

ITEM NO:	17.1 Confidential
MEETING TYPE	Ordinary Council
MEETING DATE:	17 August 2017
SUBJECT:	Review of Confidential Issues under Section 91 of the Local Government Act 1999
FILE NUMBER	F17/134 - Chief Executive Officer
RECORD NUMBER:	R17/9399
AUTHOR:	Joy Hentschke
ATTACHMENT (S):	Sceale Bay Landfill & Surfers Beach Access (R17/9393)

LINKS TO STRATEGIC MANAGEMENT PLAN 2016-2026

KEY RESULT AREA:	1. Governance
STRATEGY:	N/A
ACTION:	N/A

BACKGROUND:

Review of Confidentiality Orders

Section 97(9) of the *Local Government Act 1999* requires that any (confidentiality) orders made under section 90(3) that operate for a period exceeding 12 months must be reviewed at least once every year.

Motion No 16/16, 17/16, 18/16 from the 21 January 2016 Council Meeting relates to Review of Confidential Issues under Section 91 of the Local Government Act 1999

OPTION:

Due to the licence has not yet been surrendered, Council will remain responsible for any future contamination on the site and the land swap has not been completed with the new owners that Council seek a further 12 months in confidence because of the monetary values in the report which could lead the new owners seeking compensation.

Recommendation

That Council resolve:

- a) Pursuant to Section 90(2) of the Local Government Act, 1999, the Council orders that all persons with the exception of MJ Hentschke (Chief Executive Officer), JL Brewis (Manager, Regulatory Services) RC Nottle (Acting Manager, District Services), K Clark (Corporate Service Manager), PJ Williams (Manager, Community and Economic Development), and JA Childs (Executive Assistants & Governance Officer/Minute Taker) to be excluded from attendance at the meeting for agenda item 17.1, relating to "Sceale Bay Landfill & Surfers Beach Access Road".
- b) The Council is satisfied pursuant to Sections 90 (3)(b) of the Act, the information to be received, discussed or considered in relation to this agenda item is related to "commercial information of a confidential nature (not being a trade secret) the disclosure of which:
 - a. Could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - b. Would, on balance, be contrary to the public interest.
- c) The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances.

Recommendation

That Council, having considered Report No 17.1, Review of Confidential Issues under Section 91 of the Local Government Act 1999, 17 August 2017, Council Decision.

Recommendation

That Council, having considered agenda item 17.1 relating to "Sceale Bay Landfill and Surfers Beach Access Road" in confidence under Section 90 (2) and (3) (i) of the Local Government Act 1999, pursuant to Section 91(7) of the Act orders that the discussion and the attachments to Report 17.1 be retained in confidence and not be available for public inspection until the matter is resolved with 12 monthly periodic reviews until that time.

ITEM NO:	11.23
MEETING DATE:	21 January 2016
SUBJECT:	Sceale Bay Landfill / Surfers Beach Access – CONFIDENTIAL
FILE NUMBER:	05.064.001.004 14.016.001.002
AUTHOR:	Manager, District Services, Penny Williams
ATTACHMENT (S):	Nil

THIS REPORT IMPACTS ON:

Asset Management	X	Long term financial plan	
Budget/Annual Business Plan	X	Financial Key Performance Indicators	
Legal/Statutory/Policies		Community engagement	
Risk analysis/management		Service standards	
Environment	X	Legal advice	
Economic growth		Social	X

BACKGROUND:

The following reports have previously been presented to Council regarding the above mentioned;

1. Sceale Bay Landfill Site – Waste Management Committee – May 2015
Recommendation:

WM06/15

Moved: Cr Quinsee

Seconded: Cr Trezona

The Committee having considered Report 4.6 ‘Sceale Bay Landfill site’ dated 07 May 2015 recommend to endorse the Manager, District Services and Chief Executive officer continue to negotiate a settlement.
CARRIED

2. Surfers Beach Access Road – Ordinary Council – June and September 2015

WM143/15 Moved: Cr Wheaton

Seconded: Cr Morgan

That Council form a Sub Committee of Mayor MacKenzie, Cr Wheaton, Cr Trezona Cr Stephens, and Manager, District Services to negotiate with the Department Environment, Water and Natural Resources regarding the proposed additions on Sceale Bay Road.
CARRIED

208/15

Moved: Cr Wheaton

Seconded: Cr Karp

That Council resolve the following concerning crown land at Q55, Q56, Q57 and Q58 in DP 93267;

1. Council support the amalgamation of Parcel Q57 DP93267 with A50 and A51 (adjoining allotments)
2. Council agree to close the Public Road Reserve and for it to be included as part of the Sceale Bay Conservation Park, on the provision that there is no cost to Council in relation to fees, charges and survey costs.
CARRIED

209/15 Moved: Cr Wheaton

Seconded: Cr Trezona

Council approve the 12m wide Public Road (Stairway) to adjoin to the existing Public Road. Council commence the roads opening and closing process and negotiations with the existing landholder to formalise the new Public Road to ensure it aligns with existing road infrastructure.

CARRIED

3. Sceale Bay Landfill Site & Surfers Beach Access – Ordinary Council – October 2015
CONFIDENTIAL

223/15

Moved: Mayor MacKenzie Seconded: Cr Stephens

1. That the Mayor and Manager, District Services meet with DENR on Friday 23rd October 2015.
2. Seek further legal advice if needed.
3. That the Mayor, Chief Executive Officer and Manager, District Services meet with the Landowner

CARRIED

The Waste Management Committee recommended to Council that the CEO be authorised to negotiate a settlement with the property owner of the closed Sceale Bay Landfill Site up to a maximum of \$15,000, and Council recommended negotiations commence regarding the formalisation of the correct alignment for the road entering Surfers Beach via a road opening and closing process.

