

**Report No. 4.1 Council's interaction and collaboration with the Belongil Drainage Union - update and forward strategy**

**Directorate:** Infrastructure Services

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**File No:** I2021/176

**Summary:**

10 The Belongil Catchment Drainage Board (BCDB) is a Private Drainage Board or Drainage Union as defined in the Water Act.

The BCDU has approximately 150 members. Byron Shire Council is a member as it owns and operates land within the BCDU boundaries, but we are not on the Board of directors.

15 Council and the BCDU have had a long-standing financial agreement. This was acknowledged by Council in 2017 and for the years 2004 to 2017 (13 years) the BCDB received \$100,000. These funds were largely used to develop a Management Plan (approx. \$60,000 that has now been finalised) and drain maintenance works (approx. \$20,000 to date).

20 The Board of directors voted unanimously to charge BSC a yearly levy of \$10,000 as per the agreement between Council and the BCDB. Council currently has an outstanding invoice for the sum of \$30,000 for 2018 to 2020 inclusive.

Council recently attended a committee meeting with the BCDB with council officers Cameron Clark, James Flockton, Scott Moffett (officer now responsible for the collaboration and communications with the BCDB) and Cr Lyon.

25 Prior to this meeting Council officers sought direction from the Department of Planning, Industry and Environment (DPIE), Water Group in order to help staff understand more detail about how drainage Boards work. Staff asked a number of key questions to help understand where Council should go moving forward with the Board.

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### **RECOMMENDATION:**

**The Byron Shire Floodplain Risk Management Committee recommends:-**

**That Council:-**

- 5 1. **Supports the current collaboration and communication with the Belongil Catchment Drainage Board (BCDB).**
2. **Nominate a sitting Councillor for representation on the Belongil Catchment Drainage Board.**
- 10 3. **Request the Belongil Catchment Drainage Board consider an urgent review of their constitution to allow a Councillor to be a member of the Board prior to the Boards next election.**
- 15 4. **Pay the outstanding fees of \$30,000 (from Sewer Fund: GL 7205.27)**
- 20 5. **Will not pay any future payments to the Belongil Catchment Drainage Board until such time that the Belongil Catchment Drainage Board undertakes appropriate land audits and produces a robust and equitable ongoing financial management plan for the Board's area.**
- 25 6. **Offers assistance to the Belongil Catchment Drainage Board with the development of a fair and equitable rating financial model, including investigating access to Council's systems to rate members on the Board's behalf.**
- 30 7. **Includes a member of the Belongil Catchment Drainage Board as a key stakeholder the Council current Coastal Management Plan for the Belongil area.**
8. **Staff actively collaborate, support and engage with Southern Cross University for further research and investigations for the Belongil catchment**
- 35 9. **Note that the Byron Shire Floodplain Risk Management Committee support staff presenting the contents of this report to Council.**

## Report

The Belongil Catchment Drainage Board (BCDB) is a Private Drainage Board or Drainage Union as defined in the Water Act.

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15 Council recently attended a committee meeting with the BCDB with council officers Cameron Clark, James Flockton, Scott Moffett (officer now responsible for the collaboration and communications with the BCDB) and Cr Lyon.

20 Prior to this meeting Council officers sought direction from the Department of Planning, Industry and Environment (DPIE), Water Group in order to help staff understand more detail about how drainage Boards work. Staff asked a number of key questions to help understand where Council should go moving forward with the Board.

Below is a summary of questions and responses received:

### **General statement from DPIE- Details of the Minister's functions with respect to private drainage Boards**

25 Drainage unions were established under the *Drainage Act 1939*, which was later consolidated with the *Water Management Act 2000* (WM 2000).

30 The purpose of constituting drainage unions was to provide for the drainage of land on which water accumulated (either permanently or occasionally) due to the absence of sufficient natural or artificial drainage, flood prevention works, or works to mitigate the effect of tides (*Drainage Act 1939*, s 8).

### **The Minister has a limited role with respect to private drainage Boards**

35 Private drainage Boards are independent, landholder-run corporations. Each Board is comprised of directors elected by landholders within the drainage district. Boards may levy rates to fund their operations. Each Board is responsible for fixing, assessing and levying such rates.

The only means of dissolving a private drainage Board is by a petition to the Governor from at least a third of the landholders within the drainage district.

Under the WMA 2000, the Minister has only limited functions in relation to private drainage Boards. In particular, the Minister has no oversight role and has no obligations or responsibilities to provide assistance to these Boards.

