

I hereby certify that the Minutes of the Special Council Meeting held are a true and accurate record of the proceedings contained therein.

Shire President

Date



SHIRE OF WYNDHAM | EAST KIMBERLEY

Minutes SPECIAL COUNCIL MEETING

5 December 2017

DISCLAIMER

Members of the Public are advised that recommendations to Council contained within this Agenda and decisions arising from the Council meeting can be subject to alteration.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

An audio and/or video record will be made of these proceedings to assist in the taking of minutes.

Signed on behalf of Council



CARL ASKEW

CHIEF EXECUTIVE OFFICER

NOTES

- 1. Councillors wishing to make alternate motions to officer recommendations are requested to provide notice of such motions electronically to the minute taker prior to the Council Meeting.**
- 2. Councillors needing clarification on reports to Council are requested to seek this from relevant Officers prior to the Council meetings.**

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SHIRE OF WYNDHAM EAST KIMBERLEY
SPECIAL COUNCIL MEETING MINUTES
KUNUNURRA COUNCIL CHAMBERS
HELD ON 5 DECEMBER 2017 AT 5:30PM

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

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The Shire President declared the meeting open at 5.30pm

**2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE
(PREVIOUSLY APPROVED)**

Attendance

Cr D Menzel	Shire President	
Cr T Chafer	Deputy Shire President	
Cr M Dear	Councillor	
Cr M McKittrick	Councillor	
Cr D Pearce	Councillor	
Cr A Petherick	Councillor	
Cr N Brooke	Councillor	Observer
C Askew	Chief Executive Officer	
D Klye	Director Infrastructure	
S Dyson	Incoming Director Infrastructure	
V Lawrence	Director Corporate Services	
N Kearns	Director Planning and Community Development	
P Bracegirdle	Manager Community Services	

3. DECLARATION OF INTEREST

Nil

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

5. PUBLIC QUESTION TIME

Nil

7. PETITIONS

Nil

8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

Nil

9. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

Nil

10. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

11. REPORTS

11.1. ANNUAL GENERAL ELECTORS MEETING

DATE:	5 December 2017
AUTHOR:	Carl Askew, Chief Executive Officer
RESPONSIBLE OFFICER:	Carl Askew, Chief Executive Officer
FILE NO:	CM.13.9
DISCLOSURE OF INTERESTS:	Nil

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

1. Revoke part 2 of Minute 117836 of 28 November 2017 *"That Council convenes the Annual General Meeting of Electors on 19th December 2017 at 6pm at the Kununurra Council Chambers"*.
2. Convenes the Annual General Meeting of Electors on ____ January 2018 at 5pm at the Kununurra Council Chambers.
3. Requests that the Chief Executive Officer, pursuant to section 5.29 of the Local Government Act 1995, provide the requisite statutory local public notice of the the time and date of the Annual General Meeting of Electors.

COUNCIL DECISION

Minute No: 5/12/2017- 117854

Moved: Cr Petherick
Second: Cr Pearce

That Council suspend the operation of Meeting Procedure 8.9 "speaking time" to enable full discussion of the item.

Carried 5/0

COUNCIL DECISION

Minute No: 5/12/2017- 117855

Moved: Cr McKittrick

Second: Cr Petherick

That Council resumes Meeting Procedure 8.9 “speaking time”.

Carried 5/0

After lengthy discussion Council moved to amend the recommendation as follows;

COUNCIL DECISION

Minute No: 5/12/2017- 117856

Moved: Cr Petherick

Second: Cr McKittrick

That Council;

- 1. Urgently write to the Minister for Local Government to request an extension to the 56 day period to convene an Electors General Meeting (section 5.27 Local Government Act 1995) and approve the Shire holding its Electors Meeting on Monday 26 February 2018 at 5pm at the Kununurra Council Chambers.**
- 2. Subject to the approval requested in point 1 above;**
 - a. revoke part 2 of Minute 117836 of 28 November 2017 *“That Council convenes the Annual General Meeting of Electors on 19th December 2017 at 6pm at the Kununurra Council Chambers”*.**
 - b. convenes the Annual General Meeting of Electors on Monday 26 February 2018 at 5pm at the Kununurra Council Chambers.**
 - c. convenes an Electors Special Meeting (section 5.28 Local Government Act 1995) on Tuesday 27 February 2018 at 4pm at the Wyndham Council Chambers to present the Annual Report and draft Strategic Community Plan.**
 - d. requests that the Chief Executive Officer, pursuant to section 5.29 of the Local Government Act 1995, provide the requisite statutory local public notice of the time and date of the Annual General Meeting of Electors.**
- 3. If the Minister does not approve the request in point 1 above or if the Minister does not respond by Monday 18 December;**
 - a. revoke part 2 of Minute 117836 of 28 November 2017 *“That Council convenes the Annual General Meeting of Electors on 19th December 2017 at 6pm at the Kununurra Council Chambers”*.**
 - b. convenes the Annual General Meeting of Electors on Tuesday 23 January at 5pm at the Kununurra Council Chambers.**
 - c. request that the Chief Executive Officer, pursuant to section 5.29 of the Local Government Act 1995, provide the requisite statutory local public notice of the time and date of the Annual General Meeting of Electors.**

