

NOTICE OF MEETING



ARAKWAL MEMORANDUM OF UNDERSTANDING ADVISORY COMMITTEE MEETING

An Arakwal Memorandum of Understanding Advisory Committee Meeting of Byron Shire Council will be held as follows:

| | |
|-------|--------------------------|
| Venue | Meeting Room 1 |
| Date | Thursday, 8 October 2020 |
| Time | 10.00am |

Vanessa Adams
Director Corporate and Community Services

I2020/1478
Distributed 01/10/20

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the 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)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under 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

ARAKWAL MEMORANDUM OF UNDERSTANDING ADVISORY COMMITTEE MEETING

BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. STAFF REPORTS

Corporate and Community Services

3.1 Arakwal Cemetery - guidelines and fee waivers4

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 3.1 Arakwal Cemetery - guidelines and fee waivers

Directorate: Corporate and Community Services

5 **Report Author:** Robert Appo, Project Officer (Aboriginal), CCS - Social & Cultural Planning

File No: I2020/808

10 **Summary:**

Council and Arakwal have identified this as a priority project to allow for people to remain on country after they pass away. This is of cultural significance to Arakwal people as reflected in the current Arakwal MOU. This report discusses recent research relating to Council fees and charges to advance and realise this project.

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RECOMMENDATION:

That the Arakwal Memorandum of Understanding Committee discusses and makes recommendations regarding the preferred options provided in the report.

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REPORT

Background

- 5 The Arakwal Bumberbin Cemetery is a project in partnership between the Bundjalung of Byron Bay Arakwal People and Byron Shire Council to create a designated area at the Byron Bay Cemetery.

At the Council Meeting of 13 December 2018 Resolution **18-796**:

Resolved that Council adopt the following Committee Recommendation:

Report No. 4.4 Update on Arakwal Cemetery Project

File No: I2018/1981

Committee Recommendation 4.4.1

1. That Council ensures the installation of the concrete bench for the first row of headstones, at the area identified for the Arakwal area of the Byron Bay Cemetery in the 2018/19 financial year and that if funding source needs to be identified it comes to the next Ordinary Meeting.
2. That staff work with Arakwal to create a policy document which includes financial considerations for the Arakwal area at the Byron Bay Cemetery to be presented to the Arakwal Board for endorsement then to Council for adoption.
3. That this Committee recommends that Council waive cemetery fees for Arakwal people as per schedule 3 of the Arakwal Rule Book. (Richardson/Hunter)

10

In 2019 The Bundjalung of Byron Bay, Arakwal people celebrated the determination of their Native Title application for lands and waters within the Byron Shire.

- 15 In recognition of the determination of Native Title for The Bundjalung of Byron Bay, Arakwal people and the ongoing cultural connection to country, this project will support the restoration of important cultural practices for Arakwal people on their ancestral homelands.

20 The research component for this project was undertaken to progress action items, 2 and 3 from the Council resolution, noting that item 1 is complete.

Findings

Fees and Charges

- 25 A review of Council fees and charges found that fees payable are at time of application. For the purpose of the Schedule, "interment" includes the sinking of the grave, the placement of the coffin or ashes therein, backfilling of the grave and removal of debris. Generally two fees apply to all interments - the cost to purchase the Perpetual Interment Right, and the cost for the interment of
- 30 the bodily or cremated remains. Council fees for cemeteries are set according to the Cemeteries and Crematoria Act 2013.

Perpetual Interment Right

| | Fee (ex GST) | GST | Fee (Including GST) |
|--|--------------|-----------|---------------------|
| Adult – Dual depth (lawn areas) Purchase of Right to use the burial site | \$3,424.55 | \$342.45 | \$3,767.00 |
| Adult – Single depth (non-lawn areas) | \$2,731.82 | \$273.18 | \$3,005.00 |
| Infant or Child | \$521.82 | \$52.18 | \$574.00 |
| Stillborn Child | No Charge | No Charge | No Charge |

Interment of bodily or cremated remains into new or existing grave site

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| | Fee (ex GST) | GST | Fee (Including GST) |
|------------------|--------------|----------|---------------------|
| Adult | \$1,639.09 | \$163.91 | \$1,803.00 |
| Infant or Child | \$180.00 | \$18.00 | \$198.00 |
| Stillborn Child | \$72.73 | \$7.27 | \$80.00 |
| Cremated remains | \$427.27 | \$42.73 | \$470.00 |

Cemeteries and Crematoria Act 2013 - Section 107 Fees and charges

10 As a Crown cemetery operator, Council has an obligation to manage cemeteries under the Cemeteries and Crematoria Act 2013 legislation. As reflected in section 107 of the Act, fees and charges for services cover such things as ongoing maintenance and operational costs.

