



muswellbrook
shire council

Muswellbrook Shire Council

ORDINARY COUNCIL MEETING

BUSINESS PAPER

WEDNESDAY 21 SEPTEMBER 2022



MUSWELLBROOK SHIRE COUNCIL

P.O Box 122
MUSWELLBROOK
16 September, 2022

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the Loxton Room, Administration Centre, Campbell's Corner 60-82 Bridge St, Muswellbrook NSW 2333 on **Wednesday 21 September 2022** commencing at 5:30 pm.

Derek Finnigan
ACTING GENERAL MANAGER



Council Meetings

Meeting Principles

Council and committee meetings should be:

- Transparent:* Decisions are made in a way that is open and accountable.
- Informed:* Decisions are made based on relevant, quality information.
- Inclusive:* Decisions respect the diverse needs and interests of the local community.
- Principled:* Decisions are informed by the principles prescribed under Chapter 3 of the Act.
- Trusted:* The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
- Respectful:* Councillors, staff and meeting attendees treat each other with respect.
- Effective:* Meetings are well organised, effectively run and skilfully chaired.
- Orderly:* Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

Public Forums

The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.

To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by no later than 9.00 am two (2) days prior to the day of the meeting before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than 3 days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

Each speaker will be allowed 2 minutes to address the council. This time is to be strictly enforced by the chairperson.



Declarations of Interest

Statement of Ethical Obligations

Councillors are reminded of their oath or affirmation of office, made under section 233A of the NSW Local Government Act 1993, to undertake the duties of the office of Councillor in the best interests of the people of Muswellbrook Shire and Muswellbrook Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them, under the Local Government Act 1993 or any other Act, to the best of their ability and judgment. Pursuant to the provisions of the Muswellbrook Shire Council Code of Meeting Practice and the Muswellbrook Shire Council Code of Conduct, Councillors are reminded of their obligations to disclose and appropriately manage conflicts of interest.

Section 451 of the Local Government Act requires that if a Councillor or Member of a Council or committee has a pecuniary interest in any matter before the Council or Committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A Councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.



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1. **Acknowledgement of Country**
2. **Civic Prayer**
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4. **Disclosure of any Pecuniary or Non-Pecuniary Interests**
5. **Mayoral Minute**

Nil

6. **Public Participation**

7. **Business**

7.1. **Corporate Services**

7.1.1. **Electricity LGP Tender**

Attachments:	1. Acceptance Declaration Renewable PPA 9Sept22 [7.1.1.1 - 6 pages]
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Responsible Officer: Derek Finnigan - Acting General Manager

Author: David Walsh – Director Corporate Services and CFO

Community Plan Issue: 6 - *Community Leadership*

Community Plan Goal: Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.

Community Plan Strategy: 6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.

PURPOSE

To submit for Council's consideration an opportunity to engage with Local Government Procurement (LGP), and provide delegation to the Acting General Manager to negotiate, agree and execute an agreement with an Electricity Supplier at the conclusion of the LGP Tender process under LGP Tender EL0122.



OFFICER'S RECOMMENDATION

Council delegates to the Acting General Manager the authority to enter into a binding agreement, and further to negotiate, agree and execute a contract with an energy supplier under Local Government Procurement Tender EL0122.

Moved: _____ **Seconded:** _____

BACKGROUND

As has been previously reported to Council:

In November 2021, Muswellbrook Shire Council, along with a group of five other Hunter Councils, entered into a 10-year supply agreement with Mojo Power. The award of this contract was the result of a tender process that saw Mojo Power being considered the best value proposition for the Council Group comprising Muswellbrook, Upper Hunter, Cessnock, Lake Macquarie, Maitland & Central Coast.

On 6 June 2022, Council received a letter from Mojo Power advising that due to factors within the electricity market, Mojo Power were looking to discontinue supply. Whilst several conversations have occurred between the Council Group and Mojo Power, allowing for a delay of the disconnection, on 15 June 2022 Mojo Power served Council with a notice advising that they would instruct Ausgrid to disconnect the Council's electricity supply in 72 hours' notice.

