

137-139 Oberon Street
PO Box 84
Oberon NSW 2787

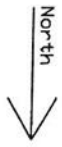
Telephone: (02) 6329 8100
Fax: (02) 6329 8142
Email: council@oberon.nsw.gov.au



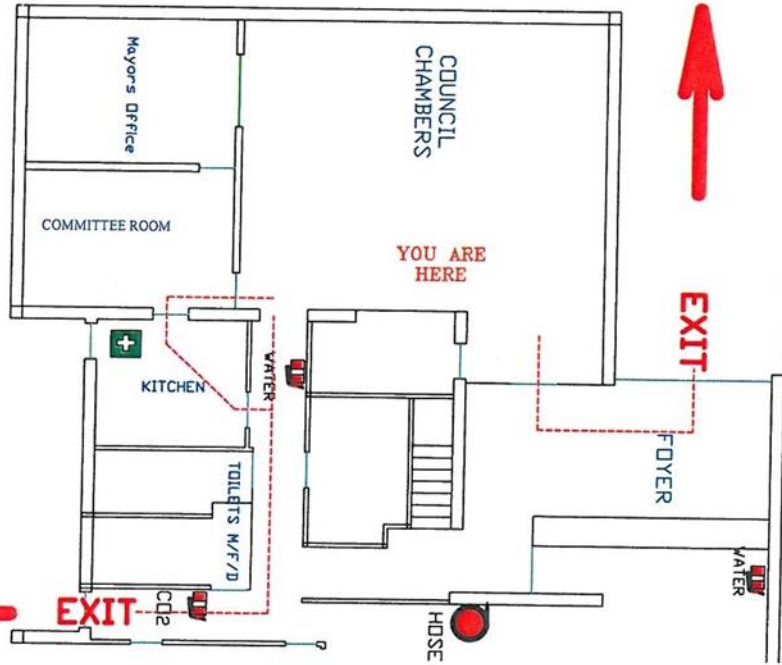
AGENDA AND BUSINESS PAPERS

Oberon Council Extraordinary Meeting
Friday 25 November 2016

Commencing at 1.00pm
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

Tallys Lane

IN EMERGENCY Phone 0 000

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1. OPENING OF MEETING

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

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.

3. RECORD OF ATTENDANCE

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

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 APPOINTMENT OF ACTING GENERAL MANAGER

File No: Personnel/General Manager
Author: Mayor Kathy Sajowitz

Summary

This report seeks to ratify the appointment on 22 November 2016 of Council's Director of Finance and Community Services, Lynette Safranek as Acting General Manager.

Recommendation:

That Council:

1. Rescind the resolution of Council made on 18 October 2016 to re-appoint Mr Gary Wallace to the position of Acting General Manager;
2. Ratify the Mayor's appointment of Council's Director of Finance & Community Services Lynette Safranek as Acting General Manager on 22 November 2016;
3. Appoint Lynette Safranek to act in the position of General Manager pursuant to s.336(1) of the Local government Act 1993 until the appointment of a General Manager pursuant to s.334 of the Local Government Act; and
4. Advise the Minister that an Acting General Manager has been appointed and request the Minister not to issue the Performance Improvement Order.

Background

Mr Gary Wallace was appointed as Acting General Manager on 20 October 2015. At the 18 October 2016 Ordinary Meeting Council resolved as follows:

That:

1. *Mr Gary Wallace's current appointment as Acting General Manager cease as at 19 October 2016*
2. *That Mr Gary Wallace be re-appointed to "act up" in the role of Acting General Manager for twelve months as required, commencing on 20 October 2016*
3. *That Mr Wallace's remuneration will continue at the current level and he will remain under award provisions*
4. *That at such time as the merger position of Oberon Council is resolved, should we remain a "stand alone" entity, the position of General Manager be filled as per the guidelines set down in The Act.*

Council was made aware that despite obtaining separate conflicting advice it had contravened the Act. Immediate consultation was undertaken with officers from the Office of Local Government (OLG) and Local Government NSW (LGNSW) as to how Council could address this issue.

On Monday 21 November Oberon Council received a "Notice of Intention to Issue a Performance Improvement Order" in relation to the appointment of Gary Wallace to the role of Acting General Manager, as Section 351 of the Local Government Act prohibits an appointment to a temporary



The Hon Paul Toole MP
Minister for Local Government

Ref:
MIN:
Doc ID:

Clr Kathy Sajowitz
Mayor
Oberon Council
PO Box 84
OBERON NSW 2787

**NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER
TO OBERON COUNCIL UNDER SECTION 438A OF THE LOCAL GOVERNMENT
ACT 1993**

Dear Clr Sajowitz

In accordance with section 438C of the *Local Government Act 1993* (the LG Act) I hereby give notice of my intention to issue a Performance Improvement Order (PIO) under section 438A of the LG Act for actions to be taken, as identified in the draft PIO, to improve the performance of Council.

