



REVIEW OF SUPPLY OF WATER TO COSTA GROUP (GUYRA) BY ARMIDALE REGIONAL COUNCIL

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Executive Summary

Effective management of water supplies in a regional setting is the primary responsibility and function of any water management authority. Local government authorities with water supply and management responsibilities have the additional complications of managing the potential conflicts between water usage and consumption of residential/household users and commercial/industrial users.

In times of drought and limited water supply, as experienced recently in the Armidale region, these tensions between uses can be exacerbated, particularly if additional impacting considerations such as employment, economic development etc. are factored into decision making.

This review found that as the relevant water utility Armidale Regional Council complied with all legal obligations in relation to water supply and management during the period review.

The review found that the period of very low rainfall and extremely low storage levels in Council's water storage facilities in 2019/20 significantly raised the tension between the competing priorities of maintaining residential supply to the town of Guyra and providing water for commercial/horticulture use by the Costa Group for the Guyra Glasshouse operation. The availability of water obviously impacts on the ability of the Costa Group to operate at the Guyra Glasshouse facility and the economic considerations of any potential, temporary or permanent, reduction in capacity or closure of the facility are important factors that the Council must factor into its decisions when allocating water supply.

As long as it is compliant with its regulatory obligations, Council is free to balance all of these competing interests as it see fit when deciding upon the issues of water allocations, water restrictions, commercial supply etc., however the review found that the Council could have made a more significant effort into providing the community with information in relation to these competing tensions on water supply and undertaken the process in a much more transparent and inclusive manner.

Purpose

In September 2020, Armidale Regional Council resolved to receive a report in relation to various issues surrounding the supply of water to the Costa Group by Council. The resolution that requested the report is as follows, inter-alia:

- b. Commission an independent report that addresses the following:*
 - i. The provision of water to the Costa Group during 2019/20,*
 - ii. The circumstances surrounding the request from Council for the Costa Group to fund the construction of public infrastructure at Izzard Park*
 - iii. Details of any and all Memorandum of Understanding between Council and the Costa Group, including draft MOU's, meetings and negotiations*
 - iv. The relationship between Council, including Councillors and staff, and the Costa Group*

This report is provided to Council at the conclusion of the review of the above matters.

Scope

It is important for any reader of this report to note that this review was limited in scope to the actions, correspondence and information generated in the timeframe of 1 January 2019 to 30 June 2020.

The circumstances surrounding the original approval of the Guyra Glasshouse operation and the historical decisions around water supply and pricing to the Costa Group prior to 1 January 2019 are not matters considered by this review or addressed in this report.

Methodology

The Interim Administrator of Armidale Regional Council, Mr Viv May PSM, and Acting General Manager, Mr John Rayner, appointed Todd Hopwood (Manager Governance & Customer Service at Wollongong City Council, and a Director of Local Government Professionals NSW) to conduct the review. Mr Hopwood had completed a secondment at Armidale Regional Council in September, 2020 to review the council's governance arrangements, providing a report with detailed recommendations for improving governance, risk management and compliance activities. As such, Mr Hopwood has a sound understanding of Armidale Regional Council systems and procedures but remains independent of the operational and management teams responsible for water supply and management on behalf of Council.

The review was undertaken as a desktop review of all available materials, documents and information held by Council in relation to the subject matter. The reviewer was provided access to all Council systems to facilitate the conduct of the review and to allow independent identification and access to documents and information held by Council.

Armidale Regional Council staff provided administrative assistance in the identification and location of materials not stored in Council's official corporate record-keeping system as well as those directly requested by the reviewer.

The level of assistance provided by Scot MacDonald (Director Businesses and Services), in particular, in proactively identifying additional information that could assist this review is acknowledged and appreciated.

Background and History

In any matter is important to outline and understand the key decision making points in a clear and chronological manner. However, in relation to this matter it is especially important that a full and detailed chronology of all key actions, meetings and correspondence is provided so that the council and the community can be provided with an open and transparent view of what is an extremely sensitive matter.

This review has found that there was opportunity for the Council to have much more transparency on its handling of the negotiations with Costa Group in relation to water supply. Council appears to be compliant with all regulations and legislation in the decisions it has made in relation to supply of water to the Costa Group. However little information has been provided to the community about the relevant competing factors that Council had to consider in making decisions on this

matter, nor did it successfully convince the community, as a whole, of the merits of its chosen course of action

The issue of water supply and security for the town of Guyra is obviously immensely important to the residents of the area, equally important are issues surrounding the long-term viability of water supplies and sustainability issues surrounding any increased capture of overland flows or extraction of ground water in the area.

