



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

Administrator Delegations Meeting
12 September 2016

CONFLICTS OF INTEREST

A conflict of interest arises when the Administrator or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Administrator or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Administrator or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Administrator or General Manager, or another Council employee to determine whether or not a person may have a conflict of interest.

Should you be unsure as to whether or not you have a conflict of interest you should err on the side of caution and either declare a conflict of interest or, you should seek the advice of the Director General of Local Government.

The contact number for the Director General of Local Government is 4428 4100.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Administrator, members of staff and delegates of the Council attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Administrator and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Administrator or General Manager are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Section 360(3) of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Administrator, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Owners of Land

Council wishes to show our respect to the First Custodians of this land the Ngarigo people and their Ancestors past and present who pass on this duty of custodianship of the land to us the current custodians. We are proud to be Australian and celebrate the diverse backgrounds and cultures that make up our Nation – our Land.

**ADMINISTRATOR DELEGATIONS MEETING
TO BE HELD IN HEAD OFFICE, 81 COMMISSIONER STREET, COOMA NSW 2630**

**ON FRIDAY 12 SEPTEMBER 2016
COMMENCING AT 10.00AM**

BUSINESS PAPER

- 1. OPENING OF THE MEETING**
- 2. DECLARATIONS OF PECUNIARY INTERESTS/CONFLICT OF INTEREST**
(Declarations also to be made prior to discussions on each item)
- 3. CORPORATE BUSINESS - KEY DIRECTION 1. SUSTAINING OUR ENVIRONMENT FOR LIFE**
Nil
- 4. CORPORATE BUSINESS - KEY DIRECTION 2. EXPANDING CONNECTIONS WITHIN THE REGION AND BEYOND**
 - 4.1 Request for Council approval of the Bombala Young Driver Training Program and associated road closure on 14 September 2016 3
- 5. CORPORATE BUSINESS - KEY DIRECTION 3. STRENGTHENING OUR LOCAL ECONOMY**
Nil
- 6. CORPORATE BUSINESS - KEY DIRECTION 4. CREATING SAFER, HEALTHIER AND THRIVING COMMUNITY**
Nil
- 7. CORPORATE BUSINESS - KEY DIRECTION 5. ENHANCING OUR HEALTHY, ACTIVE LIFESTYLE**
Nil
- 8. CORPORATE BUSINESS - KEY DIRECTION 6. MANAGING DEVELOPMENT AND SERVICE DELIVERY TO RETAIN THE THINGS WE VALUE**
Nil
- 9. CORPORATE BUSINESS - KEY DIRECTION 7. PROVIDING EFFECTIVE CIVIC LEADERSHIP AND CITIZEN PARTICIPATION**
 - 9.1 Assent of Local Government Amendment (Governance and Planning) 2016 19
- 10. CONFIDENTIAL MATTERS 27**
 - 10.1 Legal Agreement for Use of Clocktower Offices - Monaro Media Group Pty Ltd

Item 10.1 is confidential in accordance with s10(A)(2)(di) of the Local Government Act because it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

10.2 Appointment External Independent member to Audit and Risk Committee

Item 10.2 is confidential in accordance with s10(A)(2)(a) of the Local Government Act because it contains personnel matters concerning particular individuals (other than councillors) and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

4.1 REQUEST FOR COUNCIL APPROVAL OF THE BOMBALA YOUNG DRIVER TRAINING PROGRAM AND ASSOCIATED ROAD CLOSURE ON 14 SEPTEMBER 2016

Record No:

Responsible Officer: Director Service Delivery

Author: Development Engineer

Key Direction: 2. Expanding Connections Within the Shire and Beyond

Delivery Plan Strategy: DP2.3 Continually monitor and improve traffic management throughout the Shire.

Operational Plan Action: OP2.6 Investigation into the use of appropriate Traffic Management measures as an aid to increase road safety throughout the Shire.

Attachments:

1. Bombala YDT \$20mil Pub & Prod 2015-2016 [↓](#)
2. Bombala YDT Event Details and Risk Assessment [↓](#)
3. Bombala YDT Risk Register Ver 2 [↓](#)
4. Bombala YDT Safety Measures [↓](#)
5. Bombala YDT TCP [↓](#)

Cost Centre 1510 Engineering and Operations Management

Project Local Traffic Committee

EXECUTIVE SUMMARY

A request has been received from the Snowy Hydro Ltd to approve a young driver training program in Bombala and the temporary road closure of Therry Street in Bombala between the hours of 9am and 3pm. The proposed site is partly located on the Therry Street Road Reserve and partly on deposited plan number 756819 on which a car park and the municipal pool are located.

The following officer's recommendation is submitted for Council's consideration.

OFFICER'S RECOMMENDATION

That Council approves:

- A. The Bombala Young Driver Training Program to be held at Therry Street Car Park on 14 September 2016 from 9:00am until 3:00pm
- B. The temporary road closure of Therry Street, Bombala between Forbes and Caveat Streets on 14 September 2016 from 9:00am until 3:00pm

Please Note:

In future, all safety measures will need to be properly drawn up & included on the TCP.

BACKGROUND

As the Snowy Monaro Local Traffic Committee (SMLTC) did not consider this request at its last meeting on 10th August 2016, this request can only be dealt with by seeking the agreement from the NSW RMS Representative and the NSW Police Representative of the SMLTC for a

4.1 REQUEST FOR COUNCIL APPROVAL OF THE BOMBALA YOUNG DRIVER TRAINING PROGRAM AND ASSOCIATED ROAD CLOSURE ON 14 SEPTEMBER 2016

recommendation to Council as required under the Road Transport (Safety and Traffic Management) Act 1999.

The RMS advice is as follows:

Hi Volker,

No objections to the temporary road closure.

