



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

PUBLIC EXHIBITION COPY

**Extraordinary Council Meeting
24 January 2025**

STATEMENT OF ETHICAL OBLIGATIONS

Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993 and their obligations under the Council's code of conduct to disclose and appropriately manage conflicts of interest.

CONFLICTS OF INTEREST

A conflict of interest arises when the Mayor or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Mayor or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Mayor or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Mayor or Chief Executive Officer, or another Council employee to determine whether or not a person may have a conflict of interest.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Mayor or Chief Executive Officer are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Part 2, Division 1 of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Mayor, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Country

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Walgalu, Ngunnawal and Bidhawal people and their Ancestors past and present.

Webcasting

Council meetings are recorded and live streamed to the internet for public viewing. By entering the Chambers during an open session of Council, you consent to your attendance and participation being recorded and streamed on Council's website www.snowymonaro.nsw.gov.au

**EXTRAORDINARY COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS, 81 COMMISSIONER STREET, COOMA NSW
2630**

**ON FRIDAY 24 JANUARY 2025
COMMENCING AT 10:00 AM**

BUSINESS PAPER

- 1. OPENING MEETING**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. COUNCILLOR REQUEST FOR ATTENDANCE VIA AUDIO-VISUAL**
- 4. APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS**
- 5. DISCLOSURE OF INTEREST**
(Declarations also to be made prior to discussions on each item)
- 6. NOTICE OF MOTION**
 - 6.1 Replacement of Water Reservoir 2
 - 6.2 Settlement of Claims - Snowy Reservoir Collapse 5
 - 6.3 Council Undertake Asbestos Inspections and Provide Clearance Certificates 7
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 - 6.7 Application of Rural Fire Services Act Section 28 20
- 7. CONFIDENTIAL MATTERS**
Nil

6.1 REPLACEMENT OF WATER RESERVOIR

Record No: I25/26

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That the CEO:

- A. Urgently seek State and/or Federal Commonwealth government funding to replace the water reservoir before the 2025/26 Summer period.
- B. Consider making recommendations to Council about expending some of the Water Reserve funds presently held by Council and applied toward the replacement reservoir project cost.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

The Snowy Monaro community lost a vital resource described by council in the business papers of 9/12/2019 meeting as, *“critical to the reliance of the water supply system for Cooma and this work should be undertaken urgently.* Furthermore, **John Barilaro MP**, then Local Member for Monaro, Leader of NSW National Party, Deputy Premier and Minister for Regional NSW said on ABC Radio 5 January 2020: *“... the long-term is about some work to do with investigation, finding the cause, and maybe replacing this reservoir in the future”.*

GENERAL BACKGROUND TO ALL MOTIONS WITHIN THE BUSINESS PAPER

It has been five years since the Snowy No. 1 water reservoir failed. The trauma of this event is still evident in the community, and some individuals remain uncompensated for the damage to their property. Community concerns about the event have also not subsided.

Before the reservoir failure, the council sought and received comprehensive engineering advice from ALS Industries about the structural integrity of the reservoir, and that it would need repair. Based on the importance of the reservoir to the community, the council passed a motion on 19 December 2019 to repair the tank.

On 2nd January 2020, senior council staff made a decision to fill the tank because of the approaching bushfires. On 4th January 2020, the tank collapsed just before 9:30 pm. Extensive property damage resulted, and in the following period, there was indication of possible asbestos contamination of impacted properties due to exposure from damaged and broken infrastructure distributed in the flood waters to surrounding properties.

The circumstances around the reservoir’s failure, the financial impact of the failure and the loss of critical infrastructure have not been considered by the governing body of the Council at an open meeting. These issues are important governance responsibilities of councillors.

Governance roles of councillors include:

- “to be responsible for ensuring that the council acts honestly, efficiently and appropriately” [S 223 (l)].
- “to represent the collective interests of residents, ratepayers and the local community” [S 232 (d)], and “
- A councillor is accountable to the local community for the performance of the council” [S 232 (2)].

Community members concerned have invested time and financial resources into investigating these matters. The citizen investigators have presented a prima facie case of serious concerns that need to be further explored by the council’s governance body.

