

BLUE MOUNTAINS CITY COUNCIL PUBLIC INQUIRY

INFORMATION PAPER ON THE CONDUCT OF THE INQUIRY

GATHERING OF INFORMATION PRIOR TO FORMAL HEARINGS

WRITTEN SUBMISSIONS

The Commissioner wishes to encourage those persons who would like to make submissions on matters within the terms of reference of the Inquiry to do so in writing.

Submissions should be sent to Locked Bag 3012, Nowra NSW 2541 or bluemountainpublicinquiry@olg.nsw.gov.au

Date for receipt

The Commissioner will, by public notices published in a number of newspapers, call for written submissions to the Inquiry to be forwarded to the Office of the Commissioner by Friday 21 September 2018.

The Commissioner may accept late submissions and/or call for further written submissions.

No written acknowledgement of submissions will be provided.

Anonymous submissions

It is implicit in the Notice of Public Inquiry, and the call for submissions, that persons making written submissions should identify themselves. However, if this has not been done, there would appear to be no reason why, merely because of this, the Commissioner could not take any material in such a submission into account for the purposes of the Inquiry. It cannot, however, be tested by further inquiry and may carry less weight than other submissions.

Requests for anonymity

If, in making written submissions to the Inquiry, the person making the submission requests that his or her name be suppressed or otherwise protected from publication or disclosure, the Commissioner may, in appropriate circumstances, agree to the request. This may assist persons such as Council staff as the *Public Interest Disclosures Act 1994* does not apply in respect of disclosures to the Commissioner.

Protection from defamation

Any person making a written submission to the Inquiry is protected from potential liability for defamation in respect of anything contained in that submission, at least in so far as that material is relevant to the terms of the Inquiry. Persons wishing to make written submissions should therefore feel free to put to the Commissioner all matters that are relevant. The Commissioner will be the arbiter, at least in the first instance, of "relevance".

Public availability and inspection of written submissions

Subject to the restrictions noted later, written submissions made to the Inquiry will be available for inspection for the purpose of inviting public comment by interested parties.

Commissioner's rights in respect of documents produced

The Commissioner or his delegate and assistants may inspect (and copy or take extracts from) any documents produced to the Inquiry and keep them for such reasonable period as the Commissioner thinks fit.

Submissions from the Council, Councillors, Council Staff, Government Agencies and the Public

The Commissioner encourages submissions from:

- the Council,
- individual Councillors,
- Council's General Manager,
- senior Council staff,
- other Council staff,
- the Office of Local Government,
- Government departments and authorities, and
- interested members of the public

Submissions from Council staff

Council staff have no additional privileges or protections over and above other persons generally in respect of any submissions they may choose to make, but note other comments in this paper.

Submissions from Councillors

The position is the same as for Council staff.

Appointment of assistants

The Commissioner may engage persons to assist in carrying out any inquiry or investigation that may need to be made as part of the Inquiry. For example, the Commissioner may, in writing, authorise any person engaged by him to assist in the conduct of the Inquiry to inspect and report to him upon any documents or other things, such as submissions, relevant to the subject matter of the Inquiry.

THE HEARINGS

Public hearings

In addition to the receipt of written submissions to the Inquiry, the Inquiry will include a series of public hearings. Details of the venue and times of these public hearings will be announced shortly, and will be advertised by public notice in the same newspapers as the original Notice of Public Inquiry was published. The Commissioner is anxious that people who may wish to make oral submissions, in particular in support of their written submissions, have an opportunity to do so. Therefore, the public hearings will be conducted with expedition, and, where appropriate, consideration will be given to

extending the hours of sitting of the hearings to accommodate persons unable to attend during normal office hours due to work or other essential commitments.

Form of public hearings

The Commissioner may regulate or determine the procedures to apply to the conduct of the Inquiry, subject only to any contrary provisions in section 438U of the *Local Government Act 1993* and the applicable parts of the *Royal Commissions Act 1923*. The Commissioner therefore proposes to avoid undue formality in the public hearings. There is no requirement or expectation that persons giving evidence will be legally represented. See, however, under the heading “Legal representation”, below. The Commissioner intends to give all who appear before him at the Public Inquiry a fair hearing. This more reflects the nature of an Inquiry as compared to adversarial proceedings.

Persons making written submissions

As noted above, it is desirable that interested parties lodge written submissions with the Office of the Commissioner, even if the submissions are intended to be supported by an oral presentation at the public hearings. The Notice of Public Inquiry invites persons making written submissions to be lodged with the Office of the Commissioner by 21 September 2018 to indicate at the same time whether they wish to appear in person at the public hearings. This is for the purpose of assisting the Commissioner to identify the likely number of persons who wish to give oral evidence at the hearing, and to thereby assist the orderly functioning of the public hearings phase of the Inquiry by having sufficient hearing days and other arrangements and facilities in place in time for the commencement of the hearings.

