

Representation on the Board of Directors Gladstone Area Promotion and Development Limited

Responsible Officer: General Manager Finance Governance and Risk

Council Meeting Date: 1 October 2019

File Ref: CM7.1

G/19 /3938 Council Resolution:

Moved Cr Churchill

Seconded Cr O'Grady

That Council endorse its decision to appoint a Councillor of Gladstone Regional Council to serve on the Gladstone Area Promotion and Development Limited Board of Directors, noting that Councillor Hansen is the current representative.

CARRIED

Purpose:

This report presents information to assist Council in determining whether to continue with representation on the Board of Directors of the Gladstone Area Promotion and Development Limited (GAPDL).

Officer's Recommendation:

That Council determine a position on representation on the Board of Directors of the Gladstone Area Promotion and Development Limited.

Background:

One of the outputs of Council's 2019/20 Operational Plan is to '*Review existing and develop new organisational committees that are aligned to strategic objectives*'. This requires a governance review of Council appointed representation on external organisations including GAPDL.

The Gladstone Area Promotion and Development Limited has the legal status of a not-for-profit membership-based Company limited by Guarantee originally founded in 1983 with a vision as set out below:

Vision

To advance the Gladstone Region through the promotion and development of business, industry and tourism for the benefit of our members and the community, GAPDL also aims to encourage and foster new sustainable business and industry investment opportunities to assist with driving the region's economy forward.

The organisation is recognised by Tourism and Events Queensland and the State Government as one of 13 accredited Regional Tourism Organisations (RTO) and is currently managed by a Board of volunteer Directors from a range of business, industry and

government sectors. The Board of Directors are responsible for overseeing the strategic direction of the organisation.

For the duration of their appointment, a Director must be a financial member, or a representative of a financial member's business, or an appointed member under the constitution. The constitution currently allows for Council to appoint a Member on the Board.

Executive Directors:

- Leigh Zimmerlie (Chairperson)
- Brent Jordison (Deputy Chairperson)
- Terry Purcell (Secretary)
- Helen McGregor (Treasurer)

Elected Directors:

- Mark Spearing
- Colin Fort
- Jeff Moody

Appointed Directors:

- Rowen Winsor (Industry Representative)
- Councillor Rick Hansen (GRC Representative).

Cr Hansen was appointed to the Board by Council on the 4 December 2018 and is anticipated to serve for the balance of the current term of Council when the newly elected Council re-nominate appointments to external boards and committees.

Consideration:

Gladstone Regional Council (GRC) – Entity Considerations

Some considerations for Council in determining this matter should include:

1. Council is a major financial contributor to GAPDL;
2. Council is a customer of GAPDL's services;
3. A Council representative would be acting on behalf of the community and Council as an organisation.

Appointed Representative – Potential Conflicts

The Councillor appointed representative to the GAPDL Board must act in good faith and in the best interests of both Council (S.12(6) *Local Government Act 2009*) and GAPDL (as required under Australian Corporations Law). These obligations can raise potential points of conflict for a Councillor representative in circumstances where the decision making of Council may impact on the interests of the GAPDL and vice versa. Following are some potential points of conflict:

- a. Council funding decisions in respect to GAPDL and performing assessments of the service agreement that Council has with GAPDL.
- b. GAPDL may propose to support development/s which contravene Council's Planning Scheme but achieve the economic development visions of GAPDL.
- c. Council and GAPDL potentially could be competing for similar external funding opportunities for projects or initiatives.
- d. The potential for the public to perceive conflicts of interest for a Councillor in serving both organisations (ie: that the Council representative is obligated as a Director to advance the interests of GAPDL relating to industry, commerce and tourism which potentially could conflict with other Council / community interests).

From a Councillor governance perspective, provided the Councillor is aware of their obligations and duties as a Councillor and Director of a Board, and manage those interests accordingly, on balance, there does not appear to be a significant governance impediment which cannot be managed, in having a Councillor serve on both organisations.

