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Dr Peter Boxall AO
Chairman
IPART
PO Box K35
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

FIT FOR THE FUTURE SUBMISSION: *Without prejudice*

RE: EUROBODALLA SHIRE COUNCIL IMPROVEMENT PROPOSAL (TEMPLATE 2)

I am responding to your call for public Fit for the Future submissions to the Expert Advisory Panel.

AIM

The aim of this submission, is to provide you, and the Minister for Local Government with sufficient cause to prepare Terms of Reference for the Auditor General to audit Eurobodalla Shire Council and make recommendations about its future.

KEY OBJECTIVES

1. Demonstrate that Council has overstated its 'Fit for the Future' claims in Template 2 and this is harmful to the Eurobodalla's future
2. Submit a compelling case to the Minister for Local Government that enables him to act in the best interests of the Eurobodalla community

INTRODUCTION

It gives me no pleasure to make this submission. Principally because it casts a shadow over many loyal, hardworking Eurobodalla Shire Council employees. My best hope is that through this process the Minister for Local Government will judge that he has sufficient cause to invite the Auditor General to conduct a Management Audit of Eurobodalla Shire Council, with scope to recommend a way forward.

Like many things in life, the credibility of the story-teller is critical to belief. It is my understanding that behind the scenes, some in Council are portraying me, among other things, as a 'disgruntled ex-Council employee'. This is a ruse. My role as Director for Community and Corporate Outcomes at Eurobodalla Shire Council ceased in the first week of August 2013. Since that time I have kept my own counsel. My decision to speak now is a direct result of Council's insistence that it has *no* responsibility to explicitly engage the community on Fit for the Future.

My personal tipping point came when Council conflated Micromex Research¹ **with** Fit for the Future (FFTF) community consultation requirements. A second tipping point was reached when I judged that Council exaggerated its capacity to meet FFTF benchmark ratios within agreed timeframes. A third tipping point occurred when I read Council's Attachment 5 – Advocacy Plan, which includes among other things, a photograph of "New pontoons at the highly used regional boat ramp at Hanging Rock, Batemans Bay" together with information that Council upgraded marine

¹ Micromex Research, Special Rate Variation, November 2014.

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infrastructure “in collaboration with the NSW Government through its Better Boating Program and Recreation Fishing Trust.”²

More will be said on this example, but for now, consider that Council, in its own words, published that it applied for, and spent public money on ‘new pontoons’ that are within the boundaries of the Batemans Bay Marina Crown Land Lease held on Lot 11 Deposited Plan 124295.³

LEGISLATIVE AND STRATEGIC POLICY FRAMEWORK

The thrust of my submission will endeavour, at all times, to be consistent with the Local Government Act 1993 (as amended), the Independent Local Government Review Panel’s goal for “a more sustainable system of democratic local government with added capacity to meet the needs of local and regional communities and to be a valued partner of State and Federal governments”⁴ and Fit for the Future Criteria.

In addition to legislative and policy frameworks, the document seeks to deliver an evidence-based response. Anecdotal information is sparingly used to add context.

References appear in footnotes throughout the document.

THE COUNCIL RESOLUTION THAT ENDORSED COUNCIL’S SUBMISSION

Refer to Attachment 1: Page 2, of Template 2, Council Improvement Proposal (Existing Structure), which includes the Council resolution endorsing the submission. For context, Council does not show that on the day: three councillors were absent, two councillors voted in the negative and four councillors voted in the affirmative for Council’s Fit for the Future improvement Proposal.⁵

BACKGROUND

The IPART Special Variation Determination (May 2015) reports that Eurobodalla Council originally applied for a special variation of 5% plus the expected rate peg of 3% (i.e. an 8% rate rise). Council responded to community affordability concerns and reduced its application to 6.5%.

IPART approved a 6.37% rate rise, made up of the rate peg in 2015-16 of 2.4%, suggesting that the special variation in 2015-16 is 3.97%. In its determination IPART noted that the “council has assumed a rate peg of 3% in future years. The special variation percentage approved *will not change* to reflect the actual rate peg in those years.”⁶ IPART additionally noted that, “*Over the longer term, the additional revenue will improve council’s financial sustainability indicators, ... (which won’t reach a surplus)...*”⁷

² Eurobodalla Shire Council – FFTF Proposal, Attachment 5 – Advocacy Plan, p. 36

³ Lease information pertaining to the Batemans Bay Marina Crown Land Lease, received from Crown Lands, in writing, on 29 July 2015

⁴ Revitalising Local Government: Final Report of the NSW Independent Local Government Review Panel, October 2013, p. 10

⁵ Eurobodalla Shire Council, Ordinary Meeting of Council, 23 June 2015, GMR15/014 Fit for the Future – Council’s Improvement Proposal. For verbatim records, view the archived webcast from 23 June 2015.

