



**Shire of Derby /  
West Kimberley**

# **AGENDA**

## **New Business of an Urgent Nature Ordinary Council Meeting Wednesday, 25 September 2019**

**Date: Wednesday, 25 September 2019**

**Time: 5.30pm**

**Location: Council Chambers  
Clarendon Street  
Derby**

**Amanda O'Halloran**

**Chief Executive Officer**





**Order Of Business**

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## 17 NEW BUSINESS OF AN URGENT NATURE

### 17.1 APPROVAL FOR REMOTE ATTENDANCE

**File Number:** 4150

**Author:** Danielle Hurstfield, Manager Administration and Governance

**Responsible Officer:** Amanda O'Halloran, Chief Executive Officer

**Authority/Discretion:** Executive

#### SUMMARY

Council is required to approve a Councillors attendance via telephone or other means of instantaneous communications if a Councillor is not physically present at a meeting.

#### DISCLOSURE OF ANY INTEREST

Nil

#### BACKGROUND

In accordance with regulation 14A of the *Local Government (Administration) Regulations 1996*, Council must approve, by absolute majority, the attendance of a person

To approve Cr Geoff Davis attendance at the Ordinary Council Meeting held 31 October 2019 via telephone communication.

#### LEGISLATIVE IMPLICATIONS

##### 14A. Attendance by telephone etc. (Act s. 5.25(1)(ba))

- (1) A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if —
  - (a) the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting; and
  - (b) the person is in a suitable place; and
  - (c) the council has approved\* of the arrangement.
- (2) A council cannot give approval under subregulation (1)(c) if to do so would mean that at more than half of the meetings of the council, or committee, as the case may be, in that financial year, a person (other than a person with a disability) who was not physically present was taken to be present in accordance with this regulation.
- (3) A person referred to in this regulation is no longer to be taken to be present at a meeting if the person ceases to be in instantaneous communication with each other person present at the meeting.
- (4) In this regulation —

**disability** has the meaning given in the *Disability Services Act 1993* section 3;

**suitable place** —

  - (a) in relation to a person with a disability — means a place that the council has approved\* as a suitable place for the purpose of this paragraph; and
  - (b) in relation to any other person — means a place that the council has approved\* as a suitable place for the purpose of this paragraph and that is located —

- (i) in a townsite or other residential area; and
- (ii) 150 km or further from the place at which the meeting is to be held under regulation 12, measured along the shortest road route ordinarily used for travelling;

**townsite** has the same meaning given to that term in the *Land Administration Act 1997* section 3(1).

\* Absolute majority required.

*[Regulation 14A inserted: Gazette 31 Mar 2005 p. 1031; amended: Gazette 4 Mar 2016 p. 649-50.]*

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil

**STRATEGIC IMPLICATIONS**

GOAL	OUTCOME	STRATEGY
Goal 4: Good governance and an effective organisation	4.1 Effective governance and leadership	4.1.4 Ensure governance policies and procedures are in accordance with legislative requirements.

**RISK MANAGEMENT CONSIDERATIONS**

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
<b>Legal &amp; Compliance:</b> Compliance	Unlikely	Minor	Low	Council approve attendance via telephone or instantaneous communications.

**CONSULTATION**

Internal consultation has been undertaken with relevant areas.

**COMMENT**

Councillors have advised that prior commitments may result in a quorum for the October 2019 Ordinary Council Meeting not being achieved. On this basis this item approval for Cr Geoff Davis attendance via telephone or instantaneous communications prior to the meeting being opened.

**VOTING REQUIREMENT**

Simple majority

**ATTACHMENTS**

Nil

**RECOMMENDATION**

**That Council, BY AN ABSOLUTE MAJORITY:**

- 1. APPROVES Cr Geoff Davis and Cr \_\_\_\_\_ attendance at the Council Meeting to be held 31 October 2019 via telephone or instantaneous communications in accordance with regulation 14A(1) of the *Local Government (administration) Regulations 1996*;**
- 2. APPROVES Perth, Western Australia, and \_\_\_\_\_, Western Australia as a suitable place for Councillor attendance in accordance with regulation 14A(4) of the *Local Government (Administration) Regulations 1996*.**

**17.2 SPECIAL COUNCIL MEETING: THURSDAY 24 OCTOBER 2019**

**File Number:** 4150

**Author:** Amanda O'Halloran, Chief Executive Officer

**Responsible Officer:** Amanda O'Halloran, Chief Executive Officer

**Authority/Discretion:** Executive

**SUMMARY**

The purpose of this report is to schedule a Special Council Meeting on Thursday 24 October 2019 for the Swearing in of Elected Members, Election of the Shire President and Deputy Shire President and determination of Elected Member seating arrangements.

