



LATE REPORTS TO COUNCIL

25 June 2019

Late Reports to Council

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REPORT TO COUNCIL

Department:	General Manager
Submitted by:	<i>General Manager</i>
Reference/Subject:	Report 1 – Appointment of Acting General Manager

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Goal:	4.2 An effective and efficient organisation.
Strategy:	4.2.4 Establish Uralla Council as an employer of choice that trains, recruits and retains talented staff and facilitates a diverse workforce
Activity:	4.2.4.1 Enhance Council's reputation as an innovative and inclusive workplace

The attachments to this report are confidential. Should the content of the attachments be the subject of debate such debate must be undertaken in CLOSED session under section 10A (2a) of the Local Government Act (NSW) 1993.

A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:

- (a) the discussion of any of the matters listed in subclause (2), or*
- (b) the receipt or discussion of any of the information so listed.*

(2) The matters and information are the following:

- (a) personnel matters concerning particular individuals (other than councillors).*
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it.**

SUMMARY:

This report proposes the appointment of an acting general manager following the resignation of council's general manager effective close of business 2nd July 2019.

OFFICER'S RECOMMENDATION:

That Council

1. Appoint David Aber as a consultant, for the 1st and 2nd of July 2019, and then as Acting General Manager, commencing 3 July 2019, in accordance with provisions of the Local Government Act 1993 as identified in this report and on the basis of the terms and remuneration detailed in Attachment B, for a period until a new General Manager is appointed.
2. In accordance with the Local Government Act 1993 Sections 377, 378, 379 and 381, delegates to the Acting General Manager the following functions:

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- a) To carry out the regular services and operations of the Council within the sums voted by the Council for expenditure thereon and in accordance with the resolutions of the Council. To authorise variations of expenditure on individual line items and jobs which make up voted project/program items in Council's adopted budget, subject to the total voted expenditure in the project/program items not being exceeded.
- b) To exercise and implement the powers, authorities, duties and functions of the Council under the local Government Act and any other Act of Parliament of any rule, regulation, ordinance or by-law under or pursuant to any such Act but subject to Section 377 of the Local Government Act.

BACKGROUND:

On 3rd June 2019 council's General Manager submitted his formal resignation to be effective 3 July 2019.

The Local Government Act 1993 provides that this position must be filled on a temporary basis from 3 July 2019 until the recruitment of a permanent general manager. This report proposes the appointment of an acting general manager.

REPORT:

Following the resignation of council's general manager effective 3 July 2019, council must fill the position of general manager in accordance with provisions of the Local Government Act 1993. Relevant sections are noted below.

Local Government Act 1993

Relevant extracts and requirements under the Local Government Act 1993 for the appointment of a General Manager and acting general manager include the following:

- Section 223 Role of the governing body:
" 1(i) to determine the process for appointment of the general manager by the council ..."
- Section 334 Appointment of general manager:
"(1) A council must appoint a person to be its general manager. The person must not be a body corporate.

(2) The position of general manager is a senior staff position."
- Section 336 Filling of vacancy in position of general manager:
"(1) If a vacancy occurs in the position of general manager, the council must immediately appoint a person under section 334 to the vacant position or appoint a person to act in the vacant position.
(2) A vacancy occurs in the position of general manager if the general manager:
... (c) resigns from the position..."
- Section 351 which states that a person may only hold the position of Acting General Manager for a maximum period of 12 months:

(1) If a position (including a senior staff position) within the organisation structure of the council is vacant or the holder of such a position is suspended from duty, sick or absent:

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(a) the council, in the case of the general manager's position, or

(b) the general manager, in the case of any other position,

may appoint a person to the position temporarily.

(2) A person who is appointed to a position temporarily may not continue in that position:

(a) if the holder of the position is on parental leave—for a period of more than 24 months, or

(b) in any other case—for a period of more than 12 months.

- Section 223 Role of governing body:

“(1) The role of the governing body is as follows:

... (i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance, ...”

Options

The following options have been considered to fill the position of acting general manager from 3 July 2019:

Option 1 – Appointment of an internal staff as acting general manager

Council has the option of appointing one of the current Council staff to act in the position of General Manager. However, it is noted that heavy workloads are currently being carried by suitable existing staff.