The Manager, District Services and the Chief Executive Officer met with Murray Greenaway, owner of Plan D89639 Lt 92 and D93267 Sec 54 Hd of Wrensfordely, in which it has been identified Sec 54 is the location of the closed Sceale Bay Landfill Site and both Lt 92 and Sec 54 have located on them portions of the Surfers Beach Access Road.

The property owner was made an offer of \$15,000 plus legal fees, to settle the Sceale Bay Landfill Site, and agree to the Public Road Reserve realignment at Surfers Beach Access. This offer was rejected by the property owner. A further confidential report was presented to the October 2015 meeting with a further 3 options put forward, these options being a combination of property owner requests and staff recommendations. These recommendations were not accepted by Council and the recommendation to continue negotiations was adopted (See Item 3 above).

A meeting between the property owner, the Manager, District Services, Operations Supervisor and mayor was held on Monday January 11, 2015, to further discuss options.

The property owner stated he was not aware that the initial offer of \$15,000 plus legal fees to settle the Sceale Bay Landfill Site included that he was liable for the site, he believed that this offer was compensation and Council would continue to be liable for the site. This was not the intention from Council.

A number of options and items were discussed and the property owner identified that compensation was still sought for the Sceale Bay Landfill Site.

Land Details

Current Valuation for 78 34973003 (**Plan/Parcel:** D93267/QP54) – Site 202,000 Capital 295,000, When he purchased the land - Approx. May 2002 , Size of valuation – 377.2000 HA, Zoning of valuation – Coastal (\$782 / ha based on capital)

The site has been closed since approximately 2011, Council has not been given access to the site by the property owner since closure. The site has significantly revegetated in this time. The site is however still licensed (EPA) by Council at a cost of approx. \$1000 per annum.

If the site was owned by Council there will be ongoing maintenance costs including fence maintenance and fire prevention activities (mowing). Whilst the EPA currently have not requested ongoing monitoring activities outside (monthly) visual inspections as required in the closure plans, regulations may change in the future.

Quotes are currently being sought for Survey and Land Division and will be brought to the meeting.

Surfers Beach Access Road was identified by DEWNR as not being aligned within the current road reserve, with a portion of the road located on the above property owners land.

Council does have the option to reconstruct the road within the current road reserve and the Operations Supervisor has estimated this cost between \$15,000 - \$20,000, rubble in the area is not easily sourced. In addition to this clearance for the new road will require Native Vegetation Clearance approval by either payment or an environmental offset agreement being in place in an area of vegetation on another parcel owned by Council and approved by the Native Vegetation Department.

Council should also consider the potential community reaction to the realignment of this road within the existing road reserve, particularly around the clearance of the native vegetation.

The land owner at the meeting agreed that he was amenable to donate the land for the road, on the condition that compensation is provided for the Sceale Bay Landfill Site, however following the meeting further correspondence was received by which the property owner wished to treat the two matters separately and the road be considered following the decision of the landfill site.

OPTIONS:

Option 1

Sceale Bay Landfill Site

That Council pursue the option to subdivide a portion of land from (**Plan/Parcel:** D93267/QP54) in which the Sceale Bay Landfill Site was located with the following conditions;

1. That survey of such portion be in consultation with the Landowner.
2. That Council purchase the site area as agreed for a sum of \$15,000 (inc GST)
3. That Council be responsible for all costs associated with the subdivision of the land
4. That Council be responsible for all fencing costs associated with the parcel

Option 2

Sceale Bay Landfill Site

That Council pursue the option to subdivide a portion of land from (**Plan/Parcel:** D93267/QP54) in which the Sceale Bay Landfill Site was located with the following conditions;

1. That survey of such portion be in consultation with the Landowner.
2. That Council purchase the site area as agreed for a sum of \$1,200 per hectare (inc GST)
3. That Council be responsible for all costs associated with the subdivision of the land
4. That Council be responsible for all fencing costs associated with the parcel

RECOMMENDATION 1

That Council:

- (a) Pursuant to Section 90(2) of the Local Government Act, 1999, orders that all persons with the exception of the Acting Chief Executive Officer, Maxine J Hentschke, Acting Corporate Services Manager, Sandra Brice, Manager, Regulatory Services - Jennifer Brewis, Manager, District Services, Penny Williams, Operations Supervisor, Roger Quinsee and Minute Secretary, Judy Childs be excluded from attendance at the meeting for agenda item 11.23, relating to “Sceale Bay Landfill and Surfers Beach Access Road”.
- (b) The Council is satisfied pursuant to Sections 90 (2) and (3) (B)(i)(ii) and (D)(i)(ii) of the Act, the information to be received, discussed or considered in relation to this agenda item is related to a proposal to purchase land of a confidential nature.

RECOMMENDATION 2

That Council, having considered Report No 11.23, Sceale Bay Landfill & Surfers Beach Access, dated 21 January 2016 – Council Decision

RECOMMENDATION 3

That Council, having considered agenda item 11.23 relating to “Sceale Bay Landfill and Surfers Beach Access Road” in confidence under Section 90 (2) and (3) (B)(i)(ii) and (D)(i)(ii) of the Local Government Act 1999, pursuant to Section 91(7) of the Act orders that the discussion and the attachments to Report 11.23 be retained in confidence and not be available for public inspection until the matter is resolved with 12 monthly periodic reviews until that time.