The Motions proposed for this extraordinary general meeting attempt to fulfil our responsibilities as councillors under the Local Government Act (LGA), specifically: Section 223 of the LGA: “(a) to direct and control the affairs of the council in accordance with this Act, (b) to provide effective civic leadership to the local community, (g) to keep under review the performance of the council, including service delivery, and (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately”.

With something as critical as the reservoir’s failure (and the loss of an expensive and critical resource), its impact on the community, the resultant property damage, the endangerment of human life and safety, and the ongoing potential risk, of and from, possible asbestos contamination of private property, it is important that a thorough review of the event be undertaken.

The Office of Local Government’s most recent advice is that council meetings should be open. The Minister of Local Government recently stated: “It concerns me that these decisions are increasingly being made behind closed doors in private briefings, locking out the community and protecting councils from public scrutiny...As a former mayor, I want to see all councils conducting their business in an open and public forum, where communities can engage with their council on issues that directly affect them.”

The Minister’s views and the recommended changes to the OLG Model Code of Conduct above have informed our decision to bring the matters surrounding the water reservoir’s collapse before the Snowy Monaro Regional Council and community.

A series of important documents, sourced from the public domain and, in some cases following their release under GIPA requests, are identified in this paper and form part of the background to the motions. The aim of the motions is to address outstanding issues, settle any remaining claims, identify if there were failures in governance, protocols and procedures, and provide clarity, closure, transparency and accountability for the community.

CHIEF EXECUTIVE OFFICER’S RESPONSE

There is no grant funding program available for funding the replacement of the reservoir. Three attempts have already been made to seek grant funding towards the reservoir replacement. While letters can be sent it is highly unlikely that any grant funding source will be available.

The motion calls for things to be done within an unrealistic time frame in that the motion requires an application for funding to be lodged, approval to be granted and construction of a water reservoir to be finalised all in less than a 12-month period (to be done prior to the start of December 2025). Seeking to compress timelines over what is the normal construction timeframes, following approval of a grant, if physically possible will increase the cost of the replacement, which is not considered to provide value for money to the ratepayers and will result in the need to recoup those extra costs in higher rates or charges to water users. It is not possible to determine the extent of additional costs likely to result from the requested timetable.

Replacement of the reservoir is already included in the current delivery program (See page 73 and page 76), with planning for the project already underway over the last few years. As reported in the December meeting, the detailed design is complete and the project for constructing the reservoir will be commencing in early 2025. There is no need for consideration of the funding of the reservoir, as Council has already decided that matter.

ATTACHMENTS

Nil

6.2 SETTLEMENT OF CLAIMS - SNOWY RESERVOIR COLLAPSE

Record No: I25/29

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That Council take all steps required to bring about the fair settlement of all outstanding claims in relation to the water reservoir failure and report back to the council monthly until complete.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

See general background on previous notice of motion.

CHIEF EXECUTIVE OFFICER'S RESPONSE

There is one claim still being negotiated, with that matter is being managed by the insurer. Council may not be involved in the process or agreement reached. Council has no authority to settle any claims for which Statewide Mutual has indemnified Council for, unless the Council is intending to make the payment without recourse to the insurance policy. If this is the intent, there are financial implications that may require identification of funding.

Providing information to councillors on the individual details of insurance claims is a breach of the Privacy and Personal Information Protection Act 1998, section 17 & 18.

17 Limits on use of personal information

A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless--

- a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
- b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.

18 Limits on disclosure of personal information

- 1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless--
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- a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
- b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
- c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

As such reporting would only be generic information on the number of known outstanding claims and status.