**DISCLOSURE OF ANY INTEREST**

Nil

**BACKGROUND**

The Ordinary Elections of Council are being held State wide on the 19 October 2019. This year's election sees 5 vacant positions of Council.

It is a statutory requirement under section 2.29 of the *Local Government Act 1995* for Councillors to take the oath or affirmation of allegiance and make a declaration in the prescribed form before acting in the Office.

Election of the Shire President and Deputy Shire President is prescribed in Schedule 2.3 Division 1 & 2. To support and enhance the functions and operations of the Shire and Council it is intended to hold the Special Meeting of Council as soon as is practicable after the Ordinary Elections of Council on the 19 October 2019.

**STATUTORY ENVIRONMENT**

Clause 12(3) of the *Local Government (Administration) Regulations 1996*

**POLICY IMPLICATIONS**

Nil

**FINANCIAL IMPLICATIONS**

Nil, all costs have been accounted for in the 2019/20 Budget.

**STRATEGIC IMPLICATIONS**

GOAL	OUTCOME	STRATEGY
Goal 4: Good Governance and an effective organisation	Outcome 4.1 Effective governance and leadership	Strategy: 4.1.3: Strengthen the role of Councillors by informing, resourcing, skilling and supporting their role. Strategy 4.1.4: Ensure governance policies and procedures are in accordance with legislative requirements

**RISK MANAGEMENT CONSIDERATIONS**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>CONSEQUENCE</b>	<b>RISK ANALYSIS</b>	<b>MITIGATION</b>
<p><b>Legal &amp; Compliance:</b> It is a statutory requirement under section 2.29 of the <i>Local Government Act 1995</i> for Councillors to take the oath or affirmation of allegiance and make a declaration in the prescribed form before acting in the Office. Election of the Shire President and Deputy Shire President is prescribed in Schedule 2.3 Division 1 &amp; 2.</p>	Unlikely	Major	Low	Approval of this Meeting ensures that all statutory requirements are met and reduces the risk of noncompliance accordingly.

**CONSULTATION**

Elected Members

**COMMENT**

In accordance with the Clause 12(3) of the *Local Government (Administration) Regulations 1996*, notice is hereby given of a Special Meeting of Council to be held as follows:

Date: Thursday, 24 October 2019

Time: 5.30pm

Venue: Council Chambers, 30 Clarendon Street, Derby

The purpose of this meeting will be as follows;

1. Swearing in of newly Elected Members.
2. Election of President.
3. Declaration of Office by newly elected President
4. Election of Deputy President.
5. Declaration of Office by newly elected Deputy President.
6. Seating arrangements for Elected Members.

Members of the public are welcome to attend this meeting.

**VOTING REQUIREMENT**

Simple majority



**ATTACHMENTS**

1. **Public Notice - Special Council Meeting 24 October 2019**  

**RECOMMENDATION**

**That Council approve the intention to hold a Special Meeting on Thursday, 24 October 2019 at 5.30pm at 30 Clarendon Street Derby for the purpose of swearing in of Councillors, the Election of President and Deputy President and drawing the seating arrangements for Elected Members.**



**Shire of Derby /  
West Kimberley**

## **Notice of Special Council Meeting - 24 October 2019**

In accordance with the Clause 12(3) of the Local Government (Administration) Regulations 1996, notice is hereby given of a Special Meeting of Council to be held as follows:

Date: Thursday, 24 October 2019  
Time: 5.30pm  
Venue: Council Chambers, 30 Clarendon Street, Derby

The purpose of this meeting will be as follows;

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2. Election of President.
3. Declaration of Office by newly elected President
4. Election of Deputy President.
5. Declaration of Office by newly elected Deputy President.
6. Seating arrangements for Elected Members.

Members of the public are welcome to attend this meeting.

**Amanda O'Halloran  
Chief Executive Officer**

**17.3 FITZROY RIVER FORUM - UPDATE****File Number: 4050****Author: Noel Myers, Manager Planning****Responsible Officer: Amanda O'Halloran, Chief Executive Officer****Authority/Discretion: Information****SUMMARY**

This report provides an update to Council following the Fitzroy Forum held in Fitzroy Crossing over the 8<sup>th</sup> and 9<sup>th</sup> August 2019.

