



13 January 2016

NOTICE OF EXTRAORDINARY COUNCIL MEETING

Your attendance is respectfully requested at the Extraordinary Meeting of Cabonne Council convened for **Tuesday 19 January, 2016** commencing at **2.00pm**, at the Cabonne Council Chambers, Bank Street, Molong to consider the undermentioned business.

Yours faithfully

Andrew L Hopkins

GENERAL MANAGER

ORDER OF BUSINESS

- 1) Open Ordinary Meeting
- 2) Consideration of General Manager's Report
 - a) Ministerial proposal for the amalgamation of Cabonne Orange and Blayney;
 - b) Proposed Canowindra Retirement Accommodation project;
 - c) Funding for minor works to the Nashdale/Lidster public hall;
 - d) Application for grant from Canowindra Town Improvement Fund.



COUNCIL'S MISSION

“To be a progressive and innovative Council which maintains relevance through local governance to its community and diverse rural area by facilitating the provision of services to satisfy identified current and future needs.”

COUNCIL'S VISION

Cabonne Council is committed to providing sustainable local government to our rural communities through consultation and sound financial management which will ensure equitable resource allocation.

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ITEM 1 - APPLICATIONS FOR LEAVE OF ABSENCE

REPORT IN BRIEF

Reason For Report	To allow tendering of apologies for Councillors not present.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\COUNCIL MEETINGS\COUNCIL - COUNCILLORS LEAVE OF ABSENCE - 720680

RECOMMENDATION

THAT any apologies tendered be accepted and the necessary leave of absence be granted.

GENERAL MANAGER'S REPORT

A call for apologies is to be made.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 2 - DECLARATIONS OF INTEREST

REPORT IN BRIEF

Reason For Report	To allow an opportunity for Councillors to declare an interest in any items to be determined at this meeting.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\COUNCIL MEETINGS\COUNCIL - COUNCILLORS AND STAFF DECLARATION OF INTEREST - 2015 - 720681

RECOMMENDATION

THAT the Declarations of Interest be noted.

GENERAL MANAGER'S REPORT

A call for Declarations of Interest.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 3 - DECLARATIONS FOR POLITICAL DONATIONS

REPORT IN BRIEF

Reason For Report	To allow an opportunity for Councillors to declare any Political Donations received.
Policy Implications	Nil
Budget Implications	Nil
IPR Linkage	4.5.1.g - Code of Meeting Practice adopted and implemented.
Annexures	Nil
File Number	\OFFICIAL RECORDS LIBRARY\GOVERNANCE\COUNCIL MEETINGS\COUNCIL - COUNCILLORS DECLARATION OF POLITICAL DONATIONS - 720682

RECOMMENDATION

THAT any Political Donations be noted.

GENERAL MANAGER'S REPORT

A call for declarations of any Political Donations.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of an ongoing nature and it is considered it complies with the guidelines.

ITEM 4 - MINISTERIAL PROPOSAL FOR THE AMALGAMATION OF CABONNE ORANGE AND BLAYNEY

REPORT IN BRIEF

Reason For Report	To advise on proposal put forward by the Minister for Local Government to amalgamate Cabonne Orange and Blayney councils.
Policy Implications	Council has a policy opposing forced amalgamation.
Budget Implications	Guidelines will limit certain types of expenditure.
IPR Linkage	4.5.1.a. Provide quality administrative support and governance to councillors and residents
Annexures	1. Guidelines on council decision making during merger proposal periods_0.pdf
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\AMALGAMATIONS\BLAYNEY SHIRE, CABONNE AND ORANGE CITY COUNCILS PROPOSED MERGER 2016 - 724955

RECOMMENDATION

THAT Council endorse the engagement of Morrison Low consultants to prepare an independent review and submission under S263(3) for consideration by Council.

DIRECTOR OF FINANCE AND CORPORATE SERVICES' REPORT

Council would be aware that on 18 December 2015 the government announced its intention to put forward a proposal for the amalgamation of Cabonne Orange and Blayney councils. On 6 January 2016 the Minister made the formal proposal and forwarded it to the Office of Local Government to commence the process.

