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ANNEXURE ITEMS

ITEM 5 - LAND & ENVIRONMENT COURT - JUDGEMENT

REPORT IN BRIEF

Reason For Report	Seeking Council direction on next steps following the outcome of the Land & Environment Court hearing
Policy Implications	Nil
Budget Implications	Potential further expenditure
IPR Linkage	4.5.1.a - Provide quality administrative support and governance to councillors and residents
Annexures	Nil
File Number	\\OFFICIAL RECORDS LIBRARY\GOVERNANCE\AMALGAMATIONS\BLAYNEY SHIRE, CABONNE AND ORANGE CITY COUNCILS PROPOSED MERGER 2016 - 785993

RECOMMENDATION

THAT:

1. Council lodge a Notice of Intention to Appeal against the judgement brought down by the Land & Environment Court against Council on 7 October 2016 and seek agreement from the State Government not to take any further action prior to the Woollahra Supreme Court appeal determination and for seven days thereafter;
2. Council seek an injunction or interlocutory orders to stay any action should the State Government not agree to an undertaking as requested in 1. above;
3. Should the State Government not agree to give an undertaking as requested in 1. above, Council consider lodging a formal appeal subject to further advice from counsel and consideration by Council at the earliest opportunity.

ACTING GENERAL MANAGER'S REPORT

Councillors would be aware that Chief Justice Preston announced his judgement regarding the action taken by Cabonne, Oberon and Gundagai councils over the State Government merger proposal. The proceedings were dismissed and the applicants were ordered to pay the respondents costs.

Council has been given until 12 noon on Friday 14 October 2016 to determine its position after which time, should Council not have taken any other action, the State Government would be in a position to issue a Proclamation dissolving Cabonne Council and forming a new Council.

Under the Supreme Court's rules, Council has a period of up to 28 days in which to lodge a Notice of Intention to Appeal, after this is lodged there is a period of three months open for Council to formally lodge an appeal.

A Notice of Intention to Appeal does not require council to appeal, it merely opens a possible alternate avenue while council considers its legal options.

Council's legal team are currently out of the country and it is unlikely that an examination of the judgement and possible grounds for appeal would be available prior to the deadline of Friday 14 October.

Council would also be aware of the seven councils affected by the decision of Justice Moore with three councils having succeeded on the basis of errors in the delegates report and a further four councils unsuccessful. The Acting General Manager has contacted each of the councils to ascertain their current legal status.

Successful Councils

North Sydney – are currently considering their legal options and a decision will be made in the near future.

Mosman – have indicated that they are appealing the decision and have also indicated that they do not believe that a full re-examination of the proposal will take place.

Strathfield – have lodged a Notice of Intention to Appeal and are currently considering their legal position.

Unsuccessful Councils

Shellharbour – have lodged a formal appeal and been given a directions hearing date of 23 November 2016.

Ku ring gai – have lodged an appeal and been given a directions hearing of late November 2016.

Hunters Hill – have lodged a Notice of Intention to Appeal, and are holding an Extraordinary Meeting on the evening of 10 October 2016 to consider its position in respect of proceeding with an appeal.

Lane Cove – are considering a Mayoral Minute at their Ordinary Meeting to be held on the evening of 10 October 2016 recommending that Council lodge a Notice of Intention to Appeal.

All of the above councils have received a Government undertaking that the State Government will not take any further action prior to the Woollahra appeal determination, or for seven days thereafter.

Oberon and Gundagai councils are yet to determine a position.

At an Extraordinary Meeting held on 23 May 2016, Council resolved as follows:

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“THAT Council:

- 1. Determine to lodge a notice of intention to appeal any judgement which is adverse to council in the case of Walcha Council & ORS v Minister case no 16/40360 being heard in the Land and Environment Court of New South Wales and seek an injunction preventing the Minister recommending that a proclamation be made pending consideration by Council of the merits of an appeal.*
- 2. Determine to proceed and authorise the Mayor and/or General Manager to take all actions necessary to give effect to 1) above.*
- 3. Determine to proceed and vote a maximum \$20,000 for legal expenses to fund the action referred to in 1) above.*
- 4. Resolve that the expenditure is required and warranted to enable the legitimate exercise of the right of appeal.”*

A number of council's likely areas for appealing the judgement would hinge on the outcome of the Woollahra appeal currently awaiting determination by the NSW Supreme Court of Appeal. Although the date of the judgement in that case is not known at the moment, it is anticipated that it would be during the month of October.

Please note that guidelines have been issued under Section 23A of the Local Government Act titled “Council decision making during merger proposal periods”. Council must consider the guidelines in relation to each decision they make during the proposal period. The Section 23A Guidelines: *“In particular, councils and council officials should not make decisions during a merger proposal period... to prevent or disrupt the consideration of merger proposals by the Chief Executive of the Office of Local Government or his delegate, the Boundaries Commission or the Minister for Local Government other than through the legitimate exercise of legal rights of review or appeal.”*