**DISCLOSURE OF ANY INTEREST**

Nil

**BACKGROUND**

The McGowan Government made three election commitments for the Fitzroy River which are summarised as;

1. To create the Fitzroy National Park;
2. Support the protection and development of a management plan for the Fitzroy River; and
3. To not allow the Fitzroy River or its tributaries to be dammed.

The Government has also committed to prepare a water allocation plan.

- In order to coordinate the delivery of the election commitments, the Government has proposed to prepare the Fitzroy River management plan that will be a single document that ties all of the Government's Fitzroy River election commitments together;
- The purpose of developing the plan is to protect the health of the river while providing a basis for sustainable economic development;
- The other commitments – national park, position on dams, water allocation plan can be viewed as pre-committed actions within the broader Fitzroy River management plan.

The plan will be prepared having due regard to published research and with inputs obtained from stakeholder consultation process and the results of the research and consultation will be reflected in the management plan. The latest meeting held on the 8<sup>th</sup> and 9<sup>th</sup> August 2019 is consistent with this intent to seek and incorporate stakeholder visions into the preparation of management plans.

The Governments timeline to have all components of their election commitments in place is October 2020.

**STATUTORY ENVIRONMENT**

N/A

**POLICY IMPLICATIONS**

N/A

**FINANCIAL IMPLICATIONS**

N/A

**STRATEGIC IMPLICATIONS**

GOAL	OUTCOME	STRATEGY
<b>Community Strategic Plan 2012-2021</b>		
<p><u>Goal 2:</u></p> <p>A balance between the natural and built environments Sustainable natural and built environments that meet the needs of the community and support future growth</p>	<p><u>Outcome 2.9:</u></p> <p>Efficient use and management of water resources</p>	<p><u>Strategy 2.9.3:</u></p> <p>Support a coordinated approach to local and regional water resource management</p>
<p><u>Goal 3:</u></p> <p>A strong and diverse local economy</p> <p>A strong local economy that is supported by a broad industry base with opportunities for business development and employment</p>	<p><u>Outcome 3.2:</u></p> <p>A strong and diverse industry base providing community benefits</p>	<p><u>Strategy 3.2.3:</u></p> <p>Investigate agricultural or primary industry diversification opportunities</p>
<b>Local Planning Strategy</b>		
<p>s.3.7 Mining, pastoral and agricultural lands</p>	<p><u>Strategy:</u></p> <ul style="list-style-type: none"> <li>• Support the expansion and diversity and diversification of primary production</li> </ul>	<p><u>Action:</u></p> <p>55. work with other agencies in identifying appropriate locations for agricultural and horticultural activates;</p> <p>55. Co-operate with FitzCam in identifying within the Fitzroy catchment that may be suitable for diversification</p>
<p>s.3.5 Land for heritage, culture and the environment</p>	<p><u>Strategy:</u></p> <ul style="list-style-type: none"> <li>• Recognise aboriginal people as the traditional occupants of lands within the Shire;</li> <li>• Support protect and enhance the cultural environmental values of the Fitzroy River</li> <li>• Recognise conservation opportunities as identified in the Kimberley Science and Conservation Strategy</li> </ul>	<p><u>Action:</u></p> <p>43. Support rights of aboriginal people through application of the Native Title Act 1993;</p> <p>47. Support improved protection and management of the environmental values of the Fitzroy river through processes such as FitzCAM</p> <p>51. Designate land reserved for conservation, water catchment and</p>

		parks and recreation accordingly.
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**CONSULTATION**

N/A

**COMMENT**

The August 8<sup>th</sup> and 9<sup>th</sup> meeting was attended by Manager Planning Services.

As detailed above, the purpose of the meeting was for stakeholders and contributing observers including the government to discuss the development of the plans, obtain feedback from stakeholders about the preparation of the Fitzroy Management Plan, the Water Allocation Plan and discuss future decisions about water allocation and uses within the Fitzroy River Catchment Area;

- The Department of Water (DoW) are in process of preparing a Water Allocation Plan that will be used to inform decisions on future irrigated water projects;
- A variety of stakeholders were represented at the meeting with traditional owners, prospective proponents, community members, environmental groups and various government agencies with carriage to deliver upon the State Government election promises;
- The meeting was held behind closed doors with stakeholders in attendance agreeing to a variation of the “Chatham House rule’ to keep discussions contained to the room and as a consequence ‘running’ commentary on the discussions that took place over the two days are not contained within this report.

