

Supplementary Agenda Ordinary Meeting

Thursday, 22 June 2023



BYRON
SHIRE
COUNCIL

Supplementary Agenda Ordinary Meeting

held at Conference Room, Station Street, Mullumbimby
commencing at 9:00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am 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.

A handwritten signature in black ink, appearing to read "Mark Arnold".

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

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BUSINESS OF ORDINARY MEETING

LATE REPORTS

13.21	2021-1145: Water Main Supply and Construction, Byron Bay and Mullumbimby.....	7
17.1	Draft 2023-2033 Long Term Financial Plan	18

This Agenda supplements the 22 June 2023 Ordinary Council Meeting Agenda published on 13/06/2023 available at [Agenda of Ordinary Meeting - Thursday, 22 June 2023](#).

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. 13.21 2021-1145: Water Main Supply and Construction, Byron Bay and Mullumbimby

5 **Directorate:** Infrastructure Services
Report Author: Lee Griffiths, Capital Works Engineer
File No: I2023/876

Summary:

10 On 16 December 2022, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-1145 Water Main Supply and Construction, Byron Bay and Mullumbimby.

The Request for Tender was advertised from 02 May 2023 to 08 June 2023. Tenders were received from the following organisations:

- CIVILCS PTY LTD
- 15 • Eire Constructions Pty Ltd
- Ledonne Constructions
- NTS Group
- Terra Firma Pty Ltd
- Utilstra Pty Ltd
- 20 • Winslow Constructors Pty Ltd

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2021. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2021-1145.

RECOMMENDATION:

- 5 1. That Council allocates a total project budget of \$3,056,900 in the 2023/2024 financial year to fund works subject to this tender as per Table 4 in the report.
2. That the remaining budgets in the 2022/2023 financial year totalling \$1,870,400 outlined in the report at Table 1 and associated funding be removed from the 2022/2023 budget with funding returned to respective reserves.
- 10 3. That Council awards Tender 2021-1145: Water Main Supply and Construction, Byron Bay and Mullumbimby to the preferred supplier identified in the tender evaluation report Confidential Attachment 1 (#E2023/60226).
4. That Council's seal be affixed to the relevant documents if required.
- 15 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 2021.

Attachments:

- 20 1 Confidential - 2021-1145 - Watermain Renewals - Evaluation Report, E2023/60226

Report

On 16 December 2022, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-1145 Water Main Supply and Construction, Byron Bay and Mullumbimby.

- 5 The Request for Tender sought responses from proponents to supply pipe and construct new water mains in Fletcher Street, Bangalow Road and Carlyle Street in Byron Bay and Azalea Street in Mullumbimby.

10 The Fletcher Street water main has been subject to numerous failures in recent years. The other water mains necessitate relocation or upgrade to provide adequate flow and pressure requirements for Council's water supply system. The Azalea Street project will relocate existing water trunk mains out of the former Mullumbimby Hospital property. Council have identified these water mains as a high-risk assets and subsequently, prioritised them for replacement/upgrade.

The Contract is expected to commence in August 2023 for a period of six to eight months.

- 15 The Contract will be managed by Council's, Capital Works Engineer.

Tenders were advertised as follows:

VendorPanel Online: 02 May 2023

Council website: 02 May 2023

20 A mandatory site inspection was held on 10 May 2023, 11am at the Intersection of Tennyson Street and Carlyle Street, Byron Bay. Followed by inspections of Fletcher Street and Bangalow Road, Byron Bay and then Azalea Street in Mullumbimby. The inspection was well attended with thirteen organisations represented.

An Evaluation Panel comprising of two Council staff members and two consultant representatives from Planit Consulting was formed.

25 Tenders closed on 08 June 2023 and tenders were received from the following proponents:

- CIVILCS PTY LTD
- Eire Constructions Pty Ltd
- Ledonne Constructions
- 30 • NTS Group
- Terra Firma
- Utilstra Pty Ltd; and
- Winslow Constructors Pty Ltd

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

Mandatory criteria:

- a) Tender lodged on time, in accordance with the Conditions of Tender.
- 5 b) Attendance at mandatory site briefing.
- c) Respondent has a valid Australian Business Number.
- d) Tenderer has no conflicts of interest.
- e) All tender forms and schedules are completed correctly.
- f) Respondent substantially complies with the Conditions of Contract.
- 10 g) Respondent substantially complies with the Statement of Requirements and Specifications
- h) Holds, or is able to obtain, the insurances as specified in the Statement of Requirements
- i) Workers Compensation Insurance for all employees
- 15 j) Financial capacity to undertake the contract.
- k) Respondent has satisfactory work health and safety and environmental compliance.
- l) Commitment to ethical business practices.
- 20 m) Does not obtain financial benefit from Australia's offshore detention centres or involved with the development or operation of the Carmichael mine or otherwise have ties to Bravus Mining.

Qualitative criteria:

<i>Criteria</i>	<i>Elements</i>
Profile and relevant experience	Tenderer profile and Local Content
	Previous relevant experience
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
Delivery Plan	Methodology and Implementation plan
	Program
Price	Total contract price

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.

