

# Business Paper



Extra Ordinary Meeting of Council

to be held at

Council Administration Centre

180 Mort Street, Lithgow

on

Tuesday 20 February 2024

at 6:00 PM

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# ORDER OF BUSINESS

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## 1. Acknowledgement of Country

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### Acknowledgement of Country

Lithgow City Council acknowledges Wiradjuri Elders past and present of the Wiradjuri nation - the original custodians of the land on which the Lithgow's communities reside. The Council also extends our respects to our neighbouring nations.

### Declaration of Webcasting

I inform all those in attendance at this meeting, that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements concerning any person, Councillor or employee, and refrain from discussing those matters subject to Closed Council proceedings as indicated in clause 14.1 of the code of meeting practice.

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## 2. Present

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## 3. Apologies

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## 4. Declaration of Interest

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### Ethical Decision Making and Conflicts of Interest

#### *A guiding checklist for Councillors, officers and community committees*

#### Oath or Affirmation of Office

Councillors are reminded of the Oath or Affirmation taken of office, made under section 233A of the *Local Government Act 1993* when elected.

#### Ethical decision making

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

#### Conflict of interest

A conflict of interest is a clash between private interest and public duty. The test for conflict of interest:

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of 'corruption' – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

#### There are two types of conflict:

- **Pecuniary** – regulated by the *Local Government Act 1993* and Office of Local Government. A person with a pecuniary interest should at least disclose and not vote, but it would also in these cases be appropriate to leave the chamber.
  - **Non-pecuniary** – regulated by Codes of Conduct and policy. ICAC, Ombudsman, Office of Local Government (advice only). If declaring a Non-Pecuniary Conflict of Interest, a person
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with a non-pecuniary interest can choose to either disclose and vote, disclose and not vote or leave the Chamber.

- Local Government Act 1993 and Model Code of Conduct  
For more detailed definitions refer to the *Local Government Act 1993*, Chapter 14 Honesty and Disclosure of Interest and adopted Code of Conduct.

### Identifying problems

**1st** Do I have private interests affected by a matter I am officially involved in? **2nd** Is my official role one of influence or perceived influence over the matter? **3rd** Do my private interests conflict with my official role?

### Disclosure of pecuniary interests / non-pecuniary interests

Under the provisions of Section 440AAA(3) of the *Local Government Act 1993* (pecuniary interests) and the Model Code of Conduct it is necessary for you to disclose the nature of the interest when making a disclosure of a pecuniary interest or a non-pecuniary conflict of interest at a meeting.

**A Declaration form should be completed and handed to the General Manager** as soon as practicable once the interest is identified. Declarations are made at Item 3 of the Agenda: Declarations - Pecuniary, Non-Pecuniary and Political Donation Disclosures, and prior to each Item being discussed: The Declaration Form can be downloaded at .....

## 5. Public Forum

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Any person registered to speak during Public Forum on a matters included in the business paper and registered via the Council website prior to 12 Noon on the day of the meeting will have the opportunity to speak. There will be only two speakers for and against, on each matter on the business paper.

Public forum will be allocated half an hour time in total with each speaker having 3 minutes to speak.

Speaker not registered for public forum will have an opportunity to speak on matters on the business paper if time permits.

## 6. Mayoral Minutes

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The Mayor is able to table a Mayoral minute at the meeting if required.

## 7. Administration Reports

### 7.1. Responsible Governance & Civic Leadership

#### 7.1.1. EXEC - 20/02/2024 - Recruitment of a new General Manager

**Strategic Context for this matter:**

[Responsible Governance & Civic Leadership](#) - To develop community confidence in the organisation by the way it is directed, controlled and managed

**Author:** Michael McGrath – Acting Human Resource Manager

**Responsible Officer:** Craig Butler - General Manager

**Executive Summary**

The current General Manager has advised the Council of his intention to conclude his employment with this Council on 30 June 2024.

The Local Government Act requires that the Council is to determine the process for the appointment of the General Manager. This report outlines the process which the Office of Local Government considers to be best practice. It also canvasses the options that are available to the Council for commencing the recruitment process.

**Administration's Recommendation**

THAT:

1. The report dealing with the process for recruitment of a General Manager be received, and,
2. Council determine the process and the timing of commencement for recruitment of the General Manager.

**Attachments**

1. local government capability framework [7.1.1.1 - 58 pages]
2. Guidelines-for-the-appointment-and-oversight-of-general-managers [7.1.1.2 - 20 pages]

**Reference to any relevant previous minute**

Nil.

**Background and discussion**

There are two key decisions required of the Council in relation to the appointment of a General Manager-

1. The Local Government Act requires that the Council is to determine the process for the appointment of the General Manager, and,
2. Given the elections in September, the Council should consider the timing of commencement of the process.