Thanks,

Ben Borger
Traffic Engineering Officer

Network NSW | Journey Management
T 02 4221 2770 M 0408 064 433

www.rms.nsw.gov.au

Every journey matters

Roads and Maritime Services

Level 4 90 Crown Street Wollongong NSW 2500

The NSW Police advice is as follows:

Thanks Volker,

Looks adequate for this occasion, however, if they decide to do similar activities in the future, the safety measures would need to be properly drawn up & included on the TCP.

Regards, Sam.

S Morabito

Senior Constable

Monaro Traffic / HWP

Queanbeyan Police Station

Ph: (02) 62980-555

QUADRUPLE BOTTOM LINE REPORTING

1. Social

There should be no negative impact upon the community as most of the delivery trucks will be gone before the event starts. Access to the rear of businesses will be impacted upon between the hours of 9:00 AM and 3:00 PM. However this area is mainly used by employees of the businesses

4.1 REQUEST FOR COUNCIL APPROVAL OF THE BOMBALA YOUNG DRIVER TRAINING PROGRAM AND ASSOCIATED ROAD CLOSURE ON 14 SEPTEMBER 2016

and there are alternative parking sites nearby. Access to the public toilets will be minimally impacted as most of the training will be conducted in the car park area. Businesses that back onto Therry Street will be notified well in advance of the day so that any inconvenience is minimised.

Hopefully the positive impact from the training will be students with more driving experience, higher skill levels and a greater degree of understanding of their social responsibility when behind the driving wheel.

2. Environmental

The adoption of the recommendation should have no negative impact upon the environment. It is anticipated that there would be a slight increase in background noise. However the locality of the event is in close proximity to the Monaro Highway and as such businesses already experience higher levels of background noise. Residential homes are located over 150 metres away and should not be impacted by noise generated by the event.

3. Economic

The impact upon Council's budget will be a maximum of \$1000 which will be costed to the Bombala Street Maintenance vote.

4. Civic Leadership

By adopting the recommendation, Council is demonstrating leadership by ensuring that proposals are appropriately considered. The recommendation also demonstrate that Council is consulting with a technical committee (LTC) , keeping its standards up to date and ensuring that it complies with its delegation provided by the Roads and Maritime Services and under legislation.

Determination by Administrator

Approved by Administrator Dean Lynch in accordance with *Section 226 dot point one (1) or two (2) of the Local Government Act 1993.*

Signature:

Date:



Level 33 Aon Tower
201 Kent Street, Sydney NSW 2001
GPO Box 4189
Sydney NSW 2001
DX 10206, Sydney Stock Exchange

10 September 2015

Telephone 61 2 9253 7000
Facsimile 61 2 9253 7145

To Whom It May Concern

Certificate of Currency

In our capacity as Insurance Brokers to Snowy Hydro Limited, we hereby certify that the undermentioned insurance policy is current.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy detailed below, or assume continuity of the policy.

Policy Type	Public & Products Liability
Insured	Snowy Hydro Limited, Red Energy Limited, Valley Power Pty Ltd, Snowy Mountains Hydro-Electric Authority, Lumo Energy Australia Pty Ltd, Lumo Generation SA Pty Ltd, TFI Partners Pty Ltd, Direct Connect Australia Pty Ltd and/or Snowy Mountains Council and others as specified in the policy.
Lead Insurer	AEGIS Lloyds Syndicate 1225
Policy Number	TBA
Period of Insurance	From: 4.00 PM on 30 September 2015 Local Standard Time To: 4.00 PM on 30 September 2016 Local Standard Time
Interest Insured	Insured's legal liability for Death of or Bodily Injury (including Disease) to persons or Loss of (including Loss of Use) or Damage to Property arising out of or in connection with the Insured's business.
Limit of Liability	\$20,000,000 any one claim but limited to \$20,000,000 in the aggregate any one period of insurance with respect to Products Liability.
Territorial Limit	Anywhere in the world except the United States of America and Canada where this Policy will only apply in respect of exports into those countries and/or travelling directors or employees who are non-resident in such countries.
Interested Party	Australian Postal Corporation but only in respect of the Insured's occupation as Licensee of the Cabramurra Licensed Post Office.

Subject to the Terms and Conditions of this Policy.

Signed for and on behalf of **Aon Risks Services Australia Limited**,



Matt Langham
Client Executive

Bombala Young Driver Training Program

1. Plan of the event

The program, which is aimed at Year 12 students who are mainly on their red 'P' plates, focuses on the unique road conditions of the Snowy Mountains and includes both theory and practical sessions designed to improve the attitude and driving behaviours of young people in our local community.

The practical sessions are held with a specially designed 'skid car'. The skid car is a Subaru Forester with a custom designed skid frame which allows students, under direction and control of an expert driver trainer, to experience what causes a car to lose control in a simulated skid situation - demonstrating that you cannot correct a skid in real life circumstances and driving environments.

