



A CENTRE OF REGIONAL EXCELLENCE

AGENDA

EXTRAORDINARY MEETING OF COUNCIL

TO BE HELD AT

THE ADMINISTRATION CENTRE, LITHGOW

ON

23 JANUARY 2017

AT 7.00pm

AGENDA

ACKNOWLEDGEMENT OF COUNTRY

APOLOGIES

PRESENT

DECLARATION OF INTEREST

PUBLIC FORUM

PRESENTATIONS – NIL

MAYORAL MINUTES – NIL

STAFF REPORTS

General Managers Reports
Operation Reports
Corporate and Community Reports

COUNCIL COMMITTEE MINUTES – NIL

DELEGATES REPORTS – NIL

NOTICES OF MOTION – NIL

QUESTIONS WITH NOTICE – NIL

NOTICE OF RECISSIONS – NIL

BUSINESS OF GREAT URGENCY

as identified by Clause 241 of the Local Government (General) Regulations 2005

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GENERAL MANAGERS REPORTS

ITEM-1 GM - 23/01/17 - SUSPENSION AND DISQUALIFICATION OF COUNCILLOR MARTIN TICEHURST

REPORT BY: A MUIR – ACTING GENERAL MANAGER

SUMMARY

To formally advise Council of the suspension of Councillor Martin Ticehurst and disqualification for a period of 5 years.

COMMENTARY

Councillors are well aware of the decision of Senior Member Renwick in the NSW Civil and Administrative Tribunal on 13 December 2016 to suspend Councillor Martin Ticehurst for a period of 5 months pursuant to Section 428A (2)(c) of the Local Government Act. By virtue of the operation of Section 275(1A) of the Local Government Act this has the result of disqualifying Councillor Ticehurst for a period of 5 years.

Prior to the latest suspension, Councillor Ticehurst had been suspended on 6 occasions, the most recent on 2 July 2014. Section 275(1A) of the Local Government Act commenced on 13 November 2015 and provides as follows:

(1A) If:

- (a) an order for suspension from civic office for misconduct is made (after the commencement of this subsection) against a person under this Act by the Departmental Chief Executive or the Civil and Administrative Tribunal on a referral from the Departmental Chief Executive, and*
- (b) it is the third or subsequent such order that has been made against the person (including orders made before the commencement of this subsection), the person is disqualified from holding civic office for 5 years after the date the order takes effect.*

The date of effect of the order, and thus the disqualification, is 13 December 2016. Mr Ticehurst did not appeal the decision.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The disqualification of Councillor Ticehurst results in a vacancy in civic office that will necessitate a by-election. This will have a significant cost.

LEGAL IMPLICATIONS

The provisions of the Local Government Act relevant to the suspension and disqualification of Councillor Ticehurst have been previously mentioned. Section 234 (1)

(c) of the Local Government Act provides that a vacancy in civic office occurs when a councillor is disqualified from holding civic office.

ATTACHMENTS

1. Office of Local Government v Councillor Ticehurst of Lithgow City Council (No 2) [2016] NSWCATOD 162 – hearing and decision on penalty.

RECOMMENDATION

THAT the information in relation to the suspension and disqualification of Councillor Martin Ticehurst be noted.

ITEM-2 GM - 23/01/17 - BY-ELECTION DUE TO VACANCY IN CIVIC OFFICE

REPORT BY: A MUIR – ACTING GENERAL MANAGER

SUMMARY

To advise Council of the actions that must be undertaken in relation to a by-election to fill the vacancy in civic office resulting from the disqualification of former Councillor Ticehurst.

COMMENTARY

Section 234 of the Local Government Act 1993 provides the circumstances where a vacancy in civic office occurs. This includes a situation where a councillor is disqualified from holding civic office.

Section 292 of the Act provides that a by-election to fill a casual vacancy in civic office is to be held on a Saturday that falls not later than 3 months after the vacancy occurs, and is fixed by the general manager (in relation to an election administered by the general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner).