In view of the above, a very detailed chronology of relevant meetings, decision points and correspondence are provided below to assist with providing clarity to the reader.

It should be noted that whilst the period of this review was for the period of 1 January, 2019 to 30 June, 2020, some key events preceding and following those dates are provided to add to the contextual understanding of the matter.

Date	Event Type	Details
22/10/2018	Email	<p>Email of Draft Agreement to Costa for Horticultural Water Supply. Key elements of Draft agreement as follows:</p> <ul style="list-style-type: none"> • The Costa Group is entitled to draw 250 ML/year or maximum of 30ML/month. The Council reserves the right to reduce the amount of entitled water should the water level in the dam drops to water restriction levels in accordance with the Council's Drought Management Plan. • Council will publish water supply conditions and restriction level in the local newspaper and on its website. • The Costa Group acknowledges that there is no guarantee of continuous water supply. • Council will charge the following as published in Fees and Charges: <ul style="list-style-type: none"> • Raw Water - Intensive Horticulture Water Tariff (not for human consumption) • Potable Water - Commercial Water Rate • The Intensive Horticulture Water Tariff is subject to a minimum of the CPI increase every year. • The Costa Group agrees to pay Commercial Tariff when the agreed annual and/or monthly quantity is exceeded. • Transition to raw water will occur after the completion of the Malpas Dam/Guyra pipeline project. Intensive horticulture tariff to apply for the period of twelve months after the commissioning of the Malpas Dam/Guyra Pipeline.
19/11/2018	Email	<p>Comments back from Costa on draft agreement. Key comments as follows: They would like Tomato Exchange to be able to draw 300 ML/year or maximum of 60ML/month.</p>

Date	Event Type	Details
4/12/2018	Email	Email between ARC staff expressing concern with increase in allowable consumption to Costa, may have impact on any future horticulture businesses
5/12/2018	Email	Email between ARC staff indicating that the additional request would only be taken up as needed in dry periods.
5/12/2018	Event	All ARC Councillors invited to an event at Costa Glasshouse to celebrate expansion – light lunch provided.
18/12/2018	Meeting	Meeting between ARC and Costa reps, meeting agreed on these Actions; 1. Council would provide Costa with water data analysis 2. Council will send Costa a revised letter (water offer) to lock away the last 6 months of water pricing at the \$2.13 rate. 3. A further negotiation would occur after receiving the water data to see what is required from a cost perspective to treat the Malpas water either directly or indirectly.
11/02/19	Email	Email from ARC to Costa enclosing draft agreement for consideration
11/2/2019	Email	Response from Costa Group requesting meeting to raise following issues: <ul style="list-style-type: none"> • Amount of water to be drawn should be 300ML/year and be 60ML/month • Believe they should be getting charged the ‘intensive horticulture rate’ and put forward that they should be charged even less than the ‘intensive horticulture rate’ In summary, Costa is the largest employer/business in the region, directly and indirectly contributing a large financial amount to the local community, (council receives the benefit) and feel that we are not receiving the support we should be. Therefore, I would ask that throughout the remainder of the dealings, council reflect on exactly what Costa contribute when it comes to price and negotiation.
11/02/19	Email	Email from ARC to Costa reiterated that 18/12/19 meeting confirmed water supply at 250ML per year and 30ML per month
6/3/2019	Meeting	Meeting held between ARC staff and Costa reps
6/3/2019	Email	Email from Costa to ARC with notes from meeting: <ul style="list-style-type: none"> • ARC will confirm that council will hold the rate at \$2.13 from July 2018 to June 2019. • ARC and Costa staff to discuss what the next stages of water restrictions would look like in Guyra and the impact on Costa operations Council will also investigate what it looks like or costs to have a contingency of Malpas water available to Costa if the emergency arises at any time in the future