⁶ IPART, Eurobodalla Shire Council special variation for 2015-16 – Determination May 2015 p.2

⁷ IPART, Eurobodalla Shire Council special variation for 2015-16 – Determination May 2015 p.3

OVERVIEW

Eurobodalla Council's Fit for the Future Improvement Proposal (June 2015) tells a remarkable story of rags to riches in just 6 months. Indeed, in a recent letter to the local newspaper, the General Manager of Eurobodalla Shire Council declared Eurobodalla Shire Council "Super Fit".⁸

Contrast the General Manager's 'Super Fit' claim with council's recent financial background and one sees a story of conflicting scenarios. It appears that each scenario is derived for the purposes of 'selling' the Long Term Financial Plan, Special Rate Variation; and remarkably now, from a position where an 8% Special Rate Rise would not return the General Fund to surplus by 2025, the community is expected to trust that a 6.37% Special Rate Rise will return the operating budget to a modest surplus by 2017-18.

Fit for the Future decision-makers it is reasonable to ask, 'How credible are Eurobodalla Shire Council Fit for the Future claims?'

In my judgment, and in all probability, Council has overstated its improvement claims to "meet all seven Fit for the Future benchmarks through phased improvements within 10 years."⁹ If proved, such exaggeration introduces unknown, unqualifiable, and unquantifiable strategic risk to the Shire's future.

Compounding credibility are technical problems with Council's FFTF claims. This includes, among other things, Council's persistent reference to a 10 year financial accounting period, which is consistent with Council's Long Term Financial Plan but not consistent with accountabilities within the Fit for the Future timeframe of 5 years.

Indeed, in recent correspondence to IPART, Council argued that to achieve financial sustainability, "A minimum of 10 years to show improvement is necessary for the benchmark of 100%."¹⁰

There is no supporting evidence to show Council did any more than accept the Independent Local Government Review Panel's starting point. Namely, that council is a '*no change council within the South East Joint Organisation*'.

In correspondence to IPART concerning the Assessment Methodology the General Manger responded that Criterion 1 – Scale and Capacity "*This criteria is not relevant to Eurobodalla Shire Council*".¹¹

Additionally, Council has not specifically addressed assessment criteria that falls under the heading "Other Considerations".

The exception being the Shire's water utility performance. Council argues that water and sewer utilities should be included in the Own Source Operating Revenue Ratio.¹² (*As an aside, Council's argument ignores that IPART seeks, within reason, to have a level playing field for the purposes of rate pegging.*)

⁸ "We are super-fit", Bay Post/Moruya Examiner, July 8, 2015, p.12

⁹ Eurobodalla Shire Council, Fit for the Future Improvement Proposal June 2015, p.4

¹⁰ Eurobodalla Shire Council, Letter from Dr Catherine Dale, General Manager to Dr Peter Boxall AO, Chairman IPART, 25 May 2015 (ESC Reference: E12.6443)

¹¹ Eurobodalla Shire Council, Letter from Dr Catherine Dale, General Manager to Dr Peter Boxall AO, Chairman IPART, 25 May 2015 (ESC Reference: E12.6443)

¹² Eurobodalla Shire Council, Letter from Dr Catherine Dale, General Manager to Dr Peter Boxall AO, Chairman IPART, 25 May 2015 (ESC Reference: E12.6443)

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Also of concern, most of council's Benchmark Ratio Tables display Financial Year 2014-15 as the year against which future benchmarks are measured, suggesting that Council has included, as yet *un-published* financial data from 2014-15. Apart from the scope to misalign and misdirect the assessment process, the practice introduces unknown and unquantifiable risk.

This observation is apposite, in the full knowledge that Financial Statements for year ending 30 June 2015 are not yet complete, have not yet been to a meeting of council, do not have Councillors and Management sign-off, and are not yet published.¹³

To illustrate how the inclusion of Financial Year 2014-2015 data could distort or skew ratios in Council's Improvement Proposal one only needs to look to Council's (published) Financial Statement for the year ended 30 June 2014.

In the 2014 Financial Statement, Council reported a budget for Total Expenses from Continuing Operations as \$93.973million. The Actual spend was \$97.020million. The difference being an *Un-budgeted* spend of \$3.047million.¹⁴ A budgeting error in the Forward Estimates, of this scale, would significantly affect financial gains from the Special Rate Increase commencing in 2015-16.¹⁵

In my view, council should adopt a more conservative outlook for the Forward Estimates based on other factors, including that Council originally applied to IPART for an 8% rate increase for three years (or 25.97% cumulative), and subsequently obtained approval for 6.5% (20.78% cumulative).

The difficulty with Council's FFTF Improvement Proposal is derived from Council's own words.

