



**\*\*PUBLIC COPY\*\***

# **Business Papers** 2022

MID-WESTERN REGIONAL COUNCIL

EXTRAORDINARY MEETING

**WEDNESDAY 12 JANUARY 2022**

*A prosperous and progressive  
community we proudly call home*









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5 January 2022

Dear Councillor,

MEETING NOTICE  
**Extraordinary Meeting**  
12 JANUARY 2022  
Public Forum at 5.30pm  
*Council Meeting commencing at conclusion of Public Forum*

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Notice is hereby given that the above meeting of Mid-Western Regional Council will be held in the Council Chambers, 86 Market Street, Mudgee at the time and date indicated above to deal with the business as listed on the Meeting Agenda.

The meeting will be live streamed on Council's website.

Members of the public may address Council at the Public forum, which is held at 5.30pm immediately preceding the Council meeting. Speakers are given five minutes to address any items included in the agenda. If you wish to register to speak at the Public Forum please contact the Executive Assistant to the General Manager by 4.00pm on the day prior to the Council Meeting.

Yours faithfully

A handwritten signature in black ink, appearing to be "BRAD CAM", written over a horizontal line.

BRAD CAM  
GENERAL MANAGER



# AGENDA

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Item 1: Apologies

Item 2: Disclosure of Interest

In accordance with Section 451 of the Local Government Act 1993, Councillors should declare an interest in any item on this Agenda. If an interest is declared, Councillors should leave the Chambers prior to the commencement of discussion of the item.

Item 3: Confirmation of Minutes

## Item 4: Office of the General Manager

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### 4.1 Delegations of the Mayor

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400098, GOV400098

#### RECOMMENDATION

##### That Council:

1. receive the report by the Governance Coordinator on the Delegations of the Mayor;
2. pursuant to the provisions of Section 377 of the Local Government Act, 1993, delegate to the mayor authority:
  - a. to monitor the General Manager in the exercise of the General Manager's power, duties and functions;
  - b. to authorise expenditure on works approved in the Operational Plan for an amount up to \$20,000;
  - c. to authorise work, not approved in the Operational Plan, which in the Mayor's opinion is urgent, at a cost not exceeding \$20,000 except in the case of Bush Fire Emergency where the limit is \$50,000;
  - d. to approve the attendance of any Councillor at meetings or functions between Council meetings that the Mayor would normally attend on behalf of Council;
  - e. to approve professional development activities, including conference attendance, within the budget limits of the Professional Development Program;
  - f. to affix and witness the Common Seal of Council, in response to a resolution of Council, to any necessary documents in conjunction with the General Manager or another Councillor; and
3. note the Role of Mayor in accordance with section 226 of the Local Government Act attached.

#### Executive summary

To determine the Mayor's delegations for the period commencing January 2022 to January 2024 and note the role of the Mayor in accordance with section 226 of the Act.

#### Disclosure of Interest

Nil



## Detailed report

Sections 226 (o) and 377 of the Act enables to Council to delegate its functions to the Mayor.

This report provides some context for the role of the Mayor in the Mid-Western Regional Council community. Specifically, it is derived from Section 226 of the Local Government Act, 1993 that relates to the role of the Mayor.

## Community Plan implications

<b>Theme</b>	<b>Good Governance</b>
Goal	Strong civic leadership
Strategy	Provide accountable and transparent decision making for the community

## Financial implications

Not applicable

TIM JOHNSTON  
GOVERNANCE COORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

16 December 2021

*Attachments:* 1. Role of Mayor s226 Local Government Act.

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



## New South Wales Consolidated Acts

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### LOCAL GOVERNMENT ACT 1993 - SECT 226

#### Role of mayor

##### 226 Role of mayor

The role of the mayor is as follows--

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.

## 4.2 Election of the Mayor

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400066, GOV400054, GOV400098

### RECOMMENDATION

#### That Council:

1. receive the report by the Governance Coordinator on the Election of the Mayor;
2. determine that the Ballot for the election of the Mayor be by Open Voting/ Ordinary Ballot/Preferential Ballot (delete two);
3. designate the General Manager as Returning Officer for the election with the election to be conducted by the General Manager and the Manager Customer Services and Governance; and
4. Elect the Mayor for the term of 2 years.

---

### Executive summary

This report provides the direction to elect the Mayor for the period January 2022 to January 2024.

### Disclosure of Interest

Nil

### Detailed report

The Mayor is elected by the Councillors from among their number.

