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[redacted]

Byron Bay 12 March 2017

Submission to IPART, The Independent Pricing and Regulatory Tribunal NSW, Part 1

Special Rate Variation Byron Shire Council 2017

Dear Sir, Madam,

As an independent agency, I trust, that you will carefully and without fear or favour consider my submission in relation to the proposed Special Rate Variation by the Byron Shire Council, current before you for determination.

As a rate payer of 20 years in Byron Bay I have spent considerable time and effort over the last three months to understand the rationale and the extend of the rate variation sought by the Council. **After careful consideration of the documentation provided, I have come to the firm believe, that the Byron Shire Council does not meet the requirements set by IPART for such a proposal.**

These requirements have been established for good reason, with the Independence of an agency at arms length from the government. One of the principal roles of the Tribunal is in my opinion to protect the ratepayers and residents of NSW shires from potential waste of precious financial resources and to force Council to make well considered, careful decisions about asking its population for more money, in effect to raise taxes.

I have not been out to rubbish our council, but started to become suspicious in late last year, when Council handed out information brochures with the rates notice, incidentally just after the Council elections, in which it claimed, that a 33.5% rate increase over four years would lead to a **deterioration** in council's infrastructure. How could that be, when Council just prior to the last Council election congratulating themselves about the strong financial standing, Council was finding itself in? A massive rate rise was not an issue in the elections, in which 5 new, unexperienced councillors have been elected with no or minimal financial background.

With my background in financial matters, having been a Financial Planner for a decade in Byron Bay, I endeavoured to go back into Councils documents, especially the financial statements for 2015/16 and the Council Improvement plan from 2015, which was the basis for the Fit for The Future determination for Byron Shire by IPART. In addition I looked into the process of community consultation and councils documents presented to Councillors for consideration and the basis of Council's decision to apply for this Special Rate Variation. It took me a good part of the summer break to get a good understanding of the rates issue, which subsequently became the basis of this submission and my Submission to Council.

I have attached here a slightly varied version of my submission to Council, to become part of this submission. I also have for completeness sake attached the Council response in a second attachment and my response to the response, also to be treated as part of this submission. Theses attached documents go into detail about my findings and concerns. Please treat all documents submitted as part of my submission.

The more I delved into the matter, the clearer it became to me, that Council had a predetermined outcome established, which it then tried to justify with dubious means. The outcome was a massive rate increase, by means of handing out incomplete information, making wrong conclusions from established facts, keeping Councillors dependant on their advice, not providing continuing, clearly articulated data from the past, the present into the future of Council's 10 year modelling, etc.

This modelling has been done with the purpose to justify the desired outcome. The modelling has not been clear and could demonstrate **any** dollar amount of a required rate increase. My issue is not with the need for more money. And it can be said, that any council will find reasons and purposes to spend extra money. But my issue here is with the size of the amount requested to be laid out by the residents of the shire. Council has not approached this issue with the interest of the ratepayers and residents at its centre of concern, of which 70% have been opposed to the rate increase. It rather appears that an easy way is pursued.

Council's case is not well reasoned. The centre piece of its argument is the infrastructure backlog, which it wants and needs to address. For that it would need to show clearly, where the backlog exists, how it has dealt with the backlog in the last two years at least, since the Fit for the Future process has been established. It would also need to show clearly, how it has and will in the future distinguish between new infrastructure, upgrade of infrastructure and renewal of infrastructure assets. Council has just been on a massive infrastructure spending spree over the last two years, which does not clearly distinguish between these categories. Instead Council has used General fund income for all 3 categories in the last years and plans to do so in the future, without clearly addressing the backlog in identifying the asset and allocating money specific to it. There is no issue with the maintenance as it has budgeted in its foreword projections for the amount needed.

Often renewals go hand in hand with upgrades, which do not address the backlog.

Council has not provided current information on the development of key indicators/ benchmarks of asset renewal ratio and infrastructure backlog ratio, and how it arrived at the projected numbers. How can the community be confident, that the numbers in the foreword projections, which justify Councils position, can be trusted?

I have made the aforementioned substantive submission to Council, which has been replied to all councillors 24 hours prior to the crucial Council vote in January on the application. There was no time for Councillors to check on the reply. The issue of timing has been a constant mean for Council to use to its advantage.

I ask the panel to consider one of the following proposals as a way forwards:

- Reject Councils proposal outright
- Ask Council to resubmit a new proposal in 12 months time with clearer information, and a new Council improvement plan, including reporting on substantive efforts it engaged in for alternatives to Special Rate Increases, and how to address the backlog efficiently.
- Allow a 1 to 2 year increase to give Council a chance to prove itself, after which Council can submit an additional application.

Once the Special Rate Variation has been approved, Council will not have the pressure to look for alternatives, some of which have been listed in the attachments, but not exclusively.

I can provide further Council documents, if required. Please do not hesitate to contact me for any further questions. And I would be happy to discuss my submission with you in more detail.

Yours Sincerely

Attachments

- Attachment 1: Submission to IPART, Part 2
- Attachment 2: Submission to IPART, Part 3 Response of Council to my Council Submission via the General Manager to Councillors pior to Councils meeting in January 2017 plus my responses (in red).
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Attachment 2 Submission to IPART part 3

Response of Council to my Council Submission via the General Manager to Councillors pior to Councils meeting in January 2017 plus my responses (in red).

1.1 <u>Council's publicly stated position on funding shortfall is wrong.</u>

Contained in the submission is reference to a $6million shortfall. The alleged $6million is described as being overstated and a myth and is understood from your submission to be depreciation expenses not covered by revenue of $2million and an infrastructure backlog of $4million over the next ten years. It is not known how the submission determined this as the basis for a position promoted by Council because it has not been promoted by Council as such. At the end of the 2015/2016 financial year, Council as disclosed in special schedule 7 at 30 June 2016, described its infrastructure back log at $38.152million being the estimated cost to bring assets back to a satisfactory standard at 30 June 2016, not in ten years or twenty years. The view expressed in the submission is that the backlog figure is fixed and can be dealt with over the next ten or even twenty years. Unfortunately if Council took this approach, as indicated in the Strategic Asset Management Plan, it would blow out to $61million over the next ten years (2027). The Strategic Asset Management Plan indicates there is a current funding gap of $6.1million per annum between the current available funding to operate, maintain and renew infrastructure assets predominately roads and bridges compared with required funding.