Among other things, the Long Term Financial Plan (LTFP) states that, "Whilst the financial indicators have improved they still do not meet all the benchmarks as set in the Fit for the Future criteria. In particular, the Financial Sustainability indicators are not met."¹⁶

In Section 7 Sensitivity Analysis, the LTFP states that, "Council expects significant General Fund operating deficits irrespective of the external financial environment. ...If Eurobodalla Shire had a significant event it could increase the infrastructure backlog and potentially render a substantial portion of the community and transport network unsatisfactory. Such an event would significantly change the infrastructure ratios modelled."¹⁷

Additionally, the LTFP modelling shows the General Fund SRV Case in deficit over the next 10 years and that in 2024/25 the deficit would be (\$4.414m).¹⁸

Arguably the anomaly most evident in Council's Improvement Proposal appears in: *Table 233: Summary of Council's performance against the benchmarks after the implementation of Council's Improvement Plan*.¹⁹

To demonstrate, consider that IPART Assessment Methodology requires every assessable benchmark to be equivalent to a 3 year average. On balance it seems improbable that Council could

¹³ Refer to Section 413(2)(c) of the Local Government Act 1993 (as amended)

¹⁴ Eurobodalla Shire Council, Financial Statements and Special Schedules For the Year Ended 30 June 2014, p. 4

¹⁵ The estimated income generated from the Special Rate Variation increase is approximately \$0.9million, \$1.8million and \$2.8million at years one, two and three respectively. See Eurobodalla Shire Council, Delivery Program 2013-2017 Operational Plan 2015-16 p. 12

¹⁶ Eurobodalla Shire Council Long Term Financial Plan 2015-25, p.26

¹⁷ Eurobodalla Shire Council Long Term Financial Plan 2015-25, p.40

¹⁸ Eurobodalla Shire Council Long Term Financial Plan 2015-25, p.32

¹⁹ Ibid. p.78

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legitimately claim that its Building and Infrastructure Asset Renewal Ratio could improve from 64.11% in 2014-15 to 98.77% in 2015-16 and 108.50% in 2016-17 and 121.03% in 2017-18 followed by a declining metric of 93.44% in 2018-19 and 93.55% in 2019-20.

A further unsettling aspect of Council's Improvement Proposal is the comprehensive list of infrastructure projects in Attachment 5 – Advocacy Plan.²⁰

The document reads more like a wish list and lacks the very simplest attributes necessary to effective planning, monitoring and assessment. Basic SMART principles (i.e. Specific, Measurable, Achievable, Realistic, and Timing) would have, at the very least, provided an accessible and assessable framework.

Relative shortcomings include failure to identify projects with the greatest strategic priority, council's resource capacity (people and money), failure to demonstrate source data, risk strategies, contingency plans.

Any failure to apply basic strategic planning principles to Council's Infrastructure Advocacy Plan shows a lack of discipline and potential for unknown and potentially uncontrolled risk.

Council's use of phrases such as 'life blood' aim to resonate with the reader but this is hardly a measure upon which to determine priority settings. Attachment 5 lacks rigour and regrettably diminishes the value and credibility of Council's statements of claim.

Several listed projects in Attachment 5 stand out for increased scrutiny and are individually addressed later in this document.

Community Consultation

In my judgment, Council's *un-willingness* to share meaningful Fit for the Future information with the community about Local Government Reform has diminished the community's ability to understand what Fit for the Future means for them personally, and the Shire more broadly.

It is also my judgment that Council has conducted limited community consultation, using methods best described as less-than-authentic.

For example on 28 April 2015 the Mayor wrote in his weekly column "Fit for the Future is the clever and catchy name that the NSW Government have given to their long waited recommendations for the reform of local government. While it's currently topical on the blogs and in media, there is nothing new about the need for councils and their communities to look at how to improve their financial position."²¹

In the same column the Mayor wrote, "This week our annual budget and plans will go on public exhibition and once again I urge you to read them and let us know your views, and come along to one of the three information sessions if you can. What are your thoughts on the mix of services we plan to provide? The projects we are delivering? The capital works schedule? How we can improve our financial situation? As we won't hear if our application for a special rate variation is successful till mid may – this year's budgets and plans are delivered with two scenarios – one with a rate variation and one without. You

²⁰ Eurobodalla Shire Council Fit for the Future Improvement Proposal, Attachment 5 Advocacy, Infrastructure Driving the NSW Economy, Version 1.1 -20 June 2015 pp.1-58

²¹ Eurobodalla Shire Council, Mayor's Column, "<http://www.esc.nsw.gov.au/inside-council/council/councillors/councillor-lindsay-brown/mayors-column/column-posts/2015-column-posts/have-your-say-on-councils-future-plans-and-budgets>

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can attend a session and meet with Councillors and staff at the Batemans Bay Library on Wednesday 13 May at 6pm, Moruya Markets on Saturday 16 May, and the Narooma Library Monday 18 May at 6pm.”²²

The most compelling evidence that Council has assiduously worked to keep the community disengaged is in the archived Council Webcast of Council’s Ordinary Meeting of 23 June 2015.²³

During webcast discussion of Council’s Fit for the Future Improvement Proposal, Councillor Neil Burnside stated that council “...*didn’t deign to impose the process on the community.*” Cr Burnside asked the General Manager to describe what has been done.

