



# Byron Shire Council



## Agenda

### Ordinary Meeting

### Thursday, 23 April 2020

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

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**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 Code of Conduct for Councillors (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 the Code of Conduct for Councillors.

**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.

**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 of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

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## RECORDING OF VOTING ON PLANNING MATTERS

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### 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 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. PUBLIC ACCESS**

#### **2. APOLOGIES**

#### **3. REQUESTS FOR LEAVE OF ABSENCE**

#### **4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

#### **5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**

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# BYRON SHIRE COUNCIL

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### 15. QUESTIONS WITH NOTICE

*Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website [www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice](http://www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice)*

***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.***

## NOTICES OF MOTION

**Notice of Motion No. 9.1 Mayor's Discretionary Allowance**  
**File No: I2020/527**

I move:

1. That Council confirms the following donations from the Mayor's Discretionary Allowance 2019/20:
  - a. \$155 – Local Byron Shire Business Directory (online)
  - b. \$1,000 – Resilient Byron
2. That Council advertises the donations in accordance with Section 356 of the Local Government Act 1993.

Signed: Cr Simon Richardson

Councillor's supporting information:

**a. Local Byron Shire Business Directory (online) - \$155**

As a result of seeing so many local businesses shut their doors, a group of citizens are volunteering their time to set up an online local business directory of businesses now offering services and products online or offering home deliveries in the Byron Shire due to COVID-19.

To date the directory has over 100 local businesses offering takeaway, home delivery and appointments online.

Allocation of funds from the Mayor's Discretionary Allowance for this online Local Byron Shire Business Directory will enable the purchase of a domain and hosting space for a year to establish an online directory to assist our local businesses staying afloat during this tough time.

**b. Resilient Byron - \$1,000**

*Resilient Byron* is an incorporated association that was created last year to build the resilience and regenerative capacities of the residents of the Byron Shire. While *Resilient Byron* was primarily set-up to respond to the climate crisis, it is evident that it has a role to play here and now.

*Resilient Byron* is resolutely driven by a willingness to transform the Shire to become truly regenerative and resilient, long after these crises have ended. Considering the urgency of the current situation, it's focus is now on:

- becoming the Byron Shire's main source of trusted community information (i.e. an on-going clearinghouse of community/business information focused on responding to the crises and/or that build resilience and regeneration);
- helping residents setting-up neighbourhood support groups; and
- connecting community organisers, community projects and small businesses to support each other to create new resilient and regeneration projects together.

Further information can be found at <https://www.resilientbyron.org/>.

**Staff comments by Vanessa Adams, Director, Corporate and Community Services:**  
(Management Comments must not include formatted recommendations – resolution 11-979)

### Clarification of project/task:

Confirm and advertise the making of donations from the Mayor's Discretionary Allowance for 2019/20 being:

- a. \$ 155 – Local Byron Shire Business Directory (online)
- b. \$1,000 – Resilient Byron

### Director responsible for task implementation:

Director Corporate and Community Services

### Relationship to, priority of, and impact on other projects/tasks:

This will have minimal impact on other projects/tasks although there is some potential for cross-over between Resilient Byron and the projects Council has resolved to undertake with its disaster resilience funding.

### Financial and Resource Implications:

The 2019/20 Budget adopted by Council included an allocation of \$2,000.00 for budget item Mayor – Discretionary Allowance. Sufficient funds are available for making the nominated donations totalling \$1,155.00.

### Legal and Policy Implications:

In relation to the making of Section 356 Donations from the Mayor – Discretionary Allowance, Council at its Ordinary meeting held on 14 May 2009 resolved as follows: -

***“09-349 Resolved that Council confirm that all s356 donations, to be made from the budget allocation “Mayor – Discretionary Allowance”, must be the subject of a resolution of the Council at Ordinary or Extraordinary meeting.”***

This Notice of Motion is to confirm the making of the listed Section 356 Donation.

The Section 356 Donation will be advertised and public notice of financial assistance provided in accordance with Section 356 of the Local Government Act 1993.

### Is the proposal consistent with any Delivery Program tasks?

CSP Objective	L2	CSP Strategy	L3	DP Action
<b>Community Objective 4: We manage growth and change responsibly</b>	4.5	Work to improve community resilience in our changing environment	4.5.1	Develop and implement strategies for our community's needs





productivity. These conditions support cleaner water, reduce disease and pests, and retain important nutrients and soil. Healthy land supports healthy waterways.

5 Riparian areas are vulnerable and easily degraded. Damage can be caused by uncontrolled stock access, clearing for agriculture or urban development, invasion by pests and feral animals such as rabbits, weeds such as privet, or from overuse by recreational activities. Waste from stock such as cows and sheep can contribute pollution, and trampling can destroy vegetation, soil structure, and result in loss of valuable soil and land.

10 The importance of managing riparian land well is already recognised, and protection, rehabilitation and restoration work is being undertaken by Council through many local projects some in partnership/support with State Agencies and Brunswick Valley Land Care. To date there have been numerous rehabilitation projects on public and private land completed, and more recently the 'Bringing back the Bruns' NSW DPI Flagship Fish Habitat Grants Program funded the restoration works to open up 7km of upstream habitat and allow 27.4km of fish passage to the estuary mouth.

15 Further the draft Byron Shire Biodiversity Conservation Strategy is a plan of action for Council and the community, to protect and enhance our natural environment. The Strategy describes some of the Shire's unique biodiversity values, why they are under threat, and how we can help to manage these threats.

The draft Byron Shire Biodiversity Conservation Strategy is currently on exhibition and can be accessed by the link below.

25 <https://www.yoursaybyronshire.com.au/biodiversity-strategy>

Relevant actions in the draft Strategy relating to riparian restoration on Council and private land include:

1.10	Develop a priority restoration investment map that identifies key sites on private and public land requiring either protection or restoration, to assist in directing future Council and community restoration activities.
1.19	Map areas that have been revegetated: a) using public funds, and b) for conservation purposes
2.3	Update existing Brunswick Catchment Riparian Planting Guide and make available on-line.
3.3	Investigate increasing the level of extension services currently provided by BVL to provide greater support to individuals wanting to improve biodiversity values on private property.
3.4	Develop a web page that connects rural landholders to biodiversity management resources for rural properties.
3.7	Engage with landholders listed above (Action 3.4) to: a) advise of available land management resources, training, and incentives. b) advise of funding opportunities available for restoration, including grants and Biodiversity Stewardship Agreements
3.9	Seek grant funding opportunities for combined Council-private landholder restoration and revegetation projects on private land.
3.12	Continue to facilitate Agricultural Cluster Group to identify opportunities for sustainable farming improvements.
3.13	Investigate opportunities for Council to provide incentives for landholders to conduct restoration works that will assist with long term biodiversity conservation.
3.14	Seek grant funding for an extension officer to work with landholders to protect and enhance biodiversity values on private land.
4.1	Progress restoration of remaining Council-managed sites identified as requiring restoration to an on-maintenance level (total 307 Ha requiring restoration) and provide follow-up quarterly maintenance on all restored sites.
4.2	Restore (192 Ha) and maintain (315 Ha) native vegetation communities at Council Sewage Treatment Facility sites.
4.3	Seek additional grant funding for the implementation of on-ground ecological restoration actions at priority Council-managed sites, including wildlife corridors, koala habitat and HEV vegetation.

#### Financial/Resource/Legal Implications:

35 A budget bid to deliver the actions of the Biodiversity Conservation Strategy has been included in the draft 2020/21 budget process for consideration.



- 5 Bids will be considered in the context of a whole of Council response to the FY20/21 budget allocation having regard to the implications of COVID 19 on Council's programs and services. In the meantime, grant applications in partnership with external agencies and environmental groups will be pursued where possible.

Is the proposal consistent with any Delivery Program tasks?

<b>Community Objective 3: We protect and enhance our natural environment</b>	3.1 Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1 Protect and enhance our natural environment and biodiversity	3.1.1.3 Implement priority actions from the Biodiversity Conservation Strategy
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**SUBMISSIONS AND GRANTS****Report No. 11.1 Grants Submissions for March 2020****Directorate:** Corporate and Community Services**Report Author:** Alexandra Keen, Grants Coordinator**File No:** I2020/500**Summary:**

Council has submitted applications for a number of grant programs which, if successful, would provide funding to enable the delivery of identified projects. This report provides an update on these grant submissions.

**RECOMMENDATION:**

**That Council notes the report and Attachment 1 (E2020/22750) for Byron Shire Council's Submissions and Grants as at 3 March 2020.**

**Attachments:**

1 Attachment 1, E2020/22750 

### REPORT

This report provides an update on grant submissions since the last report.

#### 5 Successful applications

Council was successful in:

- Active Transport – Cycling Towns – Byron Bay to Suffolk Park Cycleway.

#### 10 Unsuccessful applications

One application was unsuccessful, being the Clubsgrants-Infrastructure funding for Ocean Shores Community Centre upgrade.

#### 15 Applications submitted

One application was submitted by Council in March 2019, being an invitation to apply for Active Transport funding for Cycling Towns – Byron Bay to Suffolk Park Cycleway.

#### 20 Upcoming grant opportunities

There are a number of upcoming grant opportunities for which Council proposes to submit a funding application, including:

- 25 • Clubsgrant – Infrastructure Grant Program Round 3 – Brunswick Heads Memorial Hall;
- Crown Reserves Improvement Fund – Summers Park weed eradication and infrastructure to support Torakina beach accessibility;
- Bridges Renewal Program Round 5 – projects being determined; and
- 30 • Fixing Country Roads 2020 – projects being determined.

### STRATEGIC CONSIDERATIONS

#### *Community Strategic Plan and Operational Plan*

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.6	Manage Council's resources sustainably	5.6.12	Implement strategic grants management systems to deliver priority projects for Byron's community (SP)	5.6.12.4	Provide governance for grants management

#### 35 *Legal/Statutory/Policy Considerations*

Under Section 409 3(c) of the *Local Government Act 1993* Council is required to ensure that 'money that has been received from the Government or from a public authority by way of a specific purpose advance or grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of grants.

#### *Financial Considerations*

45 If Council is successful in obtaining the identified grants, more than \$15 million would be achieved which would provide significant funding for Council projects. Some of the grants require a

contribution from Council (either cash or in-kind) and others do not. Council's contribution is funded.

The potential funding and allocation is noted below:

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Requested funds from funding bodies	\$15,433,300
Council cash contribution	\$3,722,009
Council in-kind contribution	\$541,759
Other contributions	\$833,280
<b>Funding applications submitted and awaiting notification (total project value)</b>	<b>\$20,530,348</b>

### ***Consultation and Engagement***

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Cross-organisational consultation has occurred in relation to the submission of relevant grants, and the communication of proposed grant applications.

**STAFF REPORTS - GENERAL MANAGER**

**Report No. 13.1**      **Licence to Upper Main Arm Community Association Inc to manage the Kohinur Hall**

**Directorate:**      General Manager

**Report Author:**      Paula Telford, Leasing and Licensing Coordinator

**File No:**      I2020/337

**Summary:**

To formalise the management of the Kohinur Hall and grounds, Council is proposing to offer the Upper Main Arm Community Association Incorporated a five year licence.

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**RECOMMENDATION:**

1. That Council notes that no public submissions were received on the proposed grant of a five year licence to the Upper Main Arm Community Association Incorporated for the management of the Kohinur Hall and grounds located on Lot 1 DP 771568.
2. That Council authorises the General Manager to enter into licence with the Upper Main Arm Community Association Incorporated for the management of the Kohinur Hall located on Lot 1 DP 771568 on the following terms:
  - a) term 5 years to commence on the lifting of all COVID-19 restrictions as to social distancing;
  - b) purpose of a community hall;
  - c) annual rent to be subsidised by Council to the value of \$19,501 per annum,
  - d) the licensee to pay initial annual rent commencing at \$490 (excluding GST) with annual rent increased thereafter by Consumer Price Index All Groups Sydney for the term;
  - e) Council to subsidise licence preparation costs to the value of \$527 (inclusive GST);
  - f) the licensee to pay outgoings to full value of all usage charges for all connected services, all onsite sewerage management system pump outs and repairs, all potable water purchased, interior and grounds maintenance of the Hall and required insurance cover; and
  - g) Council to pay outgoings to for the full value of general land rates, fixed water and sewerage charges, building insurances, pest inspections and fire safety compliance.