ATTACHMENTS

Nil

6.3 COUNCIL UNDERTAKE ASBESTOS INSPECTIONS AND PROVIDE CLEARANCE CERTIFICATES

Record No: I25/27

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That in light of the Council's previous General Manager, Peter Bascomb, raising the risk of asbestos contamination of properties due to the water reservoir's failure in a letter to residents on 23 January 2020 (see letter in the list of documents in the public domain):

- A. That the CEO organise inspection, assessment, and reporting by an appropriately qualified (expert) external body and a briefing by the inspection group to the governing body.
- B. These to be carried out within 45 days, regarding possible contamination of private and public properties in the zone affected by the flood of water from the reservoir by asbestos due to the reservoir failure.
- C. The inspection, assessment and report should address all contamination, including asbestos materials, that:
 - (i) might have originated from site formation at the reservoir's location, or
 - (ii) illegal dumping of waste materials in the public bushland areas where water flowed and carried debris, following the reservoir's collapse; or
 - (iii) asbestos that was carried by water flows that may have been present in and under structures impacted by water flows, etc.

Where necessary, the council should seek prior permission to access properties to undertake this work.

- D. For properties found by the expert group not to be contaminated, that a clearance certificate or other appropriate document be issued to the owners of the properties, certifying the absence of any asbestos contamination. Council records should be updated accordingly.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

See general background information provided in earlier notice of motion.

CHIEF EXECUTIVE OFFICER'S RESPONSE

Cr Rose states:

the Council's previous General Manager, Peter Bascomb, raising the risk of asbestos contamination of properties due to the water reservoir's failure in a letter to residents on 23 January 2020

The letter referred to is attached for information. The letter specifically refutes claims that were being made by some members of the community at the time that asbestos from the water mains connected to the reservoir was washed into people's properties. The letter does note that due to the age of the buildings asbestos needs to be considered in clean up works people are getting quotes for in lodging their claims. This is the case for all buildings built in similar timeframes. This statement is only in the letter to ensure that potential claimants did not make claims in the absence of consideration being given to the potential costs in any rectification works from asbestos.

The residents have been advised that the claims initially made that the reservoir construction included asbestos were false (the construction was well before asbestos products were in use and the technique would not use asbestos), as well as that the claims about broken pipes containing asbestos (the pipes are not asbestos, and none were broken) were also false. Affected residents who raised concerns around asbestos were advised to include any asbestos removal they identified as relating to the reservoir collapse in their claims.

The motion calls for all properties to have all contaminations identified. Based on the age of construction of many of the premises in this area, that would require a full building inspection of all structures as well as testing of ground and any fill areas. The testing required to provide clearance certificates is likely to be extensive and therefore costly. A company providing such services indicates (on their website) that invasive testing of a 2–3-bedroom house would be in the range of \$2,860-\$3,300. The cost of testing the land would be in addition to that charge. No websites were quickly identified as giving an estimate of the cost of testing land for any contaminations. It is estimated that the cost of the motion will be more than \$200,000 and possibly more than \$300,000.

This motion does not comply with clause 3.12 of the code of meeting practice:

3.12 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the CEO must either:

a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or

b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.

Quotes will be required to determine the likely cost this matter. Should the Council be of the view to support the motion the matter should be deferred until the April 2025 meeting to allow costings to be developed and following that for public notice of the proposed program of support to landowners be publicly advertised.

Funding may need to come from an increase in the annual water charge for all users. If the estimated costs are correct an increase of \$20 per user or more will be required for the 2025/26 water annual charge.

If claims have not been made and liability not established, then the Council will be choosing to voluntarily assist landowners with contamination on their land and property. The proposed motion therefore is provision of financial assistance to the owners of the properties, who will be provided with free inspections and (where suitable) clearance certificates. This would trigger the requirements under section 356 of the Local Government Act. Under s.356(2), the above resolution cannot be passed until 28 days public notice of the council's proposal to pass the necessary resolution has been given.

356 Can a council financially assist others?

1. *A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*
2. *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*
3. *However, public notice is not required if--*
 - a. *the financial assistance is part of a specific program, and*
 - b. *the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
 - c. *the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
 - d. *the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.*
4. *(4) Public notice is also not required if the financial assistance is part of a program of graffiti removal work.*

Should the investigation be undertaken on a property and land contamination is identified, this will trigger the provisions of the Contaminated Land Management Act 1997 and may require the owner and Council to report the contamination to the EPA (s.60(2) &60(4)). Such referrals may lead to the EPA investigating properties that have not provided approval to the Council to undertake testing on their properties.

