

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

4 September 2014

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**SHIRE OF WYNDHAM EAST KIMBERLEY
MINUTES OF THE SPECIAL COUNCIL MEETING
KUNUNURRA COUNCIL CHAMBERS**

HELD ON THURSDAY 4 SEPTEMBER 2014, AT 5:00 PM

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 5:00pm.

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

ATTENDANCE

Cr J Moulden	Shire President
Cr R Dessert	Deputy Shire President
Cr D Learbuch	Councillor
Cr K Wright	Councillor
Cr B Robinson	Councillor
Cr D Spackman	Councillor
Cr S Cooke	Councillor
K Hannagan	Acting Chief Executive Officer
N Octoman	Director Corporate Services
L Gee	Director Community Development
D McCallum	Governance Officer (Minute Taker)

GALLERY

Nil

APOLOGIES

Cr G Taylor	Councillor
Cr G King	Councillor

LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil

3. DECLARATION OF INTEREST

- **Financial Interest**

Nil

- **Impartiality Interest**

Nil

- **Proximity Interest**

Nil

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

5. PUBLIC QUESTION TIME

Nil

6. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7. PETITIONS

Nil

8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

Nil

9. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil

10. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS / NOTICES OF MOTIONS

Nil

11. REPORTS

11.1 CONSIDERATION TO REVOKE PARTICULAR MOTIONS REGARDING ITEM 12.1 'ADOPTION OF 2014/15 BUDGET' CONSIDERED AT THE 2 SEPTEMBER 2014 SPECIAL MEETING OF COUNCIL

DATE:	4 September 2014
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	Shire of Wyndham East Kimberley
AUTHOR:	Natalie Octoman, Director Corporate Services
REPORTING OFFICER:	Natalie Octoman, Director Corporate Services
FILE NO:	FM.05.2

PURPOSE

For the Council to consider revoking particular motions from the 2 September Special Meeting of Council in relation to item 12.1 "Adoption of 2014/15 Budget", due to the decision to reduce the interest rate for outstanding rates and charges resulting in other decisions being ultra vires; and to also ensure clarity in relation to instalment arrangements and special payment arrangements.

BACKGROUND

On 2 September 2014, the Council considered and adopted the 2014/15 budget with modifications. One modification was the reduction in the interest imposed on outstanding rates and services charges from 11% down to 9% which resulted in several other decisions being unlawful.

All motions have therefore been reviewed to ensure clarity and lawfulness.

STATUTORY IMPLICATIONS

Local Government (Administration) Regulations 1996

Part 2

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 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 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.

Voting Requirements

- 1. To consider - 1/3 of members (3 elected members)*
- 2. To revoke – absolute majority (5 elected members)*

POLICY IMPLICATIONS

The adjustment in the interest rate will not affect the current Rates and Charges Debt Collection Policy as it refers to the interest rate that the Council has adopted in general terms, and does not incorporate a percentage.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

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

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery.

COMMUNITY CONSULTATION

The officer clarified the process required to correct the anomalies with the Department of Local Government and Communities.

COMMENT

The 2014/15 Budget was adopted by the Council at its Special Meeting on 2 September 2014.

There was an alternative motion made during the meeting and subsequently adopted by the Council which reduced the interest rate applied to outstanding rates and charges from 11% down to 9%. This has resulted in several decisions being ultra vires.

In order to enact the decision of the Council in accordance with the intent, the decisions must be lawful. The revocation of parts of the decisions will ensure that the Council does not act ultra vires.

Clarity is also recommended in the separation of fees and charges for instalments arrangements associated with the payment of rates and service charges, from special payment arrangements (associated with rates and service charges).

It should be noted that as the meeting to adopt the budget was only held 2 days ago, the minutes have not yet been produced. The Officer has therefore referred to the original Officer's Recommendations on the page numbers as identified in the agenda and included an exact copy of the Council decision for clarity.

ATTACHMENTS

Nil

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION 1

NOTE: President to call for a show of hands in favour (1/3 of members) to consider the revoking of Council decisions relating to Officer's Recommendation numbers 8, 9, 10 and 11 of Agenda Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014, and recorded on pages 28 and 29 of the Agenda.