**REPORT**

The Kohinur Hall is located on Lot 1 DP 771568, 1296 Main Arm Road Upper Main Arm, being Council owned land classified as community and categorised for general community use.

The Generic Plan of Management for Community Land Categorised as General Community Use – Community Facilities expressly authorises the grant of a licence over the land.

Background:

The Kohinur Hall ('the Hall') was built in 1974 and is extensively used by the community as a multi-use facility.

In 1991, Council resolved that a management committee should be responsible for the day-to-day management of the Hall and entered into a one year agreement with the Kohinur Community Centre Committee. Management of the Hall continued under this arrangement until a review by Council in 2019. During the review it was conclusively established that Council is the owner of the Hall building.

A review into the management of the Hall was triggered in part by a history of problematic use of the Hall. Council received numerous complaints relating to illegal camping, rubbish, noise, trespass, smoking/food and anti-social behaviour associated with use of the Hall and its grounds. The NSW Police were called to investigate assaults, stealing and fire offences in connection with use of the Hall.

As an outcome of the 2019 review it was agreed that the Upper Main Arm Community Association Incorporation would be responsible for the management and operation of the Hall under terms of a new five year licence.

Public notification of proposed licence:

In accordance with the *Local Government Act 1993* (NSW), Council gave 28 days public notice of the proposed licence between 4 March and 1 April 2020. Council received no public submissions on the proposed licence.

Proposed licence:

The Upper Main Arm Community Association Incorporated is a not-for-profit organisation. This report recommends that a five year licence is granted to the Association under the following terms.

a) for the purpose of a community hall.

b) rent:

- market rent be set at \$20,040 being 6% of the unimproved capital value of the land,
- the Licensee to pay initial rent of \$490 (inclusive of GST) per annum with rent increased annually thereafter by Consumer Price Index for All Groups Sydney for the quarter immediately preceding the rent review, and
- Council to subsidise annual rent to the value of market rent less \$490 being \$19,501 (exclusive of GST).

c) outgoings:

- the Licensee must:
  - provide a minimum \$20 million public liability insurance coverage,
  - insure its owned fixture and fittings for full replacement value,



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  - pay all usage charges for all services connected to the premises, all on site sewerage management system pump outs and repairs, all waste management charges and all purchased potable water,
  - maintain the internal areas of the building and grounds to a standard required by Council, and
  - maintain and repair of all its owned fitting and fixtures.
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  - Council must:
    - Subside the full value of general rates, fixed water and sewerage charges in accordance with Policy – Section 356 Donations – Rates, Water and Sewerage Charges,
    - insure the building for full replacement value,
    - be responsible for all fire safety, pest inspections and controls, and
    - all structural repairs and maintenance excluding structural repairs and maintenance that are caused by the Licensees use of the Hall.
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  - d) Council to subsidise licence preparation fees of \$527 (inclusive of GST) as set by Councils current fees and charges.
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  - e) conditions on use of the Hall, the Licensee:
    - must comply with development consent 5.1995.377.1 conditions,
    - may hire the Hall to the public or specific sections of the public for any purpose that a short-term licence may be issued under s46(1)(b)(iii) of the *Local Government Act 1993* (NSW) excluding the agistment of stock,
    - must expend all and any income from the hire of the Hall on the operating expenses and maintenance of the Hall and provide Council with a copy of its annual financial statements,
    - must comply with all noise regulations, food safety and potable water requirements,
    - must not permit outdoor fires in the Licensed area unless written consent is first obtained from the Rural Fire Service and Council,
    - must take all reasonable steps to ensure that users of the Hall do not enter surrounding privately owner lands; and
    - must comply with Byron Shire Council assessment on the number of persons that may be accommodated in the Hall and grounds at a single event.

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Delayed commencement of licence

Due to Federal and State Governments restrictions on social gatherings, the Kohinur Hall is now closed. As a result this report recommends the commencement date of the licence is delayed until the Hall can be reopened for unrestricted business. Rent is payable under the licence from the licence commencement date.

Direct negotiations:

Council may directly negotiate the proposed five year licence with the Upper Main Arm Community Association, a not-profit organisation, in accordance with section 46A(3) of the *Local Government Act 1993* (NSW).

## STRATEGIC CONSIDERATIONS

### *Community Strategic Plan and Operational Plan*

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.3	Provide accessible, local community spaces and facilities	2.3.2	Support effective management of community buildings (SP)		

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### **Legal/Statutory/Policy Considerations**

#### **Local Government Act 1993 (NSW)**

#### **s46A Means of granting leases, licences and other estates**

- 10 (1) A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted only by tender in accordance with Division 1 of Part 3.
- (2) Nothing in this section precludes a council from applying a tender process in respect of the grant of any particular lease, licence or estate.
- 15 (3) A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

#### **s47 Leases, licences and other estates in respect of community land—terms greater than 5 years**

- 20 (1) If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:
- (a) give public notice of the proposal (including on the council's website), and
- (b) exhibit notice of the proposal on the land to which the proposal relates, and
- 25 (c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and
- (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.
- 30 (2) A notice of the proposal must include:
- information sufficient to identify the community land concerned
  - the purpose for which the land will be used under the proposed lease, licence or other estate
  - the term of the proposed lease, licence or other estate (including particulars of any options for renewal)
  - the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
  - a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.
- 35 (3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.
- 40 (4) Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.

#### **s47A Leases, licences and other estates in respect of community land—terms of 5 years or less**

- 45 (1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.
- (2) If a council proposes to grant a lease, licence or other estate to which this section applies:
- 50 (a) the proposal must be notified and exhibited in the manner prescribed by section 47, and
- (b) the provisions of section 47 (3) and (4) apply to the proposal, and

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- (c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)–(9) are to apply to the proposal.
  - (3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:
    - (a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and
    - (b) section 47 (9) has effect with respect to the Minister's consent.

10 **Financial Considerations**

The licence commencement date to be delayed until all COVID-19 restrictions are lifted. Rent is payable from the licence commencement date.

- 15 On commencement of the licence, rent payable by the Licensee is \$490 per annum (excluding GST) with rent increased annually thereafter by CPI All Groups Sydney.

20 The Licensee must pay all outgoings for usage charges for all connected services, insurances, onsite sewerage management system pump outs and repairs, all waste management charges; all purchased potable water and interior and grounds maintenance to the Hall.

Council to pay outgoings including, but not limited to, the value of general land rates (if payable), building insurance, security, pest inspections and fire safety compliance costs.

25 **Consultation and Engagement**

In accordance with s47A(2)(a) of the *Local Government Act*, Council called for public comment on the proposed licence between 4 March to 1 April 2020 in the local paper and letters to all surrounding residences.

**Report No. 13.2**      **Licence to Byron Bay Community Association Incorporated for occupation of the Byron Community Cabin.**

**Directorate:**      General Manager

**Report Author:**      Paula Telford, Leasing and Licensing Coordinator

**File No:**      I2020/365

**Summary:**

The licence held by the Byron Bay Community Association Incorporated ('BBCA') for the management of the Byron Community Cabin located in the Byron Recreation Grounds, Lot 444 Section 28 DP 758207 will expire on 31 May 2020. The BBCA has requested a new one year licence.

This report recommends that Council grant a new one-year licence to the BBCA for the purpose of a community hall and associated use of showering facilities for homeless persons subject to a booking system.

The report also recommends suspension of rent under current and proposed licences until all COVID-19 restrictions are lifted.

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**RECOMMENDATION:**

1. That Council notes that no submissions were received on the proposed grant of a one year licence to the Byron Bay Community Association Incorporated for the management of the Byron Community Cabin located on Lot 444 Sec 28 DP758207.
2. That Council authorises the General Manager to enter into a licence with the Byron Bay Community Association Incorporated for the management of the Byron Community Cabin located on Lot 444 Sec 28 DP758207 on the following terms:
  - a) term one year to commence 1 June 2020;
  - b) purpose of a community hall;
  - c) the licensee to pay annual rent of \$490 (exclusive of GST);
  - d) the licensee to pay all outgoings for usage costs of all services connected to the premises and required insurance coverage;
  - e) Council to pay outgoings to the full value of general land rates (if applicable), fixed water and sewerage charges, building insurances, pest inspections and fire safety compliance; and
  - f) Council to subsidise all licence preparation costs of \$527 inclusive of GST.
3. That Council authorises the abatement of rent payable under a current licence to the Byron Bay Community Association Incorporated for occupation of the Byron Community Cabin from 1 April 2020 to 31 May 2020 totalling \$81.66 exclusive of GST.
4. That Council authorise the abatement of rent payable under the proposed new licence to the Byron Bay Community Association Incorporated for occupation of the Byron Community Cabin to commence 1 June 2020 on a month by month basis at a total cost of \$40.83 exclusive of GST per month until all COVID-19 social distancing restrictions are lifted.

### REPORT

The Byron Bay Community Association Incorporation ('BBCA') holds a licence to operate and manage the Byron Community Cabin (the Premises') located in the Byron Recreation Grounds, Lot 444 Section 28 DP 758207 until 31 May 2020. The BBCA has requested a new one year licence.

#### The land:

Lot 444 Section 28 DP 758207 is Council owned land classified as community land and categorised as a sportsground and general community use.

The Plan of Management for the Byron Recreation Grounds expressly authorises the grant of a licence for a term up to 21 years over land categorised for general community use. The Byron Community Cabin is located on land categorised for general community use.

#### Background:

The BBCA has held a series of one year licences to occupy the premises since 1 June 2016 for the purpose of a community hall. The Licensee may offer the premises for hire to the public or specific sections of the public for low impact activities between 9:00am and 5:00pm all days.

The Licensee may also offer shower facilities in the premises for use by homeless persons on a booking scheme between the hours of 10:00am and 2:00pm weekdays only. The Licensee must consider use and occupation of surrounding recreation grounds by schools and organised sporting groups in determining when bookings may be made.

The licence is offered on the condition that no alcohol or illicit drugs are taken onto the premises or consumed within the premises and surrounding grounds.

#### Public notification of the proposed licence:

In accordance with the *Local Government Act 1993* (NSW), Council sought public comment on the proposed licence between 4 March and 1 April 2020. Council received no submissions on the proposed licence.

#### Proposed licence:

This report recommends that a new one year licence is granted to the BBCA for the period 1 June 2020 to 31 May 2021 under the following terms:

- for the purpose of a community hall and use of shower facilities by homeless persons subject to a booking system,
- annual rent set at a flat rate to the value of minimum Crown rent currently \$490 (exclusive of GST) per annum,
- licence preparation costs to be subsidised by Council,
- the Licensee to pay outgoings for the usage cost of all services connected to the premises including but not limited to electricity, phone, water and waste management costs,
- the Licensee to provide \$20 million public liability insurance cover and to insure its owned fixture and fittings for full replacement value, and
- Council to pay outgoings including, but not limited to, the full value of general land rates (if payable), fixed water and sewerage charges, building insurance, security, pest inspections and fire safety compliance costs.

Rent relief during COVID-19 restrictions

5 The BBCA intends to continue to offer homeless shower services from the premises with all other uses of the premises closed to the public during the COVID-19 crisis. The BBCA seeks rent relief under the existing and new licence.

This report recommends the abatement of rent payable under the current licence from 1 April to 31 May 2020 at a total cost of \$81.66 exclusive of GST.

10 This report also recommends the abatement of rent payable under the proposed new licence, on a month by month basis, to commence 1 June 2020 at a cost of \$40.83 exclusive of GST per month

All other Licensee outgoings remain payable under the existing and proposed licence.

15 Direct negotiation:

Council may directly negotiate the proposed five year licence with the BBCA, a non-profit organisation, in accordance with section 46A(3) of the *Local Government Act 1993* (NSW).

20 **STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

***Legal/Statutory/Policy Considerations***

25 *Local Government Act 1993* (NSW)

***s47 Leases, licences and other estates in respect of community land—terms greater than 5 years***

- (1) *If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:*
- 30 (a) *give public notice of the proposal (including on the council's website), and*  
 (b) *exhibit notice of the proposal on the land to which the proposal relates, and*  
 (c) *give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*  
 35 (d) *give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.*
- (2) *A notice of the proposal must include:*
- 40 • *information sufficient to identify the community land concerned*  
 • *the purpose for which the land will be used under the proposed lease, licence or other estate*  
 • *the term of the proposed lease, licence or other estate (including particulars of any options for renewal)*  
 • *the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)*  
 45 • *a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.*



- (3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.
- (4) Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.