Date	Event Type	Details
15/3/2019	Email	Email from ARC to Costa advising: <ul style="list-style-type: none"> • Guyra Dams are at 55% (254ML) and dropping about 3% each week. Guyra is now under Level 2 water restrictions. • Request Costa's forward projected town water needs at the Elm Street tomato farm over the next 3 to 6 months Council will incorporate this info into dam level modelling to predict when more severe restrictions may be needed.
28/3/2019	Email	Follow up email from ARC to Costa requesting urgently Costa's forward projected town water needs at the Elm Street tomato farm over the next 3 to 6 months
28/3/2019	Email	Water projections received from Costa
4/4/2019	Email	Email from ARC to Department of Primary Industries – Natural Resources Access Regulator to commence discussions on water licensing requirements
12/4/2019	Email	Email from ARC to Costa advising of Level 3 water restrictions commencing on 23/4/2019 – dams at 44%
24/4/2019	Email	Email between ARC staff in relation to why Costa provided with backdated reduced rate to 1/7/18 as part of council report. Advised that this was to encourage them to move to raw water supply from Malpas Dam. The reduced rate would equate to a saving of \$8,500 per month to Costa, or \$203,000 across the 2 year term of the deal
24/4/2019	Council Report	Council report put forward to enter heads of agreement with Costa for supply of water at \$2.13K/L backdated to 1/7/2018. Council resolved as follows: <ol style="list-style-type: none"> Council note the report on pricing for supply of water to Elm Street tomato farm. Council complete a heads of agreement with the Costa Group for reduced water pricing in line with the Fees and Charges to apply to treated water supply from 1 July 2018 to 30 June 2020. That Council authorise the CEO to sign the Heads of Agreement on behalf of Council.
04/05/2019	Email	Email between ARC staff advising that Guyra Dam has less than 100 days water supply. Town users on level 3 restrictions, suggested Costa needs to apply for Level 3 exemption. At end of May, council will implement L4 restrictions and cut off Costa, immediate impact on jobs and operations
4/5/2019	Email	Email from ARC to Costa advising less than 100 days water supply left in Guyra, need to discuss usage levels urgently
08/05/2019	Meeting	Costa Group reps met with Mayor, CEO and ARC staff to discuss Costa Water Supply (held at Mayor's Office)

Date	Event Type	Details
09/05/19	File Notes of Meeting on 8/5/19	Both Guyra town and Elm St tomato farm are using about 5ML/week (~0.75ML per day) and at this rate the remaining storage will hit Level 4 water restrictions in two weeks at which point Council will require that Costa limit take to 2ML/week. Toward end of June the dam will hit 20% total (incl. dead storage) at which point ZERO supply to Elm Street farm. Council agree to investigate carting water from Armidale Reticulated system to Costa Group,
13/5/2019	Meeting	Meeting held between Costa reps and CEO and staff of ARC – No minutes located.
22/5/2019	Meeting	Meeting held between Costa reps and Mayor, CEO and staff of ARC – No minutes located.
5/6/2019	Email	Email from Costa advising of water usage needs through summer, require urgent advice how much Council can supply as Costa needs will exceed availability from Town supply
12/06/19	Email	Email between ARC staff confirming water carting arrangements, at 2.55ML per week
27/6/2019	Email	Email between ARC staff confirming Costa had still not signed agreement so being charged at non-residential rate of \$2.60 per K/L
04/07/2019	Email	Email between ARC staff stating that Costa had requested 5.5ML a week until end Jan 2020, advised that this should be restricted to 3.6ML a week until December 2019
12/07/2019	Email	Email from ARC to Costa confirming they will only be supplied 3.6ML a week until December 2019
01/08/2019	Meeting	Meeting held between Costa reps and Mayor, CEO and staff of ARC – No minutes located.
18/9/2019	Meeting	Meeting held between Costa reps and ARC CEO and 1 staff member at Parliament Staff Café Sydney – No minutes located.
31/10/2019	Meeting	Meeting held between Costa reps and ARC CEO and staff – No minutes located.
08/11/2019	Email	Email from ARC to Costa advising proposed water supply to Costa Dec 2019 – 3.6ML Town water – 0 Guyra Bore Jan 2020 - 2.0ML Town water – 0.5ML Guyra Bore Feb 2020 - 2.0ML Town water – 1.0ML Guyra Bore March – July 2020 - 0ML Town water – 3.0ML Guyra Bore

Date	Event Type	Details
08/11/2019	Email	<p>Email from ARC to Costa confirming details of supply agreed on phone meeting of same date, Costa to return with opinion.</p> <ol style="list-style-type: none"> 1. If the Malpas Dam level dropped to 30%, the supply of town water would be terminated immediately (i.e. earlier than the end of February 2020). 2. The yield of the Bore(s) in Guyra is not guaranteed 3. Costas would be responsible for all extraction and storage infrastructure at the Guyra Bore(s) sites including the pump, power source, poly tank, connections etc. 4. The bores remain an asset of Armidale Regional Council 5. The reservation and sale of 40 ML at Dumaresq Dam would be subject to Dam level and any prospective requirements of the Rural Fire Service
5/12/2019	Meeting	<p>Meeting held between Mayor and CEO of ARC and Costa CEO: Mr Harry Debney and Board Member: Dr Jane Wilson. No minutes of meeting located</p>
12/12/2019	Letter	<p>Letter from ARC to Costa advising the following: Council cannot guarantee potable water supply post 31/12/19 however access to the Guyra Bore could be allocated to Costa on the following conditions:</p> <ul style="list-style-type: none"> • Council will retain ownership of bore • Bore is to assist with drought management and council reserves right to close or limit use of the bore • Council will fit appropriate pump • Costa group will develop and install the required above ground infrastructure • All costs with removal and transport of water borne by Costa <p>Water removed will be charged at a rate of \$1.70 per kilolitre inc GST</p>
24/12/2019	Email	<p>Email from ARC to Costa advising of need to cut Costa off from Town Supply due to manganese levels in Malgas to Guyra Pipeline Proposed extending the hours of trucking from the Izzard park bore and allowing access to the bore adjacent to the Guyra Showground.</p>

