



*Minutes of the Community and Corporate  
Standing Committee of the Council  
22 January 2008  
commencing at 10:44 am*

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**PRESENT**

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

**Staff** – J F Leu (Acting Chief Executive Officer), D G Carey (General Manager Community & Corporate), I B Barton (General Manager Finance & Administration), P M Hoye (Acting General Manager Development & Environment) and S K Andrews (Corporate Support).

**APOLOGY**

An apology was received from Cr Cox for her inability to attend the meeting due to illness.

**SUSPENSION**

Cr Davis was not in attendance due to suspension from the meeting.

**08/0122/11      DECLARATIONS OF INTEREST**

There were no declarations of interest presented to the meeting.

**08/0122/12      CONFIRMATION OF MINUTES – 11 DECEMBER 2007**

Moved Cr Berwick

Seconded Cr Bellerio

*“That the minutes of the Community & Corporate Standing Committee Meeting held on 11 December 2007 be confirmed.”*

For:                      Cr Berwick, Bellerio, Egan, Sciacca

Against:                Cr Pitt

**Carried**

## **REPORTS**

### **08/0122/13 PROPOSAL FOR HISTORY OF THE DOUGLAS SHIRE LOCAL GOVERNMENT**

Moved Cr Berwick

Seconded Cr Pitt

*"That the Committee authorises the Acting Chief Executive Officer to negotiate the production of a recent history of the Douglas Shire Local Government with the proponent Gabrielle Walsh."*

For: Cr Berwick, Pitt

Against: Cr Egan, Sciacca, Bellerio

**Lost**

Moved Cr Berwick

Seconded Cr Egan

**08/2201/13(i)** *"That the Committee calls for expressions of interest for the production of a recent history of the Douglas Shire Local Government and that it be advertised in the Cairns Post and the Courier Mail."*

For: Cr Berwick, Egan, Pitt, Sciacca

Against: Cr Bellerio

**Carried**

## **NOTICES OF MOTION**

### **08/0122/08 JS0108M – CONSTRUCTION OF NEW LIBRARY IN COOK SHIRE**

Moved Cr Sciacca

Seconded Cr Pitt

*"That the Committee contributes \$20 000 towards the construction of the new library in the Cook Shire on completion of the project."*

### **ATTENDANCE/WITHDRAWAL**

The Acting Chief Executive Officer, Julia Leu, withdrew from the meeting at 11:05 am.

The General Manager Engineering, Bob Baade, attended the meeting at 11:06 am.

The Acting Chief Executive Officer re-attended the meeting at 11:07 am.

The Manager Rates & Finance Support, Darryl Crees, attended the meeting at 11:07 am and withdrew at 11:08 am.

An amendment to the motion was moved:

Moved Cr Berwick

Seconded Cr Pitt

08/2201/08(i)

*“That the Committee considers a contribution of \$20 000 towards library services in the Bloomfield Valley and that staff be asked to investigate that option.”*

For: Cr Berwick, Pitt

Against: Cr Egan, Sciacca, Bellerio

**Lost**

The original motion was put:

For: Cr Sciacca, Pitt, Egan, Bellerio

Against: Cr Berwick

**Carried**

#### ATTENDANCE/WITHDRAWAL

Cr Bellerio withdrew from the meeting at 11:25 am.

08/0122/09

#### DE0108M – GENERAL MANAGERS’ CONTRACTS

Moved Cr Egan

Seconded Cr Pitt

*“That the Committee conducts a phone link to hear advice on General Managers’ contracts and to move forward.”*

#### TABLING OF DOCUMENTS

With the agreement of the meeting, the Mayor, Cr Berwick, tabled the following documents in relation to item 08/2201/09 – DE0108M – General Managers’ Contracts:

1. An opinion by Tim Fynes-Clinton, Managing Partner, King & Company, solicitors (Attachment One [1]); and
2. An opinion by Gabrielle Walsh, Manager Workplace Relations, Local Government Association of Queensland (Attachment Two [2]).

#### ATTENDANCE/WITHDRAWAL

Cr Bellerio re-attended the meeting at 11:27 am.

