

**SUPPLEMENTARY BUSINESS PAPER 1**

**COUNCIL MEETING**

**Tuesday, 17 July, 2012**

Distributed on 17 July 2012

**Meeting commences at 6:30pm**

**Council Chambers  
Level 3, 2-14 Fisher Street  
Petersham**

## MEETING AGENDA – PRECIS SUPPLEMENTARY ITEMS

The following report appears as a late item with Mayoral approval as information required for the preparation of the report was not available at the time of distribution of the Business Paper.

**1 Mayoral Minutes**

**2 Staff Reports**

**C0712(2) Item 16 ONE ASSOCIATION - 'YES' AND 'NO' CASE STATEMENT 3**

File Ref: 4056-03/38490.12

The purpose of this report is to provide further information on 'Yes' and 'No' cases for the purposes of debate of the 'One Association' secret ballot relating to the proposed amalgamation of the Local Government Association and Shires Association.

**RECOMMENDATION 4**

**THAT the report and attached 'yes' and 'no' case statements for the One Association ballot be received and noted.**

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**Item No:** C0712(2) Item 16  
**Subject:** ONE ASSOCIATION - 'YES' AND 'NO' CASE STATEMENT  
**File Ref:** 4056-03/38490.12

**Prepared By:** Monique Dunlop - Manager, Governance and Risk

### **SYNOPSIS**

The purpose of this report is to provide further information on 'Yes' and 'No' cases for the purposes of debate of the 'One Association' secret ballot relating to the proposed amalgamation of the Local Government Association and Shires Association.

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### **RECOMMENDATION**

**THAT the report and attached 'yes' and 'no' case statements for the One Association ballot be received and noted.**

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### **BACKGROUND**

At its meeting on 15 May 2012, Council resolved to debate the YES and NO cases at a full Council Meeting before individual Councillors cast their vote.

### **DISCUSSION**

At the Fair Work Australia hearing held on Tuesday 12 June 2012, the Local Government and Shires Associations agreed to issue the attached 'Yes' and 'No' case statements with ballot papers regarding the proposed amalgamation. This report provides Councillors with the opportunity to debate the cases.

The ballot opened on 12 July and closes at noon on 7 August 2012.

### **FINANCIAL IMPLICATIONS**

Not applicable.

### **OTHER STAFF COMMENTS**

Nil.

### **PUBLIC CONSULTATION**

Nil.

Item 16

**RECOMMENDATION**

**THAT the report and attached 'yes' and 'no' case statements for the One Association ballot be received and noted.**

Gary Mills  
A/Director, Corporate Services

**ATTACHMENTS**

1. 'Yes Case' Statement
2. 'No Case' Statement

### One Association for Local Government in New South Wales

- Vote “**Yes**” for a strong, united and effective voice to represent the interests of NSW Local Government.
- Vote “**Yes**” for one peak industry Association for Local Government in NSW.
- Vote “**Yes**” for One Association.

#### **Vote “Yes” to merge the Local Government Association of NSW and the Shires Association of NSW for a stronger representative Local Government in NSW.**

A “Yes” case for One Association is not complex; the issue of One Association has reached the point of a vote as a result of member councils from both Associations, at many Conferences over many years calling, through Conference motions, for there to be a single Association to represent Local Government in NSW.

There are significant benefits to having One Association represent Local Government in NSW.

Voting “yes” to One Association is a vote for:

- Creating a modern, efficient and powerful voice for Local Government in all the various forums in which a combined voice for Local Government in NSW is critical.
- A peak industry body speaking with one voice to Government, at all levels.
- An Association that brings to its full potential the strong cooperation that the two Associations have had for many years.
- An Association that is founded on the principle of membership control which has been imbued in each of the existing Associations.
- Removing duplication and confusion among important stakeholders.
- Removing administrative and management arrangements that will do away with the risk of complexity and uncertainty inherent in operating two Associations.