It is misleading to suggest infrastructure backlog will not increase if nothing is done and that it never changes. It is also misleading to suggest the Fit for the Future process did not require a reduction in the infrastructure backlog over any specific period, when Council were specifically requested to demonstrate compliance with the benchmarks by the 2019/2020 financial year.

The gap of 6.1 million per year is not disputed. Its the

difference between lifecycle cost (LLC) of 15.8 million dollars = depreciation + ops. and maintenance expenditure 10 year average and Lifecycle expenditure of 9,7 million dollars per year = Capital renewal + operations + maintenance expenditure as per Table 4 page 262 attachments to 15 December Council meeting. These figures are derived from Appendix B - Long Term Financial Modelling, page 311 of same attachments.

The 6.1 million include 4 million in backlog per year and 2 million of underbudgeted expenditure. As it is agreed, that the maintenance is covered in the long term budget, it means, that depreciation expenditure is unfunded. No other conclusion possible in my opinion. In the last 2 years the depriciation expenses have been funded. See Annual Report page 105 " in 2016 Council has generated sufficient surplusses (before capital grants and contributions) to fund depriciation on a consolidated basis as well as by fund

In regards to the 10 years spreading out of the backlog. That is arbitrary. Council itself has spread the backlog over 10 years. Not me. I have only followed their logic.

1.2 <u>There are alternatives to a rate rise for funding any shortfall, where one exists.</u>

My alternatives were only ever to be understood as food for thought. I have not spent a lot of time in developping them. It is up to council and staff to come up with viable options. That's not my job. Some are taken up existing alternatives, not follwed through, such as redirecting funds to the backlog or sale of properties.

The prospect of a Special Rate Variation (SRV) is not easy for any Council. Council is very much aware of the condition of its infrastructure and the consumption of that infrastructure each year which had led to the revisions to the extent of the infrastructure backlog over time. Council for the last four years has been implementing its Financial Sustainability Plan which has freed funds as much as possible and introduced new revenue sources such as paid parking. Without the new revenue source that the SRV will provide, the condition of Council's infrastructure will continue to decline. Some of the suggested alternatives provided in the submission warrant the following comment:

· 2.2 The suggestion of the water/sewer discount of $100 be paid into an Infrastructure Backlog Fund and not delivered to serviced ratepayers cannot be done as water and sewer revenue can only be spent on water and sewer activities and not general fund activities as required by Section 409(3) of the Local Government Act 1993. If Council is supportive of stabilising fixed Water and Sewer Charges, e.g. not indexing them by the rate peg or CPI, this should not be perceived as a discount but rather a reflection of the level of revenue actually required to fund those services.

Someone suggested, that the general fund could borrow from the water and sewarage funds. Don't know enough about it.

· 2.4 Holiday Park efficiency dividend. Council's two holiday parks already provide a contribution to the General Fund of $1,119,200 in the 2016/2017 financial year. This is more then double the amount the submission believes Council is taking as a dividend from the Holiday Parks. First Sun Holiday Park alone is contributing $983,900.

As per staff report for the Council meeting for 16 June 2016 page 39 the sun Holiday Park showed an operating surplus of $807,691 in 2014/15, an estimate of $485,700 and an estimate for 16/17 of $511,200. Why is there such a drop in operating result in 16/17? The estimate for 16/17 is a long way short from the nuber quoted by Council.

· 2.5 Sale of Council assets possible $5,000,000 or $500,000 contribution per year. Council is working through rationalisation of the property portfolio where possible in accordance with the Financial Sustainability Plan. Given the generalised comment are there specific alternate assets Council should be looking at by the submission writer not already included in the Financial Sustainability Plan. If so, what are they?

There are several more properties mentioned in the Council improvemet plan, of which the Ocean shores Roundhouse side was one of.

· 2.6 The quoted discounted interest rates are not correct. Council can pursue loan through NSW Treasury Corporation but investigation into this has revealed the interest rate discount is between 0.25% and 0.5% but that would depend upon testing the market. The application process is arduous with NSW Treasury Corporation but is much simpler with a Bank. The major Banks also know they are competing against NSW Treasury Corporation and price accordingly in any Expression of Interest process Council may run from time to time. Of course what this submission overlooks is Council's limited capacity to borrow even at slightly reduced interest rates. Financial institutions will only offer loans at variable interest rates generally over 10-15 years so while interest rates might be low this year they might be much higher over the term of the loan/s.

In recent rounds of loan offers a discount of 3 to 4 % was mentioned. It is appalling to state, it would be too difficult to deal with Treasury, which I am sure would offer fixed rate loans. Isn't the bridge funding through Treasury? Try harder. The borrowing capacity is increasing and needs to be tested.

· 2.7 Council could only ever contemplate this if the festival organisers agreed to such a request. Council cannot force such a contribution as there is no legislated authority to do so.

Worth a try in my opinion.

· 2.8 Any form of a tourism levy would be via a special rate variation for Council as there is no other mechanism for Council to impose. Contrary to the submission the NSW Government does not currently support the introduction of a tourism levy or bed tax. Without NSW Government support, and enabling legislation, Council cannot impose such a levy or tax. Neither the Local Government Act 1993 or other State legislation has any enabling provisions for this to occur. Mr Krause has not provided Council with any documentary evidence of legislation enabling the imposition of a tourism levy or bed tax. References to tourism associations or newspaper articles does not give Council this authority.

See the doc for Councillors, which indicates otherwise.

1.3 Funds derived from the parking fees should be reallocated.

How funds are allocated for expenditure derived from paid parking is a matter for Council to determine. This is done annually through the budget process. As part of implementing the paid parking scheme, an undertaking was given to spend at least 50% of the funds raised on infrastructure in Byron Bay. Mr Krause should also be mindful that paid parking funds raised on Crown Reserves in Byron Bay can only be spent on that Reserve and not reallocated elsewhere. Council as the Reserve Trust Manager on behalf of the Crown has this responsibility.