Affected residents who raised concerns around asbestos were advised to include any asbestos removal they identified in their claims under the insurance in place.

ATTACHMENTS

1. Letter Box Drop - 23 January 2020
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Enquiries Joyleen Mathias
Our Ref PR0026059
Cooma Office
Your Ref NA

23 January 2020

The Resident

Damage sustained on 4 January 2020

Council has nearly completed the work that it can undertake in the area at this time and as a result the staff in the area will be leaving the area for now.

Council has been working with our insurers to progress this matter. At this stage we have not received any advice on when their consideration of the matter will be finalised.

We understand that it is difficult for those who are waiting on a determination as to the Council's position on the matter. Council also wants to be able to move forward, but have to wait on our insurer to undertake their investigations and considerations.

Many people are starting to look at impacts that they are wanting to claim that are not covered by their insurance, such as landscaping. If you want work to be undertaken and have not made a claim for such types of items please arrange a quote for the works to send in with your claim. We will send this onto our insurer.

Asbestos needed to be considered as part of the clean-up work due to the age of the buildings in the area. Council has ensured that staff trained in asbestos management were onsite and monitoring any work Council has been undertaking. Any materials that may have been loose asbestos were treated as asbestos and appropriately removed.

We have heard of claims that asbestos was washed into yards from Council's water main pipes. After hearing of this claim Council re-checked the pipe network and confirmed there is no damage to the pipes. The one pipe that was partly exposed is not of a type that contains asbestos.

We will remain in frequent contact with our insurers and as soon as we have any additional information we will pass it onto you.

Yours faithfully



Peter Bascomb
Chief Executive Officer

6.4 REMEDIATION OF CONTAMINATION TO PROPERTIES

Record No: I25/30

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That council:

- A. Where asbestos contamination is found and is assessed as being present, immediately remediate all contamination by suitably qualified personnel. Where necessary, the council should seek prior permission to access each property to undertake this work.
- B. When a property is deemed uncontaminated, or at the conclusion of decontamination, a clearance certificate or other appropriate document be issued to the owners of the property.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

See common background in earlier motion.

CHIEF EXECUTIVE OFFICER'S RESPONSE

The above motion would commit Council to removing and reinstating all asbestos and other contaminated material from the buildings, structures and land in the area. Based on the age of the buildings, there is potentially extensive asbestos in some buildings and structures. As this is an action Council is taking of its own volition and without agreement of the insurer, it will not be covered by Council's insurance policy.

It will not be possible to 'immediately' remediate any contamination. Once Council has identified contamination it will then need to start the process of engaging a contractor to undertake the works. Council's procurement process will need to be followed. Council would need to consider the full extent of the work potentially being required before procuring services, which will require all the inspections to have been undertaken first. Based on the potential costing, this may even need a tender process to be run. Once the contractor is engaged, they will need to undertake the regulatory notifications required by the EPA or Safework as part of their process.

In addition, if land contamination is found the Council will need to wait on the EPA to advise on what direction is to be taken with the contaminated land, noting that the reporting, managing and remediating of any contaminated land is legislated under the *Contaminated Land Management Act 1997* and *Contaminated Land Management Regulation 2013* and regulated by the EPA.

As Council will effectively be the issuer of the clearance certificate under the resolution, this may impact on Council's insurance premiums.

This motion does not comply with clause 3.12 of the code of meeting practice:

3.12 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the CEO must either:

a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or

b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.

To identify the cost of this motion the investigations will first need to be undertaken and then quotes to rectify the works would need to be gained. To achieve this the motion would need to be deferred until after the results of the investigations are available. Those would not be complete until probably July-August 2025. Then Council would need to get pricing for undertaking the work and with that known, advertise the program of financial support to the landowners (in accordance with s.356(2)). This would mean that if the Council is supportive of following this path the decision to proceed would need to be deferred until October-November 2025.

In the interim the Council would need to identify the service reductions it will make to fund the process of getting to that stage, as there is significant work effort involved in the process.

Indications are that the cost of removing asbestos out of a house may be in the order of \$10,000. In addition, there would be the cost of additional structures, such as garages and any materials in the ground.