### Initial proposal for the process of appointment

The Office of Local Government has produced guidelines for the process, which they consider to be best practice. The guidelines are issued under section 23A of the Act and must be taken into consideration by councils when exercising their functions in relation to the recruitment and oversight of general managers.

A copy of the guidelines is attached to this report.

After discussion with the Mayor and Deputy Mayor about the guidelines, the following is tabled as a start point for the shaping of the process.

1. Council delegates the task of recruitment (up to the stage of the full governing body – the Council - interviewing the final suitable candidate or candidates) to a recruitment panel (the panel).
2. Council determines the councillors who will be appointed to the panel. Note – the panel would be assisted by Council's Human Resources Manager and the external recruitment consultant.
3. Council engages an external recruitment consultant (obtain at least two proposals).
4. Council delegates to the Mayor (who will be supported by the Human Resources Manager) the tasks of ensuring –
  - The panel is established
  - GM's position description is current and evaluated in terms of salary to reflect the responsibilities of the position. For the purpose of developing the position description it is recommended that Council engage Local Government NSW. They would consult with councillors (probably in a workshop session) to determine the preferred competence and capabilities required for the position of General Manager. It is recommended that the Local Government Capability Framework be used as the template – a copy of this framework is attached.
  - The salary range reflects the responsibilities and duties of the position (panel consulted)
  - The position is advertised according to the Act
  - Information packages are prepared
5. The external consultant is the contact person for the position. Note - the consultant will liaise with and refer on enquiries to the Mayor and the Human Resources Manager where they are better placed to deal with these)
6. The selection panel shortlists candidates.
7. The selection panel interviews shortlisted candidates.
8. The selection panel prepares a report to the Council (the governing body) that –
  - Outlines the selection process
  - Recommends, with reasons, the most meritorious candidate/s for interview by the full Council
  - Recommends that no appointment is made if the outcome is that there are no suitable applicants.
9. The Council interviews the most meritorious candidate/s, and determines if there is a suitable candidate.
10. The Council approves the position being offered to the successful candidate.

### The timing of commencement of the process

The election of councillors for the next four year term of Council will be held on 14 September 2024. This section of the report canvasses the three options that are available for commencement of the process -

1. Commence the recruitment process now, for the purpose of appointing a new General Manager as soon as possible.

With this option, the administration estimates that an offer of appointment to the successful candidate could be made in June 2024.

2. Commence the recruitment process now, but leave selection of the successful candidate for the new Council.

With this option, the administration estimates that an offer of appointment to the successful candidate could be made in December 2024.

3. Delay commencement of the recruitment process until after the new Council is formed.

With this option, the administration estimates that an offer of appointment to the successful candidate could be made in April 2025.

### **Consultation and Communication**

Recruitment would be conducted in a form which ensures that there is wide-spread communication.

### **Policy**

Not applicable

### **Legal**

There are numerous legal requirements which must be satisfied -

- The Local Government Act 1993 (the Act) requires councils to appoint a person to be the council's general manager (section 334).
- One of the prescribed functions of the governing body of a council is to determine the process for the appointment of the general manager and to monitor their performance (section 223).
- The OLG Guidelines are issued under section 23A of the Act and must be taken into consideration by councils when exercising their functions in relation to the recruitment and oversight of general managers.
- Council must use the standard contract of employment for general managers approved by the Departmental Chief Executive of the Office of Local Government under section 338 of the Act (the approved standard contract).
- As with the appointment of all council staff, councils must ensure that the appointment of the general manager is made using merit selection principles (section 349). Recruitment using merit selection is a competitive process where the applicant who demonstrates that they have the best qualifications and experience relevant to the role is appointed.
- Equal employment opportunity principles also apply to the recruitment of general managers (sections 349 and 344).
- Appropriate background checks must be undertaken, for example, bankruptcy and criminal records checks and whether the candidate has been disqualified from managing a corporation by the Australian Securities and Investments Commission.
- The appointment of a general manager is a non-delegable function of the council under section 377 of the Act and a general manager cannot be appointed without a formal resolution of the council.

**Risk Management**

There are a number of risks. Adherence to the requirements of the Local Government Act and the OLG guidelines for the appointment of General Managers should effectively manage these risks.

**Financial**

- Budget approved – Funds are available from within the approved budget for workforce expenses.
- Cost centre -
- Expended to date - Nil
- Future potential impact – appointment of an external recruitment consultant. Cost to be determined via established procurement processes.



## **8. Business of Great Urgency**

In accordance with Clause 241 of the Local Government Act (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 if:

- 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.

## 9. Closed Council

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### Reason for Confidentiality

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

{confidentiality-reason}

### SUMMARY

The position of General Manager will be vacant from 30 June 2024 until such time as a person is appointed permanently to the position.

The purpose of this report is to canvass the options available to the Council in regard to the appointment of a person to the vacant position until such time as a person is appointed permanently.

### Recommendation

That the Council move into Closed Council to deal with the confidential report noted in the business paper.