I did not talk about crown reserve parking. Only one part of my suggetsion is in relation where the money is to be spent. Council should revisit, where the money is to be spent. More importantly it needs to be spent on backlog as submitted to the Fit for the Future process. See FFF Modelling Benchmark 4 Infrastructure back log , scenario 1: 100% of additional $2,088,900 paid parking revenue added to backlog reduction in 2016/17, more in the following years. See also answer from General manager as part of Q&A for Councillors (E2016/106790) to question 6. I thought pay parking revenue would help fix the infrastructure?
Answer "with the introduction of pay parking in Byron Bay 12 month s ago Council agreed that a significant proportion of the $2M per year raised would be spent in Byron Bay to upgrade infrastructure..."

Upgrade is not backlog reduction.

In the next question, what the current paiy parking revenue is beeing spent on, the answer is partly: on Byron BAy Civic Improvements with $350,000.

1.4 <u>There is no urgency</u>

The statement that Council only includes additional revenue from its proposed Special Rate Variation (SRV) in 2019/2020 is incorrect. Council's Long Term Financial Plan (LTFP) is recognising the revenue from the SRV and its expenditure from the 2017/2018 financial year onwards when it is proposed to commence. If expenditure to reduce the infrastructure backlog is delayed further it will only increase the backlog. It is not known how the view expressed in the submission has drawn that conclusion and therefore justifies deferring the SRV. The LTFP on page 15 under each of the SRV scenarios clearly state each option is modelled to commence from 2017/2018. Using the logic in the submission suggests Council would not bother to levy rates including the SRV increase until the third year post SRV approval which makes no sense.

I relied on figures in the delivery plan which specifically mentioned SRV revenue in 19/20. Previous years could include SRV revenue, but are not specifically indicated. My point here is, that a 12 months delay of a decission would mean a maximum funding gap of $2 million, as a 10% rate rise would raise approximately that amount in the first year. With 7.5% it would be less. Pay parking increases from 3 to 4 dollars as suggested would cover 1.1 million dollars. See also the disputed 6.1 millin dollar funding gap at the beginning.

1.5 <u>Council needs to focus on the backlog, not new works.</u>

Council is not misleading ratepayers about the urgency of the infrastructure backlog. Furthermore Council cannot simply decide not to do new works. An example of this is the Council's Section 94 Plan which governs the expenditure of developer contributions Council receives. These contributions can only be spent on new works and must be matched by part funding from Council to cover its side of the apportionment identified in the plan. Without this Council funding, the developer contributions cannot be released. Furthermore, the Shire is growing and this will inevitably necessitate new works as a matter of course. To contemplate not providing any new works would require community agreement to such a course of action which Council believes would not be forthcoming. Such a decision would also be in breach of the Section 94 Plan and would effectively see Council collecting Section 94 levies under false pretences if there was no intention to build the new infrastructure that those fees purport to fund. Not providing any new works also has the potential to stifle the economic growth of the Shire. It is not contemplated in the Krause submission whether the community agrees with the concept of no new works nor does the submission explain how then would Council utilise developer contributions received.

S94 was never disputed by me. See improvements and new work with general fund income above. Here is councils own statement: "The focus of the allocation of the additional funds is on renewals. Any diversion of available funds to new assets will delay the recovery and achievement of a sustainable asset renewal position" (attachments to council meeting 15 December 2016 page 262)

1.6 <u>The community rejected the rate rise</u>

The submission suggests that more then 70% of the community voted against the rate rise during the community consultation. Through the utilisation of Micromex random survey, reply paid card opt in survey, and online survey up to phase 3 of the consultation process, Council received 2,107 responses. Combining these responses indicates that 53% ratepayers had some form of a rate rise as their first preference with 47% not supporting any rate increase. Of the 53% suggesting support for a rate increase, 20% suggested option 3 as the preferred rate increase option being the 'Improve' option at 12.5% increase per year for a four year period.

Council is using their dodgy methology of counting as valid the responses of the sentt out questionaire without the nil increase option. My comments remain valid.

1.7 Councillors and/or public have been misled

The submission says '*At different times different figures have been given to council and the public, meaning one or the other has been misled.* This has been raised as a key issue but is so generalised without specific example it is hard to offer a response. In respect of providing incorrect information, the fifth dot point on page 8 of the submission says: '*According to the IPART website Council's proposed rate increases are above any of the approved Special rate variations for 2015/2016'.* The following link details the published IPART fact sheet on determinations for 2015/2016. https://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/fact_sheet_-_summary_of_iparts_decision_on_councils_requests_for_special_rate_variations_in_2015-16.pdf

There are actually two Councils being Newcastle City and Wollondillly that have cumulative increases greater than that proposed for Byron Shire Council under the recommended option for Council's consideration on 2 February 2017.

So What?

Page 12 of the submission at the fourth dot point says "*Gifted assets such as the old highway add to the Council's infrastructure assets and should be positive for the backlog ratio'*. The logic of this statement needs to be questioned as it is the position of Council that it may have the opposite effect. The highway if handed over will need to be assessed in terms of condition and whether it contains any inherent backlog as it ill not be gifted to Council in new condition and it is also not clear whether funding will be provided for its maintenance. Council will then become responsible for ongoing maintenance and eventual renewal of this significant asset. Over the long term it will have the potential to increase the infrastructure backlog.

The highway is an example. Council will receive maintenance funding for the next 10 years from the State government. Increase in depreciable assets flow into the backlog ratio and generally decrease the ratio. This is because of pure mathematical necessity.

Page 12 of the submission at the third dot point says: *'The use of general fund ratio in Council's projections is most unhelpful, as it displays Council's current financial position in a more pessimistic light then it really is'.* From the perspective of the submission it might be disappointing to identify a fact that is not wanted to be known but general fund ratios have to be presented for the following reasons: 1. Rate income is general fund revenue, 2. a significant portion of Council's infrastructure ie roads and bridges reside in the general fund, 3. The 'Fit for the Future' process and the resultant Council Improvement Plan was General Fund only as requested by the NSW Government, 4. IPART require any SRV application to be General Fund related only.