PURPOSE

For Council to vary the date for the Annual General Electors meeting.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Regulator - enforce state legislation and local laws

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

Council previously considered this matter at its meeting of 28 November 2017 and resolved as follows;

COUNCIL DECISION

Minute Number: 28/11/17- 117836

That Council:

- 1. Accepts the 2016- 2017 Annual Report (including the 2016-17 Annual Financial Statements (Part B) and Associated Notes) as presented.**
- 2. Convenes the Annual General Meeting of Electors on 19th December 2017 at 6pm at the Kununurra Council Chambers.**
- 3. Requests that the Chief Executive Officer, pursuant to sections 5.29 and 5.55 of the Local Government Act 1995, provide the requisite statutory local public notice of the acceptance of the 2016 - 2017 Annual Report and the time and date of the Annual General Meeting of Electors.**

Moved: Cr Farquhar

Seconded: Cr Petherick

Carried 9/0

The development of an Annual Report is a requirement of the Local Government Act 1995 (the Act). Section 5.53(1) of the Act requires local governments to develop and publish an annual report for each financial year with the required content of the annual report specified in section 5.53(2) of the Act.

Section 5.54 of the Local Government Act 1995 requires that the local government accept the annual report for a financial year no later than 31 December after that financial year; the exception being that if the Auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the Auditor's report becomes available.

A general meeting of the electors is to be held once every financial year no later than 56 days after accepting the annual report. The meeting is to be convened by the CEO giving at least 14 days local public notice.

STATUTORY IMPLICATIONS

Local Government Act 1995

5.27. Electors' general meetings

- 1) *A general meeting of the electors of a district is to be held once every financial year.*
- 2) *A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.*
- 3) *The matters to be discussed at general electors' meetings are to be those prescribed*

5.53. Annual reports

- 1) *The local government is to prepare an annual report for each financial year.*
- 2) *The annual report is to contain —*
 - a) *a report from the mayor or president;*
 - b) *a report from the CEO;*
 - c) *[Deleted]*
 - d) *[Deleted]*
 - e) *an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year;*
 - f) *the financial report for the financial year;*
 - g) *Such information as may be prescribed in relation to the payments made to employees;*
 - h) *the auditor's report for the financial year;*

5.54. Acceptance of annual reports

- 1) *Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.*

** Absolute majority required.*
- 2) *If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.*

5.55. Notice of annual reports

The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.

6.4. Financial report

- 1) A local government is to prepare an annual financial report for the preceding financial year and such other financial reports as are prescribed.*
- 2) The financial report is to —*
 - a) be prepared and presented in the manner and form prescribed; and*
 - b) contain the prescribed information.*
- 3) By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor —*
 - a) the accounts of the local government, balanced up to the last day of the preceding financial year; and*
 - b) the annual financial report of the local government for the preceding financial year.*

7.9. Audit to be conducted

- 1) An auditor is required to examine the accounts and annual financial report submitted for audit and, by the 31 December next following the financial year to which the accounts and report relate or such later date as may be prescribed, to prepare a report thereon and forward a copy of that report to —*
 - a) the mayor or president;*
 - b) the CEO of the local government; and*
 - c) the Minister.*
- 2) Without limiting the generality of subsection (1), where the auditor considers that —*
 - a) there is any error or deficiency in an account or financial report submitted for Audit;*
 - b) any money paid from, or due to, any fund or account of a local government has been or may have been misapplied to purposes not authorised by law; or*
 - c) there is a matter arising from the examination of the accounts and annual financial report that needs to be addressed by the local government, details of that error, deficiency, misapplication or matter, are to be included in the report by the auditor.*
- 3) The Minister may direct the auditor of a local government to examine a particular aspect of the accounts and the annual financial report submitted for audit by that local government and to —*
 - a) prepare a report thereon; and*
 - b) forward a copy of that report to the Minister, and that direction has effect according to its terms.*

- 4) *If the Minister considers it appropriate to do so, the Minister is to forward a copy of the report referred to in subsection (3), or part of that report, to the CEO of the local government to be dealt with under section 7.12A.*

