

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

LATE Agenda (Items 36 & 37)

**Ordinary Council Meeting
Wednesday 17 April 2019**

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

Guiding Principles for Tweed Shire Council

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

Items for Consideration of Council:

| ITEM | PRECIS | PAGE |
|------|--|------|
| | LATE ITEMS | 4 |
| | REPORTS FROM DIRECTOR ENGINEERING | 4 |
| 36 | [E-CM-LATE] Licence for Temporary Access on Council Land - Tweed Heads Wastewater Treatment Plant | 4 |
| | REPORTS FROM EXECUTIVE MANAGER FINANCE AND INFORMATION TECHNOLOGY | 8 |
| 37 | [FRIT-CM-LATE] Fossil Fuel Divestment | 8 |

LATE ITEMS

REPORTS FROM DIRECTOR ENGINEERING

36 [E-CM-LATE] Licence for Temporary Access on Council Land - Tweed Heads Wastewater Treatment Plant

SUBMITTED BY: Water and Wastewater

mhm



Behind the scenes

Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Behind the scenes
- 4.1 Assurance
- 4.1.3 Legal Services - To support and advise staff on organisational legal issues and property management of Council controlled assets

ROLE: **Provider**

SUMMARY OF REPORT:

At its meeting held 21 March 2019 Council resolved as follows:

... that Council defers this item to the April Council Meeting.

The Motion was Carried

The report is reproduced as follows for the information of Council:

This item was considered at Council's meeting held on 21 February 2019. It was resolved to defer the item to the meeting being held on 21 March 2019.

Council issued a licence to use part of the Tweed Heads Wastewater Treatment Plant to Garbind Pty Ltd and Feitelson Holdings Pty Ltd in 2014, for a term of 2 years. The purpose of the licence was to allow the licensees to construct an access road to their land so that they could haul in fill for an approved industrial subdivision.

The applicant has an approved industrial subdivision which required them to purchase land from Council through the Waste Water Treatment Plant, the cost of the land was \$120,000 paid by the applicant in 2000. The parcel created in the subdivision of the land was dedicated as road, now known as Hakea Drive. This access has not been formed to date.

Council prefers the applicant to utilise the northern most access through the Waste Water Treatment Plant site to minimise traffic impact on Kennedy Drive for the haulage of fill.

A further 2 year term was requested in 2016 in response to the applicants being unable to source the required type and quantity of fill to complete the job at an economic rate, Council resolved on 18 February 2016 to provide a further 2 year licence from July 2016, this licence expired on 28 July 2018.

The applicants have now lodged a request for a new licence for a further 2 years as there have been issues outside of their control with commencing the formation of the haul road due to infrastructure impeding the construction of the haul road and ongoing negotiations for the sourcing of the fill.

RECOMMENDATION:

That Council:

- 1. Approves granting a licence for a temporary licence to Feitelson Holdings Pty Ltd and Garbind Pty Ltd over Lot 1 DP 1011625, for a term of 2 years, at a peppercorn rental.**
- 2. Executes all necessary documentation under the Common Seal of Council.**

REPORT:

This item was considered at Council's meeting held on 21 February 2019. It was resolved to defer the item to the meeting being held on 21 March 2019.

Council issued a licence to use part of the Tweed Heads Wastewater Treatment Plant to Feitelson Holdings Pty Ltd and Garbind Pty Ltd ("the applicants") in 2014, for a term of 2 years. The purpose of the licence was to allow the licensees to construct a temporary access road to their land so that they could haul in fill for an approved industrial subdivision.

The plan below shows the location of these 2 parcels, the Wastewater Treatment Plant is Lot 1 DP 1011625, showing the area to be licensed outlined in yellow, with the land being developed by the applicants to the west adjacent to the waterway:



A further 2 year term was requested in 2016 in response to the applicants being unable to source the required type and quantity and fill to complete the job at an economic rate, Council resolved on 18 February 2016 to provide a further 2 year licence from July 2016, this licence expired on 28 July 2018.