Page 13 of the submission under section 7.4 under the fourth dot point suggests that Section 94 contributions will 'still free up money from the general fund for road maintenance and the reduction of the back log'. This statement is simply false. Section 94 contributions (Developer contributions) can only be spent in accordance with the Section 94 plan on new assets and Council must fund its share of the plan apportionment to use the Section 94 funds. These funds therefore will not free up money from the general fund for road maintenance or renewal of existing assets which represents the infrastructure backlog. This statement also contradicts the view under key issue 1.5 in the submission that says Council should focus on the backlog and not new works.

If town improvements paid by pay parking can instead being funded by S94, then money is fred up. Am I wrong?

There are possibly more commentary in the submission that is not factually correct so whilst the submission offers the suggestion that staff have misled Councillors and the public, there are questions to be raised about the validity of comments in the submission which clearly themselves are misleading.

I did not have that in my original submission

1.8 <u>The rate proposals are too aggressive and are unnecessary.</u>

The submission suggests the proposed Special Rate Variation (SRV) proposals ignores differentials in relation to business rates. This is an attempt at confusion given the SRV is about increasing Council's overall revenue from rates. How Council then determines to apportion the rating distribution between residential, business and farmland is a separate matter and goes to the structure of the Council rating system. Council has passed a resolution at its 15 December 2016 Council Meeting regarding distribution or apportionment of the rating yield. This matter regardless of whether an SRV is proceeded with or approved by IPART will occur as part of developing the 2017/2018 Revenue Policy. Council will be obligated to consult with impacted ratepayers whom may receive increases if the apportionment is changed. The submission suggests Council is ignoring other options listed by IPART but has not specified what those other options are so it is difficult to respond to such a generalised comment. There is a view the SRV is necessary as it underpins Council's Improvement Plan and Council was reminded by the Office of Local Government in December 2016 the Improvement Plan outcomes will be monitored and there is an expectation Council must follow through with the strategies identified. Council has identified that it is necessary to address the infrastructure backlog which the Krause submission has dismissed as an issue that will never change. To suggest the SRV increase proposal is the most aggressive in NSW is misleading. Byron Shire Council has not had an SRV increase since 2008/2009 and whilst the SRV proposal for 2017/2018 has the highest cumulative increase of all applications in 2017/2018, IPART have approved SRV applications that have been even more aggressive then the recommended option Council will consider on 2 February 2017. Examples include in 2015/2016 Newcastle City Council 46.93%, Wollondilly 50.72%. In 2014/2015 examples include Maitland Council 63.22%, Tenterfield Shire Council

53.07%. In 2013/2014 Parkes Council 63.0%.

To come up with a hand full of councils over a 4 year period, which had a "more aggressive " approach to SRV's, from all possible and actual applications, just validates my point. Council also admits to being agressive, just not as much.

1.9 <u>Council has completely ignored many alternatives.</u>

Please see response under item 1.2 which disputes that Council has ignored alternatives. In some cases it is already implementing these alternatives to a greater extent then indicated in the submission(ie Holiday Park dividend) and on the basis of what it lawfully can do (ie cannot impose a tourism levy or bed tax).

1.10 <u>Information presented to Councillors is contradictory, arguably wrong and undermines the entire basis of the democratic process.</u>

The report that went to Council on 6 October 2016 was putting forward a recommendation to Council to proceed with Phase 3 of the consultation process with the Community. It was during phase 3 that Council indicated to the community that the 'maintain' option included a 10% special rate variation (SRV) per year for four years. Consultation was conducted on this basis and reported to Council as such to its Ordinary Meeting held on 15 December 2016 to proceed with phase 4 of the consultation. Phase 4 consultation involved Council needing to exhibit its updated Integrated Planning documents for public comment and consultation. These documents contained again the 'maintain' option to include the 10% SRV. Between the phase 2 and before the phase 3 consultation period started, Council finalised in draft form the Strategic Asset Management Plan (SAMP). The further asset modelling undertaken by Council during the development of the SAMP, using asset modelling software purchased in the intervening period, indicated that the 7.5% option would not generate sufficient funds to provide the maintain scenario but a 10% SRV scenario would.

All arguments from Council for the necessity of the SRV is based on the Council improvment plan of 2015. When it does not suit, the Plan is outdated. The Backlog number of $38,152 has not changed between the 2nd and the 3rd phase of this process. Question is, what has changed? Have misteriously some roads been reclassified to suit an outcome? The Special Schedule 7 of the financial report requires grading of the roads. Last time it was 11% of sealed roads in poor condition, 1 % in very poor condition. For unsealed roads it was 6% in poor and 0% in very poor condition.

It needs to be recognised that the maturity of Council's asset information has improved since the lodgement of the Council Improvement Plan (CIP) eighteen months ago. Given the investment Council has made into asset management over the last three years has resulted in a more complete picture of its infrastructure. Information provided in the CIP eighteen months ago was at the time the best information Council had available. Surely if Council has better information now available it should be putting that forward. To also suggest staff have on purpose given misleading information, not responded to Councillor questions, and ignored Councillor requests for information without specific examples provided in the submission to prove such generalised statements is somewhat disappointing (Submission page 2, 3rd paragraph).

1.11 <u>Tourist taxes and bed taxes.</u>

It is Council's information contrary to the submission that tourist taxes have not been agreed to by the NSW Government as an option for increased funding. Unfortunately it appears the submission points to an agreed position by tourism industry representatives and an article in the Sydney Morning Herald. These references do not point to any enabling legislation for Council to implement tourism taxes or bed taxes. A tourism levy traditionally relates to a special rate variation to fund tourism related activities and promotion but not the restoration of infrastructure used by tourists.

