

Minutes

Of the Special Council Meeting

Location: Council Chambers, Municipal Offices
62-68 Ovens Street, Wangaratta

Date: 29 January 2018

Time: 6pm

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1. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We acknowledge the traditional owners of the land on which we are meeting. We pay our respects to their Elders and to Elders from other communities who may be here today.

2. OPENING PRAYER

Almighty God, we humbly ask thee to bless and guide this council in its deliberations so that we may truly preserve the welfare of the people whom we serve. Amen

3. PRESENT

COUNCILLORS:

MR DAVID FULLER, MR DEAN REES, MR HARRY BUSSELL, MR HARVEY BENTON, MR KEN CLARKE OAM, MR MARK CURRIE, MS ASHLEE FITZPATRICK

OFFICERS:

BRENDAN MCGRATH, CHIEF EXECUTIVE OFFICER, RUTH KNEEBONE , DIRECTOR CORPORATE SERVICES, ALAN CLARK, DIRECTOR INFRASTRUCTURE SERVICES, BARRY GREEN, DIRECTOR DEVELOPMENT SERVICES

4. ABSENT

COUNCILLORS:

OFFICERS:

JAIME CARROLL, DIRECTOR COMMUNITY WELLBEING

5. ACCEPTANCE OF APOLOGIES & GRANTING OF LEAVE OF ABSENCE

ORDER OF BUSINESS

6. CONFLICT OF INTEREST DISCLOSURE

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a 'conflict of interest' in a decision if they would receive, or could reasonably be perceived as receiving, a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

Disclosure must occur immediately before the matter is considered or discussed.

Cr Harvey Benton declared a conflict interest regarding item 7.1 as he is a stock agent for a company that operates at the Sale Yards.

PRESENTATION OF REPORTS

OFFICERS' REPORTS

7. CORPORATE SERVICES

7.1 WANGARATTA SALEYARDS

Meeting Type: Special Council Meeting
Date of Meeting: 29 January 2018
Author: Governance and Risk Advisor
File Name: PROJECT MANAGEMENT - Projects - 2017 - Saleyards - Management
File No: F17/360

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to recommend the next steps in relation to the incorporation of the Wangaratta livestock exchange. The most recent step in this process is the completion of a risk assessment report that is required by section 193 of the *Local Government Act 1989* (the Act). This report has been prepared and is now provided to Council for consideration.

Cr Harvey Benton left the room at 6.01pm due to his conflict of interest.

RECOMMENDATION:

(Moved: Councillor H Bussell/Councillor A Fitzpatrick)

That Council, having received and considered the s193 Risk Assessment Report as provided by Maddocks Solicitors and prepared by Pitcher Partners:

- 1. Continues with the formation of a company to independently operate the Wangaratta Livestock Exchange.***
- 2. Adopts the constitution for the Wangaratta Livestock Exchange (refer attachment)***
- 3. Adopts the Management Services Agreement (refer attachment) subject to the inclusion of a plan which highlights the area of land to be licenced to the Wangaratta Livestock Exchange and the interim budget and strategic plan which will be presented to Council prior to the appointment of Directors.***
- 4. Approves the "Information for Applicants – Wangaratta Livestock Exchange Pty Ltd – Director" information pack and***

commences the advertising process to enable expressions of interest from suitably qualified persons to be received

Carried

Background

Earlier this year, Council resolved to agree in principle to develop a management structure for the Wangaratta saleyards which would be a Council owned entity, to ensure the facility has the flexibility to maximise its full commercial potential.

A subsequent resolution sought public feedback regarding Council's intention to change the management and business structure of the Wangaratta Saleyards business to a company limited by shares, wholly owned by Council.

The consultation period was completed and feedback received has been very favourable towards the proposed change.

In addition Council's Agriculture and Agribusiness Advisory Committee has also reviewed the proposal and at its meeting of 25 July 2017 provided the following endorsement:

"The Agriculture and Agribusiness Committee endorses the proposed new management structure for the Wangaratta Saleyards. It should be a skills based board with a rigorous effort to ensure flexibility around the allocation and number of board members. The committee recommends that this process is undertaken with a high priority and as a matter of urgency."