These reports are attachments to this report to provide a context and background information to this report.

The applicants have now lodged a request for a new licence for a further 2 years. During the term of the second licence period, the applicants have been in discussions with various parties to remove an Essential Energy Switching Station in the road reserve in Sussyer Avenue,

previously Parkes Drive, which is the street access point for the northern part of Council's Lot 1.

Discussions to resolve this issue have been held with Council officers, Essential Energy, Queensland Airport Corporation and Queensland Department of Main Roads. These discussions are ongoing and the sourcing of the fill for the applicants' site is nearly complete.

OPTIONS:

1. To approve the granting of a licence to the applicants for a further 2 year term.
2. To not approve the granting of a licence.

CONCLUSION:

As the Applicants have not been able to commence the physical works to utilise the area licensed to them in the previous licences due to circumstances beyond their control, it is recommended that a further 2 year licence is granted to allow them to commence the works under their approved consent.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

A peppercorn rental is proposed for this temporary access on the basis that the Applicant has previously purchased from Council a permanent access to their site through the Wastewater Treatment land for the amount of \$120,000.

c. Legal:

A licence agreement will provide a temporary right to use the licensed area for the purpose of temporary road and haulage of fill purposes only. The agreement provides that there will be no permanent access over the Council land.

d. Communication/Engagement:

Inform - We will keep you informed.

No public engagement required.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council report and resolution dated 21 August 2012 (ECM5736556).

Attachment 2. Council report and resolution dated 18 February 2016 (ECM5736557).

REPORTS FROM EXECUTIVE MANAGER FINANCE AND INFORMATION TECHNOLOGY

37 [FRIT-CM-LATE] Fossil Fuel Divestment

SUBMITTED BY: Financial Services

mhm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

| | |
|-------|---|
| 2 | Making decisions with you |
| 2.2 | Engagement |
| 2.2.5 | Financial Services - To collect and manage Council funds and provide information and advice to support sound financial decision-making. |

ROLE: **Leader**

SUMMARY OF REPORT:

Council at its meeting held 21 February 2019 considered a report on Fossil Fuel Divestment and resolved as follows:

... that this item be deferred for consideration at the April Council meeting.

The report is reproduced as follows for Council's consideration.

On 20 September 2018 Council resolved:

"That Council brings forward a report on options to improve our rate of Fossil Fuel divestment considering our Ethical Investments have been stuck at around only 50% of our total funds invested since reporting on this first started."

The legislative and fiduciary responsibilities of Council and the constraints and difficulties in providing for targeted social/environmental investing are included within the body of this report.

Options that Council may wish to consider that:

- are practical and protect Council's underlying capital, as outlined in Council's adopted investment policy;
- use a source that is accredited and recognised within the industry; and
- provide an open, transparent and positive strategy for ethical investments

are outlined within this report.

RECOMMENDATION:

That Council officers continue to

- 1. Adopt a positive screening approach for indirect divestments, utilising Australian Ethical as the source of advice, and prioritise investments in non-fossil fuel aligned Authorised Deposit-taking Institutions if the investment transaction is compliant with Council's investment policy and the rate of investment is no worse than other investments available to Council at the time.**
- 2. Highlight within the monthly investment report those investments that are acknowledged by Australian Ethical as worthy ethical investments and monitor progress in increasing levels of ethical investments.**

REPORT:

On 20 September 2018 Council resolved:

"That Council brings forward a report on options to improve our rate of Fossil Fuel divestment considering our Ethical Investments have been stuck at around only 50% of our total funds invested since reporting on this first started."

This report provides an analysis of options which Council may consider that are practical, protect Council's underlying capital, as outlined in Council's adopted investment policy, and that use a source that is accredited and recognised within the industry whilst providing an open, transparent and positive strategy for ethical investments.