#### **Introduction and Background**

The Municipal Association of NSW was established in 1883 and had at its inauguration a membership of 63; being 23 metropolitan and 40 country municipal councils. In 1906, the passing of the *Local Government Act* saw New South Wales, with the exception of the existing Municipalities, divided into 134 Shires. After the passing of the Act, the Municipal Association changed its name to the Local Government Association of NSW, in part to provide for the membership of the newly established Shires Association of NSW in 1908.

Both Associations have always existed to represent and advance the interests of their member councils in New South Wales, and now, collectively they represent the interests of 152 general purpose councils, 12 county councils and the NSWALC.

Whilst remaining separate organisations, both Associations have long recognised their similarities and the value of unity and have cooperated for many years in matters of common interest. Since 1922 one Secretariat has served both Associations and in 1981 it was agreed that the Associations would operate with a joint budget. This process continues today.

Despite the cooperation between the Associations, the lack of a single voice for Local Government in NSW has reduced the potential effectiveness of the Associations, which in turn is not in the best interests of members.

The proposed amalgamation and resulting formation of One Association for Local Government in NSW will allow the One Association to fulfil its potential.

#### **Why amalgamate?**

A "yes" vote for One Association will result in a stronger, more coherent and more effective voice to represent the interests of members. It will mean that your Association is better placed to promote the interests of NSW Local Government when lobbying State and Commonwealth Governments and their instrumentalities, such as in relation to funding, legislation, planning, services, and protecting the natural and built environments of the communities that you, and our members, represent.

#### **The majority of members have told us they want One Association**

The formation of One Association has been discussed and debated by one or both Associations at their Annual Conferences in 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 as well as the One Association Convention held in 2010 and the Special Shires Association Conference held in 2011.

Decisions at recent annual Conferences of the Associations have supported an amalgamation between the LGA and SA [see: 2010 LGA Conference (Item 1), 2009 LGA Conference (Item 4), 2008 LGA Conference (Item 4), 2009 SA Conference (Item 3) and SA 2007 Conference (Item 4.1)].

The matter has now reached the time to vote after more than two years of negotiations and Special Conferences which resulted from motions passed by both Associations in 2009, where the Shires Association resolved:

*"That the Shires Association continue to engage the Local Government Association in discussions to achieve amalgamation of the two Associations."*

And the Local Government Association resolved:

*"That the Local Government Association conference, as a matter of priority, proceed with the formation of One association to represent Local Government in New South Wales. In order to facilitate this move, it is recommended that a constitutional convention of both organisations take place to consider the formal amalgamation or the dissolution of both associations and the formation of one new representative body."*

*That the consultative paper prepared by Woods and Wearne be utilized as the discussion paper in the constitutional convention."*

In April 2012, the Executive Committees of both Associations resolved to approve the proposed Scheme of Amalgamation and to support the "Yes case".

**One Association will remove duplication**

Currently the two Associations, on a combined basis, have two Presidents, two Treasurers, four Vice Presidents, two Immediate Past Presidents and 26 Executive members totalling 36. Each Association has an annual Conference, and bi-annual elections and each Association meets separately five - six times per year, with the Joint Committee meeting 10 - 11 times each year.

Consolidating the two existing Executives into one newly elected Executive Board to represent the One Association will result in a more strategically focussed and operationally efficient management structure.

**One Association will reduce confusion**

There is ongoing confusion around the current existence of the two Associations amongst various stakeholders, government representatives, within the State and Federal bureaucracies, and even from within elected and staff ranks.

For instance, it is not uncommon for Associations' staff to encounter industry practitioners who are unaware that there are two Associations. It is not uncommon for the Associations to receive correspondence addressed to the wrong President or have correspondence addressed to the President of the "LGSA" or for only one President instead of both to receive an invitation to an important meeting or briefing.

The creation of a single Association will remove this confusion and make for a stronger and more effective Peak Body.

**A Constitution reflecting agreed principles**

The Constitution for one Association is explained in more detail in the Outline of the Scheme of Amalgamation, but it is based on the fundamental principle that the two constituencies that the existing organisations represent (rural/regional councils and metropolitan/urban councils) should have an equal voice and an equal say in the amalgamated Association, within a set of rules that continues the democratic principle of membership control that has existed in the two Associations since their inception.