Date	Event Type	Details
30/12/2019	Email	<p>Email from Costa to ARC confirming details of phone discussion of same date</p> <ol style="list-style-type: none"> 1. a) Current town water supply will return to agreed levels from Thursday 2/1 b) will still receive the allocation of water we have missed out on 2. Izzear Park Bore <ol style="list-style-type: none"> a) Proposal to pump 20hrs a day starting immediately b) Proposal to truck 6am-6pm, 7 days start immediately c) Proposal to soundproof current pump with cool room panel to muffle the noise d) ARC to confirm ASAP Costa are ok to go ahead with this 3. Guyra Showgrounds <ol style="list-style-type: none"> a) Proposal for Costa to get involved to push this along more speedily, similar to Izzear Park b) ARC to contact Adam Marshall and John Barilaro for asap emergency electricity upgrade to Izzear and Showgrounds to quieten the pumps (diesel to electricity) <p>ARC to set up a council meeting for Costa CEO, Harry Debney to attend in Armidale ASAP</p>
30/12/2019	Email	<p>Email from ARC to Costa response to above</p> <ol style="list-style-type: none"> 1 (a). Agreed. (b) Will be in a position to answer that by the end of week. 2 (a) Agreed. Start pumping 20 hours per day effective immediately. Please prepare a note and distribute by hand to nearby residences- "Dear Residents, Pumping at the Izzear Park bore will run 20 hours per day. Sound dampening measures will be installed. Power supply to run electric motors will replace diesel motors as soon as connected by Essential Energy." (b) Trucking from 06:00 to 18:00 seven days per week permitted immediately. This will be reviewed as soon as water security permits. (c) and (d) Costas to install sound dampening material at Izzear Park immediately. 3. All necessary works and infrastructure at the new Showground bore have been approved. 4. Representations will be made to NSW Government to fast track power connections to new bores.
30/12/2019	Email	Email from staff to Council Exec and Mayor updating on issues and changes implemented over last few days
2/1/2020	Meeting	Meeting held between Mayor and council staff with Costa CEO: Mr Harry Debney. No minutes of meeting located
7/1/2020	Meeting	Meeting held between ARC staff and Costa rep. No minutes of meeting located but notes made by staff below

Date	Event Type	Details
7/1/2020	Email	<p>Email from staff to Council Exec advising of meeting between Council and Costas. Outcomes from meeting</p> <ul style="list-style-type: none"> • ARC is unable to supply potable water for the foreseeable future (aside from minimal amounts for personal use and hygiene). • ARC will continue to make the bore at Izzard Park available. This bore is producing between 3 and 4 MLs per week. • ARC will develop a new bore at Guyra Showground asap. Preliminary testing shows yield of at least 3 MLs per week. • ARC is considering other bores including at Leagues Park. • We stressed the Bore network is being developed primarily for the residents of Guyra and the potable water network. • Access to the bores by Costas will be kept under review. • Costas can purchase the 30 MLs at the Guyra Dam that is unable to be used and treated by the Guyra Water Treatment plant. Access commences immediately. No price was discussed. All costs (e.g. pumping, trucks etc) are to be borne by Costas. <p>We advised Costas that ARC's management of water is coming under close scrutiny by the public. We requested Costas take steps to explain to the community the economic and social benefits of their operations.</p>
24/1/2020	Meeting Teleconference	<p>Meeting held ARC staff and Costa reps. No minutes of meeting located</p>
5/2/2020	Email	<p>Email from ARC to Costas following meeting of 4/2/2020. Outcomes being</p> <ul style="list-style-type: none"> • Costas Group cease using the Izzard Park bore and new Guyra Showground bore this Sunday night (9/2/20) • Armidale Regional Council will supply 9 MLs per week of town water from Monday morning (10/2/20) • The Guyra dams are 100% full and we anticipate secure supply for approximately 300 days, however supply will continue to be reviewed. <p>Costas requested ARC check the pipes are capable of supplying rates equivalent to 9 MLs/week</p>
6/2/2020	Email	<p>Email from Costa to ARC requesting work on a new water supply agreement</p>
11/2/2020	Invoice	<p>Costa's Invoiced \$12,128 for gravel hardstand at Izzard Park Bore</p>
20/2/2020	Meeting	<p>Meeting ARC staff and Costa reps. No minutes of meeting located</p>