**5 s47A Leases, licences and other estates in respect of community land—terms of 5 years or less**

- (1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.
- 10 (2) If a council proposes to grant a lease, licence or other estate to which this section applies:
  - (a) the proposal must be notified and exhibited in the manner prescribed by section 47, and
  - (b) the provisions of section 47 (3) and (4) apply to the proposal, and
  - (c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47
- 15 (5)–(9) are to apply to the proposal.
- (3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:
  - (a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and
  - 20 (b) section 47 (9) has effect with respect to the Minister's consent.

**Financial Considerations**

This report recommends the abatement of rent payable under:

- 25 a) the current licence from 1 April to 31 May 2020 at a cost of \$81.66 exclusive of GST; and
  - b) the proposed new licence from 1 June 2020 at a cost of \$40.83 per month on a month by month basis.
- 30 On completion of the rent abatement term, rent is to be subsidised to the value of minimum Crown rent current set at \$490 (exclusive of GST) per annum.

The Licensee must pay outgoings of all user charges for all services connected to the premises and required insurances.

- 35 Council must pay outgoings of general land rates (if payable), fixed water and sewerage charges, building insurance, security, pest inspections and fire safety compliance costs.

**Consultation and Engagement**

- 40 In accordance with s47A(2)(a) of the Local Government Act, Council called for public comment on the proposed licence between 4 March to 1 April 2020 in the local paper and letters to all surrounding residences.

**Report No. 13.3**      **Amendment to Policy 15/007 Sustainable Community Markets**  
**Directorate:**      General Manager  
**Report Author:**      Paula Telford, Leasing and Licensing Coordinator  
**File No:**      I2020/413

5

**Summary:**


10      Policy 15/007 Sustainable Community Markets ('the Policy') guides how licences to operate markets in the Shire are to be granted. A five year review of the Policy is now due.

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**RECOMMENDATION:**

1.      That Council notes the contents of this report.
2.      That Council authorises the public exhibition of the Draft Policy 15/007 Sustainable Community Markets for a period of 28 days.
3.      That a separate report be tabled at Council's June Ordinary meeting detailing submissions received for consideration of adoption of the Draft Policy 15/007 Sustainable Community Markets.

15      **Attachments:**

- 1      Draft Amended Policy: Sustainable Community Markets 2020, E2020/4102 

20

**REPORT**

Policy 15/007 Sustainable Community Markets ('the Policy') was adopted by Council in 2015 following extensive community consultation and workshops. The resulting Policy guides the licensing of markets in the Byron Shire. A review of the Policy is now due.

Policy review:

As a guiding tool for Council staff to administer the granting of market licences, certainty in Policy definitions and use of standardised wording is essential. As a result the following changes to the Policy are proposed:

1. Certainty of definitions:

The Policy distinguishes between a market licence granted following a tender process and a temporary market licence granted by directly negotiation under delegations of the General Manager.

A 'Temporary Market' is defined in the Policy as:

*'A market conducted for less than three consecutive days and licensed for less than a 12 month period.'*

The Temporary Market definition offers the right to directly negotiate a market licence to hold weekly markets for less than 3 consecutive days for a year and onward for two more years. The definition fails to consider if other markets are licenced on the same day and affords no procedural fairness to other market licensee's to make comment before a temporary market licence is granted.

The proposal is to replace a 'Temporary Market' with an 'Occasional Market' defined as:

*'A single day market held not more than 2 times in any 12-month period by the same applicant and on a day that no other market, authorised by this Policy, is held.'*

The new definition in the Policy provides greater clarity and certainty when Council may directly negotiate a market licence. The new definition will ensure that Council does not directly negotiate a market to operate in competition with other markets licenced in accordance with the Policy.

2. Standard wording and deletion of duplicate information:

Standardised wording and the elimination of duplicate information is essential in the Policy to convey a uniform message as intended. As a result the following changes to the Draft Policy are proposed:

a) Replace the word 'shall' with the word 'must' throughout the Draft Policy.

b) Change the definition of Northern Rivers Region to read:

*'The Northern Rivers Region is the area comprised by the boundaries of Ballina, Lismore, Tweed, Byron, Clarence Valley, Richmond Valley and Kyogle Local Government Areas'*

c) Change the definition of Adjoining Shires to read:

*'Adjoining Shires are those areas comprised by the boundaries of Lismore, Tweed and Ballina Local Government Areas.'*

d) Change to clause 3.1(f) to read:

*'Where this Policy and/or Market licence agreements conflict with relevant legislation, the legislation will prevail to the extent of the conflict.'*

e) Delete clause 3.3(e) because duplicate information is in clause 3.4(c) of the Draft Policy::

~~*'e) Temporary Market licence shall not be granted prior to development consent, where development consent is required.'*~~

f) Change clause 3.5(a) to read:

*'Obtaining development consent and any other legislative approvals will be the responsibility of the Market Manager.'*

### 3. Approvals to operate a market:

Certain markets in the Shire do not require development consent instead are authorised by continuing use rights. The inclusion of points 3.4(b) and 3.4(c) in the Draft Policy is proposed to clarify the conditions required to operate a market without the need to obtain prior development approval.

The following changes are proposed:

3.4(b) *Market licences can be held in accordance with the following table without the need to obtain development consent.*

<i>Location</i>	<i>Market Type</i>	<i>Frequency</i>	<i>Times</i>
<i>Butler Street Reserve</i>	<i>Community</i>	<i>Monthly on 1<sup>st</sup> Sunday plus 3<sup>rd</sup> Sunday December and January</i>	<i>8:00 – 18:00</i>
	<i>Farmers</i>	<i>Every Thursday</i>	<i>8:00 – 11:00</i>
<i>Denning Park</i>	<i>Artisan</i>	<i>4 times per year on a Saturday</i>	<i>8:00 – 16:00</i>
<i>Memorial Park</i>	<i>Community</i>	<i>Monthly on 1<sup>st</sup> Saturday</i>	<i>8:00 – 14:00</i>
<i>New Brighton Oval</i>	<i>Farmers</i>	<i>Every Tuesday</i>	<i>8:00 – 11:00</i>
<i>Railway Park</i>	<i>Artisan</i>	<i>Every Saturday</i>	<i>15:00 – 21:00</i>
<i>Summers Park</i>	<i>Community</i>	<i>Monthly on 3<sup>rd</sup> Saturday</i>	<i>8:00 – 14:00</i>

3.4(c) *Development consent and other legislative approvals may be required to conduct Markets, Other Markets and Occasional Markets on Council owned or managed land.*

### 4. Consultation with current Market Licensees:

Council consulted with current tendered Market Licence holders, for a period of 28 days, on proposed changes to the Policy. The following feedback was received:

<i>Licensee</i>	<i>Submission</i>	<i>Council response</i>
<i>North Byron Farmers Market:</i>	<i>all changes look fine.</i>	<i>noted.</i>
<i>Byron Farmers Market:</i>	<i>the proposed changes to the Policy have little bearing on the operation of the Farmers Market and no other issues require review further.</i>	<i>noted.</i>
<i>Byron Bay</i>	<i>all changes are suitable.</i>	<i>noted.</i>

Licensee	Submission	Council response
Community Association:		
Brunswick Valley Woodchop & Entertainment Committee:	Agree with proposed changes to the Policy.	noted.
Brunswick Valley Historical Society:	<p>Thanked Council for an opportunity to make following comments.</p> <ul style="list-style-type: none"> <li>error in clause 3.4(a).</li> <li>clause 3.2(c) refers to market rental income from Crown Reserves to be used to fund asset renewals, upgrades and improvements, yet to date Council has not spent any income on Summers Park, members undertake improvements and a real need to fix holes in asphalt to the site.</li> </ul>	<ul style="list-style-type: none"> <li>reference to Temporary changed to Occasional.</li> <li>Summers Park is not part of Council's regular programmed works, Council undertakes regular tree and weed maintenance. \$10,911.04 is to be expended in 2020 on tennis courts and recreation grounds maintenance works.</li> </ul>

This report recommends wider consultation of the Draft Policy for an additional 28 days for public input on proposed Policy changes. On completion of the consultation a separate report will be tabled at Councils June meeting detailing all submissions received.

5

## **STRATEGIC CONSIDERATIONS**

### ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.3	Provide access to publicly available corporate registers	5.2.3.4	Update and publish Council's policies online

10

### ***Legal/Statutory/Policy Considerations***

Nil.

### ***Financial Considerations***

Nil.

20

### ***Consultation and Engagement***

Council consulted with current Market Licence holders between 9 March and 1 April 2020 requesting written comment on proposed changes to the Policy.

**Report No. 13.4 Outcome of Butler Street Reserve site investigations**

**Directorate:** General Manager

**Report Author:** Claire McGarry, Place Manager - Byron Bay  
Phil Warner, Manager Assets and Major Projects

5 **File No:** I2020/419

**Summary:**

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This report details the history of contamination investigations on Butler Street Reserve and recommends next steps for the future management and use of the site.

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**RECOMMENDATION:**

1. That Council notes the advice from the EPA and proceed with the development of an Environmental Management Plan for Butler Street Reserve;
2. That Council engages a landscape architect to develop concept plans for future use and management of Butler Street Reserve;
3. That Council undertakes consultation with existing site users and neighbouring property owners to inform concept plans; and
4. That Council investigates funding opportunities to implement concept plans.

15



## REPORT

**Site investigations**

In 2017, the Butler Street reserve was investigated by Transport for NSW as a potential site for the new Byron Bay Bus interchange. These investigations involved, in part, a detailed contamination assessment by consultants SMEC. The draft report concluded that the former landfill in this location posed significant constraints that made the option of a new interchange unviable. The report was referred to Council such that further assessment could occur.

Following detailed research of the history of the former landfill the matter was referred to the NSW EPA who issued Council with a preliminary investigation order 20181009 on 1 November 2018. Council has conducted a series of investigations in accordance with the EPA requirements and submitted the final report to the EPA in November 2019.

The EPA have assessed the investigation and associated report, concluding that the investigation did not reveal any immediate risks to human health or the environment based on multiple lines of evidence. The EPA has advised that the Butler Street Reserve, being a former landfill, needs a long term environmental management plan to ensure reduced exposure to buried wastes and ongoing monitoring of both groundwater and soil gas to confirm no changes to the recent findings. The EPA strongly recommends that Council prepare and implement an Environmental Management Plan (EMP).

**Use of the site**

Since 2002, Butler Street Reserve has been home to weekly farmers markets and monthly community markets. The Plan of Management for the Reserve approved by the Minister for Natural Resources (Lands) in 2003 expressly provides for markets on the land. Markets initially operated under short-term licences until 2016 when a competitive tender by Council awarded five (5) year market licences.

In 2015, Council resolved in part (15-370) *“that Butler Street Reserve be made available as an all day carpark”*. While the cost, duration and limitations of parking on the Reserve has been adjusted over time, the Reserve has accommodated markets and parking on the site over the past 5 years, with significant site degradation occurring as a result and issues arising in terms of antisocial behaviour and unauthorised camping.

Site users (market operators, community members and neighbouring property owners) have made numerous requests to Council to better manage competing uses on the site to improve its condition and useability.

In February 2019, Council resolved in part (19-062):

1. *That Butler Street Reserve be closed to the public after the 7 July Community Market for a period of 6 months while the section of the Byron Bay Bypass (including the Somerset Street Roundabout and its western and southern legs and the area of works within Butler Street north of the roundabout) is constructed.*

In August 2019, Council resolved (19-407) to:

1. *Retain Butler Street Reserve for passive recreation, ground parking and community uses, including markets*

2. *Remove the option of an expansion of the 3-storey commercial zone (as referenced in the Byron Bay Town Centre Masterplan) from the consideration of the future use or zoning of the Butler Street Reserve site*

5 In October 2019, Council resolved (**19-555**) to authorise the continued suspension of markets on the Reserve to 30 June 2020 for the then anticipated duration of the construction of the Byron Bypass project with an additional option of six months.

**Next steps**

10 It is recommended that Council engage the consultants who completed the site investigation in accordance with the EPA requirements to now prepare the required Environmental Management Plan. It is envisaged this could be completed by the end of June 2020.