Fossil fuel divestment is one of a number of criteria that fit within the Ethical investments charter, which includes:

seek out investments which provide for and support:

- a. the development of workers' participation in the ownership and control of their work organisations and places*
- b. the production of high quality and properly presented products and services*
- c. the development of locally based ventures*
- d. the development of appropriate technological systems*
- e. the amelioration of wasteful or polluting practices*
- f. the development of sustainable land use and food production*
- g. the preservation of endangered eco-systems*
- h. activities which contribute to human happiness, dignity and education*
- i. the dignity and well being of non-human animals*
- j. the efficient use of human waste*
- k. the alleviation of poverty in all its forms*
- l. the development and preservation of appropriate human buildings and landscape*

avoid any investment which is considered to unnecessarily:

- i. pollute land, air or water*
- ii. destroy or waste non-recurring resources*
- iii. extract, create, produce, manufacture, or market materials, products, goods or services which have a harmful effect on humans, non-human animals or the environment*
- iv. market, promote or advertise, products or services in a misleading or deceitful manner*
- v. create markets by the promotion or advertising of unwanted products or services*
- vi. acquire land or commodities primarily for the purpose of speculative gain*
- vii. create, encourage or perpetuate militarism or engage in the manufacture of armaments*
- viii. entice people into financial over-commitment*
- ix. exploit people through the payment of low wages or the provision of poor working conditions*
- x. discriminate by way of race, religion or sex in employment, marketing, or advertising practices*
- xi. contribute to the inhibition of human rights generally"*

Parts of this report are based on the Council report of 21 May 2015 on ethical investments as a majority of the issues are related.

1. Divestment, screening strategies and constraints

What is divestment?

a) Divestment

There are two types of fossil fuel divestment:

- 1 **Direct divestment**: no direct investment in any company that involves fossil fuel in their core business strategy or principle business activity.

This usually refers to stocks held for resources companies and alike, and has been the main focus of many organisations that have declared their commitment to fossil fuel divestment (e.g. Dunedin City Council in New Zealand, City of San Francisco (USA), City of Seattle (USA), Australian National University, Local Government Super, The University of Sydney, Stanford University, Uniting Church of Australia, etc.). These organisations had a direct exposure via shares or bonds of companies or indirect exposure through holdings with managed funds.

Constrained by the *Local Government Act 1993*, the Ministers Investment order and the Tweed Shire Council Investment Policy, Council does not invest in direct shares of companies or invest in managed funds and therefore complies with direct divestment.

- 2 **Indirect divestment**: divest from financial institutions or companies that invest in fossil fuel companies. Diversification of portfolios amongst companies makes it difficult to readily identify all indirect investments; therefore companies usually limit their divestment policies to direct investments only.

Council currently holds investments in Authorised Deposit-taking Institutions (ADIs), including large banks, in accordance with the Tweed Shire Council Investment Policy.

b) Screening

An increasingly popular investment analysis tool is 'Screening'.

Screening is the process of selecting companies to invest in based on their social and/or environmental performance.

Negative screening excludes certain securities from investment consideration based on social and/or environmental criteria. Negative impacts on society or the environment may exclude investments in tobacco, carbon intensive industries, old growth and native forest logging, land degradation caused by mining, uranium, animal cruelty, human rights abuses, weapons and armaments, gambling, genetic modification, excessive consumerism.

As acknowledged by '350.org Melbourne' *finance is heavily interlinked and it would be impossible to find a completely 'kosher' investment product that didn't perhaps inadvertently deal with the fossil fuel industry.*

Positive screening involves making investments in activities and companies believed to have a positive social impact. This investment approach allows investors to positively express their values on corporate behaviour issues such as social justice and the environment through stock selection --- without sacrificing portfolio diversification or long-term performance.

c) Resources and impartial advice

Council does not have the resources to undertake any form of screening and therefore must seek impartial advice from external parties, as is part of Council's fiduciary duty:-

- "(2) A trustee may, having regard to the size and nature of the trust, do either or both of the following:
- (a) obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice,
 - (b) pay out of trust funds the reasonable costs of obtaining the advice."

There are many and often contradictory websites offering advice on ethical investments and fossil-fuel friendly financial institutions. Whose definition of ethical do you use? Where do you draw the line? These questions provide practical and fiduciary difficulties for Council Officers undertaking investment decisions.

