



MINUTES OF SPECIAL MEETING OF COUNCIL HELD ON 10 SEPTEMBER 2012

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 Confirmed

Date: _____

Item No	Description	Page No
1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS.....	3
2.	RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	3
3.	DECLARATION OF INTERESTS.....	4
4.	REPORTS.....	5
4.1	COMMUNITY DEVELOPMENT	5
4.1.1	Ord Surface Water Allocation Plan	5
5.	CLOSURE	14

**SHIRE OF WYNDHAM EAST KIMBERLEY
AGENDA
OF THE SPECIAL COUNCIL MEETING
HELD ON MONDAY, 10 SEPTEMBER 2012 AT 5:00 PM.**

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 5:01pm.

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

ATTENDANCE

Cr J Moulden	Shire President
Cr R Addis	Deputy Shire President (by teleconference)
Cr D Ausburn	Councillor
Cr R Dessert	Councillor
Cr Cissy Gore-Birch Gault	Councillor

G Gaffney	Chief Executive Officer
N Kearns	Director Community Development
J Ellis	Director Corporate Services
J Hutson	Executive Assistant
D McCallum	Governance Officer (Minute Taker)

GALLERY

Chris Gunby	Regional Manager Department of Water
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APOLOGIES

Cr J Parker	Councillor
Cr J McCoy	Councillor

LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil

5:31pm The Shire President declares the meeting cancelled due to no quorum being established within the 30 mins after the meeting was due to start as per Local Government (Administration) Regulations 1996 r.8.

3. DECLARATION OF INTERESTS

- **Financial Interest**

Nil

- **Impartiality Interest**

Nil

- **Proximity Interest**

Nil

4. REPORTS

4.1 COMMUNITY DEVELOPMENT

4.1.1 Ord Surface Water Allocation Plan

DATE:	10 September 2012
PROPONENT:	Department of Water
LOCATION:	Shire of Wyndham East Kimberley
AUTHOR:	Nick Kearns, Director Community Development
REPORTING OFFICER:	Nick Kearns, Director Community Development
FILE NO:	GR.09.1

PURPOSE

For Council to note the release of the draft Ord River Surface Water Allocation Plan and provide a response.

BACKGROUND

The Ord River Surface Water Allocation Plan is an update to the Ord River Water Management Plan (DoW 2006) and describes how the Department of Water (DoW) will manage water allocation and licensing in the plan area. This includes securing 865GL of surface water for current irrigation and future expansion of the Ord Irrigation area, defining dam release rules and specifying restriction policies for hydropower, irrigation and environmental water during drought periods.

The Shire did not provide a response to the Department of Water on the 2006 plan. A copy of the Ord River Surface Water Allocation Plan has been previously provided to Councillors.

STATUTORY IMPLICATIONS

There are no statutory implications associated with this report.

POLICY IMPLICATIONS

No policy implications apply in the preparation of this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this item.

STRATEGIC IMPLICATIONS

This report aligns with Council's focus on Economic Development, Key Result Area 3, in and Governance, Key Result Area 5, in the *Shire of Wyndham East Kimberley Strategic Plan 2008*.

- Advocate for opportunities unique to the region
- Promote and facilitate economic opportunities
- Effective partnerships with the public and private sectors
- Leadership and advocacy on issues relevant to the region
- Council has effective relationships with external organisations

COMMUNITY CONSULTATION

Advice has been sought from the Ord Irrigation Cooperative (OIC) and the Ord-East Kimberley Expansion Project (OEKEP). The OEKEP has indicated that the current Ord Allocation Plan may not provide sufficient water allocation to enable the development of irrigated agriculture to its full potential. They are of the view that there is a possibility that sugar cane may emerge as a major crop across the valley, and if that were to happen, there may not be a sufficient allocation.

OEKEP has suggested an interagency workshop to develop and scope out investigative work aimed at increasing the water allocation for irrigated agriculture. The OEKEP have not however provided a formal response on the Plan, at this stage.

The OIC have provided a formal response to DoW and have sent a copy of that correspondence to the Shire (attached). The OIC have raised concerns about the plan's compliance with the National Water Initiative and concerns about the Department of Water's intention to recoup part of the OIC's water entitlement.

COMMENT

The volumes of water allocated to each area of the Ord Irrigation Area have not changed from the plan released in 2006. It is important to note that the allocations are calculated using an average of approximately 16ML of water per hectare at a 95% reliability of supply. The type of crops planted across the irrigation area will impact on the volume of water that is available for future development. However, this plan allows for the full expansion of the Irrigation area including the 14000 hectares in the Northern Territory. If a greater volume of allocated water is required, reliability of supply may need to decrease.