5 Governance of private drainage Boards

10 The provisions of the WMA 2000 relating to private drainage Boards do not provide any powers for the Minister to become involved in the day to day affairs of a Board. The majority of powers are given to the private drainage Board. A private drainage Board is a corporation under the corporate name by which it was constituted (s 200 WMA 2000)

Overview of relevant provisions of the legislation

15 The WMA 2000 provides for the appointment and election of directors (s201), the functions of private drainage Boards (s202), powers of entry (s203), extension of drainage works (s204) and the amendment of boundaries of the drainage district (s 205). It also prescribes requirements for the fixing and levying of rates (s 206).  
20 Part 5 and Part 6 of the Water Management (General) Regulation 2018 (WMR) contains provisions relating to private drainage Boards, including in relation to the conduct of elections, quorum for a private drainage Board and finance.

25 An election of directors of a private drainage Board must be held every 3 years (cl 92(1) WMR). A person is entitled to vote in an election of directors of a private drainage Board if the person is the owner of land within the drainage district of that Board (cl 61(1) WMR).

The Minister's functions with respect to private drainage Boards

The Minister's role is very limited under Part 3 of Chapter 4. The only functions the Minister has in relation to PDBs are to:

- 30
- appoint a director if any Crown lands are included in a private drainage Board's district (s201(2) WMA 2000)
  - cause notice of an application for the amendment of the boundaries of the drainage district to be published in the authorised manner (s205(3) WMA 2000)
  - consider any objections and recommend (or recommend modification) of an application for amendment to the boundaries (s205(5) WMA 2000)
  - notify the approval of the Governor and particulars of the alteration made in the boundaries in the Gazette (s205(6) WMA 2000)
  - approve the manner in which the private drainage Board publishes their accounts (s218(2) WMA 2000).
- 35
- 40

**DPIE response to Council's questions**

1. Can the Belongil Drainage Board amend their catchment area?

Yes. The WMA 2000 provides for the amendment of boundaries of the drainage district (s205) and for extension of drainage works (s204).

5 The Board will need to ensure they have met the requirements outlined in the relevant section of the WMA 2000.

2. If the catchment can be amended, is there a process to follow?

10 The Board will need to put in an application according to the process specified in section 205 of the WMA 2000:

*The Water Management Act 2000*

*Section 205 Amendment of boundaries*

- 15 (1) *The boundaries of a drainage district may from time to time, on application by the private drainage Board, be amended by the Governor.*
- (2) *Any such application must contain particulars of the lands proposed to be added to or excised from the drainage district, and that have or are capable of being increased in value or that have decreased in value respectively by reason of the operations of the private drainage Board.*
- 20 (3) *The Minister must cause notice of any such application to be published in the authorised manner.*
- (4) *The notice must—*
- (a) *give particulars of the lands proposed to be added to or excised from the drainage district, and*
- 25 (b) *appoint a time (not being earlier than 8 weeks after the date of publication of the notice) and place at which objections may be lodged.*
- (5) *After expiration of the appointed time and on consideration of any objection lodged the Minister may recommend and the Governor may approve an application with such modification, if any, as the Minister, on investigation, may recommend.*
- 30 (6) *The approval of the Governor, and particulars of the alterations made in the boundaries of the drainage district, must be notified by the Minister in the Gazette.*
- 35 (7) *As from the date of publication of such notification, the boundaries of the drainage district are taken to be altered accordingly.*

3. Does the Belongil Drainage Board have the ability to pressure Council about issues outside of their catchment area?

40 A drainage Board is not limited in the issues which they can raise with their relevant council, but has no particular standing other than as a community member.

It is up to the Council to determine how to respond to any such pressure.

5 4. If the Board wanted to redesign the drainage systems in their catchment, what process should be followed?

The WMA 2000 outlines the functions of private drainage Boards in s202, which includes constructing, altering or extending drainage works in the drainage district. This could include redesigning the drainage works.

10 *s202 Functions of private drainage Boards*

(1) A private drainage Board has the following functions—

(c) to construct, alter, or extend any drainage works in accordance with any authority and consent given under this Part.

15 The extension of drainage works is also subject to s204. If s204 is relevant because drainage works were being extended, then a majority vote at a general meeting (with the minimum number of members) is required to authorise the extension of drainage works.

20 *s204 Extension of drainage works*

(2) A private drainage Board is to carry out such extensions of drainage works as are authorised by a majority of votes cast at a general meeting at which a quorum is present.

25 5. The drainage Board have prepared a Plan of Management; do all landowners in the catchment need to approve it? Do we need to approve it noting we are a landowner in the catchment?