The Local Government Act 1993 provides that where the Mayor is elected by the Councillors from among their number, the election shall be held within 3 weeks of the ordinary election (Section 290 (1) (a)) and the Mayor shall hold office for two years (Section 230).

As provided by Clause 394 of the Local Government (General) Regulation 2005, the conduct of the election of the Mayor is governed by the provisions of Schedule 7 of that Regulation.

#### **Local Government (General) Regulation 2005 Requirements**

The Returning Officer for the election of the Mayor shall be the General Manager (or a person appointed by the General Manager). The General Manager has indicated that he will act as Returning Officer and that the Manager Customer Services and Governance will assist.

Nominations for the Mayor shall be in writing, but may be without notice, by two (2) or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

The nomination is to be delivered or sent to the Returning Officer who is to announce the names of the nominees at the Council Meeting at which the election is to be held.

If only one candidate is nominated, that Councillor is elected.

When more than one candidate is nominated, the Council may, by resolution, decide whether the election shall be carried out by:

- a) Ordinary Ballot - Involving the marking of Ballot Papers - subsequent exclusion of one candidate; further voting and exclusions; repeated until two candidates only remain, final vote between remaining two candidates.
- b) Open Voting - Procedure identical to Ordinary Ballot, however, the voting is by show of hands or similar means, not a Ballot Paper.
- c) Preferential Ballot - The complete numbering of Ballot Papers in consecutive order of preference for all candidates, commencing with "1" as first preference.

### **Drawing of Lots**

If this becomes necessary, it shall be done by the Returning Officer.

In any case for the purpose of excluding a candidate, the candidate's name drawn shall be excluded. In any case for the purpose of electing a candidate, the candidate's name drawn shall be elected.

## Community Plan implications

<b>Theme</b>	<b>Good Governance</b>
Goal	Strong civic leadership
Strategy	Provide accountable and transparent decision making for the community

## Financial implications

Not applicable

TIM JOHNSTON  
GOVERNANCE COORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

16 December 2021

*Attachments:* 1. Role of Mayor.

### **APPROVED FOR SUBMISSION:**

BRAD CAM  
GENERAL MANAGER

## Local Government Act 1993 No 30

Current version for 1 July 2020 to date (accessed 27 July 2020 at 12:06)

[Chapter 9](#) > [Part 2](#) > [Division 2](#) > Section 226

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### 226 Role of mayor

The role of the mayor is as follows—

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.

## 4.3 Election of Deputy Mayor

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400066, GOV400054, GOV400098

### RECOMMENDATION

#### That Council:

1. **receive the report by the Governance Coordinator on the Election of Deputy Mayor;**
2. **determine that the Ballot for the election of the Deputy Mayor be by Open Voting/ Ordinary Ballot/Preferential Ballot (delete two);**
3. **elect the Deputy Mayor for the Mayoral term (2 years) or less; and**
4. **designate the General Manager as the Returning Officer for the election with the election to be conducted by the General Manager and the Manger Customer Services and Governance.**

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### Executive summary

This report provides the direction to elect the Deputy Mayor for a period commencing January 2022 to January 2024.

### Disclosure of Interest

Nil

### Detailed report

The Deputy Mayor is elected by the Councillors from among their number.

The Local Government Act 1993 provides that where the Deputy Mayor is elected by the Councillors from among their number, the Deputy Mayor shall hold office for the Mayoral term or a shorter period (Section 231).

As provided by Clause 394 of the Local Government (General) Regulation 2005, the conduct of the election of the Deputy Mayor is governed by the provisions of Schedule 7 of that Regulation.

#### **Local Government (General) Regulation 2005 Requirements**

The Returning Officer for the election of the Deputy Mayor shall be the General Manager (or a person appointed by the General Manager). The General Manager has indicated that he will act as Returning Officer and that the Manager Customer Services and Governance will assist.

Nominations for the Deputy Mayor shall be in writing, but may be without notice, by two (2) or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.



The nomination is to be delivered or sent to the Returning Officer who is to announce the names of the nominees at the Council Meeting at which the election is to be held.

If only one candidate is nominated, that Councillor is elected.