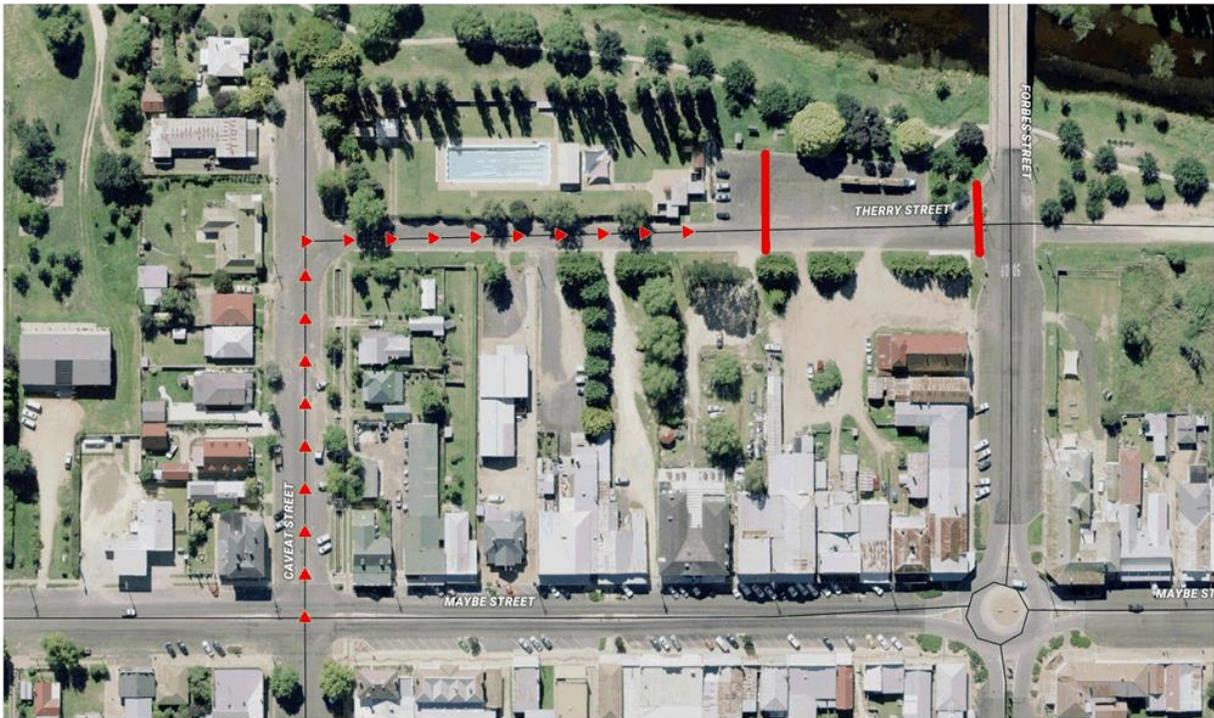
On Wednesday 14 September Snowy Hydro propose running the Young Driver Training Program for Year 12 students at Bombala High School. The program would be run from 9.00am to 3.00pm and the proposed venue is the car park on the corner of Therry and Forrest Streets (see diagram below). Snowy Hydro personnel will transport Bombala High School students to and from the school to the training location in a Snowy Hydro vehicle. Four students at each time will participate in the training in the skid car. Each group will take approx. one hour. There are approx. five groups of students.

The success of the Young Driver Training Program is a direct result of Snowy Hydro's partnership with local schools and this high quality, professionally run program provides a tremendous outcome, not only for participants and their families, but also for our entire community.

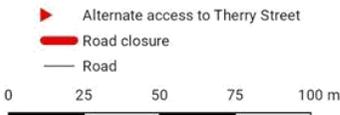
2. Traffic Control Plan showing where the road is to be closed

The below diagram indicates the approx. boundaries for the training. Snowy Hydro will cordon off the area with plastic bollards and rope and can arrange signage if required.

Snowy Hydro would request assistance through information, signage and possible resourcing, if required, to ensure the area is cordoned off in adherence to SMRC policy.



Bombala
Young Driver Training Site
snowyhydro



"This map is for general use only and Snowy Hydro Limited (SHL) gives no warranty or representation regarding the map's accuracy, completeness, reliability or suitability for any particular purpose. SHL excludes all liability to any person for loss or damage of any kind (however caused, including but not limited to by negligence)."



3. Consideration of alternative public car parking (if required) and parking for participants

The above diagram shows the limited parking for public toilet use. Alternative parking could be used in Caveat Street.

4. Risk assessment

Task	Hazard Scenario (what could go wrong?)	Causes (why would the hazard scenario occur?)	Standard Controls	Current Consequence	Current Likelihood	Current Risk	Risk Status
Setting up Skid Frame on YDT Car	Injury to self Damage to vehicle	Incorrect processes Incorrect manual handling Incorrect equipment	Trained personnel only to set up frame on car (Craig Williams)	Minor	Unlikely	Low	CLOSED
Getting to YDT Location: Instructors and tow truck with skid car	Accident on regional roads Car breakdown	Snowy and Ice Trees Rockfalls Wildlife	First aid kit in car Phone / radio contact at all times	Minor	Unlikely	Low	CLOSED
Loading and unloading skid car off tow truck	Injury to self Damage to vehicle	Incorrect processes Incorrect manual handling Incorrect equipment	Trained personnel only to load and unload car (staff from Burchalls transport)	Minor	Unlikely	Low	CLOSED
Delivery of theory session to students at school	Slips/Trips/Falls	Tripping over cords / furniture	Ensure movement pathways are free of obstructions Tape down cords	Minor	Unlikely	Low	CLOSED

Transport of students to and from training venue	Accident on regional roads Car breakdown	Snow and Ice Trees Rockfalls Wildlife	Permission notes to be signed by all students / parents / guardians Liability insurance to be up to date Ensure seat belts are worn by all people in the car First aid kit in car Phone / radio contact at all times SHL Staff to drive vehicle	Minor	Unlikely	Low	CLOSED
Training location	Damage Stone damage - car/persons Pedestrian accidents	Area not large enough Ground cover unsuitable Area not cordoned off Pedestrians unaware of training	Ensure area is at least 60mx100m Book area in advance and ensure information is displayed prior to session regarding use Abide by rules / regulations from location owners Before session, cordon area off with high vis barriers Inspect ground surface prior to training - sweep excess gravel from area Traffic Control Plan approved by SMRC	Minor	Unlikely	Low	CLOSED
Training	Injury whilst in car during YDT Car breakdown	Braking quickly Sudden turns	Ensure seat belts are worn First aid kit in car Instructor to be in car at all times	Minor	Rare	Low	CLOSED