1.12 <u>Council is actually in a good financial position</u>

It is fair to say that Council is in a good financial position on a short term basis. The central issue for Council is the longer term where it does not have the available financial resources to redress its infrastructure backlog without the addition of new revenue. Council also runs the risk of increased infrastructure backlog due to accelerated deterioration of infrastructure that is already in poor condition unless its starts to address the situation. The additional revenue from the Special Rate Variation coupled with other strategies under the ‘maintain’ option at least will give the Council the ability to stop the decline further. It is suggested in the submission that IPART does not require zero backlog only a positive trend in the backlog ratio. The benchmark for the Infrastructure Backlog is 2% or less but under the Council Improvement Plan (CIP), Council had to demonstrate whether this benchmark would be met by 2019/2020. In consideration of all the strategies in the CIP including the 10% SRV each year for four years representing the ‘maintain’ option, Council could not meet this benchmark.

The backlog was never an issue for the FFF. Council did not show, that it would achieve the 2% required, as did not many other Shires. Still Council past the test for FFF wiyh flying colours. My statements are completely correct.

1.13 Surpluses

The Long Term Financial Plan (LTFP) of Council does indicate surpluses on an operating basis will occur by any of the SRV options. This is simply because rate revenue is an operating income and has to be disclosed that way. Also indicated in the LTFP is how Council intends to spend the funds raised by an SRV. Given the revenue is geared mainly towards asset renewal to reduce backlog, the expenditure is not treated as an operating expense but as a capital expense. Therefore the expenditure is not matched against operating revenue which is why paper surpluses will exist.

Not sure.

1.14 Council needs to establish an Infrastructure Backlog Fund (IBF)

Council has already established an Infrastructure Renewal Reserve and did so at the end of the 2012/2013 financial year. This fund does as suggested in the submission. It needs to be clarified though it is not Council staff who have authority to allocate the reserve on reduction of any infrastructure backlog. That is a matter for Council to determine.

Council's job. Agreed

Submission to IPART, Part 2

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INTRODUCTION

The case for a 7.5% per cent compound rate rise per annum for four years (around a 33.5% increase in total over the period) is one of the most poorly justified cases for a taxation increase I have ever seen.

In summary, it is a case which is based on a large number of alleged "facts" which utilise inaccurate or incomplete information as evidence, combined with a range of complete assertions with insufficient factual backing. The information presented to council and public is different and changes over time.

The figures presented in the council presentations appear to have often been plucked from thin air. No alternatives are presented. Community opposition has been completely and utterly disregarded.

Funds which should have been spent on the backlog have been spent on new works, contrary to the original commitments. There is no information presented on s94 funds that could have been used for new works. The depreciation and maintenance budget figures presented make no sense.

Alternatives to the rate rise have either been ignored or dismissed with very flimsy or no explanation at all.

All of this is leaving aside the issues of equity and fairness.

In short the entire arguments for the rate rise need to be disregarded since they provide insufficient factual justification for such a rise.

1. KEY ISSUES

1.1 Councils publicly stated position on the funding shortfall is arbitrary . The funding gap is anything between $2 million and the claimed $6.1 million. (see section 3).

1.2 There are alternatives to a rate rise for funding any shortfall, where one exists (see section 2). There are numerous alternatives set out in that section . This is not an exhaustive list.

1.3 Funds derived from the parking fees should be re-allocated. Funds which were intended for the backlog have been appropriated for new projects and this needs to be reversed . They should be replaced by S94 funds for any new works.

1.4 There is no urgency. a postponement of the SRV would have only a small material impact on council's planned infrastructure program. A postponement of the SRV for 12 months would leave Council to find less than $2 million dollars in that period, which could be found elsewhere in the proposed alternatives.

1.5 Council needs to focus on the backlog not new works. Currently it is spending money, such as parking fees, which were intended for the backlog on new works/improvements . While legal, this is, effectively, misleading ratepayers about both the rationale for the parking fees and the urgency of the backlog.

1.6 The community rejected the rate rise: More than 70% of the community voted against the rate rise during community consultations but council just ignored this outcome. So either the community consultation was pure window dressing or any vote for a rate rise will be profoundly anti-democratic (see section 5).

1.8 The rate proposals are too aggressive: Byron's proposed rise is one of the most aggressive in NSW and ignores other options listed by IPART. It also ignores the fact that business rate differentials (i.e. the increased amount paid by businesses) are much lower than in comparable councils (e.g. Lismore and Coffs) and have not increased to anywhere near the same extent as residential rates have. (see section 4).

1.9 Council has ignored low interest loans apart from bridge replacement financing as well as a tourist tax and other options set out in section 2 . This is despite the fact that the NSW Government permits tourist taxes (on application) and that it was supported by both Byron United (now Byron Bay Chamber of Commerce) and the NSW Tourism Council)

1.10 Information presented to councillor is contradictory, arguably wrong and undermines the entire basis of the democratic process. See section 6.

1.12 Council is actually in a good financial position and is, therefore, not threatened by amalgamation. The backlog ratio between infrastructure maintenance and renewal work and the Shires depreciating infrastructure assets has been decreasing over recent years (see section 7). IPART does not require zero backlog only a positive trend in the backlog ratio (section 7)

1.13 Regardless of how you calculate income and expenditure, a 7.5% rate rise will leave council with a surplus, after all expenditure listed, based on the figures it presents.

1.14 Council needs to establish an Infrastructure Backlog Fund (IBF) with an existing staff member who is given the task to monitor the reduction in the backlog over time and ensure that expenditure that should be for backlog reduction is being spent on the backlog and ensuring that councillors are aware of any changes.

2. OPTIONS FOR ALTERNATIVE FUNDING

2.1 The redirection of current paid parking revenues to its original purpose of backlog reduction as presented in the Council Improvement Plan 2015. The revenues to be placed into the IBF. Possible contribution up to 2.5 million dollars per year. New works should be met from section 94 funds or elsewhere.

2.2 The proposed Sewage/Water discount of 100 dollars per resident ratepayer to be paid instead into the IBF, possible contribution of $1 million dollars

2.3 Hourly paid parking increase by $1 as a minimum, noting that some jurisdictions charge as much as $9 per hour for beachside parking. Paid Parking extended to Brunswick Heads and beyond. Revenues to be paid into the IBF, possible contribution $500,000 per year

2.4 Holiday Park Efcciency dividend. First Sun raises revenue of 3 Million Dollars a Year and currently contributes less than $500,000 per year to councils bottom line. Possible contribution to IBF $500,000 per year.