When more than one candidate is nominated, the Council may, by resolution, decide whether the election shall be carried out by:

- a) Ordinary Ballot - Involving the marking of Ballot Papers - subsequent exclusion of one candidate; further voting and exclusions; repeated until two candidates only remain, final vote between remaining two candidates.
- b) Open Voting - Procedure identical to Ordinary Ballot, however, the voting is by show of hands or similar means, not a Ballot Paper.
- c) Preferential Ballot - The complete numbering of Ballot Papers in consecutive order of preference for all candidates, commencing with "1" as first preference.

### **Drawing of Lots**

If this becomes necessary, it shall be done by the Returning Officer.

In any case for the purpose of excluding a candidate, the candidate's name drawn shall be excluded. In any case for the purpose of electing a candidate, the candidate's name drawn shall be elected.

## Community Plan implications

<b>Theme</b>	<b>Good Governance</b>
Goal	Strong civic leadership
Strategy	Provide strong representation for the community at Regional, State and Federal levels

## Financial implications

Not applicable

**TIM JOHNSTON**  
**GOVERNANCE COORDINATOR**

**SIMON JONES**  
**DIRECTOR COMMUNITY**

16 December 2021

*Attachments:* Nil

**APPROVED FOR SUBMISSION:**

**BRAD CAM**  
**GENERAL MANAGER**

## 4.4 Recognition of Outgoing Councillors

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400098, A0110038

### RECOMMENDATION

#### That Council:

1. **receive the report by the Governance Coordinator on the Recognition of Outgoing Councillors; and**
2. **recognise the service of former Councillors Martens, Holden and O'Neill:**
  - **Esme Elizabeth Martens first elected 25<sup>th</sup> March 2006 ending 4<sup>th</sup> December 2021 continuous service for 15 years 8 months (4 terms)**
  - **Russell Holden 2008 – 2012 and 2016 - 2021 (2 terms)**
  - **John O'Neill 2016 – 2021**

### Executive summary

Service to the community deserving appropriate recognition of the Council.

### Disclosure of Interest

Nil

### Detailed report

The recognition of service of outgoing councillors is being appropriately recorded in the minutes of the Councils meeting.

### Community Plan implications

<b>Theme</b>	<b>Good Governance</b>
Goal	Strong civic leadership
Strategy	Provide strong representation for the community at Regional, State and Federal levels

### Strategic implications

#### **Council Strategies**

Not Applicable

#### **Council Policies**

Not Applicable

**Legislation**

Not Applicable

Financial implications

N/A

Associated Risks

Nil

TIM JOHNSTON  
GOVERNANCE COORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

23 December 2021

*Attachments:* Nil

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER

## 4.5 Councillor casual vacancies within 18 months of the election

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400098, GOV400015, GOV400098

### RECOMMENDATION

#### That Council:

1. receive the report by the Governance Coordinator on the matter of Councillor casual vacancies within 18 months of the election;
2. in accordance with section 291A of the Local Government Act 1993 declare that casual vacancies occurring in the office of a councillor within 18 months of the election are to be filled by a countback of votes cast at the election or;
3. in accordance with section 291 of the Local Government Act 1993 a casual vacancy occurs in a civic office, the office is to be filled by a by-election.

*The resolution should select either 2 or 3*

### Executive summary

The legislative provision of s 291A if adopted must be resolved at the first meeting of the new Council.

### Disclosure of Interest

Nil

### Detailed report

The Office of Local Government circular 21-42 dated 24<sup>th</sup> December 2021 is attached confirming the actions required by Council at their first meeting. This report addresses the need for council to resolve to fill casual vacancies that arise with 18 months of the election using a count back if they want to fill casual vacancies by these means.

### Community Plan implications

Theme	Good Governance
Goal	Strong civic leadership
Strategy	Provide strong representation for the community at Regional, State and Federal levels

### Strategic implications

#### Council Strategies

Not Applicable

#### Council Policies

Not Applicable

**Legislation**

Not Applicable

Financial implications

Council currently has a budget reserve balance for councillor election of \$300k. The cost of the 12 Dec 2021 election has not been billed by the Electoral Commission, it is estimated as being \$225K. The cost of a By-Election is estimated as being \$225K.

Associated Risks

There is a low public reputation risk that Council will consider in making this decision.

TIM JOHNSTON  
GOVERNANCE COORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

15 December 2021

*Attachments:* 1. OLG Circular 21-42 - Casual Vacancies.

APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



Office of  
Local Government

## Circular to Councils

<b>Circular Details</b>	21-42 / 24 December 2021 / A798531
<b>Previous Circular</b>	<i>21-30 Post-Election Guide on key decisions and activities for councils, county councils and joint organisations following the local government elections</i>
<b>Who should read this</b>	Councillors / General Managers / Council Governance Staff
<b>Contact</b>	Council Governance Team / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Council to Implement

**Reminder to councils: decisions on countbacks, administration of the oath or affirmation of office and the delivery of councillor induction and refresher training after the election**

### What's new or changing

- Councils are reminded that at their first meeting following the ordinary election, they will be required to decide whether to fill casual vacancies using a countback and to administer an oath or affirmation of office for councillors.
- Councils are also reminded that they will need to provide induction training for newly elected mayors and councillors and refresher training for returning mayors and councillors within six months of the election.

### What this will mean for your council

- At their first meeting after the ordinary election, councils are required to resolve to fill casual vacancies occurring in the first 18 months after the election using a countback if they want to fill casual vacancies by these means. If councils do not resolve to fill casual vacancies using a countback at their first meeting after the election, by-elections will need to be held to fill vacancies.
- At or before the first meeting after the election, the mayor and councillors are required to take an oath or make an affirmation of office. A councillor who fails, without a reasonable excuse, to take the oath or make an affirmation of office, will not be entitled to attend council meetings until they do so and will be taken to be absent without leave.
- Councils must provide induction training for newly elected mayors and councillors and refresher training for returning mayors and councillors within six months of the election. Councils are required to report on the mayor's and councillors' participation in induction or refresher training in their annual reports. Guidance on developing and delivering induction and refresher training is provided in the Office of Local Government's *Councillor Induction and Professional Development Guidelines* which are available [here](#).

### Where to go for further information

- Further guidance on these and other requirements is provided in the *Post-Election Guide for Councils, County Councils and Joint Organisations*. The Guide is available [here](#).

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- For further information, contact the Council Governance Team on 4428 4100 or [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).

 23 December 2021

**Brett Whitworth**  
**Group Deputy Secretary, Planning Delivery and Local Government**

## 4.6 Delegations of the General Manager

REPORT BY THE GOVERNANCE COORDINATOR  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400098, GOV400002

### RECOMMENDATION

#### That Council:

1. **receive the report by the Governance Coordinator on the Delegations of the General Manager; and**
2. **review and adopt the instrument of delegations of authority of the General Manager to be dated 12<sup>th</sup> January 2022.**

### Executive summary

Section 380 of the Local Government Act requires that each Council must review all its delegations during the first 12 months of each term of office. This report deals with the Councils review of the General Manager's Delegations (s 377)

The Council in November 2021 amended the General Manager's delegation (*motion 319/21*). The amendments were introduced to limit the potential of disruption of business during the delayed and protracted period of the Councillor Elections. This report recommends maintaining some of those changes to the General Manager's delegations.

### Disclosure of Interest

Nil

### Detailed report

At the 3<sup>rd</sup> November 2021 meeting of Council the following motion was adopted;

#### **That Council:**

1. ***receive the report by the Governance Coordinator on the Delegation of Authority General Manager / Councillor Election 4 December 2021;***
2. ***suspend the operation of the exclusions listed in Part 4 of the General Manager's Delegations of Authority for the period 5th November 2021 to 12th January 2022; and***
3. ***amend Part 3 limitations of the General Manager's Delegations of Authority increasing emergency expenditure 3.1a from \$100,000 to \$250,000 and 3.2 accepting Council tenders from \$1,000,000 to \$3,000,000 for the period 5th November 2021 to 12th January 2022.***

This report now recommends making a change of the exclusions in the delegations as follows (*the change is identified in red*):

Part 4: Exclusions in this delegation:-

Determination of applications under the Environmental Planning and Assessment Act 1979, and other relevant Acts, which include:

- 4.1 The determination of a development application where a Senior Staff\* member of Council or Councillor is the owner or applicant of the subject land (excluding Council owned or managed land).
- 4.2 The determination of a development application where Council is the owner or manager of the land if the development exceeds a construction value of \$150,000 (Change to \$1,000,000)
- 4.3 The determination of a development application for a subdivision creating more than 20 allotments.
- 4.4 The determination of a development application for the erection, alteration and/or additions to buildings exceeding a construction value of \$3,000,000.
- 4.5 To grant consent to a development application requiring a variation of more than 10% to a condition or standard specified in a Council policy, Development Control Plan (DCP) or Local Environment Plan (LEP), without providing 5 working days notification to Council, during which two Councillors request the application to be reported to Council for consideration.
- 4.6 To grant consent to a development which receives 7 or more objections during assessment.
- 4.7 To grant consent to a development application which receives 1-6 objections during assessment; without providing 5 working days notification to Council, during which two Councillors request that the application be reported to Council for consideration.
- 4.8 The determination of a development application which upon the written request of two Councillors is to be reported to Council for consideration.

