



Byron Shire Council



Supplementary Agenda

Ordinary Meeting

Thursday, 27 June 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

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

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. LATE REPORTS

- 14.1 CONFIDENTIAL - Tender Evaluation - Design Investigation for the Modification of the Jonson Street Protection Works4

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.

LATE REPORTS

Report No. 14.1 CONFIDENTIAL - Tender Evaluation - Design Investigation for the Modification of the Jonson Street Protection Works

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator
 Daniel Strzina, Project Engineer
10 **File No:** I2019/937

Summary:

15 On 15 January 2019, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2018-0029 Design Investigation for the Modification of the Jonson Street Protection Works.

20 The Request for Tender sought responses from proponents to provide consultancy services comprising a design investigation for modification of the coastal protection works at Main Beach, Byron Bay.

The Request for Tender was advertised from 8 April 2019 to 17 May 2019. Proposals were received from the following organisations:

- 25
 - Bluecoast Consulting Engineers
 - Jeremy Benn Pacific (JBP)
 - Water Research Laboratory (WRL)
 - Water Technology

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 in relation to Contract 2018-0029.

35 The project is complex and will require a highly experienced consultancy with excellent technical skills and ability to propose outside-of-the-box/non-conventional methods to achieve project outcomes in accordance with project objectives.

A preferred response to tender has now been selected.

40 However, under the *Local Government (General) Regulation 2005* clause 173(2)(b) and 177(2) and (3), the preferred tender is unable to be considered by Council because the tender proposal was submitted after deadline.

45 In summary, the preferred tender proposal as submitted uses a multiple lines of evidence approach gathering lots of data to inform and refine the design investigation to achieve a considered design solution consistent with Council expectations.

50 The recommendation seeks Council to not accept any of the tenders, and instead support direct negotiations with the preferred tenderer in relation to Tender for Contract 2018-0019 as outlined in the proposal.

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RECOMMENDATION:

- 5 1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Tender Evaluation - Design Investigation for the Modification of the Jonson Street Protection Works.
- 10 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
- 15 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:

20 This report is to discuss the tender/proposals submitted in relation to the 'Design Investigation for the Jonson Street Protection Works' and best discussed confidentially for commercial in confidence reasons as disclosure would reveal commercial information supplied by potential contractors which could prejudice Council entering into a contract.

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

25 **RECOMMENDATION:**

- 30 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Evaluation - Design Investigation for the Modification of the Jonson Street Protection Works are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
- 35 2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 35 1 Confidential - Preferred Tender Proposal, E2019/43569
2 Confidential - Tender 2018-0029 - Evaluation Report - Design Investigation for the Modification of the Jonson Street Protection Works, E2019/16964