



**Shire of Derby /
West Kimberley**

AGENDA

Special Council Meeting Monday, 23 October 2023

I hereby give notice that a Special Meeting of Council will be held on:

Date: Monday, 23 October 2023

Time: 4:30 PM

**Location: Council Chambers
Clarendon Street
Derby**

Neil Hartley

Acting Chief Executive Officer



Our Guiding Values

We are **PROUD** of who we are and where we live.

We will create a **POSITIVE LEGACY** for our children and children's children.

We will go about our business with **INTEGRITY, TRANSPARENCY and AUTHENTICITY**.

We value and **RESPECT** what our community has to say and will strive to make things happen.

We are **PROUD** of and value the **KNOWLEDGE** of our diverse and strong people and cultures.

We value our **RELATIONSHIPS** and will work with others to achieve common goals and gain maximum impact.

We are **PROUD** of and **COMMITTED** to the responsible preservation of our unique natural environment and making sure our built environment reflects our current and future needs.

We are open for and encourage business, industry and all aspects of **COMMUNITY DEVELOPMENT**, particularly our thriving arts and cultural scene.

Disclaimer

No responsibility whatsoever is implied or accepted by the Shire of Derby/West Kimberley (Shire) for any act, omission or statement or intimation occurring during Council or Committee meetings.

The Shire disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by any Council Member or officer of the Shire during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire.

The Shire warns that anyone who has any application lodged with the Shire must obtain and should only rely on written confirmation of the outcome of the application and any conditions attaching to the decision made by the Shire in respect of the application.

Notes for Members of the Public

PUBLIC QUESTION TIME

The Shire of Derby/West Kimberley extends a warm welcome to you in attending any Shire meeting. The Shire is committed to involving the public in its decision making processes whenever possible. The ability to ask questions during 'Public Question Time' is of critical importance in pursuing this public participation objective. The Shire sets aside a period of 'Public Question Time' to enable a member of the public to put questions. Questions should only relate to the business of the Shire and should not be a statement or personal opinion. Upon receipt of a question from a member of the public, the Presiding Member may either answer the question or direct it to an officer to answer, or it will be taken on notice.

Any comments made by a member of the public become a matter of public record as they are minuted by Council. Members of the public are advised that they are deemed to be held personally responsible and legally liable for any comments made by them that might be construed as defamatory or otherwise considered offensive by any other party.

MEETING FORMALITIES

Local government Council meetings are governed by legislation and regulations. During the meeting, no member of the public may interrupt the meetings proceedings or enter into conversation. Members of the public shall ensure that their mobile telephone or audible pager is not switched on or used during any Shire meeting.

Members of the public are hereby advised that the use of any electronic, visual or audio recording device or instrument to record proceedings of the meeting is not permitted without the permission of the Presiding Member.

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Notes for Council Members

NATURE OF COUNCIL'S ROLE IN DECISION MAKING

Advocacy:	When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
Executive/Strategic:	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations, grants, and setting and amending budgets.
Legislative:	Includes adopting local laws, town planning schemes and policies.
Administrative:	When Council administers legislation and applies the legislative regime to factual situations and circumstances that affect the rights of people. Examples include town planning applications, building licences and other decisions that may be appealable to the State Administrative Tribunal.
Review:	When Council reviews a decision made by Officers.
Information:	Includes items provided to Council for information purposed only that do not require a decision of Council (that is for 'noting').

ALTERNATIVE MOTIONS

Council Members wishing to make alternative motions to officer recommendations are requested to provide notice of such motions in written form to the Chief Executive Officer prior to the Council meeting.

DECLARATIONS OF INTERESTS

Council Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences. Section 5.60A of the *Local Government Act 1995* states;

"a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person."

Section 5.60B states;

"a person has a proximity interest in a matter if the matter concerns –

(a) a proposed change to a planning scheme affecting land that adjoins the person's land;
or

(b) a proposed change to the zoning or use of land that adjoins the person's land; or

(c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land."