Section 293 provides if the Minister is of the opinion that it would be impractical or inconvenient to hold a by-election as provided by section 292, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the by-election. However, the subsequent Saturday must not be more than 28 days later than the day when the by-election should have been held.

Discussions have been held with the office of the NSW Electoral Commission who have indicated that they are also conducting a by-election on 18 March 2017 due to a vacancy in another local government area and it would be preferable to hold Lithgow's By-Election on the same day. Due to uncertainties surrounding a possible appeal to the Supreme Court and the Christmas/New Year Period it was always likely that an extension to the by-election date would be requested of the Minister. An election date of 18 March would also fall outside the 3 month period, so if Council concurs with that date then an extension would still be required.

It is suggested that Council set Saturday 18 March as the date for the by-election and request the Minister for an extension to the period provided by Section 293 of the Local Government Act.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The NSW Electoral Commission has advised that the cost of the by-election would be typically 75 – 80% of a general election. The final invoice for the last general election has still not been received. Enquiries have been made with the Electoral Commission

and it is not anticipated until the end of February. It is intended to report this to Council when available.

LEGAL IMPLICATIONS

Primarily the subject of the report.

RECOMMENDATION

THAT

1. The NSW Electoral Commission be formally engaged to conduct the by-election to fill the vacancy resulting from the disqualification of Councillor Martin Ticehurst and the Electoral Commissioner be requested to fix Saturday 18 March 2017 as the date.
2. The Minister for Local Government be requested to grant an extension to accommodate a by-election date of 18 March 2017.

ITEM-3 GM - 23/01/17- NOMINATIONS FOR AND ELECTION OF DEPUTY MAYOR

REPORT BY: A MUIR – ACTING GENERAL MANAGER

SUMMARY

This report provides the procedure for the election of the Deputy Mayor, if decided by Council, for the remainder of the term commenced by former Councillor Martin Ticehurst prior to his disqualification from civic office.

COMMENTARY

At its Extraordinary meeting of 28 September 2016 the Council resolved as follows:

THAT Council:

1. Note the report on the appointment of and procedure for the election of a Deputy Mayor;
2. Resolve that a Deputy Mayor is to be elected for a one year term.
3. Hold an election for the position of Deputy Mayor on the same basis as for the Mayoral position; and
4. Council determines that NIL fee is to be paid to the Deputy Mayor.

Former Councillor Martin Ticehurst was subsequently elected unopposed as Deputy Mayor for the 12 month period until September 2017 and his recent disqualification from civic office has left the position vacant for the remainder of this term.

Section 231 of the Local Government Act provides that Councillors **may** elect a Deputy Mayor from one of their number. The person may be elected for the Mayoral term or a shorter one.

The Deputy Mayor's role is to exercise any function and delegation of the Mayor:-

- i) At the request of the Mayor; or
- ii) If the Mayor is prevented by illness, absence or otherwise from exercising the function; or
- iii) If there is a casual vacancy in the Office of Mayor.

The procedure for the election of Deputy Mayor is the same as the procedure for the election of Mayor.

Additional fees, if any, for holding the position of Deputy Mayor are to be **deducted** from payments to the Mayor. No fees are presently paid by Lithgow City Council for the holder of the position of Deputy Mayor.

Nomination forms for the position of Deputy Mayor are coloured **GREEN** and are enclosed with the business paper and will also be available at the Extra-Ordinary Meeting of Council.

The Returning Officer will call for final lodgement of nominations at this meeting. After the final call for nominations, the Returning Officer will announce the names of nominee(s). If necessary an election will then be conducted.

POLICY IMPLICATIONS

NIL

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

Outlined within the report.

ATTACHMENTS

1. Nomination Forms - Green

RECOMMENDATION

THAT Council:

1. Note the report on the appointment of and procedure for the election of a Deputy Mayor;
2. Resolve that a Deputy Mayor is to be elected for the period ending on 25 September 2017;
3. Hold an election for the position of Deputy Mayor on the same basis as for the Mayoral position; and
4. Re-affirms that NIL fee is to be paid to the Deputy Mayor.