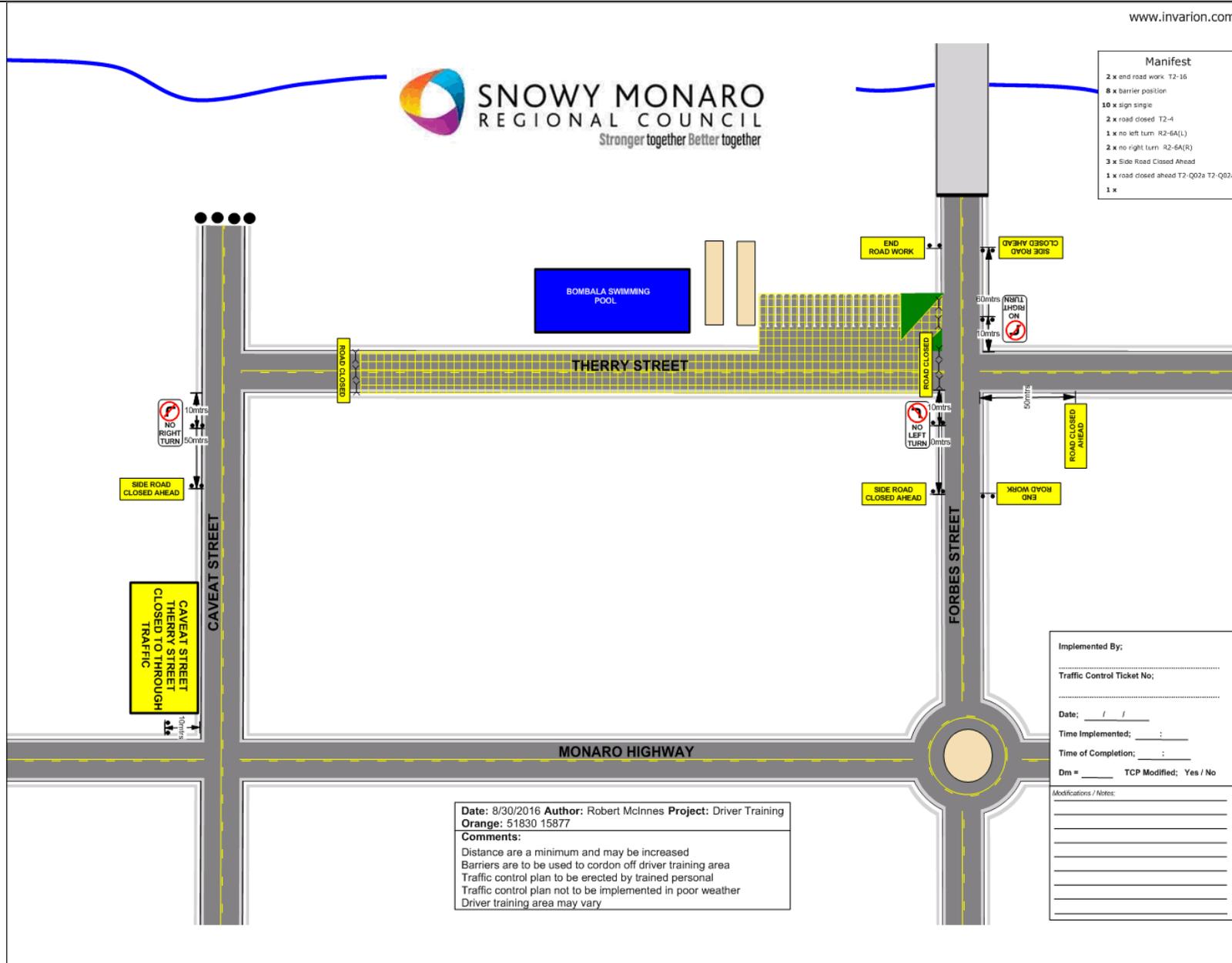
			Instructor to give safety briefing prior to each session Phone/radio contact at all times				
Training: Illness	Motion sickness	Braking quickly Sudden turns	Driving instructor to monitor students Waste kits in car Paper bags in car	Minor	Unlikely	Low	CLOSED
Training: Weather	Unsafe to drive Students/staff exposed to extreme weather	Conditions worsen for driving: sleet/rain/heat	Monitor weather conditions prior to session Information to students regarding appropriate clothing/hats Ability to cancel/postpone if necessary	Minor	Unlikely	Low	CLOSED

Task	Hazard Scenario (what could go wrong?)	Causes (why would the hazard scenario occur?)	Standard Controls	Current Consequence	Current Likelihood	Current Risk	Risk Status	Review Date
Setting up Skid Frame on YDT Car	Injury to self Damage to vehicle	Incorrect processes Incorrect manual handling Incorrect equipment	Trained personnel only to set up frame on car (Craig Williams)	Minor	Unlikely	Low	CLOSED	Aug-16
Getting to YDT Location: Instructors and towtruck with skidcar	Accident on regional roads Car breakdown	Snowy and Ice Trees Rockfalls Wildlife	First aid kit in car Phone / radio contact at all times	Minor	Unlikely	Low	CLOSED	Aug-16
Loading and unloading skid car off towtruck	Injury to self Damage to vehicle	Incorrect processes Incorrect manual handling Incorrect equipment	Trained personnel only to load and unload car (staff from Burchalls transport)	Minor	Unlikely	Low	CLOSED	Aug-16
Delivery of theory session to students at school	Slips/Trips/Falls	Tripping over cords / furniture	Ensure movement pathways are free of obstructions Tape down cords	Minor	Unlikely	Low	CLOSED	Aug-16