Whilst Council is currently looking for short-term (12 month) solutions, it is important that we continue to seek longer-term solutions for our energy needs.

CONSULTATION

Mayor

Acting General Manager

Corporate Lawyer

Procurement & Contract Officer

REPORT

Local Government Procurement (LGP) is looking to conduct a centralised tender process, under LGP Tender EL0122, and is looking for Councils to nominate interest in participating in the Tender. Whilst this process is standard, the situation with the energy market means that there are special considerations being given to this particular tender.

Per the attached letter from Local Government Procurement, Council is required to submit a **binding** agreement for inclusion in the tender process, and therefore Council is required to ensure that the Acting General Manager is suitably delegated the authority to negotiate, agree and execute contracts within a very tight timeframe. Staff will continue to keep Councillors informed of the process, allowing for transparent decision making. The decisions of Council Officers will be based on all relevant procurement policies and regulations, and will ensure that the best value for money, fit for purpose outcome is achieved for Council.

The Mayor, Acting General Manager, Director Corporate Services, Corporate Lawyer and the Procurement & Contracts Officer have had discussions, and have each agreed, individually, that this is the best approach.

OPTIONS

1. Provide an appropriate delegation to the Acting General Manager, or;
2. Not provide a delegation to the Acting General Manager.



CONCLUSION

It is recommended that Council provides delegation to the Acting General Manager the ability to enter into a binding agreement, and to negotiate, agree and execute a contract with the successful tenderer.

SOCIAL IMPLICATIONS

None identified.

FINANCIAL IMPLICATIONS

The financial implications are unable to be quantified accurately at this stage.

From a high level, it is expected that the total value of the contract, that is over the life of the contract, will be between \$15m and \$20m in aggregate.

POLICY IMPLICATIONS

None identified.

STATUTORY IMPLICATIONS

Local Government Act 1993.

LEGAL IMPLICATIONS

None identified.

OPERATIONAL PLAN IMPLICATIONS

Submission of the report complies in principle with item 3.5.1.1 of the Operational Plan: 'Council's energy contractor supplies energy from renewable sources'.

RISK MANAGEMENT IMPLICATIONS

Reduces Council's risks associated with the inability to provide the best value of money option for electricity costs due to the dynamic nature of the electricity market.

WASTE MANAGEMENT IMPLICATIONS

None identified.

COMMUNITY CONSULTATION/MEDIA IMPLICATIONS

None identified.



LGP Request for Tender EL0122 for Supply of Renewable Electricity

This correspondence has been issued to seek your participation in the new tender process (EL0122), to be released soon.

LGP is intending to conduct a tender for the supply of electricity based upon renewable power augmented by more traditional power sources when the output of the renewable power is insufficient to meet the demand.

Where a council does not wish to participate in a supply of renewable energy but would rather have a "traditional" (non-renewable supply) this can also be accommodated through this LGP tender.

The tender aims to establish a single (if possible) licensed Retailer(s) holding accreditation to provide electricity in New South Wales for the provision of both renewable and non-renewable power.

Once the number of participants committed to the process is finalised, LGP will seek tenders (pricing submissions) from the Retailers.

To assist councils, attached is a brief explaining a renewable power purchase agreement model.

Evaluation Process

Tenders are to be evaluated by a Tender Evaluation Team comprising LGP staff, supported by a Tender Evaluation Working Group (TEWG) consisting of up to four staff from participants in the process.

A tender evaluation report will be drafted by LGP following the pricing submission stage. It is then forwarded to the Tender Evaluation Working Group for review and feedback. Once finalised, the confidential evaluation report is released on request to General Managers/Chief Executive Officers or Senior Staff having the Delegated Authority of the participating Council or other entity.

The issue of this tender will not commit, oblige, or require LGP to award any contract should the Tender Evaluation Team and TEWG believe that the submissions, after due consideration, are not reflective of the market at that time.

Acceptance Process for Participating Councils only.