**ITEM-4 GM - 23/01/17 - NOTICE OF INTENTION TO ISSUE A
PERFORMANCE IMPROVEMENT ORDER – FIT FOR THE FUTURE**

REPORT BY: A MUIR – ACTING GENERAL MANAGER

REFERENCE

Min 16 – 249: Ordinary Meeting of Council 12 December 2016.

SUMMARY

To advise council of the actions and progress in relation to the proposed issue of a Performance Improvement Order by the Minister for Local Government and the subsequent submission to the Office of Local Government.

COMMENTARY

Following the receipt of the Notice of Intention to issue a Performance Improvement Order in relation to Lithgow City Council's Fit for the Future reassessment a comprehensive submission was prepared primarily by the firm Morrison Low who have specific expertise in this area.

A copy of the submission is attached to the business paper which at its core proposes a Draft Performance Improvement Plan looking at a number of actions that it is hoped will improve Council's position and satisfy the Minister that a Performance Improvement Order should not be issued in this instance. The key aspects of the proposed Performance Improvement Plan include:

- Preparing a revised long term financial plan;
- Improvement strategies and compliance with Fit For The Future benchmarks;
- Preparation of a revised Asset Management Plan incorporating revaluation of assets and useful lives of assets;
- Financial Management Review; and
- Submission of a revised reassessment proposal for Fit for the Future.

The Draft Performance Improvement Plan is aimed at achieving long term financial sustainability and incorporating changes to underlying financial management practices to satisfy the Office of Local Government of Council's commitment.

Whilst it is hoped that the Minister sees fit not to issue a Performance Improvement Order it is clear that there is still work to be done irrespective of this. Some of this will become apparent during the draft budget process. It is also anticipated that the asset revaluation process, reported separately in the business paper, will have a positive impact on Council's position.

POLICY IMPLICATIONS

No specific policy implications arise.

FINANCIAL IMPLICATIONS

Substantially the subject of the Draft Performance Improvement Plan proposed in Council's response. Consultancy fees for the work carried out and required to move forward are expected to be in excess of \$30,000. However, should a Performance Improvement Order be issued, the Minister may appoint a temporary advisor or financial controller, both of which would have to be funded by Council.

LEGAL IMPLICATIONS

Sections 438A to 438HA of the Local Government Act 1993 and Clause 413D of the Local Government (General) Regulation 2005 deal with Performance Improvement.

ATTACHMENTS

1. Submission and Report: Proposed Performance Improvement Order Lithgow City Council – Morrison Low.

RECOMMENDATION

THAT the information in relation to Council's submission on the Proposed Notice of Intention to Issue a Performance Improvement Order by the Minister for Local Government be noted.

**ITEM-5 GM - 23/01/17 - LOCAL GOVERNMENT REMUNERATION TRIBUNAL
- REVIEW OF CATEGORISATION MODEL**

REPORT BY: A MUIR – ACTING GENERAL MANAGER

SUMMARY

To advise Council of correspondence from the Local Government Remuneration Tribunal that advises, among other things, of a review of the categorisation model for Local Councils. This has a relationship to Councillor remuneration.

COMMENTARY

Council is in receipt of correspondence from the Local Government Remuneration Tribunal which provides advice on its commencement of the review for the 2017 annual determination but also advises that it is revising its criteria for classifying Council's into categories for both Metropolitan and Non Metropolitan councils.

The tribunal advises that in 2009 it outlined the characteristics of existing categories of Councils in Non-Metropolitan areas being *Rural Regional* and *Rural*. Characteristics of Rural Regional Councils were regionalism and growth and included major centres such as Albury, Orange and Dubbo. Characteristics of Rural Councils were those that were smaller than Rural Regional Councils and less likely to have a regional focus. Under the current categorisation Lithgow is in the Rural category.