I have concerns that Council's resolution of 18 October 2016 in re-appointing Mr Wallace to the position of temporary general manager represents a failure by Council to comply with the provision of the Local Government Act 1993.

Furthermore, this breach follows correspondence I sent to the council on September 7 2016 where I advised Council it would need to take appropriate steps to ensure that it complies with its obligations under Section 351 of the Act.

The appointment of a person to the position of general manager, whether on a temporary or permanent basis, in conformity with the requirements of the Local Government Act 1993 is crucial to the good governance of council and to the openness and transparency of its operations short and long term.

The appointment of a person to what is the apex of the organisation is paramount to the public perception that Council is not only aware of its obligations, but is keen to comply with them in an open and transparent manner. The maintenance of effective governance at a council is crucial to manage and minimise overall risk and, ultimately, to provide transparency and confidence to the community

Section 438B(2) of the Act requires me to consider the performance improvement criteria prescribed by clause 413D of the Local Government (General) Regulation 2005 before issuing a PIO:

(a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines;

- (b) whether there are significant risks facing the council that are not being addressed;*
- (c) whether previous intervention attempts have failed;*
- (d) whether council business is being disrupted and the council is failing to exercise its functions;*
- (e) whether the appointment of a temporary adviser is necessary, in the opinion of the Minister, to restore the proper or effective functioning of the council;*
- (f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified;*
- (g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.*

I have considered these mandatory criteria in the context of the factual findings listed below. On balance, I have decided that action must be taken to improve the Council's performance.

The reasons why I, as Minister, have decided to issue a Performance Improvement Order (section 438A(3)(a)).

1. The appointment of a general manager in the manner proposed by Council's resolution of 18 October 2016 results in the position being held by the same person for a period of more than 12 months, which is in breach of section 351 (2)(b) of the Act. (criteria (a), (b))
2. Through the operation of sections 348, 349 and 351 of the Local Government Act 1993 (LG Act) a person may only act in the position of general manager for a maximum period of 12 months. By making the decision to reappoint Mr Wallace the council has placed itself in breach of the provisions of the LG Act in that Mr Wallace's tenure in the role of general manager now exceeds 12 months. The Council's resolution of 18 October 2016 places Council in breach of ss.348 and 349 of the Local Government Act 1993. (criteria (a), (b))
3. The actions taken by Council in relation to the appointment of a temporary general manager demonstrate that the Council may not fully understand its role and responsibilities under the Local Government Act 1993 LG Act and that Council may not have adequately, appropriately and reasonably carried out its responsibilities in the best interests of all ratepayers. The conduct of the council therefore suggests that it is not functioning effectively. (criteria (a), (b))
4. There is an outstanding Performance Improvement Order which has issued to the Council on 9 November, 2016 in relation to Council's Financial Reports. (criteria (g))

The terms of the proposed performance improvement order, including the period for compliance with the order (section 438C(2)(a) of the Act).

The attached proposed PIO is intended to form part of this notice. As required by section 438C(2)(a) of the Act, the terms and period for compliance are specified in the proposed PIO. As required by section 438A(3)(b) of the Act, the action required to be taken to improve the performance of the Council is specified in the proposed PIO.

The actions that may be taken by me, as Minister, if a performance improvement order is not complied with (section 438C(2)(c) of the Act).

If a PIO is not complied with, I may consider:

- i. issuing a further PIO; and/or
- ii. temporarily suspending the Council under Chapter 13, Part 7 of the Act.

Invitation to make submissions to me regarding the proposed Order (sections 438C(3) and (4) of the Act).

I invite Council to make submissions to me in respect of the proposed PIO. Should Council choose to make submissions, they must be provided to me no later than 7 days from the date upon which this notice is served on it.

I will consider all submissions made to me by Council during this period before deciding whether to issue a PIO.

It is suggested that Council tables this notice at an open Council meeting and provides its submissions by way of resolution of the Council.

I have attached an information sheet about the process for the issuing of PIOs.

Signed on this 21st day of November 2016

Yours sincerely



**Paul Toole MP
Minister**



The Hon Paul Toole MP
Minister for Local Government

COPY

Cir Kathy Sajowitz
Mayor
Oberon Council
PO Box 84
OBERON NSW 2787

Ref:
MIN:
Doc ID: A512930



07 SEP 2016

Dear Cir Sajowitz

Thank you for your email of 29 August 2016 seeking an exemption from the operation of section 351 of the *Local Government Act 1993*.