2.5 Sale of some additional council assets for one off backlog reduction, or alternatively use assets for commercial activities, such as storage sheds. Income stream to be placed into IBF. Possible contributions $5 million or $500,000 per year income stream.

2.6 Use of discounted loans (previously 3 to 4 % discounted interest rates) offered by the NSW Government, of up to 10 million dollars over the 10 year period, repaid by the IBF over the lifetime of the assets. Council's current loans relate overwhelmingly to the Sewage Fund and only to a small proportion to the General Fund. Additional Revenue via paid parking has increased council's borrowing capacity. Most interest costs are linked to the sewage fund and not related to the general Fund. Planned loan based bridge-funding can go a head without SRV.

2.7 Introduction of a small charge to Major Festival goers in Byron Shire, a so-called "Community Infrastructure Maintenance Contribution" for ailing infrastructure, to be collected through ticket sales via promoters. Possible Contribution to IBF of 1 to 2 million dollars a year, at 2 dollars per festival goer per day.

2.8 Tourist or bed taxes: the NSW has agreed to the idea of a tourist levy (as opposed to a bed tax), as a result of a concerted push by numerous councils to address this issue over the last 20 years. But Byron Shire has never applied to have a bed tax despite it being agreed in the 2008 Tourism Management Plan. This is potentially a major source of revenue and was even agreed to by tourism industry representatives. (see http://tinyurl.com/hznqsmh). See also: http://www.smh.com.au/nsw/levy-for-small-holiday-hot-spots-wins-support-from-tourism-industry-2013010 4-2c8t4.html

2.9 Provisional section 94 levies. Festival such as Bluesfest are operating under provisional licences so have never paid s94 developer levies despite having been operating for several years, unless this has changed in the last several months. 5

3. THE MYTHICAL $6.1 MILLION DOLLAR SHORTFALL

A large part of the rationale for the rate rise is the alleged $6.1 million shortfall. But this shortfall is at best overstated and at worst is largely a myth created to justify the rate rise. In reality the shortfall could be as low as $2 million per year.

The alleged $6.1 million can be divided into two parts, deriving from Council's forward projections (Source:STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES 13.2 - ATTACHMENT 3, Attachments 15 December 2016 page 311 , Appendix B – Long Term Financial Modelling Figures)

3.1 Depreciation expenses not covered from revenue - $2 million

3.2 An infrastructure backlog of $4 million over the next ten years

Neither of these figures can be justified. The first has just been created for no obvious reasons, as shown below, while the second is overstated and can be addressed in different ways that do not require a large rate rise.

Depreciation expenses not covered from revenue

Council's projections underfund necessary expenditure for infrastructure depreciation from the General Fund by 2 million dollars for no obvious reason.

To explain. Councils must budget for depreciation so that assets do not deteriorate. The source of this funding normally comes from general revenues (the General Fund). Before 2015/16 council there was no such "gap". It suddenly and mysteriously appeared in the accounts in 2016/17

Then suddenly from 2017/18 onwards a "funding gap" appears and is presented as a rationale for the rate increase without any explanation. Council needs to clearly articulate the origin of this supposed $2 Million shortfall. Without this artificial and suddenly created allowance for unfunded depreciation the gap is reduced by $2 million.

The 2016/2017 financial position has been strong as well, as shown below in section 8. The funding gap does not exists in the current year.

An infrastructure backlog of $4 million. A critical part of the argument for the rate rise is the alleged infrastructure backlog of $4 million per year.

The reality about this backlog is that:

− It is NOT a critical part of the assessment for the Fit For the Future Assessment

Council has behaved as if this is the case and has attempted to scare ratepayers by suggesting that council could be amalgamated if the backlog is not reduced. This is NOT true. All IPART requires is that the backlog is being addressed. There is no specic formula or timeframe.

− While a infrastructure backlog exists the way in which is treated is arbitrary.

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The council projections allocate the current infrastructure backlog over a 10 year period, therefore the projection assumes that 4 million dollars is needed each year to address this backlog. However FFF does not require reductions in backlog over any specific period. If council were to address the backlog over 20 years, instead of ten, then the funding requirements would only be $2 million pa instead of $4 million, thus reducing the required funds by $2 million.

Even if the desire was to reduce the backlog more quickly this could be done in two stages. An initial $2 million per annum which could then be increased once other sources of revenue has been found .

In combination with additional borrowings, council could manoeuvre any bottlenecks or spend one year more for a renewal , partly funded by a loan facility, whilst saving money in another year, when deterioration of infrastructure is less demanding on the budget.

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4. OTHER COUNCILS AND ALTERNATIVE RATE OPTIONS INCLUDING BUSINESS RATES

The following section provides additional information regarding the excessive nature of the rate rise proposed by Byron relative to other councils etc.

• Byron Shire council wants to apply for rate variations for 4 years, permanently between 7.5% and 12.5%. IPARTS allows temporary rate variations as well as permanent. It offers rate variation between 1 and 7 years. Its examples use 7%. Not only has Byron Shire chosen one of the highest possible rates but has made it permanent, so that even if other revenue streams are found the rate rise stays in place.

• The NSW Government website of the independent regulator IPART has just released the intended special rate increases for all shires in NSW. Byron Shire's proposal is by far the most aggressive proposal with the highest percentage increase sought of almost all other Shires in the state

Here is the list. Byron Shire, 33.5%, 46.4%, 60.2% cumulative over 4 years, permanent. Ballina 3.4% above peg for 3 years, permanent. Bellingen 6% one off, permanent. Hunter Hill 4.5% one off, permanent. Inverell 4.75% plus peg for 3 years, cumulative 14.94%. Lockhard 4.6% cumulative for 10 years. Mid Coast 5% for 4 years cumulative. Muswellbrook 2.5% for 4 years. Port Macquarie-Hasting 3.96% one off permanently. Shoalhaven 11.5% over 2 years, 6.25 over 4 years or 5% over 7 years (plus peg each). Willoughby 1.47% and 1.45% over 2 years (plus peg).