A teleconference was held on 8 January 2016 with the outcome as follows:-

Letters to councils - Letters have been sent to affected councils by the delegates.

Delegates meet with councils – during late January / early February.

Public inquiries - Delegates will arrange public inquiries (for each council) - times, dates and locations will be made available mid-January.

Submissions - Written submissions invited from councils and communities – closing date Sunday 28 February.

Submissions reviewed - Delegates examine proposals and submissions in line with requirements of the Act and prepare reports – timeframe not specified.

Boundaries Commission - Reports provided to the Boundaries Commission for comment.

Minister - Delegates report to Minister for decision.

New councils commence - Decision announced by proclamation of the Governor (expected around mid-2016).

Guidelines have also been issued for "Council Decision Making During Merger Proposal Periods" (the Guidelines) which are attached for council's information. These guidelines have been issued under S23A of the Local Government Act and council must take them into consideration when making a determination. Staff have been instructed to include a paragraph in all reports for determination drawing attention to the guidelines and whether recommendations made comply with them.

Key elements raised in the guidelines are that Council and council officials:

- Must not prevent or disrupt the consideration of merger proposals (other than through legitimate exercise of legal rights of review or appeal);
- Must not use council resources to oppose or support a proposal for personal or political purposes;
- Must not damage or impede the operational effectiveness of a new council.

Detailed provisions have been included in the guidelines in relation to financial management, workforce management, regulatory functions and merger related information campaigns. Enforcement guidelines indicate that failure to comply with the Guidelines may result in the issue of a Performance Improvement Order (the pre-cursor to appointing an Administrator) and the possibility of surcharging council officials for any deficiency or loss as a result of negligence or misconduct (making individuals personally liable for any financial loss).

Council has until 28 February 2016 to make a formal submission in relation to the proposal and due to this narrow timeframe the services of Morrison Low (who already have a background in matters related to a possible merger) have been engaged to conduct an independent review and draft a submission for council to consider that addresses the matters contained in S263(3).

Funds are available in the budget for a Strategic Capacity Project which enable the project to proceed at a cost of \$55,000 plus disbursements. Council's endorsement of the above actions is requested.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is already included in the 2015/2016 budget and it is considered it complies with the guidelines as it is necessary as part of the merger proposal process.

ITEM 5 - PROPOSED CANOWINDRA RETIREMENT ACCOMMODATION PROJECT

REPORT IN BRIEF

Reason For Report	To advise Council regarding a Notice of Motion received.
Policy Implications	Nil
Budget Implications	\$750,000 not included in current budget plus \$450,000 long term loan.
IPR Linkage	3.2.1.b. Facilitate retirement and aged care projects and services
Annexures	Nil
File Number	\OFFICIAL RECORDS LIBRARY\COMMUNITY SERVICES\SERVICE PROVISION\CANOWINDRA PROPOSED RETIREMENT VILLAGE - CORNER BLATCHFORD and MILL STREETS - 725144

RECOMMENDATION

THAT the Notice of Motion be dealt with.

DIRECTOR OF FINANCE AND CORPORATE SERVICES' REPORT

A Notice of Motion has been received from Councillors Walker and Hayes as follows:

We the undersigned Councillors hereby give notice of intention to move the following motion at the Extraordinary Council meeting to be held on 19 January 2016:-

"THAT Council provide \$550,000 in infrastructure funding and \$450,000 by way of a long term loan to the Canowindra Retirement Village Association Inc to enable the establishment of a retirement village in Canowindra and an additional \$200,000 from the Canowindra Town Improvement Fund for remaining infrastructure improvements."

(Signed)

.....
Clr K Walker

.....
Clr M Hayes

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter **does not** meet the

guidelines as it is not included in the 2015/2016 budget and is greater than \$250,000 and could also impose a significant and ongoing financial commitment on a new council.

In order for the Notice of Motion to be dealt with it would need to be moved and seconded on the day of the meeting.