\*Senior Staff s332 Local Government Act 1993 No 30

It is also recommended to maintain the changes made to Part 3 Limitations in this delegation (*the changes are identified in red*):

3. Limitations in this delegation:-

- 3.1
  - a) To authorise any work at a cost not exceeding \$100,000, (change to \$250,000) which in the General Manager's opinion is necessary to respond to an emergency, community safety issue or potential public liability issue. Any such expenditure must be reported immediately to the Mayor and to the next ordinary meeting of the Council.
  - b) To authorise any work at a cost not exceeding \$250,000, which in the General Manager's opinion is necessary to respond to a S44 fire event or a declared natural disaster. Any such expenditure must be reported immediately to the Mayor and to the next ordinary meeting of the Council.
- 3.2 To accept Council tenders with a contract value of up to \$1,000,000 (change to \$3,000,000) or a contract entered into through a prescribed entity tender, where all other tender requirements of section 55 of the Local Government Act 1993 and Part 7 of the Local Government Regulation 2005 are met.

- 3.3 To determine and write-off rates, fees, charges and other debts up to and including \$2,500.00 per annum per debt.

## Community Plan implications

<b>Theme</b>	<b>Good Governance</b>
Goal	Strong civic leadership
Strategy	Provide strong representation for the community at Regional, State and Federal levels

## Strategic implications

### Council Strategies

Not Applicable

### Council Policies

Delegations & Authorisations Policy 19 May 2021

### Legislation

Local Government Act 1993 Chapter 12 Part 3

## Financial implications

The Delegations of Authority Instrument establishes financial limitations of the General Manager.

## Associated Risks

Not Applicable

TIM JOHNSTON  
GOVERNANCE COORDINATOR

SIMON JONES  
DIRECTOR COMMUNITY

21 December 2021

*Attachments:* 1. delegation-of-authority-for-the-general-manager.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



## DELEGATION OF AUTHORITY FOR THE GENERAL MANAGER

*A prosperous  
and progressive  
community*

ADOPTED		REVIEW DATE	AUGUST 2021
COUNCIL MEETING MIN NO	319/20	FILE NUMBER	A0230005
DATE:	21 OCTOBER 2020		

1. Pursuant to the powers conferred on Council by Section 377 of the *Local Government Act* 1993, (LG Act) the Council hereby authorises the General Manager to exercise the under mentioned powers, in addition to those powers conferred and imposed upon General Managers by Section 335 of the *LG Act* 1993, the functions of General Manager.
  - 1.1. Council recognises that it cannot delegate those powers, authorities, duties and functions that are required by legislation to be exercised by Council under the LG Act s. 377 (1) (a) to (u); Or requiring a resolution of Council.
  - 1.2. The delegation will remain in force until otherwise revised or revoked by resolution of Council in accordance with the *LG Act 1993* (as amended). Council must review all its delegations during the first 12 months of each term of office *LG Act* s. 380
  - 1.3. Any function that is delegated by the Council may, notwithstanding the delegation, still be exercised by the Council.
  - 1.4. The General Manager will exercise the powers, authorities, duties and functions delegated, in accordance with and subject to the provisions of any legislation and in accordance with relevant policies of Council.
2. The Council delegates to the General Manager the powers, authorities, duties and functions specified in:
  - 2.1 The *Local Government Act 1993* (as amended), subject to s. 377 of the *LG Act*.
  - 2.2 All other Acts and subordinate legislation (as amended) under which Council has powers, authorities, duties and functions, subject to s.381 of the *Local Government Act 1993* (as amended).
3. **Limitations in this delegation:-**
  - 3.1 a) To authorise any work at a cost not exceeding \$100,000, which in the General Manager's opinion is necessary to respond to an emergency, community safety issue or potential public liability issue. Any such expenditure must be reported immediately to the Mayor and to the next ordinary meeting of the Council.
  - 3.1 b) To authorise any work at a cost not exceeding \$250,000, which in the General Manager's opinion is necessary to respond to a S44 fire event or a declared natural disaster. Any such expenditure must be reported immediately to the Mayor and to the next ordinary meeting of the Council.
  - 3.2 To accept Council tenders with a contract value of up to \$1,000,000 or a contract entered into through a prescribed entity tender, where all other tender requirements of section 55 of the *Local Government Act* 1993 and Part 7 of the *Local Government Regulation* 2005 are met.
  - 3.3 To determine and write-off rates, fees, charges and other debts up to and including \$2,500.00 per annum per debt.