15 Once an Environmental Management Plan is in place, it is the recommended that Council engage a landscape architect to:

1. Review the existing uses, challenges and constraints of the Reserve
2. Review the long-term objectives of the Reserve as detailed in the Byron Bay Town Centre Masterplan
3. Conduct targeted consultation with current site users regarding future use of the site
4. Conduct broader community consultation including Byron Masterplan Guidance Group, neighbouring properties, neighbouring Reserve managers and community stakeholder groups.
5. Develop concept plans for the future use and management of the Reserve

Concept plans will be reported to Council and, once endorsed, formalised through a new Plan of Management for the Reserve to enable future activities on the Reserve, as identified through consultation process.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.7	Implement identified projects of the Byron Bay Town Centre Master Plan	1.2.7.4	Develop concept plans for the future use and management of Butler Street Reserve (action from Byron Bay Town Centre Masterplan)

***Legal/Statutory/Policy Considerations***

***Financial Considerations***

There are sufficient funds in the waste fund investigation budget to complete the EMP.

Funding has been allocated in the 2019/20 budget for the 'Butler Street Reserve' upgrade, funded by Crown Paid Parking. It is recommended that this amount be carried over to 2020/21 to enable the concept plans to be developed.

***Consultation and Engagement***

5 The site investigations and discussions regarding future use of the Reserve has been the subject of detailed and ongoing engagement with market operators, neighbouring properties, the Byron Masterplan Guidance Group and the broader community for a number of years.

This consultation and engagement will continue throughout the concept plan development phase, with outcomes reported to Council.

10

**Report No. 13.5**      **Council Delegations & Emergency Decision-Making During COVID-19 Crisis**  
**Directorate:**      General Manager  
**Report Author:**      Ralph James, Legal Counsel  
**File No:**      I2020/510

**Summary:**



Council delegations are an important governance tool at any time. During the current Novel Coronavirus (COVID-19) crisis, delegations provide a means of enabling councils to continue functioning in a timely and responsive manner as events unfold quickly and urgent decisions need to be made.

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**RECOMMENDATION:**

1. That pursuant to the *Local Government Act 1993* Council delegates to Mayor of the Council all functions of the Council other than those which are non-delegable pursuant to the provisions of section 377(1) of the *Local Government Act*.
2. This delegation may only be exercised:
  - a) in the period between meetings of Council and where it is not reasonable or practical to call an Extraordinary Meeting;
  - b) where the Mayor considers that the exercise of this delegation is necessary in the interests of the local community or the wider public; and
  - c) after the Mayor has consulted with the General Manager as to the proposed exercise of the delegation.
3. The exercise of this delegation must be reported to the next Ordinary Meeting of the Council.
4. This delegation remains current for a period of 6 months from its issue or for such other shorter or longer period as shall be resolved by the Council.
5. That Council note and endorse the resolution of Council made by the Mayor on 9 April 2020 in exercise of his role pursuant to the provisions of section 226(d) of the *Local Government Act*.

**Attachments:**

- 1 Delegation of Functions - Mayor, E2017/102117 
- 2 Memorandum to the Mayor in respect of the exercise of powers under section 226(d) LGA, E2020/25751 

## REPORT

Council delegations are an important governance tool at any time. During the current Novel Coronavirus (COVID-19) crisis, delegations provide a means of enabling councils to continue functioning in a timely and responsive manner as events unfold quickly and urgent decisions need to be made. This is particularly so where urgent decisions need to be made between council meetings and the calling of an extraordinary meeting would not be a sufficiently responsive or feasible way of making the decision.

Section 377(1) of the *Local Government Act 1993* ('**LG Act**') enables a council, by resolution, to delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under the LG Act or any other Act with 21 specific exceptions.

A number of councils are moving to resolve to confer broad '*emergency*' delegations on their mayors as a contingency measure in order to ensure, so far as is practicable, that the council is able to continue to provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and the wider public in an effective manner during the crisis.

During the COVID-19 crisis, there is a strong case for governing bodies to delegate to mayors all of the functions of the council which are not delegated to the general manager. Such a delegation would be complimentary to a mayor's role under s226(d) of the LG Act '*to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council*'.

Section 226 (o) of the LG Act provides that the role of the Mayor is *to exercise any other functions of the council that the council determines*.

The provisions of s226(d) of the LG Act and the Mayors current delegation adequately covers the ability of the Mayor to make a decision on behalf of the Council between meetings. However, section 226(d) limits the Mayor's authority to *policy* matters. In addition, the general restrictions on the Mayor's current delegations require that the Mayor must consider that an urgent decision is required for the efficient and effective administration of the council.

During the current crisis there may be decisions to be made which do not relate to policy or to matters touching the efficient and effective administration of the council.

Council could resolve to give the Mayor the power to exercise any of council's functions, but consistent with the general limitations included in the Mayor's present delegations.

It is important that emergency delegations to the mayor are drafted to be only exercisable in any period during which the holding of meetings of the governing body of the council and council committees are suspended, disrupted or unable to occur by reason of COVID-19 or where, in cases of necessity between meetings of the council, the mayor considers that it is in the interests of the local community or the wider public or the effective functioning of the council that an emergency delegation is exercised.

Further, in relation to the mayors' emergency delegations, councils may wish to impose a requirement that the mayor consults with the general manager before exercising an emergency delegation relating to any operational matter of the council.

Emergency delegations to the mayor, while clearly warranted during the COVID-19 crisis, are no panacea. They cannot be a complete substitute for decision-making by the governing body. Any

decision taken by the mayor pursuant to emergency delegations must be reported to the next available Council meeting.

It is to be noted that some of the most important functions of councils, including the levying of rates, the making of charges, the fixing of fees, the borrowing of money, and the voting of money for expenditure on works, services or operations, are excluded from delegation under s377(1) of the LG Act. Legislation would be needed to enable mayors to be given delegations to exercise these functions during the current crisis.

Any emergency delegations granted to mayors will, of course, be subject to any legislation, or any proclamations, directions, orders, notices or the like of the Minister administering the Local Government Act 1993 made or given to address Council decision-making during the COVID-19 crisis.

The Mayor's current delegations are attachment 1.

#### Exercise of section 226(d) powers

On 9 April 2020 the mayor exercised his powers pursuant to the provisions of section 226 (d) of the Local Government Act as follows:

*That Council:*

- 1) *Modifies the Brunswick Head Parking Scheme immediately as follows:*
  - a. *Establish a 2P Parking Area between 5am-7pm east of the South Arm Bridge.*
  - b. *Establish a No Parking Area between 7pm-5am east of the South Arm Bridge.*
2. *That the modified changes are to take effect from the date of this resolution until 31st July 2020 or such other time as shall be resolved by Council.*

A copy of the Memorandum forwarded to the Mayor on 8 April 2020 on which he determined that his section 226(d) powers should be exercised is attachment 2.

## STRATEGIC CONSIDERATIONS

### **Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.4	Support Councillors to carry out their civic duties

### **Legal/Statutory/Policy Considerations**

As outlined in the report.

#### Local Government Act

### **226 Role of mayor**

The role of the mayor is as follows—

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,**



- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.**

***Financial Considerations***

Not applicable.

***Consultation and Engagement***

Not applicable.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.6**      **Council Investments - 1 March 2020 to 31 March 2020**

**Directorate:**      Corporate and Community Services

**Report Author:**      James Brickley, Manager Finance

**File No:**      I2020/522

**Summary:**

This report includes a list of investments and identifies Council's overall cash position for the period 1 March 2020 to 31 March 2020 for information.

This report is prepared to comply with Regulation 212 of the *Local Government (General) Regulation 2005*.

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**RECOMMENDATION:**

**That the report listing Council's investments and overall cash position as at 31 March 2020 be noted.**

## REPORT

Council has continued to maintain a diversified portfolio of investments. At 31 March 2020, the average 90 day bank bill rate (BBSW) for the month of March 2020 was 0.53%. Council's performance to 31 March was 1.71%. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits, bonds and purchasing floating rate notes with attractive interest rates. It should be noted that as investments mature, Council's % return will continue to decrease due to the lower rates available in the current market.

The table below identifies the investments held by Council as at 31 March 2020

Schedule of Investments held as at 31 March 2020

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	Y	AA-	24/03/22	Y	B	3.25%	1,044,263.16
15/11/18	980,060	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	1,108,880.00
20/11/18	1,018,310	QLD Treasury Corp (Green Bond)	N	AA+	22/11/24	Y	B	3.00%	1,077,720.00
28/03/19	1,000,000	National Housing Finance & Investment Corporation	Y	AAA	28/03/31	Y	B	2.38%	1,062,980.00
21/11/19	1,000,250	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	1,000,250.00
27/11/19	500,000	National Housing Finance & Investment Social Bond	Y	AAA	27/05/30	Y	B	1.57%	500,000.00
31/03/17	1,000,000	CBA Climate Bond	Y	AA-	31/03/22	Y	FRN	1.83%	1,008,850.00
16/11/17	750,000	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	1.99%	753,667.50
30/08/18	500,000	Bank Australia Ltd (Sustainability Bond)	Y	BBB+	30/08/21	Y	FRN	2.27%	502,795.00
07/12/18	2,000,000	Credit Union Australia	Y	BBB	07/12/20	Y	TD	3.02%	2,000,000.00
03/07/19	1,000,000	Australian Military Bank	Y	NR	02/07/20	N	TD	2.12%	1,000,000.00
27/08/19	1,000,000	AMP Bank	Y	BBB	26/08/20	N	TD	1.80%	1,000,000.00
25/09/19	2,000,000	NAB	N	AA-	24/09/20	N	TD	1.60%	2,000,000.00
08/10/19	1,000,000	NAB	N	AA-	06/04/20	N	TD	1.60%	1,000,000.00
21/10/19	2,000,000	NAB	N	AA-	21/04/20	N	TD	1.57%	2,000,000.00
31/10/19	1,000,000	ME Bank	Y	BBB	28/07/20	Y	TD	1.58%	1,000,000.00
30/10/19	2,000,000	Macquarie Bank Ltd	N	A	30/04/20	N	TD	1.60%	2,000,000.00
06/11/19	1,000,001	AMP Bank	N	BBB	06/05/20	N	TD	1.75%	1,000,001.00
07/11/19	2,000,000	NAB	N	AA-	06/04/20	N	TD	1.58%	2,000,000.00
08/11/19	2,000,000	Suncorp	Y	A+	04/08/20	N	TD	1.60%	2,000,000.00
25/11/19	1,000,000	AMP Bank	N	BBB	25/05/20	N	TD	1.90%	1,000,000.00
27/11/19	1,000,000	Coastline Credit Union	Y	NR	26/11/20	Y	TD	1.80%	1,000,000.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
02/12/19	1,000,000	The Mutual Bank	Y	NR	02/06/20	Y	TD	1.75%	1,000,000.00
03/12/19	1,000,000	AMP Bank	N	BBB	02/06/20	N	TD	1.90%	1,000,000.00
13/12/19	1,000,000	Summerland Credit Union	Y	NR	14/04/20	Y	TD	1.80%	1,000,000.00
06/01/2020	2,000,000	NAB	N	AA-	4/6/2020	N	TD	1.58%	2,000,000.00
06/01/2020	1,000,000	Judo Bank	Y	NR	5/1/2021	N	TD	2.10%	1,000,000.00
06/01/2020	1,000,000	Police Credit Union Ltd (SA)	Y	NR	6/4/2020	N	TD	1.75%	1,000,000.00
08/01/2020	1,000,000	Suncorp	N	A+	7/5/2020	N	TD	1.50%	1,000,000.00
13/01/2020	1,000,000	Suncorp	N	A+	12/5/2020	N	TD	1.50%	1,000,000.00
20/01/2020	1,000,000	Westpac (Tailored)	Y	AA-	20/1/2021	Y	TD	1.41%	1,000,000.00
20/01/2020	2,000,000	NAB	N	AA-	19/5/2020	N	TD	1.60%	2,000,000.00
24/01/2020	2,000,000	Bank of QLD	N	BBB+	24/7/2020	N	TD	1.60%	2,000,000.00
28/01/2020	1,000,000	NAB	N	AA-	27/4/2020	N	TD	1.58%	1,000,000.00
31/01/2020	1,000,000	MyState Bank Limited	Y	NR	28/5/2020	N	TD	1.60%	1,000,000.00
30/01/2020	1,000,000	Judo Bank	N	NR	30/7/2020	N	TD	1.85%	1,000,000.00
30/01/2020	1,000,000	The Mutual Bank	N	NR	30/4/2020	N	TD	1.75%	1,000,000.00
30/1/2020	1,000,000	Macquarie Bank Ltd	N	A	30/4/2020	N	TD	1.60%	1,000,000.00
3/02/2020	1,000,000	NAB	N	AA-	04/5/2020	N	TD	1.58%	1,000,000.00
04/2/2020	1,000,000	Summerland Credit Union	Y	NR	04/5/2020	Y	TD	1.70%	1,000,000.00
06/2/2020	1,000,000	My State Bank	Y	NR	06/8/2020	Y	TD	1.70%	1,000,000.00
12/02/2020	1,000,000	The Mutual Bank	N	NR	12/5/2020	Y	TD	1.78%	1,000,000.00
12/02/2020	1,000,000	ME Bank	N	BBB	12/5/2020	Y	TD	1.52%	1,000,000.00
25/2/2020	1,000,000	Macquarie Bank Ltd	N	A	25/5/2020	N	TD	1.60%	1,000,000.00
25/2/2020	2,000,000	NAB	N	AA-	25/5/2020	N	TD	1.60%	2,000,000.00
25/2/2020	1,000,000	Macquarie Bank Ltd	N	A	26/5/2020	Y	TD	1.80%	1,000,000.00
26/2/2020	1,000,000	Judo Bank	N	NR	26/5/2020	Y	TD	1.85%	1,000,000.00
27/2/2020	2,000,000	AMP Bank	N	BBB+	27/5/2020	N	TD	1.75%	2,000,000.00
02/3/2020	2,000,000	Macquarie Bank Ltd	N	A	1/6/2020	N	TD	1.70%	2,000,000.00
02/3/2020	2,000,000	Macquarie Bank Ltd	N	A	1/6/2020	N	TD	1.70%	2,000,000.00
03/3/2020	2,000,000	Macquarie Bank Ltd	N	A	2/6/2020	N	TD	1.70%	2,000,000.00
04/3/2020	1,000,000	Auswide Bank Ltd	Y	NR	3/6/2020	Y	TD	1.55%	1,000,000.00
09/3/2020	2,000,000	NAB	N	AA-	09/06/20	N	TD	1.37%	2,000,000.00
12/3/2020	2,000,000	Macquarie Bank Ltd	N	A	10/06/20	N	TD	1.70%	2,000,000.00
25/3/2020	1,000,000	TCorp Green Deposit	N	AAA	25/09/20	N	TD	0.57%	1,000,000.00
N/A	215,262.99	CBA Business Saver	N	AA-	N/A	N	CALL	1.20%	215,262.99
N/A	2,500,000.00	CBA Business Saver - Tourism	N	AA-	N/A	N	CALL	1.20%	2,500,000.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
N/A	3,572,260.74	NSW Treasury Corp	N	AAA	N/A	Y	CALL	1.10%	3,572,260.74
<b>Total</b>	<b>76,036,144.73</b>						<b>AVG</b>	<b>1.75%</b>	<b>76,346,930.39</b>

