



**QUALITY NATURE - QUALITY HERITAGE - QUALITY LIFESTYLE**

**BUSINESS PAPER**  
**EXTRAORDINARY COUNCIL**  
**MEETING**  
**13 MARCH 2024**

Notice is hereby given in accordance with the provisions of the *Local Government Act 1993*, and pursuant to Clause 3.3 of Council's Code of Meeting Practice that a **Extraordinary Council Meeting** will be held in the "Koreelah Room", Council Administration Building, 247 Rouse St, Tenterfield NSW, on **Wednesday 13 March 2024** commencing at **9.00 am**.

Glenn Wilcox  
**General Manager**

## COMMUNITY CONSULTATION – PUBLIC ACCESS

**Community Consultation (Public Access) relating to items on this Agenda can be made between 9.00 am and 9.30 am on the day of the Meeting. Requests for public access should be made to the General Manager no later than COB on the Monday before the Meeting.**

Section 8 of the Business Paper allows a period of up to 30 minutes of Open Council Meetings for members of the Public to address the Council Meeting on matters INCLUDED in the Business Paper for the Meeting.

Members of the public will be permitted a maximum of five (5) minutes to address the Council Meeting. An extension of time may be granted if deemed necessary.

Members of the public seeking to represent or speak on behalf of a third party must satisfy the Council Meeting that he or she has the authority to represent or speak on behalf of the third party.

Members of the public wishing to address Council Meetings are requested to contact Council either by telephone or in person prior to close of business on the Monday prior to the day of the Meeting. Persons not registered to speak will not be able to address Council at the Meeting.

Council will only permit two (2) speakers in support and two (2) speakers in opposition to a recommendation contained in the Business Paper. If there are more than two (2) speakers, Council's Governance division will contact all registered speakers to determine who will address Council. In relation to a Development Application, the applicant will be reserved a position to speak.

Members of the public will not be permitted to raise matters or provide information which involves:

- Personnel matters concerning particular individuals (other than Councillors);
- Personal hardship of any resident or ratepayer;
- Information that would, if disclosed confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business;
- Commercial information of a confidential nature that would, if disclosed:
  - Prejudice the commercial position of the person who supplied it, or
  - Confer a commercial advantage on a competitor of the Council; or
  - Reveal a trade secret;
- Information that would, if disclosed prejudice the maintenance of law;
- Matters affecting the security of the Council, Councillors, Council staff or Council property;
- Advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege;
- Information concerning the nature and location of a place or an item of Aboriginal significance on community land;
- Alleged contraventions of any Code of Conduct requirements applicable under Section 440; or
- On balance, be contrary to the public interest.

Members of the public will not be permitted to use Community Consultation to abuse, vilify, insult, threaten, intimidate or harass Councillors, Council staff or other members of the public. Conduct of this nature will be deemed to be an act of disorder and the person engaging in such behaviour will be ruled out of order and may be expelled.

## CONFLICT OF INTERESTS

**What is a "Conflict of Interests"** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** - a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

### **Remoteness**

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Who has a Pecuniary Interest?** - A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- Another person with whom the person is associated (see below).

### **Relatives, Partners**

A person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. "Relative", in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

### **No Interest in the Matter**

However, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### **Disclosure and participation in meetings**

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - A person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

### **Participation in Meetings Despite Pecuniary Interest (S 452 Act)**

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

### **Disclosures to be Recorded (s 453 Act)**

A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee or Sub-Committee must be recorded in the minutes of the meeting.

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## ORDER OF BUSINESS

### Community Consultation (Public Access)

1. Opening & Welcome
2. Civic Prayer & Acknowledgement of Country
3. Apologies
4. Disclosure & Declarations of Interest
5. Recommendations for Items to be Considered in Confidential Section
6. Open Council Reports
  - Our Community
  - Our Economy
  - Our Environment
  - Our Governance
7. Confidential Business
8. Meeting Close

# AGENDA

## COMMUNITY CONSULTATION (PUBLIC ACCESS)

### WEBCASTING OF MEETING

This meeting will be recorded for placement on Council's website and livestreamed on Council's YouTube Channel for the purposes of broadening knowledge and participation in Council issues and demonstrating Council's commitment to openness and accountability.

All speakers must ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms or mentioning any private information.

No other persons are permitted to record the meeting, unless specifically authorised by Council to do so.

