



*Minutes of the Special Meeting of Council
23 May 2007
commencing at 9:00 am*

PRESENT

Councillors – M P Berwick (Mayor), D P Egan (Deputy Mayor), W J Bellerio, M J Cox, R Davis, J Sciacca and D G Pitt.

Staff – I B Barton (Acting Chief Executive Officer), D G Carey (General Manager Community & Corporate), R J Baade (General Manager Engineering) and S K Andrews (Corporate Support).

BUSINESS

Cr Egan, Pitt, Sciacca and Bellerio advised they had called the Special Meeting in accordance with Douglas Shire Council Local Law No 17 (Meetings), Section 7, Part 2a to discuss the termination of the tenure of the Chief Executive Officer and the actions taken by the Mayor and Cr Davis.

ADJOURNMENT OF THE MEETING

At 9:09 am the meeting was adjourned so the Chair could accept an urgent telephone call.

RESUMPTION OF THE MEETING

The meeting resumed at 9:11 am.

CLOSURE OF THE MEETING TO THE PUBLIC

Moved Cr Davis

Seconded Cr Egan

07/0523/1A *“That pursuant to Section 463(1)(a) of the Local Government Act 1993, the meeting be closed to the general public to allow in confidence discussion of events of the last meeting regarding the termination of tenure of the Chief Executive Officer, and the actions taken by the Mayor and Cr Davis.” (9:30 am)*

Carried unanimously

ATTENDANCE/WITHDRAWAL

At the closure of the meeting to the public all staff withdrew from the meeting.

OPENING OF THE MEETING TO THE PUBLIC

The meeting re-opened to the public at 9.44 am.

Upon re-opening of the meeting to the public the Acting Chief Executive Officer, Ian Barton; General Manager Community & Corporate, David Carey; General Manager Engineering, Bob Baade; and Corporate Support Officer, Susanna Andrews; returned to the meeting.

General discussion of the issue at hand continued and the Council also received procedural advice on the provisions of the Local Government Act 1993 and its Meetings Procedures Local Law and Policy in respect of the ability of the Chair to accept or reject motions.

ATTENDANCE/WITHDRAWAL

The General Manager Engineering withdrew from the meeting at 10:16 am and re-attended at 10:17 am.

The Manager Community, Cultural & Economic, Julia Leu, attended the meeting at 10:17 am.

PROCEDURAL MOTION

Cr Egan attempted to move a motion however the Chair indicated that he would not accept motions as the notice of the special meeting did not allow it.

Cr Egan moved a motion of dissent in the ruling of the Chair:

Moved Cr Egan

Seconded Cr Bellerio

07/0523/01

For: Cr Egan, Bellerio, Pitt, Sciacca

Against: Cr Berwick, Davis, Cox

Carried

TERMINATION OF TENURE OF THE CHIEF EXECUTIVE OFFICER

The following agreement was forthcoming from discussions held while the meeting was closed to the public:

1. That legal advice be sought from Mr Stuart Macnaughton from the legal firm McCullough Robertson Lawyers, with support from a Queens Counsel (QC) of his own choice, and a second opinion be sought from Mr John Carey of the legal firm Wilson Ryan Grose, with support from Danny Gore QC, to address the questions raised by the following:
 - (i) Under Section 1145 of the Local Government Act 1993, only Council can discipline the Chief Executive Officer and Section 472 specifically prohibits Council in any way delegating this power, and having noted this information Council:
 - notes the recommendations received from the Performance Management Panel (PMP) and in particular that relating to the need for procedural fairness;
 - seeks legal advice from Danny Gore QC on the obligation of Council to ensure procedural fairness, equity and natural justice is provided to employees and whether or not those principles were applied in this instance; and
 - facilitates independent advice from Danny Gore QC to determine whether a significant conflict of interest existed or exists with two of the three members of the PMP given the information released by the Mayor in a newspaper article of 22 May 2007. The advice to include whether action could, or should, be taken under the Local Government Act 1993, the Criminal Code, corporations law or any other relevant legislation.
 - (ii) Whether Councillors are liable for any action taken regarding the termination of the tenure of the Chief Executive Officer.
 - (iii) Whether Councillors can be held personally liable for any breaches of contract with the Minister for Local Government regarding the 22-Point Plan.
 - (iv) Whether the notice of the Special Meeting has been worded in such a way as to prevent the acceptance of motions.

- (v) Assessment of the validity of the motion that was put and carried that led to the appointment of the General Manager Finance & Administration, Ian Barton, as Acting Chief Executive Officer.

2. That the proposed motion from Cr Egan be tabled (Attachment 1).
(Item 07/0605/03(iii) – 5 June 2007).

TERMINATION OF THE MEETING

The meeting was closed at 10:20 am.

Presented to and confirmed by Council on the *fifth* day of *June* 2007.

M P Berwick
Chair

Confirmed

Attachment 1

DAVE CAHILL

Moved

Seconded

“that Council note that under Section 1145 of the Local Government Act only Council can discipline the Chief Executive Officer, that section 472 specifically prohibits Council in any way delegating this power, and having noted this information Council:-

- (a) Council note the recommendations received and in particular that relating to the need for procedural fairness.
- (b) Subject to legal advice being received from senior Counsel Danny Gore QC on the obligation of Council to ensure procedural fairness, equity and natural justice is provided to employees Council confirm the ongoing tenure of the Chief Executive Officer Mr Terry Melchert and no further action be taken at this time.
- (c) Engage a consultant, on advice from the Australian Institute of Management, to review the techniques and principles adopted by the Performance Management Panel (PMP) in reviewing the performance of the Chief Executive Officer and to advise on a process of review for both the Chief Executive Officer and the General Managers for the future.
- (d) Make enquiries with the PMP as to why it did not fulfil Council’s instruction to provide a report detailing all enquiries and representations made to it by individual Councillors.
- (e) Facilitate independent advice from Danny Gore QC to determine whether a significant conflict of interest existed or exists with two of the three members of the PMP given the information released by the Mayor in a newspaper article of 22 May 2007. The advice to include whether action could or should be taken under the Local Government Act, the Criminal Code, Corporations law or any other relevant legislation.

Moved

Seconded

“Council initiate legal advice through Danny Gore QC to determine whether:-

*The actions taken by the Mayor and Councillor Davis in publicly releasing information to staff and the press on confidential matters discussed “in committee” regarding the PMP report and the tenure of the Chief Executive Officer constitute a breach of the Local Government Act, particularly given the Local Law 17 specifically prohibits such action.

*action taken by the Mayor in attempting to terminate the services of the Chief Executive Officer without the authority of Council represents a breach of the Local Government Act.

*action could or should be taken against the parties.”

*action taken by the Mayor in despatching material on Council letterhead and without the knowledge or authority of Council constitutes a breach of the Local Government Act.

* Council formally censure the Mayor and Councillor Davis in relation to the release of Confidential Information regarding the report of the PMP