#### NOTATION

Following a brief discussion of the reports presented to the meeting by the Mayor, the General Manager Community & Corporate, David Carey, requested it be noted in the minutes that he wished the meeting to discuss item 08/2201/09 – DE0108M – General Managers' Contracts, while the meeting remained open to the public, for the reason that it was clear that the subject matter of this item was his particular contract of employment with the Council and he felt that it was in the public interest for this matter to be dealt with in open council.

#### CLOSURE OF THE MEETING TO THE PUBLIC

Moved Cr Egan

Seconded Cr Bellerio

08/0122/09A

*"That pursuant to Section 463(1)(b) of the Local Government Act 1993, the meeting be closed to the general public to allow in confidence discussion of item 08/0122/15 – DE0108M – General Managers' Contracts."* (11:34 am)

For: Cr Egan, Bellerio, Sciacca, Pitt

Against: Cr Berwick

**Carried**

#### ATTENDANCE/WITHDRAWAL

At the closure of the meeting to the public, some members of the gallery present did not withdraw from the meeting, even though they had been directed to do so by the Chair.

The General Manager Engineering withdrew from the meeting at 11:35 am.

The Acting Chief Executive Officer, the Acting General Manager Development & Environment, Paul Hoye and the General Manager Finance & Administration, Ian Barton, withdrew from the meeting at 11:37 am.

#### ADJOURNMENT OF THE MEETING

As a consequence of the failure of members of the gallery to leave the meeting the Chair adjourned the meeting at 11:37 am.

#### RESUMPTION OF THE MEETING

The meeting resumed at 11:45 am with the attendance of the Acting Chief Executive Officer and the General Manager Finance & Administration.

The meeting was deemed still to be closed to the public.

#### ATTENDANCE/WITHDRAWAL

The General Manager Finance & Administration withdrew from the meeting at 11:50 am.

Several members of the public remained in the gallery and the Chair reiterated his request for them to leave.

#### EMERGENT ISSUE – CALL TO THE AUTHORITIES

Due to the refusal of a number of members of the gallery to leave the meeting when requested to do so by the Chair, this was considered to be an act of disorder resulting in the following resolution:

Moved Cr Bellerio

Seconded Cr Egan

08/2201/09B

*“That the authorities be contacted in order to remove members of the gallery so the meeting can be conducted in closed session in accordance with Local Law No 17 (Meetings).”*

For: Cr Bellerio, Egan, Sciacca, Pitt

Against: Cr Berwick

**Carried**

#### ATTENDANCE/WITHDRAWAL

The Acting Chief Executive Officer withdrew from the meeting at 11:52 am and re-attended at 11:56 am.

The Acting Chief Executive Officer requested the members of the gallery still present to leave the meeting, at which time they did so.

The meeting then proceeded whilst closed to the public.



OPENING OF THE MEETING TO THE PUBLIC

Moved Cr Sciacca

Seconded Cr Bellerio

08/0122/09C

*“That the meeting be re-opened to the public.” (12:07 pm)*

**Carried** unanimously

Moved Cr Bellerio

Seconded Cr Egan

08/0122/09

*“That the Committee contacts Stephen Fynes-Clinton QC, regarding the wording of the contract for the General Manager Community & Corporate and that the Committee goes back into closed session to receive that advice.”*

For: Cr Bellerio, Egan, Sciacca, Pitt

Against: Cr Berwick

**Carried**

TERMINATION OF THE MEETING

The meeting was closed at 12:08 pm.

Presented to and confirmed by the Community & Corporate Standing Committee of the Council on the *twelfth* day of *February* 2008.

**J Sciacca**  
**Chair**



One

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**Nicole Barton**

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**From:** Tim Fynes-Clinton [tfc@kingandcompany.com.au]

**Sent:** Monday, 24 December 2007 12:55 PM

**To:** Julia Leu

**Cc:** Cr Mike Berwick - DSC Mayor; Dave.Egan@dsc.qld.gov.au; Cr George Pitt; Cr Melinda Cox; Cr Rod Davis; Cr Bill Bellerio; Cr Joe Sciacca

Julia

I refer to our telephone discussion earlier today.

As discussed, my preliminary view is that Council's purported decision to dismiss Mr Carey was unlawful.