Transport of students to and from training venue	Accident on regional roads Car breakdown	Snow and Ice Trees Rockfalls Wildlife	Permission notes to be signed by all students / parents / guardians Liability insurance to be up to date Ensure seatbelts are worn by all people in the car First aid kit in car Phone / radio contact at all times SHL Staff to drive vehicle	Minor	Unlikely	Low	CLOSED	Aug-16
Training location	Damage Stone damage - car/persons Pedestrian accidents	Area not large enough Ground cover unsuitable Area not cordoned off Pedestrians unaware of training	Ensure area is at least 60mx100m and cordoned off with witches hats A4 no entry signage erected at varying points of cordoned off training area Book area in advance and ensure information is displayed prior to session regarding use Abide by rules / regulations from location owners Before session, cordon area off with high vis barriers	Minor	Unlikely	Low	CLOSED	Aug-16

			Inspect ground surface prior to training - sweep excess gravel from area Traffic Management Plan approved by SMRC					
Training	Injury whilst in car during YDT Car breakdown	Braking quickly Sudden turns	Ensure seatbelts are worn First aid kit in car Instructor to be in car at all times Instructor to give safety briefing prior to each session Phone/radio contact at all times	Minor	Rare	Low	CLOSED	Aug-16
Training: Illness	Motion sickness	Braking quickly Sudden turns	Driving instructor to monitor students Waste kits in car Paper bags in car	Minor	Unlikely	Low	CLOSED	Aug-16
Safety area or location where people / students are able to wait prior to or after undertaking training	Injury due to being too close to moving vehicle	Students / people not understanding risks Students / people wondering through training area	Set up an approx 3m x 3m area cordoned off by watches hats located on the grassed area in front of the public toilets Student / people to be accompanied by Snowy Hydro	Minor	Unlikely	Low	CLOSED	Sep-16

			employee Discuss area and risks with students					
Skid vehicle losing control outside training area	Colliding with people / students or surrounding structures / objects.	Driver error Training area too small	Driving instructor in vehicle with students at all times Training area to be 60 x 100m which allows considerable space for driver error Training to be conducted in designated section of training area	Minor	Unlikely	Low	CLOSED	Sep-16
Training: Weather	Unsafe to drive Students/staf f exposed to extreme weather	Conditions worsen for driving: sleet/rain/heat	Monitor weather conditions prior to session Information to students regarding appropriate clothing/hats Ability to cancel/postpone if necessary	Minor	Unlikely	Low	CLOSED	Aug-16



9.1 ASSENT OF LOCAL GOVERNMENT AMENDMENT (GOVERNANCE AND PLANNING) 2016

Record No:

Responsible Officer:	Director Special Projects Office
Key Direction:	7. Providing Effective Civic Leadership and Citizen Participation
Delivery Plan Strategy:	DP7.2 Council's leadership is based on ethics and integrity to enable informed and appropriate decisions in the community's best interest
Operational Plan Action:	OP7.6 Ensure that governance structures are open, transparent and fully accountable and that these are supported by relevant instruments.
Attachments:	1. Explanatory Note - Local Government Amendment (Governance and Planning) Bill 2016 ↓
Cost Centre	3120 – Corporate Governance
Project	Legislative Amendment
Further Operational Plan Actions:	Nil

EXECUTIVE SUMMARY

On 30 August 2016 the Local Government Amendment (Governance and Planning) Bill 2016 was assented in Parliament and amends the Local Government Act 1993.

The following officer's recommendation is submitted for Council's consideration.

OFFICER'S RECOMMENDATION

That Council receive and note the amendment to the Local Government Act assented on 30 August 2016.

BACKGROUND

The explanatory note provides an overview of the object of amending the act as follows:

- a) to extend the purposes of that Act and to set out principles for councils,
- b) to include expanded descriptions of the roles of councils, mayors and councillors and the functions of general managers,
- c) to enable councils to apply to reduce councillor numbers or mandated meetings or change wards, before the next council elections after the proposed Act commences,
- d) to increase the term of office for mayors elected by councillors from 1 year to 2 years,
- e) to require councillors to take an oath or make an affirmation of office,
- f) to enable postal voting to be used for elections by all councils and to postpone the use of countbacks instead of by-elections until after a day to be specified by regulations,
- g) to limit the role of councils in determining the staff organisation of a council to senior positions,
- h) to enable councils to delegate the function of accepting tenders (other than for services currently provided by council staff members) and granting financial assistance,
- i) to provide for a model code of conduct for meetings,

- j) to streamline provisions in the Principal Act relating to the integrated planning and reporting framework and enable regulations to be made about consultation and other procedural matters,
- k) to provide for the council auditor functions to be exercised by the Auditor-General (or a person appointed by the Auditor-General) and to confer other auditing functions relating to local government on the Auditor-General,
- l) to require councils to establish Audit, Risk and Improvement Committees,
- m) to enable the appointment of a financial controller for a council if an improvement order is issued for the council,
- n) to make it clear that an administrator appointed to a council has the functions of a mayor,
- o) to provide for misconduct by councillors relating to disclosures of pecuniary interests to be dealt with in the same way as other misconduct, by including disclosure requirements in mandatory code of conduct provisions and applying the same disciplinary provisions that apply to breaches of the code,
- p) to apply the model code provisions relating to disclosure of pecuniary interests to members of council committees and other advisers,
- q) to make it clear that wage rise restrictions do not apply to a case where a council is recategorised for the purpose of determining the category of allowances payable to councillors and mayors,
- r) to extend regulation-making powers for various matters,
- s) to make other consequential amendments and to enact savings and transitional provisions.

QUADRUPLE BOTTOM LINE REPORTING

1. Social

The *Local Government Act 1993* and *Local Government Amendment (Governance and Planning) 2016* Acts provide the legislative requirements of all local government organisations within NSW.

