



# Byron Shire Council



## Agenda

### Extraordinary Meeting Thursday, 15 November 2012

held at Council Chambers, Station Street, Mullumbimby  
commencing at 8.30am

A handwritten signature in black ink, appearing to read 'Phil Holloway', enclosed in a white rectangular box.

Phil Holloway  
Acting General Manager

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## 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)

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## RECORDING OF VOTING ON PLANNING MATTERS

### **Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters**

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

**BYRON SHIRE COUNCIL**

EXTRAORDINARY MEETING

15 NOVEMBER 2012

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**BUSINESS OF EXTRAORDINARY MEETING**

- 1. **APOLOGIES**
- 2. **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 3. **REPORTS BY DIVISION**

**Organisational Support**

- 3.1. General Manager Recruitment ..... 2

**ORGANISATIONAL SUPPORT - EXECUTIVE MANAGER'S REPORT**

**Report No. 3.1. General Manager Recruitment**

**Executive Manager:** Organisational Support

5 **File No:** F612 x E2012/17318

**Theme:** Corporate Management – Human Resource Management

**Summary:** The Councillor Recruitment Panel has completed first round interviews and has shortlisted a number of applicants for final stage interviews by the full Council.

**RECOMMENDATION:**

10 1. That to receive a briefing from the consultant and conduct interviews with potential applicants the Council resolve:

15 (A) pursuant to Section 10A(2)(a) and 10A(2)(c) of the Local Government Act, 1993, to move into Confidential Session to discuss the report, namely General Manager Recruitment and:

- 20 (i) that the reasons for closing the meeting to the public to consider this item be that the Consultant’s report, interview process and Council deliberations all involve:
  - 25 (a) personnel matters concerning particular individuals (other than Councillors); and
  - (b) information that would, if disclosed, confer a commercial advantage on a person with whom Council hopes to negotiate a contract for the position of General Manager(ii) that on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential information could:
    - 30 (a) breach Council’s statutory obligations under privacy and information laws;
    - (b) compromise Council’s ability to recruit the best person for the position of General Manager and/or compromise contract negotiations and Council’s ability to obtain the best value.

(B) to move into Committee to conduct the interviews.

35 2. To select the preferred candidate/s and determine any parameters for negotiation of terms and conditions of contract, ensuring confidentiality and public interest as per 1(A) above are maintained in that process.

40 3. To delegate to the Mayor authority to enter into negotiations with the preferred candidate/s in accordance 2. above and to either enter into a Contract on Council’s behalf or to report back to Council on the outcome of the negotiations at the first available meeting and/or at an Extraordinary Meeting if required.

**Attachments:**

- 45 • **CONFIDENTIAL** Report of Local Government Management Solutions dated 7 November 2012 #E2012/18276 [238 pages] ..... **Annexure 1(a)**
- Privacy declaration requested by LGMS #.E2012/18211 [2 pages] ..... **Annexure 1(b)**

*Annexure 1(a): Due to the size of this document and the manner in which it has been prepared by LGMS - a hard copy has been produced for Councillors only.*

**Report**

On 28 June 2012 Council considered Report 12.31 to its Ordinary Meeting on arrangements for the recruitment of a new General Manager and resolved:

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**(Res 12-538)**

That Council:

- 10 “1. *Commence the process for recruitment of a new General Manager, noting that the shortlisting, interviewing, selection and contract negotiation will all be undertaken by the newly elected Council after the September 2012 Local Government elections.*
- 15 2. *Proceed with the recruitment on the basis of the same remuneration package as currently exists and same terms and conditions and position description as the incumbent.*
- 20 3. *Authorise the Acting General Manager to obtain at least 3 quotes and proposals from recognised recruitment agencies experienced in recruitment of General Managers in Local Government.*
4. *Appoint a panel of Councillors including the Mayor to consider the quotes and proposals and authorise the panel to appoint a recruitment agency. The Panel is to include Crs Cameron, Woods, Richardson and Tucker if available with a minimum of three.*
- 25 5. *...*”

In accordance with this resolution the then Councillor Recruitment Panel convened and:

- 30 i. appointed Local Government Management Solutions (a part of Council's industry body Local Government Shires Association) as the recruitment agency;
- ii. settled the advertisements, size format and content, as well as the content of the package of information to be made available to potential applicants; and
- 35 iii. determined the advertising campaign, including when, where and for how long advertisements were to appear in both electronic and print media and at a local, state-wide and national level.