**Note 1.** CP = Capital protection on maturity  
N = No Capital Protection  
Y = Fully covered by Government Guarantee  
P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

**Note 2. No Fossil Fuel ADI**  
Y = No investment in Fossil Fuels  
N = Investment in Fossil Fuels  
U = Unknown Status

**Note 3.**

Type	Description	
B	Bonds	Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.
FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance.

### Environmental and Socially Responsible Investing (ESRI)

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An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'No Fossil Fuel' investing institution. This information has been sourced through [www.marketforces.org.au](http://www.marketforces.org.au) and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.

10

The notion of Environmental and Socially Responsible Investing is much broader than whether a financial institution as rated by 'marketforces.org.au' invests in fossil fuels or not. Council's current Investment Policy defines Environmental and Socially Responsible Investing at Section 4.1 of the Policy which can be found on Council's [website](#).

15

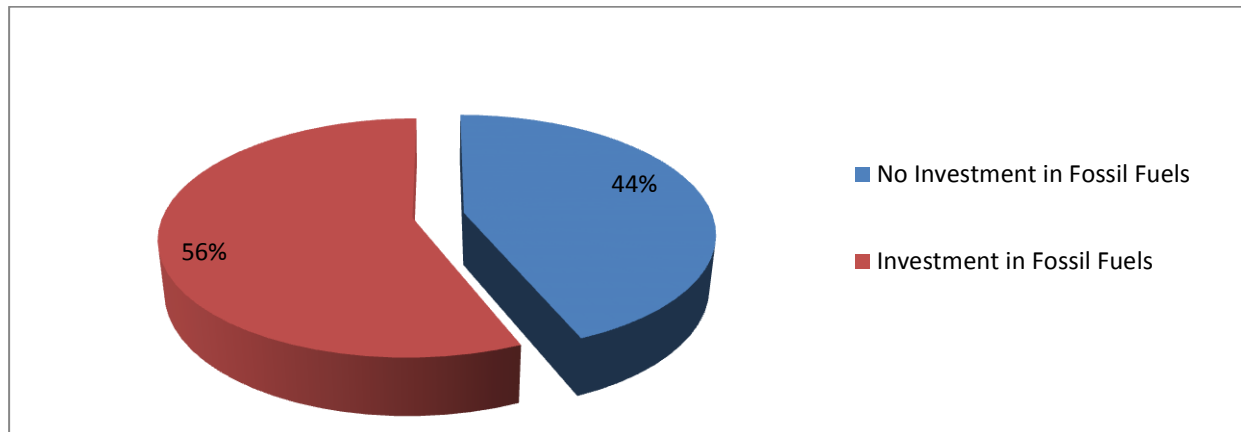
Council has two investments with financial institutions that invest in fossil fuels but are nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

20

1. \$1,000,000 investment with the National Australia Bank maturing on 24 March 2022 known as a Social Bond that promotes Gender Equity.

25

2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.



### Investment Policy Compliance

Investment policy compliance % per institution should not exceed the following			ACTUAL	Variance
AAA to AA	A1+	100%	47.41%	Meets policy
A+ to A-	A1	60%	16.99%	Meets policy
BBB to NR	A2,NR	40%	35.60%	Meets policy

The above table identifies compliance with Council's Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e. credit unions).

### Associated Risk

Moving more of the investment portfolio into the 'ethical' space will lower the credit quality of the investment portfolio overall and increase the organisation's credit risk (i.e. exposure to potential default). To monitor this issue the 'Investment Policy Compliance' table is now produced for each monthly Investment Report to Council.

The investment portfolio is outlined in the table below by investment type for the period 1 March 2020 to 31 March 2020:

### Dissection of Council Investment Portfolio as at 31 March 2020

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
62,000,001.00	Term Deposits	62,000,001.00	0.00
2,250,000.00	Floating Rate Note	2,265,312.50	15,312.50
2,715,262.99	Business On-Line Saver (At Call)	2,715,262.99	0.00
3,572,260.74	NSW Treasury Corp (T Corp)	3,572,260.74	0.00
5,498,620.00	Bonds	5,794,093.16	295,473.16
<b>76,036,144.73</b>		<b>76,346,930.39</b>	<b>310,785.66</b>

The current value of an investment compared to the principal value (face value or original purchase price) provides an indication of the performance of the investment without reference to the coupon (interest) rate. The current value represents the value received if an investment was sold or traded in the current market, in addition to the interest received.

The table below provides a reconciliation of investment purchases and maturities for the period of 1 March 2020 to 31 March 2020 on a current market value basis.

**Movement in Investment Portfolio – 31 March 2020**

Item	Current Market Value (at end of month) \$
<b>Opening Balance at 1 March 2020</b>	<b>77,848,776.98</b>
Add: New Investments Purchased	12,000,000.00
Add: Call Account Additions	5,000,000.00
Add: Interest from Call Account	2,701.29
Less: Investments Matured	13,000,000.00
Add: T Corp Additions	0.00
Add: Interest from T Corp	0.00
Less: Call Account Redemption	5,500,000.00
Less: T Corp Redemption	4,547.48
Less: Fair Value Movement for period	0.00
<b>Closing Balance at 31 March 2020</b>	<b>76,346,930.79</b>

**Term Deposit Investments Maturities and Returns – 1 March 2020 to 31 March 2020**

Principal Value (\$)	Description	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000	Bank of Us	2/3/2020	90	1.70%	4,191.78
2,000,000	Macquarie Bank Ltd	2/3/2020	181	1.75%	17,356.16
1,000,000	Australian Military Bank	3/3/2020	183	2.82%	8,383.56
2,000,000	Macquarie Bank Ltd	3/3/2020	91	1.60%	7,978.08
1,000,000	Banana Coast Credit Union	4/3/2020	364	2.90%	28,920.95
2,000,000	NAB	9/3/2020	91	1.60%	7,978.08
2,000,000	Macquarie Bank Ltd	12/3/2020	106	1.60%	9,205.48
1,000,000	NSW T Corp Green Term Deposit	25/3/2020	184	1.00%	4,986.30
1,000,000	NAB	30/3/2020	270	1.95%	14,424.66
<b>13,000,000</b>					<b>103,425.05</b>

Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. In this regard, for the month of March 2020 the table below identifies Council's overall cash position as follows:

## Dissection of Council's Cash Position as at 31 March 2020

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	62,000,001.00	62,000,001.00	0.00
Floating Rate Note	2,250,000.00	2,265,312.50	15,312.50
Business On-Line Saver (At Call)	2,715,262.99	2,715,262.99	0.00
NSW Treasury Corp (T Corp)	3,572,260.74	3,572,260.74	0.00
Bonds	5,498,620.00	5,794,093.16	295,473.16
<b>Total Investment Portfolio</b>	<b>76,036,144.73</b>	<b>76,346,930.39</b>	<b>310,785.66</b>
<b>Cash at Bank</b>			
Consolidated Fund	2,156,944.16	2,156,944.16	0.00
<b>Total Cash at Bank</b>	<b>2,156,914.16</b>	<b>2,156,914.16</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>78,193,038.89</b>	<b>78,503,874.55</b>	<b>310,805.66</b>

## STRATEGIC CONSIDERATIONS

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.5	Identification of ethical investment opportunities with environmental and social inclusion outcomes

5

**Legal/Statutory/Policy Considerations**

10 In accordance with Regulation 212 of the *Local Government (General) Regulation 2005*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies it has invested under section 625 of the *Local Government Act 1993*.

15 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are often received after the deadline for the submission of reports. Endeavours are being made to achieve a better alignment and for some months this will require reporting for one or more months.

20 Council's investments are made in accordance with section 625(2) of the *Local Government Act 1993* and Council's Investment Policy. The *Local Government Act 1993* allows Council to invest money as per the Minister's Order – Forms of Investment, last published in the Government Gazette on 11 March 2011.

25 Council's Investment Policy includes the objective of maximising earnings from authorised investments and ensuring the security of Council Funds.



***Financial Considerations***

Council uses a diversified mix of investments to achieve short, medium and long-term results.

**Report No. 13.7**      **COVID-19 Financial Assistance and Actions**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      James Brickley, Manager Finance  
**File No:**      I2020/543

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**Summary:**

- 10      This report outlines proposed actions and recommendations for Council's consideration on how it can further respond to the COVID-19 pandemic in terms of financial assistance to the community.

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**RECOMMENDATION:**

That Council notes and endorses the actions taken or proposed to be taken, as identified in this report, including the following specific recommendations:

**Recommendation 1:** Council relaxes the owner/occupier rule to also allow payment arrangements from owners with multiple properties provided they enter into a suitable payment arrangement for each individual property.

**Recommendation 2:** Council suspends debt recovery action beyond issuance of a reminder notice or statement with a review to be conducted in December 2020.

**Recommendation 3:** Council agrees to a further deferment of six months as of 1 April 2020 of Developer Contributions for Section 64 Sewerage Contributions. The deferment does not mean the required repayments are reduced or written off but means that repayments due do not need to be made for the next six months and will need to recommence on 1 October 2020 subject to a review at that time.

**Recommendation 4:** Council establishes a bank overdraft facility for \$1,000,000 and authorises the General Manager to establish this facility.

