



GLAMORGAN SPRING BAY
COUNCIL

Special Meeting Minutes

For the Special
Meeting of Council
to be held at the
Triabunna
Council Offices

14 January, 2020

THAT NOTICE OF SPECIAL MEETING

Notice is hereby given that the Mayor has called a Special Meeting of the Glamorgan Spring Bay Council in closed session to be held at the Triabunna Council Offices on Tuesday the 14th of January at 2.00pm.



Dated this Friday 10 January, 2020

Chris Schroeder
GENERAL MANAGER

"I certify that with respect to all advice, information and recommendations provided to Council with this agenda:

- 1. The advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation, and**
- 2. Where any advice is given directly to the Council by a person who does not have the required qualifications or experience, that person has obtained and taken into account in that person's general advice the advice from any appropriately qualified or experienced person. "**

Note: Section 65 of The Local Government Act 1993 states:

- (1) A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.**
- (2) A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and taken into account in providing general advice to the council or council committee.**



Chris Schroeder
GENERAL MANAGER

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Audio/Video Recording of Ordinary and Special Meetings of Council

As determined by Glamorgan Spring Bay Council in April 2017 all Ordinary and Special Meetings of Council are to be audio/visually recorded and streamed live. A link is available on the Glamorgan Spring Bay Council website to the YouTube platform, where the public can view the meeting live and watch recordings of previous Council meetings.

In accordance with the Local Government Act 1993 and Regulation 33, these video/audio files will be retained by Council for at least 6 months and made available for viewing live, as well as online within 5 days of the scheduled meeting. The written minutes of a meeting, once confirmed, prevail over the video/audio recording of the meeting.

1. Opening

The Mayor to welcome Councillors, staff and members of the public and declare the meeting open at 2.05pm.

1.1 Acknowledgement of Country

The Glamorgan Spring Bay Council acknowledges the Traditional Owners of our region and recognises their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and emerging.

1.2 Present and Apologies

Present: Mayor Debbie Wisby, Deputy Mayor Jenny Woods, Cllr Keith Breheny Cllr Annie Browning, Cllr Rob Churchill, Cllr Keith Pyke.

Apologies: Cllr Cheryl Arnol, Cllr Michael Symons.

1.3 In Attendance

Mr Chris Schroeder (General Manager), Ms Rachael Garrett (Executive Officer), and approximately 5 members of the public.

1.4 Declaration of Interest or Conflict

The Mayor requests Elected Members to indicate whether they have:

1. *any interest (personally or via a close associate) as defined in s.49 of the Local Government Act 1993; or*

2. *any conflict as described in Council's Code of Conduct for Councillors,
in any item included in the Agenda.*

2. Officers' Reports Requiring a Decision

2.1 Correction of Assessed Annual Valuation of Rates

Responsible Officer – General Manager

Background

Information in relation to this issue was provided to the 17 December Ordinary Meeting of Council. That information is provided in Attachment A. Further information was requested at that meeting and it has been provided in Attachment B below.

Recommendation

As the complete costs and time delays for levying greater than \$10 in the rates variance still remain unclear, Council agrees to waive the rates difference in this instance.

Attachment A: Legal Opinion and Background provided to 17 December OMC.
Attachment B: Cost Factors Breakdown

Decision: 1/20

Moved Cllr Breheny, seconded Cllr Churchill that Council agrees to waive the levying of rates related to the Assessed Annual Valuation of rates as received from the Valuer General's Office in June 2019 for 2019/2020 financial year. The basis of this decision is due to the negative impact on the administration of Council by delaying this matter any further.

**The motion was put and carried unanimously
(6 Votes to 0)**

For: Mayor Debbie Wisby, Deputy Mayor Jenny Woods, Cllr Annie Browning, Cllr Rob Churchill, Cllr Keith Pyke, Cllr Keith Breheny.

Against: Nil

Attachment A: Legal Opinion and Background provided to 17 December OMC

Background:

In accordance with s.20 of the Valuation of Land Act 2001 the Valuer-General provided updated valuations for the municipal area to Council in June 2019.

For rating purposes, the main effect of the new valuations was an increase to AAV for primary production land.