• Byron Shire is paying high per capita rates, one of the highest in its Group of councils, according to NSW data from 2008/09. Out of 33 Councils in its group, Byron Shire had the 6 th highest average rate per assessment for residential rates. Note that this is despite having a relatively low household incomes in Australia (71% of national average) and a high rate of unemployment (8.4%)

• According to the IPART website Council's proposed rate increases are above any of the IPART approved Special rate variations for 2015/16. Only 5 Councils in all NSW applied for 4 years accumulative rate rises and proposed retaining them permanently.

• Byron Bay, Suffolk Park and Brunswick Heads are disproportionately hit by rate increases. In 2016/17 rates have increased in these areas already by between 10% and 25% due to differences in land valuations in 2015. Another land valuation is taking place right now and most likely will lead to further distortions.

• Byron CBD Business rates went down by 8.5% in 2016/17, Farmland by 16%, in contrast to residential rates. Distribution issues such as proportioning percentages of rates to different rate classes need to be resolved before rates are increased via a SRV. This is because council has a cap on the total income it can raise and must stay within this cap. So if it raises rates for one part of the community excessively then others parts of the community can end up paying reduced rates in order for the total income raised to stay within the cap.

• It was agreed previously to apply a differential rate for businesses in Byron so that they would bear the costs applicable to the use of infrastructure by them and their customers. This differential has been progressively eroded in Byron Shire such that other councils (eg Lismore and Coffs have differentials between residents and businesses up to twice as high as those in Byron Bay. The difference between residential and business rates in Byron is 200% while in Lismore it is 400%, as shown in Council's own pamphlet to ratepayers. Property owners and renters along the Byron Shire Coastline will be driven out of the shire and the sense of community will be eroded.

5. COMMUNITY OPINION

The community gave a clear message to the council. While its goals are high in many areas such as fixing the roads it is happy to live within its means.

More than 70% voted against a rate rise, in both the telephone survey and the online survey. For example in Council’s first survey in August/September 2016 at question 5 “preferred funding options” only 29% wanted rates to rise to fund infrastructure improvements.

Nevertheless the recommendation of the survey company was to progress the rate variation options that had been presented to the public. This is not a logical conclusion of the findings. The process should have stopped there and then. In addition the reply paid survey did not present all the options, including the fact that it omitted both a zero rate rise choice and failed to present options lower than 7.5%. As such it is invalid.

Comments made, especially on the 7.5% option, show clearly an unwillingness to accept the options presented. 40% of respondents did not agree with any of the rate rise options and indicated this by selecting none.

It's worth noting that the data provided for community consultation was biased towards Council’s preferred position, as shown below:

• Financial Information that was given in the survey was designed to lead respondents to the council's desired outcome. In other words the survey choices were loaded towards a pre-determined outcome.

• There was a nonsensical combination of options 1 and 2 used in Council's summary to make the case for rate increases look better. If someone does not want a rate rise, that’s it. No second preferences.

• The way in which boxes were numbered which included a zero rise in a list with other options makes no sense. The options should have been either “Support a rate rise” or “no rate rise”. If you selected the rst option you would then get choices. The entire exercise was loaded in favour of council's preferred outcome.

• Leaving a no rate option off the feedback cards makes them incomplete and makes the whole exercise worthless.

• The written comments made in the survey do not match the preference which the writer has given which is a clear sign of confusion in understanding of the question.

• When asked for infrastructure improvements it was not made clear immediately to the interviewees what the financial consequences of the answer would be.

37% of all online comments, from people who apparently supported one of the rate increase options, made comments, which did not match their choice. That indicates a level of confusion within the community which in itself invalidates the survey. 9

6. THE PROCESS IS FAILING BASIC DEMOCRATIC PRINCIPLES Councillors have been left under constant time pressure and given misleading or unclear information. Some of the dubious information presented included the following:

- Different information presented to council and the public: The proposals put to the public do not match the council resolution and so are invalid.

The options agreed upon by council resolution on 6 th of October 16 had the options:

Nil - deteriorate,

7.5% - maintain,

12.5% - improve.

These are different to the options put to the public which were 7.5% deteriorate, 10% maintain and 12.5% improve. In effect, council either misled the public or councillors and thus any vote by council is effectively invalid.

- Council's documents and the General Manager's comments indicate that 42% of the shires roads are of a poor quality, whereas the ofcial annual report 2015/16 gures in Special Schedule 7 shows 13% of sealed roads in poor or very poor condition. The rst number suits council's case, but is not explained. Again, arguably councillors have been misled in order to justify a rate increase.

- In its modeling to p rove the deterioration of Council's nances Council uses general fund ratios, especially the infrastructure backlog ratio, which look weaker, whereas in its Council improvement plan from 2015 it uses consolidated ratios, which look stronger. The consolidated ratios are also used in the Financial report 2015/16, Special Schedule 7. Again the council has used selective information to justify its argument for a rate increase.

- Council has increased the backlog by 1 million dollars of uncompleted maintenance in just six months, from the time the 2015/16 nancial statements were produced. It has added (mainly) bus shelters and fences to the backlog for no convincing reason.

− Most of Council's documents do not mention a 4 year cumulative rate variation, but are worded incompletely, only talking about "a rate variation of up to 10%". Only in very small print projection tables for different scenarios in its Council improvement plan is the full scale of the rate increase mentioned. Even then they are in ne print, an example being that rates are to be kept at these new much higher levels.

− Part of the text in the modeling is worded "the proposed increase is a total of 10%..."., when in fact it is 50% after four years, permanently. Councillors at the time could have voted without the awareness of the full impact their vote would have down the line.

- Although the permanent retention of the rate increase is shown in the printed brochure by council, it was nebulous during the process of council considerations and adopting of policies. It is most likely, that at the early stage of the mentioning of a SRV councillors were not aware of the extent of the SRV nally sought. The incomplete formulation of the SRV in Council documents nevertheless has consistently been used to further the progress of the process.