Date	Event Type	Details
5/3/2020	Meeting	<p>Meeting held at Costa Offices in Melbourne, Vic ARC Attendees, Mayor, Cr P Bailey and Scot McDonald Costa CEO: Mr Harry Debney and M Engelman No minutes of meeting located, notes of S McDonald available</p> <ul style="list-style-type: none"> • Purpose of the meeting was to secure Costa Group's future in Guyra and for Council to encourage Costa Group to continue to invest in the facility • During the drought Costa Group paused the \$60m construction of the fourth glasshouse • Council was concerned about potential to lose 600+ jobs from the region, plus the potential 150+ jobs that could come from the fourth glasshouse • Council wished to lobby the Costa Group CEO to finish the glasshouse and provide as much certainty as possible on water supply <p>Council did not give any guarantees about water supply and there was no discussion on pricing</p>
27/5/2020	Council Meeting	Cr Roberts asked a question on notice <i>"Is there any formal or informal agreement with Costas in relation to water?"</i>
5/6/2020	Meeting	Online Meeting – Mayor, CEO and staff of ARC and Costa reps. No minutes of meeting located
15/6/2020	Email	Letter from Costa seeking support of Council in application for temporary visas for staff from Netherlands to construct additional glasshouse at Guyra
16/6/2020	Email	Media Release from Friends of Mother of Ducks Lagoon calling on the Armidale Regional Council to suspend all works in advance of regulatory approval, release the hydrogeologist report and conduct a transparent investigation of groundwater recharge and sustainable use. Complained that all reports are being withheld from the public
22/6/2020	Letter	Letter from CEO of ARC to B Joyce MP supporting foreign worker visa applications
17/7/2020	Meeting (Phone)	ARC Staff and Costa reps. No minutes of meeting located
29/7/2020	Council Meeting	Costa reps attended
22/7/2020	Email	From consultancy working on behalf of Costa on application for a Regional Connectivity Program grant. Requesting a meeting to discuss the possibility of council providing in kind support through undertaking trenching to lay fibre cable

Date	Event Type	Details
22/7/2020	Email	Response from ARC indicating that council cannot provide such support without a resolution of Council, as council has advertised rates for such works. The author made comment of significant public perception that council was doing special deals for Costa, whilst author did not believe that to be the case, he would not submit a report to council seeking the in-kind support
22/9/2020	Email	Further email from consultant working on behalf of Costa on application for a Regional Connectivity Program grant. Requesting a letter of support for their application
23/9/20	Council report	Council considers report number 11.5 recommending the purchase of surface infrastructure at the Guyra Bore from Costa's at full installation cost. Council resolved to purchase and requested a full independent review as follows: <i>Commission an independent report that addresses the following:</i> <i>i. The provision of water to the Costa Group during 2019/20,</i> <i>ii. The circumstances surrounding the request from Council for the Costa Group</i> <i>to fund the construction of public infrastructure at Izzard Park</i> <i>iii. Details of any and all Memorandum of Understanding between Council and the Costa Group, including draft MOU's, meetings and negotiations</i> <i>iv. The relationship between Council, including Councillors and staff, and the Costa Group</i>
30/9/2020	Letter	Letter from Acting GM in support of grant application
1/10/2020	Email	Invoice in the amount of \$43,723.83 ex GST generated to allow payment and transfer of surface water infrastructure assets at Izzard park, Guyra

Assessment

The brief for this review had four main areas of focus. Each of the areas of focus is discussed in more detail individually below.

Provision of water to the Costa Group during 2019/20

As indicated in the detailed chronology above the provision of water to the Costa Group throughout 2019 and 2020 was subject to extensive negotiation and consideration by Council staff. The details of agreement negotiations are detailed later in this report.

In early May 2019 Council records indicate that the Costa Group were using about 5ML a week of 'Town water', and the Guyra township was consuming similar levels. Council staff noted at that time that Level 4 water restrictions would be required in two weeks at which point Council would require that Costa limit take to 2ML/week of 'Town water'.

In May 2019 Council agreed to investigate carting water from the Armidale Reticulated system to the Costa Group property. In June 2019 water carting arrangements commenced at an initial rate of 2.55ML per week. From 12 July 2019 supply was at a rate of 3.6ML per week.