At the time, due to file incompatibility with Property Wise, Council did not apply its 2019/2020 rates resolution to the fresh valuations and instead made the necessary calculations based on the former values, effectively issuing rates notices based on incorrect values.

This resulted in Council not complying with s.89A(2) of the Local Government Act 1993 which, in summary, required Council to apply its 2019/2020 rates resolution to the updated valuations provided by the Valuer-General.

The attached rates comparison data details the number of ratepayers effected and the costs to be recovered if Council so choose.

Statutory Implications

Legal Advice from PageSeager of 1/11/19 (as discussed in a Workshop 25/11/19)

Background

Council received 'fresh valuations' per s.20 of the Valuation of Land Act 2001 for the municipal area from the Valuer-General in mid-June 2019. For rating purposes, the main effect of the fresh valuations was an increase to AAV for primary production land; and Council was unable to apply its 2019/2020 rates resolution to the fresh valuations, and instead made the necessary calculations based on the former values and went on to dispatch rates notices.

The result is that Council has not complied with s.89A(2) of the Local Government Act 1993 (Act) which, in summary, required Council to apply its 2019/2020 rates resolution to the fresh valuations supplied by the Valuer-General.

Put another way, when Council applied its 2019/2020 rates resolution it did so using values that were not the latest values provided by the Valuer-General prior to that start of the relevant rating period (1 July 2019 to 30 June 2020).

In terms of a remedy to this issue, two questions arise:

1. does the Act provide a remedy?
2. assuming that a remedy is available under the Act, should it be pursued by Council?

Does the Act provide a remedy?

Division 6B of the Act provides that councils may apply to the Minister for a rectification order to correct a 'rate' as that term is defined in s.109I(1).

The term 'rate' includes the general rate make under s.90.

Per s.109J(4) of the Act, the Minister may only make a rectification order in respect of a rate made, or purportedly made, under Part 9 of the Act if the Minister is satisfied that :

- a. an amount, a method, a description, or another factor, that was included in the resolution by which the rate was made was included in the resolution by error; or
- b. the rate may be invalid because the rate, or the making of the rate, is not in accordance with one or more provisions of this Act.

When made, rectification orders lead to the re-calculation of rates and the issuing of either (or both) of supplementary rates notices or refund notices (see ss.109N and 109O respectively).

In this case, on the face of it the relevant error does not lie in the 'rates' made by Council in its 2019/2020 rates resolution (e.g. general rate of X cents in the dollar of AAV); the error was applying the rates made by Council to outdated valuation data for the purpose of producing rates notices that were subsequently issued to land owners. The result is that on the face of it the rectification order process may not apply; i.e. the process is intended to correct rates resolutions.

That being said, if the 'rates' made by Council in its 2019/2020 rates resolution were in fact calculated/arrived at using the older valuations (I do not know if they were), then in my opinion the language used in s.109J(4) and the intent of the provision is broad enough that Council may be able to obtain a rectification order on the basis that the 'rates' made by Council in its 2019/2020 rates resolution:

1. included an error in an amount, method or another factor used in their calculation – i.e. reference was made to the old valuations (per s.109J(4)(a)); and/or
2. the making of the rate was not in accordance with s.89A(2) of the Act – i.e. the latest valuations were not used to calculate the general rate, etc (see s.109J(4)(b)).

Should Council pursue rectification?

As I (Marc Edwards of PageSeager) understand it, you (General Manager) have already concluded that the costs (in terms of \$, staffing, reputation and otherwise) of pursuing a correction and attempting to recover the shortfall, outweigh the value of the shortfall itself. Under those circumstances, from a pragmatic perspective I cannot recommend that Council pursue a rectification order.

That being said, in the event that a ratepayer or other third party became aware of this issue and took steps to attempt to invalidate Council's 2019/2020 rates resolution because of it, in response Council should further investigate using the rectification procedure to cure the matter and in doing so defeat the challenge. If a challenge was brought, and a substituted rate was made, I note that s.109L provides a level of protection that preserves the validity of the rates notices Council has already issued.