The volume of water allocated to self-supply pumpers is 15GL and approximately 60% of that volume has already been allocated. No additional allocations are set aside for further rural residential or residential developments such as Valentine Falls estate.

There is likely to be an announcement by the State Government at the end of September 2012 regarding the distribution of land in the Goomig, Knox Plain and Ord West bank land areas. The Shire President John Moulden and Chief Executive Officer Gary Gaffney have been briefed about that process. Councillors may want to consider the potential impact that the announcement may have on the community.

Taking on board the suggestions of the OEKEP and the concerns of the OIC, and having regard to the potential needs for the area with regards to both agriculture and urban development, it is suggested that Council submit to the Department of Water on the following basis:

- That consideration is given to additional consultation on the Plan with the broader community, to better explain the Plan with respect to the need for environmental water requirements and how restrictions will apply in drought periods.
- That an interagency working group be formed, along the lines of that suggested by the Ord East Kimberley Expansion Project to discuss the current allocated volumes and the implications for the types of crops planted in the valley and to ensure greater flexibility to anticipated future expanded agricultural opportunities.
- That there is consideration for allocation of water supply for expansion of urban and rural-residential land consistent with the Shire's planning strategies.

- To review new release rules and the potential impacts that may be caused to tour boat operators – to ensure that water is available for tourism operations, particularly during the dry season months.
- That the Shire acknowledges the concerns of the Ord Irrigation Cooperative in regard to compliance with the National Water Initiative and the potential restrictions that may be placed on local growers if the OIC's entitlement is reduced.

A copy of the draft response is provided at Attachment 1.

ATTACHMENTS

The associated attachment will be provided under separate cover.

Attachment 1 – Draft response to Department of Water

Attachment 2 – Copy of letter from Ord Irrigation Cooperative to Department of Water in response to the plan.

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That Council notes Ord River Surface Water Allocation Plan and writes to the Department of Water and submits on the basis of the following:

- **That consideration is given to additional consultation on the Plan with the broader community, to better explain the Plan with respect to the need for environmental water requirements and how restrictions will apply in drought periods.**
- **That an interagency working group be formed, along the lines of that suggested by the Ord East Kimberley Expansion Project to discuss the current allocated volumes and the implications for the types of crops planted in the valley and to ensure greater flexibility to anticipated future expanded agricultural opportunities.**
- **That there is consideration for allocation of water supply for expansion of urban and rural-residential land consistent with the Shire's planning strategies.**
- **To review new release rules and the potential impacts that may be caused to tour boat operators – to ensure that water is available for tourism operations, particularly during the dry season months.**
- **That the Shire acknowledges the concerns of the Ord Irrigation Cooperative in regard to compliance with the National Water Initiative and the potential restrictions that may be placed on local growers if the OIC's entitlement is reduced.**

Attachment 1 – Draft response to Department of Water

10 September 2012

Our Ref: GR.09.1
Your Ref: WT9482
Enquiries: Nick Kearns

Ian Loh
Water Allocation Planning Branch
Department of Water
PO Box 6822
Perth WA 6842

Dear Mr Loh

Ord Surface Water Allocation Plan

Thank you for the opportunity to comment on the Ord River Surface Water Allocation Plan.

The Council of the Shire of Wyndham East Kimberley is supportive of opportunities to promote and provide opportunities for economic and social growth in the East Kimberley. It is generally considered that this Plan demonstrates the availability of water to support that growth and therefore, the Council is supportive of the Plan but provides the following comments by way of a submission:

- That consideration is given to additional consultation on the Plan with the broader community, to better explain the Plan with respect to the need for environmental water requirements and how restrictions will apply in drought periods.
- That an interagency working group be formed, along the lines of that suggested by the Ord East Kimberley Expansion Project to discuss the current allocated volumes and the implications for the types of crops planted in the valley and to ensure greater flexibility to anticipated future expanded agricultural opportunities.
- That there is consideration for allocation of water supply for expansion of urban and rural-residential land consistent with the Shire's planning strategies.
- To review new release rules and the potential impacts that may be caused to tour boat operators – to ensure that water is available for tourism operations, particularly during the dry season months.
- That the Shire acknowledges the concerns of the Ord Irrigation Cooperative in regard to compliance with the National Water Initiative and the potential restrictions that may be placed on local growers if the OIC's entitlement is reduced.

Should you have any further enquiries please do not hesitate to contact Nick Kearns, Director Community Development on (08) 9168 4100 or email nick.kearns@swek.wa.gov.au.

Yours sincerely

Gary Gaffney
Chief Executive Officer

Attachment 2 – Copy of letter from Ord Irrigation Cooperative to Department of Water in response to the plan.



