



Office of Local Government

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Our Reference: A535143
Your Reference:
Contact: Richard Murphy
Phone:

Mr Mike Eden
Administrator
Federation Council
PO Box 77
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Dear Mr Eden

Thank you for your email of 17 January 2017, to the Department of Premier and Cabinet, asking for an independent investigation into the accuracy of the Minutes of Corowa Shire Council's (the former Council's) meeting of 19 April 2016. Your request was referred to the Office of Local Government (the Office).

I note that it has been alleged that the Minutes do not accurately record a resolution of the former Council related to the leasing of Council land for an Organics Waste Facility. It has been further alleged that changes were made to the wording of the resolution after the meeting.

The Office has undertaken a comprehensive review of records provided by Council and additional information from persons who have complained directly to the Office. These documents include the Minutes of the meeting, statutory declarations, records of interviews with relevant staff members and media reports.

The Office has not identified any evidence that would warrant it or the Federation Council taking any further action in regard to the matters that have been alleged. The reasons for this assessment are detailed in this letter.

I should state at the outset that Council's records appear to indicate that there is a difference between the wording of the motion projected on the screen at the meeting, which formed the basis of an initial draft of the Minutes, and the wording of the decision as recorded in the Minutes subsequently circulated to the Councillors and published on the Council's website.

The two versions are reproduced hereunder for ease of reference:

- Initial version based on the wording of the motion as projected on the screen at the meeting:

"allow the General Manager to support a heads of agreement with Cleanaway Australia to allow a lease of 5 hectares of land within the confinement of the Howlong Landfill"



- Published version:

“allow the lease of 5 hectares of land within the confinement of the Howlong Landfill”.

The difference in the two versions may, in part, explain the uncertainty in the minds of some of the former Councillors as to the accuracy of the published version of the Minutes.

The Council officer responsible for the transcribing the words of the motions at the meeting and for their projection on the screen at the meeting has a recollection of this specific matter because it was not on the agenda for the meeting. The officer has stated that as a consequence of the item not being on the agenda, they would have been particularly careful to ensure that the wording was correct. I am satisfied, on the balance of probabilities and on the basis of the information provided to the Office, that the wording of the resolution, as recorded in the first version of Minutes, is accurate. It appears to be the only contemporaneous record of the wording of the resolution.

Council’s General Manager has confirmed he made the change to the way the decision was recorded in the Minutes as he was concerned that the information that would have been disclosed in the original version was commercially sensitive given that the terms of the proposed agreement were still being negotiated.

It should be noted that section 375(1) of the *Local Government Act 1993* requires a council to keep full and accurate minutes of council meeting proceedings. The general manager must ensure that the following matters are recorded in the council’s minutes:

- a) details of each motion moved at a council meeting and of any amendments moved to it,
- b) the names of the mover and seconder of the motion or amendment,
- c) whether the motion or amendment is passed or lost.

Subject to these legislative provisions and any directions from the council, it is up to the general manager to decide how much detail is to be shown in the minutes.

While I appreciate that some may express concern as to the difference in the two versions of the Minutes, I do not consider that the versions are so different as to warrant any action. In forming this view, I have had particular regard to advice that both versions can be reasonably construed to authorise the General Manager to take the same course of action. I also note Council’s advice that the General Manager had the delegation to enter into an agreement to lease the land.

On any view, the change to the way the decision was recorded in the Minutes cannot be reasonably construed as having been made for any improper motive and/or for an improper purpose. There is no evidence that would support such an assertion.

The Office has reviewed four statutory declarations made by Councillors who were present at the meeting, including the purported mover and seconder of the motion.

The statutory declarations from the purported mover and seconder both indicate the councillors do not “recall moving the motion”. However, they do not assert that the motion was not moved by them. The statutory declarations do not declare that a differently worded motion was moved by them or another Councillor.

Two other statutory declarations from former Councillors indicate that a different motion was moved to that which was recorded in either version of the Minutes.

One of the former Councillors declared that the wording of the motion was that “Council approach Cleanaway to discuss a composting facility at the Howlong landfill” and that there was no mention of a lease of 5 hectares of land at that site. The Office contacted the person who made this declaration who advised that their recollection of the matter was clear because they voted against the motion. The other former Councillor declared that their recollection of the motion was that it was to allow the making of enquiries and only to “investigate the option” of leasing. I note that both these declarations were made in January 2017, that they were based on the former Councillors recollection of the wording of the motion, and that the declarations were not informed by any contemporaneous notes made at the meeting or shortly thereafter.

While I accept all of the declarations were made honestly and in good faith, I do not consider they provide a sufficient basis to conclude that the Minutes are incorrect.

The draft Minutes of the meeting were circulated to Councillors shortly after the meeting was held. This was the normal practice of the former Council and gave the Councillors the opportunity to draw the General Manager’s attention to any perceived errors. The former Council’s *Code of Meeting Practice* required the Councillors, where possible; to advise “*Management of errors ... within 3 days of receiving the Minutes.*” There is no information available to this Office that indicates any of the Councillors raised any concern at the time about the manner in which the decision was recorded.

If the recorded decision was at odds with the intent of the then Councillors, it was open to them to either query the accuracy of the Minutes at the time and/or to lodge a rescission motion. Neither course of action was pursued by the Councillors. There was time for them to do so before the former Council was merged and before the decision was acted upon by the General Manager.

The practice of the former Council was to display the wording of motions on a projected screen at the meeting. This is good practice as it affords Councillors the opportunity to correct any errors at the time of the meeting. If the wording, as recorded in the initial draft was incorrect, it was open to the Councillors to address this before voting on the motion.

The Office has noted that the item was dealt with at the meeting notwithstanding that it was not on the Agenda. In such a circumstance, the Council should have passed a motion to allow it to be considered and then the Mayor should have made a ruling on whether the matter was urgent. This did not occur.

The General Manager's recollection of the circumstances of the matter being dealt with was that he had received some correspondence about it the day before the meeting. He alerted the Councillors on the day of meeting that he wanted to consult with Council on his intended course of action and that there was an urgency to do so, given the processes that needed to be attended to prior to entering into an agreement. However, there was no written report outlining this.

Given Council's and the General Manager's acknowledgement that the manner in which the matter was put before the meeting was not good practice, I do not consider any further action is warranted.

Finally, I should also point out that in a circumstance where there is doubt as to the intent of a Council resolution, it is open to the Council to adopt a subsequent motion to clarify its position on the matter. I note you passed a new resolution as Administrator in relation to the proposed lease of land, which negates the need for any reliance on the minutes of 19 April 2016. While this Office has not examined the merit of the decision to lease the land and it is not its role to do so, I am of the view that in the circumstances, it was appropriate for this matter be dealt with in this way, to remove any doubt as to Council's position in regard to the leasing of the land.

Given the public interest in this matter, I have no objection to this letter being provided to Federation Council's Local Representative Committee and you may table it at a Council meeting if you consider that this will assist the public in gaining a better understanding of the matter.

Thank you for your assistance in this matter.

Yours sincerely



Tim Hurst
Acting Chief Executive
Office of Local Government

(7/3/17)