6.10. REVIEW AND REMAKING OF COUNCILLOR SUPERANNUATION ARRANGEMENTS

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DEPARTMENT Finance and Corporate Services

RECOMMENDATION

That Councillors:

1. **Note that superannuation is a matter for individual Councils to agree on.**
2. **As per the *Taxation Administration Act* schedule 1, s446-45 approve that Councillors are subject to PAYG (Pay as You Go) withholding – deeming them employees of Council for superannuation purposes only, and therefore subject to minimum superannuation guarantee contributions being made by Council.**
3. **Approve for Council to participate in superannuation for Councillors as employees of Council.**
4. **Note the change from mandatory personal contributions to superannuation to optional provisions in the *Qld Local Government Act 2009* from 1 July 2024.**
5. **Note the recommendation that Councillors should individually seek expert taxation advice.**
6. **Note the budget impacts of electing for Councillors to participate in superannuation; and**
7. **Note the future Certified Agreement negotiations and any changes to Commonwealth Superannuation legislation may affect the budget impact of electing for Councillors to participate in superannuation.**

EXECUTIVE SUMMARY

Council has the option to determine whether Councillors should access, benefit from and optionally contribute to superannuation funds/schemes complying with the Commonwealth Superannuation legislation for elected members who wish to participate.

BACKGROUND

The Local Government Remuneration Commission annual report, which addresses and sets Mayor/Councillor remuneration, specifically excludes superannuation as being a matter for individual Councils to agree on.

Specifically, the Commission is restricted from making provisions for superannuation by virtue of clause 244(3) of the *Qld Local Government Regulation 2012* making:

- superannuation a discretionary matter for Councils - similar to setting of the Reimbursement of Expenses Policy (which set matters outside remuneration); and

- participation in superannuation is discretionary for each individual Councillor.

S226 of the *Qld Local Government Act 2009* (the Act) provides that:

- Councillors can establish, amend and take part in a superannuation scheme paying superannuation contributions for Councillors, to an approved fund, which complies with the provision of the Commonwealth Superannuation Act; and

- also enter into an arrangement under which:

    - one or more councillor/s agrees to forgo a percentage or amount of the remuneration that the councillor is entitled to as a councillor (salary sacrifice); and
    - local government agrees to contribute the percentage or amount to the superannuation scheme for the councillor.

If it does so, the local government may pay an amount from its operating fund to the superannuation scheme as a contribution for its Councillors.

The Act does not require the co-contribution by Councillors to receive the superannuation contribution by council.

COMMENTS

S226 of the Act provides for Council to extend superannuation to Councillors by resolution.

As the new Council term has started Councillors are encouraged to seek independent advice from a registered tax agent.

Per s226 of the Act, Council has the option to determine whether Councillors should access, benefit from and optionally contribute to superannuation funds/schemes complying with the Commonwealth Superannuation legislation for elected members who wish to participate.

From 1 July 2024 Council intends for Councillors who make voluntary superannuation contributions of 6% to receive a 12% contribution from Council (noting these percentages may change in future, refer points 1-3 below).

Council intends for those Councillors who do not make a voluntary contribution to receive the standard superannuation guarantee payment (11.5%) from 1 July 2024.

Councillors have the option to pass a resolution per the Taxation Administration Act schedule 1, s446-45 that Councillors are subject to PAYG (Pay as You Go) withholding - making them employees of Council, for taxation purposes only and therefore subject to minimum superannuation guarantee contributions being made by Council.

From 1 July 2024 this rate is 11.5%.

If Councillors elect to salary sacrifice additional superannuation, from July 2024 the maximum contribution rates are 6% of income by Councillors and then 12% of income contribution by Council governed by the Certified Agreement, the Act and the Superannuation Guarantee and reflected in Council's resolution.

Councillors can elect to contribute less than 6%, in which case, the council contributions will be scaled down proportionately.

Council provides funding to cover the superannuation benefits, with the recommendation that Councillors have the option to participate in additional voluntary contributions.

Individual Councillors must decide whether or not to participate.

Councillors should note:

1. A change to the Act, will take effect in July 2024 making the contributions pursuant to the Act optional instead of mandatory, impacting on the resolution.

2. Incremental increases to the Superannuation Guarantee since the scheme was first established in 2014 have impacted on the percentage optionally paid by Council above the guarantee.

3. The Certified Agreement, which is due to commence negotiations, may increase the level of Council superannuation contributions payable and is a watching brief.

4. Where a Councillor chooses to make a personal contribution, this can be elected to be salary sacrificed (pre-tax) or post tax.

PROPOSAL

That Councillors:

1. Note that superannuation is a matter for individual Councils to agree on.

2. As per the *Taxation Administration Act 2001* schedule 1, s446-45 approve that Councillors are subject to PAYG (Pay as You Go) withholding - deeming them employees of Council for superannuation purposes only, and therefore subject to minimum superannuation guarantee contributions being made by Council.

3. Approve for Council to participate in superannuation for Councillors as employees of Council.

4. Note the change from mandatory personal contribution to superannuation to optional provisions in the Act from 1 July 2024.

5. Note the recommendation that Councillors should individually seek expert taxation advice.

6. Note the budget impacts of electing for Councillors to participate in superannuation; and

7. Note the future Certified Agreement negotiations and any changes to Commonwealth Superannuation legislation may affect the budget impact of electing for Councillors to participate in superannuation.

FINANCIAL/RESOURCE IMPLICATIONS

The overall impact on Council's budget would be based on Council's resolution to opt-in for Councillor superannuation, and any individual decisions taken by Councillors to participate. Superannuation payable would be calculated at the mandatory base rate of superannuation payable, plus any additional amount payable.

The cost to Council for Councillor superannuation, if superannuation is paid at the Super Guarantee Rate from 1 July 2024 of 11.5% is $35.7k.

If superannuation is paid at 12% the amount is $37.2K. There is a further possible impact once the Certified Agreement has been negotiated. Councillor superannuation is included in Council's budget.

RISK MANAGEMENT IMPLICATIONS

If Council decides not to approve superannuation for Councillors, there is a risk that Councillors may be deemed to be employees of Council and that Council has not complied with Commonwealth Superannuation Legislation.

SUSTAINABILITY IMPLICATIONS

Economic:	If Council opts to permit Councillors to receive superannuation, this will increase expenditure for Council. Councillor superannuation is factored into Council's budget.
Environmental:	Nil
Social:	Nil

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Goal 3 - *We will make sound financial decisions by ensuring robust strategic planning, financial management and reporting.*

Operational Plan 2023-2024 Actions:

Legislative requirement.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator	Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

CONSULTATION

Internal:	Finance team Human Resources team
External:	Nil

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

Nil