As with the previous motion, this motion provides financial assistance to the owners of the properties, who will be provided with removal of contaminated material. Considering the age of construction of the houses and buildings in the area, there is a high likelihood that some asbestos will have been used in the construction of houses and other structures, such as shed and fences. This would trigger the requirements under section 356 of the Local Government Act. Under s.356(2), the above resolution cannot be passed until 28 days public notice of the council's proposal to pass the necessary resolution has been given.

Funding may need to come from an increase in the annual water charge for all water users. It is impossible to reasonably determine the cost.

ATTACHMENTS

Nil

6.5 PROVISION OF INFORMATION - INSURANCE CONTRACT AND CLAIMS

Record No: I25/31

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That the CEO provide councillors with:

- A. A copy of council's insurance contract and any product disclosure statement held at the time of and before the reservoir collapse (4th January 2020).
- B. Details of all claims that have been received and managed by this council and/or by council's insurer including, but not limited to, the following:
 - (a) Claim lodgement date.
 - (b) Claimant type (i.e. a home or vehicle owner, an insurer (who may have paid a claim by their customer), etc).
 - (c) Date lodged when first notified to our insurer.
 - (d) Current status of the claim (fully settled, partially settled, unsettled)
 - (e) Settlement amount if paid by our insurer and settlement date.
 - (f) Settlement amount, or co-contribution if paid by council or insurer.
 - (g) A letter from the representative of the council's insurer (at the time of the collapse) confirming the information outlined in points (b) 1 through 5.
- C. Details of the claims that have been made against the council and not referred to, managed by or settled in part or in full by the council's insurer (or their agents), including, but not limited to, the following:
 - (a) Claim filing date.
 - (b) Claimant type (i.e. a home or vehicle owner, an insurer (who may have paid a claim by their customer), etc).
 - (c) Current status of the claim (fully settled, partially settled, unsettled).
 - (d) Settlement amount if paid by council and payment date.
 - (i) Councillors to be provided with full details of all claims that have been received, settled, and outstanding, including by third-party insurers, and the total cost of the settled claims and outstanding claims. Also, full details of the claims or payments that have been made outside the insurance process.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

See general background in previous notice of motion.

CHIEF EXECUTIVE OFFICER'S RESPONSE

Council has been indemnified by Statewide Mutual, subject to the terms, conditions and exclusions of the insurance policy, for third party claims. Council's deductible of \$20,000 has been paid and exhausted. In terms of those claims which have settled and for which Council has been indemnified, there is no additional financial cost to Council over and above the deductible. In those circumstances, it is unclear why councillors require/need this information. There is no corporate governance need for the information.

The resolution call for provision of all insurance policies held 'before the reservoir collapse'. This would include all historical policies going back in time. Reviewing all available records to see what historical policies are in the records will take significant resources.

Council does not have information on most of the claims once they have been forwarded to Council's insurer. The information available within Council may not be the full amount claimed, as claims may have changed after being forwarded. Other than anecdotally, the status of claims is not known directly. Information available indicates the insurer has settled all but one of the claims lodged with them.

In respect of Part B(g) of the Motion, it is beyond the control of Council to compel the insurer to provide information on claims they are managing.

Aspects of the information being sought is subject to confidentiality clauses, based on industry practices, and may also be covered by requirements under the Privacy and Personal Information Protection Act 1998.

All claims lodged with Council were referred to Council's insurer.

ATTACHMENTS

Nil

6.6 UNDERTAKE INVESTIGATION INTO THE RESERVOIR COLLAPSE

Record No: I25/34

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That Council:

A. Commission an independent expert investigation to assess the circumstances that led to the reservoir's failure, determine responsibility for the reservoir's failure, and steps taken to deal with the failure. This investigation must consider, and not be limited to, the following documents that are in the public domain, having been released under GIPA or parliamentary processes:

- (a) Mr Bascomb's letter to residents of 23 January 2020;
- (b) The final ALS Industries Report No: 67890 REP 01 R1 *Inspection of Snowy Monaro Water Tank* dated 24 January 2019. This report identified (pp 100-104) 14 of 19 structural defects that according to the risk matrix were rated at the highest risk level: "**Extremely Critical.**" The report stated these 14 repairs were critical prior to the recommissioning of the tank.
- (c) The Report Prepared by Public Works Advisory (*Report No. 1 PWA/1PM/000876/ 3 May 2018* and prepared by Mikhail Kogan and Ram Singh). In that report was the advice that: "*The vertical wall is reinforced lightly (refer original design in appendix B) and could crack in service due to loss of prestress and thermal actions.*"
- (d) SafeWork NSW - *Briefing for the Investigation Decision Making Panel. Dangerous Incident at Snowy Monaro Regional Council on 4 January 2020* (WSMS: 1-435161 & 2-153021) Responding Inspector Janene van der Westhuysen (Unclassified). This report contains a comprehensive timeline and recommendation in this report was for a "*full investigation*". Amongst other things this report states that: "*The risk was foreseeable – Engineering/technical reports indicated that continued use of the water tank would lead to catastrophic failure...*"
- (e) *Water and Waste Water Services SMRC OPERATIONS REPORT: Snowy No. 1 Reservoir Timeline Report*. Prepared by Mark Rixon (Manager Water & Waste Water Operations) and David Rawlings (Acting Director Corporate & Community Services) 15th January 2020.
- (f) Powerpoint presentation – *Snowy Reservoir No. 1 - Timeline* by David Rawlings.

B. Provide the Independent Expert Investigator(s) at 6(a) above, access to any and all of the council's internal and external records relating to the reservoir's history of construction, failure, engineering assessments, history of tenders, structural analysis, repairs and operational reports over the lifetime of the tank such as they may exist.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

To comply with the NSW Work Health and Safety Act (2011) in Section 19(2).

CHIEF EXECUTIVE OFFICER'S RESPONSE

The Motion states in order for Council to comply with Section 19(2) of the *Work Health and Safety Act*, it should commission an independent expert investigation.

Section 19(2) provides:

A person conducting a business or undertaking (PCBU) must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

This section does not require or place any onus on a PCBU to commission an independent expert investigation. While it is open to Council to undertake an investigation into the event 5 years ago, it is not required to do so to comply with S.19(2).

The reservoir is no longer in existence or use as part of the business. As such there is no 'work being carried out as part of the conduct of the business or undertaking' and consequently, no person can currently be 'put at risk' from events in the past. There are no other water tanks operated by Council that are of the same construction method.

Cr Rose indicates that: 'This report identified (pp 100-104) 14 of 19 structural defects that according to the risk matrix were rated at the highest risk level: "**Extremely Critical.**"'

The critical repairs referred to relate primarily to the sealing of the tank (for the medium to long term life of the tank) and in addition dealing with water quality concerns from structure components. They are not issues that relate to the structural integrity of the tank directly.

The 14 observed defects '*assessed for the potential risk which may have impact on the structural of the asset*' with a priority ranking of PO (Extremely Critical) were as follows:

3. Repair of internal surface weathering and surface staining:

- Hydroblasting the tank wall to remove the minimum top 2mm of surface and to expose structurally sound, clean, and free of all contaminations such as stain, dirt, oil, grease, loose material, etc.

4. Repair of poor vertical and horizontal joint repair, and patch repair:

- The quality of recent repair inside the tank was found poor. The repair is not functional and it puts the integrity of structure at risk to rely on the remaining of previous repair. The previous repair should be removed with hydroblasting.
- Hydroblasting the previous repair on the internal and external of tank wall.
- On the external of tank wall the patch at EXW Section 1 should be repaired with hand application of minimum of Sika MonoTop®-352 or equivalent.

