

AMENDED ITEM



Item No: 6.2
Title: Notice of Motion - Nine Million (\$9,000,000)
Agency Agreements / Body Hire
Department: Councillor

9 March 2020 Ordinary Council Meeting

Reference: F2020/00039 - D13841793
Author: Greg Best, Councillor
Bruce McLachlan, Councillor
Troy Marquart, Councillor

Councillors Best, McLachlan and Marquart have given notice that at the Ordinary Council Meeting to be held on 9 March 2020 they will move the following motion:

- 1** *That further to Council now receiving its 18-19 Accounts, nine months late, it is noted on Page 30 the expenditure of some \$9 million under the line item "Agency Hire"??*
- 2** *That Council receives the 224 page Section 430 Investigation Report into Body Hire Arrangements in the Former Wyong Shire Council 2007-2010 that identified "evidence of serious and systemic maladministration." [LINK](#)*
- 3** *That Council urgently writes to the Office of Local Government (OLG) advising them of Council's concerns as to the real possibility that Body Hire Arrangements may have also arisen at Central Coast Council and ask the OLG to 'independently' advise on the legality and governance that underpins these arrangements.*
- 4** *That Staff as a matter of urgency report to Council detailing numbers of persons working under these arrangements, the type of contractual arrangements, what tendering was conducted, what interviewing process took place, their roles and their work station locations.*
- 5** *That pending advice from the OLG, no further Body Hire or Agency Agreements be entered into.*
- 6** *That Staff confirm as to whether these multi-million dollar arrangements have now been continued into the 19-20 Accounts.*

Councillors Note

Councillors, As you are aware I put Council on notice at the last Meeting that I intend to put this matter on the public record.

6.2 Notice of Motion - Nine Million (\$9,000,000) Agency Agreements / Body Hire (contd)

I thank Councillors for requesting that I provide further details around this issue. With the greatest of respect, we have a plethora of Policies, Offices and Governance Protections that are far better placed to govern and report on such issues than an individual Independent Councillor reading old Accounts. I am quite concerned that Council did not see the need to resolve at the last Meeting that a similar such urgent Report request be provided from Management. Unfortunately, similar such apprehensions and poor Councillor governance plagued the initial Wyong response.

I understand that the vast majority of these Hire Arrangements are within the IT Unit and as we have just received the Resignation of our Information Technology Director it is difficult to gain a clear understanding at this point, therefore I respectfully request Staff provide background in tandem with the OLG.

As with the former Wyong Council issue, the independence and guidance from the OLG proved critical. However I recollect there was a significant and protracted reluctance to initially garner their support.

Please note the full 224 page OLG Investigation findings and to assist councillors ([LINK](#)), below is the first page of the Executive Summary.

REPORT OF THE

SECTION 430

INVESTIGATION INTO “BODY HIRE”
ARRANGEMENTS OPERATING AT
WYONG SHIRE COUNCIL BETWEEN
JANUARY 2007 AND MAY 2010

July 2011

Departmental representative:

John Davies, Senior Investigations Officer, Division of Local Government



Report of the Section 430 investigation into "body hire" arrangements operating at Wyong Shire Council between January 2007 and May 2010

1 EXECUTIVE SUMMARY

This investigation has identified evidence of serious and systemic maladministration that occurred over a number of years at Wyong Shire Council in relation to the procurement and management of temporary contract personnel services.

This maladministration has since been addressed by the Council.

Between 2007 and 2010, Council engaged temporary contract personnel under 68 "body hire" contracts. However, there is evidence to suggest that Council's "body hire" practices also predate this period. Total expenditure under the 68 "body hire" contracts was \$17,813,449 including GST.

This investigation demonstrates that the Council's practices in relation to the engagement and management of "body hire" contractors did not only, in some respects, fail to comply with the Council's statutory obligations, but more fundamentally failed to meet basic probity and good governance requirements or to provide any assurance that the Council had received best value for money in relation to the services provided under the contracts.

Thirty four of these contracts involved expenditure that exceeded \$150K and were thereby subject to a statutory requirement that they be entered into pursuant to a competitive tendering process unless otherwise exempt from the requirement. None of these "body hire" contracts were entered into pursuant to a competitive tendering process. Only 3 of the contracts were exempt from the tendering requirement by virtue of the fact that the contractor was engaged under a State Contracts Control Board standing contract. Council failed to comply with its statutory obligations to tender in the remaining 31 cases.

There is evidence to suggest that in the case of a number of other contracts where expenditure did not exceed \$150K, the contracts formed part of a single seamless engagement and had been "split" thereby avoiding any single transaction that exceeded \$150K. This was notably the case with respect to the contracts Council entered into with respect to the delivery of the Leadership Development Program. While that Program was delivered under six separate contracts each with an initial approved value of under \$150K, total expenditure with respect to the delivery of the Program was in fact \$886,200.57.