2. Environmental

There are no environmental sustainability issues relating to the introduction of this amendment.

3. Economic

Preparation of this report has been undertaken within the salary and wages budget of the senior management team.

The commencement of this Act may have future economic benefits for our local community by enabling more efficient decision making processes.

4. Civic Leadership

Governance arrangements through legislative frameworks promote ethical and transparent decision making.

The *Local Government Amendment (Governance and Planning) 2016* is available online at:

<http://www.legislation.nsw.gov.au/#/view/act/2016/38/whole>

Determination by Administrator

Approved by Administrator Dean Lynch in accordance with *Section 226 dot point one (1) or two (2) of the Local Government Act 1993*.

Signature:

Date:

First print



New South Wales

Local Government Amendment (Governance and Planning) Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* (the *Principal Act*) as follows:

- (a) to extend the purposes of that Act and to set out principles for councils,
- (b) to include expanded descriptions of the roles of councils, mayors and councillors and the functions of general managers,
- (c) to enable councils to apply to reduce councillor numbers or mandated meetings or change wards, before the next council elections after the proposed Act commences,
- (d) to increase the term of office for mayors elected by councillors from 1 year to 2 years,
- (e) to require councillors to take an oath or make an affirmation of office,
- (f) to enable postal voting to be used for elections by all councils and to postpone the use of countbacks instead of by-elections until after a day to be specified by regulations,
- (g) to limit the role of councils in determining the staff organisation of a council to senior positions,
- (h) to enable councils to delegate the function of accepting tenders (other than for services currently provided by council staff members) and granting financial assistance,
- (i) to provide for a model code of conduct for meetings,
- (j) to streamline provisions in the *Principal Act* relating to the integrated planning and reporting framework and enable regulations to be made about consultation and other procedural matters,

Local Government Amendment (Governance and Planning) Bill 2016 [NSW]
Explanatory note

- (k) to provide for the council auditor functions to be exercised by the Auditor-General (or a person appointed by the Auditor-General) and to confer other auditing functions relating to local government on the Auditor-General,
- (l) to require councils to establish Audit, Risk and Improvement Committees,
- (m) to enable the appointment of a financial controller for a council if an improvement order is issued for the council,
- (n) to make it clear that an administrator appointed to a council has the functions of a mayor,
- (o) to provide for misconduct by councillors relating to disclosures of pecuniary interests to be dealt with in the same way as other misconduct, by including disclosure requirements in mandatory code of conduct provisions and applying the same disciplinary provisions that apply to breaches of the code,
- (p) to apply the model code provisions relating to disclosure of pecuniary interests to members of council committees and other advisers,
- (q) to make it clear that wage rise restrictions do not apply to a case where a council is recategorised for the purpose of determining the category of allowances payable to councillors and mayors,
- (r) to extend regulation-making powers for various matters,
- (s) to make other consequential amendments and to enact savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed, except for the amendments relating to mayoral terms, oaths of office, adoption of expenses and facilities policy, election on countbacks and clarifying the application of the State wages policy to re-categorisation decisions.

Schedule 1 Amendment of Local Government Act 1993 No 30

Purposes of Act and principles for councils

Schedule 1 [1] streamlines the statement of the purposes of the Principal Act.

Schedule 1 [2] replaces the statement of a council's charter with sets of principles for the exercise of functions by councils, including provisions setting out principles for financial management and for the development of the integrated planning and reporting framework by councils.

Council governance, wards, councillors and election matters

Schedule 1 [3] extends a provision which enables the abolition of wards, without the consultation and other requirements that would otherwise apply under the Principal Act, to councils that are prescribed by the regulations and requires applications to the Minister for approval to do so to be made not later than 12 months before the next ordinary election of councillors following the commencement of the amendment. **Schedule 1 [90]** extends the time for making an application if an ordinary election of councillors is held earlier than 12 months after that commencement.

Schedule 1 [4] expands the role of the governing body (which comprises the councillors) to include providing effective civic leadership, ensuring compliance with the principles for councils and adopting a rating and revenue policy and operational plans that support the optimal allocation of council resources and other matters.

Schedule 1 [5] extends a provision (that is no longer operating) which enables councils to apply to obtain Ministerial approval to decrease the number of councillors to councils that are prescribed by the regulations and requires applications for that purpose to be made not later than 12 months before the next ordinary election of councillors following the commencement of the amendment.

Local Government Amendment (Governance and Planning) Bill 2016 [NSW]
Explanatory note

Schedule 1 [90] extends the time for making an application if an ordinary election for councillors is held earlier than 12 months after that commencement.

Schedule 1 [6] expands the role of the mayor to include being a leader of the council and in the local community, being the principal member and spokesperson of the governing body and to promoting the effective and consistent implementation of strategic plans, programs and policies of the council as well as to include other matters relating to engagement with the local community and key stakeholders.

Schedule 1 [7] extends the term of office of a mayor elected by councillors from 1 year to 2 years.

Schedule 1 [8] revises the role of a councillor to include requirements to represent the collective interests of residents, ratepayers and the local community, to uphold and represent accurately the policies and decisions of the governing body and to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor.

Schedule 1 [9] requires a councillor to take an oath or make an affirmation of office at or before the first council meeting after being elected. A councillor will not be entitled to attend a council meeting if the oath or affirmation is not taken or made and, in any such case, will also be taken to be absent without leave.

Schedule 1 [10] clarifies that a councillor ceases to hold office as a councillor if elected as mayor by the electors.

Schedule 1 [11] clarifies that a mayor who is elected by councillors ceases to hold office as mayor if the person ceases to hold office as a councillor.

Schedule 1 [18] provides that the provision which allows a council vacancy to be filled by a countback election does not apply to a vacancy that occurs before a day to be prescribed by the regulations.