In November 2019 the Costa Group were advised that Council would provide supply moving forward from Town water as well as the Guyra Bore as follows:

- Dec 2019 – 3.6ML Town water – 0 Guyra Bore
- Jan 2020 - 2.0ML Town water – 0.5ML Guyra Bore
- Feb 2020 - 2.0ML Town water – 1.0ML Guyra Bore
- March – July 2020 - 0ML Town water – 3.0ML Guyra Bore

On 9 February, 2020 the Costa Group ceased using the Izzard Park bore and Guyra Showground bore, and Council agree to supply 9 MLs per week of town water from 10 February, 2020 as the Guyra dams were 100% full and Council anticipated secure supply for approximately 300 days.

Funding of public infrastructure at Izzear Park by the Costa Group

Regular meetings were held between Council staff and representatives of Costa, however documented minutes were rarely kept of proposed agendas or formal minutes of meetings kept. However, the outcomes of some meetings could be ascertained by correspondence between the two parties.

On 8 December 2019 Council staff forwarded an email to Costa Group confirming details of a meeting held on the same date in which supply issues due to the drought were discussed and supply options moving forward were agreed as follows:

1. If the Malpas Dam level dropped to 30%, the supply of town water would be terminated immediately (i.e. earlier than the end of February 2020).
2. The yield of the Bore(s) in Guyra is not guaranteed
3. Costas would be responsible for all extraction and storage infrastructure at the Guyra Bore(s) sites including the pump, power source, poly tank, connections etc.
4. The bores remain an asset of Armidale Regional Council
5. The reservation and sale of 40 ML at Dumaresq Dam would be subject to Dam level and any prospective requirements of the Rural Fire Service

There is no indication in the Council records of the origin of the proposal for Costa Group to fund the extraction and infrastructure at the Guyra Bore sites.

The above email was followed by a letter from ARC to Costa Group advising that Council cannot guarantee potable water supply post 31/12/19 however access to the Guyra Bore could be allocated to Costa on the following conditions:

- Council will retain ownership of bore
- Bore is to assist with drought management and council reserves right to close or limit use of the bore
- Council will fit appropriate pump
- Costa group will develop and install the required above ground infrastructure
- All costs with removal and transport of water borne by Costa
- Water removed will be charged at a rate of \$1.70 per kilolitre inc GST

Agreements between Council and the Costa Group

As indicated in the detailed chronology above the provision of water to the Costa Group throughout 2019 and 2020 was subject to extensive negotiation and consideration by Council staff.

In 2018/19 Costa Group was charged commercial tariff of \$2.60/kL instead of intensive horticulture tariff (flat rate \$2.13/kL) due to absence of heads of agreement.

In February 2019 a Draft Agreement was sent to Costa (attached as Appendix "A" to this report) based on their average annual consumption. Clauses were included in the draft agreement to encourage Costa to transition to raw water to extend the life of the existing Guyra treatment plant and secure water supply to Guyra town. Relevant clauses shown below

8. *Tomato Exchange will transition to raw water, at own cost, within twelve months of the commissioning of the Malpas Dam/Guyra pipeline project.*
9. *Council will apply the intensive horticulture tariff from 1 July 2018 if this agreement is completed by 28 February 2019*
10. *Should the Tomato Exchange not transition to raw water within twelve months of the commissioning of the Malpas/Guyra Pipeline the Commercial Tariff will apply from 1 July 2018.*

Costa Group responded to the draft agreement by indicating:

- *Amount of water to be drawn should be 300ML/year and be 60ML/month*
- *Believe they should be getting charged the 'intensive horticulture rate' and put forward that they should be charged even less than the 'intensive horticulture rate'*
- *In summary, Costa is the largest employer/business in the region, directly and indirectly contributing a large financial amount to the local community, (council receives the benefit) and feel that we are not receiving the support we should be. Therefore, I would ask that throughout the remainder of the dealings, council reflect on exactly what Costa contribute when it comes to price and negotiation.*

Council did not accept the request for an increased water allocation and Council did not send an updated Draft Agreement and Costa Group never entered into an agreement. As the Costa Group never entered into the heads of agreement they were charged commercial tariff of \$2.60 per kL in 2018-19 and \$2.70 per kL in 2019-20.

On 24 April 2019 Council considered a report in relation to water supply to Costa Group. The report and draft agreement would provide Costa Group with a reduced rate of \$2.13 per K/L backdated to 1/7/18, with the rationale that this was to encourage the Costa Group to move to raw water supply from Malpas Dam. The reduced rate would equate to a saving of \$8,500 per month to Costa, or \$203,000 across the 2 year term of the deal. As previously stated Costa Group never took up the agreement and did not benefit from the reduced rates.