Phone (08) 9168 3300
Mobile 0408 683 300
PO Box 573
Kununurra WA 6743

Chris Gunby
Department of Water
PO Box 625
Kununurra, WA 6743

Ord Irrigation Co-operative Ltd (“OIC”) would like to congratulate the Department of Water (“the Department”) on releasing the draft Ord Surface Water Allocation Plan (“the Plan”) for public comment.

OIC is supportive of Agricultural Expansion and the Departments plan to secure and make available reliable water supplies for a strong and expanding irrigation industry. OIC is also an advocate for the environment and believes that the proposed plan will support a healthy lower Ord River environment.

As a large stakeholder in the region, the OIC would however like to raise several constructive objections in relation to the Plan, as currently proposed. There is the possibility that some sections of the Plan, if left in the final version, could be highly detrimental to OIC members and the community. In its current state, it is in our opinion highly probable that certain aspects of the Plan would stifle the possibility of future water trade, as well as potentially amount to a direct failure to comply with the directives of the National Water Initiative (NWI).

Western Australia signed the Intergovernmental Agreement on a National Water Initiative (NWI) in 2006 and has been continually working towards (and releasing documentation periodically) which evidences its intention to implement transparent objectives in the water industry/market closely aligned with the principles set out in the NWI. As such, the OIC questions why a document has now been released by the Department which clearly doesn't comply with the key principles in the NWI. With a view to clarification on this point, can the Department please confirm that its intention is to breach the NWI?

Unfortunately, it would appear in the Plan that some key aspects of the NWI are not being complied with. The OIC has noted in previous correspondence the Department's error in interchangeably using “entitlements” and “allocation” which has continued into the present plan - these are entirely different concepts with entirely different legal meanings. The OIC strongly believes that the Department needs to correct the Plan and use the unambiguous legal concepts of entitlement and allocation clearly and based on the standard definitions and usages in line with the NWI. For the avoidance of doubt;

Entitlements: such as, in our opinion, the OIC water licence refers to a perpetual entitlement to exclusively access a share of water. The allocation of water to an entitlement is to be made consistent with the requirements and rules set out in the relevant water plan. Entitlements are to:

- specify the essential characteristics of the water product;
- be exclusive;
- be able to be traded, given, bequeathed or leased;
- be able to be subdivided or amalgamated;
- be mortgageable (and in this respect have similar status as freehold land when used as collateral for accessing finance) *a number of OIC shareholders have mortgage water entitlements to support irrigation activities;*
- be enforceable and enforced; and
- be recorded in publicly-accessible reliable water registers that foster public confidence and state unambiguously who owns the entitlement, and the nature of any encumbrances on it (NICWER).

Entitlements also;

- clearly indicate the responsibilities and obligations of the entitlement holder consistent with the *water plan* relevant to the source of the water;
- only be able to be cancelled at Ministerial and agency discretion where the responsibilities and obligations of the entitlement holder have clearly been breached (*the OIC has never breached our License conditions*); and
- be able to be varied, for example to change extraction conditions, where mutually agreed between the government and the entitlement holder (*OIC does not mutually agree to “recoup” entitlements*);

Allocation: The percentage of the entitlement volume that is available for diversion by irrigators in the current water year in regulated rivers that use an “annual accounting” system.

OIC notes these key objectives of the NWI in relation to entitlements and allocations which are to:

- enhance security and certainty of water access
- ensure they possess clear and **nationally**-compatible characteristics
- ensure entitlements clearly assign the risks arising from future changes to the consumptive pool, including unregulated growth in interception through land-use change.

In light of the above, the OIC requests the following constructive concerns are noted and requests the Plan be amended accordingly;

1. The Plan makes reference to “recouping” unused entitlements. It also makes reference to its intention to “match water entitlements with water use” and promotes

confusion by interchangeably misusing the terms “entitlement” and “allocation”. Moreover, the Department has seemingly expressed that should the OIC not be able to show reasonable use for 335GL that the water shall be returned to the consumptive pool where it will be further allocated to third parties. The OIC asserts that the Department cannot legally “recoup” a water entitlement such as exist pursuant to its 335GL licence.

The OIC water entitlement is owned legally by the OIC and beneficially by its members and was fundamentally and unequivocally entered into on the basis of representations made by the Department as to the intended permanency of this water entitlement. It is a right to water which is volumetrically determined pursuant to variations in allocation and has, on occasion, been borrowed against accordingly by OIC members. This was done on the basis of representations made by the Department to OIC and its members as to permanent water entitlements in line with the NWI. Banks have consequently lent money to OIC members and have an equitable interest in some of the water entitlements. The 335GL water entitlement was issued on the basis of representations by the Department of permanent water entitlements in line with the objectives of the NWI. Certain aspects of the Plan appear to be a breach of these NWI objectives and undermine the unambiguous representations made by the Department to the OIC and its members as to permanent water entitlements in line with the NWI. The OIC again requests clarification on whether through this Plan it is the Department’s intention to breach the NWI as signed by the Western Australian Government?

