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## AGENDA AND BUSINESS PAPERS

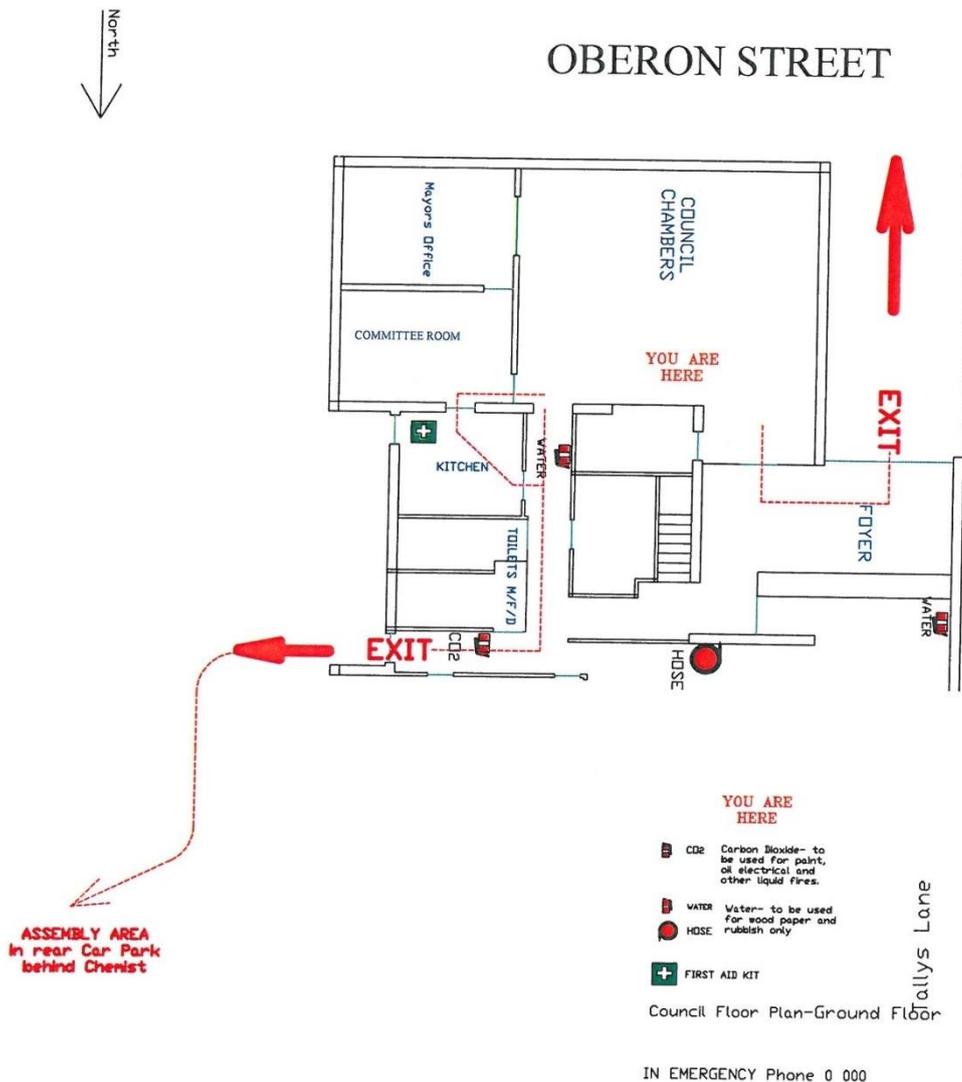
Oberon Council Extraordinary Meeting  
Wednesday 13 April 2016

Commencing at 5.00pm  
at the Oberon Council Chambers

# Agenda Items

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## 1. OPENING OF MEETING

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## 2. ACKNOWLEDGEMENT OF COUNTRY & PRAYER

Council acknowledges that this meeting is being held on the traditional lands of the Wiradjuri and Gundungurra People, and respects the history and culture of the elders both past and present.

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## 3. RECORD OF ATTENDANCE

Members	Mayor Kathy Sajowitz (in the Chair) Deputy Mayor Kerry Gibbons Clr Ian Doney Clr Jill Evans Clr Neil Francis Clr Sam Lord Clr Clive McCarthy Clr John Morgan
Staff	Gary Wallace, Acting General Manager Lynette Safranek, Finance and Community Services Director Chris Schumacher, Works and Engineering Director
Apologies	Nil

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## 4. DECLARATIONS OF INTEREST

File No: Governance/Councillors/Declarations of Interest

### **A GUIDE TO ETHICAL DECISION-MAKING** *(Provided by the Independent Commission Against Corruption)*

- 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?