That Council:

1. Revokes the Council decision relating to Officer's Recommendation 8 on page 28 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council, pursuant to section 6.45 of the Local Government Act 1995 and in accordance with regulation 64(2) of the Local Government (Financial Management) Regulations 1996, adopt the instalment dates for payment of rates and service charges for the 2014/15 financial year:

- (a) *14 October 2014: To pay in full within 35 days of issue of the rates notice*
- (b) *To pay by 2 equal instalments being:*
 - (i) *14 October 2014: 50% of the rates within 35 days*
 - (ii) *17 February 2015: 50% of the rates within 4 months of (i)*
- (c) *To pay by 4 equal instalments being:*
 - (i) *14 October 2014: 25% of the rates within 35 days*
 - (ii) *16 December 2014: 25% of the rates within 2 months of (i)*
 - (iii) *17 February 2015: 25% of the rates within 2 months of (ii)*
 - (iv) *21 April 2015: 25% of the rates within 2 months of (iii) being 6 months from the expiration of the initial 35 day period and 6 months and 35 days from the date of issue of the notice."*

2. Revokes the Council decision relating to Officer's Recommendation 9 on page 28 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council, in accordance with section 6.51 of the Local Government Act 1995, and Regulation 70 of the Local Government (Financial Management) Regulations 1996, impose interest at 11% per annum calculated on a daily basis on rates and service charges remaining unpaid (excluding eligible pensioners) and where:

- a) *No instalment option is taken – interest is applied 35 days after the date of issue of the Rates Notice.*
- b) *Instalment option is taken – interest is applied after the due date of the instalment, and continues to accrue until the instalment is paid."*

3. Revokes the Council decision relating to Officer's Recommendation 10 on page 29 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council shall recover the costs of any proceedings to recover any rates or service charges and in accordance with section 6.51 of the Local Government Act 1995 and Regulation 70 of the Local Government (Financial Management) Regulations 1996, impose interest at 9% per annum calculated on a daily basis remaining unpaid after becoming due and payable and where:

- a) *No instalment option is taken – interest is applied 35 days after the date of service of the Rates Notice.*
- b) *Instalment option is taken – interest is applied after the due date of the instalment."*

4. Revokes the Council decision relating to Officer's Recommendation 11 on page 29 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council in accordance with section 6.45(3) of the Local Government Act and Regulation 67 of the Local Government (Financial Management) Regulations 1996, impose administration fees for payment of rates and service charges by instalments - \$54.80 for initial establishment plus \$8.90 per instalment notice along with interest at 5.5% per annum calculated daily (excluding eligible pensioners)."

5:01pm

Shire President calls for a show of hands in favour (1/3 of members) to consider the revoking of Council decisions relating to Officer's Recommendation numbers 8, 9, 10 and 11 of Agenda Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014, and recorded on pages 28 and 29 of the Agenda.

The following Councillors indicated their intent to consider the revocation motion:

**Councillor John Moulden
Councillor Raymond Dessert
Councillor Don Learbuch
Councillor Keith Wright
Councillor Beau Robinson
Councillor Darren Spackman
Councillor Sophie Cooke**

COUNCIL DECISION

Minute No. 10558

Moved: Keith Wright

Seconded: Beau Robinson

That Council:

1. Revokes the Council decision relating to Officer's Recommendation 8 on page 28 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council, pursuant to section 6.45 of the Local Government Act 1995 and in accordance with regulation 64(2) of the Local Government (Financial Management) Regulations 1996, adopt the instalment dates for payment of rates and service charges for the 2014/15 financial year:

- (a) *14 October 2014: To pay in full within 35 days of issue of the rates notice*
- (b) *To pay by 2 equal instalments being:*
 - (i) *14 October 2014: 50% of the rates within 35 days*
 - (ii) *17 February 2015: 50% of the rates within 4 months of (i)*
- (c) *To pay by 4 equal instalments being:*
 - (i) *14 October 2014: 25% of the rates within 35 days*
 - (ii) *16 December 2014: 25% of the rates within 2 months of (i)*
 - (iii) *17 February 2015: 25% of the rates within 2 months of (ii)*
 - (v) *21 April 2015: 25% of the rates within 2 months of (iii) being 6 months from the expiration of the initial 35 day period and 6 months and 35 days from the date of issue of the notice."*

