

Item No	10.3
Report Title	Governance Report
Council Meeting Date	14 August 2013
Author	Andrew C Boardman
Title	Chief Executive Officer
Senior Manager	
Department	
Attachments	Letter from Ombudsman
File Ref - Records	L2013/1930 – 9.4.16
Hours to compile	4.5
Strategic Plan Reference	1.3 - to provide good governance that is transparent, equitable & accountable
Purpose	To address an issue of governance based on external advice.
Executive Summary	Section 10 - Procedure at Meetings Regulations (2000) governs the process about how questions from Elected Members are to be received and handled by Council. A provision exists in the Regulations that allows questions to be assessed by the Presiding Member and should they be deemed to be vague, irrelevant, insulting or improper then the Presiding Member can rule that they not be answered. Advice received recently would suggest that our interpretation of this is not consistent with the intent of the Regulations and good governance requires us to address this.
Recommendation	<p>That Council:</p> <ol style="list-style-type: none"> 1) Notes the advice received from the Office of State and Local Government (verbal) and the Ombudsman (attached to this report) that Questions on Notice be published in an Agenda in full and confirms that the omission of question 5 from the questions printed in the April 2013 Agenda has now been addressed by the publication of the question in full in this report in this August 2013 Agenda. 2) Formulates a submission to the SA Local Government Association for their inclusion into consultation with State Government highlighting our concerns that the act of publishing questions on notice that are vague, irrelevant, insulting or improper in a Council Agenda may present Council, the Community, staff and individuals with unforeseen and potentially damaging consequences. This presents an unacceptable level of liability and we ask that consideration be given to an amendment to the Procedure at Meeting Regulations (2000) which would permit these questions to be omitted from an Agenda.

Discussion

Our interpretation of the Procedure at Meeting Regulations (2000) with regards to Section 10 - Questions has been questioned by an Elected Member. Advice from Office of State and Local Government and the Ombudsman is contrary to our current position and therefore, in the interests of good governance any questions on notice will now be included in full in the Agenda of the Meeting raised even if the question(s) are then deemed not to require answering by ruling of the Presiding Member (Section 10, sub-section 6) "...if the presiding member considers that the question is vague, irrelevant, insulting or improper."

One section of a five part Question on Notice from Cr Liu in the April 2013 Agenda of Council was omitted following our interpretation of the Procedure at Meeting Regulation (2000) and this question is now reproduced in full below:

Question 5:

Which properties below the storage lagoon are on the flood path when the dam is full, overflowing through the spillway rushing down the hill onto the residential area between Cheopis Street and Lashmar Street? To what extent is damage expected to occur along the flood path and will lives be at risk when this situation occurs?

The assessment of the question by the Presiding Member was as follows:

From: Jayne [mailto:bateski@bigpond.net.au]

Sent: Wednesday, 3 April 2013 5:25 PM

To: ken.liu@bigpond.com

Cc: Andrew Boardman

Subject: Question on notice

Hello Ken,

The CEO has provided me with your Question on notice concerning the CWMS project in Penneshaw submitted for the April meeting.

I have ruled that question 5 (below) will not be answered as it is improper and misleadingTo explain my ruling, your question implies that the Council would build something that will fail and put lives at risk. I have underlined the word, 'when' within your question, that gives the impression that it is a certainty that this dam will fail and lives will be lost. As an Engineer, you understand that properly designed and built infrastructure can and will mitigate risks, and to suggest that a dam will fail before full design and engineering is finalised is improper and misleading, and I believe would be particularly disturbing and upsetting for Nathan Silby and our staff.

I trust you understand my ruling on this issue, but it is important to debate this issue with full knowledge and understanding. I also apologise for the lateness of my advice but Ashleigh and I have been off Island visiting our grandchildren in NSW over Easter and have only just returned.

Cheers

Question 5:

Which properties below the storage lagoon are on the flood path when the dam is full, overflowing through the spillway rushing down the hill onto the residential area between Cheopis Street and Lashmar Street? To what extent is damage expected to occur along the flood path and will lives be at risk when this situation occurs?

Jayne Bates

Mayor

Kangaroo Island Council

There is no reason for this ruling to change and therefore the question as asked will not require answer.

In receiving this report Council will have complied with the need to publish the question in the Agenda of this Meeting and therefore complied with the requirements, as advised.

Discussions with the Office of State and Local Government and the South Australian Local Government Association (LGA) have highlighted a process of consultation on various provisions of the Local Government Act 1999 and the Procedure at Meetings Regulations (2000). It has been suggested that a submission into this consultation process via the LGA on any elements of either piece of legislation that causes concern would be considered an appropriate means of raising the issue.

Council may wish to consider raising a concern that the printing of questions, that are assessed and ruled as vague, irrelevant, insulting or improper in the Agenda, may have unforeseen and damaging consequences to Council, the Community, staff and individuals which may leave Council exposed to unnecessary and unacceptable levels of liability.