Consistent with the principles adopted at the One Association Convention on 16 August 2010 comprising members of both Associations, the structure of the proposed new Association will be broken up into two regions; a metropolitan/urban region and rural/regional region. This will ensure that the new Association fairly represents the interests of all councils irrespective of their geographic location.

The scope of membership of the new Association will be the same as the combined coverage of the existing Associations, with membership open to all councils and county councils in the State of New South Wales, and the New South Wales Aboriginal Land Council (ALC).

County councils and the ALC will be eligible for Ordinary membership or Associate membership of the new Association. Associate membership will confer on the Associate Member the right through its delegates to attend, participate and vote on resolutions proposed at conferences of the Association, and to participate in or receive services offered by the Association, but does not confer any right to have its delegates stand for or vote in elections for any office within the Association.

For the purpose of voting on motions at conferences, each region will have an equal number of votes, which will be distributed proportionally among those member councils who fall within that region according to population, with all member councils receiving a minimum of one vote.

In the case of the NSWALC, it will have nine delegates, one delegate from each of the nine NSWALC Regions constituted under the *Aboriginal Land Rights Act 1983* (NSW), each such delegate being a member of the Board of the ALC. This approach is necessary due to the unavailability of reliable Aboriginal population data for each ALC Region. For the purposes of voting, each of the ALC Regions will form part of the rural/regional region, except for the Region for Sydney/Newcastle, which shall form part of the metropolitan/urban region.

It is proposed that the new single Association will have a Board of Directors that includes a maximum of 25 members (a reduction of 11), comprising of one President, one Immediate Past President, one Metropolitan/Urban Vice President, one Regional/Rural Vice President, one Treasurer, ten Board members representing Metropolitan/Urban councils and ten Board members representing Rural/Regional councils.

The positions of President and Treasurer will be elected at large by all voting delegates whereas the remaining board members will be elected by the voting delegates from the region that the board member represents.

The term of office for all Board members will be two years with no limit to the number of times that a Board member may be re-elected, except for the President who may be elected to occupy the position of President for a maximum of two consecutive terms (i.e. four years). The position of President will also alternate between the two regions.

**The Executive of both Associations urge you to vote “Yes” to support One Association to represent Local Government in NSW.**



## **The NO Case - for conducting a Secret Postal Ballot on One Association.**

### **Introduction - The need for an open debate**

There is general in principle support for forming a single association to represent Local Government in NSW. This current debate concerns the detail of the constitution proposed for One Association and a concern that rushing through a constitution without fully considering its effects has the potential to result in future disharmony.

Member Councils of the Local Government Association (LGA) should be aware that the currently proposed Constitution has NEVER been debated at the LGA conference or in any public forum.

There are reasons we need an open debate about the proposed constitution. The reasons we need more debate are:

#### **1) Regional Disadvantage.**

**The proposed Constitution disadvantages some regional Councils in a profound and permanent way.**

#### **2) One size fits all.**

**The proposed Constitution does not allow for Councils west of the Great Dividing Range to have guaranteed representation.**

#### **3) Lack of transparent governance.**

**The proposed Constitution fails to provide for an open, transparent and accountable peak local government body and thereby misses a historic opportunity to modernise local government.**

This paper will deal with each of these issues in turn.

### **Why have these issues not be raised before?**

LGA Members should be aware that some concerned members of the Executive believed there had been a commitment to conduct detailed information sessions in a range of locations around NSW and that the pros and cons of any proposed constitution would be discussed at those sessions. These were not implemented.

Members should also be aware that a basic premise of this whole debate has been that a draft constitution would go through the safeguard of being debated openly at a conference.

The purpose of this NO CASE is not to argue against a single association for local government in NSW. It is to argue that before adopting any constitution the Members should have the right to debate the proposed Constitution at our Conference.

The Constitution of the Local Government Association of NSW currently requires any constitutional amendment to be put to Conference and for the amendment to gain majority support.

The current process will see the biggest constitutional change of all (merging of two Associations) being decided by a secret ballot without the opportunity for debate to be had and for questions to be asked on the floor of Conference.

