12:59 pm the meeting adjourned for lunch.

Upon resumption at 1:45 pm all present at the adjournment were in attendance.

**11.2 Delegates Report - Bush Fire Management Committee**

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**Councillor** Cr Bain, Councillor

**File Number** F18/1959

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**2024.264 RESOLVED (Cr Bain/Cr Paix):**

That Council receives and notes the report.

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**12 CONFIDENTIAL MATTERS**

**2024.265 RESOLVED (Cr Bain/Cr Paix):**

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 Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**12.2 Steuart McIntyre Dam Water Treatment Plant Approval of Tender**

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**Officer** Wes Trotter, Director Utilities

**File Number** CP22/11

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### **Section 10A(2)(d)(i) – Commercial Position**

This report is submitted on a confidential basis as it involves commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. (*Local Government Act 1993*, section 10A(2)(d)(i))

On balance, the public interest in preserving the confidentiality of the commercial information supplied outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

**Cr Lawrence left the Chamber at 2:46 pm.**

**Cr Lawrence returned to the Chamber at 2:47 pm.**

**2024.266 RESOLVED (Cr Matchett/Cr Saul):**

**That Council:**

- 1. Accepts the tender for Design and Construction of the Steuart McIntyre Dam Water Treatment Plant (WTP) project (TQE23/72) received from LC Eire for \$41,675,531.05 (ex GST); and**
- 2. Delegates to the General Manager authority to execute the contract and approve future variations.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

### **12.3 Sewer Pump Station Frederickton 1 Land Acquisition**

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**Officer** Wes Trotter, Director Utilities

**File Number** F22/1810

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### **Section 10A(2)(c) – Commercial Advantage in Business Dealing**

This report is submitted on a confidential basis as it involves information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. (*Local Government Act 1993*, section 10A(2)(c))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in Council decision-making by discussing the matter in an open meeting.

**2024.267 RESOLVED (Cr Selby/Cr Saul):**

**That:**

- 1. Council proceed with the compulsory acquisition of the land described as Lot 11, DP1179119 for the purpose of sewer pump station upgrade in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.**
- 2. Council make an application to the Minister and the Governor for approval to Lot 11, DP1179119 by compulsory process under section 186(1) of the Local Government Act.**

**3. The land be classified as operational land.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

**2024.268 RESOLVED (Cr Bain/Cr Matchett):**

**That the ordinary Council meeting be resumed.**

**CARRIED UNANIMOUSLY (9 / 0)**

**FOR:** Cr Bain, Cr Coburn, Cr Lawrence, Cr Matchett, Cr Paix, Cr Ring, Cr Saul, Cr Selby and Cr Wyatt

**AGAINST:** Nil

### **13 CONCLUSION OF THE MEETING**

**There being no further business, the Mayor then closed the meeting, the time being 2:50 pm.**