Following this, at its 22 August 2017 meeting, Council resolved as follows:

1. *to progress with the establishment of a new company limited by shares, wholly owned by the Wangaratta Rural City Council (the Council), to be called the 'Wangaratta Livestock Exchange Pty Ltd' (WLX) in accordance with the Corporations Act 2001 (Cth) and the Local Government Act 1989 (the Act);*
2. *authorises the Chief Executive Officer (CEO) to:*
 - a. *undertake the business planning and risk assessment process required under section 193 of the Act and in accordance with the Ministerial Guidelines and seek any approvals as required;*
 - b. *determine and recommend to Council:*
 - i. *the amount to be capitalised into WLX;*
 - ii. *the form of WLX's constitution which will include a prohibition on WLX from borrowing funds;*
 - iii. *the appointment of initial directors based on their skills subject to seeking a balance of skills on the board of WLX;*
and
 - iv. *the management agreement governing the relationship between Council and WLX.*
 - c. *report on and advise in relation to any alternative proposals or options for the future operation of the Wangaratta Saleyards.*

3. *requires the CEO to report the outcomes of the processes undertaken under paragraph 2 above at a future meeting for Council to consider the relevant reports and recommendations and for final determination of whether to establish the company limited by shares.*

The section 193 risk assessment was completed and a summary appears below under the Risk Management section.

Council also has received the final draft of the constitution and management services agreement, which are now presented to Council for adoption.

Company Constitution (refer attachment)

1. The purpose of the Constitution is to govern the internal affairs of the wholly-owned entity following incorporation. The Constitution contains rules relevant to the company itself, the company and its directors and the company and its shareholder (i.e. Council).
2. The Constitution's rules relate to matters such as directors' powers, appointing company officers, calling meetings and issues relating to the company's shares.

Management Services Agreement (refer attachment)

The purpose of the Agreement is to govern the relationship between Council and its wholly-owned entity. Amongst other things, the Agreement sets out the company's right to receive income, the responsibilities of each party for the term of the Agreement, and the requirement to develop strategic plans, annual plans and budgets.

There has been feedback received from Council's legal representatives relating to these documents and council officers are now satisfied that they provide Council with both the legal and operational frameworks that will enable the WLE to operate with the independent appointed board.

The Management Services agreement will require a plan to be included which will highlight the area of land to be licenced to the company and in addition an interim strategic plan and budget will need to be prepared and adopted by the Council.

It is proposed that the interim strategic plan and budget will be prepared in consultation with the proposed Directors of the company prior to the company being operational.

Appointing Directors

1. Council at its briefing of the 13th November was advised that Maddocks have provided advice regarding the appointment and selection of directors
2. The draft 'Information for Applicants' document for the purpose of inviting applications for director positions was provided. It has used the Guidelines

and other guidance material from the Australian Institute of Company Directors (AICD) and ASX Corporate Governance Council

3. The selection panel including the Mayor, the Chief Executive Officer and the Director Development Services will be used for the appointment process which will culminate with a selection report and recommendation to Council.
4. It is suggested that Council commence advertising for expressions of interest for suitably qualified persons who wish to become board members. It is anticipated that the following timetable for board appointments will be undertaken.
 - 31 January 2018 – commence advertising for board membership
 - 21 February 2018 – expressions of interest close
 - 20 March 2018 – Council meeting to appoint selected together with the required paperwork
 - April 2018 board operational
 - July 2018 Board assume control of the livestock exchange.

Transitional arrangements and the new business start-up

1. With any new business there is considerable work to be undertaken in establishing the business.
2. Council has completed a new business start-up checklist for the board and preliminary work will commence to establish the business.
3. As Council currently undertakes a number of functions and provides various services for the existing saleyards, work has commenced on costing these functions and services and due to the timeframes, Council may be required to provide these services during the transition from Council owned and operated saleyards to independent operation.

Implications

Policy Considerations

There are no specific Council policies or strategies that relate to this report.