Schedule 1 [19] removes a limitation on the councils that are able to decide to use postal voting in council elections.

Schedule 1 [21] provides that the general manager (rather than the council) is to determine the organisation structure of the council but the council retains power to determine senior staff positions and reporting lines. **Schedule 1 [23] and [24]** make consequential amendments.

Schedule 1 [25] expands the role of the general manager to include the implementation of lawful council decisions, preparation of strategies, programs and plans required for the integrated planning and reporting framework and giving advice and administrative professional support to the mayor and other councillors necessary for them to effectively discharge their functions.

Schedule 1 [26] removes the requirement for the general manager to report annually to the council on the contractual conditions of senior staff.

Schedule 1 [27] enables regulations to be made prescribing a model code of meeting practice for councils and council committees and making some provisions mandatory. A council must adopt a code of meeting practice not later than 12 months after an ordinary election of councillors.

Schedule 1 [28] and [31] make consequential amendments.

Schedule 1 [29] enables a council to apply to the Minister to have the number of required council meetings reduced from 10 meetings a year. An application will only be able to be made by a council prescribed by the regulations and any application must be made not later than 12 months before the next ordinary election after the amendment commences. **Schedule 1 [90]** extends the time for making an application if an ordinary election for councillors is held earlier than 12 months after that commencement.

Schedule 1 [33] enables the Audit, Risk and Improvement Committee of the council to exclude the general manager from a meeting if it thinks it appropriate to do so.

Schedule 1 [34] removes the prohibition on delegation by a council of the acceptance of any tender that the Principal Act requires to be invited by the council and instead prohibits delegation of the function of accepting tenders to provide services currently provided by council staff.

Schedule 1 [35] enables a council to delegate functions relating to the granting of financial assistance as part of a specified program and subject to other conditions.

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Schedule 1 [36] and [37] remove procedural requirements relating to the community strategic plan, community engagement strategy, resourcing strategy, delivery program and operational plan. **Schedule 1 [87]** enables regulations to be made about these procedural matters and also other procedural matters relating to community engagement strategies, resourcing strategies, delivery programs and operational plans. **Schedule 1 [77] and [79]** make consequential amendments.

Schedule 1 [37] also provides for the integrated planning and reporting guidelines for councils to be prescribed by regulations.

Schedule 1 [41] makes it clear that material, as well as information, may be included in a council's annual report.

Schedule 1 [42] removes the requirement for councils to make a state of the environment report in the annual report in the year in which an ordinary council election is held.

Schedule 1 [43] requires a council to establish an Audit, Risk and Improvement Committee to review compliance, risk management, fraud control, financial management, governance, implementation of the strategic plan, delivery program and strategies and other aspects of council operations. One or more councils may jointly appoint a committee for that purpose.

Schedule 1 [88] enables regulations to be made relating to Audit, Risk and Improvement Committees.

Finances and auditing

Schedule 1 [13] requires a council to adopt a policy for payment of expenses and provision of facilities within the first 12 months of each council term instead of requiring the policy to be renewed each year. **Schedule 1 [15]** makes a consequential amendment.

Schedule 1 [14] removes the requirement for the council to show the Chief Executive of the Office of Local Government any new expenses policy or any change to a policy.

Schedule 1 [38] requires a council's auditor to also audit the financial reports of any entity that the council has formed or participated in forming or in which it has a controlling interest.

Schedule 1 [39] replaces the requirement for a council auditor to attend the meeting at which the council's financial reports are presented with an obligation for a council auditor who is appointed by the Auditor-General to attend that meeting if given 7 days notice in writing of the requirement to attend.

Schedule 1 [40] substitutes provisions relating to the appointment of auditors with provisions making the Auditor-General the auditor for a council, subject to a power to appoint another person to be an auditor. The provisions inserted confer inspection and other powers on the Auditor-General for the purposes of carrying out audit and other related functions as well as the power to carry out performance audits and audit-related powers. The Auditor-General is also to communicate with the Minister for Local Government (the *Minister*) on matters that are sufficiently significant to be brought to the Minister's attention and is to report to Parliament annually on sector-wide issues arising from the exercise of the Auditor-General's functions.

Disciplinary matters and disclosure of pecuniary interests

Schedule 1 [16] makes it clear that an administrator appointed for a council after a public inquiry has been held into the council has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [17] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council.

Schedule 1 [30] relocates a provision relating to the disclosure of pecuniary interests at council meetings.

Schedule 1 [44] requires notice of an intention to appoint a financial controller to be given when notice of a proposed performance improvement order for a council is given.

Schedule 1 [45] enables regulations to be made to establish criteria which must be considered by the Minister when deciding whether or not to appoint a temporary adviser to a council for which

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a performance improvement order is made. **Schedule 1 [46]** requires the Minister to consider the criteria.

Schedule 1 [47] enables the Minister to appoint a financial controller for a council if a performance improvement order is issued for the council. The appointment may be made in the order or a subsequent order and on the recommendation of the council or on the Minister's initiative. The Minister is to consider any criteria prescribed by the regulations in determining whether or not to appoint a financial controller. A council may not make a payment from any funds of the council unless payment is authorised by the financial controller. A financial controller is to review any report on compliance with the improvement order and may comment on the report to the Minister.

Schedule 1 [48] makes it clear that an administrator appointed for a council after the council has been suspended has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [49] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council when the council is suspended.

Schedule 1 [50] makes it clear that an administrator appointed for a council after the council has been suspended while a public inquiry is being held has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [51] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council when the council is suspended while a public inquiry is being held.

Schedule 1 [53] relocates interpretation provisions and inserts definitions of *pecuniary interest*, *pecuniary interests duty*, *model code* and *code of conduct*. **Schedule 1 [58]–[60]** make consequential amendments.