Leaving aside possible issues of procedural fairness (and we concede that we have no detailed instructions on this aspect of the decision at this point in time) which are likely render the dismissal (as opposed to Council's decision to dismiss) unlawful, we have great difficulty in seeing how such a decision could be made at a special meeting convened to discuss 3 particular items of business, none of which referred to a proposal to dismiss any Council employee.

Unless all councillors were present and clearly and unequivocally expressed their unanimous agreement to consider, without notice, the resolution dismissing Mr Carey, then, as stated above, our preliminary view is that the resolution was unlawful.

Our office will be shut from 1.00pm today until 8.30am on Monday 7 January 2008. If you wish us to consider the matter in more detail, we will be unable to do so until that time.

As requested, we have forwarded this email to the Mayor and all Councillors.

Regards  
Tim Fynes-Clinton  
Managing Partner  
King & Company  
Tel: 3243 0000  
Fax: 3236 1885

29/01/2008

Two

Advice pertaining to lawful dismissal:

(1) Council's policy prescribes the role and function of councillors apropos the selection and appointment of executive staff. This Council policy is 2.5.1.01; which, inter alia, provides for the following:

1. The Council, having determined it wishes to be involved in the recruitment of executive staff, which is limited to the positions of General Manager in the current organisation structure, will be involved to the following extent:

- (a) Review position requirements;
- (b) Construct/review the contract of employment (if applicable);
- (c) Establish a selection panel;
- (d) Short list applications for interview;
- (e) Conduct interviews of short listed applicants;
- (f) Consider information gathered and determine (if appropriate) to make an offer of employment.

2. In order for Councillors to be involved as provided for in [1] above, Councillors will receive training at the appropriate time in respect of:

- (a) Employment contracts;
  - (b) Enterprise agreement provisions;
  - (c) Equal employment opportunity principles;
  - (d) The provisions of the Local Government Act 1993 relating to the employment of staff;
  - (e) The corporate structure of the organisation;
  - (f) Interview techniques.
- N/A = (no appointment function)

(2) The construction of the General Manager's contract is such that it is the Chief Executive Officer who is the appointer of executive staff and who has the contractual ability to dismiss - not council in the first instance (the exception to this is, of course, is the appointment of the position of Chief Executive Officer); and, accordingly, the Chief Executive Officer must be satisfied that appropriate steps have been taken in accordance with the contract and the common law:

Thus the Chief Executive Officer must be satisfied that either:

- (a) one criterion or a combination of criteria outlined in clause 9.1.5 sub clauses (a) - (g) of the contract have been investigated and have been found to have occurred (after a show cause notice is issued); or
- (b) for any reason - again the discretion is with the CEO and then Council must approve and not the other way around.

It is to be noted that the government security of employment regarding contracts will prevail in this regard, as the exception to the non-continuance of the contracts to March 16 2012 is on grounds of performance. Thus it would be a requirement by the Minister and the department, and by a tribunal of competent jurisdiction that a formal performance approval system have been entered into and that as a consequence of this performance review, the subject officer did not perform adequately to maintain the continuance of the contract. It is my understanding that the Chief Executive Officer at the commencement of this contract did not enter into any formal performance appraisal system and as a consequence the 'performance' trigger as set out in clause

8.12.1 cannot be invoked.

In summary





Council's policy provides the power to appoint and to dismiss to the Chief Executive officer. Once the Chief Executive Officer determines that dismissal is warranted the CEO would advise council; The chief Executive Officer must ensure that she/he does not take arbitrary or capricious action and would have to satisfy himself or herself regarding termination of General manager; With amalgamation contracts will transmit to the Cairns Regional council; The Workforce Transition code of Practice provides for the continuance of contracts to 16 March 2012 unless terminated earlier due to performance. At this point in time, no evidence of any of the aforementioned criteria has been met and thus you would not be able to in any way lawfully dismiss the subject officer. Moreover, should you do so, it is almost guaranteed that the department will invoke its powers to avert the dismissal.

Should you have any further queries, please do not hesitate to contact me.

Kind Regards  
Gabrielle Walsh  
Manager Workplace Relations  
Local Government Association of Queensland  
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Brisbane QLD 4006  
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