The Council resolved as follows:

- (a) Council note the report on pricing for supply of water to Elm Street tomato farm.*
- (b) Council complete a heads of agreement with the Costa Group for reduced water pricing in line with the Fees and Charges to apply to treated water supply from 1 July 2018 to 30 June 2020.*
- (c) That Council authorise the CEO to sign the Heads of Agreement on behalf of Council.*

Relationship between Council and the Costa Group

The fourth component of this review was to review the relationship between Council, including Councillors and staff, and the Costa Group.

As a very large employer in the Armidale area the Costa Group is a very important stakeholder for Council, as such it is important and appropriate that professional, productive and mutually beneficial relationships are formed between the two organisations and staff in key positions.

The review has not identified any inappropriate interactions or relationships between Council staff and councilors and representatives of Costa Group.

There is evidence that representatives of Costa Group lobbied Council staff strongly in relation to the fact that they should be charged the 'intensive horticulture rate' for water supply, or even less as, in the opinion of Costa Group they are the largest employer/business in the region, directly and indirectly contributing a large financial amount to the local community and therefore to Council, and that should be reflected in the price they pay.

Council staff equally advanced the position of Council in these negotiations and as such this appears to be conducted as a normal negotiation of a commercial supply agreement between parties. As previously stated, Council has to balance multiple competing interests when determining its position on this matter, including commercial terms, and it appears that Council staff endeavored to do this throughout the negotiations.

On 5 March, 2020 the Mayor, Cr P Bailey and Scot McDonald attended a meeting in Melbourne to meet with Costa Group CEO, Mr Harry Debney and other Costa staff.

No minutes of meeting located, however notes of staff that attended the meeting indicate that the purpose of the meeting was to secure Costa Group's future in Guyra and for Council to encourage Costa Group to continue to invest in the facility. During the drought Costa Group paused the \$60m construction of the fourth glasshouse. Council was concerned about potential to lose 600+ jobs from the region, plus the potential 150+ jobs that could come from the fourth glasshouse. Council wished to lobby the Costa Group CEO to finish the glasshouse and provide as much certainty as possible on water supply. Council did not give any guarantees about water supply and there was no discussion on pricing

Whilst there may be some community concern in relation to the expense of council officials attending an interstate meeting, it appears that the purpose of the meeting was to advance the above issues that were to the benefit overall of the community, directly with the Costa Group CEO.

The importance of the Costa Group to the Guyra / Armidale economy was a key driver in Council also providing support to Costa Group in its efforts to secure visa's for overseas workers required for the construction of the 4th Glasshouse at the Guyra facility and in efforts to identify and have approved alternate water supply/bores on nearby private property. It is entirely appropriate for Council to provide support, via letters of support to Government departments and Ministers etc. based on the expected return and benefit to the community.

Findings

1. From the evidence available, this review concludes that the supply of water to the Costa Group was in accordance with legislation and regulations. This is evidenced by correspondence in 2004 from the NSW Dept Infrastructure & Planning to the former Guyra Council indicating that it is permissible to supply a commercial operation from a town water licence, within the council's overall licence cap.
2. Subject to Item 1 above, Council is entitled to determine within its licence cap, and the available water supply, the level of comparative usage of residential users and commercial users of water supplied by Council.
3. At all times in 2018/19 and 2019/20 the Costa Group was charged for water taken from the "Town" supply at appropriate rates set out in Council's adopted fees and charges.

Organisational Improvement Opportunities

Openness and Transparency

Whilst all decisions on these matters appear to be compliant with the law and made by Council with the intent of balancing the complex and competing needs of the community, both residential and commercial needs, there appears a consistent theme of not making such decisions in an open and transparent manner.

There are many items of correspondence received by Council from ratepayers and concerned residents over the past 2 years seeking explanations and more information of decisions, which were, in the main responded to with only minimal information, or responses indicating that the water usage rates supplied by Council by a customer could not be provided to another party.

There is evidence in email discussions between staff in January 2020 that staff were acutely aware of the interest in this matter that the community had. This is evidenced by the following example:

"We advised Costas that ARC's management of water is coming under close scrutiny by the public. We requested Costas take steps to explain to the community the economic and social benefits of their operations."