In her response, the General Manager stated that “...*we have not spoken about Fit for the Future but what we have done.*”²⁴

To demonstrate her point the General Manager spoke to the tabulated list of ‘community engagement’ reaching back to September 2010.²⁵

Another way of understanding the General Manager’s message might be to say, ‘*It is business as usual.*’

Also at the 23 June 2015 meeting, the General Manager stated the community was invited to attend three information sessions, in Batemans Bay, Moruya and Narooma, about Council’s revised Delivery Program 2013-17 and Draft Operational Plan and Budget 2015-16 which was true. (*Apropos information in the Mayor’s column mentioned above, the community understood the information sessions to be specifically on the topic of annual budgets and plans.*)

However the General Manager’s claims she presented Council’s framework for the Fit for the Future Improvement Proposal are *un-true.*”²⁶

I attended the Information Session at Batemans Bay and confirmed my observations with other attendees. There is a collective viewpoint that the so-called Budget and Plans Information Session took place.

It consisted of the General Manager describing the Delivery Program 2013-17 Operational Plan & Budget 2015-16 (DP/OP & B) including special rate variation.

The General Manager encouraged the audience to view the DP /OP & B as ‘*Council’s Plan*’ (distinct from the Community’s Plan).

The General Manager focused on pages 16 and 17 of the DP / OP & B, which details the distribution of Council’s total rates income across the services Council delivers.

The General Manager did not volunteer Fit for the Future information.

²² Ibid.

²³ Eurobodalla Shire Council, Archive of council meeting, Ordinary Meeting, Date 23 June 2015, 10am filesize:544mb, Order of business, GMR15/014 Fit for the Future – Council’s Improvement Plan

²⁴ Eurobodalla Shire Council, Archive of council meeting, Ordinary Meeting, Date 23 June 2015, 10am filesize:544mb, Order of business, GMR15/014 Fit for the Future – Council’s Improvement Plan

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²⁶ Eurobodalla Shire Council, GMR15/014, Report to Ordinary Meeting of Eurobodalla Shire Council Held on Tuesday 23 June 2015, p. 14

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When asked by a member of the audience about Council's response to Fit for the Future, the General Manager stated that "Eurobodalla Council is fit for the future." No information was offered from Council's FFTF improvement proposal.

As verified by others in attendance, the General Manager explained that Council had recently received the Assessment Methodology from IPART. She held up a copy of the IPART document but did not expand on it.²⁷

To summarise Council's attitude to both the Fit for the Future reforms and FFTF community consultation, one only needs to look to Council's own words.

*"In many areas, Council's Improvement Proposal will not be a significant change in direction for our community."*²⁸

Indeed the General Manager's response to IPART on the FFTF Assessment Methodology demonstrates that Council has not evolved to meet the challenges of Fit for the Future reforms as evidenced in the General Manager's statement that, *"The comprehensive consultation process undertaken during the Integrated Planning and Reporting process is considered appropriate for ESC as it has already been assessed as having scale and capacity."*²⁹

SCALE AND CAPACITY

If it is Council's view that, *"Council's Improvement Proposal will not be a significant change in direction for our community"*³⁰ then the improvements across all benchmark ratios require forensic examination to be explicable.

A disappointing aspect of the Council's FFTF Proposal is the persistent use of headline statements that lack evidence from underpinning research, analysis, and evaluation within a context of strategic priority. Council's use of own reports to Ordinary Meetings of Council does not represent an independent review of data.

It is as if, Council believes the IPART Assessors lack critical thinking skills and that so long as the rhetoric sounds plausible, IPART will accept what Council says without scrutiny.

The value of IPART's Fit for the Future process is the guarantee that highly skilled Assessors are responsible for the careful evaluation of council proposals.

In the case of Eurobodalla Shire Council's FFTF proposal, there is an absence of credible data, which affects the veracity of all benchmark ratios. The two least credible ratios being the Building and Infrastructure Asset Renewal Ratio with an average 3 year starting point of 64.11% improving in 2019-20 to 93.55%; and the Infrastructure Backlog Ratio with an average 3 year starting point of 15.34% reducing to 9.82%³¹

²⁷ Statement by Dr Catherine Dale, General Manager Eurobodalla Shire Council, at Batemans Bay Library, May 13, 2015.

²⁸ Eurobodalla Shire Council, FFTF Proposal, Executive Summary, p.5

²⁹ Correspondence from Dr Catherine Dale, General Manager Eurobodalla Shire Council to Dr Peter Boxall AO, Chairman IPART, 25 May 2015, ESC Reference E12.6443

³⁰ Ibid.