Financial/Economic Implications

Officers have previously advised council estimated legal, incorporation and board remuneration costs for 2017/18 of \$60,000. This amount is included in the 2017/18 revised budget.

Other costs, including capitalising the entity, have been allowed for in the 2017/18 budget.

Legal/Statutory

Council must meet the following legal requirements in establishing a company limited by shares:

- The relevant provisions of the *Corporations Act 2001*; and
- The entrepreneurial powers provisions established under section 193 of the Act.

From a legal perspective the following key documents required are:

1. The Company's Constitution
2. The Management Services Agreement between Council and the Company

Social

The incorporation of the Wangaratta Saleyards will assist in securing the long-term viability of livestock exchange within the Wangaratta municipality. This will provide all stakeholders involved with a place to congregate, socialise and do business.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2017 – 2021 Council Plan

This report supports the 2017-2021 Council Plan:

Goal

We are Established

Our saleyards will be managed in an appropriate structure to ensure business growth and longevity

Risk Management

Section 193 of the Local Government Act states the following:

193 Entrepreneurial powers

- (1) *For the purpose of performing any function or exercising any power conferred on a Council by or under this Act or any other Act a Council may—*
- (a) participate in the formation and operation of a corporation, trust, partnership or other body; and*
 - (b) subscribe for or otherwise acquire and dispose of shares in or debentures or other securities of, a corporation; and*

- (c) *become a member of a company limited by guarantee; and*
- (d) *subscribe for or otherwise acquire and dispose of units in a trust; and*
- (e) *acquire and dispose of an interest in a partnership or other body; and*
- (f) *enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction capable of being conducted so as to directly or indirectly benefit the Council.*

It further states:

(5A) If the Council proposes to exercise any power under subsection (1), the Council must assess the total investment involved and the total risk exposure.

and:

5C) If the sum assessed under subsection (5A)—

- (a) exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year, the Council must consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person;*
- (b) exceeds whichever is the greater of \$500 000 or 5% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year, the Council must—*
 - (i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and*
 - (ii) obtain the approval of the Minister;*
- (c) exceeds \$5 000 000, the Council must—*
 - (i) consider a risk assessment report (including appropriate reporting arrangements) from an appropriately qualified person; and*
 - (ii) obtain the approval of the Minister; and*
 - (iii) obtain the approval of the Treasurer.*

Therefore it was a requirement that Council appoint an appropriately qualified person to undertake the risk assessment. Council appointed Pitcher Partners to undertake this assessment and a copy of the final report is attached (**refer attachment**)

The executive summary from the report is as follows.

The migration of the saleyard from one owned and operated by council, to that of an independent company, in itself appears to be reasonably straight forward and in many respects considered a reasonable and straight forward undertaking. From a risk perspective, while there are a number of potential benefits in gaining a truly commercial perspective on running the business and

its operations there are also a number of potential risks, notably the impact on potential viability as well as community reaction to possible changes in pricing and operating manner. The manner in which the new company transitions from a council operated entity to an independent operating company will considerably influence its ability to function in a sustainable manner in the future. From our risk analysis presented below, we have estimated a potential annual risk exposure of \$87,000.

The requirement of the Act is that the Council consider this report prior to resolving to proceed with the appointment of an independent board.

Consultation/Communication

Council has consulted with Victorian Farmer's Federation Wangaratta Branch and the Wangaratta Associated Stock Agents in relation to the progress of the incorporation.

Options for Consideration

Council may resolve to proceed with or abandon the proposal to incorporate the Wangaratta Saleyards.

Conclusion

Council officers are progressing towards the incorporation of the Wangaratta Livestock Exchange. A key element in this project is the completion of the Risk Assessment Report by an appropriately qualified person. This report is now presented to Council for its consideration.

Attachments

- 1 Constitution WLE [⇒](#)
- 2 Management Services Agreement [⇒](#)
- 3 Information for Applicants Directors WLE [⇒](#)
- 4 S193 Risk Assessment Report [⇒](#)

8. CLOSURE OF MEETING

The Meeting closed at 6.05pm