Council should balance this view with other considerations such as:

1. What are the strategic advantages and disadvantages for Council being involved with GAPDL at the Director level?
2. Council has a service level agreement with GAPDL to manage its deliverables under Council's Corporate Plan - is it appropriate for Council as an entity (and for an individual Councillor), to have representation on an organisation that Council provides funding to, and seeks services from?
3. Council's representative does not need to be an elected member however, if not, is there any benefit derived from nominating another person on behalf of Council (eg. input from a general community interest perspective)?

Option 1 – Continue with Councillor Representation on the GAPDL Board

Should Council consider that having a Councillor Representative on the GAPDL Board aligns with the strategies and objectives of its Corporate Plan, and that associated potential conflicts for the appointed Councillor can be managed, then Council may elect to continue having a Councillor appointment on the GAPDL Board.

Option 1 suggested resolution:

That Council endorse its decision to appoint a Councillor of Gladstone Regional Council to serve on the Gladstone Area Promotion and Development Limited Board of Directors, noting that Councillor Hansen is the current representative.

Option 2 – Council's nominated representative on the GAPDL Board being a person other than a Councillor

GAPDL's constitution provides the following in respect to the Council nominated Director on the GAPDL Board:

- i. A person nominated by the Council as defined in the Companies Local Government Service Agreement.*

The current service level agreement between Council and GAPDL provides as follows:

12.1 Board Membership

- (1) The Company will allow a representative of Council to be on the Board of the Company whilst this Agreement is in effect.
- (2) Such representative shall be advised to the Company by Council in writing and the Company will be required to put in effect the requirements to allow that Council representative to take up a position on the board of the Company expeditiously;
- (3) Council may change its representative upon notification to the Company in writing.

There is no provision that requires Council to have its position on the Board filled by a Councillor. Council could elect to have any other person it may consider appropriate to fill the role. To action this change, Council need only to advise GAPDL in writing.

Option 2 suggested resolution:

That Council appoint an external person yet to be determined, as Council's representative on the Board of Directors of the Gladstone Area Promotion and Development Limited.

Option 3 – Elect not to have a Council Representative on the GAPDL Board

Should Council elect to no longer have a Council Representative (elected member or other person) on the Gladstone Area Promotion and Development Limited Board, GAPDL would need to be advised and Section 27.3 of GAPDL's constitution would require amendment.

Option 3 suggested resolution:

That Council advise Gladstone Area Promotion and Development Limited that it no longer seeks to have a representative on the Board of Directors.

Communication and Consultation (Internal/External):

Elected Members of Council
Manager Governance
Executive Team

Legal Environmental and Policy Implications:

The *Local Government Act 2009* outlines the responsibilities of a Councillor (s12). Directors of Australian Companies have statutory obligations under corporations law and under the constitution of Boards that they serve on.

As the implementation of the second stage of the Belcarra recommendations progresses, the bill of amendment to the *Local Government Act 2009* proposes the insertion of a new chapter relating to Councillor conflicts of interest.

However, it is proposed that the chapter will not apply:

“in relation to a councillor's conflict of interest in a matter relating to a corporation or association that arises solely because of a nomination or appointment of the councillor by the local government to be a member of the board of the corporation or association.”

If the conflict of interest is solely that the Councillor is an appointed member of a board, no declaration is required (although a Councillor may choose to voluntarily comply with the chapter).

A conflict of interest may still exist in other circumstances (e.g. a related person is an employee of the organisation) and this will need to be managed accordingly.

Financial and Resource Implications:

Council has a service level agreement with GAPDL which requires an annual contribution by Council. Council has budgeted \$453,000 in the 2019/20 financial year for GAPDL Agreement Costs.

Cr Hansen as the current Council appointed representative on the Board of Directors of GAPDL also dedicates time as a volunteer in fulfilling the duties and responsibilities of the role.

Commentary:

Nil

Summary:

Nil

Anticipated Resolution Completion Date:

31 October 2019

Attachments:

Nil

Tabled Items:

Nil.

Report Prepared by: Governance Advisor