5. Repair of corroded inlet/outlet pipes:

- Pressure blasting and removal of corrosion and rust from the surface of the items.
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- Painting the steel component with a corrosion inhibitor paint.
6. Repair of corroded installation on internal face of the tank:
- Pressure blasting and removal of corrosion and rust from the surface of the items.
 - Painting the steel component with a corrosion inhibitor paint.
7. Sanitary and cleanliness:
- Cleaning of water tank after completion of repair work from insects and organic matter, etc.
 - Cleaning of tank every 5 years.
8. Repair of debonded old mortar or patch repair from concrete surface:
- Hydroblasting the tank wall to remove the minimum top 2mm of surface and to expose structurally sound, clean, and free of all contaminations such as stain, dirt, oil, grease, loose material, etc.
 - Hand application of minimum 4mm of Sika MonoTop®-352 or equivalent.
 - If a vertical crack appeared under the debonded mortar patch epoxy injection to crack is recommended (Item 18).
9. Repair of floor joints:
- The remaining of the old sealer be removed from the joint.
 - The joint be cleaned and air blasted.
 - A self-expanding joint filler cork to be placed in the joints, and joints resealed with a water resistant flexible sealer (Fosroc® Hydrocor Type 106 / Type 3 or equivalent). The sealer can be Sikaflex® Tank N or equivalent but should be compatible with the expansion cork.
10. Possible formation of horizontal cold joints from jack lifting:
- Hydroblasting (as explained in Item 3) over the 13 formwork marks on the internal tank wall.
 - Hand application of minimum 4mm of Sika MonoTop®-352 or equivalent
11. Repair of exposed reinforcing steel inside the tank on floor, internal wall, columns supporting pads:
- Removal and cut of exposed steel by power saw
 - Hydroblasting the surface area around the exposed bar (0.15m x 0.15m) as explained in Item 3.
 - Hand application of corrosion inhibitor epoxy mortar such as SikaTop Armatec 110 EpoCem 2 coats each 2mm or equivalent.
12. Repair the loss of coat and corrosion of roof columns:
- Pressure blasting and removal of corrosion and rust from the surface of the items.
 - Painting the steel component with a corrosion inhibitor paint.
14. Decreasing corrosion rate of strand wires. This items should be applied to strands:
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- Where there is a sign of water seepage and build-up of surface salt on gunite
- The bottom 1.5 m of the wall (Strand number 1 to 8)
- Wall area over strand number 13 and 14
- 200mm on each side of the construction joints on the external gunite
- It is required to expose the strands No 1 to 8, 13 and 14. Hydroblasting can be applied to remove the concrete from the external surface of gunite. Hydroblasting should expose strands and expose gunite in structurally sound, clean, and free of all contaminations such as stain, dirt, oil, grease, loose material, etc.
- Strand wires to be painted with SikaTop® Armatec® 110 EpoCem or equivalent
- Mechanically applied dry shotcrete such as Sikacrete® -Gunite 103 should be applied on the top of coated wires.

17. Repair the softening or insufficient mortar (grout) in tie-rod inside the tank:

- (Item3) Hydroblasting the tank wall to remove the minimum top 2mm of surface and to expose structurally sound, clean, and free of all contaminations such as stain, dirt, oil, grease, loose material, etc.
- Hand application of minimum 4mm of Sika MonoTop®-352 or equivalent.

18. Repair of vertical construction joints:

- The previous repair should be removed (Item 4)
- Concrete on two sides of the each vertical joint should be repaired with hand application of Sika MonoTop®-352 or Sika Dur 31 or equivalent. The repair should be performed in such way that the access to vertical joint is not blocked.
- The full height (6.25m) of construction joints between wall sections should be fully injected and sealed with structural epoxy such as Sika dur 52.
- The finish surface should be smoothed with grinder.
- Please see item 19 for application of SikaSeal® Tape-S or equivalent over the construction joints.

19. Application of water proofing coat on internal wall and surface of tank

- The internal surface should be hydroblasted and smoothed as discussed in Item 3.
 - All recommended repairs should be performed before application of the coating layers.
 - Where bugholes, surface irregularity or surface roughness is observed, surface should be smoothed by hand application of minimum of Sika MonoTop®-352 or equivalent
 - Brush, roller of mechanical spray application of two coats (1-2 mm each coat) Sikalastic® - 1K or equivalent.
 - At vertical joints SikaSeal® Tape-S or equivalent will be applied after the first coat and then the second coat will be applied.
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Based on the methodology outlined in the ALS Report, Council awarded a tender at its December 2019 Council Meeting for the Reseal and Relining of the Snowy 1 Reservoir Cooma Water Supply System.