Should the necessity arise for an internal staff member to be appointed to act as the general manager the Mayor has the capacity to make such an appointment under s226(d), which articulates one of the Mayoral roles as being “to exercise in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council”.

Option 2 – Engage consultancy services to fill the temporary role as acting general manager.

Option 3 - Advertise and recruit for a temporary role as acting general manager

In view of time constraints this was not considered as a suitable option.

In view of current workloads the preferred option is to replace the current general manager as close as possible to his departure date through Option 2. It is proposed to on-board the acting general manager in a consultant capacity on the 1st and 2nd of July, if possible, to enable the current general manager to provide him with a ‘handover’. The terms of the 2 day consultancy will be the same as those identified in Attachment B.

Proposed Consultancy

Local Government New South Wales (LGNSW) provide independent consultancy services to councils across NSW and were invited to provide options for suitable candidates to fill the position of acting general manager to meet council's needs. Two candidates were provided and reviewed by a panel consisting of the Mayor, deputy Mayor and Cr O'Connor.

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The candidate unanimously proposed by the panel to fill the temporary position of acting general manager is Mr David Aber. Details of terms including proposed remuneration is provided in Attachment B. Mr Aber's CV is at Attachment A.

It is recommended that David Aber be engaged as a consultant for the 1st and 2nd of July and be appointed as the USC Acting General Manager commencing 3rd July 2019 and on terms and remuneration as detailed in Attachment B and until a permanent appointment of a new general manager is undertaken.

Functions and Delegations

In accordance with s335 of the Local Government Act the functions of the General Manager are:

- a) *to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,*
- b) *to implement, without undue delay, lawful decisions of the council.*
- c) *to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,*
- d) *to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council.*
- e) *to prepare, consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,*
- f) *to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions.*
- g) *to exercise any of the functions of the council that are delegated by the council to the general manager,*
- h) *to appoint staff in accordance with the organisation structure determined under the is Chapter and the resources approved by the council.*
- i) *to direct and dismiss staff,*
- j) *to implement the council's workforce management strategy.*
- k) *any other functions that are conferred or imposed on the general manager by or under this or any other Act.*

Part 3 of the Local Government Act deals with the delegation of functions. Section 377 is a general power of the council to delegate. It also identifies those matters which the Council cannot delegate to the General Manager. Therefore, all matters not specifically identified in s377 can be delegated to the General Manager. Section 377 states that:

- (1) *A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:*
 - (a) *The appointment of a general manager,*
 - (b) *The making of a rate,*
 - (c) *A determination under section 548 as to the levying of a rate,*
 - (d) *The making of a charge,*
 - (e) *The fixing of a fee,*
 - (f) *The borrowing of money,*
 - (g) *The voting of money for expenditure on its works, services or operations,*
 - (h) *The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),*
 - (i) *The acceptance of tenders to provide services currently provided by members of staff of the council.*
 - (j) *The adoption of an operational plan under section 405,*
 - (k) *The adoption of a financial statement included in an annual financial report,*
 - (l) *A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,*
 - (m) *The fixing of an amount or rate for the carrying out by the council of work on private land.*

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- (n) *The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,*
 - (o) *The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979,*
 - (p) *The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,*
 - (q) *A decision under section 356 to contribute money or otherwise grant financial assistance to persons,*
 - (r) *A decision under section 234 to grant leave of absence to the holder of a civic office,*
 - (s) *The making of an application, or the giving of a notice, to the Governor or Minister,*
 - (t) *This power of delegation,*
 - (u) *Any function under this or any other Act that is expressly required to be exercised by resolution of the council.*
- (1A) *Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if:*
- (a) *The financial assistance is part of a specified program, and*
 - (b) *The program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
 - (c) *The program's proposed budget for that year does not exceed 5% of the council's proposed income from the ordinary rates levied for that year, and*
 - (d) *The program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.*
- (2) *A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.*
- (3) *A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation.*

Section 378 of the Act deals with delegations by the General Manager to other staff, s379 is about delegation of regulatory functions and s381 is about the exercise of function conferred or imposed on council employees under other Acts.