**6.2 Notice of Motion - Nine Million (\$9,000,000) Agency Agreements /
Body Hire (contd)**

Chief Executive Officer Note

The Chief Executive Officer considers that this Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer will provide a report in relation to the Notice of Motion. This report will be provided as a Late Item and will be made available by close of business on the Friday prior to the Council Meeting.

Attachments

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| 1 | Chief Executive Officer Response to Notice of Motion - Nine Million (\$9,000,000) Agency Agreements / Body Hire | D13852307 |
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Title: Chief Executive Officer Response to Notice of Motion - Nine Million (\$9,000,000) Agency Agreements / Body Hire

Department: Chief Financial Officer

9 March 2020 Ordinary Council Meeting

Reference: F2020/00039 - D13852307

Author: Craig Norman, Chief Financial Officer
Krystie Bryant, Executive Manager, People and Culture
Dr Liz Develin, Director Governance

Executive: Gary Murphy, Chief Executive Officer

Report Purpose

To provide Council with information to assist in their decision making with regard to the Notice of Motion (NoM) put forward by Councillors Best and McLachlan regarding "Body Hire".

Summary

The NoM put forward by Councillors Best and McLachlan seeks Council to: i) note agency hire expenditure from last financial year; ii) refers to a 2011 report conducted into Wyong Shire Council; iii) seeks OLG to investigate; iv) asks for staff to report on the matter; v) wants no further 'body hire' entered into; and vi) seeks to confirm arrangements for 2019-20.

Beyond providing an information report to Council regarding the current arrangements, the rest of the NoM is considered unnecessary. In this report, staff outline the rationale against each of the relevant points in the NoM to assist with Council's decision making.

Motion: *That further to Council now receiving its 18-19 Accounts, nine months late, it is noted on Page 30 the expenditure of some \$9 million under the line item "Agency Hire"??*

Staff Comment:

Section 416(1) of the *Local Government Act 1993* requires Council to prepare and audit financial reports within 4 months after the end of the financial year. That is, by 31 October following the 30 June year end.

Section 416 of the *Local Government Act 1993* also permits Council to apply for an extension to prepare and audit the financial reports. Council applied for and was granted an extension to prepare and audit its financial reports for the year ended 30 June 2019 to 29 February 2020. As such, the Accounts are not nine months late as suggested by the NOM.

With regard to the 19/20 expenditure on Agency Hire, Council engages contractors and day labour for the following reasons:

- Backfilling vacant positions for periods of extended leave (especially unplanned leave);
- Backfilling positions which are temporarily vacant as staff have been seconded to projects;
- Backfilling vacant positions whilst recruitment is being undertaken to ensure continuity of service;
- Supplementing supporting roles where increased capacity is required for a short term only due to launch of a project, business change or addressing backlogs of work;
- Backfilling periods of absence for safety purposes such as traffic control work to ensure safe work sites so that planned works can continue or to maintain operational service levels including reactive works;
- To assist with the completion of specific projects with definable start and end dates. These projects predominately relate to merger related activities and were unable to be fulfilled by existing employees; and
- A portion of costs associated with this expenditure relate to apprentice costs incurred under a previous method of apprentice engagement.

All of the above reasons are legitimate and well within the requirements of relevant legislation.

Staff Recommendation:

The Motion is unnecessary.

Motion: ***That Council receives the attached 224 page Section 430 Investigation Report into Body Hire Arrangements in the Former Wyong Shire Council 2007-2010 that identified "evidence of serious and systemic maladministration."***

Staff Comment:

Council has previously received the Section 430 Investigation into "Body Hire" Arrangements operating at Wyong Shire Council between Wyong Shire Council between January 2001 and May 2010. At its meeting held 22 June 2011 the former Wyong Shire Council resolved as follows:

- 1 *That Council endorse the proposed reply to draft "Report of the Section 430 Investigation into Wyong Shire Council Investigation Report" provided to the General Manager by the Division of Local Government of the Department of Premier and Cabinet on 26 May 2011, that reply comprising the covering letter from the General Manager as well as Annexures A and B to that letter, as attached to this report.*
- 2 *That Council request a meeting with the CEO of the Division of Local Government and the Minister for Local Government.*

As a result, this Motion is redundant as the action has already been taken and the former Wyong Shire Council provided a response to the Office of Local Government report.

It is acknowledged that the report found serious maladministration. However, page four of the report clearly states: "This maladministration has since been addressed by the Council".