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Financial Considerations

The price basis for the contract is a lump sum.

Comment from Manager Finance

10 Council has a current 2022/2023 financial year budget of \$1,870,400 for this multi water main project. This is to cover construction and contract administration and supervision and takes into consideration current actual expenditure and committed costs incurred to date.

15 There is not sufficient funding for the proposed contract in the current budget. This is due in part to material and labour cost increases over the period between initial budget being set in early 2022 and current economic conditions prevailing. The current remaining existing budgets are outlined in Table 1 below:

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Table 1 – Remaining existing Budgets

Watermain	Funding Source	Ledger	Current Available Budget 2022/23 \$
Fletcher Street, Byron Bay	Capital Works Reserve	6649.009	299,800
Bangalow Road, Byron Bay	Section 64 Reserve	6649.011	512,000
Carlyle Street, Byron Bay	Section 64 Reserve	6649.012	460,000
Azalea Street, Mullumbimby	Capital Works Reserve	6749.012	598,600
Current budget remaining:			1,870,400

The recommended contractor has submitted a price of \$ 2,331,300 (ex GST) in round terms to complete the four watermain projects.

- 5 In addition, part of the Azalea Street Water main project includes an additional pipeline that will be funded by NSW Public Work Advisory (PWA) – approximately \$410,000. PWA has agreed to \$5,000,000 for the entirety of the new water main from the water reservoir to the highway. \$410,000 is the estimated cost for this section (including survey, design, construction, and materials).

- 10 The following table outlines the change in cost estimates resulting from the tender process of the preferred tenderer based on percentage splits for each job as follows in Table 2:

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Table 2 – Tender Pricing Changes

Watermain Project	Original 2022-23 budget remaining \$	Cost changes (from preferred tender quote) \$	Price change per job (based on preferred tender price) \$	Funding
6649.009 Fletcher Street Watermain Renewal	299,800	329,900	30,100	S64
6649.011 Bangalow Road upgrade - 710m DN100 - DN200	512,000	950,200	438,200	S64
6649.012 Carlyle Street Watermain Renewal - Tennyson to Massinger.	460,000	643,500	183,500	S64
6749.012 Old Mullumbimby Site - relocation of water main	598,600	723,300	124,700	Water Capital Works Reserve
6749.012 Old Mullumbimby Site - Rous main install (funded by PWA)	0	410,000	410,000	PWA
Total Cost	1,870,400	3,056,900	1,186,500	

In Table 2 above, the total \$1,870,400 available in the 2022/2023 financial year for the projects subject to this tender will clearly not be expended with less than two weeks of the financial year remaining.

- 5 It is therefore recommended that these budgets be removed from the 2022/2023 budget and returned to their respective reserve source as Council will need to establish budgets for the 2023/2024 financial year to enable the tender to be awarded. This is due to none of the four projects tendered being currently included in the Draft 2023/2024 Budget Estimates being considered for adoption at this Ordinary Meeting as part of Report 13.8.

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Table 3 below outlines on an overall project basis the additional budget required to fund the proposed works along with the existing budgets in the 2022/2023 financial year that will now need to be carried forward in advance of the normal carryover process to the 2023/2024 financial year:

5 **Table 3 – Overall Project Cost and Funding**

Item	Amount \$ (ex GST)
Required Budget for Contract Delivery as per tender outcome	2,331,300
Contract Administration/Supervision [15%] plus Provisions	725,600
Total Project Cost	3,056,900
Less Current 2022/2023 Budgets to be carried forward to 2023/2024 now	1,870,400
Required Additional Budget 2023/2024	1,186,500

The additional budget required of \$1,186,500 is proposed to be funded from the following sources that are available to be added to the \$1,870,400 available in 2022/2023 that must now be carried forward:

- Grant from Public Works Advisory \$410,000
- Water Fund Section 64 Funds held \$651,800
- Water Fund Capital Works Reserve \$118,600

Overall to allow the awarding of this tender Council will need to establish a total project budget of \$3,056,900 in the 2023/2024 financial year for the four following projects subject to the tender as per Table 4 below:

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Table 4 – Overall Project Budget Requirements

Watermain Project	Proposed 2023/2024 Budget \$	Funding Source
6649.009 Fletcher Street Watermain Renewal	329,900	S64
6649.011 Bangalow Road upgrade - 710m DN100 - DN200	950,200	S64
6649.012 Carlyle Street Watermain Renewal - Tennyson to Massinger.	643,500	S64
6749.012 Old Mullumbimby Site - relocation of water main	723,300	Water Capital Works Reserve
6749.012 Old Mullumbimby Site - Rous main install (funded by PWA)	410,000	PWA Grant
Total Project Cost	3,056,900	

5 Should Council endorse the proposed budgets in Table 4 above, and adjust the current 2022/2023 budget as per Table 1 above, the required budgets will be established to allow the tender to be awarded should Council adopt Recommendation 3 to this report.

