



# Byron Shire Council



## Supplementary Agenda

Ordinary Meeting

Thursday, 28 February 2019

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

*Public Access* relating to items on this Agenda can be made between 9.00am and 10.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Mark Arnold  
General Manager

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## 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)

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## 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**

ORDINARY MEETING

**BUSINESS OF ORDINARY MEETING**

**17. LATE REPORTS**

- 17.1 CONFIDENTIAL - Federal Drive Landslide Stabilisation (Tender 2019-0002) .....4

## LATE REPORTS

**Report No. 14.1**      **CONFIDENTIAL - Federal Drive Landslide Stabilisation (Tender 2019-0002)**

5    **Directorate:**            Infrastructure Services  
**Report Author:**       Daniel Strzina, Project Engineer  
                                  Kirk Weallans, Project Engineer  
10    **File No:**                I2019/237

### Summary:

15    On 8 January 2019, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2019-0002 – Federal Drive Landslide Stabilisation.

20    The Request for Tender was advertised from Monday 14 January to Tuesday 5 February 2019. Tenders were received from the following organisations:

- Dark Peter TAS Ground Stabilisation Systems
- Geovert GE Ltd
- Mulligan Geotechnical
- Piling Concreting Australia PCA Pty Ltd
- 25    • PJ Warner Australia Pty Ltd
- Queensland Prestressing Pty Ltd

30    Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2019-0002.

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### RECOMMENDATION:

- 35    1.    That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Federal Drive Landslide Stabilisation (Tender 2019-0002).
- 40    2.    That the reasons for closing the meeting to the public to consider this item be that the report contains:
- a)    information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
  - 45    b)    commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
- 50    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:
- Confidential commercial information relating to the tender process.**

### OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

55    **RECOMMENDATION:**

# BYRON SHIRE COUNCIL

## LATE REPORTS

14.1

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Federal Drive Landslide Stabilisation (Tender 2019-0002) are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

### **Attachments:**

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| 10 | 1 | 2019-0002 - Federal Drive Landslide Stabilisation - Tender Evaluation Report - signed, E2019/12494 |
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