2. Revokes the Council decision relating to Officer's Recommendation 9 on page 28 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

"That Council, in accordance with section 6.51 of the Local Government Act 1995, and Regulation 70 of the Local Government (Financial Management) Regulations 1996, impose interest at 11% per annum calculated on a daily basis on rates and service charges remaining unpaid (excluding eligible pensioners) and where:

- (c) *No instalment option is taken – interest is applied 35 days after the date of issue of the Rates Notice.*
- (d) *Instalment option is taken – interest is applied after the due date of the instalment, and continues to accrue until the instalment is paid."*

3. Revokes the Council decision relating to Officer's Recommendation 10 on page 29 of the Agenda for Item 12.1 'Adoption of 2014/15 Budget' presented to the Special Meeting of Council held on 2 September 2014:

“That Council shall recover the costs of any proceedings to recover any rates or service charges and in accordance with section 6.51 of the Local Government Act 1995 and Regulation 70 of the Local Government (Financial Management) Regulations 1996, impose interest at 9% per annum calculated on a daily basis remaining unpaid after becoming due and payable and where:

- c) No instalment option is taken – interest is applied 35 days after the date of service of the Rates Notice.***
- d) Instalment option is taken – interest is applied after the due date of the instalment.”***

- 4. Revokes the Council decision relating to Officer’s Recommendation 11 on page 29 of the Agenda for Item 12.1 ‘Adoption of 2014/15 Budget’ presented to the Special Meeting of Council held on 2 September 2014:**

“That Council in accordance with section 6.45(3) of the Local Government Act and Regulation 67 of the Local Government (Financial Management) Regulations 1996, impose administration fees for payment of rates and service charges by instalments - \$54.80 for initial establishment plus \$8.90 per instalment notice along with interest at 5.5% per annum calculated daily (excluding eligible pensioners).”

Carried Unanimously 7/0

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION 2

That Council:

1. Pursuant to section 6.51(1) and subject to section 6.51(4) of the *Local Government Act 1995* and regulation 70 of the *Local Government (Financial Management) Regulations 1996*, adopts an interest rate of 9% per annum calculated on a daily basis for rates (and service charges) and costs of proceedings to recover such charges that remains unpaid after becoming due and payable (excluding eligible pensioners) and where:
 - a. No instalment option is taken – interest is applied 35 days after the date of issue of the Rates Notice;
 - b. Instalment option is taken – interest is applied after the due date of the instalment, and continues to accrue until the instalment is paid;
2. Amends page 47 and 57 of the 2014/15 Adopted Budget, being note 13 of the Statutory Budget outlining interest charges and instalments for the 2014/15 Financial Year and 2014/15 Fees and Charges respectfully.

COUNCIL DECISION

Minute No. 10559

Moved: Keith Wright

Seconded: Don Learbuch

That Council:

1. Pursuant to section 6.51(1) and subject to section 6.51(4) of the *Local Government Act 1995* and regulation 70 of the *Local Government (Financial Management) Regulations 1996*, adopts an interest rate of 9% per annum calculated on a daily basis for rates (and service charges) and costs of proceedings to recover such charges that remains unpaid after becoming due and payable (excluding eligible pensioners) and where:
 - a. No instalment option is taken – interest is applied 35 days after the date of issue of the Rates Notice;
 - b. Instalment option is taken – interest is applied after the due date of the instalment, and continues to accrue until the instalment is paid;
2. Amends page 47 and 57 of the 2014/15 Adopted Budget, being note 13 of the Statutory Budget outlining interest charges and instalments for the 2014/15 Financial Year and 2014/15 Fees and Charges respectfully.