### 1. OPENING & WELCOME

#### 2. (A) OPENING PRAYER

*"We give thanks for the contribution by our pioneers, early settlers and those who fought in the various wars for the fabric of the Tenterfield Community we have today.*

*May the words of our mouths and the meditation of our hearts be acceptable in thy sight, O Lord."*

#### (B) ACKNOWLEDGEMENT OF COUNTRY

*"Tenterfield Shire Council would like to acknowledge the Ngarabal people, the traditional custodians of this land that we are meeting on today, and also pay our respect to the Jukembal, Bundjalung, Kamilaroi, Githabul and Wahlubul people of our Shire, and extend our respect to all people."*

### 3. APOLOGIES

### 4. DISCLOSURES & DECLARATIONS OF INTEREST

### 5. RECOMMENDATIONS FOR ITEMS TO BE CONSIDERED IN CONFIDENTIAL SECTION

### 6. OPEN COUNCIL REPORTS

### OUR GOVERNANCE

(ITEM GOV18/24) DELEGATIONS TO THE GENERAL MANAGER..... 6

**7. CONFIDENTIAL BUSINESS**

**8. MEETING CLOSED**

|                      |                                           |
|----------------------|-------------------------------------------|
| <b>Department:</b>   | <b>Office of the Chief Executive</b>      |
| <b>Submitted by:</b> | Glenn Wilcox, General Manager             |
| <b>Reference:</b>    | <b>ITEM GOV18/24</b>                      |
| <b>Subject:</b>      | <b>Delegations to the General Manager</b> |

#### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK**

|                      |                                                                                                                                                                                                                         |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CSP Goal:</b>     | <b>Leadership</b> - Council is a transparent, financially-sustainable and high-performing organisation, delivering valued services to the Community.                                                                    |
| <b>CSP Strategy:</b> | Ensure the performance of Council as an organisation complies with all statutory Guidelines, supported by effective corporate management, sound integrated planning and open, transparent and informed decision making. |

#### **SUMMARY**

To ensure that Council is able to function and meeting its community outcomes, the Council may delegate legislative and practical functions under various Acts to its General Manager.

The General Manager can then delegate functions to staff to ensure that Council meets its legal and operational outcomes.

#### **OFFICER'S RECOMMENDATION:**

##### **That Council:**

**Issues the delegations to the General Manager other than the functions of Council in accordance with Section 377 of the Local Government Act 1993 and subject to any limitations as listed in attachment 1.**

#### **BACKGROUND**

Council has previously delegated its general powers to its General Manager.

#### **REPORT:**

A Council may Delegate the General Power of the Council to the General Manager to allow them to undertake the business of Council on a day-to-day basis. The Council may also restrict its delegations to allow for financial accountability or community concern areas to be reported back to the Council.

Section 377 of the Local Government Act 1993 states that:

#### ***"377 General power of the council to delegate***

*(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:*

- (a) the appointment of a general manager,*
- (b) the making of a rate,*
- (c) a determination under section 549 as to the levying of a rate,*
- (d) the making of a charge,*
- (e) the fixing of a fee,*
- (f) the borrowing of money,*

Our Governance No. 18 Cont...

- (g) the voting of money for expenditure on its works, services or operations,*
  - (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),*
  - (i) the acceptance of tenders to provide services currently provided by members of staff of the council,*
  - (j) the adoption of an operational plan under section 405,*
  - (k) the adoption of a financial statement included in an annual financial report,*
  - (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,*
  - (m) the fixing of an amount or rate for the carrying out by the council of work on private land,*
  - (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,*
  - (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979,*
  - (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,*
  - (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,*
  - (r) a decision under section 234 to grant leave of absence to the holder of a civic office,*
  - (s) the making of an application, or the giving of a notice, to the Governor or Minister,*
  - (t) this power of delegation,*
  - (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.*
- (1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if -*
- (a) the financial assistance is part of a specified program, and*
  - (b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
  - (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
  - (d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.*
- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.*
- (3) A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation."*

### **General Manager Delegations**

The General Manager sub delegates functions of the General Manager to staff in accordance with Section 378 of the Local Government Act 1993:

#### **"378 Delegations by the general manager**

- (1) The general manager may delegate any of the functions of the general manager, other than this power of delegation.*
- (2) The general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council).*
- (3) Subsection (2) extends to a function sub-delegated to the general manager by the council under section 377(2)."*



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Section 335 of the Local Government Act 1993 states that:

**"335 Functions of general manager**

*The general manager of a council has the following functions -*

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,*
- (b) to implement, without undue delay, lawful decisions of the council,*
- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,*
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,*
- (e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,*
- (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,*
- (g) to exercise any of the functions of the council that are delegated by the council to the general manager,*
- (h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,*
- (i) to direct and dismiss staff,*
- (j) to implement the council's workforce management strategy,*
- (k) any other functions that are conferred or imposed on the general manager by or under this or any other Act."*