*A conflict of interest is a clash between private interest and public duty. There are two types of conflict:*

- Pecuniary – regulated by the Local Government Act and Department of Local Government
- Non-pecuniary – regulated by codes of conduct and policy. ICAC, Ombudsman, Department of Local Government (advice only)

*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

*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?

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

When making a Declaration of Interest the reason for making the declaration should be clearly stated. Pecuniary and Non-Pecuniary Significant Interests should be managed by leaving the room while the matter is considered.

Pecuniary -  
Non-Pecuniary -  
Significant  
Non-Pecuniary -  
Less than  
Significant

## 5. REPORTS FOR DECISION

### 05.01 POTENTIAL LEGAL ACTION

File No: Governance/Reporting/Boundaries Commission Review  
Author: Gary Wallace, Acting General Manager

#### Summary

This report seeks to identify Council's position in relation to possible action as a result of a resolution from Walcha Council with respect to the current NSW State Government reform processes.

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#### Recommendation:

That Oberon Council join with Walcha Council the action and:

1. Commence legal action in the Land & Environment Court against the State Government (Minister for Local Government) as the Minister has failed to comply with Section 218F of the Local Government Act, 1993.
2. Appoint a local solicitor to ensure filing of documents and due process is observed.
3. Appoint Acting General Manager, Gary Wallace to sit on a Steering Committee of similarly affected rural councils, supporting Walcha Council being the lead party in the proposed action in the nature of a people's writ or class action.
4. Ensure the documents are filed by Friday the 22 April 2016 to ensure there is no procedural problem so far as the Court is concerned and to catch up with the Woollahra Writ.
5. Commence a Public Relations campaign that is coordinated with a view for demonstrating at the time the Writ is filed, that Woollahra is not alone in this issue, and that Oberon and other councils support its stand.
6. Increase the allocation within the previously resolved Community Fund by an additional \$15,000 to support this action.
7. Advise Barrister Peter King to proceed with preparation of Court documents in liaison with appointed Coordinators and local Solicitor.
8. The Mayor and the General Manager be authorised to affix the Common Seal to any necessary documentation as part of the legal action with the affixing of the Seal to be attested to by the Mayor and the General Manager.

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#### Comment

An Extraordinary Meeting has been called by the Acting General Manager as this matter is considered to be an emergency given the very short timeframes to address the below matter.

Councillors will be aware of ongoing legal action currently being undertaken by Woollahra Council in the Land and Environment Court relating to the proposed NSW State Government reforms. The basis of this case is that the Minister has failed to comply with Section 218F of the Local Government Act, 1993 when it fast tracked the process to force Local Government Amalgamations. Further the claim outlines the inappropriate, inadequate and unfair public hearing processes undertaken by delegates.

Council has been approached by Walcha Council suggesting it join a similar action in conjunction with a number of other NSW Councils. Walcha Council have indicated that it has gained the services of a prominent Barrister, who has offered this service pro-bono, however, there will be court costs that will need to be met.

The Mayor will provide a verbal update in relation to this action and also provide information to assist Council in determining whether inclusion in this proposed action is warranted.

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## 6. CLOSED SESSION REPORTS

In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2) of the Act, and should be dealt with in a part of the meeting closed to the media and public.

**Set out below is section 10A(2) of the *Local Government Act 1993* in relation to matters which can be dealt with in the closed part of a meeting.**

The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than Councillors)
- (b) the personal hardship of any resident or ratepayer
- (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 a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the Council, or
  - (iii) reveal a trade secret
- (e) information that would, if disclosed, prejudice the maintenance of law
- (f) matters affecting the security of the Council, Councillors, Council staff or Council property
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.

There are no closed session reports listed for discussion, however some aspects of this meeting may require Council to close the meeting to member of the public to discuss confidential legal matters pertaining to section 10A(2)(g) of the *Local Government Act 1993*

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege

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## 7. CLOSURE OF MEETING

The Mayor will declare the Meeting closed.