This motion does not comply with clause 3.12 of the code of meeting practice:

3.12 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the CEO must either:

- a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or*
- b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.*

Quotes would need to be sought to gain an indication of the costs of undertaking the inspection. After the collapse of the reservoir Council was approached by two water utilities wanting to inspect the reservoir. Those groups were advised Council would agree if they were willing to make the findings available to the wider water utility industry. Council also raised with the Office of Local Government the proposal that Council, OLG and NSW Water work on an investigation to be able to share the findings with other water utilities.

Council has no other reservoirs of that construction type, so an understanding of the engineering cause of the failure has no value. The process leading up to the collapse has been reviewed by Safework NSW (twice) and the Office of Local Government. We are aware that it had been referred to the NSW Police, Minister for Local Government, NSW Ombudsman, ICAC and the Minister in charge of SafeworkNSW. None of the organisations have seen fit to take further action against Council.

ATTACHMENTS

Nil

6.7 APPLICATION OF RURAL FIRE SERVICES ACT SECTION 28

Record No: I25/35

Councillor Reuben Rose has given notice that at the Ordinary Meeting of Council on 24 January 2025, he will move the following motion.

MOTION

That Council:

- A. Confirm (or otherwise) that Council applied this section (*s28 The Rural Fires Act 1997 No 65*) to claims.
- B. Prepare a report for councillors outlining any limitations the council encountered in applying this section or any other applicable legislation.
- C. Provide a copy of our insurer's investigation report.

RESPONSIBLE COUNCILLOR: Cr Reuben Rose

BACKGROUND

Council's documentation indicates senior council officers formed a view that council acted "in good faith" in response to a declared emergency (*State Emergency and Rescue Management Act 1989(SERM)*) following a directive by the Rural Fire Service [RFS (combat agency)] to "have water reservoirs as full as possible". [The Rural Fires Act 1997 No 65](#) outlines the following:

28 Damage to property and the environment

- 1) *Any damage to property that is caused by any person exercising any function conferred by or under this Division in good faith and any remedial work necessary to rectify damage to the environment is to be taken to be damage by fire within the meaning of any policy of **insurance** against fire covering the property so damaged.*
- 2) *Any provision, stipulation, covenant or condition in any agreement that negates, limits or modifies or purports to negate, limit or modify the operation of this section is void and of no effect.*

CHIEF EXECUTIVE OFFICER'S RESPONSE

Section 28 of the Rural Fires Act 1997 has no application to the failure of Snowy 1.

Section 28 is part of Division 3 of the Rural Fires Act which sets out the formation of and powers of rural fire brigades such as the power to enter premises, closure of streets and public places, making premises safe and the use of water by the fire brigade.

Section 28 applies to any damage caused to property by a rural fire brigade acting within the powers conferred on the brigade under Division 3 of the Act. The failure of Snowy 1 was not

caused by any rural fire brigade performing its powers under Division 3 of the Act. Further, any damage sustained to residents' property was not caused by any rural fire brigade performing its powers under Division 3 of the Act.

Reference to a policy of insurance in sub-paragraph (1) is a reference to a third party's policy of insurance, not Council's policy of insurance. For example, a resident has a home insurance policy which covers damage caused by fire. The rural fire brigade may, in good faith, cause damage to the resident's front door when they enter the property. The damage to the front door was not caused by the fire, but rather by the rural fire bridge's actions entering the premises. The purpose of s 28 is to stipulate that in those circumstances, the damage to the front door is taken to be damage by fire for the purposes of the resident's insurance policy.

Certain words within a section of an Act cannot be interpreted in isolation of the entire sentence, let alone the entire Act.

Council has not experienced any 'limitations' with legislation relating to the collapse of the reservoir. The limitations experienced related to the impact of the Black Summer fires and COVID, which left Council and residents waiting for a significant amount of time to have the issue of liability determined.

If any investigation report undertaken by the Council's insurer would be confidential and subject to privilege. It is beyond the power of Council to compel the insurer to provide their documents to Council.

ATTACHMENTS

Nil