Note: General Manager's advice at this point was to not pursue the additional rates amount, or if that wasn't an acceptable option, only pursue amounts greater than \$50, eg. 90 ratepayers totalling \$15,747 worth of rates, with 2,627 ratepayers totalling \$29,957 not being pursued.

Legal Advice of 12/12/19 – Detailed (following on from 3/12/19 Workshop)

- a) Council's powers regarding the making and levying of rates and charges are set out in Part 9 of the Act.
- b) Part 9 of the Act does not contain any provisions for addressing the relevant error in this case;² i.e. Part 9 does not expressly grant Council or the General Manager a general power to withdraw and re-issue rates notices upon discovering errors.³
- c) Whether Council's rights or obligations in respect to rates are strictly governed by the Act (i.e. unless the Act expressly allows an action it is prohibited) has not been tested in Tasmania. A reasonable argument could be constructed that it is so strictly governed although, on our non-exhaustive review, this is unlikely.
- d) Even if Part 9 does not strictly govern rates, a Court may nevertheless impose limitations on the types of errors that councils are empowered to correct. For example, it may be held that councils:
 - i. have the power to correct errors resulting from simple accidents or mistakes (e.g. printing, IT, etc) that are obvious and can be quickly rectified; however
 - ii. do not have the power to correct errors as a result of a council's negligence.

- e) In short, there is no definitive answer to this issue in the absence of an express power under the Act to rectify rates in the circumstances of this matter.
- f) Having considered the Act and broadly taken into account competing arguments, in our (PageSeager) view it is an open and reasonable argument that Council in this matter would be entitled to rectify the rates notices to take into account the Adjustment Data.
- g) Council should note that individual ratepayers could raise private legal claims against Council as a result of the amended notices. For instance, if a ratepayer could show that they had, on the basis of the previous rates notice, structured their finances in ways that now prevented them from being able to afford an increased amount of rates, they could potentially raise a legitimate defensive claim. That being said, the risk of such claims is considered to be remote.
- h) Putting to one side the question of whether Council is empowered to pursue the shortfalls, Council should consider whether the net benefit of pursuing the additional moneys would outweigh the likely costs.

² On the basis that the rectification order process in Division 6B of Part 9 of the Local Government Act 1993 does not apply because the relevant error did not affect the modelling associated with producing the values in Council's 2019/2020 Rates Resolution.

³ S.123(3) permits the General Manager to amend rates notices but only in the context of addressing an objection. Upon receipt of supplementary valuations the General Manager can issue supplementary rates notices, but this power does not apply under the circumstances (per s.92 and s.89A(3)).

Legal Advice 12/12/19 – Summary (following on from 3/12/19 Workshop)

In summary, no definitive answer can be given in this case because Part 9 of the Act does not expressly allow Council to rectify the rates notices in the circumstances of this matter. However, in our (PageSeager) view it is open and reasonably arguable that Council in this matter would be entitled to rectify the rates notices to take into account the Adjustment Data. Council's entitlement to payment of the additional rates would be subject to any private legal claim that a ratepayer might have against Council, although the risk of such claims is considered to be remote.

Budget Implications

Preferred Option 1 – Waiving amount of \$45,704 from 2,717 ratepayers, OR

Alternative Option 2 – Levying rate for differences greater than \$10, thereby waiving \$7,887 from 1,195 ratepayers, and collecting \$37,817 from 1,522 ratepayers.

Note – Out of this rates difference of \$45,704, the amount that GSBC will need to pay to the Tasmanian Fire Services (TFS) regardless of whether we levy these rates adjustment charges or not, is \$32,574.60.

Option 1 Cost:

Waiving the \$45,704 in full and just updating the relevant data to the properties, will not cost anything and can be corrected within 2 hours.

Option 2a Cost:

Danielle has now established that every property (6,177) must have an amendment performed, even if the figures have not changed, so will take longer than initially advised, eg. Danielle has completed a mock supplementary process to gauge the time required per property. She was able to achieve 30 properties per hour. This is a maximum rate, achieved with no interruptions

and without completing any other work. This equates to 225 (maximum) properties per day, and working 3 days per week equals 675 per week.

