



MINUTES

Extraordinary Council Meeting

3 December 2018

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**MINUTES OF WOLLONDILLY SHIRE COUNCIL
EXTRAORDINARY COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, 62-64 MENANGLE STREET, PICTON NSW 2571
ON MONDAY, 3 DECEMBER 2018 AT 7.30PM**

PRESENT: Mayor Judith Hannan (Mayor), Cr Robert Khan, Cr Michael Banasik, Cr Blair Briggs, Cr Matthew Deeth, Cr Matthew Gould, Cr Simon Landow, Cr Noel Lowry

IN ATTENDANCE: Acting Chief Executive Officer, Executive Director Community & Corporate, Acting Director Planning, General Counsel, Assistant Director People, Legal & Governance, David Baird (Marsdens Law Group) and Minute Taker

1 OPENING

2 RECORDING OF THE MEETING

In accordance with Council's Code of Meeting Practice the electronic recording of the Council Meeting and the use of electronic media during the proceedings is not permitted. This includes devices such as laptops, mobile phones, tape recorders and video cameras.

3 WEBCAST NOTICE

Members of the public are advised, in accordance with Section 18 of the Privacy and Personal Information Protection Act 1998 (PPIPA), that Wollondilly Shire Council records and webcasts live all Ordinary and Extraordinary Meetings of Council held in open session for the purpose of facilitating community access. The webcasts are publicly available for viewing on Council's website.

Video footage collected is of the decision making body only, if you do not wish your image to be recorded please remain in the public gallery. Your image, voice, personal and health information may be recorded, publicly broadcast and archived if you speak during the meeting and/or don't remain in the space provided.

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Council may be required to disclose recordings pursuant to the Government Information (Public Access) Act 2009, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation

4 NATIONAL ANTHEM

5 ACKNOWLEDGEMENT OF COUNTRY

The Mayor acknowledged the traditional Custodians of the Land:

I would like to pay my respect and acknowledge the traditional custodians of the land on which this meeting takes place, and also pay respect to Elders both past and present.

6 APOLOGIES AND LEAVE OF ABSENCE REQUESTS

An apology was noted for Cr Matt Smith

7 DECLARATION OF INTEREST

Nil

8 EFFICIENT AND EFFECTIVE COUNCIL

8.1 LEGAL ADVICE RELATING TO THE PENDLEBURY REPORT

This matter relates to Councillors' access to an investigation report produced by Brooke Pendlebury of Pendlebury Workplace Law.

Councillors are seeking access to this report and therefore require legal advice. The legal advice to be presented is therefore considered subject to legal professional privilege.

Under section 10A(4) of the Local Government Act 1993 the public are invited to make representations to the Council meeting before any part of the meeting is closed, as to whether that part of the meeting should be closed.

No representations were received.

RESOLUTION 97/2018

Moved: Cr Matthew Deeth

Seconded: Cr Blair Briggs

1. That Council considers the report listed below in a meeting closed to the public in accordance with Section 10A(2) of the Local Government Act 1993:

8.1 Legal Advice Relating To The Pendlebury Report

This matter is considered to be confidential under Section 10A(2) (a) and (g) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

2. That pursuant to Section 10A(1) of the Local Government Act 1993, the media and public be excluded from the meeting on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2).

3. That the correspondence and reports relevant to the subject business be withheld from access to the media and public as required by Section 11(2) of the Local Government Act 1993.

On being put to the meeting the motion was declared **CARRIED** 8/0

In Favour: Crs Judith Hannan, Robert Khan, Michael Banasik, Blair Briggs, Matthew Deeth, Matthew Gould, Simon Landow and Noel Lowry

Against: Nil

Council moved into Closed Council at 7.45pm. The Executive Director Community & Corporate, Acting Director Planning, Assistant Director People, Legal & Governance, the public and media left the chamber.

The Ordinary meeting re-opened to the staff, public and media at 8.30pm.

RESOLUTION 102/2018

Moved: Cr Matthew Deeth

Seconded: Cr Blair Briggs

That the recommendation as resolved in closed session be read out.

On being put to the meeting the motion was declared **CARRIED** 7/1

In Favour: Crs Judith Hannan, Robert Khan, Michael Banasik, Blair Briggs, Matthew Deeth, Matthew Gould and Simon Landow

Against: Cr Noel Lowry

The Mayor read the resolution adopted in respect of Item 8.1 Legal Advice Relating To The Pendlebury Report.

1. That Council acknowledge its deep concern for everyone affected by the issues raised in the lead up to and as a result of the Pendlebury Review, and in particular the family of Harry Wilson and the pain they must be going through. Further that Council note that this is a very difficult time for many staff and that employee assistance services are available to any staff that need them.
2. That Council note the preliminary legal advice indicating that the governing body may access the "Pendlebury Report/Review" (hereafter referred to as the "Pendlebury Report").
3. That Council note that such access is both reasonable and lawful given the governing body's obligation under section 223 of the Local Government Act to:
 - a. Direct and control the affairs of the Council in accordance with the Act,
 - b. Be responsible for ensuring that the Council acts honestly, efficiently and appropriately.
 - c. Ensure as far as possible that the council acts in accordance with the plans set out in Chapter 3 of the Local Government Act and the programs, strategies and policies of the Council.
4. That a further emergency extraordinary meeting be held on Thursday the 6th December 2018 for the purposes of further considering Council's response to the Pendlebury Report.
5. That the General Manager (CEO) be directed to attend and table the following items as closed items at the extraordinary meeting referred to in point 4 above:
 - a. the Pendlebury Report, lawfully redacted,
 - b. a report outlining his response to the recommendations in the Pendlebury Report and any proposed actions

Further that there be sufficient copies of the reports available at the meeting for each councillor to have a copy for the purposes of reviewing it.

6. That Council note that the Chief Executive Officer, in his role as General Manager under the Local Government Act, is required under section 335 of that act to implement, without undue delay, lawful decisions of the council.
7. That the Mayor be delegated the authority to seek further legal and/or professional advice

on the Pendlebury report, or any other related matters as she deems necessary. Further, that the Mayor provide an update to Council on any advice received at the extraordinary meeting to be held on Thursday the 6th December 2018.

8. That the functions of Council delegated to the General Manager (CEO) under the “Instrument of Delegation, Delegation of Authority – General Manager” in force from 18 September 2017 be suspended for any matters relating to the Pendlebury Report or for any issues arising from or addressed in it.
9. That for any matters relating to the Pendlebury Report or any issues arising from or addressed in it, the General Manager (CEO) be required to receive the concurrence of the Mayor before exercising any functions that would otherwise be delegated to him under the “Instrument of Delegation, Delegation of Authority – General Manager” in force from 18 September 2017. Further that councillors be advised of for any action taken using this delegation.
10. That the Mayor be delegated the authority to instruct the General Manager (CEO) on seeking further advice to implement resolutions 8 and 9 above.

The Mayor noted that Cr Lowry voted against the motion.

The Meeting closed at 8.40PM.

The minutes of this meeting were confirmed at the Ordinary Meeting of the Wollondilly Shire Council held on 10 December 2018.

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MAYOR