1. Legislative and fiduciary responsibility

Council and Council Officers must have regard to several legislative and policy requirements in regard to investments. These include

Legislative responsibility

Section 625 How May Councils Invest?

- (1) A council may invest money that is not, for the time being, required by the council for any other purpose.
- (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette. *
- (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
- (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation is not an investment for the purposes of this section.

*Ministerial Order is below as attachment 1

Fiduciary Duty

The Trustee Amendment (Discretionary Investments) Act 1997 – Sections 14A (2), 14C (1) and (2)

14A (2) Duties of trustee in respect of power of investment

A trustee must, in exercising a power of investment:

- (a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, or
- (b) if the trustee is not engaged in such a profession, business or employment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

14C Matters to which trustee is to have regard when exercising power of investment

- (1) Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, if any, have regard to the following matters:
 - (a) the purposes of the trust and the needs and circumstances of the beneficiaries,
 - (b) the desirability of diversifying trust investments,
 - (c) the nature of, and the risk associated with, existing trust investments and other trust property,
 - (d) the need to maintain the real value of the capital or income of the trust,
 - (e) the risk of capital or income loss or depreciation,
 - (f) the potential for capital appreciation,
 - (g) the likely income return and the timing of income return,
 - (h) the length of the term of the proposed investment,
 - (i) the probable duration of the trust,
 - (j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment,
 - (k) the aggregate value of the trust estate,
 - (l) the effect of the proposed investment in relation to the tax liability of the trust,
 - (m) the likelihood of inflation affecting the value of the proposed investment or other trust property,
 - (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment,
 - (o) the results of a review of existing trust investments in accordance with section 14A (4).
- (2) A trustee may, having regard to the size and nature of the trust, do either or both of the following:
 - (a) obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice,
 - (b) pay out of trust funds the reasonable costs of obtaining the advice.

Investment Policy

All Council investments must comply with Council's Investment Policy, available at <http://knowledge:1036/Policies/Investment%20Policy%20V1.8.pdf>

Major points within this policy include:-

Risk Management Guidelines

Investments obtained are to comply with seven key criteria relating to:

- i) **Preservation of Capital:** the requirement for preventing losses in an investment portfolio's total value, inclusive of both principal and income.
- ii) **Diversification/Credit Risk** limits overall credit exposure of the portfolio by diversification of credit ratings.

| Long-Term Credit Ratings | Overall Portfolio Credit Limits Short-Term Credit Ratings | Investments Maximum |
|--------------------------|--|---------------------|
| AAA | A1+ | 100% |
| AA | A1+ | 100% |
| A+ | A1 | 60% |
| A | A1 | 60% |
| A- | A1 | 60% |
| BBB+ | A2 | 20% |
| BBB | A2 | 20% |
| BBB- | A3 | 20% |
| Unrated | Unrated | 10% |

- iii) **Market Risk:** limiting the risk that the fair value or future cash flows of an investment will fluctuate due to changes in market prices by restricting the amount invested in non-rated or lower rated institutions.

- iv) **Counterparty Credit Framework:** exposure to individual counterparties/institutions to remain within policy guidelines.

| Individual Counterparty Limits | | |
|--------------------------------|---------------------------|---------------------|
| Long-Term Credit Ratings | Short-Term Credit Ratings | Investments Maximum |
| AAA | A1+ | 25% |
| AA | A1+ | 20% |
| A+ | A1 | 15% |
| A | A1 | 15% |
| A- | A1 | 15% |
| BBB+ | A2 | 10% |
| BBB | A2 | 10% |
| BBB- | A3 | 10% |
| Unrated | Unrated | 5% |

- v) **Maturity Framework:** limits the duration of any investment term.