Furthermore, prior to and since amalgamation, Council has made considerable progress in adopting a structured and controlled method of engagement and management of temporary personnel. There are well documented policies and procedures within the Procurement and People & Culture processes, for example within the Talent acquisition policy CCC026.

In addition to the above, when utilising temporary personnel Central Council Council also adheres to legislative requirements including the Local Government (State) Award 2017 Clause 28 and Clause 34 of the Local Government Act.

Where Central Coast Council seeks to source temporary workers, it utilizes Local Government Procurement Panels, Council's own panel suppliers, specific contracts; and the requirement for CEO approval for specialist resources.

Specifically, Council uses the following to source contingent workers:

- Local Government Procurement Contract - 808-3 Permanent and Temporary Placements and Associated Services;
- Central Coast Council Information Management and Technology (IM&T) Agency Hire Personnel Supplier Panel - CPA/1493;
- Central Coast Council Finance Agency Hire Personnel Supplier Panel CPA1527;
- Day Labour Contract – typically used for traffic control and general labouring; and
- Specialist recruitment request – CEO approval.

While it is important that Council remains vigilant in ensuring the previously documented issues from Wyong do not occur again, there is no need to receive the now dated report again.

Staff Recommendation:

The Motion is unnecessary.

Motion: *That Council urgently writes to the Office of Local Government (OLG) advising them of Council's concerns as to the real possibility that Body Hire Arrangements may have also arisen at Central Coast Council and ask the OLG to 'independently' advise on the legality and governance that underpins these arrangements.*

Staff Comment:

This motion makes a presumption that there is something illegitimate or inappropriate in the way Council is using agency hire resources. Without proper investigation, it is unreasonable to presume such an outcome.

Furthermore, it is not the core business of the Office of Local Government (OLG) to undertake investigations on behalf of Council. Rather than referring concerns to OLG, it would be more appropriate for Council to investigate the matter itself, and then, only if concerns remain seek the assistance of independent third parties.

It should also be noted that Internal Audit has previously undertaken investigation in response to the Section 430 Report, with their findings issued in August 2014. All required actions of this Internal Audit report have been closed and reported to Council's Audit, Risk and Improvement Committee. The Internal Ombudsman has also had reason to investigate particular matters relating to procurement of contract staff, with recommendations being provided to the CEO at the time.

Further, under the Internal Audit schedule, which has previously been provided to Council there is an Audit scheduled for 'Contractors and Temporary Labour Hire' in April 2020.

It would be prudent for Council to receive the report described in the following motion and the Internal Audit report before determining any further course of action.

Staff Recommendation:

The Motion is unnecessary.

Motion: *That Staff as a matter of urgency report to Council detailing numbers of persons working under these arrangements, the type of contractual arrangements, what tendering was conducted, what interviewing process took place, their roles and their work station locations.*

Staff Comment:

A report will be prepared for Council by April 2020.

Staff Recommendation:

That the Motion be amended to:

That Staff provide a report to Council by the end of April 2020 detailing numbers of persons working under these arrangements, the type of contractual arrangements, their roles and their work station locations.

Motion: *That pending advice from the OLG, no further Body Hire or Agency Agreements be entered into.*

Staff Comment:

The contingent workforce has a valid and important role in modern workplaces and resourcing, allowing for flexibility and agility in responding to changing needs.

It is not feasible for Central Coast Council to cease further body hire or agency agreements immediately as this will significantly inhibit the business from maintaining service delivery to the community. On any given day, there is a requirement for Body Hire or Agency Agreements to be in place to meet operational requirements.

Cessation of existing arrangements or a hold on any new arrangements would impact on the safety of our community and Council staff and would impede the efficiency and performance of the Council resulting in disruption to the community.

Staff Recommendation:

The Motion is unnecessary.

Motion: *That Staff confirm as to whether these multi-million dollar arrangements have now been continued into the 19-20 Accounts.*

Staff Comment:

Staff can confirm that agency hire arrangements continue into this financial year. The reasons for using such arrangements is outlined in response to the first resolution.

The operational spend on contractors and day labour for the 7 months to 31 January 2020 is \$5.4 million.

Staff Recommendation:

The Motion is unnecessary as the confirmation sought is provided in this report.

Summary

In summary, the following motion is recommended to Council:

That Staff provide a report to Council by the end of April 2020 detailing numbers of persons working under these arrangements, the type of contractual arrangements, their roles and their work station locations.

Financial Impact

Implementing the recommendations from this report can be achieved within existing resources.

Link to Community Strategic Plan

Theme 4: Responsible

Choose Focus Area

R-G2: Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect.

Risk Management

Ceasing agency hire arrangements would be a high-risk exercise, as the impact on staff and community safety, and service delivery has not been well examined.

Attachments

Nil.