

NOTICE OF MEETING



BELONGIL CATCHMENT ADVISORY COMMITTEE MEETING

A Belongil Catchment Advisory Committee Meeting of Byron Shire Council will be held as follows:

Venue	Cavanbah Centre, Ewingsdale Road, Byron Bay
Date	Monday, 27 June 2016
Time	9.00am

A handwritten signature in black ink, appearing to read "Phillip Holloway".

Phillip Holloway
Director Infrastructure Services

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 Local Government Act (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 Section 448 of the Local Government Act.

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.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

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 if the provisions in S451 of the Local Government Act apply (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 Division 2A of Part 6 of 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.

BYRON SHIRE COUNCIL
BELONGIL CATCHMENT ADVISORY COMMITTEE MEETING

BUSINESS OF MEETING

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
 - 3.1 Belongil Catchment Advisory Committee Meeting held on 30 May 2016
- 4. BUSINESS ARISING FROM PREVIOUS MINUTES**
- 5. STAFF REPORTS**

Infrastructure Services

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STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 5.1 Belongil Creek Opening Strategy Overview

Directorate: Infrastructure Services

5 **Report Author:** James Flockton, Drain and Flood Engineer

File No: I2016/678

Theme: Community Infrastructure
Emergency Services and Floods

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Summary:

The Belongil Creek Catchment Advisory Committee has requested a report on the opening strategy for the Belongil Estuary. The following is provided to satisfy this request.

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RECOMMENDATION:

That the Belongil Creek Catchment Advisory Committee recommend Council fund the preparation of a long term opening strategy for Belongil Creek in accordance with this report

Attachments:

- 1 24.2009.10.1 Copy of Signed Amended Crown Licence 453621 and Plan referenced in Condition 54 re Mechanical Opening of Belongil Creek / Estuary, DM550742
- 20 2 24.2009.10.1 Belongil Estuary Entrance Management Report Stage 6 (October 2015 - March 2016), E2016/42960
- 3 24.2009.10.1 Belongil Creek Entrance Opening Strategy following agency review, E2016/42969
- 4 Review of Environmental Factors for the Belongil Entrance Opening Strategy, DM674768
- 25 5 24.2009.10.1 Report to Council - Technical Review of the Belongil Entrance Opening Strategy Review, E2016/45858.doc, E2016/45858

Report

Why Do We Open Belongil Creek?

5 Council has opened Belongil Creek to the ocean for many years, the sole reason for this is for flood mitigation. If the mouth is not opened, the urban areas of Byron Bay are impacted, as well as the farm land to the west of Byron Bay town centre. The land topography is very low in these areas, therefore the state of the mouth has considerable impact on water levels during rainfall events.

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Current Informal Opening Strategy

The opening strategy for Belongil Creek is to open the mouth when water levels at the Ewingsdale Road bridge reach 1metre AHD or above.

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Staff currently inspect the water level manually each week and act when the above trigger is met. A typical flood gauge is installed on the bridge. This manual inspection will change soon when an automated gauge is installed.

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The current strategy is as per the current Crown Lands licence (LI 453621), which will be in force until December 2022. (See attachment 1). Clause 55 states the opening water level trigger.

Current Opening Methodology

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The Belongil Estuary is mechanically opened by using an excavator when the level reaches 1.0m AHD, as measured on the gauge at the Ewingsdale Road Belongil Bridge. Access to the Belongil entrance is made from the Old Jetty Site with machine then walked up the beach. When this access is not available arrangements have to be discussed with North Byron Beach Resort for alternative access.

30

Normal weekly inspections are carried out and additional inspections are made during inclement weather and stormy conditions.

35

As threatened species utilise Belongil Beach for roosting and breeding purposes, entrance opening works shall recognise the presence of these species and avoid any disturbance to their activities.

Mechanical opening of the Belongil mouth at this level should be considered when:

40

- storm events are forecast
- creek levels are rising rapidly
- spring tide or high seas will assist in opening and clearing the mouth

Before the opening proceeds the following people are advised / consulted:

45

- DPI Fisheries
- Department of Lands
- National Parks and Wildlife Service
- Marine Parks Authority
- NSW Office of Environment and Heritage
- North Byron Beach Resort
- Bird Buddies

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55

Current Monitoring Reports

5 A key clause in the crown licence is clause 56. Council is to develop a long-term opening strategy for the mouth. This has partially been demonstrated by the preparation of six monthly monitoring reports. (See attachment 2.)

10 The six monthly reporting is a small step in a bigger project. A long-term strategy will take 1-2 years to prepare, require extensive environmental investigations, stakeholder input and cost in the region of \$50-100k. The process would be similar to an EIS, but it is not believed an EIS is required under current legislation. The cost will depend on how much value the historic documents can add to the process

DRAFT Belongil Creek Entrance Opening Strategy

15 A DRAFT Belongil Creek Entrance Opening Strategy 2005 is attached. (See attachment 3.) Note no work has been carried out on this document in recent years.