Persons wishing to make oral submissions only

As noted above, the Commissioner wishes to encourage those persons who wish to put submissions to the Inquiry to do so in writing. It is, on the other hand, not necessary for persons who wish to appear at the public hearings to make advance written submissions to gain a right of appearance and hearing, but, those persons contemplating making oral submissions only should be aware that the Commissioner is not obliged to automatically give a right of appearance to all those wishing to appear before him at the public hearings. The Commissioner will hear submissions from those wishing to give oral evidence only, provided that they can show to the satisfaction of the Commissioner that they are substantially and directly interested in the subject matter of the Inquiry, or that their conduct in relation to any such matter has been challenged to their detriment.

As is the case for those making written submissions, such persons are also asked to give advance written notice to the Commissioner 14 days prior to the commencement date of the public hearings of their desire to give oral evidence at the public hearings. This notice should contain a brief outline of the topics such person wishes to address. A failure to give such notice alone will not, however, mean that such a person would on that account alone be denied the opportunity to appear at the public hearings.

Voluntary attendance at the public hearings

Persons having information relevant to the terms of the Inquiry are encouraged to come forward voluntarily.

Compulsory attendance at the public hearings and compulsory production of relevant documents to the Inquiry

In case of need, the Commissioner may summons any person to attend the Inquiry at a time and place named in the summons, and then and there to give evidence, and to produce any documents or other things in the person's custody or control.

Legal representation

While the Commissioner wishes to avoid undue formality in the proceedings (see under the heading "Form of public hearings", above), the Commissioner recognises that some parties may be directly affected by the Inquiry. Therefore, any request by persons appearing or proposing to appear at the public hearings that they be legally represented (i.e., that their legal representatives be allowed to be present at and make submissions to the Commissioner at the hearing) will be considered in that light. This may be allowed for example, where persons are substantially and/or directly interested in the subject matter of the Inquiry, or where a person's conduct in relation to any such matter has been challenged to the person's detriment.

The Commissioner has no power to make orders providing financial assistance to persons appearing or wishing to appear at the hearing to meet the cost and expense of legal representation.

Witness expenses

Likewise, the Commissioner has no power to make orders providing financial assistance or for the payment of allowances to any witness summoned to appear or voluntarily appearing at the public hearings. This applies also, for example, to travelling and accommodation expenses.

Private hearings

The Commissioner has been appointed to conduct a public inquiry in this matter. On the other hand, in appropriate and/or exceptional circumstances, the Commissioner may exercise his discretion to hear oral submissions from a person wishing to make such submissions in private hearing. An alternative to appearing at a public hearing is to make a written submission. If any private hearing is conducted, members of the public, including the media, will not be permitted to attend.

Restriction on public availability and inspection of written submissions

The Commissioner may exercise discretion, in appropriate circumstances, to publicise and make publicly available written submissions that are made to the Inquiry for the purpose of inviting public comment by interested parties to assist the Commissioner. This may involve weighing the likely public benefit gained from this against any likely

damage to the reputation of individual persons that might flow from such publication. The overriding concern of the Commissioner is to encourage persons who have information relevant to the terms of reference of the Inquiry to come forward and give that information to the Inquiry in the knowledge that they will not suffer recriminations or other liability from or at the hands of third parties as a result.

Protection from defamation at hearings

Persons appearing at and making oral submissions to the Commissioner at the public hearings are protected from potential liability for defamation in respect of any submissions given to the Inquiry. This is the case whether the appearance of the person is voluntary or made under compulsion. Persons wishing to make submissions should, however, confine their submissions or evidence to matters within the terms of reference of the Inquiry and avoid making malicious statements.

Sworn evidence

Persons making oral submissions to the Inquiry at the public hearings will be required to give sworn evidence. Witnesses will be required to take an oath or affirmation, which will carry with it the same consequences as an oath. No exceptions from the swearing of an oath or the making of an affirmation can or will be given.

Continued attendance

Every witness who has been summoned to attend the Inquiry must appear on the day required, and thereafter until the Commissioner excuses the witness from further attendance.

Cross examination of witnesses

Persons who have been given a right of appearance by the Commissioner, and any barrister or solicitor which the Commissioner authorises to represent them, may, with the leave of the Commissioner, cross examine any witness on any matter which the Commissioner deems relevant to the Inquiry.

REPORT OF COMMISSIONER'S FINDINGS

At the conclusion of the Inquiry, the Commissioner will make a written report to the Minister for Local Government and may make recommendations to the Minister, including whether all civic offices in relation to the Council should be declared vacant, and/or on any other matter as the Commissioner sees fit.

The Minister will lay the report before both Houses of the NSW Parliament. If neither House is sitting, the report is presented to the Clerks of both Houses.

The Commissioner may also, in appropriate circumstances, pass on information or evidence or material given to the Inquiry to any law enforcement agency, such as the Director of Public Prosecutions, the Commissioner of Police, or the Independent Commission Against Corruption if the information or material relates or may relate to a breach of the law.

FURTHER ASSISTANCE

Persons requiring further assistance or information in relation to the Inquiry may contact Angus Broad on 4428 4192.