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**CONFIDENTIAL ITEMS**

*Clause 240(4) of the Local Government (General) Regulation 2005 requires Council to refer any business to be considered when the meeting is closed to the public in the Ordinary Business Paper prepared for the same meeting. Council will discuss the following items under the terms of the Local Government Act 1993 Section 10A(2), as follows:*

**ITEM 9 COURT OF APPEAL - LEGAL ADVICE**

*(g) 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*

**ANNEXURE ITEMS**

**ITEM 32 - COURT OF APPEAL**

**REPORT IN BRIEF**

<b>Reason For Report</b>	To advise that Council's appeal rights expire on 7th January 2017.
<b>Policy Implications</b>	Nil
<b>Budget Implications</b>	Potential further expenditure
<b>IPR Linkage</b>	4.5.1.a - Provide quality administrative support and governance to councillors and residents
<b>Annexures</b>	Nil
<b>File Number</b>	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\AMALGAMATIONS\BLAYNEY SHIRE, CABONNE AND ORANGE CITY COUNCILS PROPOSED MERGER 2016 - 799026

**RECOMMENDATION**

THAT Council:

1. Lodge an appeal in the NSW Supreme Court of Appeal in relation to the merger proposal.
2. Resolve that the expenditure is required and warranted to enable Council to exercise its legitimate right to appeal.

**ACTING GENERAL MANAGER'S REPORT**

As Council would be aware the Land & Environment Court rejected Council's challenge to the Minister's amalgamation proposal on 7<sup>th</sup> October 2016. Council lodged a Notice of Intention to Appeal in the NSW Supreme Court of Appeal on 12<sup>th</sup> October 2016 and was subsequently given an undertaking by the Crown Solicitor's Office that no further action regarding amalgamation would be taken until 7 days after the 'Woollahra Case' was decided by the Court of Appeal.

The Supreme Court goes into recess from 19<sup>th</sup> December 2016 to 27<sup>th</sup> January 2017 (both dates inclusive). A decision in the 'Woollahra Case' has not been made and Council has now been advised that a decision is unlikely before February 2017 at the earliest.

Council's appeal rights expire on 7<sup>th</sup> January 2017 unless a formal appeal is lodged before that date.

Should Council decide not to lodge an appeal, the government would be able to proceed with a proclamation to amalgamate Cabonne with Orange & Blayney Councils regardless of the outcome of the 'Woollahra Case'.

A separate report has been included in the confidential section of the business paper outlining preliminary legal advice relating to Council's possible avenues of appeal. The legal team have indicated that they would have a more detailed opinion and cost estimate in relation to Cabonne and Oberon's appeal by the day of the meeting. This will be distributed to councillors as soon as it is received.

Should Council determine to proceed with the appeal, funds could be provided from the Strategic Capacity Projects vote.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period. The Section 23A Guidelines: *"In particular, councils and council officials should not make decisions during a merger proposal period... to prevent or disrupt the consideration of merger proposals by the Chief Executive of the Office of Local Government or his delegate, the Boundaries Commission or the Minister for Local Government other than through the legitimate exercise of legal rights of review or appeal."*

Also, as there is not a specific vote for this matter in the 2016/2017 budget, the council will be required to resolve why the expenditure is required and warranted.

### **ITEM 33 - COUNCIL POOLS**

#### **REPORT IN BRIEF**

<b>Reason For Report</b>	For Council to approve expenditure for casual pool attendants (lifeguards)
<b>Policy Implications</b>	Nil
<b>Budget Implications</b>	Yes - \$88,000 from the Recreation & Culture Reserve
<b>IPR Linkage</b>	3.3.3.a - Maintain pools to an operational and safe standard
<b>Annexures</b>	Nil
<b>File Number</b>	\\OFFICIAL RECORDS LIBRARY\COUNCIL PROPERTIES\AUDIT\SWIMMING POOL AUDIT - 799528

#### **RECOMMENDATION**

THAT Council:

1. Implement the recommendations from the audit conducted on Council's swimming pools that are under the care, control and management of Section 355 Committees;
2. Approve expenditure of \$88,000 to employ qualified pool attendants at Council's Cumnock, Yeoval, Manildra, Cudal and Eugowra swimming pools;
3. Fund the expenditure of \$88,000 from the Recreation & Culture Reserve; and
4. Resolve the expenditure is required and warranted to enable Council's swimming pools to be operational to a safe standard.

### **ACTING DIRECTOR OF FINANCE & CORPORATE SERVICES' REPORT**

Council is aware that an audit was conducted on Council's swimming pools that are under the care, control and management of Section 355 Committees. This audit highlighted that the minimum standard required for pool attendants is a bronze medallion qualification. The previous understanding was for a lesser level of qualification.

Prior to the pool season, the Section 355 Committees appointed casual pool attendants and it has recently become apparent that the pool attendants appointed do not hold this minimum qualification.

Council has now taken the step to engage staff (through Complete Staff Solutions) that will be suitably qualified for the role of pool attendants (lifeguards) at each of the five locations. This measure has been put in place to ensure that Council complies with legislation and ensures the safety of all patrons attending the pools during operational hours. No funding for this was included in Council's original pool budget.

Whilst this is a short term measure, Council will ensure that during the off season other options will be considered and this matter will be rectified by the time the pools open for next season.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period. Under the guidelines funding that was not included in council's original budget must be considered in open council and the resolution voting the funds must state the reason why council considered the expenditure is required and warranted.

### **ITEM 34 - TENDER - CONSULTANCY SERVICES FOR LONG POINT ROAD UPGRADE CROSSING OF THE MACQUARIE RIVER FEASIBILITY STUDY**

#### **REPORT IN BRIEF**

<b>Reason For Report</b>	Request to authorise the affixing of the Common Seal to the Contract
<b>Policy Implications</b>	Nil
<b>Budget Implications</b>	\$72,820 to be funded from State Government Grant for this project.
<b>IPR Linkage</b>	4.5.1.b - Maintain strong relationships and liaise effectively with all relevant Government agencies and other councils
<b>Annexures</b>	Nil
<b>File Number</b>	\\OFFICIAL RECORDS LIBRARY\ROADS and BRIDGES\TENDERING\CONTRACT 782303 – LONG POINT ROAD UPGRADE FEASIBILITY STUDY - 799709

### **RECOMMENDATION**

THAT Council authorise the signing and affixing of the Common Seal to the contract instrument of agreement between Cabonne Council and GHD Pty Ltd.

### **ACTING TECHNICAL SERVICES MANAGER'S REPORT**

Council approved a report to the November 2016 meeting for tender for consultancy services for Long Point Road upgrade crossing of the Macquarie River Feasibility study. The recommendation did not include the sign and affixing of the common seal.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled "Council decision making during merger proposal periods". Council must consider the guidelines in relation to each decision they make during the proposal period, this contract is reasonably necessary for the purpose of meeting the Council's ongoing service delivery commitments to the community.