## 21 OCTOBER 2020, DELEGATION OF AUTHORITY FOR THE GENERAL MANAGER

**4. Exclusions in this delegation:-**

Determination of applications under the *Environmental Planning and Assessment Act* 1979, and other relevant Acts, which include:

- 4.1 The determination of a development application where a Senior Staff<sup>1</sup> member of Council or Councillor is the owner or applicant of the subject land (excluding Council owned or managed land).
  - 4.2 The determination of a development application where Council is the owner or manager of the land if the development exceeds a construction value of \$150,000.
  - 4.3 The determination of a development application for a subdivision creating more than 20 allotments.
  - 4.4 The determination of a development application for the erection, alteration and/or additions to buildings exceeding a construction value of \$3,000,000.
  - 4.5 To grant consent to a development application requiring a variation of more than 10% to a condition or standard specified in a Council policy, Development Control Plan (DCP) or Local Environment Plan (LEP), without providing 5 working days notification to Council, during which two Councillors request the application to be reported to Council for consideration.
  - 4.6 To grant consent to a development which receives 7 or more objections during assessment.
  - 4.7 To grant consent to a development application which receives 1-6 objections during assessment; without providing 5 working days notification to Council, during which two Councillors request that the application be reported to Council for consideration.
  - 4.8 The determination of a development application which upon the written request of two Councillors is to be reported to Council for consideration.
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<sup>1</sup> Senior Staff s332 Local Government Act 1993 No 30



## Item 5: Finance

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### 5.1 Tourism Services and Regional Marketing Expression of Interest 2021/54

REPORT BY THE CHIEF FINANCIAL OFFICER  
TO 12 JANUARY 2022 EXTRAORDINARY MEETING  
GOV400098, COR400472, GOV400098

#### RECOMMENDATION

##### That Council:

1. **receive the report by the Chief Financial Officer on the Tourism Services and Regional Marketing Expression of Interest 2021/54;**
2. **note that three EOI proposals were received, and one late EOI proposal which was not assessed;**
3. **note that no viable proposals were received as part of this EOI process; and**
4. **request an additional report be brought back to Council detailing the alternate cost of providing Tourism Services and Regional Marketing internally (not through a contract arrangement), outlining any benefits and disadvantages to current service levels.**

#### Executive summary

Council sought proposals for the provision of Tourism Services and Regional Marketing through an advertised Expression of Interest process, to ascertain whether:

- a) a viable market exists, to progress to a selective tender process as required under Section 55 of the Local Government Act; and
- b) a more efficient service arrangement could be implemented for the ongoing provision of these 2 functions of Council.

#### Disclosure of Interest

The Manager Economic Development provided technical support throughout this EOI, and declared an immaterial, non-pecuniary conflict of interest. This role did not evaluate the proposals.

#### Detailed report

##### **Tourism Services and Regional Marketing Expression of Interest 2021/54**

An Expression of Interest process in accordance with Council's Procurement Policy was carried out for the establishment of market suppliers capable of filling the tourism Services and Regional Marketing functions under Council's Delivery Program and Operational Plan. The services were split

into two areas, per the EOI above, to establish whether there was a viable market for either function. Quotes for servicing these functions were sought, to ensure that the market proposals were viable for Council.

A probity review of the Tourism Services contract is attached as Attachment 2, which provides clarity around the requirements of Council to ascertain whether a market exists. See Item F1.

### Purpose

The proposed contract will run for a period of 3 years from 1 July 2022 to 30 June 2025. The existing budget for this contract is about \$1.95 million, therefore it is anticipated that a tender will be required under Section 55 of the Local Government Act, unless there is not a viable market for these services to run a tender. Should the EOI prove that a viable market existed, a selective tender was planned to be run from the EOI responses. Should a viable market not exist, a report to obtain exemption from tender would be written for Council.

The Tourism Services and Regional Marketing EOI was carried out through VendorPanel and obtained 3 proposals. Information from those proposals has been summarised in the confidential attachments for this report.