The Acting General Manager will require appropriate delegations to provide for the effective and efficient functioning of the council. It is usual practice in local government in NSW for Councils to confer upon the General Manager, acting or permanent, the following delegations:

In accordance with the provisions of Sections 377, 378, 379 and 381 of the Local Government Act 1993, as amended, delegates to the Interim General Manager and the following functions:

1. *To carry out the regular services and operations of the Council within the sums voted by the Council for expenditure thereon and in accordance with the resolutions of the Council. To authorise variations of expenditure on individual line items and jobs which make up voted project/program items in Council's adopted budget, subject to the total voted expenditure in the project/program items not being exceeded.*
2. *To exercise and implement the powers, authorities, duties and functions of the Council under the local Government Act and any other Act of Parliament of any rule, regulation, ordinance or by-law under or pursuant to any such Act but subject to Section 377 of the Local Government Act.*

KEY ISSUES:

- Resignation of council's General Manager, effective 3 July 2019
- Urgent requirement to fill the position of Acting General Manager from 3 July 2019 in accordance with s336 of the Local Government Act 1993

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- Current legislation allows for the temporary appointment of a general manager for up to a 12 month period
- Appropriate delegations for the acting general manager determined in accordance with the LGAct.

COUNCIL IMPLICATIONS:

1. Community Engagement/ Communication (per engagement strategy)

Nil.

2. Policy and Regulation

- *Local Government Act 1993*

3. Financial (LTFP)

Nil.

4. Asset Management (AMS)

Nil

5. Workforce (WMS)

Nil

6. Legal and Risk Management

Nil.

7. Performance Measures

Nil.

8. Project Management

Nil

Prepared by staff member: General Manager
TRIM Reference Number:
Approved/Reviewed by Manager: As above
Department: General Manager's Office
Attachments: Attachment A – CV of David Aber (Confidential)
Attachment B – Terms of Engagement (Confidential)

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REPORT TO COUNCIL

Department:	Infrastructure & Regulation
Submitted by:	Manager Waste, Water and Sewer Services
Reference/Subject:	Late Report 2 – Funding Approval Safe and Secure Water Program Bundarra Sewer Scheme

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Goal:	3.4	Secure, sustainable and environmentally sound water-cycle infrastructure and services
Strategy:	3.4.2	Maintain and renew the sewerage network infrastructure to ensure the provision of efficient and environmentally-sound sewerage services
Activity:	3.4.2.1	Provide sewerage services
Action:	3.4.2.1.3	Progress the Bundarra Sewerage Scheme

SUMMARY:

The purpose of this report is to update Council on progress with its application for funding through the Safe and Secure Water Program.

OFFICER'S RECOMMENDATION:

That Council:

- 1. Note the advice from Hon. Minister Melissa Pavey MP regarding revised NSW Government funding of up to \$6.557 million to complete the Bundarra Sewerage Scheme; and**
- 2. Authorise the General Manager to undertake the necessary negotiations to extinguish the funding agreement with Infrastructure NSW enter into a new funding agreement with NSW Department of Industry – Water.**

BACKGROUND:

On 28 March 2019 Council wrote to the Director of Water Utilities, Lands and Water Division of the NSW Department of Industry requesting additional funds for the Bundarra Sewer Scheme.

REPORT:

On 20 June 2019 Uralla Shire council received a letter from the Hon. Melinda Pavey MP, Minister for Water, Property and Housing confirming that Council's request for additional funding for the Bundarra Sewer Scheme has been approved under the Safe and Secure Water Program.

The offer details funding to a value of \$6.557 million towards the total estimated cost of \$8.329 million. The letter from the minister notes that Council should extinguish the existing funding deed with Infrastructure NSW before the NSW Department Industry, Water, can enter into negotiations with Council with a view to executing a new funding deed.

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A timeframe for finalising the new funding deed has not been advised. The letter from the Minister outlines a commitment to “work with Council to finalise the funding deed as soon as practicable.”

KEY ISSUES:

- The existing funding deed with Infrastructure NSW will need to be extinguished.
- Council will need to enter into negotiations with the Department of Industry – Water (Dol Water) regarding new funding deed arrangements.
- In regard to the Bundarra Sewer Access Charge, Council has determined, in accordance with resolution X09.03/19 that Council “lift the charge for the coming Financial Year (2019/2020) and reapply it from the financial year after the additional required funding is secured.”
- The pre tender tasks including the design work, approvals process, land acquisition and preparation of tender documents are progressing.