ITEM 6 - FUNDING FOR MINOR WORKS TO NASHDALE/LIDSTER PUBLIC HALL

REPORT IN BRIEF

Reason For Report	To advise on meeting held to discuss possible assistance.
Policy Implications	Nil
Budget Implications	\$3673.70 from the Community Facilitation Fund.
IPR Linkage	3.3.5.a. Review community need for new and upgraded facilities
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GRANTS AND SUBSIDIES\PROGRAMS\COMMUNITY FACILITATION FUND - 725151

RECOMMENDATION

THAT Council contribute a further \$673.70 towards the cost of insurance for the Nashdale/Lidster Public Hall.

DIRECTOR OF FINANCE AND CORPORATE SERVICES' REPORT

Following a matter of urgency raised by Clr Davison at the December 2015 council meeting, the Mayor, General Manager and Clr Davison met with representatives of the Nashdale/Lidster Hall Committee to discuss matters raised in correspondence that had been tabled before council.

The outcome of the meeting was that due to the urgent need to resolve the insurance cover for the hall that \$3000 would be provided from the Community Facilitation Fund (the maximum amount under the policy) with the remainder of \$673.70 to be reported to council for consideration. The representatives were advised of the council's community assistance program and it was suggested that application be made in the next round for items such as the stove and rain water tank mentioned in their correspondence.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is of a minor nature with

funding available in the current budget and it is considered it complies with the guidelines.

ITEM 7 - APPLICATION FOR GRANT FROM CANOWINDRA TOWN IMPROVEMENT FUND

REPORT IN BRIEF

Reason For Report	To advise on request for funding from the Canowindra Showground and Racecourse Trust.
Policy Implications	Nil
Budget Implications	\$47,900 from the Canowindra Town Improvement Fund.
IPR Linkage	3.3.6.a. Maintain sporting, recreational, council and community facilities
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\PARKS AND RESERVES\MAINTENANCE\CANOWINDRA SHOWGROUND - 725167

RECOMMENDATION

THAT Council determine whether it wishes to agree to the request.

DIRECTOR OF FINANCE AND CORPORATE SERVICES' REPORT

The Canowindra Showground and Racecourse Trust have written to Council seeking a grant of \$47,900 (inc GST) from the Canowindra Town Improvement Fund to build an amenities block, including disabled facilities, near the new multi-purpose shed at the Canowindra Showground.

The Canowindra Showground and Racecourse Trust is a Trust dedicated for the purposes of maintaining the care, control and management of the Canowindra Showground and Racecourse, it is not a S355 committee and is appointed by the State of NSW.

Clr Walker has indicated that he believes the amenities block would be of benefit to the Canowindra community and as such should be funded from the Canowindra Town Improvement Fund.

Please note that guidelines have been issued under Section 23A of the Local government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this matter is not included in the 2015/2016 budget, however allocations from the Canowindra Town Improvement Fund have traditionally been made on the recommendation of

local councillors as the need arises, these funds can only be used for projects within the Canowindra town improvement area and it is considered it would comply with the guidelines as it is less than \$250,000 and is being considered at a council meeting that is open to the public.



Office of Local Government

**COUNCIL DECISION MAKING DURING
MERGER PROPOSAL PERIODS**



DECEMBER 2015

Strengthening local government

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PURPOSE

These Guidelines provide guidance to councils that are the subject of merger proposals on the appropriate exercise of their functions during the period in which a merger proposal is under consideration by the Chief Executive of the Office of Local Government, the Boundaries Commission and the Minister for Local Government under the Act.

It is important during any merger proposal period that councils continue to operate appropriately, effectively and efficiently to meet the needs of their communities. The Office of Local Government recognises that councils, councillors and council staff all share the desire to continue to serve their communities effectively during the merger proposal period and will have many questions about how to do this in a manner that is appropriate and permissible. These Guidelines seek to assist councils to do this and to provide clear guidance on what is and is not appropriate and permissible during the merger proposal period.

These Guidelines are issued under section 23A of the Act meaning that all councils must consider them when exercising their functions.

THE SCOPE OF THESE GUIDELINES

These Guidelines apply to decisions made by councils the subject of a merger proposal during a merger proposal period.