### Advertised

Open to Market	17 November 2021
Closed	14 December 2021
Total days	28

The above EOI was advertised in:

- Council's e-Tendering portal –VendorPanel
- Information regarding this EOI was published on Council's website

### EOI's Received

One non-conforming EOI was received, while two conforming EOI's were received.

### Late EOI's

There was one late EOI received. As per the EOI documentation, this EOI was not accepted, nor evaluated.

### Process of Evaluation

The process of evaluation, the methodology used and Evaluation Panel members are in accordance to the information provided in the Procurement and Evaluation Plan.

### Evaluation Panel Members

Panel Member	Name	Position Title
Chairperson	Leonie Johnson	CFO
Panel Member 1	Julie Robertson	Director Development
Panel Member 2	Simon Jones	Director Community
Technical Advisor	Alina Azar	Manager Economic Development

## Probity

The EOI has been conducted in accordance with Clause 168 of the Local Government (General) Regulation 2005.

Conflict of Interest Declarations were signed by all participating evaluation panel members both on advertising of the EOI and prior to evaluation. The declarations are available to be viewed if required.

All EOI proposals insurance records and compliance information were checked against EOI requirements and potential non-conformities were noted in the Evaluation Matrix for the consideration of the panel.

The evaluation was conducted in accordance with the Local Government Tendering Guidelines and confidentiality and probity were maintained throughout the process.

## Methodology

All EOIs were assessed and scored against the evaluation criteria listed in the tender documentation and weightings in the evaluation plan to determine whether a suitable applicant, or multiple suitable applicants existed.

## Outcome

It was deemed that no viable market proposals were received, as proposals either only partially met the supplier brief, or were materially over Council's budget. It may be possible to vary the request for some or all of the service and either negotiate directly with one or all of the EOI proposals. However, indicative in house pricing was also reviewed and it was deemed appropriate due to cost effectiveness, to explore transferring these services to an internal service structure. A key consideration for procurement is to ensure that Council receives value for money for the services obtained. An initial review of Council's in-house capacity and capability shows that a viable alternative and more cost effective solution may be to explore the delivery of these services via an internal service structure.

There are noted benefits in assessing the existing service structure and alternative service delivery arrangements. Attachment 1 provides a service review that was carried out prior to testing the market by Council's external auditors Crowe Howarth. Given the result of this EOI, it would be prudent to further assess:

Item 6. Identification of areas where synergies between supplier and Council could be created and identifying areas where duplication of efforts can be identified (*reduced*).

There has also been notable difficulties in providing a clear service/benefit to all ratepayers equally through a membership based body supplier.

## Community Plan implications

Theme	Good Governance
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

## Strategic implications

### Council Strategies

Economic Development Strategy

**Council Policies**

Procurement Policy

**Legislation**

Local Government Act – Section 55 Tendering

Local Government Regulations – Part 7 Tendering

**Financial implications**

No budget variations are required at this time, a further report will be brought back to Council detailing possible alternate service delivery arrangements which may result in budget variation recommendations.

**Associated Risks**

Given the current service contract ends on 30 June 2022, there is a period of less than 6 months to ascertain the most efficient structure to deliver tourism services and regional marketing to support the tourism industry in the Mid-Western Region, and if required negotiate exit terms of the existing contract.

Should Council choose to negotiate directly with one of the existing EOI's or an alternate supplier, a resolution stating the following will be required as a minimum:

1. Provide exemption from tender under section 55 of the LG Act
2. Provide a reason for the exemption for tender
3. Authorise the GM to negotiate terms, as required for a new contract

LEONIE JOHNSON  
CHIEF FINANCIAL OFFICER

22 December 2021

*Attachments:*

1. Mid-Western Tourism Services Review. (Confidential - separately attached)
2. Probity Audit Tourism Services Contract. (Confidential - separately attached)
3. Tourism services EOI evaluation worksheet. (Confidential - separately attached)

**APPROVED FOR SUBMISSION:**

BRAD CAM  
GENERAL MANAGER

## Item 6: Urgent Business Without Notice

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### URGENT BUSINESS WITHOUT NOTICE

As provided by Clauses 19 & 20 of Council's Code of Meeting Practice (Clause 14 LGMR).