This means to complete the supplementary adjustment manually at 675 per week, it would take a minimum of 9 weeks. This is without Danielle doing any other work, which would need to be covered in some way (to be advised, if required).

Including the manual work effort above, printing and postage, etc (all direct costs), and the harder to determine indirect costs (ratepayer queries, etc) of circa \$1200, the total would be circa \$21,000.

MAXIMUM TOTAL LEFT FROM RATES RAISED \$37,817 - \$21,000 = \$16,817

Option 2b Cost:

Or if Brighton Council correct the issue via 'backend programming', it's estimated it will take them approximately 5 - 6 days (non-consecutively) of effort at a minimum cost of \$15,000. The amount quoted is for approximately 70% of the work that is to be completed. With GSBC to then finalise – at a salary cost (including oncosts) of approximately \$1,960. They are unable to commence this work until end of January or start of February 2020. With the indirect costs remaining the same at circa \$1200, therefore totalling \$18,160.

MAXIMUM TOTAL LEFT FROM RATES RAISED \$37,817 - \$18,160 = \$19,657

Attachment B – Cost Factors Breakdown

Cost Factors	To Bill	Not to Bill
Potential Income - Fire Levy	\$ 32,574.00	\$ -
Potential Income - General Rate (not counting \$7887 of invoices under \$10 value)	\$ 5,243.00	\$ -
Sub Total Income	\$ 37,817.00	\$ -
Brighton Costs (Estimate) - to proceed with billing	-\$ 15,000.00	\$ -
Brighton Costs (Estimate) - not to proceed with billing		\$ -
GSBC Staff time (Estimate) - to proceed with billing	-\$ 2,000.00	\$ -
GSBC Staff time (Estimate) - not to proceed with billing		\$ -
Postage and Printing - to proceed with billing	-\$ 1,200.00	\$ -
Fire Levy based on \$32,574k less 4% GSBC commission	-\$ 31,271.00	-\$ 31,271.00
Lost 4% Commission		-\$ 1,303.00
Lost Income General Rate (not including \$7887 of invoices under \$10 value)		-\$ 5,243.00
Brighton Council advised time frame to complete their portion of work - cannot commence until beginning March 2020 and will take 5 (non-consecutive) days to fix the program problem.	\$?	\$ -
Supplementary notice and alterations to properties (from 01/07/2019) cannot be and have not been rectified/processed until this matter is resolved. This is affecting more than 1000 GSB properties. This work continues to accumulate and will require significant time to bring up to date once this matter is resolved. This is causing stress to the Rates Officer, continuous calls from ratepayers and developers, calls from the State Fire Department re property value updates and Council income being delayed from the Supplementary Notices and alterations to properties.	\$?	\$ -
Due to this matter, since 01/07/2019 132 Certificates for subdivided properties or split title sales have had to be calculated and produced manually. Generally a computer generated 132 Certificate would take two minutes, manual calculation and creation can take thirty minutes depending on the complexity. This again creating a great workload on the Rates Officer.	\$?	\$ -
Total Financial Loss	-\$ 11,654.00	-\$ 37,817.00
The \$7887 worth of invoices under \$10 have not been accounted for above - other than in the fire levy figures.		

3. Confidential Item (Closed Session)

The Mayor to declare the meeting closed under regulation 15 of the Local Government (Meeting Procedures) Regulations 2015 Statutory Rules 2015, No.38 the meeting will be closed to the public according to regulation 15 (2) (a) *personnel matters*.

Decision: 2/20

Moved Deputy Mayor Woods, seconded Cllr Breheny, that Council moves into a closed session (2.29pm).

**The motion was put and carried
(6 Votes to 0)**

For: Mayor Debbie Wisby, Deputy Mayor Jenny Woods, Cllr Keith Breheny, Cllr Annie Browning, Cllr Rob Churchill, Cllr Keith Pyke,

Against: Nil

The live streaming and recording of meeting will now be switched off. Mayor to check that the streaming has been terminated.

4. Close

The Mayor will declare the Special Meeting closed at (2.54).

CONFIRMED as a true and correct record.

Date:

Mayor Debbie Wisby