COUNCIL IMPLICATIONS:

- 1. Community Engagement/ Communication (per engagement strategy)**
Update to be provided to the community.
- 2. Policy and Regulation**
Nil
- 3. Financial (LTFP)**
The additional funding and scheme costs will impact the LTFP
- 4. Asset Management (AMS)**
Provides for additional assets to be included in Council’s asset management strategy.
- 5. Workforce (WMS)**
Additional staffing requirements for ongoing operations and maintenance.
- 6. Legal and Risk Management**
Nil
- 7. Performance Measures**
Nil
- 8. Project Management**
Public Works Advisory, Director Infrastructure and Development, Manager Waste, Water and Sewer Services

Prepared by staff member: Manager Waste, Water and Sewer Services.

Approved/Reviewed by Manager: Director Infrastructure & Development

Department: Infrastructure & Regulation

Attachments: 1. Letter from Hon. Melinda Pavey MP re Bundarra Sewerage Scheme Funding Approval Safe and Secure Water Program



The Honourable Melinda Pavey MP
Minister for Water, Property and Housing

Minister's office reference

B19/3737

Mr Terry Seymour
Director Infrastructure and Development
Uralla Shire Council
PO Box 106
URALLA NSW 2358

Dear Mr Seymour

Thank you for your letter of 28 March 2019 concerning Bundarra Sewerage Scheme.

I am pleased to advise that I have approved additional funding that will see the total NSW Government funding rise to up to \$6.557 million (being 76% of \$8.329 million). Note that this figure is inclusive of any amounts already paid or due from Infrastructure NSW (INSW).

This special allocation from the Safe and Secure Water Program is to enable Uralla Shire Council to proceed with the Bundarra Sewerage Scheme project without increasing Council's original commitment.

I understand that Uralla Shire Council has an existing funding agreement with INSW for the Bundarra Sewerage Scheme project. That deed required Council to contribute \$1.772 million to the project. Council should contact INSW to arrange for the existing funding deed to be terminated.

Council should contact the Department of Industry - Water (DoI Water) once the termination of the existing is deed is completed, and the Department will commence negotiations with Council with a view to executing new funding deeds for this project. A template funding deed is attached for your information and the final version will include project specific appendixes including proposed baseline program and funding milestones. The DoI Water will work closely with Council to finalise the funding deed as soon as practicable.

Council is advised that Government funding under the Safe and Secure Water Program is subject to the relevant local water utility completing the necessary environmental assessment, community consultation and obtaining all relevant statutory approvals, including Section 60 approval under the *Local Government Act 1993*, before construction can commence.

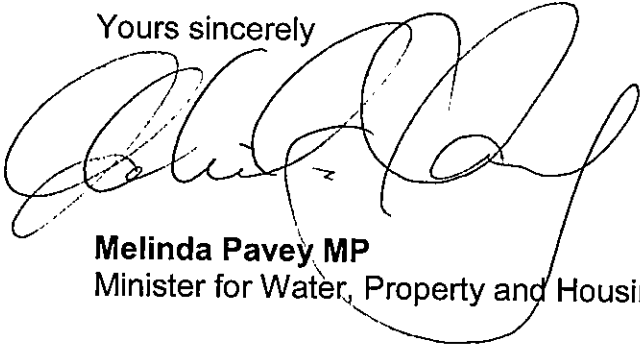
This approval is part of the NSW Government's \$1 billion Safe and Secure Water Program to ensure regional communities have the right infrastructure for the future. The Safe and Secure Water Program enables local water utilities to construct modern infrastructure to provide safe, secure and reliable water and sewerage services for their communities.

.../2

The DoI Water can provide technical assistance and advice to Council during the development and delivery phases of the project. I have asked that Mr Mark Watson, Senior Project Officer, be available to assist Council for this project. Mr Watson can be contacted on 0409 114 384 or by email at mark.watson@dpi.nsw.gov.au.

Congratulations on receiving funding for this important project.

Yours sincerely

A large, stylized handwritten signature in black ink, appearing to read 'Melinda Pavey'.

Melinda Pavey MP
Minister for Water, Property and Housing

18.06.2019