



# Byron Shire Council



## Supplementary Agenda

Ordinary Meeting

Thursday, 28 November 2019

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

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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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**

#### **17. LATE REPORTS**

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***Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.***

**LATE REPORTS**

**Report No. 17.1**      **2019/2020 Loan Borrowings**  
**Directorate:**      Corporate and Community Services  
**Report Author:**   James Brickley, Manager Finance  
**File No:**            I2019/1966

**Summary:**

The purpose of this report is to seek authorisation from Council to undertake loan borrowings for the 2019/2020 financial year in accordance with the 2019/2020 Budget Estimates. Total loan borrowings for 2019/2020 required are for the General Fund and amount to \$1,844,000.

In addition, Council needs to refinance an existing loan (loan no 58) borrowed in 2009 on 4 December 2019 following the end of the ten year fixed interest period for this loan. The amount to be refinanced for loan no 58 is \$17,564,000.

Council has gained approval from NSW Treasury Corporation (TCorp) to borrow \$1,844,000 required for the 2019/2020 Budget Estimates and to refinance \$17,564,000 for loan no 58. Unfortunately existing Council resolutions authorising these loan borrowings are not considered sufficient by TCorp which has necessitated this late report so that the loan agreement can be executed.

A resolution of Council is required to authorise the borrowing of money given it is a function that cannot be delegated to the General Manager in accordance with Section 377(1)(f) of the Local Government Act 1993.

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**RECOMMENDATION:**

1. That Council authorises the General Fund borrowings of \$1,844,000 for the 2019/2020 financial year for the purposes outlined in this report and the refinance of existing loan no 58 in the amount of \$17,564,000.
2. That Council authorises the General Manager to accept the loan offer for \$19,408,000 from NSW Treasury Corporation as indicated in the report.
3. That Council authorises the affixing of the Council Seal to any documents to execute the loan borrowings that are the subject of this report.

## REPORT

The purpose of this report is to seek authorisation from Council to undertake loan borrowings for the 2019/2020 financial year in accordance with the 2019/2020 Budget Estimates. Total loan borrowings for 2019/2020 required are for the General Fund and amount to \$1,844,000.

In addition, Council needs to refinance an existing loan (loan no 58) borrowed in 2009 on 4 December 2019 following the end of the ten year fixed interest period for this loan. The amount to be refinanced for loan no 58 is \$17,564,000.

A resolution of Council is required to authorise the borrowing of money given it is a function that cannot be delegated to the General Manager in accordance with Section 377(1)(f) of the Local Government Act 1993.

The 2019/2020 Budget Estimates adopted by Council on 27 June 2019 (Resolution **19-325**) included new General Fund loan borrowings of \$1,844,000 for the following purposes:

- Bridge works \$1,644,000 for Byron Creek Bridge and South Arm Bridge
- South Golden Beach Flood Pump \$200,000

At its Ordinary Meeting held on 27 August 2009 Council resolved (Resolution **09-720**) to borrow \$31,125,000. Of this amount, Council on 4 December 2009 borrowed \$20,000,000 (loan no 58) for the following purposes:

- Brunswick Valley Sewerage Scheme \$18,730,000
- Donahy's Bridge \$1,020,000
- O'Possum Creek Bridge \$250,000

The borrowing undertaken on 4 December 2009 was secured at an interest rate of 8.08% over a thirty year term but the interest rate was fixed for the first 10 years only and that ends on 4 December 2019, requiring the remaining loan principal outstanding of \$17,564,000 to be refinanced over the remaining twenty year term.

Given its recent positive experience in June 2019 with low interest loan borrowings now available via TCorp, Council approached them to see whether they would refinance loan no 58. T Corp advised consideration would be given to the refinance as the original loan purposes were for infrastructure and this has not changed.

Council lodged a loan application with TCorp on 9 November 2019 for a total loan borrowing of \$19,408,000 represented by the \$1,844,000 new loan borrowings associated with the 2019/2020 Budget Estimates and \$17,564,000 to refinance existing loan no 58. Council received a loan offer for acceptance on 26 November 2019.

For Council to accept and execute the loan offer from T Corp it needs to pass a resolution to authorise/execute the borrowings and to apply the Council seal (if required) plus provide a copy of the resolution to TCorp. Unfortunately existing resolutions **09-720** and **19-325** were not considered sufficient by TCorp to execute the loan offer.

### **Next steps**

Should Council adopt the recommendations to this report, it will be able to execute the loan offer from TCorp and refinance loan no 58 at a significant financial advantage on 4 December 2019 as outlined in the '*Financial Considerations*' section of this report. It will also provide the ability to complete the new loan borrowings outlined in the 2019/2020 Budget Estimates.

**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	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.4	Treasury functions of Council managed to maintain cash flow and maximise return on invested funds

**Legal/Statutory/Policy Considerations**

5 Section 55 of the Local Government Act 1993 outlines the requirements for tendering. Specifically Section 55(1)(h) states:

(1) A council must invite tenders before entering into any of the following contracts:  
 (f) a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),

Section 377 of the Local Government Act 1993 outlines the general power of Council to delegate.

15 Section 377(1)(f) concerns the delegation power in respect of loan borrowings:

(1) A council may, by resolution, 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 this or any other Act, other than the following:  
 (f) the borrowing of money,

20 Regulation 400(4) of the Local Government (General) Regulation 2005 outlines the use of the Council Seal as follows:

(4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

Council's Loan Borrowing Policy 09/006 as required in Section 4.1 states:

30 4.1 The targeted term of a loan will be determined by the service life of the asset for which it is borrowed and wherever possible matched to a loan facility as near as practicable in the then current market.

**Financial Considerations**

35 Should Council authorise the loan borrowings subject of this report it is proposed at this stage to do the following:

40 1. Refinance \$17,564,000 on 4 December 2019 by paying out the existing loan no 58 with the loan proceeds made available by T Corp.

2. Borrow the remaining \$1,844,000 now approved before but near the end of June 2020 given Council has not budgeted any loan repayments on these borrowings for 2019/2020. This will mean loan repayments will not commence until the 2020/2021 financial year.

- 5 The loan offer from T Corp is based on a fixed interest rate loan over twenty years at an indicative interest rate of 2.41% for the entire loan term. The actual interest rate will be set on 29 November 2019 and is not expected to change significantly from the indicative rate offered.

- 10 As an indicative guide, as part of its loan application Council forecast an interest rate of 2.50% for loan 58. Given this loan is currently set at 8.08%, it will likely achieve indicative annual loan repayment reductions of \$650,000 per annum, saving Council \$13,000,000 over the remaining loan term compared to existing repayments. Of this saving 93.65% (approx. \$610,000) applies to the Sewerage Fund and 6.35% (approx. \$40,000) will apply to the General Fund.

- 15 The interest rate to apply for the remaining \$1,844,000 will be determined in June 2020 when that loan is taken up.