Section 351 operates to limit the period that a person can be temporarily appointed to a position, including the position of general manager, to 12 months. There is no power in the Act for the Minister to grant an exemption from the application of that section.

Council will need to take appropriate steps to ensure that it complies with its obligations under section 351 and the Office's section 23A Guidelines on council decision making during merger proposal periods.

I hope this information will clarify the situation.

Yours sincerely

Paul Toole MP
Minister

Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, powers to issue performance improvement and suspension orders may be used.

HOW DOES THE PROCESS WORK?

- Notice of intention to issue a performance improvement order will be given.
- Councils will be given no less than 7 days to respond.
- Notices of intention and orders will outline what is required.
- Council should consider and table the notice of intention at an open council meeting.
- Council should provide its response to the notice of intention by resolution.
- The Minister is required to consider council's submission when making a decision.
- Council should table a performance improvement order at the next available council meeting.
- Council is required to publish the order on its website.
- Council will be required to complete a compliance report on the implementation of the performance improvement order.
- If a temporary adviser is appointed, the council, councillors and members of staff are required to co-operate with the temporary adviser. This includes providing any information or assistance that the adviser reasonably requires to exercise his or her functions.
- If a temporary adviser is appointed, the council is required to provide the temporary adviser with an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister. A copy of the reviewer's comments (if any) is to be provided to the Minister. Failure to comply with this is a contravention of the legislation.
- The Office of Local Government will monitor the implementation of performance improvement orders.
- Council will be advised in writing of the outcome of the Minister's consideration of its compliance report.
- The Office will publish orders, compliance reports and monitoring assessments on its website.

This is a quick guide to how the process of issuing a performance improvement order will work. Further detail is contained in the Framework for Implementing Early Intervention Orders. This document, available at www.olg.nsw.gov.au, provides more detail about who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.

Local Government Act 1993

Order under section 438A

I, the Minister for Local Government, issue this Performance Improvement Order to the Council and/or persons specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

This Order takes effect upon service on the Council.

Dated:

The Hon Paul Toole MP
Minister for Local Government

SCHEDULE 1

OBERON COUNCIL

SCHEDULE 2

Reasons for Order – section 438A(3)(a)

I am aware that Council has resolved at an ordinary Meeting held on 18 October 2016 that Mr Gary Wallace be re-appointed to “act up” in the role of Acting General Manager for twelve months commencing on 20 October 2016.

I sent a letter to the council on September 7 2016 in which I advised Council that it would need to take appropriate steps to ensure that it complies with its obligations under Section 351 of the Act.

Through the operation of sections 348, 349 and 351 of the *Local Government Act 1993* (LG Act) a person may only act in the position of general manager for a maximum period of 12 months. By making the decision to reappoint Mr Wallace the council has placed itself in breach of the provisions of the LG Act in that Mr Wallace’s tenure in the role of general manager now exceeds 12 months.

I am concerned that the actions taken by Council in relation to the appointment of a temporary general manager demonstrates that the Council may not fully understand its role and responsibilities under the LG Act and that Council may not have adequately, appropriately and reasonably carried out its responsibilities in the best interests of all ratepayers. The conduct of the council therefore suggests that it is not functioning effectively.

I believe that the compliance with the requirements of the Local Government Act 1993, the Local Government (General) Regulation 2005 and any policies and

guidelines is paramount to the maintenance of effective governance at a council and is crucial to manage and minimise overall risk and, ultimately, to provide transparency and confidence to the community.

The appointment of a general manager in accordance with the relevant statutory provisions is the mechanism to achieve those benchmarks which in turn provides confidence to all stakeholders that council is functioning effectively.

Action required to improve performance – section 438A(3)(b)

That Council take immediate action to convene a meeting of the Council to:

1. Rescind the decision made on 18 October 2016 to re-appoint Mr Wallace to the position of Acting General Manager.
2. Resolve to appoint a person to the position of Acting General Manager by either appointing another qualified staff member to act in the role of general manager or if no such person is available to make a temporary appointment of a suitably qualified person external to the council to act as a locum general manager.

Period for compliance with Order

Council must convene a meeting to give effect to this Order within 14 days of the date of service of this Order.

Evidence to be provided with the compliance report

A copy of Council's resolutions on the actions required by this Order.

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.

Recommendation:

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

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.

There are no closed session reports listed for consideration.

8. CLOSURE OF MEETING

The Mayor will declare the meeting closed.