

5.6. DETERMINATION AS TO WHETHER ELECTED MEMBERS WILL BE SUBJECT TO PAYG WITHHOLDING TAX

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RECOMMENDATION

That Council resolves to become an eligible governing body subject to Section 446-5 of Schedule 1 of the *Taxation Administration Act 1953* effective 18 April 2020, and requests that officers advise the Australian Taxation Office accordingly.

Or

That Council does not become an eligible governing body effective 18 March 2020 and advise the Australian Taxation Office accordingly.

EXECUTIVE SUMMARY

This report has been prepared so that the elected members can make a determination as to whether they wish to be subject to Pay As You Go (PAYG) withholding tax, pursuant to Section 446-5 of Schedule 1 of the *Taxation Administration Act 1953*.

BACKGROUND

Section 446-5 of Schedule 1 of the *Taxation Administration Act 1953* allows Councillors by unanimous resolution to elect to be treated as PAYG taxpayers by becoming an eligible governing body. Such an election has nothing to do with the quantum of remuneration. It solely relates to the way in which Councillor remuneration is to be taxed.

The practical effect of such a resolution is that Councillors would be treated as employees, and subject to PAYG withholding tax. Any non-cash benefits provided by Council would be subject to the provisions of the Fringe Benefits Tax (FBT) legislation.

COMMENT

Under the provisions of the current Local Government legislation, Councillors are not deemed to be employees of the Local Government to which they have been elected.

One outcome of this situation is that Councillors are not subject to the PAYG withholding tax system, and therefore must make alternative arrangements for remitting tax instalments to the Australian Taxation Office (ATO). Historically, this situation has not suited all elected members, with some showing a preference to have PAYG tax instalments deducted from their Council remuneration. A number of Councils across Queensland have opted to have tax instalments deducted; however, others have not. This has been a matter of choice for those respective Councils.

Australian Business Number (ABN)

If Councillors elect not to be employees, their ability to claim Income Tax Credits (ITCs) would depend on their ability to register for an ABN. To register for an ABN, an individual needs to carry on an enterprise. Whilst an “enterprise” is exhaustively defined in the relevant legislation, there is a specific exclusion in the definition for activities undertaken as a member of a Local Government body established under State law. As such, Councillors are not able to register for an ABN, obtain GST registration, or claim ITCs.

Non PAYG

If Councillors were to revoke the recommendation within this report, Council would not be required to withhold tax from Councillor remuneration. Councillors would be required to remit quarterly to the ATO a percentage of payments received from Council during that quarter. The percentage payment to be remitted to the ATO would only be determined after lodgement and assessment of the individual Councillors income tax return.

Expense reimbursements to Non-PAYG Councillors would need to be included as income in any income tax return lodged by the Councillor, with the ability to claim any allowable expenses in that tax return.

Superannuation

Under the provisions of Section 226 of the Local Government Act 2009, Council can resolve to provide superannuation support for non-PAYG Councillors in much the same manner as PAYG Councillors i.e. 12 percent Council contribution and 6 percent Councillor Contribution.

The ATO has also advised in ATO Interpretive Decision 2007/205 that where a non-PAYG Councillor elects to forego part of his/her remuneration in exchange for the Local Government making contributions to a complying superannuation fund, the remuneration foregone does not represent assessable income of the Councillor for the purposes of the Income Tax Assessment Act 1997.

From a practical perspective, this means that for superannuation purposes there is no distinction in taxation treatment between PAYG and non-PAYG Councillors

FINANCIAL/RESOURCE IMPLICATIONS

A review of the two options (to elect to be subject to PAYG withholding tax or not) identifies a number of positive and negative outcomes. The PAYG option allows Councillors to be treated as employees, with the advantage that Council manages their remuneration and non-cash benefits but reduces some options from a tax planning and cash flow perspective.

From the non-PAYG perspective, there are tax planning and cash flow benefits. However, Councillors will need to manage their own taxation affairs independently of Council. Ultimately, the decision as to whether to continue to remain as an eligible governing body is one of individual circumstance for each Councillor.

In making this decision, Councillors are encouraged to seek independent advice from a registered tax agent or legal firm. Councillors are reminded that the recommendation needs to be adopted unanimously.

RISK MANAGEMENT IMPLICATIONS

There is no significant risk to Council arising from this report. However, Councillors are encouraged to seek their own, independent advice from a registered tax agent or lawyer.

SUSTAINABILITY IMPLICATIONS

Economic: Nil

Environmental: Nil

Social: Nil

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Operational Plan 2015-2016 Actions:

5.2.3 - *Implement continuous improvement program.*

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal: Nil

External: *Local Government Act 2009, Income Tax Assessment Act 1997, Taxation Administration Act 1953*

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

Nil