



## EXTRA ORDINARY MEETING OF COUNCIL

held on

Thursday, 7 April 2016

at

5:40pm

at

Walcha Council Chambers

**PRESENT:** Clr JM Archdale (Chairman) Mayor together with Councillors KW Ferrier, WJ Heazlett, L Levingston, SJ Schmutter and RS Thomson.

**IN ATTENDANCE:** Mr JG O'Hara, General Manager, Mr R Ranjit, Director – Engineering Services, and Mrs LJ Latham, Environmental Services Manager.

### **1. APOLOGIES:**

144 **RESOLVED** on the Motion of Councillors Schmutter and Heazlett that the apologies received from Councillor Lyon and Councillor Woods due to being out of town on business matters be **ACCEPTED**.

MINUTES



---

## **2. DECLARATIONS OF INTEREST**

### **Committee Report 2.2 Expressions of Interest in Property in Walcha WINT/2016/00791**

The Mayor, Clr Archdale, declared a pecuniary interest in this matter due to her husband being a part owner of the business that is the Agent for the property.

## **3. SENIOR OFFICERS REPORT**

145 **RESOLVED** on the Motion of Councillors Ferrier and Thomson that the Senior Officers' Reports be **RECEIVED** for further consideration.

### **3.1 Committee of the Whole Referral – Legal Action against State Government AND Legal Action against Standard & Poors AND Expressions of Interest in Property in Walcha WO/2016/00514**

146 **RESOLVED** on the Motion of Councillors Ferrier and Levingston that, in accordance with the provisions of Section 10 of the Local Government Act, 1993, the matter of “Legal Action against State Government” AND “Legal Action against Standard & Poors” be referred to be discussed in Committee of the Whole for the reason that they relate to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege AND the matter of “Expression of Interest in Property” be referred to be discussed in Committee of the Whole for the reason that it relates to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

## **4. COMMITTEE OF THE WHOLE**

147 **RESOLVED** on the Motion of Councillors Schmutter and Levingston that Council resolve into Committee of the Whole and that the press and public be excluded from the entire proceedings of the Meeting of the Committee of the Whole for the reason that they relate to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege AND the for the reason that it relates to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

148 **RESOLVED** on the Motion of Councillors Ferrier and Schmutter to change the order of business and move items 4.2 & 4.3 to consider first.

149 The Meeting resumed in **OPEN** Council on the Motion of Councillors Levingston and Thomson.



The Mayor reported whilst in Committee of the Whole the following matters were discussed.

**PRESENT:** Present and IN Attendance were the same as listed in the Minutes of the Ordinary Meeting with the exception of the press and the public.

**4.2 Expressions of Interest in Property in Walcha WINT/2016/00791**

Clr Archdale left the Meeting and took no part in the debate. Clr Schmutter, Deputy Mayor assumed the Chair.

The Committee **RECOMMENDED** on the Motion of Ferrier and Heazlett that Council submit an Expression of Interest in both properties, 38W Fitzroy Street, Walcha being Lot 1 DP 158212 and Lot 2 DP 779495 and 28W Fitzroy Street, Walcha, being Lot 1 DP 779495, with the Valuer General land value being the offering price and the Expression of Interest to be submitted by 29 April 2016.

Clr Archdale returned to the Meeting and was informed on the decision and resumed the Chair.

**4.3 Legal Action against Standard & Poors WINT/2016/00789**

The Committee **RECOMMENDED** on the Motion of Ferrier and Levingston that Council authorise the General Manager, John Gregory O'Hara, to sign the Deed of Covenant and any other associated documentation relating to Council's claim against Standard & Poors (S&P) **FURTHER THAT** Council approve the affixing of the Common Seal to all necessary documentation **STILL FURTHER THAT** the affixing of the Common Seal be attested to by the Mayor and the General Manager.

**4.1 Legal Action against State Government Re: Amalgamations WINT/2016/00790**

The Committee **RECOMMENDED** on the Motion Schmutter and Heazlett that on the provision that two other rural councils join the action that Council:

- 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 Form a Steering Committee of similarly affected rural councils, with Walcha Council being the lead party in the proposed action in the nature of a people's writ or class action and appoint George Spring and the General Manager as the coordinators who will liaise through Council with other Councils and with counsel in relation to this matter.



- 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 Walcha and other councils support its stand.
- 6 Approve the legal expenses associated with this action up to a level of \$20,000.
- 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.

### **ADOPTION OF COMMITTEE OF THE WHOLE**

The Chairman publicly declared the recommendations passed by the Committee whilst in Committee of the Whole.

#### **4.4 Expressions of Interest in Property in Walcha WINT/2016/00791**

Clr Archdale left the Meeting and took no part in the debate. Clr Schmutter, Deputy Mayor assumed the Chair.

150 **RESOLVED** on the Motion of Councillors Heazlett and Thomson that Council submit an Expression of Interest in both properties, 38W Fitzroy Street, Walcha being Lot 1 DP 158212 and Lot 2 DP 779495 and 28W Fitzroy Street, Walcha, being Lot 1 DP 779495, with the Valuer General land value being the offering price and the Expression of Interest to be submitted by 29 April 2016.

Clr Archdale returned to the Meeting and was informed on the decision and resumed the Chair.

#### **4.5 Legal Action against Standard & Poor's WINT/2016/00789**

151 **RESOLVED** on the Motion of Councillors Heazlett and Levingston that Council authorise the General Manager, John Gregory O'Hara, to sign the Deed of Covenant and any other associated documentation relating to Council's claim against Standard & Poor's (S&P) **FURTHER THAT** Council approve the affixing of the Common Seal to all necessary documentation **STILL FURTHER THAT** the affixing of the Common Seal be attested to by the Mayor and the General Manager.



**4.2 Legal Action against State Government Re: Amalgamations**

**WINT/2016/00790**

152 **RESOLVED** on the Motion of Councillors Heazlett and Levingston that on the provision that two other rural councils join the action that Council:

- 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 Form a Steering Committee of similarly affected rural councils, with Walcha Council being the lead party in the proposed action in the nature of a people's writ or class action and appoint George Spring and the General Manager as the coordinators who will liaise through Council with other Councils and with counsel in relation to this matter.
- 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 Walcha and other councils support its stand.
- 6 Approve the legal expenses associated with this action up to a level of \$20,000.
- 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

**THERE BEING NO FURTHER BUSINESS THE CHAIRMAN DECLARED THE MEETING CLOSED AT 6:22PM.**