

144

**16.1 QUESTIONS WITH NOTICE - CR ANDREW GRIEGER - COUNCIL PROPERTY WORKS**

Attachments: Nil

<b>Section under the Act</b>	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 90(2) & (3) of the <i>Local Government Act 1999</i> .
<b>Sub-clause and Reason:</b>	(a), (e), (g) and (h) - information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), matters affecting the security of the council, members or employees of the council, or council property; or the safety of any person, matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty and legal advice.

I, Councillor Andrew Grieger, having complied with the requirements of Section 9 of the Local Government (Procedures at Meetings) Regulations 2013, hereby give Notice of the following question/s to be submitted at the meeting of the Southern Mallee District Council to be held on 16 September 2020.

**Question**

1. Did Council authorise the recent works and expenditure on the pergola, the supply and installation of the rain water tanks and the supply and installation of the lattice work to the veranda at the Council house?
2. If yes, in what manner (eg resolution, delegation, budget approval) and/ or on what date did Council authorise the works and the expenditure of the funds for the works?
3. ~~If Council did not authorise the works and/or expenditure, what action should Council now take?~~

**Response**

Officer's response was provided at the meeting:

**Answers to Questions on Notice**

Question 1: Did Council authorise the recent works and expenditure on the pergola, the supply and installation of the rain water tanks and the supply and installation of the lattice work to the veranda at the Council house?

This reply was prepared and ready to be given by the acting CEO at the 19 August 2020 Council meeting:

Based on an independent review of the matters raised in these questions on notice, Council responds as follows.

The works were approved by Council's Manager Property & Development Services. By Council resolution on 20 November 2019, Council delegated a number of powers and functions to the CEO under Section 44 of the Local Government Act. The powers and functions delegated to the CEO included the power to expend Council's approved budgeted funds under Section 137 of the Local Government Act. That power was then sub-delegated by the CEO to the Manager Property & Development Services by instrument of sub-delegation dated 28 November 2019. The Council officer was entitled to expend up to \$25,000 in accordance with his delegation and Council's Procurement Policy.

The capital works program in the approved Annual Business Plan and Budget adopted by resolution of Council at the Council Meeting on 19 June 2019 approved the replacement of a fence at the Council property. In addition to the approved capital works program, Council's Annual Budget and Business Plan for 2019/2020 included a general budget of \$2.1 million for "Materials, Contracts and Other Expenses".

At the commencement of the fencing works, the Council officer inspected the property. Following this inspection, he authorised the replacement of the pergola due to safety concerns. The pergola was in urgent need of repair as it posed a risk to the inhabitants of the premises and other neighbouring properties should the structure tear itself apart in a storm.

The pergolas was significantly affected by dry rot, two of the central beams were cracked and, one attachment point was no longer connected, the brick wall supporting the pergola had multiple movement cracks and the support attachment had broken away and the roofing material was loose and flapping in multiple places.

The pergola works were valued at \$14,723 plus GST. The Council officer also approved the installation of a rainwater tank at a cost of \$3,300 plus GST because there was a significant subsistence issue from water run off that needed to be urgently addressed.

The Council Officer made the decision to complete these works under section 11 of Council's Procurement Policy which permits emergency works to avoid a risk to Council, address safety concerns and protect Council assets. The Council officer formed the view that the works could be funded from the Council property maintenance budget which falls within the "Materials, Contracts and Other Expenses" budget and surplus funds from the approved capital expenditure for the property. Funds were available in the Materials, Contracts and Other Expenses budget, which was significantly underspent. There is no specific budget allocation for emergency capital works within the approved Council budget even though such works are contemplated by the Council's approved Procurement Policy. The Council Officer reported the additional works to the Elected Members at the April and July Council meetings.

Whether the works were authorised by Council within an approved budget depends on the appropriate accounting treatment of the works. The Council's Asset Accounting Policy provides that "capital expenditure" includes "costs incurred for replacement or repair of an existing asset". The Policy then specifies capitalisation thresholds for particular asset categories and provides that for "buildings" any structural addition to the building of a value of \$5,000 or greater is characterised as capital expenditure. Accordingly:

- the appropriate accounting treatment for the pergola works (\$14,723.00) was capital expenditure;
- the rainwater tanks (\$3,300) did not meet the capitalisation threshold contained within the Council's Asset Accounting Policy for capital expenditure.

As such, the pergola works were not authorised within the approved budget and a revision to the capital works budget was required for those works. The position in relation to the rainwater tank is different. Given that the rainwater tank did not meet the capitalisation threshold that expenditure could be allocated to the "materials, contracts and other expenses" budget and, therefore, was authorised pursuant to the Council officer's delegation that I have referred to.

Question 2: If yes, in what manner (eg resolution, delegation, budget approval) and/ or on what date did Council authorise the works and the expenditure of the funds for the works?

*See response above.*

Reference notes

1. This item was first placed on a Council meeting agenda for the meeting on 15 July 2020.
2. The Chief Executive Officer recommended that Council deal with this matter in confidence.
3. Cr Andrew Grieger decided at the Council meeting held 15 July 2020 to remove question 3 above from the Question on Notice.
4. Cr Andrew Grieger decided at the Council meeting held 15 July 2020 that this item would not be discussed in confidence.
5. At the meeting on 15 July 2020 the Chief Executive Officer advised that Council's legal firm was still preparing a response to the Question on Notice and that a response could be provided at the next ordinary meeting of Council in August.
6. The Acting Chief Executive Officer included this item in the Council meeting agenda of 19 August 2020.
7. The Acting Chief Executive Officer recommended that this matter be considered in confidence at the 19 August 2020 meeting.
8. Council decided at the Council meeting held 19 August 2020 to defer this item "for consideration at council's next meeting so that the Chief Executive Officer can address the meeting."
9. The Chief Executive Officer's recommendation to Council remains that this item should be dealt with as a confidential item at this meeting. This recommendation is supported by consistent legal advice to Council from Council's legal services provider.
10. Council has been provided with separate legal advice to assist the Mayor and Council in dealing with Confidentiality issues – refer to the item in this agenda - *Legal Advice - Questions on Notice - Confidentiality Issues*.
11. Council's *Elected members legal advice policy (November 2019)* provides clear guidance on the limited situations in which:
  - a. the Elected Members may seek independent legal advice;
  - b. the Mayor may seek independent legal advice;
  - c. the Council will fund the costs of the legal advice obtained by the Elected Members or the Mayor; and
  - d. the limits of that funding.

**The Mayor with approval of two-thirds of the members present suspended the meeting procedures pursuant to regulation 20(1) of the Local Government (Procedures at Meetings) Regulations 2013, for a period of 10 minutes to facilitate informal discussion in relation to the Questions with Notice - Cr Andrew Grieger - Council Property Works at 7.46pm**

**Meeting procedures resumed at 7.59pm**