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PO Box 84  
Oberon NSW 2787

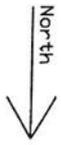
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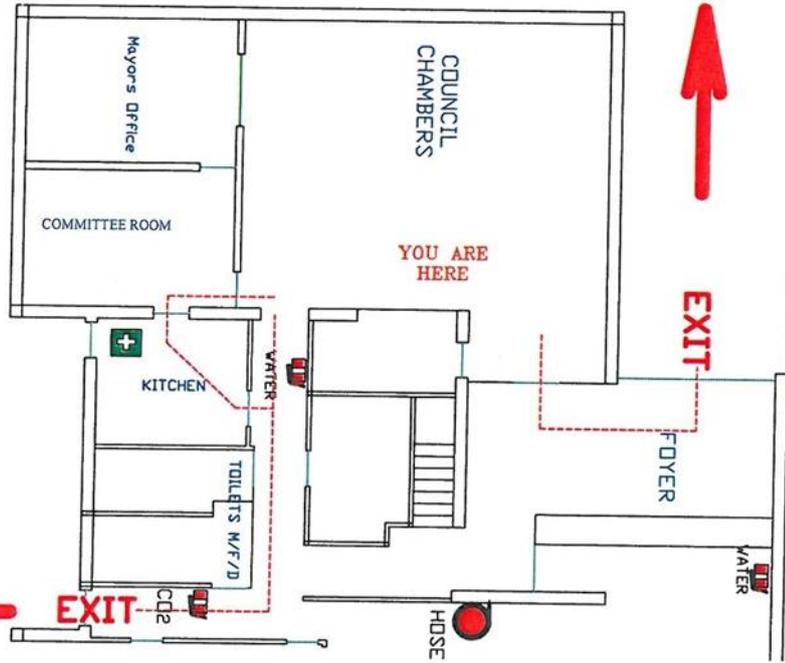
## AGENDA AND BUSINESS PAPERS

Oberon Council Extraordinary Meeting  
Tuesday 11 October 2016

Commencing at 5.30pm  
at the Oberon Council Chambers



# OBERON STREET



**ASSEMBLY AREA**  
in rear Car Park  
behind Chemist

- YOU ARE HERE**
- CD2** Carbon Dioxide- to be used for paint, oil electrical and other liquid fires.
  - WATER** Water- to be used for wood paper and rubbish only
  - HOSE**
  - FIRST AID KIT**

Council Floor Plan-Ground Floor

IN EMERGENCY Phone 0 000

Tallys Lane

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## 1. OPENING OF MEETING

The Deputy Mayor will welcome members and declared the meeting open.

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## 2. ACKNOWLEDGEMENT OF COUNTRY

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      Deputy Mayor Kerry Gibbons (in the Chair)  
                  Clr Neil Francis  
                  Clr Sam Lord  
                  Clr Clive McCarthy  
                  Clr John Morgan  
                  Clr Jill Evans

Staff            Gary Wallace, Acting General Manager  
                  Chris Schumacher, Works and Engineering Director  
                  Lynette Safranek, Finance and Community Services Director  
                  Sharon Swannell, Executive Coordinator

Apologies     Mayor Kathy Sajowitz  
                  Clr Ian Doney

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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 APPEAL AGAINST LAND AND ENVIRONMENT COURT JUDGEMENT ON FORCED AMALGAMATION

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

#### Summary

Providing information regarding current legal proceedings and requesting Council's consideration of possible appeal against the findings of the Land & Environment Court in relation to the forced amalgamation of Oberon Council with Bathurst Regional Council..

#### Recommendation:

That:

1. Council reaffirm its position to lodge a Notice of Intention to Lodge an Appeal against the judgement brought down in the Land & Environment Court on 7 October 2016 and seek agreement from the State Government not to take any further action prior to the Woollahra appeal determination, or for seven (7) days thereafter.
2. Council seek an injunction, or interlocutory orders, to stay any action should the State Government not agree to an undertaking as requested in 1 above.
3. Should the State Government not agree to give an undertaking as requested in 1 above Council consider lodging a formal appeal subject to further advice from its Counsel and consideration of Council at its earliest convenience.
4. Delegation be issued to the Acting General Manager and the Mayor or Deputy Mayor to sign any documentation required in relation to the above matters.
5. Should the Council determine to proceed, resolve that the expenditure is required and warranted in accordance with the guidelines under Section 23A of the Local Government Act to enable the legitimate exercise of legal rights of review or appeal.