Stakeholder management and community relations are a key component of good corporate governance in a local government setting. The above issues demonstrates a failing in this regard by ARC as when the issue of community interest in the matter was identified, the Council asked the Costa Group to explain the benefits of their operations. In this circumstance it would have been more appropriate for Council to take the opportunity to explain to the community the important and divergent factors that come into decisions on water supply in the circumstances in which Council itself, and provide reasons as to why the decisions made by Council were in the best interests of the community overall in the long term.

Recordkeeping

In accordance with the State Records Act 1998 Council is required to maintain a record of all decisions of Council, including those made by staff. Throughout this review a number of areas of concern were identified in relation to record keeping practices by staff:

- A significant number of meetings were held with external companies / participants for which there were no agendas, minutes or discussion summaries prepared or not stored in Councils records management system. Where an action or an agreement arises out of a meeting between council staff, or a meeting between council staff and external parties, minutes of the meeting should be created and stored in the records management system as evidence of that decision and the decision-making process.
- A large number of emails between Costa and Council staff were either not stored in Councils records management system or were stored in the system significantly after they were created, i.e. some records were not stored in the system until a year or more after they were created, and possibly only stored as a consequence of this review.

Recommendations

Recommendation 1:

That this report be made public to give the community transparency and confidence in the actions taken by Council staff that they have acted in the best interests of the community and provided effective management of water supply and security for the Guyra area and the Armidale region more generally.

Recommendation 2:

That Council review its approach to community engagement and stakeholder management, with particular reference to subject matters that have significant and divergent factors that Council must consider in determining the best outcomes for the community overall. This is essential to ensure that Council appropriately demonstrates its decision making methodology and how it is achieving best value overall for the community in its decision making.

Recommendation 3:

That Council consider providing updated training to all staff on the requirements of the State Records Act 1998 and the importance of prompt and accurate retention of all records that relate to a decision or action of Council in Council's records management system.

Recommendation 4:

That Council consider the proactive release of any relevant materials, referenced or identified in this report, in accordance with s7 of the Government Information (Public Access) Act if it believes that such releases would improve community understanding of Council's actions in this matter or add to community confidence in the decision making of Council.

Attachments

**Draft Agreement for the Supply of Treated
Water for Horticulture Operations**

Agreement for the Supply of Treated Water for Horticulture Operations

This agreement made the _____ day of 2019 is between:

Armidale Regional Council of 135 Rusden Street, Armidale NSW 2350 (**Council**)

And

Tomato Exchange Pty Ltd of 37 Blush Road (Lot 45 DP 755824), Guyra NSW 2365

In respect of the business located at

37 Blush Road (Lot 45 DP 755824), Guyra NSW 2365

Terms of the Agreement

Tomato Exchange, as the current tenant of the land, shall be entitled to draw water from the pipeline subject to the following conditions:

1. Tomato Exchange is entitled to draw 250 ML/year or maximum of 30ML/month. The Council reserves the right to reduce the amount of entitled water should the water level in the dam drops to water restriction levels in accordance with the Council's Drought Management Plan.
2. Council must contact Tomato Exchange to inform any proposal to reduce the entitlement and the reasons for this decision. Council will publish water supply conditions and restriction level in the local newspaper and on its website.
3. Tomato Exchange acknowledges that there is no guarantee of continuous water supply. Pumps breakdown, Treatment Plant failure, mains failure and other unforeseen events due to planned or unplanned maintenance can interrupt the water supply.
4. Tomato Exchange will provide prior to the commencement of each financial year the monthly water consumption projections and peak demands.
5. Council will charge the following as published in Fees and Charges (current rates attached):
 - a. Raw Water - Intensive Horticulture Water Tariff (not for human consumption)
 - b. Potable Water - Commercial Water Rate

6. The Intensive Horticulture Water Tariff is subject to a minimum of the CPI increase every year.
7. Tomato Exchange agrees to pay Commercial Tariff when the agreed annual and/or monthly quantity is exceeded.
8. Tomato Exchange will transition to raw water, at own cost, within twelve months of the commissioning of the Malpas Dam/Guyra pipeline project.
9. Council will apply the intensive horticulture tariff from 1 July 2018 if this agreement is completed by 28 February 2019
10. Should the Tomato Exchange not transition to raw water within twelve months of the commissioning of the Malpas/Guyra Pipeline the Commercial Tariff will apply from 1 July 2018.
11. Tomato Exchange has no right to sell the water agreement without the Council's consent.

DRAFT

Signed by Service Leader of **ARMIDALE**

REGIONAL COUNCIL under delegated

Authority on the day of
2018.

Service Leader

Signed by the Tomato Exchange

)

Signature

)

Full Name (please print)

Signature of Witness

)

Signature

Full Name of Witness (please print):

Address of Witness:

DRAFT