(1) A Crown cemetery operator may from time to time set the fees or charges payable with respect to the following:

- 15 (a) grant of interment rights (including the renewal of renewable interment rights) with respect to interment sites in the cemetery under Part 4,
- (b) use of the whole or any part of the cemetery and any building, structure or enclosure in the cemetery,
- (c) parking or use of any vehicle or class of vehicles in the cemetery,
- 20 (d) use of electricity, gas and water,
- (e) rubbish disposal and cleaning of the cemetery,
- (f) removal of effluent.

25 (2) The Crown cemetery operator may from time to time set the fees or charges payable for the services provided in respect of the cemetery.

(3) In setting fees and charges, the Crown cemetery operator is to have regard to the following:

- 30 (a) any contractual arrangements entered into by the responsible operator in relation to the cemetery,
- (b) the number of intended interments or cremations,
- (c) the costs of developing the land to be used for interment sites,
- (d) future maintenance,
- (e) infrastructure costs.

35 (4) Notice of the fees or charges payable under subsection (1) (b)-(f) and (2) is to be published in the Gazette or in another manner prescribed by the regulations, or both.

(5) The Crown cemetery operator is to give the Cemeteries Agency notice of a fee or charge set by it within 3 months (or such other period as may be prescribed by the regulations) after the fee or charge is set.

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(6) The Crown cemetery operator may in any particular case waive payment of the whole or any part of any fee or charge set under this section.

(7) Without limiting subsection (6), a Crown cemetery operator may waive payment of part of a fee or charge that is referable to the unexpired portion of a renewable interment right.

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(8) The Cemeteries Agency may serve notice on the Crown cemetery operator disallowing or varying any fee or charge as specified in the notice and the operator is to give effect to the Cemeteries Agency's notice.

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Local Government Act. 1993 – Waiving of fees

Under the Local Government Act. 1993 - SECT 610E, Council may waive or reduce fees.

(1) A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.

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(2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F(2) or (3).

25

Similarly under the Cemeteries and Crematoria Act, Section 107, Council has discretion to waive payment of part of a fee or charge that is referable to the unexpired portion of a renewable interment right.

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Key issues

The research for this project identifies a number of key issues regarding the Council resolution and recommendations from the Arakwal MOU committee.

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(1) Fees and Charges relating to cemeteries are service related or levy fees as referenced in the Cemeteries and Crematoria Act. Council is obligated to charge these fees under legislation.

40

(2) Council may waive fees and charges through the General Manager for an individual case, however the Local Government Act, Section 610E would apply for a proposed category of fees to be waived.

(3) Council as a Crown cemetery operator may waive payment of part of a fee or charge that is referable to the unexpired portion of a renewable interment right. However under Section 107-8 of the Cemeteries and Crematoria Act, The Cemeteries Agency may serve notice on the Crown cemetery operator disallowing or varying any fee or charge.

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(4) Council may need to allocate a budget or fund waived fees out of the General revenue budget to cover the fees and charges associated with burial fees for Arakwal members.

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Options

The options below may be considered to progress this project.

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(1) Submit an application on a case by case basis for fees to be waived for burial costs which can be approved by the General Manager as per the Local Government Act – Section 610E.

5 (2) Seek further information on whether an application to NSW State Government may be supported to waive burial fees for Arakwal members in recognition of their Native Title rights.

(3) Explore a negotiation process between Council and Arakwal under the Native Title Act.

10 **Next steps**

The next steps will depend on the option/s recommended by the Arakwal MOU Committee.

15 **STRATEGIC CONSIDERATIONS**

Community Strategic Plan and Operational Plan

| CSP Objective | L2 | CSP Strategy | L3 | DP Action | L4 | OP Activity |
|---|-----|--|-------|---|---------|---|
| Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community | 2.1 | Support and encourage our vibrant culture and creativity | 2.1.4 | Support Aboriginal cultural vibrancy within the Shire | 2.1.4.3 | Review Arakwal MoU 2013-2018 and develop new partnership agreement with Arakwal |
| | 2.1 | Support and encourage our vibrant culture and creativity | 2.1.4 | Support Aboriginal cultural vibrancy within the Shire | 2.1.4.1 | Support cultural restoration projects, events and celebrations |

20 **Legal/Statutory/Policy Considerations**

Local Government Act.1993 - Section 610E
 Cemeteries and Crematoria Act. 2013 - Section 107
 25 Native Title Act. 1993
 Arakwal Memorandum of Understanding 2018, 2019-21.

Reviewed by Legal Counsel:

30 **Financial Considerations**

The financial considerations for this project are difficult to calculate as fees and charges are for varying amounts. Assumptions for budget required are dependant on Arakwal member numbers.

| | Fee (ex GST) | GST | Fee (Including GST) |
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BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

3.1

| | | | |
|------------------|-----------|-----------|-----------|
| (non-lawn areas) | | | |
| Infant or Child | \$521.82 | \$52.18 | \$574.00 |
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- 5 Reviewed by Manager Finance:

Consultation and Engagement

- 10 Consultation for this project has been ongoing with the Arakwal MOU Committee and Arakwal board.