**1. Disadvantage - the proposed Constitution literally adopts a double standard.**

The proposed constitution provides for a voting system which disadvantages 34 regional councils. Specifically this affects larger regional Councils with more than 27,000 people. As currently proposed regional Councils of 27,000 people or more will receive less votes than a metropolitan Council of 27,000 people or more.<sup>1</sup>

34 regional Councils will receive less votes than would a comparably sized Council located in the Metropolitan area. The list below details these Councils, their population and votes as calculated by the LGSA - compared with a Council of similar size in the Metropolitan area and its respective proposed voting entitlement:

**Disadvantaged Regional Councils**

| Council            | Population (as per LGSA) | Votes | Comparative Metro Council | Population | Votes |
|--------------------|--------------------------|-------|---------------------------|------------|-------|
| Albury             | 51112                    | 4     | Leichhardt                | 55596      | 5     |
| Ballina            | 42708                    | 3     | Manly                     | 41925      | 4     |
| Bathurst Regional  | 39915                    | 3     | Botany Bay                | 40463      | 4     |
| Bega Valley        | 33925                    | 3     | Burwood                   | 33803      | 4     |
| Blue Mountains     | 77943                    | 4     | Willoughby                | 70008      | 5     |
| Byron              | 32378                    | 3     | Lane Cove                 | 33335      | 4     |
| Cessnock           | 51706                    | 4     | Camden                    | 56809      | 5     |
| Clarence Valley    | 52592                    | 4     | Woolahrah                 | 56005      | 5     |
| Coffs Harbour      | 72827                    | 4     | North Sydney              | 64795      | 5     |
| Dubbo              | 41763                    | 3     | Ashfield                  | 42787      | 4     |
| Eurobodalla        | 37714                    | 3     | Burwood                   | 33803      | 4     |
| Gosford            | 168188                   | 7     | Horsnby                   | 164034     | 10    |
| Goulburn Mulwarree | 28702                    | 3     | Lane Cove                 | 33335      | 4     |
| Great Lakes        | 35924                    | 3     | Burwood                   | 33803      | 4     |
| Greater Taree      | 48955                    | 3     | Strathfield               | 36911      | 4     |
| Hawkesbury         | 64030                    | 4     | Kogarah                   | 59200      | 5     |
| Kempsey            | 29442                    | 3     | Mosman                    | 29232      | 4     |
| Lake Macquarie     | 200849                   | 7     | Fairfield                 | 196567     | 11    |

<sup>1</sup> This is because the distribution of the extra 82 votes to metropolitan Councils based on population size (see formula in C1.23 Step 4) results in a Council having approx. 27,000 people or more receiving an extra vote. Please note the precise number at which an 'extra vote' becomes applicable may change over time depending on any Council amalgamations and/or population changes.

|                   |        |   |              |        |    |
|-------------------|--------|---|--------------|--------|----|
| Lismore           | 45917  | 3 | Manly        | 41925  | 4  |
| Maitland          | 70296  | 4 | Pittwater    | 59847  | 5  |
| Newcastle         | 156112 | 7 | Campbelltown | 153222 | 10 |
| Orange            | 39329  | 3 | Manly        | 41925  | 4  |
| Port Macquarie    | 76323  | 4 | Waverly      | 69420  | 5  |
| Port Stephens     | 67825  | 4 | North Sydney | 64795  | 5  |
| Queanbeyan        | 41430  | 3 | Ashfield     | 42787  | 4  |
| Shellharbour      | 67797  | 4 | Pittwater    | 59847  | 5  |
| Shoalhaven        | 96967  | 4 | Hurstville   | 80823  | 6  |
| Tamworth Regional | 59461  | 4 | Camden       | 56809  | 5  |
| Tweed             | 90090  | 4 | Hurstville   | 80823  | 6  |
| Wagga Wagga       | 63500  | 4 | Kogarah      | 59200  | 5  |
| Wingecarribee     | 46960  | 3 | Botany Bay   | 40463  | 4  |
| Wollondilly       | 44050  | 3 | Mosman       | 29232  | 4  |
| Wollongong        | 203487 | 7 | Liverpool    | 185481 | 11 |
| Wyong             | 151527 | 7 | Randwick     | 133116 | 8  |

These 34 Council will be permanently disadvantaged so far as their number of voting delegates is concerned by the proposed One Association Constitution in comparison with metropolitan Councils of similar size.