Private drainage Boards are responsible for the preparation, review and implementation of management programs for their drainage district (s202(1)(a)).

30 The Board is composed of directors who are elected by the landholders within the drainage district. Clause 61 of the Water Management (General) Regulation 2018 details the persons eligible to vote.

35 If Council have any concerns regarding the plan of management and as a landholder within the district, it is recommended that these concerns be raised with the drainage Board.

40 The WMA 2000 does not indicate that such a plan of management would require approval by all landholders. This is contrasted with s204 which provides that extensions to drainage works require a majority member vote and not the approval of all.

45 If the plan of management includes aspects which would require a development consent there may be other approval requirements whereby council is the determining authority.

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- 5 6. Council has an Opening Strategy for the mouth of the catchment (the mouth is outside what we believe to be the Boards catchment area) – it is an ICOLL. We are happy with the strategy and it has a happy medium of environmental awareness and draining for the Board. However, the Board would like to see it revisited. What should we do?

This is a matter for Council, not the Department. Also see the response to item 4.

- 10 7. The Board want a comprehensive and independent flood study prepared (they do not appear to trust ours) – What should we do?

This is a matter for Council, not the Department. Also see response to item 4.

- 15 8. The Board requested we change our sewer discharge points and ideally move our sewer discharge points out of the catchment. Our discharge is fully approved – What should we do?

20 This is a matter for Council, not the Department. We would suggest Council seek its own legal advice on this.

- 25 9. Belongil Creek is a Crown waterway. Council does not have any jurisdiction over it without licenses and in our opinion are not required to remove or manage blockages and silt under any legislation. Are we correct? Who is responsible?

30 Crown land is owned by the State and managed by a different area of the Department. Generally, if Council does not own the land, we would anticipate that they have no obligation to manage it.

35 However, we would suggest Council also follow this issue up. Enquiries can be made at: 1300 886 235

See: <https://www.industry.nsw.gov.au/lands/what-we-do/management>  
[https://www.lawsociety.com.au/sites/default/files/2019-09/LS3148\\_Policy\\_RuralIssues-factsheet\\_CrownLand.pdf](https://www.lawsociety.com.au/sites/default/files/2019-09/LS3148_Policy_RuralIssues-factsheet_CrownLand.pdf)

- 40 10. The Board requested we redesign and upgrade a culvert under our road, our opinion is the culvert is suitable for its current use – what should we do?

This is a matter for Council, not the Department.

- 45 11. Does the Drainage Board have authority to come into council operated lands which have a drainage management plan or program for i.e. industrial estate and undertake drainage maintenance? Does their right of entry legislation trump ours?

Section 203 of the WMA 2000 provides authority for the drainage Board or persons duly authorised by the Board to enter land within or outside its drainage district;

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however, this is only permissible for the purposes of undertaking the functions for which the Board is responsible for.

5 In exercising this right, if any damage occurs to land the drainage Board is responsible for fully compensating the landholder. The right of the drainage Board to enter land does not extinguish the right of others.

10 12. Costs, fees and charges. Should Council be paying for this service (as it says they can collect fees and charges. Is that from land owners? Do other Councils pay Drainage Boards?

15 Section 202 of the WMA 2000 provides the drainage Board the power to create a levy and collect rates. This relates to the landholders within the drainage district. Therefore, if Council is a landholder they may be liable to pay a levy. The Department cannot comment on the levies paid by members of other drainage Boards.

20 13. Who is responsible if there is an incident WHS or environmental incident. Tree removal without approvals. They are not deemed a council subcontractor so how does that work if they are on our land? Who holds this risk?

25 The WMA 2000 does not deal with WHS related matters or environmental incidents. Accordingly, this is not a matter for the Department. We note our understanding is that tree removal is generally a Council matter.

14. Is there any other MOU's out there between councils and drainage Boards?

30 DPIE does not have oversight of MOUs between councils and drainage Boards. If Council is seeking advice on this issue we suggest contacting other councils which have drainage Boards within their local government area.

15. How many drainage Boards are out there today, are they still relevant?

35 Yes, drainage Boards are still relevant and all details pertaining to them are described in Part 3 of the WMA 2000. Drainage Boards may only be dissolved by a petition to the Governor from at least a third of the landholders within the drainage district.

40 16. Do drainage Boards trump Councils drainage management programs. We understand they have powers but do they exceed ours?

We are not aware of how the powers of drainage Boards interact with Council's drainage management programs. We suggest seeking independent legal advice.



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5 17. Can we have some clarity around the Board's and Council's powers roles and responsibilities. Noting Council is a landowner in the area we believe to be the Board's catchment.