7.12A. Duties of local government with respect to audits

- 1) *A local government is to do everything in its power to —*
 - a) *assist the auditor of the local government to conduct an audit and carry out his or*
 - b) *her other duties under this Act in respect of the local government; and*
 - c) *ensure that audits are conducted successfully and expeditiously.*
- 2) *Without limiting the generality of subsection (1), a local government is to meet with*
 - a) *the auditor of the local government at least once in every year.*
 - b) *A local government is to examine the report of the auditor prepared under section*

Local Government (Audit) Regulations 1996

10. Report by auditor

- 1) *An auditor's report is to be forwarded to the persons specified in section 7.9(1)*
- 2) *within 30 days of completing the audit.*
 - a) *The report is to give the auditor's opinion on —*
 - b) *the financial position of the local government; and*
 - c) *the results of the operations of the local government.*
- 3) *The report is to include —*
 - a) *any material matters that in the opinion of the auditor indicate significant adverse trends in the financial position or the financial management practices of the local government; and*
 - b) *any matters indicating non-compliance with Part 6 of the Act, the Local Government (Financial Management) Regulations 1996 or applicable financial controls in any other written law; and*
 - c) *details of whether information and explanations were obtained by the auditor; and*
 - d) *a report on the conduct of the audit; and*
 - e) *the opinion of the auditor as to whether or not the following financial ratios included in the annual financial report are supported by verifiable information and reasonable assumptions —*
 - i) *the asset consumption ratio; and*
 - ii) *the asset renewal funding ratio.*
- 4) *In subregulation (3)(e) — asset consumption ratio has the meaning given in the Local Government (Financial Management) Regulations 1996 regulation 50(2); asset renewal funding ratio has the meaning given in the Local Government (Financial Management) Regulations 1996 regulation 50(2).*

- 5) *Where it is considered by the auditor to be appropriate to do so, the auditor is to prepare a management report to accompany the auditor's report and to forward a copy of the management report to the persons specified in section 7.9(1) with the auditor's report*

Local Government (Administration) Regulations

10. Revoking or changing decisions (Act s. 5.25(1)(e))

(1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*

(a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*

(b) *in any other case, by at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee,*

inclusive of the mover.

(1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*

(2) *If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —*

(a) *in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or*

(b) *in any other case, by an absolute majority.*

(3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.*

[Regulation 10 amended in Gazette 31 Mar 2005 p. 1030.]

POLICY IMPLICATIONS

The Audited Annual Financial Report for year ended 30 June 2017 has been prepared in accordance with Council Policies CP/FIN-3200 *Strategic Rating* and CP/FIN-3201 *Significant Accounting Policies*.

FINANCIAL IMPLICATIONS

Advertising of the Annual Electors meeting will incur a small cost and is budgeted for within the 2017/18 Budget.

STRATEGIC IMPLICATIONS

Strategic Community Plan 2012-2022

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.1: Strong community engagement

Strategy 1.1.2 : Improve planning processes to ensure broader engagement and identification of relevant issues from all parties.

RISK IMPLICATIONS

Strategic - failure to comply with legislative requirements leading to damage of reputation and/or financial loss

Control - Annual Financial Audit

COMMUNITY ENGAGEMENT

Engagement will take place in accordance with the Shires Community Engagement Guidelines and will include local public notice, which will inform the community of the date and time of the Annual General Electors meeting.

COMMENTS

Council met on Tuesday 28 November 2017 and resolved the AGM date and time as immediately after the next OCM on 19 December 2017.

The local newspaper (Echo) publishes once per week and cut off is Tuesday for publishing late on Thursday. As a consequence advertising on Thursday 30 November could not be achieved and so a public notice was scheduled for Thursday 7 December. However this will only allow for 12 days notice and the L G Act (5.29) requires 14 days notice to be provided. All other advertising and notices (website, Facebook, Administrations and Libraries) can be compliant with the 14 day requirement.

This has been discussed with the Shire President and it is suggested that Council reconsider its resolved date in order to meet the statutory requirements of section 5.29. The Shire President has agreed to call a Special Council meeting on 5 December 2017 in order to deal with this matter.

Given the requirements of section 5.27 of the L G Act, Council will need to determine a date in January 2018 and prior to 24 January 2018.

The Echo have advised that they will have editions published on 14 December and 21 December 2017, then will break for Christmas, with the next edition appearing on 11 January 2018 (for which notices will need to be received by 22 December 2017).

Note: The current review of the Local Government Act is considering a range of changes, one of which is to the requirement for Electors General Meetings. The position statement of WALGA as per the State Council Agenda of 6 December 2017 is that *Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory*. In addition the current review being undertaken by the Department also includes consideration of the requirements to give public notice of certain matters and how that process may be made more practical and in some cases less onerous to comply with.

ATTACHMENTS

Nil

12. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

**14. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY
DECISION**

Nil

15. MATTERS BEHIND CLOSED DOORS

Nil

16. CLOSURE

The Shire President declared the meeting closed at 6:00pm