The proposed Constitution has been developed to "equal" the votes between country and city. There was some concern that in a merged organisation in which there are more "country" councils than "city" councils and the "country" would dominate. However that is not the reality.

Firstly it relies on a perception that Councils such as Wollongong, Newcastle, Gosford, Wyong and Lake Macquarie are "country" councils rather than the large urban Councils they are in reality.

Secondly it relies on a perception that somehow all Councils outside the metropolitan basin would form "faction" and vote as a "bloc". In reality Councils have different demographics and many different interests.

In developing a constitution for One Association a choice has to be made between the 'one vote one Council' system used by the Shires Association and a system which is scaled according to the population size of the Council. With a range of differing population sizes in the proposed One Association ( from Urana with 1,261 right up to Blacktown with 307,816 people) it is not surprising that a scaled system based on the existing LGA model has been chosen.

**However to go further and designate a different system of scaling for regional Councils than for metro Councils is to adopt a double standard, literally.**

The proposed structure appears to be unethical and undemocratic.

What does the double standard mean for City Councils?

**Will city Councils pay more fees?**

The question on which there has been no discussion is who will pay the fees of the disadvantaged Councils.

Clearly the inequitable in voting rights will create resentment. It is hard to imagine Councillors at those tense budget meetings (when there is never enough money to go around) not asking why they are paying the same fees as another Council with more votes.

A Council such as Lake Macquarie (200,849 people) with 7 votes could object to paying similar fees to Fairfield Council (196567 people) which will have 11 votes.

**Metropolitan Councils fees to rise by 14.5%?**

The 82 extra votes allocated to the metropolitan Councils represents 14.5% of the total. It would therefore be reasonable for metropolitan Councils to pay 14.5% more membership fees than regional Councils. However there has been absolutely no discussion of this issue.

**Or will regional Councils be forced to permanently pay the same fees as Metropolitan Councils with more votes?**

The proposed Constitution says at Cl.13 (b) that the Board can determine fees as it sees fit and may determine different subscriptions for different classes of members. The classes of members defined in the Constitution are limited to "ordinary" and "associate" members. The most straightforward interpretation of this is that the Board may be prohibited by the Constitution from allowing a lesser subscription rate to those disadvantaged Councils. **Consequently it may be that disadvantaged Councils are constitutionally compelled to pay disproportionately higher fees permanently without any prospect of relief.**

There is an **URGENT** need to have this issue clarified and is just one example why the proposed constitution should be presented to a full debate at Conference.

**Higher cost of Conferences for Metropolitan Councils & and difficulty in sending delegates.**

The largest metropolitan Councils will receive the most votes. For the first time large Councils will receive more than 7 votes.

The proposed constitution (Cl.35) does not allow Members Councils to send proxies to Conference to vote on policy. It is acknowledged as an important safeguard for democracy that a single person should not be able to cast votes for a large number of people.

However Cl. 23 of the proposed constitution outlines a complicated 7 step process for working out voting entitlement. Step 6 allows **Councils which have more votes than Councillors** to allocate an extra vote to nominated delegates. This only applies if a Council has more votes than Delegates (City of Sydney) and appears to still require every single Councillor to attend the Conference.

In some cases large metropolitan Councils will be forced to send all of their Councillors to every Conference just to achieve their voting entitlement on motions and policy.

**In the most extreme situations:**

- ^ the City of Sydney will be entitled to 11 votes but only has 10 Councillors, and
- ^ Hornsby will have to send every one of its 10 Councillors to exercise its 10 votes.
- ^ Liverpool will have to send each of its 11 Councillors to exercise its 11 votes.