Governance Considerations

(relates to consistent management, cohesive policies, guidance, processes and decision-rights for a given area of responsibility)

There is a need to ensure that good governance is practiced - interpretation of the various Acts and Legislation is part of this process and the use of external assistance and advice is advised where necessary.

Risk Management Considerations

(identification, assessment, and prioritization of risks (defined as the effect of uncertainty on objectives, whether positive or negative) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities)

Compliance with the various Acts and pieces of Legislation ensures that risk to the business is minimised.

Economic Considerations

(Assessment of likely financial implications of pursuing a course of action)

Nil at this time.

Social Considerations

(Assessment of likely impacts with the Community)

Good governance and the incorporation of external feedback lends credibility to the governance process of Council and can assure the Community that the organisation is being managed correctly and in accordance with the relevant pieces of Legislation.

Environmental Considerations

(Assessment of likely impacts on the environment)

Nil at this time.



OmbudsmanSA

ATTACHMENT
ITEM 10.3
14 August 2013
L2013/1930 - 9.4.16

Enquiries: Mr Denis Carey
Telephone: (08) 8226 8687
Ombudsman reference: 2013/06163
Agency reference:

COPY

Councillor Ken Liu
PO Box 80
KINGSCOTE SA 5223

Dear Councillor Liu

Your complaint about the Kangaroo Island Council (the council)

I refer to my letter dated 24 June 2013 and your complaint about the council under the *Ombudsman Act 1972*. You have complained that the council failed to comply with the *Local Government (Procedures at Meetings) Regulations 2000* (the regulations) when it did not record on the agenda and subsequent minutes of the meeting on 10 April 2013 a question on notice. You also complain that the mayor ruled that the question would not be answered.

My investigation

In my enquiries, my office:

- assessed the information provided by you
- considered the regulations
- assessed the information on the council's website
- spoke to the Office of State/Local Government Relations (OSLGR) and the council's Chief Executive Officer (CEO)
- prepared this letter to you.

My assessment of your complaint

The first issue raised by your complaint is whether the council failed to appropriately record question 5 that you put to it. Regulation 10 provides that:

- (1) A member may ask a question on notice by giving the chief executive officer written notice of the question at least five clear days before the date of the meeting at which the question is to be asked.
- (2) If notice of a question is given under subregulation (1)–
 - (a) the chief executive officer must ensure that the question is placed on the agenda for the meeting at which the question is to be asked; and
 - (b) the question and the reply must be entered in the minutes of the relevant meeting.
- (3) A member may ask a question without notice at a meeting.
- (4) The presiding member may allow the reply to a question without notice to be given at the next meeting.
- (5) A question without notice and the reply will not be entered in the minutes of the relevant meeting unless the members present at the meeting resolve that an entry should be made.
- (6) The presiding member may rule that a question with or without notice not be answered if the presiding member considers that the question is vague, irrelevant, insulting or improper.

In my view regulation 10(2) is clear on council's obligation to record questions on notice on the agenda and subsequently in the minutes of the meeting. The reply to a question or questions, including a ruling declining to answer must also be minuted.

I note that prior to lodging your complaint with my office you raised this matter with the Minister for State/Local Government Relations. I am advised that following your approach to the minister an officer from OSLGR spoke to the CEO. The CEO was led to believe that the officer would contact him again about some concerns the CEO expressed to him. Unfortunately this did not occur which resulted in the council not amending the agenda and therefore, not acting in accordance with the views stated by the minister.

I am advised that OSLGR has recently contacted the CEO and informed him of the need to ensure compliance with the regulations. The council recognises its obligation to comply and intends doing so, but this will probably not occur until the August meeting. As the CEO has indicated his intention to remedy the situation I will take no further action on this.

The second issue raised by your complaint is whether the mayor erred in determining that your question should not be responded to. Regulation 10(6) requires the presiding officer to exercise a judgment in terms of the content of the question and whether council should respond to it. In my view it was open to the mayor to decline to answer the question having regard to the other questions asked by you at the time and the responses provided by council.

I appreciate that you endeavoured to explain to the mayor the question in more detail. In view of the comments you attribute to the mayor perhaps consideration could be given to reframing the question and putting it to the council. This may elicit the information you are seeking on behalf of your constituents.

Outcome of my enquiries

In light of my assessment above and on the basis of the evidence available, it appears that the council has not acted in a way that is unlawful, unreasonable or wrong within the meaning of the Ombudsman Act. Accordingly, I do not consider that further enquiries into your complaint by my office are necessary or justifiable.

I understand that this may not be the outcome you wanted, but on the evidence currently available to me, I do not think further enquiries would achieve a different result.

I intend to end my consideration of your complaint, unless you are able to identify an error in my assessment of the matter. If you think you are able to identify such an error, I ask you to contact my office by 2 August 2013 with your reasoning. If you do not contact my office within that time, I will close the file. I have sent a copy of this letter to the council.

Yours sincerely



Richard Bingham
SA OMBUDSMAN

18 July 2013

Cc: Chief Executive Officer
Kangaroo Island Council
PO Box 121
KINGSTON SA 5223