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**REPORT**

From late March 2020 to the time of writing this report, there has been a series of announcements and restrictions imposed by both the Commonwealth and NSW State Governments by way of response to the COVID-19 pandemic. These announcements and restrictions are impacting the Byron Shire community and Council in numerous ways including financially.

A number of measures have been put in place following day to day operational requirements and decisions already made by Council in consideration of the Mayoral Minute presented to the 26 March 2020 Ordinary Council Meeting and subsequent resolution **20-124**. These actions are designed to provide assistance to the community whilst also balancing the financial impact upon Council.

These measures include:

**Suspension of Merchant Services Fee**

In accordance with resolution **20-124**, the merchant service fee has been suspended and is no longer being applied to credit card transactions accepted by Council.

**Suspension of footpath dining fees**

In accordance with resolution **20-124**, footpath dining fees have been suspended. Footpath dining fees raised for the period 1 March 2020 to 31 March 2020 will be credited and fees for the period 1 April 2020 to 30 June 2020 will not be raised. A letter is being sent to all businesses subject to footpath dining fees advising accordingly. The same approach is being applied to fees applicable for goods/chattels.

**Payment arrangements for rates and water/sewerage accounts**

In accordance with resolution **20-124**, Council's Debt Management and Financial Assistance Policy has been extended to local business ratepayers.

Further to the above, Council's website now has an [online form](#) for ratepayers to use to establish a payment arrangement.

Submitting this form generates an auto acceptance of the arrangement for a six month period from 1 April 2020 to 30 September 2020. The minimum payment required is \$50 per month. During the arrangement term, interest on outstanding rates and charges will still accrue but if the arrangement is substantially honoured as agreed, interest accrued from 1 April 2020 to 30 September 2020 will be written off.

Payment arrangements established due to the COVID-19 Pandemic will be reviewed at 30 September 2020.

Council's Debt Management and Financial Hardship Policy currently provides potential assistance to an owner/occupier. This means a ratepayer who may currently own more than one property can only make an arrangement on one property and only if they are occupying it. It is recommended this requirement be relaxed provided the ratepayer enters into a suitable payment arrangement for each of their individual properties during the period of the COVID-19 Pandemic.

**Recommendation:** Council relaxes the owner/occupier rule to also allow payment arrangements from owners with multiple properties provided they enter into a suitable payment arrangement for each individual property.

Suspension of Debt Recovery

Section 5.4 of Council's Debt Management and Financial Hardship Policy, provides for debt recovery action for outstanding rates and water accounts on a half yearly cycle. The next debt recovery cycle is due in September 2020 (after the first rate instalment due on 31 August 2020). Given current circumstances it is recommended that debt recovery be suspended beyond issuance of a reminder notice and that this be reviewed in December 2020. Existing debt recovery matters are not currently being pursued and Council's external debt recovery agents have advised they are not pursuing any debt recovery matters at this time.

**Recommendation:** Council suspends debt recovery action beyond issuance of a reminder notice or statement with a review to be conducted in December 2020.

Deferred Developer Contributions – Section 64 Sewerage Contributions

Council has an existing policy that allows developer contributions for Section 64 sewerage charges to be deferred from an upfront payment to a suitable arrangement to repay the required contributions over a set time. Council has received requests concerning these agreements and the inability to make agreed repayments. Given the current situation where some businesses have been required to close down, Council could consider further deferment of these payments.

**Recommendation:** Council agrees to a further deferment of six months as of 1 April 2020 of Developer Contributions for Section 64 Sewerage Contributions. The deferment does not mean the required repayments are reduced or written off but means that repayments due do not need to be made for the next six months and will need to recommence on 1 October 2020 subject to a review at that time.

Refunds for payments made to Council for services yet to be performed

Council does provide services or facilities that require either payment in full or in part prior to the service or facility being used. An example of this is Council's holiday parks where a payment is required to secure a booking. Due to the restrictions currently in place, Council is refunding any fees paid in advance upon request and will also offer this subject to a request and agreement on a case by case basis. This approach will be applied to other instances across Council's operations as applicable.

Costs associated with responding to the COVID-19 Pandemic

Council is now tracking costs associated with the response to the COVID-19 pandemic. In the absence of any financial assistance from government, these costs will need to be funded initially by the end of June 2020 and then into the next financial year. Costs being attributed are those directly related to Council's response to government announcements, orders and Council decisions. Any revenue losses will be recognised through budgeted revenue adjustments commencing with the March 2020 and June 2020 Quarterly Budget Reviews.

Establishment of a Bank Overdraft

Byron Shire Council does not have a bank overdraft facility linked to its bank account. Council is able to apply for and establish a bank overdraft facility that can be used as a very short term buffer if the bank account is overdrawn. If Council did overdraw its bank account, it would be required to pay overdraft interest, as it constitutes a form of borrowing for any period the account is overdrawn. Whilst the Council's bank account is monitored daily, in these uncertain times and with Council wanting to maintain its payment obligations to suppliers and employees whilst its revenue is negatively impacted, the provision of a bank overdraft with a \$1,000,000 limit would be a helpful

buffer. The establishment of the facility does not mean it has to or will be used but it is there in case.

- 5 **Recommendation:** Council establishes a bank overdraft facility for \$1,000,000 and authorises the General Manager to establish this facility.

Further reporting will be provided to Council in respect of financial matters as they arise and as the COVID-19 pandemic progresses.

- 10 The 31 March 2019 Quarter Budget Review to be presented to Council on 28 May 2020 and to the Finance Advisory Committee on 14 May 2020, will include a review of emerging impacts to Council's operations in terms of potential revenue loss specifically in but not limited to the following areas:

- 15       1. Pay Parking  
           2. Fines  
           3. Cavanbah Centre  
           4. Public Halls  
           5. Swimming Pools  
 20       6. Holiday Parks  
           7. Children's Services  
           8. Interest on Investments  
           9. Leases and Licences  
           10. Footpath Dining Fees  
 25       11. Inspection Fees

- 30 As at the end of March 2020, Council's revenue has not yet realised any significant impacts which would be consistent with the timing of imposition of greater restrictions and cessation of some activities. Revenue impacts will emerge in the April 2020 to June 2020 quarter for 2019/2020 and further into the 2020/2021 financial year.

## **STRATEGIC CONSIDERATIONS**

### ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.5	Manage Council's finances sustainably	5.5.1	Enhance the financial capability and acumen of Council	5.5.1.1	Financial reporting as required provided to Council and Management

### ***Legal/Statutory/Policy Considerations***

- 40 There are a number of legislative requirements and or policies that influence and determine Council's financial operations. This report has considered these and provided recommendations to Council to consider where it is beyond existing Council policy or staff delegation to implement.

### ***Financial Considerations***

- 45 The COVID-19 Pandemic will impact negatively the financial outcomes of Byron Shire Council. Anticipated financial impacts where identified will be reported to Council in conjunction with the 31 March 2020 Quarterly Budget Review noting that through these uncertain times it is vital that

Council maintains a robust system of budgetary control and a sustainable financial position as best as practicable.

**Summary of Recommendations**

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Recommendation 1: Council relaxes the owner/occupier rule to also allow payment arrangements from owners with multiple properties provided they enter into a suitable payment arrangement for each individual property.

10 Recommendation 2: Council suspends debt recovery action beyond issuance of a reminder notice or statement with a review to be conducted in December 2020.

15 Recommendation 3: Council agrees to a further deferment of six months as of 1 April 2020 of Developer Contributions for Section 64 Sewerage Contributions. The deferment does not mean the required repayments are reduced or written off but means that repayments due do not need to be made for the next six months and will need to recommence on 1 October 2020 subject to a review at that time.

20 Recommendation 4: Council establishes a bank overdraft facility for \$1,000,000 and authorises the General Manager to establish this facility

## STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.8**      **Minutes of Coastal Estuary Catchment Panel**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Dominika Tomanek, Executive Assistant Infrastructure Services  
**File No:**      I2020/517

**Summary:**


The attachment to this report provides the minutes of the Coastal Estuary Catchment Panel Meeting of 12 March 2020 for determination by Council.

**RECOMMENDATION:**

That Council adopt the following Panel and Management Recommendation(s):

1. That Council note that the Coastal Estuary Catchment Panel received several projects updates by staff.
2. That in relation to Belongil Catchment Drainage Board update:
  - a) That Council note that due to current lack of clarity and mutual understanding as to the roles and responsibilities of Council and Belongil Catchment Drainage Board, the Plan of Management has not been agreed upon by Council.
  - b) That Council meet with DPI and Belongil Catchment Drainage Board to engage in resolution of the POM and hence the MoU.
3. That in relation to Additional Flow Path project, the REF, once determined, be placed on Council's website for community information
4. That In relation to Belongil Issues Studies, the outcomes of the recent DPI workshop on ICOLLs be reported to Council.

**Attachments:**

- 1 Minutes 12/03/2020 Coastal Estuary Catchment Panel, I2020/377 

**REPORT**

The attachment to this report provides the minutes of the Coastal Estuary Catchment Panel Meeting of for determination by Council. The agenda for this meeting can be located on Council's website at:

[https://byron.infocouncil.biz/Open/2020/03/CECP\\_12032020\\_AGN\\_1190\\_AT.PDF](https://byron.infocouncil.biz/Open/2020/03/CECP_12032020_AGN_1190_AT.PDF)

The Panel recommendations are supported by management and are provided in the attachment to this report.

Staff support Panel recommendation.

**STRATEGIC CONSIDERATIONS*****Legal/Statutory/Policy Considerations***

Not applicable.

***Financial Considerations***

Not applicable.

***Consultation and Engagement***

Not applicable.



**Report No. 13.9**      **Expression of Interest for Dingo Lane Solar Farm Design, Construct, Operation and Maintenance Contractors**

**Directorate:**      Infrastructure Services

**Report Author:**      Andrew Swan, Senior Project Manager Dingo Lane Solar Farm

**File No:**      I2020/501

**Summary:**

On 28 November 2019 Council, approved the use of the open tender method to call for Expressions of Interest for Contract 2019-0176 Myocum Solar Farm Development

The Expressions of Interest was advertised from 11 January 2020 to 13 February 2020.

Submissions were received from the following organisations:

- Akcome Power Pty Ltd
- Autonomous Energy Pty Ltd
- Boschetti Industries
- Coolamon Energy P/L
- EPC Technologies Pty Ltd
- First Sun Solar
- Gildemeister LSG Solar Australia Pty Ltd
- My Energy Solutions Pty Ltd
- Photon Energy Engineering Australia Pty Ltd
- Solgen Energy Pty Ltd
- Todae Solar Pty Ltd
- Veolia Energy Solutions Pty Ltd

Submissions have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the Submissions and recommends that four short-listed respondents be invited to participate in the next stage of the procurement process, prior to issuing a select tender to the short-list. The progression to a select tender process is subject to further Council resolution..

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**RECOMMENDATION:**

1. That Council nominate four (4) short-listed respondents be invited to participate in the next stage of the procurement process, being:
  - Autonomous Energy Pty Ltd
  - Todae Solar Pty Ltd
  - Solgen Energy Pty Ltd
  - Gildemeister LSG Solar Australia Pty Ltd
2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.

**Attachments:**

- 1 Confidential - EOI 2019/0176 Expression of Interest Stage 1 EOI Evaluation Report Myocum Solar Farm Development, E2020/22771

**Report**

In June 2019, Council unanimously resolved to commit the funding necessary to complete detailed feasibility, development approval planning and undertake a procurement process for the Dingo Lane Solar Farm.

In November 2020, Council resolved to call for an Expression of Interest for firms to carry out the Design, Construction, Operation and Maintenance of the proposed Solar Farm. It is ultimately Council's aim to identify and tender with commercial partners to bring the Dingo Lane Solar Farm to market, assuming viability is maintained. Council is targeting construction start of the Myocum solar farm by early 2021, subject to a range of further studies, procurement stages, development approval and final Council resolution to proceed.

Expression of Interest (EOI) submissions were sought from suitably qualified organisations with specific knowledge and track record for the design, construction, maintenance and ongoing operation for a proposed utility scale 4.95MWac solar farm to be constructed at Dingo Lane, Myocum (Project). Council is also interested in alternative finance options for the Project to compare against the current proposed self-financing combination of equity and debt.