Statutory and Policy Compliance Considerations

The tendering process has been undertaken in accordance with Council’s Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

10 The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2021 - Reg 178

Acceptance of tenders

178 *Acceptance of tenders*

- 5 (1) *After considering the tender submissions for a proposed contract, the council must either—*
- (a) *accept the tender submission that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) *decline to accept any of the tender submissions.*
- 10 (1A) *Without limiting subsection (1), in considering the tender submissions for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender submissions.*
- 15 (2) *A council must ensure that every contract it enters into as a result of a tender submission accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender submission was made by the council (as provided for in section 55(2A) of the Act), the council is not required to enter into any contract in*
- 20 *order to carry out the requirements of the proposed contract.*
- (3) *A council that decides not to accept any of the tender submissions for a proposed contract or receives no tender submissions for the proposed contract must do one of the following—*
- (a) *postpone or cancel the proposal for the contract,*
- 25 (b) *invite, in accordance with section 167, 168 or 169, fresh tender submissions based on the same or different details,*
- (c) *invite, in accordance with section 168, fresh applications from persons interested in making a tender submission for the proposed contract,*
- 30 (d) *invite, in accordance with section 169, fresh applications from persons interested in making a tender submission for contracts of the same kind as the proposed contract,*
- (e) *by resolution of the council, 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,*
- 35 (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*

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- (a) the council's reasons for declining to invite fresh tender submissions or applications as referred to in subsection (3)(b)–(d),*
 - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*
- 5 Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

Report No. 17.1 Draft 2023-2033 Long Term Financial Plan

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2023/952

5 **Summary:**

10 Council at this Ordinary Meeting will be considering Report 13.8 regarding the Adoption of the Operational Plan 2023/24, including Budget, Statement of Revenue Policy, and Fees and Charges. This report makes mention of the Draft 2023-2033 Long Term Financial Plan (LTFP) also for adoption, however, at the time of Agenda publication, the LTFP was not completed hence this Late Report.

The purpose of this report is to present the Draft 2023-2033 Long Term Financial Plan for Council to consider and adopt.

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RECOMMENDATION:

That Council adopts the 2023-2033 Long Term Financial Plan (#E2023/60942) including any budget changes (if any) made in the consideration of Report 13.8 to this Ordinary Meeting.

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Attachments:

1 2023-2033 Long Term Financial Plan, E2023/60942 

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Report

Council, at this Ordinary Meeting, will be considering Report 13.8 regarding the Adoption of the Operational Plan 2023/24, including Budget, Statement of Revenue Policy, and Fees and Charges. This report makes mention of the Draft 2023-2033 Long Term Financial Plan (LTFP) also for adoption however, at the time of Agenda publication, the LTFP was not completed hence this Late Report.

Provided at Attachment 1 is the Draft 2023-2033 Long Term Financial Plan. This Plan attempts to project the financial position of Council over a ten year period and contains the following outcomes:

1. Base Case described as 'business as usual' based on Council's current operations, services levels and resources.
2. Scenario 1 contains the Base Case outcomes plus estimated expenditure on the February/March 2022 flood events (Flood Recovery) to reconstruct infrastructure damaged and to repair landslips.

Scenario 1 does not change the overall financial outcome in terms of operating results and unrestricted cash but does show elevated levels of income and expenditure over the period 2023/24 to 2027/28 (five years). It assumes the estimated expenditure at the time of plan preparation is likely to be around \$300million, above the amounts already expended on emergency works and immediate repair works in the 2021/22 and 2022/23 financial years. The plan assumes the cost of the flood recovery will be fully reimbursed to Council under Natural Disaster funding arrangements by the Federal and NSW State Governments.

Provided in the LTFP are the assumptions that underpin it, and it will be subject to annual review.

The Plan is demonstrating Council's financial challenges in that the General Fund is not able to return to operational surplus over the next ten years and that unrestricted cash does not improve until 2030/2031, assuming Council maintains existing services and considering projected revenue and expenditure outcomes. In summary, Council is not generating enough revenue to cover its costs and annually balancing the Council budget is becoming increasingly difficult to achieve.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.3: Ethical and efficient management of resources	1.3.5: Resourcing - Identify and investigate resourcing to meet future needs	1.3.5.2	Develop the 2023/24-2032/33 Long Term Financial Plan.

Legal/Statutory/Policy Considerations

5 [Section 403](#) of the Local Government Act 1993 requires that a Council must have a long-term resourcing strategy for the provision of the resources required to perform its functions. The resourcing strategy includes the long term financial plan, asset management strategy, and workforce management strategy.

Financial Considerations

10 The 2023-2033 Long Term Financial Plan in providing a 10 year projection is certainly demonstrating the financial challenges faced by Council, especially the General Fund. As indicated earlier in this report, and in Attachment 1, the General Fund is likely to deliver operating deficits for the entire life of the plan along with unrestricted cash not returning to surplus until a projected 2030/2031 financial year.

15 It can only be stressed that Council must consider the financial implications of any decision carefully and look for ways to improve the financial outlook with each annual refresh of the Long Term Financial Plan.