Carried Unanimously 7/0

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION 3

That Council:

1. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 64(2) of the *Local Government Financial Management) Regulations 1996*, nominates the following due dates for the payment of rates and services charges in full:
 - (a) 17 October 2014; or to pay in full within 35 days of issue of the rates notice
 - (b) To pay by 2 equal instalments being:
 - (i) 50% of the rates: 17 October 2014 or within 35 days of issue of the rates notice;
 - (ii) 50% of the rates: 17 February 2015 or within 4 months of (i)
 - (c) To pay by 4 equal instalments being:
 - (i) 25% of the rates: 17 October 2014: within 35 days of issue of the rates notice;
 - (ii) 25% of the rates: 19 December 2014 or within 2 months of (i);
 - (iii) 25% of the rates: 20 February 2015 or within 2 months of (ii);
 - (iv) 25% of the rates: 24 April 2015 or within 2 months of (iii) being 6 months from the expiration of the initial 35 day period and 6 months and 35 days from the date of issue of the notice.
2. Amends page 47 of the 2014/15 Adopted Budget, being note 13 of the Statutory Budget outlining interest charges and instalments for the 2014/15 Financial Year.

COUNCIL DECISION

Minute No. 10560

Moved: Sophie Cooke

Seconded: Beau Robinson

That Council:

- 1. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 64(2) of the *Local Government Financial Management) Regulations 1996*, nominates the following due dates for the payment of rates and services charges in full:
 - (b) 17 October 2014; or to pay in full within 35 days of issue of the rates notice**
 - (b) To pay by 2 equal instalments being:
 - (i) 50% of the rates: 17 October 2014 or within 35 days of issue of the rates notice;**
 - (ii) 50% of the rates: 17 February 2015 or within 4 months of (i)****
 - (c) To pay by 4 equal instalments being:
 - (i) 25% of the rates: 17 October 2014: within 35 days of issue of the rates notice;**
 - (ii) 25% of the rates: 19 December 2014 or within 2 months of (i);**
 - (iii) 25% of the rates: 20 February 2015 or within 2 months of (ii);**
 - (iv) 25% of the rates: 24 April 2015 or within 2 months of (iii) being 6 months from the expiration of the initial 35 day period and 6 months and 35 days from the date of issue of the notice.******
- 2. Amends page 47 of the 2014/15 Adopted Budget, being note 13 of the Statutory Budget outlining interest charges and instalments for the 2014/15 Financial Year.**

Carried Unanimously 7/0

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION 4

That Council:

1. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 67 of the *Local Government (Financial Management) Regulations 1996*, adopts an instalment administration charge where the owner has elected to pay rates and service charges through an instalment option of \$11.50 per instalment notice after the initial instalment is paid;
2. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 68 of the *Local Government (Financial Management) Regulations 1996*, adopts an interest rate of 5.5% per annum calculated daily where the owner has elected to pay rates and service charges through an instalment option (excluding eligible pensioners);
3. Notes that included in the 2014/15 Fees and Charges is a \$54.80 charge for the initial establishment of a rates special payment arrangement along with an \$8.90 charge for each instalment of the rates special payment arrangement which is consistent with the initial fees and charges endorsed in March 2014.

COUNCIL DECISION

Minute No. 10561

Moved: Keith Wright

Seconded: Don Learbuch

That Council:

1. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 67 of the *Local Government (Financial Management) Regulations 1996*, adopts an instalment administration charge where the owner has elected to pay rates and service charges through an instalment option of \$11.50 per instalment notice after the initial instalment is paid;
2. Pursuant to section 6.45 of the *Local Government Act 1995* and regulation 68 of the *Local Government (Financial Management) Regulations 1996*, adopts an interest rate of 5.5% per annum calculated daily where the owner has elected to pay rates and service charges through an instalment option (excluding eligible pensioners);
3. Notes that included in the 2014/15 Fees and Charges is a \$54.80 charge for the initial establishment of a rates special payment arrangement along with an \$8.90 charge for each instalment of the rates special payment arrangement which is consistent with the initial fees and charges endorsed in March 2014.

Carried Unanimously 7/0

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. CLOSURE

The Shire President declares the meeting closed at 5:06pm.