The tribunal is looking at a new model where four non-metropolitan categories would be proposed. A new Regional City category is intended to be created for Newcastle and Wollongong City Councils. A new Regional Strategic Centre category will be created for Central Coast and Lake Macquarie Councils. It is intended to retain the Regional Rural and Rural categories. The tribunal has advised that it is yet to finalise the criteria for classifying councils into the new model.

The tribunal has advised that it would welcome submissions from councils on the proposed classification model and the criteria to which the tribunal should have regard to when determining the categories. It is suggested that Lithgow Council should make a submission to the tribunal. The submission should be along the lines that the larger Regional Centres such as Dubbo, Albury etc are included into the Regional Strategic Centre category with criteria developed accordingly. Whilst Lithgow may not have the strong Regional characteristics of some of the larger centres it is also larger than many small rural councils. Therefore, it would be suggested that councils of a size such as Lithgow be included in the Regional Rural category with appropriate criteria developed.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil at this stage

LEGAL IMPLICATIONS

The Local Government Remuneration Tribunal must consider matters within Section 240 of the Local Government Act 1993.

ATTACHMENTS

1. Correspondence dated 28 November 2016 from the Local Government Remuneration Tribunal.

RECOMMENDATION

THAT a submission be made to the Local Government Remuneration Tribunal in relation to the proposed new non-metropolitan categories suggesting that larger Regional Cities be included in the proposed Regional Strategic Centre category and smaller Regional Cities such as Lithgow be included in the Regional Rural category.

BUSINESS OF GREAT URGENCY

In accordance with Clause 241 of the Local Government (General) Regulations 2005 business may be transacted at a meeting of Council even though due notice of the business has not been given to the Councillors. However, this can happen only of:

- a) *A motion is passed to have the business transacted at the meeting: and*
- b) *The business proposed to be brought forward is ruled by the Chairperson to be of great urgency.*

CLOSED COUNCIL

**ITEM-6 GM - CONFIDENTIAL COUNCIL - 23/01/17 - ROGER BAILEY
 VERSUS LITHGOW CITY COUNCIL AND OTHERS**

REPORT BY: A MUIR – ACTING GENERAL MANAGER

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) and 10A(2)(g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relation to the following:

- (a) personnel matters concerning particular individuals (other than councillors),
or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

SUMMARY

To provide Council with details on the outcome of proceedings taken by former General Manager Mr Roger Bailey against Lithgow City Council and Other respondents.

RECOMMENDATION

THAT Council consider the report on Roger Bailey versus Lithgow City Council and Others in Closed Council pursuant to Section 10A(2)(a) and (g) of the Local Government Act 1993.

**ITEM-7 OPER - 23/01/17 - CONFIDENTIAL COUNCIL - CONSTRUCTION OF
RAIL OVERBRIDGE, WALLERAWANG**

REPORT BY: I STEWART – GROUP MANAGER OPERATIONS

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) and 10A(2)(g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relation to the following:

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

SUMMARY

This report provides detail regarding the Extension of Time claim submitted by Abergeldie Complex Infrastructure Pty Ltd and related claim for damages. This matter was previously reported to Council on the 27 June 2016.

RECOMMENDATION

THAT Council consider the report on Construction of Rail Overbridge in Closed Council pursuant to Section 10A(2)(c) and 10A(2)(g) of the Local Government Act 1993.

**ITEM-8 CORP – CONFIDENTIAL COUNCIL - 23/01/17 – ASSET
REVALUATION AND REVIEW**

REPORT BY: N DERWENT – FINANCIAL SERVICES MANAGER

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) and 10A(2)(d)(i) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relation to the following:

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- d) commercial information of confidential nature that would if disclosed:
 - (i) prejudice the commercial position of the person who supplied it,

SUMMARY

To advise Council of the acceptance of quotations for the Asset Revaluation and Review.

RECOMMENDATION

THAT Council consider the report on Asset Revaluation and Review in Closed Council pursuant to Section 10A(2)(c) and 10A(2)(d)(i) of the Local Government Act 1993.