The matter was reported to Council on 27 September 2012, after the elections, at which time Council resolved:

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**(Res 12-766)**

- 45 “1. *That Council reconstitute the Councillor recruitment panel by appointing the Mayor and five Councillors, Crs Ibrahim, Dey, Woods, Cameron and Wanchap. The quorum be set at three.*
2. *That the Councillor recruitment panel, with the support of the recruitment agency, consider the initial shortlisting report, determine applicants for first round interviews, conduct first round interviews and undertake shortlisting to determine list of final round interviewees.*”

50 In accordance with this resolution, the current Councillor Recruitment Panel, considered all applications received, shortlisted 9 applicants for first round interviews and conducted those interviews over 2 days and from that, shortlisted 3 applicants for background checks and final round interviews. The Councillor Recruitment Panel's work pursuant to Res 12-766 has been completed.

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# BYRON SHIRE COUNCIL

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This Extraordinary Meeting has been convened to enable Council to:

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- A. receive a confidential report from the recruitment agency providing an overview of the recruitment process to date and the recommended process from this point forward;
- B. enable the full Council to conduct, in confidential session, the final round interviews with the shortlisted applicants; and
- 10 C. enable the full Council to resolve on how the matter progresses from this point forward, including on such things as identification of:
- who Council's preferred applicant/s are, if any;
  - what additional background checks, if any, Council wants undertaken on the preferred applicant/s (eg bankruptcy, credit and other checks not yet completed);

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  - what the parameters might be set for negotiations on terms and conditions with the preferred applicant/s
  - who will be given delegated authority to conduct the negotiations on Council's behalf eg the Mayor;

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  - whether the Mayor has delegation to enter into a Contract on Council's behalf or whether the outcome of negotiations is to be reported back to Council first; etc.

Information about the applicants is strictly confidential and the consultant has provided a privacy declaration that each Councillor attending the interviews has been requested to sign – refer to Annexure 1(b).

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## **Financial Implications**

The costs in this matter have been to date, or are estimated at:

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- (a) consultant's fee \$15,000;
  - (b) advertising costs \$11,770;
  - (c) background check costs \$995 (estimate) to date;
  - (d) final background check – estimates \$1,100 per applicant;

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  - (e) costs associated with the two rounds of interviews \$4,700 (estimate).

The costs will be funded from the GM Annual Performance review budget (\$4,200) with the balance from the general recruitment advertising and interview/relocation expenses budget allocations. If any further unanticipated recruitment costs for senior positions, or for increased numbers of recruitments beyond those normally managed each year, arise in the second half of this financial year, there is potential for the general recruitment budgets to become over-committed. This will need to be monitored during the second half of the financial year through the normal quarterly budget review processes.

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## **Statutory and Policy Compliance Implications**

Full copies of the relevant provisions of the Local Government Act 1993 have previously been produced and a summary appears below as follows:

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- s334 Council (elected body) must appoint a General Manager and the General Manager is a prescribed "Senior Staff" position.
- s336 Council must "immediately" appoint to the vacant General Manager position or appoint a person to act in the vacancy.
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- s338 General Managers must be appointed under the standard form of contract prescribed by the Department of Local Government – which can be downloaded from

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<http://www.dlg.nsw.gov.au/dlg/dlgHome/documents/Information/06-52%20-%20GM%20Contract.pdf>

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s348 The term of the contract must not be less than 1 year or more than 5 years.  
Vacant positions within Council's organisation structure must be advertised in a manner to allow suitably qualified people to apply.
- 10 For prescribed "Senior Staff" positions, ie vacant General Manager position, advertising requirements can be satisfied by advertising at least twice in a State paper.  
The requirement to advertise does not apply to appointments of a term of less than 1 year.
- 15 s349 Appointments are required to be the people with the "greatest merit" from those who applied in response to the advertising.
- s350 The requirement to advertise does not apply demotions or lateral transfers (neither of which is applicable in this instance).
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