³¹ Eurobodalla Shire Council, FFTF Proposal, Section 4: How will Council's plan improve performance, Table 233, p.78

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Claims that “Council’s Improvement Proposal ...will contribute to achieving five of the seven benchmarks in full and enable consistent improvement in the Building and Infrastructure Asset Renewal and Infrastructure Backlog Ratios by 2019-20”³² is, in my opinion, a clever piece of misdirection that Eurobodalla Shire Council must explain in full.

Adding to doubts about the veracity of Council’s FFTF claims are many unresolved, hot topic issues that bear on Council’s claim to be ‘Super-Fit’³³.

The more contentious being council strategies and policies that deal with Sea Level Rise, Rural Land Use, Coastal Zone Management and incomplete major infrastructure projects. Each topic is deserving of its own submission.

However, for this submission I choose not to deal with these worthy issues.

Instead, I will focus on matters that I consider go to Council’s fit for purpose. I interpret ‘fit for purpose’ to closely align with the conditions that collectively go to Scale and Capacity, and within the meaning of the criterion as determined by IPART.

In order to provide examples, I selected what I euphemistically call ‘Top 5 Concerns’.

There are, of course other examples to draw on, but for the purpose of this submission the selection provides an insight to the practices and behaviours that have a direct bearing on Council’s capacity to be reliably fit for the future.

TOP 5 CONCERNS

1. Council’s Leadership Team
2. Staff recruitment and retention
3. Infrastructure – Priority Settings and Decision-making
4. North and Perry Street Traffic Lights
5. Community Strategic Plan

COUNCIL’S LEADERSHIP TEAM

On 20 August 2013, the Bay Post/Moruya Examiner ran with a headline, ‘Council restructures’.

In a media statement the community was informed that Council had agreed to restructure, reducing the number of directors from three to two. The General Manager, Dr Catherine Dale justified the decision saying that “the structure would reduce costs”.

According to a Council spokeswoman, the Director Community and Corporate Outcomes position would become redundant and the functions reallocated to other areas in the organisation.³⁴


Contrast the restructure approved by Council in August 2013 with the current publication of Council’s leadership team:³⁵

³² Eurobodalla Shire Council, FFTF Proposal, Section 4: How will Council’s plan improve performance, p.78

³³ “We are super-fit”, Bay Post/Moruya Examiner, July 8, 2015, p.12

³⁴ Bay Post / Moruya Examiner, Council restructure by Kerrie O’Connor, Aug. 20, 2013, 5:13pm (<http://www.batemansbaypost.com.au/story/1718246/council-restructures>)

³⁵ Eurobodalla Shire Council Organisation Structure – <http://www.esc.nsw.gov.au/inside-council/council/organisation-structure>

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- General Manager
 - Director Infrastructure Services
 - Director Planning and Sustainability Services
 - Director Finance and Business Development
 - Director Community, Arts and Recreations Services
 - Executive Manager, Communications and Tourism

Areas of concern:

In the Eurobodalla Shire Council 2013-14 Annual Report, the leadership team is defined as the General Manager, two Directors and three Divisional Managers.³⁶ Currently on Council's website the three, formerly identified Divisional Managers are respectively described as Directors and an Executive Manager, which begs the question, 'Has Council complied with the Local Government Act?'³⁷

Significantly, no credible evidence could be found to show that Councillors have made a re-determination of Council's existing structure. Again due to a lack of evidence, it appears that the three former Divisional Managers were promoted (in place) respectively to Director and Executive Manager. If true, then it is probable that Council is in breach of the Local Government Act.

Such practice, if proved, leads to questions of professional competency, and ability to lead and manage the operational effectiveness of Council. It also goes to the demonstrated ability of the position-holders to perform the roles and responsibilities of senior officers, in accordance with legislative and regulatory frameworks.

Council's less than transparent, merit-based recruitment process, affects how external agents perceive Council's governance arrangements, and its capacity for transparency and accountability. In short, Senior Staff appointments require a merit based recruitment process that accords with legislative requirements. Given the background and perceived circumstances of the appointments it seems probable that Council has breached the Local Government Act (1993).

Specifically Chapter 11 – How councils are staffed. Including:

- Part 1 – Organisation Structure, Sections 332 and 333
- Part 2 – The General Manager and Other Senior Staff, Sections 337, 338 and 339
- Part 5 – Other Provisions of Concerning Staff, Section 348 (1) (2), and 349

Should it be proved that Council has appointed Senior Staff outside legislative requirements then on a fundamental level, Council's capacity to deliver fit for purpose services comes into doubt.