For the purposes of these Guidelines:

“the Act” – means the *Local Government Act 1993* (NSW).

“a decision” - includes the exercise by the council of any function (including the expenditure of monies and the use of resources) and includes functions exercised under delegation by council officials.

“council officials” – includes a councillor (including the Mayor), a member of council staff or a delegate of a council.

“merger proposal” – means a proposal for the amalgamation of two or more local government areas or the alteration of the boundaries of one or more local government areas initiated by the Minister for Local Government, a council affected by the proposal or an appropriate minimum number of electors under section 218E of the Act.

“merger proposal period” – means the period of time during which a council is affected by a merger proposal, commencing on the day a proposal is made with respect to the council’s area under section 218E of the Act and concluding on:

- the day after the Minister decides to decline to recommend to the Governor that a proposal referred to the Boundaries Commission or the Chief Executive be implemented under section 218F(8), or
- the date specified in the proclamation implementing the proposal if the Minister

recommends to the Governor that the proposal be implemented.

“**new council**” – means a new council created as a result of a merger proposal.

COUNCIL DECISION MAKING DURING MERGER PROPOSAL PERIODS – GENERAL PRINCIPLES

During a merger proposal period, councils and council officials should be mindful of the need to act in the best interests of their community and for the purposes of meeting the needs of that community. Councils should not make decisions that needlessly impose avoidable costs on a new council.

In particular, councils and council officials should not make decisions during a merger proposal period for the following purposes:

- to prevent or disrupt the consideration of merger proposals by the Chief Executive of the Office of Local Government or his delegate, the Boundaries Commission or the Minister for Local Government other than through the legitimate exercise of legal rights of review or appeal
- to exercise their functions or use council resources to oppose or support a merger proposal for personal or political purposes (see below for more information on merger-related information campaigns)
- to seek to damage or impede the operational effectiveness of a new council including by (but not limited to):
 - making significant and/or ongoing financial commitments that will be binding on a new council
 - making other significant undertakings or commitments that will be binding on a new council
 - making decisions that are designed to limit the flexibility or discretion of a new council
 - deliberately and needlessly expending council resources to minimise the resources available to a new council on its commencement.

INTEGRATED PLANNING AND REPORTING

During a merger proposal period, councils should continue to implement and operate in accordance with their adopted Community Strategic Plan, Delivery Program, Operational Plan and Resourcing Strategy.

Annual reporting requirements continue in accordance with the Act, and a report on the progress on implementation of the Community Strategic Plan should be presented at the final meeting of each of the outgoing councils.

Preparation of Operational Plans

Should councils prepare Operational Plans during a merger proposal period, these should be prepared as a sub-plan of the council's adopted Delivery Program and should not depart from the council's adopted Delivery Program.

The Operational Plan should directly address the actions outlined in the council's adopted Delivery Program and identify projects, programs or activities that the council will undertake within the financial year towards addressing these actions.

The Operational Plan should include a detailed budget for the activities to be undertaken in that year.

FINANCIAL MANAGEMENT***Expenditure during merger proposal periods***

During a merger proposal period, councils should only expend monies in accordance with the detailed budget adopted for the purposes of implementing their Operational Plans for the relevant year.

There should be clear and compelling grounds for any expenditure outside of a council's adopted budget. Expenditure outside of the adopted budget should be approved by the council at a meeting that is open to the public.

The council's resolution approving the expenditure should disclose the reasons why the expenditure is required and warranted.

Should such expenditure be outside of a council's adopted budget and be of an amount equal to or greater than \$250,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger), then such a variation shall be advertised and public comments invited.

Councils the subject of merger proposals should not make decisions that will impose a significant and/or ongoing financial commitment on a new council.