### GIVING NOTICE OF BUSINESS

19. (1) The Council must not transact business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business in writing at least two (2) days prior to the day on which the agenda and business paper is prepared and delivered to Councillors; and
  - (b) unless notice of the business has been sent to the Councillors in accordance with Clause 6 of this Code. (see Section 367 LGA & Clause 14(1) LGMR)
- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) is already before, or directly relates to a matter that is already before the Council (see Clause 14(2)(a) LGMR); or
  - (b) is the election of a chairperson to preside at the meeting as provided by Clause 12(1) (see Clause 14(2)(b) LGMR); or
  - (c) is a matter or topic put to the meeting by the chairperson in accordance with Clause 21 (see Clause 14(2)(c) LGMR); or
  - (d) is a motion for the adoption of recommendations of a committee of the Council; (see Clause 14(2)(d) LGMR); or
  - (e) relates to reports from officers, which in the opinion of the Chairperson or the General Manager are urgent;
  - (f) relates to reports from officers placed on the business paper pursuant to a decision of a committee that additional information be provided to the Council in relation to a matter before the Committee; and
  - (g) relates to urgent administrative or procedural matters that are raised by the Mayor or General Manager.

### BUSINESS WITHOUT NOTICE

20. (1) Despite Clause 19 of this Code, business may be transacted at a meeting of the 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. Such a motion can be moved without notice. (see Clause 14(3) LGMR)
- (2) Despite Clause 30 of this Code, only the mover of a motion referred to in subclause (1) can speak to the motion before it is put. (see Clause 14(4) LGMR)

## Item 7: Confidential Session

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### LOCAL GOVERNMENT ACT, 1993

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#### 10A *WHICH PARTS OF A MEETING CAN BE CLOSED TO THE PUBLIC?*

- (1) 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),
  - (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 ground of legal professional privilege,
  - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
  - (i) alleged contraventions of any code of conduct requirements applicable under section 440.
- (3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

#### 10D *GROUNDINGS FOR CLOSING PART OF MEETING TO BE SPECIFIED*

- (1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.
- (2) The grounds must specify the following:
  - (a) the relevant provision of section 10A(2)
  - (b) the matter that is to be discussed during the closed part of the meeting,
  - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

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**DISCLOSURE AND MISUSE OF INFORMATION**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed under the Ombudsman Act 1974 or the Freedom of Information Act 1989, or
  - (e) with other lawful excuse.
  
1. (1A) In particular, if part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1), a person must not, without the authority of the council or the committee, disclose (otherwise than to the council or a councillor of the council) information with respect to the discussion at, or the business of, the meeting.
  
2. (1B) Subsection (1A) does not apply to:
  - (a) the report of a committee of a council after it has been presented to the council, or
  - (b) disclosure made in any of the circumstances referred to in subsection (1) (a)-(e), or
  - (c) disclosure made in circumstances prescribed by the regulations, or
  - (d) any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with section 12.
  
- (2) A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known, for the purpose of gaining either directly or indirectly a financial advantage for the person, the person's spouse or de facto partner or a relative of the person.
  
- (3) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:
  - (a) the determination of an application for an approval, or
  - (b) the giving of an order.

**Maximum penalty: 50 penalty units**



## MOTION

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**I move that pursuant to the provisions of Section 10 of the Local Government Act, 1993 the meeting be closed to the public.**

After a motion to close the meeting has been moved and seconded and before the vote, the Chairman will ask if there are any other matters, besides those listed on the agenda which should be considered in Confidential Session.

He will then announce those matters to be considered in Confidential Session. In doing so, the Chairman will give reasons why those matters are to be considered in Confidential Session and explain the way in which discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

## CHAIRMAN

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*The following matters have been listed for consideration in Confidential Session:*

**7.1 Sale of Land to Recover Overdue Rates and Charges - Chapter 17, Part 2, Division 5, Section 713 Local Government Act, 1993**

***The reason for dealing with this report confidentially is that it relates to personnel matters concerning particular individuals (other than Councillors) in accordance with Section 10A(2)(a) of the Local Government Act, 1993.***

***Discussion of this matter in an open meeting would be, on balance, contrary to the public interest as it involves discussion of (a) personnel matters concerning particular individuals (other than councillors).***

The Chairman will then ask the General Manager if there are any written representations from the public on the proposed closure of the meeting.

The General Manager will read out any written representations received.

The Chairman will ask if anyone in the gallery would like to make verbal representations in regard to the matters now to be considered in Confidential Session.

The Chairman will then put the motion "to close the meeting" to the vote.

Item 8: Urgent Confidential Business Without Notice

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Item 9: Open Council