STAFF RECRUITMENT AND RETENTION

Within its Fit for the Future Improvement Proposal, Council states that, "*While Council has reported deficits in the General Fund in recent years, a return to modest surplus is forecast in future years...*"³⁸ Among the list of initiatives contributing to this forecast is a '*recruitment freeze and other workforce measures*'.³⁹

³⁶ Eurobodalla Shire Council, 2013-14 Annual Report, Our Organisation, p.19

³⁷ Eurobodalla Shire Council Organisation Structure – <http://www.esc.nsw.gov.au/inside-council/council/organisation-structure>

³⁸ Eurobodalla Shire Council, FTF Improvement Proposal, 1.2 Scale and Capacity, p.8

³⁹ Ibid.

Area of concern

Contrast this statement with some readily available facts. Council, in its application to IPART for a 2015-16 Special Rate Variation identified that during the 3-year special variation period, council plans to spend \$0.8million for additional staff costs for two project managers.⁴⁰

In Council's Fit for the Future Improvement Proposal, Council quotes a staff *"turnover rate of 7.41% in 2013-14..."*⁴¹

This statistic would say more if disaggregated into staff cohorts. For example since the start of the 2013-14 financial year, published records show that Council is losing professional staff.

A sample of advertised professional vacancies follows:

- Divisional Manager Strategic Landuse Services⁴²⁴³
- Divisional Manager Development Services⁴⁴⁴⁵
- Divisional Manager Works⁴⁶
- Coordinator Natural Environment Planning
(personal view – this is a significant loss to Council. As the former position holder was 1 of 5 Accredited Bio-Banking Assessors in NSW)
- Manager Arts and Culture
(personal view – significant loss to Council as the former position holder was instrumental in bringing the prestigious Basil Sellers Art Prize to the Eurobodalla Shire.)

Contrast the loss of professional staff with Council's stated intention to spend \$0.8million for additional staff costs for two project managers. Another way to consider the impact that losing professional staff has on Council's operational outputs is to consider a proxy measure of cost. In this instance, a reasonable proxy is the cost to employ an additional two project managers (or \$0.8million). It is assumed that the project managers would enable council to recover momentum following the loss of key staff.

The combined loss of key staff, and the requirement to meet council's operational requirements from funding sourced from the 2015-16 Special Variation bears on Council's scale and capacity claims.

INFRASTRUCTURE – PRIORITY SETTINGS AND DECISION-MAKING

In my judgment, Eurobodalla Shire's scale and capacity is adversely affected by poor infrastructure priority settings and decision-making.

There is a long-held practice in Council to apply for and accept infrastructure funding. To illustrate the process, consider a report to Council that begins with the following statement:

⁴⁰ IPART, Eurobodalla Shire Council's application for a special variation for 2015-16: Local Government – Determination May 2015, p.4

⁴¹ Eurobodalla Shire Council, FTF Improvement Proposal, 1.2 Scale and Capacity, p.9

⁴² Australian Local Government Job Directory Issue 6, Monday 16 February 2015

⁴³ Australian Local Government Job Directory Issue 7, Monday 23 February 2015

⁴⁴ Australian Local Government Job Directory Issue 6, Monday 16 February 2015

⁴⁵ Australian Local Government Job Directory Issue 7, Monday 23 February 2015

⁴⁶ http://www.govjobs.com.au/show_government_job.php?title=division_manager_works_73905

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'Council has successfully secured grant funds from (*insert name of funding agency*) under the (*insert name of program*). ...These grants have been accepted to secure the funding. Followed by a recommendation that Council endorse the actions taken in accepting the offers of grant funding.'⁴⁷

Council staff consistently demonstrate an ability to apply for and secure grant funds. Hidden from view, and largely unconsidered by staff and Councillors are the disruptive impacts that small grants can have on strategically important projects.

Areas of concern

- ***Surf Beach Employment Lands***

Council's infrastructure advocacy plan⁴⁸ does not mention the Surf Beach Employment Lands, despite it being listed on Council's website as a major project.⁴⁹

Anecdotally, around 3 to 4 years ago (possibly longer), Council applied for and received Economic Development funds. It is understood that a condition of the funding was to use the funds within an agreed timeframe. If the funds were not used, Council must return the funds to the funding agency.⁵⁰

It is understood that the purpose of the Economic Development funds was to remove the decommissioned polishing ponds and rehabilitate Surf Beach Employment Lands. This would enable the establishment of a business, technology, bulky goods and light industrial precinct in accordance with the land's B5 – Business Development zoning.

It is a matter of public record that the removal of the polishing ponds and rehabilitation of the business development land remains incomplete. The consequence being that a valuable asset is not delivering intended economic benefit to the Shire.

In my judgment this major (incomplete) project, requires close examination of what Council did to acquit expenditure of time-limited State Government Economic Development funds.

Key attributes of an audit would be to investigate the terms and conditions of the funding, with particular focus on Council's acquittal claims, timeframes and deliverables.