Division 2 of the WMA 2000 details the role and responsibilities of the drainage Board. Council as a landholder may attend general meetings, vote on issues, pay a levy and participate in votes for the directors.

10 We are not aware of the interaction between Boards and Council's powers, roles and responsibilities. We suggest seeking independent legal advice.

15 18. The drainage Board are pushing Council to increase our reuse out of the catchment. We also want to increase our reuse, but can only do so much – how should we handle this?

This is a matter for Council, not the Department.

### **Recent BCDB meeting**

20 A range of issues were discussed at the recent BCDB meeting. These are summarised below:

- SEE officers gave an overview of West Byron developments and a current status update. This was greatly appreciated by the Board.
- The BCDB requested that a member of the Board be invited to be on the current Coastal Management Plan Council committee.
- Manager of Utilities gave an update on the additional Flow Path servicing the West Byron Sewerage Treatment Plant (STP), which was greatly appreciated by the Board. Council Utilities department have committed to the following:
  - Providing water quality and discharge volumes in the online portal so it is easily available to everyone. Target date for this is end of financial year.
  - A graphic showing all flow paths, monitoring points and discharge points (Total Water Balance schematic)
  - Operation Manual will get reported to Council via the Water, Waste and Sewer Advisory Committee.
  - Ensure all existing ground water bores are being monitored. The BCDB has given full permissions for Council to access their private properties for operation and maintenance of the ground water bores as was allowed historically
  - Discuss recycled water strategy at a future meeting
- Funding of the Board was discussed. Currently, Council is the only member of the union that is levied / rated (\$10,000/calendar year). Council asked why this was the case as it appears to be unequitable. The BCDB believe that the flows from the current STP discharge are taking all the capacity of the Union drain and this prevents the drain from performing its intended purpose. Officers explained that

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further transparency of flow data and the future operation of the additional flow will improve the understanding and capacity of Union drain operations. It was also noted that all surrounding land still receives a benefit from the Union Drain.

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- It was noted that BCDB have no way of rating their members. (Post meeting discussions have highlighted that we currently rate residents on behalf of Rous Water, therefore, there appears to no reason why we could not do the same for the BCDB).
- 10
- The BCDB noted it doesn't require a formal Memorandum of Understanding (MOU) with Council, just a commitment to fund the drainage Board. Staff noted that an equitable way to levy all members was needed as well as processes and funding to ensure the BCDB area is managed fairly and appropriately.
- 15
- It was agreed that it would be valuable to have a Councillor to nominate to sit on the BCDB however, election are two years away.
- 20
- It was agreed that some specialist research involvement from the local Southern Cross University for specialist agricultural research/water balance topics would be beneficial.

In summary the meeting was productive with the BCDB unanimous in working more closely with Council for the better overall understanding and management of the BCDB area.

- 25
- It is noted that if the BCDB are to be sustainable into the future they will need a robust and equitable ongoing financial management plan that can support annual maintenance and future catchment improvements (revegetation, culvert improvements etc).

- 30
- They cannot continue to solely rely upon Council funds. This needs to be the Board's highest priority and due to the complexities in creating such a plan Council should support the Board in achieving this goal.

### **Key issues**

Council has land within the BCDB area; we are a paying member of the BCDB. It is essential Council plays a key role on the BCDB to ensure the area is managed appropriately and ensure our funds are being spent equitably.

### **Options**

Not applicable

### **Next steps**

Please refer to recommendations.

## 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	2.2	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 community planning to inform decision making, build capacity and develop a shared responsibility for actions with the community.
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	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	2.2.1.1	Support local interagency and regional network development to improve collaboration and inclusion

### Recent Resolutions

Not applicable

### 5 Legal/Statutory/Policy Considerations

Drainage Act 1939, which was later consolidated with the Water Management Act 2000 (WM 2000).

### Financial Considerations

Pay the outstanding fees of \$30,000 (from Sewer Fund: GL 7205.27)

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### Consultation and Engagement

<b>Who was consulted?</b>	<b>How did consultation occur? e.g. email, verbal etc</b>	<b>Comments/Feedback</b>
BCDB	Formal meeting and ongoing email and verbal correspondence	Working well, ongoing
DPIE	Verbal and email	Comments/feedback received and contained in this report
Phil Warner	Verbal	Historic management information of the BCDB
Phillip Holloway	Verbal and email	Ongoing updates
Southern Cross University	Verbal and Email	Ongoing support and research
Council various internal departments	Verbal, emails, workshops	West Byron STP and Coastal Management Plan