The consequence of these rules for the largest Councils are threefold:

- 1) A large Council in practice may not be able to use its voting entitlement. For example a Council entitled to 11 delegates may not have 11 delegates who can take that much time off work to attend the conference and consequently the Council cannot use its voting allocation.
- 2) Significant increase in cost. A large Council which does manage to send 11 delegates will incur a higher cost than sending their current allocation of 7. A Council sending 11 delegates to a conference in Dubbo could conservatively be expected to have costs of \$2000 per delegate and therefore a total cost of \$22,000 just to attend the annual conference.<sup>2</sup>
- 3) If large metropolitan Councils end up paying higher membership fees as well as higher Conference costs they will be hit with a double whammy.

**Large City Councils and proposed voting entitlement**

|                 |   |                 |    |                       |    |
|-----------------|---|-----------------|----|-----------------------|----|
| Bankstown       | - | Number of votes | 11 | Number of Councillors | 12 |
| Blacktown       |   |                 | 13 |                       | 15 |
| Campbelltown    | - |                 | 10 |                       | 14 |
| Canterbury      | - |                 | 8  |                       | 10 |
| Fairfield       | - |                 | 11 |                       | 13 |
| Hornsby         | - |                 | 10 |                       | 10 |
| Liverpool       | - |                 | 11 |                       | 11 |
| Parramatta      | - |                 | 10 |                       | 15 |
| Penrith         | - |                 | 11 |                       | 15 |
| Randwick        | - |                 | 8  |                       | 15 |
| Sutherland      | - |                 | 11 |                       | 15 |
| City of Sydney  | - |                 | 11 |                       | 10 |
| The Hills Shire | - |                 | 10 |                       | 12 |
| Warringah       | - |                 | 8  |                       | 10 |

**2) The proposed Constitution does not allow for Councils west of the Great Dividing Range to have guaranteed representation.**

The proposed constitution lumps all regional councils into the one area for representation on the One Association executive.

Previously the Shires Association has had 9 specific geographic Divisions with a single

<sup>2</sup> Please note that this figure is an estimate and may be higher or lower. It does not include the cost of sending Staff to conference.

representative from each. The LGA has had a single regional area but with most Councils being coastal and only a few of the larger inland cities as members.

It is apparent to everyone that life west of the Great Dividing Range is different in many respects than it is for those living on the Coast.

While it may not be appropriate to transfer the 9 Divisions of the Shires Assoc into a new organisation there has been NO debate about the merits of having a Western Division which guarantees Executive membership from Councils west of the Great Dividing Range. The distances involved, the distinct nature of the rural economy and the lack of public services for transport, health and education should merit having dedicated representatives from Western NSW.

Given that a new association is likely to last at least as long as the current LGA and Shires have been operating separately (80 years) surely the least we could do is have an open debate on whether a Western Division is appropriate. Such a debate should do more than just assume there is only a choice between a Shires 9 Divisions structure and a single all-encompassing regional district.

**3) The proposed Constitution fails to provide for an open, transparent and accountable local government body and thereby misses a historic opportunity to modernise local government.**

Such a historic occasion of merging the Shires and Local Government Association should not be rushed through. Any new organisation should be more open and transparent.

For example the following safeguards should be added to the constitution:

- ^ The business papers and minutes (save for confidential components) should be automatically available to all member councils.
- ^ Proposed increases in pay and remuneration for all Executive members should be reported to the Annual Conference for approval (currently proposed that 'Senior Executive' (see Cl.20 (vi)) recommend the rate of remuneration to be paid to President and others).
- ^ The amount of annual payments to all individuals gained by virtue of their appointment by the Association to external bodies to represent the Association should be reported in the annual report to Conference.
- ^ The powers of the President should be equivalent to those of a Mayor and the broad power given in to the President via cl.17 (d) of the proposed Constitution should be modified.
- ^ LGSA financial reports show the Presidents of the LGA and the Shires Association is each budgeted to receive \$103,683.00 remuneration this financial year. The Scheme of Amalgamation should clarify if each proposed 'Interim Joint President' will continue to receive \$103,683.00 up until a new election is scheduled for October 2013.
- ^ It should be clarified why an interim committee of 10 people is being put forward to have control of the organisation for an estimated 14 months when the proposed constitution provides for a Board of 25 people.