As electricity prices have a short validity period, LGP will aim to allow up to 48 hours for feedback regarding the evaluation report. Assuming there are no significant issues, LGP will determine the outcome in accordance with its Prescription status and s(55) of the Local Government Act 1993 (Act) as amended. Note that the participating entities will be **bound** to the outcome determined by LGP.

In the interests of transparency and good corporate governance however, we would make the following comments:



1. Each General Manager/Chief Executive Officer or senior manager must have the appropriate delegation in consideration of the monetary value involved. This should be reviewed carefully.
2. Regarding the monetary value, each General Manager/Chief Executive Officer or senior manager may feel it is appropriate to inform, or seek further authority, or confirmation from the Council. This of course, is a matter for each respective General Manager/Chief Executive Officer or senior manager to consider, given their own unique political and governance sensitivities.

Commitment Process

As we are seeking binding commitments, we ask that you complete the attached 'Acceptance Declaration'. This confirms you are aware of, and agree to, the outcome of this selective tender process.

This commitment is required before LGP commences and releases the request for tender to the market.

Contract Terms and Conditions

As Retailer terms and conditions may be updated over time, LGP regularly reviews them to ensure compliance with the current LGP requirements and expectations.

The applicable Retailer terms and conditions apply once successful Retailers are selected by LGP via the tender evaluation process. The terms of the successful Retailers contracts will be part of the contract documents sent to Participants for signing at that time.

Required action by all Participating Organisations

If after reviewing this correspondence, your Council wishes to commit to the LGP Request for Tender EL0122 for the Supply of Electricity, please arrange for your General Manager/Chief Executive Officer or delegated senior manager to sign and return the attached 'Acceptance Declaration' form.

Should you have any queries regarding this proposal, please do not hesitate to contact LGP Energy team directly.

Thank you,

LGP Energy

Local Government Procurement

PLEASE RETURN TO: Local Government Procurement (LGP) ASAP

via EMAIL: energy@lgp.org.au

By 5.00pm on Friday, 23rd September 2022

Acceptance Declaration

LGP Request for Tender EL0122 for Supply of Renewable Electricity

To LGP,

We, _____, declare the following is acceptable for the provision of electricity services through LGP's tender process and can be accepted by LGP in order to comply with the requirements of s55 of the Local Government Act 1993 as amended, and that, upon LGP's acceptance of the Retailer's terms and conditions for electricity supply, my organisation will enter into the supply contract(s) with the selected Retailer(s) from LGP's EL0122 tender process.

Disclosure of Management Fee: As per prior tenders, a management fee will be paid by retailers to LGP. The fee is to cover initial process costs and the ongoing contract management that is carried out by LGP.

Please Note: Due to energy market volatility, LGP will be seeking proposals from tenderers covering several supply periods. LGP will review the proposals submitted and select the most optimal supply period for participants.

Further, you acknowledge that market volatility may result in very short validity periods and that LGP may need to accept offers on your behalf without allowing participants the normal 48 hours to respond.

However, the issue of this tender will not commit, oblige, or require LGP to award any contract should the Tender Evaluation Team and TEWG believe that the submissions, after due consideration, are not reflective of the market at that time.

Our organisation would like to participate in the following category or categories.

- ☐ Electricity - Large Buildings & Facilities > 100 MWh p.a.
- ☐ Electricity - Small Tariff Sites < 100 MWh p.a.
- ☐ Electricity - Unmetered Street Lighting.

Further, our organisation would like to participate in this tender based on a (Please select one option only):

- ☐ Renewable Supply arrangement (2025 to 2029), or,
- ☐ Non-Renewable Supply arrangement (2023 and 2024), or



☐ Both Renewable Supply and Non-Renewable Supply (2023 to 2029)

In signing this Acceptance Declaration, _____ warrants that _____ as _____ has authority to **bind** the named Participant/Council to participate in this tender process and enter into the resulting contract with the successful retailer(s).

The named Participant/Council acknowledges that Local Government Procurement (LGP) reserves the right to request evidence of the formal delegation from the named Participant/Council authorising the Officer signing to execute this Authority and undertakes to provide same upon request in writing.