On completion of the EOI, an Early Contractor Involvement phase is proposed with successful, short-listed tenderers. The Early Contractor Involvement phase is designed to examine and critique the specification and contract documents that will be utilised in the select tender stage of the project. Shortlisted tenderers must participate in the Early Contractor Involvement phase and are expected to develop plans and documentation to support the project. Shortlisted tenderers that participate in the Early Contractor Involvement phase will be compensated up to \$10,000 (+GST) in recognition of the resource requirement to support the project.

The Early Contractor Involvement process will be managed by a Senior Project Engineer in the Utilities section of Council.

Tenders were advertised as follows:

- Sydney Morning Herald – 17th Jan 2020
- Echo – 17th Jan 2020
- Tenders Online – 11th Jan to 13th February
- Council website – 11th Jan to 13th February

An optional briefing/site inspection was held at 2pm on 29<sup>th</sup> January 2020 at 1 Dingo Lane, Myocum NSW and was attended by 20 companies.

An Evaluation Panel comprising of three Council staff members and two consultants (Willow and Sparrow and Resource Analytics) was formed.

Tenders closed on 13 February and submissions were received from the following proponents:

- Akcome Power Pty Ltd
- Autonomous Energy Pty Ltd
- Boschetti Industries
- Coolamon Energy P/L
- EPC Technologies Pty Ltd
- First Sun Solar
- Gildemeister LSG Solar Australia Pty Ltd
- My Energy Solutions Pty Ltd
- Photon Energy Engineering Australia Pty Ltd
- Solgen Energy Pty Ltd

- Todae Solar Pty Ltd
- Veolia Energy Solutions Pty Ltd

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

5

*Mandatory criteria:*

10

- EOI lodged on time, in accordance with the Conditions of Responding.
- Respondent has a valid Australian Business Number
- Respondent substantially complies with the Statement of Requirements
- Respondent substantially complies with the Conditions of Contract
- Workers Compensation Insurance for all employees
- Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements
- Respondent has satisfactory work health and safety practices
- Financial capacity to undertake the contract
- Commitment to ethical business practices
- Respondent confirmed no ties to Adani

15

*Qualitative criteria:-*

Main Criteria	Weighting	Sub-Criteria Elements	Schedule	Weighting
Profile and Relevant Experience	40%	Proponent experience (including key personnel and project structure), including Subcontractor experience (subcontractor experience weighting as % of total)	3.1	35%
		Quality Management and Environmental Protection	5.0 and 7.0	15%
		Previous project experience with comparable PV projects (scale/size)	3.2	50%
System design	20%	Overall design	4.1	40%
		Layout	4.1	20%
		Construction methodology/approach	4.2	40%
Technology	20%	Panels	4.1 (MS Excel)	40%
		Inverter	4.1 (MS Excel)	20%
		Racking/mounting system	4.1 (MS Excel)	30%
		Warranties	4.1 (MS Excel)	10%
Price (D& C and O&M)	20%	Net Present Value over 20 years	4.4	100%

20 Detail of the assessment process is includes in the Tender Evaluation Report (attached).

The Evaluation Panel recommends that the following respondents be short-listed and invited to participate in the next stage of the procurement process:

Rank	Expression of Interest Respondent
1	Autonomous Energy Pty Ltd
2	Todae Solar Pty Ltd
3	Solgen Energy Pty Ltd
4	Gildemeister LSG Solar Australia Pty Ltd

25

**Next steps**

On completion of the EOI, an Early Contractor Involvement phase is proposed with successful, short-listed tenderers. The Early Contractor Involvement phase is designed to examine and critique the specification and contract documents that will be utilised in the select tender stage of the project. Shortlisted tenderers must participate in the Early Contractor Involvement phase and are expected to develop plans and documentation to support the project. Shortlisted tenderers that participate in the Early Contractor Involvement phase will be compensated up to \$10,000 (+GST) in recognition of the resource requirement to support the project.

The information obtained during the Early Contractor Involvement phase, as well as other studies currently underway, will be reported to Council as part of the updated business case and the Office of Local Government CAPEX Review process so that Council can make a decision to proceed with the project and calling for select tenders from the shortlisted contractors if the viability of the project is maintained, this is currently expected to be ready to provide to Council in September.

According to the Probity Plan for this project, Council will continue to be updated about the progress of the detailed feasibility stage of the Dingo Lane Solar Farm through the quarterly Sustainability and Emissions Reductions Advisory Committee.

**Update to the Business Case for Dingo Lane Solar Farm**

Overall, the median whole of life (25 year) cost across all Expression of Interest (EOI) submissions was \$9.73M. The short-list respondent' price ranges from \$9.7M to \$10.6M for fixed tilt system and \$9.68M to \$11.04M for the single axis tracking.

The current business case allowed for \$14.3M whole of life costs (\$12.2M capital and \$2.1M for operation and maintenance). Allowing for \$1M of preliminary costs (including contract supervision of the construction works) this shows that current price expectations from industry (say \$11M) is within current business case estimates (\$14.3M). It should be noted that the Expression of Interest submission were non-binding in nature.

It is too early to reduce the expected capital estimate as critical elements of scope will be finalised through the Early Contractor Involvement phase with the short list panel, after which an updated estimate can be made.

Council is pursuing further information about the energy retail market, through a separate procurement process.

**Financial Implications**

The establishment of the panel commits Council to a maximum of \$40,000 expenditure (Early Contractor Involvement payments), which is within the current project budget.

**Statutory and Policy Compliance Implications**

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005. The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2005 - Reg 168

*168 Selective tendering method by which invitations to tender for proposed contract are made following public advertisement asking for expressions of interest*

(1) A council that decides to use the selective tendering method referred to in clause 166(b) for allocating a particular proposed contract must publish in the relevant newspapers an advertisement inviting applications from persons interested in tendering for the proposed contract.

5 (2) Every such advertisement must include—

- (a) a brief description of the work, goods, facilities, services or property concerned, and
- (b) the name of a person to whom requests for information concerning the proposed contract  
10 ssed and how the person can be contacted, and
- (c) the deadline for submitting applications.

The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

15 (3) A council must consider all applications made in response to such an advertisement and, in so doing, must take into account—

- (a) the experience of the applicants in fulfilling the requirements of similar contracts, and
- (b) the capacity of the applicants to fulfil the requirements of the proposed contract.

20

(4) After considering the applications, the council may either—

- (a) send invitations in writing to all applicants, or such of them as the council thinks will be  
25 able to fulfil the requirements of the proposed contract, to tender for the proposed contract,  
or
- (b) decline to invite tenders from any of the applicants.

(5) In inviting tenders from applicants, the council must—

- (a) invite them to submit tenders to the council by the deadline specified in the invitations,  
30 and
- (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.

35 The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.

(6) The tender documents relating to the proposed contract must comply with clause 170.

40 Council's endorsement of the recommendation to establish a short-list of contractors to proceed to the next stage of procurement as recommended in the attached Evaluation Report is sought.

**Report No. 13.10**      **Tender 2019-0046 Yamble Reservoir Trunk Water Main Renewal**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Jason Stanley, Systems Planning Officer  
Dean Baulch, Principal Engineer, Systems Planning  
5   **File No:**      I2020/307

**Summary:**

10 Tenders for Contract 2019-0046 Yamble Reservoir Trunk Water Main were advertised from 10 March 2020 to 31 March 2020. Tenders were received from the following organisations:

- Civil Contracting Solutions
- 15 • Coffs Harbour City Council
- Demacs Constructions (Aust) Pty Ltd
- Dormway Pty Limited
- Eire Constructions Pty Ltd
- Fewster Brothers Contracting Pty Ltd
- 20 • Utilsta Pty Ltd

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 2019-0046.

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**RECOMMENDATION:**

1. That Council award Tender 2019-0046 to Demacs Construction (Aust.) Pty Ltd for lump sum \$669,234.00 (excluding GST).
2. That the total budget allocation for this project be increased by \$ 849,800 for the 2019/2020 Financial year with funding provided from available Water Fund Capital Works Reserve.
3. That Council delegate to the General Manager the authority to administer this contract to the contract value plus the contingency value nominated in this report.
4. That Council authorise the affixing of the Council seal to all documents that may require it, in regards to the Contract.
5. That Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.
6. That the Tender Evaluation Plan and Tender Evaluation Report remain confidential until the contract is finalised.

**Attachments:**

- 1 Confidential - Confidential 2019-0046 Tender Evaluation Plan, E2020/23905
- 2 Confidential - Confidential 2019-0046 - Tender Evaluation Report, E2020/23908

### Report

Tenders for Contract 2019-0046 Yamble Reservoir Trunk Water Main were advertised from 10 March 2020 to 31 March 2020.

The Request for Tender sought responses from proponents for the supply, construction and testing of a new trunk water main (to replace the existing DN450 AC water mains), connections and flow meter pit at the Yamble Reservoir reserve and along the road reserves at Kuringai Way and Orana Road, Ocean Shores.

The construction will include connection points to the reservoir, and four existing water mains in the reserves and roadways at Yamble Drive, Kuringai Way and Orana Road. The existing water mains are live assets. All cut-ins shall be covered in the construction management plan shall be done under the supervision of Council.

The new water main will be fitted with a new flow meter to be installed in new flow meter pits. This pit will include Austral International pit lid, drainage and power and communication connection to the existing switchboard.

The Contract is expected to commence in March 2020 for a period of 6 months with a defects liability period of 12 months.

The Contract will be managed by Utilities Principal Engineer, Systems Planning.

Tenders were advertised as follows:  
 Sydney Morning Herald: 10 March 2020  
 Byron Shire News: 10 March 2020  
 Tenders Online: 10 March 2020  
 Council website: 10 March 2020

Site meetings were held at 10am on 16 January 2020, 23 January 2020 and 17 March 2020. The attendees were:

- Ark Construction PTY. LTD.
- Coastal Works PTY. LTD.
- D & J's Civil Construction PTY. LTD.
- Eire Constructions PTY. LTD.
- J & M Bashforth & Sons PTY. LTD.
- Ledonne Construction PTY LTD.
- OM Civil PTY. LTD.
- RCC Civil PTY. LTD.
- Utilstra PTY. LTD.

An Evaluation Panel comprising of 3 x Council staff members and 1 x External Technical consultant from Planit Engineering was formed.

Tenders closed on 31 March 2020 and tenders were received from the following proponents:

- Civil Contracting Solutions
- Coffs Harbour City Council
- Demacs Constructions (Aust) Pty Ltd
- Dormway Pty Limited
- Eire Constructions Pty Ltd
- Fewster Brothers Contracting Pty Ltd
- Utilsta Pty Ltd

Tenders were evaluated by the Evaluation Panel in accordance with the tender evaluation plan at Attachment 1 (E2020/23905).

5 Following the evaluation, the Evaluation Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report (Attachment 2 E2020/23908).

10 Following the evaluation, the Evaluation Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report.

### Financial Implications

15 The price basis for the contract is a lump sum. The offer recommended to accept is \$669,234.00 (excluding GST).

20 Council budgeted \$355,000.00 for pipeline renewals (General Ledger Code 6849.004) for this financial year which included this project and the Warrambool Reservoir Water Main Renewal which was awarded under a lump sum quotation basis for \$203,600.00 (excluding GST) to Ledonne Constructions Pty.Ltd.

There is insufficient funding for the proposed contract in the current budget.

25 It is also recommended that an additional allowance equal to 10% of the lump sum tender price is allocated as a contingency and a further 10% is allocated for the cost of site supervision/contract management services.

	Amount
<i>GL 6849.004 Remaining budget after project design, investigation, etc.</i>	\$198,000
Warrambool Reservoir Water Main Renewal	\$203,600
Yamble Reservoir Trunk Water Main	\$669,234
Allowances/site supervision/contract management services at 20%	\$175,000
<i>Total costs</i>	\$1,047,834

30 New 2019/20 budget forecast = \$1,047,834 - \$198,000 = \$849,834

This would result in a forecast budget amount for the new works (both projects) of \$ 849,800 (excluding GST) being required as a minimum.

35 An additional amount of \$ 849,800 is required to bring the total budget for GL 6859.004 – Pipeline Renewals to \$ 1,047,800 and needs to be sourced from the Water Fund Capital Works Reserve.

As a note, Council was able to defer Mullumbimby pipeline renewals of approximately \$1Million last financial year due to it's investigation and condition assessment methodology.