The level of entitlement was originally based on a sugarcane agricultural industry and conveyancing water to support a flow-through-irrigation system. Whilst the Sugar Industry is not currently active, there are very strong possibilities that the industry will re-surface in future years. Shareholders of the cooperative have purchased these entitlements and they are recorded in the National Irrigation Corporations Water Entitlement Register (NICWER).

The volume of entitlement ensures that growers have flexibility in their cropping possibilities from season to season and has been calculated from crop water uses in the region. These water entitlements are separate from land titles and can be permanently or temporarily traded as required. This promotes regional investment, water trading and certainty among water users. In addition, the OIC has systems and software in place that supports these practices.

2. OIC notes from the Plan that the department references “During the past three years the cooperative has taken less than 200GL/yr from Lake Kununurra.....” OIC sees this comment as completely inappropriate and irrelevant for an allocation plan, particularly as the comments fail to reflect the ongoing re-development of OIC irrigation land in line with new industries. The closure of the Sugar Industry had resulted in 50% of the irrigation land being progressively re-introduced to irrigated cropping over the past 4-5 years and the recent water use in no way will reflect the next 10 years as the land is being used for silviculture, horticulture or agriculture.

3. The Department comments in the plan “OIC.....supplies water to 63 irrigation cooperative members”. Individual members are irrelevant to the plan and the OIC

requests that the Department only refers to 111 individual properties, comprising a total area of 15363Ha and a combined 335GL water entitlement.

5. OIC notes that the Department has also separately allocated entitlement to Packsaddle expansion and the East Bank expansion, both of these developments are within the deliverable area of the Stage 1 infrastructure and therefore water entitlement is available from OIC's existing water entitlement. OIC has sold additional water from our entitlement to support new irrigation land that is within the boundary of our license.

6. OIC is extremely supportive of the water and its control to support traditional Aboriginal laws and customs. OIC agrees that this will be difficult to manage, and recognises the environmental benefits associated with periodically reducing flows to below environmental flow requirements; provided this doesn't impact irrigation capacity.

The OIC is also supportive of the annual lowering of the Lake to be able to perform critical asset management practices.

7. OIC is supportive of the social water aspect of the Plan, however it must be noted that the environmental water for many years has been well above the minimum environmental flow requirements and that recreational users and locals may view these as "Normal" conditions. This has already been seen in recent months with conservative environmental flows and changes in downstream geographic's impacting local fishing businesses in the lower Ord River. It should be noted that these businesses make no financial contributions to water storage or transfer and so the OIC would find it unacceptable if any water was intentionally released to satisfy their requirements that impacted negatively on irrigator's allocation.

8. OIC also notes that the Plan currently makes reference to a 104GL entitlement that is currently being requested by Carlton Plain development and requests clarification on the impact to the consumptive pool and the Main Ord subarea. The Carlton Plain development is not listed in the water demand chart, and OIC seeks clarification as to whether this 104GL is included in the 865GL total water availability for irrigation purposes, and a more detailed analysis of hectares to entitlements. The OIC feels 865GL will not support the Stage 1, Main Ord future expansion and the Tarrara-Carlton subarea. OIC is concerned the Department is going to drastically under-allocate inflexible water entitlements to new developments.

It is requested that the Department note that any uncompensated "recouping" or any alteration whatsoever by the Department of the 335GL water entitlement of the OIC will be vigorously defended by the OIC in every available forum and notes that in adopting this policy, the Department would, in the opinion of OIC, fundamentally breach its obligations under the NWI as signed by the Western Australian government.

From a social perspective, the water entitlement is a key factor in land values, cropping systems, irrigator profitability and some of the current suggestions set out in the Plan threaten entire communities and are, in the view of OIC and its members, morally and publicly unacceptable practices by a government entity. Despite the above, there are many aspects of the Plan which the OIC is positively in support of

and we thank the Department for allowing this forum to comment on the proposed Plan. The OIC looks forward to seeing its comments incorporated into the next stage in the development of the Plan.

If you wish to discuss this further please do not hesitate to call me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mathew Dear", with a stylized flourish at the end.

Mathew Dear
General Manager

5. CLOSURE

The Shire President declares the meeting closed at 5.31pm. Thank you to staff for attendance in gallery.