Schedule 1 [55] extends the operation of provisions of the model code of conduct relating to the disclosure of pecuniary interests to members of council committees and council advisers.

Schedule 1 [57] relocates provisions relating to the content of the model code of conduct for councils and includes matters relating to the disclosure of pecuniary interests as matters that may be included in a code. The amendment also re-enacts a provision requiring the general manager of a council to keep a register of returns of the interests of councillors and of designated persons (council staff, committee members and council delegates). **Schedule 1 [32], [52], [72]–[76], [78], [80], [81], [89] and [92]** make consequential amendments.

Schedule 1 [61] removes the provision which provided that a breach of disclosure provisions was not misconduct. The effect of this amendment and the amendment made by **Schedule 1 [57]** is to apply the general disciplinary provisions that apply to councillors for misconduct that does not relate to disclosures of pecuniary interests to breaches of the code of conduct relating to the disclosure of pecuniary interests (the *pecuniary interests duties*).

Schedule 1 [61] also relocates a provision excluding a person from being liable for misconduct for a failure to disclose a pecuniary interest if the person did not know, and could not reasonably have known, that the person had a pecuniary interest in a matter being considered at a meeting.

Schedule 1 [62] omits the provisions containing requirements for disclosure of pecuniary interests, as these matters are to be dealt with by using the model code of conduct. **Schedule 1 [90]** continues in force most of the repealed provisions until the model code of conduct provisions are in force. **Schedule 1 [63]** makes a consequential amendment.

Schedule 1 [64] applies the complaints procedure about breaches of disclosure of pecuniary interests duties, that currently applies to councillors and other persons, to persons other than councillors who breach the pecuniary interests duties. **Schedule 1 [67]–[69]** make consequential amendments.

Schedule 1 [65] omits the requirement to verify a complaint about a breach of disclosure requirements by statutory declaration. **Schedule 1 [66]** makes a consequential amendment.

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Schedule 1 [70] confers on the Civil and Administrative Tribunal exclusive jurisdiction relating to contraventions of pecuniary interests duties by persons other than councillors. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [71] sets out the sanctions that may be imposed on a delegate of a council who contravenes a pecuniary interests duty.

Miscellaneous

Schedule 1 [12] provides that the requirement for determinations of the Local Government Remuneration Tribunal to give effect to government policy on remuneration for public sector staff does not apply to a determination by the Tribunal that changes the category of a council or mayoral office (whether or not the effect is to increase the range of amounts payable to the councillors or mayor of a council).

Schedule 1 [22] updates references to government sector legislation.

Schedule 1 [82] provides that certain provisions of the Principal Act (setting out functions of councillors, mayors, principles for councils and relating to codes of conduct) do not give rise to, and cannot be taken into account in, any civil cause of action and do not affect any rights or liabilities arising apart from the relevant provisions. **Schedule 1 [54] and [56]** make consequential amendments.

Schedule 1 [83] enables regulations to be made about financial management and auditing.

Schedule 1 [84] enables regulations to be made about induction courses and professional development for mayors and councillors.

Schedule 1 [85] adds procedures for elections of mayors by councillors to the examples of matters about which regulations may be made.

Schedule 1 [86] adds community engagement strategies to the examples of matters about which regulations may be made.

Schedule 1 [90] inserts savings and transitional provisions that are consequential on the amendments made by the proposed Act.

Schedule 1 [91] makes a statute law revision amendment to make it clear that a reference in the Principal Act to an area includes areas constituted by amalgamation of areas.

Schedule 1 [93] inserts a definition of *integrated planning and reporting framework* for the purposes of the Principal Act.

10. CONFIDENTIAL MATTERS

In accordance with Section 10A(2) of the Local Government Act 1993, Council can exclude members of the public from the meeting and go into Closed Session to consider confidential matters, if those matters involve:

- (a) personnel matters concerning particular individuals; or
- (b) the personal hardship of any resident or ratepayer; or
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
- (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; or
- (f) matters affecting the security of the council, councillors, council staff or council property; or
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
- (h) an item of Aboriginal significance on community land.

and Council considers that the closure of that part of the meeting for the receipt or discussion of the nominated items or information relating thereto is necessary to preserve the relevant confidentiality, privilege or security of such information, and discussion of the material in open session would be contrary to the public interest.

In accordance with Section 10A(4) of the Local Government Act 1993 the Chairperson will invite members of the public to make verbal representations to the Council on whether the meeting should be closed to consider confidential matters.

RECOMMENDATION

1. THAT pursuant to Section 10A subsections 2 & 3 and Section 10B of the Local Government Act, 1993 (as amended) the following items on the agenda for the Ordinary Council meeting be dealt with in Closed Session for the reasons specified below:

10.1 Legal Agreement for Use of Clocktower Offices - Monaro Media Group Pty Ltd

Item 10.1 is confidential in accordance with s10(A)(2)(di) of the Local Government Act because it contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

10.2 Appointment External Independent member to Audit and Risk Committee

Item 10.2 is confidential in accordance with s10(A)(2)(a) of the Local Government Act because it contains personnel matters concerning particular individuals (other than councillors) and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

2. The press and public be excluded from the proceedings of the Council in Closed Session on the basis that these items are considered to be of a confidential nature.
3. That the Minutes and Business Papers including any reports, correspondence, documentation or information relating to such matter be treated as confidential and be withheld from access by the press and public, until such time as the Council resolves that the reason for confidentiality has passed or become irrelevant.
4. That the resolutions made by the Council in Closed Session be recorded in the Minutes of the Council Meeting.

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| <p>5. That upon this recommendation being moved and seconded, the Chairperson invite representations from the public as to whether this part of the meeting should be closed to consider the nominated item.</p> |
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