2005 Review of Environmental Factors

20 The 2005 Review of Environmental Factors (REF) for Belongil Entrance Opening Strategy followed the above strategy and was required in order to use the strategy. (See attachment 4.)

25 The REF determined the environmental impacts of adopting the DRAFT Belongil Creek Entrance Opening Strategy. It was concluded that artificial opening of the entrance over the past 47 years had resulted in significant environmental changes. Reducing the trigger value from RL 1.2m to 1.0m AHD would therefore add to these impacts.

30 The 2005 REF recommended that a more detailed Environmental Impact Statement (EIS) be prepared if the level of RL 1.0 metre AHD was to be adopted and maintained. Alternatively, an EIS was not required if various conditions were followed, including an opening trigger of 1.2mAHD.

35 Various reports were prepared for Council at this time regarding this REF and the opening strategy. A technical review of the REF followed and was prepared by BMT WBM, the author being Dr Phil Haines, considered to be one of the most knowledgeable persons regarding ICOLLS in the State. (See Attachment 5.)

40 The technical review made various short, medium and long term actions, none of which included an EIS. It recommended that rather than use a specific trigger height that induces artificial opening, the opening should be permitted within the principal range of RL 1.0 to 1.2 metre AHD. That is, once water levels reach RL 1.0 metre AHD, Council should prepare for, and initiate, an opening when the predicted rainfall forecast is favourable (noting that water levels in the Creek may well exceed RL 1.0 metre AHD once rainfall stops).

45 In the most recent report to Council (see Attachment 5) staff recommended:

1. That Council revise the Belongil Entrance Opening Strategy consistent with the Technical Review.
2. That Council support the concept development for trial drainage remediation works.

50 However, Council resolved as follows:

07-273 Resolved that Council retain its current draft Belongil Entrance Opening Strategy. (Tucker/Mangleson)

Therefore an EIS is required under this resolution. The EIS project has since remained unfunded. No further work was carried out on the DRAFT Belongil Creek Entrance Opening Strategy following the above resolution.

- 5 It is not known how or why the Crown has provided a licence to complete works that require an EIS, without an EIS. The only explanation is that clause 56 of the licence requires Council to work towards finalising a long term opening strategy.

Marine Parks Authority

- 10 A Marine Parks Authority Permit is required to open Belongil Creek. Marine Parks are currently allowing Council to continue to carry out the opening works without a permit, mainly because Council's Crown Lands permit has a clause requiring Council to prepare a long term strategy. There is an expectation from Marine Parks that Council will soon prepare the strategy, in
15 consultation with them and then apply for a permit.

The Way Forward

- 20 The only way forward is for Council is to prepare a long term opening strategy in accordance with the current licence. This project should be funded as a priority in order to avoid a potential situation where Crown Lands does not issue a new licence to open the Creek in 2023.

- It is also likely that Marine Parks will exercise their right to not allow the openings to occur should Council not begin the project soon.
25

- The proposed \$10 million Byron Bay Drainage Upgrade will remove the flooding risk to the urban areas of Byron Bay. However, this project is currently unfunded and even if it is completed, the farm land to the west needs a level of protection.

- 30 Both the 2005 REF and technical review note that in the face of sea level rise, the openings will become less and less effective. However, until this becomes a reality Council needs to work towards a long term opening strategy. Such a strategy would consider sea level rise and potentially be adaptable if it happens.

35 Financial Implications

A long-term opening strategy will cost in region of \$50-100k.

Statutory and Policy Compliance Implications

- 40 Council holds a licence issued on 4 December 2012 to undertake the activity, the licence is provided by the Department of Crown Lands to occupy Crown land under the Crown Lands Act. The licence is conditional upon Council developing an Entrance Opening Strategy.

Report No. 5.2 **Status of Actions**
Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2016/681
5 **Theme:** Community Infrastructure
 Sewerage Services

Summary:

10 At the meeting of 30 May 2016, the Committee requested the status of specific actions listed in Attachment 2 of Report 5.1

RECOMMENDATION:

That the report to the Belongil Catchment Advisory Committee outlining the status of actions is noted.

Attachments:

15 1 Status of Actions for Belongil Catchment Advisory Committee Meeting 27 June 2016, E2016/43621

Report

At the meeting of 30 May 2016, the Committee requested the status of specific actions listed in Attachment 2 of Report 5.1.

5

These actions are as below and their status is noted in Attachment 1 of this report:

Action Number

10 5, 16 – 20, 25, 26, 29, 38 – 41, 43, 49 - 52, 147 – 154

Financial Implications

15 Nil

Statutory and Policy Compliance Implications

Nil