#### Background

Previously, Oberon Council was an 'Applicant' together with Cabonne and Gundagai Councils entered into a legal challenge against the State Government, which was heard by the Land and Environment Court of NSW from 24 May to 6 June 2016. The case, in essence, claimed that the State has improperly used provisions of the Local Government Act to undertake aspects of its Merger Proposal. The claims by the Applicants were set out in the Amended Statement of Claim previously provided to Council. A copy can be provided upon request.

At the 31 May Finance Committee Meeting Council considered a report regarding options available should the judgement be unfavourable to Council. The resolution provided for:

*That:*

1. *Council lodge a notice of intention to appeal against any adverse judgement resulting from the challenge in the Land & Environment Court against the proposal to merge Oberon Council and Bathurst Regional Council.*
2. *Council through its legal representatives seek an injunction preventing the Minister recommending that a proclamation be made pending consideration by Council the results of the legal challenge*

3. *Should Council determine to proceed \$20,000 be allocated to support the intention to appeal.*
4. *Should the Council determine to proceed, resolve that the expenditure is required and warranted in accordance with the guidelines under Section 23a of the Local Government Act to enable the legitimate exercise of legal rights of review or appeal.*

### **Commentary**

On 7 October 2016 Chief Justice Preston ruled on the proceedings undertaken by Oberon, Cabonne and Gundagai. The Conclusion and orders indicated:

1. *The applicants have not established any of the grounds of challenge to the administrative decisions and actions in relation to the Oberon proposal, the Cabonne proposal or the Gundagai proposal. Each of the proceedings should be dismissed. The usual order for costs in judicial review proceedings, namely that costs follow the event, should apply.*
2. *The Court orders in each of the proceedings:*
  - a. *The proceedings are dismissed*
  - b. *The applicant is to pay the respondents' costs of the proceedings.*

A copy of the judgement is ATTACHED to this report.

Staff have been in contact with Councils legal representatives who have provided initial comment in relation to the outcome.

They have indicated that they believe the result is disappointing and reflects the Woollahra decision of the same Judge, made several months ago. However, on an initial overview there are points of contention that they believe are challengeable. Should any additional information become available it will be tabled on the night.

Currently the Woollahra case is yet to be determined however it would seem reasonable to assume that this will occur within the next two weeks. As a consequence, should the State Government agree to the proposed first recommendation then Council will have 7 days to respond to the judgement. Currently, Council will hold its Ordinary October Meeting on 18 October and its Works & Finance Committee Meetings on 25 October that would give opportunity to provide additional information should it be required.

Currently \$20,000 has been provided from the 2015/16 Operational plan to help assist with an appeal process. It is not envisaged that additional monies will be required at this point in time to lodge an Intention to Appeal application. Council should be aware that Cabonne Council is currently considering its position and should both Councils resolve to continue with an appeal costs could be potentially shared.

### **Acting General Manager's Comment**

Please note the guidelines issued under Section 23A of the Local Government Act "Council decision making during merger proposal periods". Oberon Council must consider the guidelines in relation to each decision they make during the proposal period. It is considered it complies with the guidelines. The Section 23A Guidelines state: *"In particular, councils and council officials should not make decisions during a merger proposal period... 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."*

## 6. URGENT BUSINESS

### Summary

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 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.

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### Recommendation:

That Council consider the following matters as they are considered to be of an urgent nature requiring immediate consideration by Council

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## 7. CLOSED SESSION / CONFIDENTIAL REPORTS

### Summary

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.

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## 8. CLOSURE OF MEETING

The Deputy Mayor will declare the meeting closed.