### 40 Statutory and Policy Compliance Implications

45 The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005. The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.



Local Government (General) Regulation 2005 - Reg 178

*Acceptance of tenders*

- 5     178   *Acceptance of tenders*
- (1)   *After considering the tenders submitted for a proposed contract, the council must either:*
- (a)   *accept the tender that, having regard to all the circumstances, appears to it to be the*  
              *most advantageous, or*
- 10       (b)   *decline to accept any of the tenders.*
- (2)   *A council must ensure that every contract it enters into as a result of a tender accepted by*  
*the council is with the successful tenderer and in accordance with the tender (modified by*  
*any variation under clause 176). However, if the successful tender was made by the council*  
*(as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any*  
15       *contract in order to carry out the requirements of the proposed contract.*
- (3)   *A council that decides not to accept any of the tenders for a proposed contract or receives no*  
*tenders for the proposed contract must, by resolution, do one of the following:*
- (a)   *postpone or cancel the proposal for the contract,*
- 20       (b)   *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or*  
              *different details,*
- (c)   *invite, in accordance with clause 168, fresh applications from persons interested in*  
              *tendering for the proposed contract,*
- (d)   *invite, in accordance with clause 169, fresh applications from persons interested in*  
              *tendering for contracts of the same kind as the proposed contract,*
- 25       (e)   *enter into negotiations with any person (whether or not the person was a tenderer)*  
              *with a view to entering into a contract in relation to the subject matter of the tender,*
- (f)   *carry out the requirements of the proposed contract itself.*
- (4)   *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the*  
*resolution must state the following:*
- 30       (a)   *the council's reasons for declining to invite fresh tenders or applications as referred to*  
              *in subclause (3) (b)–(d),*
- (b)   *the council's reasons for determining to enter into negotiations with the person or*  
              *persons referred to in subclause (3) (e).*
- 35     Council's endorsement of the recommendation to award the tender as recommended in the  
 attached Evaluation Report is sought.

**REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**

**Report No. 14.1**      **Report of the Audit, Risk and Improvement Committee Meeting held on 17 March 2020**

**Directorate:**      Corporate and Community Services  
**Report Author:**      Esmeralda Davis, A/Manager Corporate Services  
**File No:**      I2020/440

**Summary:**

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 March 2020 for adoption by Council.

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**RECOMMENDATION:**

1. That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 March 2020.

2. That Council adopts the following Committee Recommendation:

**Report No. 4.1**      **Audit Office of NSW Report on Local Government 2019**  
File No: I2020/373

**Committee Recommendation 4.1.1**

That the Audit Risk & Improvement Committee notes the Audit Office of NSW Report on Local Government 2019.

3. That Council adopts the following Committee Recommendations:

**Report No. 5.1**      **Business Continuity and Risk Management - Update**  
File No: I2020/84

**Committee Recommendation 5.1.1**

1. That the Audit, Risk and Improvement Committee notes the Business Continuity planning progress update.
  2. That the Audit, Risk and Improvement Committee endorses the Strategic and Operational Risk Registers, Fraud Control Plan (as Appendix 1 to the Fraud and Corruption Control Policy) and revised Risk Management Strategy.
  3. That the Audit, Risk and Improvement Committee notes the strategic and operational risk reports for the quarter ending 31 December 2019.
4. That Council adopts the following Committee Recommendations:

**Report No. 5.2**      **Audit Progress Report - January 2020**  
File No: I2020/87

**Committee Recommendation 5.2.1**

1. That the Audit, Risk and Improvement Committee notes the Internal Audit

**Activity Report – January 2020 (E2020/7324).**

2. That the Audit, Risk and Improvement Committee endorses the recommendation from the Executive Team to close off 6 recommendations in Appendix C of the attached report (E2020/7324) due to these actions being confirmed as complete.
5. That Council adopts the following Committee Recommendations:

**Report No. 5.3 IT Update**

File No: I2020/119

**Committee Recommendation 5.3.1**

1. That the Audit, Risk and Improvement Committee notes the update provided in this report.
  2. That the Audit, Risk and Improvement Committee receives ongoing reports on the status priority 1 (P1) incidents (i.e. a standing agenda item).
  3. That the Audit, Risk and Improvement Committee receives ongoing reports on the status of cyber incidents, trends and management of cyber risk (i.e. a standing agenda item).
6. That Council adopts the following Committee Recommendation:

**Report No. 5.4 Business Continuity Debrief - Rain Event February 2020**

File No: I2020/232

**Committee Recommendation 5.4.1**

**That the Audit Risk and Improvement Committee notes the Business Continuity Debrief – Rain Event February 2020 as per Attachment 1 (E2020/15619).**

7. That Council adopts the following Committee Recommendations:

**Report No. 5.5 2019 Year End Audit Management Letter**

File No: I2020/1

**Committee Recommendation 5.5.1**

1. That the Audit, Risk and Improvement Committee notes the 2019 Year End Audit Management Letter (E2020/103).
  2. That the Audit, Risk and Improvement Committee receives a quarterly progress report on the recommendations listed in the 2019 Year End Audit Management Letter (E2020/103).
  3. That the Audit, Risk and Improvement Committee undertake a review of its Terms of Reference by December 2020.
8. That Council adopts the following Committee Recommendation:

**Report No. 5.6 2019-2020 External Audit Engagement Plan**


File No: I2020/368

**Committee Recommendation 5.6.1**

**That Council notes the External Audit Engagement Plan prepared by the Audit Office of New South Wales for the year ended 30 June 2020 as outlined in Confidential Attachment 1 (#E2020/16020).**

**Attachments:**

5

- 1 Minutes 17/03/2020 Audit, Risk and Improvement Committee, I2020/380 

**Report**

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 17 March 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

[https://byron.infocouncil.biz/Open/2020/03/ARIC\\_17032020\\_AGN\\_1239\\_AT.PDF](https://byron.infocouncil.biz/Open/2020/03/ARIC_17032020_AGN_1239_AT.PDF)

**Report No. 4.1            Audit Office of NSW Report on Local Government 2019**

The report focuses on key observations and findings from the 2018-19 financial audits of councils and joint organisations.

The report highlights a number of areas where there has been improvement. The report also found that in general NSW councils could do more to be better prepared for the new accounting standards, asset management practices could be strengthened, and information technology controls and cyber security management could be improved.

The Auditor-General also recommended that the Office of Local Government within the Department of Planning, Industry and Environment develops a cyber security policy by 30 June 2021 to ensure a consistent response to cyber security risks across councils.

**Report No. 5.1            CONFIDENTIAL - Business Continuity and Risk Management - Update**

This report provides an update on the Business Continuity and Risk Management frameworks.

**Report No. 5.2            CONFIDENTIAL - Audit Progress Report - January 2020**

This report presents the Internal Audit Activity Report – January 2020 prepared by Council and the Internal Auditor, O'Connor Marsden and Associates (OCM).

The activity report contains the remaining recommendations from each audit review conducted by Council's previous internal audit provider as well as recommendations from recently completed audit reviews conducted by OCM.

**Report No. 5.3            CONFIDENTIAL - IT Update**

This report provides an update on audit actions that fall under the Business Systems and Technology portfolio.

**Report No. 5.4            CONFIDENTIAL - Business Continuity Debrief - Rain Event February 2020**

This report provides an overview of the business interruption rain event in February 2020 and its impact, from a business continuity perspective.

**Report No. 5.5            CONFIDENTIAL - 2019 Year End Audit Management Letter**

Council has received the 2019 Year End Audit Management Letter from the External Auditor, the Audit Office of NSW, relating to the 2018/2019 financial year audit. The Year End Audit Management Letter details nineteen items for management to consider and provides recommendations to improve internal controls and financial reporting processes.

Each of the audit matters raised in the 2019 Year End Audit Management Letter has been identified in this report for consideration by Council and the Audit, Risk and Improvement Advisory Committee.

**5 Report No. 5.6 CONFIDENTIAL - 2019-2020 External Audit Engagement Plan**

This report presents the 2019-2020 External Audit Engagement Plan for Council to the Audit, Risk and Improvement Committee.

**10 Financial Implications**

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 March 2020.

**15 Statutory and Policy Compliance Implications**

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 March 2020.

**REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES****Report No. 14.2      Report of the Byron Shire Floodplain Risk Management Committee Meeting held on 24 March 2020**

5    **Directorate:**            Infrastructure Services  
    **Report Author:**       James Flockton, Drain and Flood Engineer  
    **File No:**                I2020/463

10   **Summary:**

The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 24 March 2020 for determination by Council.

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**RECOMMENDATION:**

1.    That Council note the minutes of the Byron Shire Floodplain Risk Management Committee Meeting held on 24 March 2020.

2.    That Council adopt the following Committee Recommendation(s):

**Report No. 4.2   Draft North Byron Floodplain Risk Management Study and Plan**  
**File No: I2020/418**

**Committee Recommendation 4.2.1****Committee Recommendation:-**

1.    That Council support the public exhibition of both the Draft North Byron Floodplain Risk Management Study and Plan documents from 27 April to 25 May 2020. Attachments 2 to 7 of this report.
2.    That the community should be thanked for the interest and time they have taken to review and comment on the first exhibition stage of this project.
3.    That Council continue to have a Floodplain Risk Management Committee to receive reports and help drive all floodplain related actions within Council's Floodplain Management Plans, beyond the current process.

3.    That Council adopt the following Committee Recommendation(s):

**Report No. 4.3   Discussion of item requested by committee member Duncan Dey regarding filling in no-fill zone of Marshalls Creek floodplain**  
**File No: I2020/427**

**Committee Recommendation 4.3.1**

20    That Council note the report.

5.    That Council adopt the following Committee Recommendation(s):









**Report No. 4.4 Discussion of item requested by Cr Lyon**

File No: I2020/429

**Committee Recommendation 4.4.1**

**That Council note the report.**

**Attachments:**

- 5
- 1 North Byron FRMS&P - Draft FRMS Public Exhibition Consultation Comments, E2020/26452 
  - 2 North Byron FRMS&P - FRMS Final Draft for second public exhibition, E2020/26451 
  - 3 North Byron FRMS&P - Draft FRMP For public Exhibition, E2020/26443 
  - 4 North Byron FRMS&P - Draft FRMS Figures lowres, E2020/26449 
  - 10 5 North Byron FRMS&P - Draft FRMS Figures highres, E2020/26448 
  - 6 North Byron FRMS&P - Draft FRMS Appendix C to T, E2020/26446 
  - 7 North Byron FRMS&P - Draft FRMS Appendix C Appendices, E2020/26445 
  - 8 Minutes 24/03/2020 Byron Shire Floodplain Risk Management Committee, I2020/437 

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**Report**

The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 24 March 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

[https://byron.infocouncil.biz/Open/2020/03/BSFRM\\_24032020\\_AGN\\_1185\\_AT.PDF](https://byron.infocouncil.biz/Open/2020/03/BSFRM_24032020_AGN_1185_AT.PDF)

**Committee Recommendation**

The committee recommendations are supported by management and are provided in the attachment to this report.

Note: Despite the best efforts from WMA Water all the iterations of the cumulative development modelling are not yet complete. The included Floodplain Risk Management Study report discusses the progress to date and is drafted as much as possible, however sections Section 8.1.1 to 8.1.5 and Section 11.6.10, Figures 43 to Figure 50 will need minor updates to incorporate the final results, along with the inclusion of an additional Appendix. This information will be added prior to public exhibition.

No changes to the FRMP will be required as the action is already accounted for in the tables.

The following documents are provided:

- Attachment 1 - Draft FRMS Consultation Comments spreadsheet. (E2020/26452)
- Attachment 2 - Updated post public exhibition Draft Floodplain Risk Management Study (includes Appendix A & B) – (E2020/26451)
- Attachment 3 - Draft Floodplain Risk Management Plan (E2020/26443)
- Attachment 4 - FRMS Figures Low res (E2020/26449)
- Attachment 5 - FRMS Figures high res versions (E2020/26448)
- Attachment 6 - FRMS Appendices C to T (E2020/26446)
- Attachment 7 - FRMS Appendix C appendices (E2020/26445)

**Financial Implications**

As per the Reports listed within the Byron Shire Floodplain Risk Management Committee Meeting of 24 March 2020.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Byron Shire Floodplain Risk Management Committee Meeting of 24 March 2020.