Key questions for the Auditor General might also be: Did Council reallocate the funds? *If yes*, did this affect Council's past and present Delivery Programs and Operational Plans? What effect, *if any*, did this have on Council's bottom line? Where are the Economic Development funds now?

- ***New pontoons at Hanging Rock, Batemans Bay***

Council acknowledges there remains a substantial amount of work to do to maintain, renew, and upgrade marine infrastructure,⁵¹ which is why it is inexplicable that council showcased its installation

⁴⁷ Examples of this entrenched practice can be found in various Reports to Ordinary Meetings of ESC

⁴⁸ Eurobodalla Shire Council, Fit for the Future Proposal, Attachment 5 – Advocacy Plan

⁴⁹ Eurobodalla Shire Council, <http://www.esc.nsw.gov.au/inside-council/project-and-exhibitions/major-projects-and-works/surf-beach-employment-lands>

⁵⁰ Anecdotal information is the result of conversations with people who have taken an interest in this project over many years.

⁵¹ Eurobodalla Shire Council, FFTF Improvement Proposal, Attachment 5, p.36

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of two new pontoons, *using public money*,⁵² within the private sector Crown Land Lease for Batemans Bay Marina (Lot 11 DP 124295).⁵³

Crown Lands has confirmed (in writing) that the Lease does require the Tenant (Batemans Bay Marina) to maintain the improvements on the Premises.⁵⁴ Council made infrastructure improvements to Lot 11 DP124295.⁵⁵ *“Crown Lands is aware that Council and the Leaseholder are in discussions in relation to the boat ramp and the best way to deal with the boundary issue.”*⁵⁶ Batemans Bay Marina shares a boundary with a Council controlled reserve. Access to the boat ramp and pontoons is from the Council reserve.

Compounding, the decision to install infrastructure on property not under Council’s jurisdiction, it seems a further error of judgment by Council to publish that it is advocating, *“The NSW Government should [also] give consideration to low interest finance arrangements subject to agreement by the Marina lessee to an accelerated delivery program. This could be achieved through renegotiated lease arrangements, linked to maintenance dredging of the Batemans Bay sand bar.”*⁵⁷

Key attributes of an audit could be to discover what steps Council took to ensure it did not infringe the Leaseholder’s rights, and that it was acting within its jurisdiction. Related to this is the need to investigate the grant application process, and grant acquittal process.

Council’s own words and photographic evidence of the new pontoons within its FFTF proposal suggests Council has not learned from its mistake. An audit could make recommendations to prevent an error of this scale in the future.

Apposite to the matter at hand, is the need for the Auditor General to examine Council’s published statement advocating *“low interest finance arrangements subject to the agreement of the Marina Lessee to an accelerated delivery program”* and that this *“could be achieved through renegotiated lease arrangements.”*⁵⁸ Apropos possible conflicts of interest matters, there are, in my judgment, commercial-in-confidence considerations. It is unclear that Council consulted the Lessee, or that the Lessee gave permission for sensitive commercial information to be included in Council’s FFTF proposal.

If Council published advocacy information concerning low interest finance without the Lessee’s knowledge or approval then Council statements in Attachment 5, page 21 has (in my judgment) the potential to bring the Lessee, and Eurobodalla Shire Council into disrepute.

⁵² Eurobodalla Shire Council, FFTF Improvement Proposal, Attachment 5, p.36

⁵³ To access boundary information for each lot for free using the Land and Property Information Portal go to www.maps.six.nsw.gov.au Use the search bar, select Advanced Search, and search by Lot and Deposited Plan

⁵⁴ Lease information pertaining to the Batemans Bay Marina Crown Land Lease, received from Crown Lands, in writing, on 29 July 2015

⁵⁵ To access boundary information for each lot for free using the Land and Property Information Portal go to www.maps.six.nsw.gov.au Use the search bar, select Advanced Search, and search by Lot and Deposited Plan

⁵⁶ Lease information pertaining to the Batemans Bay Marina Crown Land Lease, received from Crown Lands, in writing, on 29 July 2015

⁵⁷ Eurobodalla Shire Council, FFTF Improvement Proposal, Attachment 5, p.21

⁵⁸ Eurobodalla Shire Council, FFTF Improvement Proposal, Attachment 5, p.21

NORTH AND PERRY STREET TRAFFIC LIGHTS

Recently Council approved the installation of traffic lights at the T-intersection of North Street and Perry Street, Batemans Bay.

The lights were installed against strong opposition from the community, including the Bay Chamber of Commerce. According to the Chamber's website, the "Chamber was credited with stopping the traffic lights going ahead in 2012."⁵⁹ This reference to the same matter occurring in 2012, suggests the North and Perry Street traffic lights has a contentious history.

Areas of concern

Council made its case for the installation of traffic lights on North and Perry Streets, Batemans Bay based on the needs of people with a disability.