Notwithstanding the limitation on reciting the content of specific discussions from the meeting, it is reasonable to state that there is a diversity of view as to the impact that the various election commitments will have upon stakeholders’ interests across areas of indigenous rights, environmental considerations and economic opportunities. The view of the room was encapsulated in a joint communique that was issued on 9 August 2019 titled Fitzroy Forum – “One River for All of Us, Black and White”. (Attachment 1).

At this juncture work is ongoing regarding the progression of the various election commitments. In the absence of the draft management plan and water allocation plan it is difficult to arrive at a firm position on the overall issue. Whilst work towards the creation of the National Park/s has been substantially progressed the final shape and form of such parks is still unknown.

The Council’s Community Strategic Plan and Local Planning Strategy both articulate strategies and actions that relate to and are consistent with aspects of the current scope of work being undertaken by the Government to progress their election commitments concerning the creation of economic opportunities but also advocate for the consideration and protection of the Fitzroy Rivers environmental and cultural values.

**SUMMARY:**

Clearly there is a diversity of view that arises from consultation process and it is the role and responsibility of the agencies preparing the various management plans to ensure that the issues raised during the consultation phases are appropriately factored into the draft documents that will be released for further consultation and review.

As detailed in the preceding section of this report, the approach to support development and planning is considered to be consistent with the Council's strategic documents that seek to explore future economic opportunities that are balanced with preservation of the Fitzroy Rivers environmental and cultural values.

It is recommended that the Council continue to engage with the Fitzroy Forum as this matter progresses and review the position once draft management plans are released for comment.

### **VOTING REQUIREMENT**

Simple majority

### **ATTACHMENTS**

1. Fitzroy Communique  

### **RECOMMENDATION**

**That Council NOTES the Report and confirms Council's approach towards the State Governments Fitzroy River Commitments is to support development and planning that is consistent with the Council's strategic planning documents that seek to explore future economic opportunities that are balanced with preservation of the Fitzroy Rivers environmental and cultural values.**

## FITZROY FORUM

### “One River for All of Us, Black and White”

#### Communique

9 AUGUST 2019

- Stakeholders and contributing observers, including WA Government representatives, attended the Fitzroy Forum, organised by the WA Government, at Fitzroy River Lodge in Fitzroy Crossing on 8 and 9 August 2019.
- The Forum commenced with a Welcome to Country delivered by Mary Aiken, Bunuba elder, and Brendaleen Shaw, Gooniyandi elder.
- Dr Anne Poelina (Chair, Martuwarra Fitzroy River Council) and Alastair Shields (Independent Chair, Fitzroy Valley Stakeholder Group) were the Co-Chairs of the Forum, supported by Bardy McFarlane, Fitzroy Valley Stakeholder Convener.
- The Forum had wide ranging and constructive discussions concerning:
  - The potential for a shared vision and shared values concerning sustainable development and appropriate protection measures;
  - National Heritage Place Listing under the EPBC Act;
  - Water resource and extraction opportunities in the Fitzroy Valley Catchment area;
  - A proposal to create buffer zones;
  - The CSIRO Northern Australia Water Assessment report;
  - Existing Australian Government and State Government approval processes
- The Forum resolved that there is broad agreement on the following principles to apply if there is a Development Proposal in the Fitzroy Catchment:
  - Sincere engagement between proponents and traditional owners to achieve mutually acceptable outcomes.
  - Early engagement and communication with Traditional Owners.
  - Acknowledgement of the WA Govt position of no dams of Fitzroy River and tributaries (noting that there is a need for clarification on this).
  - Groundwater and surface water extraction and off-stream storage may be considered, together with pumping out of the river at high-flow.
  - There is a proposal for a buffer zone (further work to be done before agreed).
  - Rigorous compliance with existing approval requirements (e.g. National Heritage Listing, EPBC Act and State approval processes).
  - Decisions must utilise western science and Aboriginal Traditional Knowledge/Indigenous science.

- Any approvals should contain conditions to protect the environment as per existing approval requirements.
- Desire to achieve/leverage improved social, cultural and economic outcomes (aim for a higher good and all aspects considered) for the community and prevent negative social and economic impacts.
- Desire for certainty of processes and timelines, working in good faith.
- Effective monitoring, compliance and regulation.