Section 131 of the Local Government (General) Regulation 2021 provides guidance on the delegated authority to write off rates and charges:

**"131 Procedures for writing off rates and charges**

- (1) The council must, from time to time, by resolution, fix the amount of rates and charges above which any individual rate or charge may be written off only by resolution of the council.*
- (2) An amount of rates or charges of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subsection (1), rates and charges can be written off only by resolution of the council.*
- (3) A resolution or order writing off an amount of rates or charges must dash;*
  - (a) specify the name of the person whose debt is being written off, and*
  - (b) identify the account concerned, and*
  - (c) specify the amount written off, or must refer to a record kept by the council in which those particulars are recorded.*
- (4) An amount of rates or charges can be written off under this section only dash;*
  - (a) if there is an error in the assessment, or*
  - (b) if the amount is not lawfully recoverable, or*
  - (c) as a result of a decision of a court, or*
  - (d) if the council or the general manager believes on reasonable grounds that an attempt to recover the amount would not be cost effective.*
- (5) The fact that an amount of rates or charges is written off under this section does not prevent the council concerned from taking legal proceedings to recover the amount.*
- (6) The general manager must advise the council of rates and charges written off by written order of the general manager."*

Our Governance No. 18 Cont...

Section 213 of the Local Government (General) Regulation 2021 provides guidance on the delegated authority to write off debts to a council:

***"213 Restrictions on writing off debts to a council***

*(1) This section does not apply to amounts owed to a council for rates or other charges for which the Act, or any other regulation in force under the Act, makes specific provision for writing off those amounts in specified circumstances.*

*(2) A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.*

*(3) A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subsection (2), the council's debts can be written off only by resolution of the council.*

*(4) A resolution or order writing off a debt to a council must dash;*

*(a) specify the name of the person whose debt is being written off, and*

*(b) identify the account concerned, and*

*(c) specify the amount of the debt, or must refer to a record kept by the council in which those particulars are recorded.*

*(5) A debt can be written off under this section only dash;*

*(a) if the debt is not lawfully recoverable, or*

*(b) as a result of a decision of a court, or*

*(c) if the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.*

*(6) The fact that a debt is written off under this section does not prevent the council concerned from taking legal proceedings to recover the debt."*

Delegations from Council to the General Manager are made on an exception basis. This means that all functions are delegated to the General Manager from Council unless expressly excluded or limited by legislation or Council resolution.

Attachment 1 to this report provides a list of the General Manager delegations.

The information below is provided to assist with the consideration of the delegations for the General Manager position put forward for adoption:

**Legal Matters:**

It is proposed that a delegation be created in relation to legal proceedings to allow the General Manager to pursue options to resolve appeals where this is in Council's best interests but may not be in accordance with a Council resolution. To provide assurance to Councillors, the General Manager will be required, where possible and practical, to consult with the Mayor prior to giving instructions. In addition, Councillors will be advised of the outcome through a report to Council.

The proposed wording for this delegation is:

*"Authority to give instructions in legal proceedings contrary to a resolution of Council where instructions can be given to resolve an appeal, after consultation with the Mayor where practical and possible, with the outcome to be reported to Council at a later date."*

**Determine Development Applications:**

That Council establish a call up process to ensure the Councillors are informed of Development Applications with an estimated cost between \$2.5million and \$10million.

A delegation has been included in the attachment.

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**COUNCIL IMPLICATIONS:**

- 1. Community Engagement / Communication (per engagement strategy)**  
Nil.
- 2. Policy and Regulation**  
As per the Local Government Act 1993 and Regulations.
- 3. Financial (Annual Budget & LTFP)**  
As approved by Council.
- 4. Asset Management (AMS)**  
Nil.
- 5. Workforce (WMS)**  
As approved by Council.
- 6. Legal and Risk Management**  
As per the Local Government Act 1993 and Regulations.
- 7. Performance Measures**  
Nil.
- 8. Project Management**  
Nil.

**Glenn Wilcox**  
**General Manager**

|                               |                                                            |         |
|-------------------------------|------------------------------------------------------------|---------|
| Prepared by staff member:     | Glenn Wilcox, General Manager                              |         |
| Approved/Reviewed by Manager: | Glenn Wilcox, General Manager                              |         |
| Department:                   | Office of the Chief Executive                              |         |
| Attachments:                  | <b>1</b> Draft Instrument of Delegation to General Manager | 8 Pages |