However, there is a perception that Council has used the needs of the disabled to justify the installation.

It was reported in the local press on 10 July 2015 that "*Local Government Super has bought three Batemans Bay properties, including the Clyde River Motel, with a view to upgrading the Bridge Plaza and expanding its car park by 80 spaces. ...The fund, which owns Bridge Plaza and the Village Centre, has been working with Eurobodalla Shire Council and expects works to be completed by June 2017.*"⁶⁰

The Batemans Bay Parking Study by Bitzios for Eurobodalla Shire Council based its 2011 study on information supplied by Council, and from discussion with Council officers. At the time, it was known that six major developments were planned for Batemans Bay. Two of the six major developments included:

- Bridge Plaza – a combination of 9,470m² of retail and 20,680m² of residential (166 apartments) in block 34
- Redevelopment of the Clyde River Motel (including 46 hotel rooms/serviced apartments, 10 residential apartments, a restaurant and a retail shop) in block 34

The reported development of the Bridge Plaza and carpark upgrade appears to be consistent with the findings and recommendations of the Batemans Bay Parking Study (Study) by Bitzios Consulting, which Council adopted at its Policy and Strategy Meeting held 1 November 2011⁶¹

The heightened sensitivity around this matter requires further examination to restore community confidence that Council did indeed follow a transparent and accountable process.

To restore community confidence over this issue, the Auditor General might examine, what Council undertook to do, *if anything*, to assist Local Government Super purchase properties adjoining the existing Bridge Plaza carpark. Also the significance, *if any*, of the proximity of the Clyde River Motel to the contentions North and Perry Street traffic lights, and Council's decision to proceed with the installation against community wishes.

⁵⁹ Bay Chamber reaffirms opposition to traffic lights, baychamber.com.au posted 11 June 2014

⁶⁰ Local Government Super plans Bridge Plaza, car park upgrade, batemansbaypost.com.au by Carmen McIntosh, July 10, 2015

⁶¹ Eurobodalla Shire Council, Policy and Strategy Meeting, 1 November 2011, Minute PSM 11/69, <http://www.esc.nsw.gov.au/council-services/works/traffic-studies/batemans-bay-parking-study/Batemans-Bay-Parking-Study.pdf>



COMMUNITY STRATEGIC PLAN

In my view Council has lost its way. The most telling evidence of this can be understood within the context of Collaborative Communities: Objectives 7 and 8 of the Community Strategic Plan.

Respectively the objectives remind us to strive to be an engaged and connected community; a community willing to work together to achieve our goals.

Areas of concern

In my judgment, Council's drive to generate revenue has led to practices that increase risk as evidenced by the examples outlined in this submission. Another dimension of the perceived dash for cash is that Council is fast establishing a monopoly over community grants to the possible exclusion of some groups.

For example, Council applies for grants that it cannot deliver. Evidence of this appears in Council's 2014 Financial Statements. The cost to council to outsource community care was \$626,000 in 2013, and \$452,000 in 2014.⁶² The knock-on effect to the beneficiaries of the grant funding is to receive a smaller slice of the pie.

Likewise, Council derives revenue from a range of charges applied to grants, which it then distributes across multiple lines of operations.⁶³

Council would argue this is a win-win outcome. However, the behaviour is not unlike the big banks, or large supermarkets, in time it squeezes the little guy out.

Our community strategic plan promotes a one community philosophy. When council excludes volunteers from community infrastructure projects our community becomes less resilient. We are less connected and more reliant on Council. When Council wins the majority of grants and brokers a deal with another provider, capacity in the community becomes less.

Council needs to understand the effect it is having on community groups. Significant consequences include unemployment and the cessation of operations. Unlike Council, when funding runs out, Council picks up the salary bill for a permanent employee. Small NGOs and Not for Profits do not have the same buffer.

Council, when it next engages the community on the Community Strategic Plan needs to ask how it can become a provider of business intelligence rather than a competitor in the same space.

CONCLUSION

The matters raised in this submission are, to the very best of my knowledge, based in fact. For almost two years I have watched from the sidelines and witnessed, what I perceive to be an increasing disenfranchisement of the community.

Today, with others, I add my voice to the call for much needed reform. The Eurobodalla Community deserves a better deal.

⁶² Eurobodalla Shire Council, Financial Statements for the year ended 30 June 2014, p.32

⁶³ Eurobodalla Shire Council, Financial Statements for the year ended 30 June 2014, pp. 22-23



RECOMMENDATION

THAT the Minister for Local Government invite the Auditor General to conduct a Management Audit of Eurobodalla Shire Council, with scope to recommend a way forward.

I have copied my letter to the Hon. Paul Toole MP, Minister for Local Government, and my local member the Hon. Andrew Constance MP, Minister for Transport and Infrastructure.

Yours sincerely,

Kerry Foster
31 July 2015