Entry into contracts and undertakings

Councils the subject of merger proposals should not enter into a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$250,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger), unless:

- the contract or undertaking is being entered into as a result of a decision made or procurement process commenced prior to the start of the merger proposal period; or
- entry into the contract or undertaking is reasonably necessary for the purposes of:
 - meeting the council's ongoing service delivery commitments to its community; or

- to implement an action previously approved under a council's Delivery Program or the Operational Plan for the relevant year

WORKFORCE MANAGEMENT

Appointment and termination of employment of general managers and senior staff

A council affected by a merger proposal should not during a merger proposal period appoint or reappoint a person as the council's general manager, other than:

- appointing a person to act as general manager under section 336(1) of the Act, or
- temporarily appointing a person as general manager under section 351(1) of the Act.

Councils affected by merger proposals should also avoid making appointments of senior staff other than temporary or "acting" appointments unless there are compelling operational reasons for doing so. Outside of these circumstances, where possible, councils should make temporary appointments to fill vacancies to senior staff positions during the merger proposal period.

There is no restriction on councils' ability to terminate the employment of general managers and other senior staff during a merger proposal period. However, in doing so, councils must comply with the standard contracts of employment for general managers and senior staff and the 'Guidelines for the Appointment & Oversight of General Manager' (July 2011).

Organisation restructures

Councils affected by merger proposals should not undertake organisation restructures unless there are compelling operational grounds for doing so.

No forced redundancies of non-senior staff

Councils affected by a merger proposal should not during a merger proposal period terminate the employment of non-senior staff on grounds of redundancy without their agreement (see section 354C).

Determination of employment terms and conditions for council staff

Determinations of the terms and conditions of employment of council staff members (including in an industrial agreement, in an employment contract or in an employment policy of the council) made during a merger proposal period will not be binding on a new council unless the determination has been approved by the Minister for Local Government (see section 354E).

The Minister's approval is not required for the following determinations:

- determinations authorised by an industrial instrument, or employment policy of the former council, made or approved before the merger proposal period
- determinations in, or authorised by, an award, enterprise agreement or other

industrial instrument made or approved by the Industrial Relations Commission or Fair Work Australia

- determinations that comprise the renewal of an employment contract (other than for the general manager) entered into before the proposal period.

As a general rule, the Minister will approve determinations unless he is satisfied that the determination arises from or is in anticipation of a merger proposal and would result in an unjustifiable increase or decrease in the obligations of the new council in relation to transferred staff members (see section 354E(3)).

REGULATORY FUNCTIONS

Councils and council officials should exercise their regulatory functions strictly in accordance with statutory requirements and the requirements of the *Model Code of Conduct for Local Councils in NSW* and solely on the basis of relevant considerations.

Councils should not exercise their regulatory functions (including in relation to development applications or strategic land use planning) for the purposes of campaigning for or against a merger proposal.

Councils should not make decisions that would not otherwise withstand legal challenge on the basis that the new council and not the outgoing one would need to defend any such challenge.

MERGER-RELATED INFORMATION CAMPAIGNS

Any public information campaigns conducted by councils with respect to merger proposals:

- should be conducted for the purposes of informing the local community about the merger proposal and should be proportionate to this purpose
- should not involve disproportionate or excessive expenditure or use of council resources
- should be conducted in an objective, accurate and honest manner and should not be deliberately misleading
- should not be used to endorse, support or promote councillors, individually or collectively, political parties, community groups or candidates or prospective candidates at any election, Local, State or Federal.

Merger-related information campaigns should be approved by councils at an open council meeting. Councils should also publicly approve a budget for the campaign at an open council meeting before incurring any expenditure on the campaign.

Any variations to the budget should also be publicly approved by the council at an open meeting.

Councils should account fully and publicly for the costs of merger-related information campaigns, including staff and contractor costs. This information should be accessible to the community on councils' websites.

ENFORCEMENT OF THESE GUIDELINES

These Guidelines are issued under section 23A of Act. Councils are required to consider the Guidelines in exercising their functions. The Office of Local Government will be monitoring compliance with these Guidelines.

Failure to comply with the Guidelines may result in the Minister for Local Government issuing a performance improvement order under section 438A of the Act against a council to compel them to comply with the Guidelines or to correct any non-compliance.

The Chief Executive of the Office of Local Government may also surcharge a council official under section 435 the amount of any deficiency or loss incurred by the council as a consequence of the negligence or misconduct of the council official.