

Report No. 13.19 Mullumbimby Leagues Club Amenities Facility Section 64 Contribution

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Water Supplies

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Summary:

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Council has advised that s64 contributions are due to be paid by the Mullumbimby Rugby League Football Club Limited (MRLFC) for charges levied under the *Water Management Act 2000* applicable as a condition of consent for the subject development application 10.2016.125.1.

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The DA proposes the construction of a detached amenities block for use at the Mullumbimby Leagues Club football grounds. This is a similar proposal as a previous development application but with the proposed facility on a different site location and an alternative project title.

The Mullumbimby Leagues Club has again requested that Council waive this charge under Clause 2.7 of the Water Supply and Sewerage Developer Servicing Plans.

RECOMMENDATION:

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That Council levy s64 contributions due to be paid by the Mullumbimby Rugby League Club for DA 10.2016.125.1, but at the 2004 rate to be paid over a 10 year period.

Attachments:

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- 1 Council Report - Waiving of s64 Charges - Mullumbimby Rugby Leagues Club, E2014/70916
- 2 Supporting Documents from Barry Stenner re Exemption Development Contribution for Mullumbimby Leagues Club received on 8 May 2018 (attachment to Council Report I2018/802), E2018/38624

Report

On 16 October 2017 Council received a request from Mullumbimby Leagues Club for s64 contributions relating to Development Application (DA) 10.2016.125.1 to be waived.

DA10.2016.125.1 is a similar proposal as DA 10.2013.310.1 with the proposed facility on a different site location and an alternative project title.

Council considered the Club's same request for DA 10.2013.310.1 at the Ordinary Meeting held 20 November 2014 (see report at Attachment 1 E2014/70916) and resolved as follows:

14-584 Resolved that Council levy s64 contributions due to be paid by the Mullumbimby Rugby League Club for DA 10.2013.310.1, but at the 2004 rate to be paid over a 10 year period.

The application of s64 contributions upon DA10.2016.125.1 has been consistent with the Water Management Act 2000, Water Management (General) Regulation 2011, Council's Water Supply and Sewerage Developer Servicing Plan's and also the Equivalent Tenement Policy 13/005.

As per previous assessment of DA 10.2013.310.1; Council Report with subsequent Council resolution 100.2014.584.1 the operations of the Mullumbimby Leagues Club do not have any capacity for development without the payment of Water and Sewer ETs. Nothing has changed with DA10.2016.125.1.

A meeting (11 December 2017) with representatives of the Club provided additional time to research the Clubs 'Not-for-Profit and Charitable' status. The applicable regulating authority being the Australian Charities and Not-for-profits Commission (ACNC).

Council's Development Servicing Plans for Water Supply and Sewerage does provide exemption of s64 charges for such organisations.

2.7 Exemption

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BSC may waive developer contributions where the proponent demonstrates to Council's satisfaction that it is a non-profit and charitable organisation, which by virtue of carrying out such development, is considered to be making a significant and positive contribution to the community and is unable to recover the charge from the end user.

Subsequent correspondence from Mr David Graber Senior Analyst at the Australian Charities and Not-for-profits Commission confirmed that the Mullumbimby Rugby League Football Club Ltd is a not-for-profit organisation; however, it is not entitled to registration as a charity because it has a sporting purpose and, therefore, cannot be registered with the ACNC.

Again, registration with the ACNC was the requirement for waiver of the s64 developer contributions to satisfy Council. Council resolution 14-584 also states that Mullumbimby Rugby League Football Club Ltd do not have any capacity for development without the payment of Water and Sewer s64 developer contributions.

The Mullumbimby Leagues Club Limited is a registered business and exists for the benefit of its members. It does not fall into a category for waiver of s64 contributions as per the ACNC ruling. Additionally Council made the same decision in 2014 but gave some concession.

Staff do not support the waiving of s64 charges based on the above. There is an existing charitable organisation that has met the requirements for the waiver (a group home on Bangalow

Road, Byron Bay) and an impending development for a childcare centre in Suffolk Park that has also received pre-approval for the waiver.

5 Both organisations have maintained their status with the ACNC and are required to do so under the conditions of their DA approval. Doing anything less would create an additional layer of regulation/management upon Council and would require additional resources – it is not a function Council needs to acquire as the ACNC is the appropriate National regulator.

10 There is scope for Council to amend its Water & Sewer Developer Servicing Plan (DSP) to cater for sporting groups such as the Mullumbimby Leagues Club, so that the waiver can include or consider them to some degree. Such an amendment to the DSP will require a resolution and public exhibition. This also raises the question about the s94 contribution and the Plan associated with them – there appears to be no allowance for sporting groups either. Should Council wish to amend the current policy staff can provide further advice in relation to amendments to provide
15 guidance for all sporting clubs for the future.

20 It is conceded that Mullumbimby Leagues Club have been a long time charitable organisation in the community which is represented in their constitution. Staff have met with Club representatives a number of times to provide a pathway for assistance however the request for the waiver is outside staff delegation.

Financial Implications

25 Council has assessed that \$171,975.57 is due to be paid by the Mullumbimby Rugby League Football Club Limited (MRLFC) for charges levied under the Water Management Act 2000, applicable as a condition of consent for the subject development application 10.2016.125.1.

30 Should Council waive this charge, future developers under a new Developer Servicing Plan (DSP) will be subsidising the new amenities facility for the Leagues Club.

Statutory and Policy Compliance Implications

35 The application of s64 contributions upon DA10.2016.125.1 has been consistent the Water Management Act 2000, Water Management (General) Regulation 2011, Council's Water Supply and Sewerage Developer Servicing Plan's and also the Equivalent Tenement Policy.

Section 356 of the Local Government Act 1993 is also relevant and must be considered:

40 *Can a council financially assist others?*

(1) *A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*

45 (2) *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*

(3) *However, public notice is not required if:*
50 (a) *the financial assistance is part of a specific program, and*
(b) *the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
(c) *the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
55 (d) *the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.*

(4) Public notice is also not required if the financial assistance is part of a program of graffiti removal work.

Note. Part 4 of the Graffiti Control Act 2008 deals with graffiti removal work.

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The recommendation does constitute financial assistance as it is applying fees at a reduced rate and therefore will require 28 days public notice.