Overall Portfolio Term to Maturity Limits

| | |
|--------------------------|-------------------|
| Portfolio % <=1 year | 100% max; 40% min |
| Portfolio % >1 <=3 years | 60% |
| Portfolio % >3 <=5 years | 40% |

- (vi) **Leveraging Risk:** the magnification of an investor's risk and return that occurs when the investor takes on financial leverage through an investment product. Leveraged investment products are prohibited by the Investment Policy.
- vii) Council will seek independent investment advice where necessary when preparing an investment policy. Advisors must have no actual or potential conflict of interest in relation to investment products being recommended. Advisors are required to provide written confirmation that they do not have any actual or potential conflicts of interest in relation to investment they recommending or reviewing. Manufacturers and distributors of investment products are excluded from acting as investment advisors to Council.

2. Current Investment Portfolio/Reporting

On 21 May 2015, Council resolved:

That Council initially adopts, for the purposes of reporting and due to the lack of other impartial/accredited advice, the charter and credentials of the Australian Ethical and highlights within the monthly investment report those investments that are acknowledged by Australian Ethical as worthy ethical investments.

The January 2019 Investment Report showed Ethical Investments comprising 58.01% of the total portfolio. This portfolio contained working funds invested in the Overnight Money Market. If we exclude these funds from the calculation, the ethical investment proportion increases to 59.43%.

Further to this, there was an additional \$15 million invested in the Defence Bank and Credit Unions which, whilst not identified as ethical investments, the institutions exist to serve the financial needs of their members. They do not exist to make profits for shareholders and invest any profits back into providing products and services for the benefit of their members. If we include these funds in the ethical investments total, then the percentage increases to 64.15%

Following is an analysis of the total investment portfolio excluding Overnight Money Market deposits as at 31 January 2019.

| Description | Ethical | Other | Total |
|------------------------------|--------------|--------------|--------------|
| Value deposited | \$189million | \$129million | \$318million |
| Percentage of total value | 59% | 41% | 100% |
| No. of separate deposits | 87 | 62 | 149 |
| Percentage of total deposits | 58% | 42% | 100% |
| No. of institutions | 19 | 12 | 26* |
| Average deposit/institution | 4.58 | 5.16 | 5.73 |
| Average rate of return | 3.00% | 3.05% | 3.02% |

* some institutions provide both ethical and other investments

Whilst the average rate of return between ethical and other investments seems minor (0.05%), if applied to the total investment portfolio, it would represent a difference in interest income per annum of \$159,000.

Whilst it seems that the proportion of funds invested in ethical investments has been able to be increased slowly over time, it is apparent that further fossil fuel divestment needs to be managed carefully and prudently in order to continue to meet the sometimes conflicting investment objectives of maximising rates of return, diversifying investment (spreading risk),

ensuring funds are available as and when required, and compliance with ministerial guidelines.

OPTIONS:

Option 1

Council Officers continue to adopt a positive screening approach for indirect divestments, utilising Australian Ethical as the source of advice, and prioritise investments in non-fossil fuel aligned Authorised Deposit-taking Institutions if the investment transaction is compliant with Council's investment policy and the rate of investment is no worse than other investments available to Council at the time.

Council Officers continue to highlight within the monthly investment report those investments that are acknowledged by Australian Ethical as worthy ethical investments and monitor progress in increasing levels of ethical investments.

Option 2

Council reviews its Investment Policy so as to only allow for investments in non-fossil fuel aligned Authorised Deposit-taking Institutions and all existing other investments be phased out as they mature.

Note: This would result in lower investment earnings, less diversification of Authorised Deposit-taking Institutions and will restrict available investment terms.

CONCLUSION:

The legislative and fiduciary responsibilities of Council and the constraints and difficulties in providing for targeted social/environmental investing are outlined above. Given the lack of a broadly accepted 'ethical' definition and maturity for ethical investing in local government, it may be more appropriate to maintain a watching brief and continue record Councils ethical investments, on the monthly investment register, with an aim to increase those investments categorised as ethical in accordance with Australian Ethical guidelines.

COUNCIL IMPLICATIONS:

a. Policy:

The Investment Policy may need amendment dependant on the option resolved by Council.

b. Budget/Long Term Financial Plan:

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