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7 – MISCELLANEOUS ISSUES

The delivery program also indicates that council plans to lift the internal restriction by 2019/2020 for paid parking revenue which currently applies. From that time onwards 50% is to be allocated shire wide. This lifting of the internal restriction can be brought forward and applied to 100% shire wide, so other backlogs can be addressed, not just Byron Bay, and to fund such repairs for streets such as for Fern Street in Mullumbimby.

To bring this new focus into Council planning, Council should review the Improvement Plan from 2015, which has as Strategy 5 the Special Rate Variation. This Strategy component is to be replaced by a combination of the above listed strategies and to be presented to NSW FFF Assessors.

If none of the above raises substantial revenue, within the near future, then Council can go back to the residents with a SRV proposal in 12 months time which covers an additional $2 million funding shortfall due to the delay in increasing rates such as a one off 10% SRV .

7. 1 There is sufficient income to fund all infrastructure maintenance; there currently is NO "funding gap"

Council agreed that infrastructure maintenance was and will continue to be funded in full into the future. In addition the 2015/16 Financial report states clearly, that all depreciation expenses have been funded in full from continuing operations, thus a funding gap did not exist. The Annual report 2015/16 states on page 148:"In 2016 Council has generated sufficient surpluses (before capital grants and contributions) to fund its depreciation on a consolidated basis as well as by fund". Without unfunded depreciation there is no backlog increase.

7.2 Asset renewal ratio.

An asset renewal ratio is in essence the ratio between money spent on asset renewals and depreciation expenses on corresponding assets. If the ratio is 100%, it means Council spent enough on asset renewals to cover its depreciation expenses. If it spends less, it will add to the infrastructure backlog in the following year.

In 2016/17 in its September update Council has reached an Asset Renewal ratio of almost 300% or in other words 3 time the necessary amount spent to cover budgeted expenses and thus not to increase the infrastructure backlog. For the full year the ratio is expected to come in at 188%. It is inconceivable, that with these numbers depreciation expenses for the infrastructure in question has not been funded in full in 2016/17 and thus it is logical, that the infrastructure requirements will also be met in 2016/17. The point is, that Council has currently sufficient funds for necessary infrastructure work.

In conclusion Council has currently sufficient funds for infrastructure and these funds need to be reinstated and/or money needs to be redirected back towards the infrastructure needs of the general fund, mainly for fixing existing roads .

7.3 Additional observations on the backlog:

• For 2016/17, according to Council's community update in July 2016, Council planned to spend $52 Million dollars on roads, drains, open spaces, community facilities, water and sewage. A large part of this money will find its way back into the Infrastructure backlog, either as a reduction of the estimated costs to bring assets to a satisfactory standard, in other words the backlog, or in the increase of the carrying value of infrastructure assets.

• In both cases the infrastructure backlog ratio decreases, which is positive for being Fit for the Future.

• My calculations show the infrastructure backlog being around 6% at the end of 2016/17 down from 7.92% in 2015/16. That is on a consolidated level, i.e. General, Water and Sewage fund combined. This consolidated level is the more important one, as it is the benchmark, which IPART requires in order to show a positive trend.

• The use of the General fund ratio in council's projections is most unhelpful, as it displays Council's current nancial position in a more pessimistic light than it really is.

• Gifted assets such as the old highway add to the council's infrastructure assets, and should be positive for the backlog ratio.

• Depreciation expenses for Roads, Bridges, and Footpaths have decreased slightly from 5,372 million dollars in 2015 to 5,346 million dollars in 2016 as per Annual Report 2015/16 page 148. This indicates, that depreciation costs are not spiraling out of control and in danger of pressuring the budget.

• Council refers to the achievements of their Council Improvement plan such as introducing paid parking in Byron Bay. But it does not mention the important failure of the plan to address the infrastructure backlog . Instead it has created new infrastructure and improvements. Civic improvements and the new walkway at Watego's are examples. According to the General Manager that ".. Council agreed that a signicant proportion of the $2M per year raised wouldbe spent in Byron Bay to upgrade infrastructure and facilities...". Council can and should reverse this.

• In addition Council has not implemented further asset sales to overcome the backlog or directing the proceeds of the paid parking to asset renewals in full. For example Paid Parking money has been restricted to Byron Bay and is used for civic improvements and new assets, such a the new footpath on Wategos.

• Council claims, that more money is needed for asset maintenance. Modeling for the Council Improvement Plan show, that a SRV has no impact on the asset maintenance ratio.

• There are discrepancies between what IPART expects from Byron Shire Council and what Council asked from residents. IPART expects 3% above peg for years, as per nal assessment in October 2015.

• The currently elected council did not take the SRV to the recent Council election and therefore did not look for a mandate from the voters. The SRV became a public issue right after the election, even though some of the planning was conducted prior to the election. In addition 5 new councillors were elected without experience out of a total of 9. One of their rst activities was to further the SRV process without full knowledge of its implications.

• It appears that modeling has been done to justify large rate rises and not in interests of the community. The question never asked or answered, is what would be the minimum special rate variation necessary, if any.

• Amalgamation fear is overstated and used to inuence the outcome of the rate proposal with no discussion as to its validity.

• NSW Councils have a huge infrastructure backlog, the problem exists everywhere. Amalgamation is not an issue in terms of backlogs.

• No explanation is given, for why the infrastructure backlog increases despite a 7.5% rate rise over 4 years. It does not match the Council Improvement plan

7.4 Council’s financial position

• Councils Self funding ability is already high, comfortably above the required rate of 60%. In other words its reliance on grants is at acceptable levels.

• Council has spent 27 million Dollars on infrastructure assets this nancial year alone, a sign of nancial strength, not weakness. Some of these investments will have a positive inuence on the backlog.

• The 2016/17 nancial results showed all performance indicators met benchmarks, bar two (infrastructure backlog and asset renewal ratio), but both with improving trends.

• Development activity helped increase s94 contributions by more than $4 Million in 2015/16. The trend is continuing. Though it is restricted money, it will still free up money from the general fund for road maintenance and the reduction of the backlog.

• Byron Shire is wealthy with land assets recently re-valued at an additional 40 Million Dollars, plus $60 Millions assets in reserve, although restrictions apply.

[redacted]