I confirm that my organisation authorises Local Government Procurement (LGP) to obtain information and data either directly, or via a third-party consultant engaged by LGP, from our current retailer and/or meter data agent regarding our current electricity purchases and consumption.

Authorised Signature: _____

Date: _____

Contact Name: _____

Entity Name: _____

Contact Position: _____

Phone / Fax: _____



Short Brief: Renewable energy model

It is challenging to nominate a cost of PPAs, without going to tender and getting quotes. Even a consulting report cannot be as accurate as getting market prices. This short brief relates to 7-12 Year renewable energy supply agreements, aka Retail PPAs, with retailers.

Generally renewable energy PPAs do not necessarily cost more to organisations. The price will depend on how long the PPA is for, how competitive the tender is, and what organisation decide to do with LGCs (see separate section below)

Typically, retail agreements are 2-3 years long, while Renewable PPAs are 7-12 years long. By signing a longer contract, a Renewable PPAs enable the retailer to sign a PPA or invest in a new wind or solar farm. These projects have (mostly) fixed costs for their duration, so they are able to provide a fixed price for a long period. This is different to coal and gas power stations, which have varying fuel costs over time, sometimes linked to volatile and/or international markets. It is less viable for coal and gas generators to offer long term fixed prices as future costs may change.

A longer agreement can offer fixed and often lower costs compared to several 2-3-year retail agreements over the same period. However, it is not possible to know how electricity prices will compare in, say, 5 years' time compared to now and therefore not possible to know exactly how much a Renewable PPA will save or cost for its duration. The benefit is, however, that with a renewable PPA, costs are known for the period, creating better budget certainty.

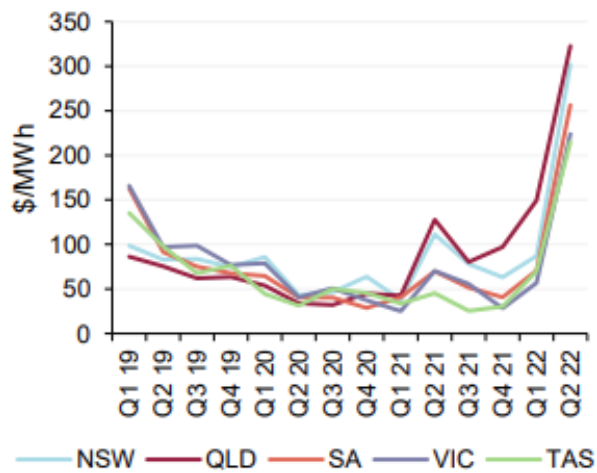
Timing of Tender

In typical retail tendering, timing of the tender can make a big impact on tender prices. This is due to changes in ASX Baseload futures. An advantage of longer-term renewable retail tenders is their pricing is less subject to day-to-day changes in ASX Baseload futures, and a longer-term view is taken by tenderers.

The below graph shows how price volatility has impacted prices since Q1 2022.



Figure 9 Prices elevated in all NEM regions
Average wholesale electricity spot price by NEM region



AEMO 2022 Quarterly Energy Dynamics Q2 2022



8. Notices of Motion

Nil

9. Adjournment into Closed Council

In accordance with the Local Government Act 1993, and the Local Government (General) Regulation 2005, business of a kind referred to in Section 10A(2) of the Act should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

10. Closed Council

RECOMMENDATION

Council adjourn into Closed Session and members of the press and public be excluded from the meeting of the Closed Session, and access to the correspondence and reports relating to the items considered during the course of the Closed Session be withheld unless declassified by separate resolution. This action is taken in accordance with Section 10A(2) of the Local Government Act, 1993 as the items listed come within the following provisions:

Moved: _____ Seconded: _____

10.1. Potential Litigation

This report is CONFIDENTIAL under the provisions of Section 10A(2)(g) of the Local Government Act 1993, as it relates to advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

11. Resumption of Open Council

12. Closure

Date of Next Meeting: 27 September, 2022