MEETING DATES

At its Ordinary Meeting of Council on 27 October 2022, Council adopted the following meeting dates for 2023:

January			Council in Recess
Thursday	23 February 2023	5.30 pm	Council Chambers, Derby
Thursday	30 March 2023	5.30 pm	Fitzroy Crossing
Thursday	27 April 2023	5.30 pm	Council Chambers, Derby
Thursday	25 May 2023	5.30 pm	Fitzroy Crossing
Thursday	29 June 2023	5:30pm	Council Chambers, Derby
Thursday	27 July 2023	11.00am	Remote Aboriginal Community
Thursday	31 August 2023	5.30 pm	Council Chambers, Derby
Thursday	28 September 2023	5.30 pm	Fitzroy Crossing
Thursday	26 October 2023	5.30 pm	Council Chambers, Derby
Thursday	30 November 2023	5.30 pm	Fitzroy Crossing
Thursday	14 December 2023	5.30 pm	Council Chambers, Derby

Council's Compliance and Strategic Review Committee and the Commercial Committee meet when required. Details of these meetings are advised as appropriate.

APPLICATION FOR LEAVE OF ABSENCE

In accordance with Section 2.25 of the *Local Government Act 1995*, an application for leave requires a Council resolution granting leave requested. Council may grant approval for Leave of Absence for a Council Member for ordinary Council meetings for up to but not more than six consecutive meetings. The approval of the Minister is required for leave of absence greater than six ordinary Council meetings.

This approval must be by Council resolution and differs from the situation where a Council Member records their apologies for the meeting. A failure to observe the requirements of the Act that relates to absence from meetings can lead to an Elected Member being disqualified should they be absent without leave for three consecutive meetings.

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1 DECLARATIONS / SWEARING IN

1.1 SWEARING IN OF PRESIDENT

File Number: 4285

Author: Neil Hartley, Director - Strategic Business

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Executive

SUMMARY

The office of President is elected at large as part of the biennial election for the Shire, however the successful candidate must be sworn in before they can act in the role, which has a four-year term of office. This needs to occur prior to the official commencement of the Special Council Meeting.

The President of the Council will take an oath and be sworn in before Justice of the Peace, Peta Smallshaw.

BACKGROUND

For the first time at the Shire of Derby/West Kimberley, the office of President was elected at large as part of the 2023 biennial election for the Shire. As a "Tier 2" local government in Western Australia, and until the State Government via the Local Government Act decides otherwise, this will be the model for future elections for this position.

The term of office of President begins when the member is elected (noting however that a Council Member cannot act in that capacity until being sworn in) and ends when the President resigns from office, does not make the required declaration of office within two months after being declared elected to that office, or when the position of President is next elected at or after the next ordinary elections. The President when elected at large is not a Councillor, so is addressed as Mr/Mrs, not Cr. as has historically been the case.

Justice of the Peace, Peta Smallshaw will officiate, following which the President will officially take up the position of President, and presiding member for this and future Council meetings.

STATUTORY ENVIRONMENT

Local Government Act S. 2.29 (Declaration) requires that a person elected as president or as a Council Member has to make a declaration in the prescribed form before acting in the office.

ATTACHMENTS

Nil

Mr Peter McCumstie, having read aloud and signed the Declaration required under the Local Government Act 1995, was formally sworn in as President before Justice of the Peace, Peta Smallshaw.

1.2 SWEARING IN/DECLARATION BY COUNCIL MEMBERS**File Number:** 4252**Author:** Neil Hartley, Director - Strategic Business**Responsible Officer:** Amanda Dexter, Chief Executive Officer**Authority/Discretion:** Executive**SUMMARY**

All newly elected Council Members are required to undertake a declaration to office and this will occur before Justice of the Peace, Peta Smallshaw. This needs to occur prior to the official commencement of the Special Council Meeting.

BACKGROUND

Each successful candidate of the election is required to make a declaration before they can act in the capacity of a Council Member; or as the council elected Deputy President. This is generally called a "swearing in" ceremony and takes place at a Special Council Meeting following closely after the election.

The declaration of office is a document that states the Council Member will faithfully perform their duties and will adhere to the principles and rules established by the Shire's Code of Conduct.

All newly elected Council Members are required to undertake a declaration to office in accordance with the requirements of Section 2.29 of the Local Government Act 1995, regulation 13 of the Local Government (Constitution) Regulations 1998 and the Oaths, Affidavits and Statutory Declarations Act 2005. This needs to occur prior to the official commencement of the Special Council Meeting in order to have successful candidates sworn in as Council Members, and then able to establish a quorum to sit as a Council.

In accordance with previous precedents the swearing in will be witnessed by Justice of the Peace, Peta Smallshaw.

The prescribed form will be provided to Council Members by the Chief Executive Officer at the Council meeting.

Newly elected Council Members will undertake their declaration in alphabetical order.

STATUTORY ENVIRONMENT

Local Government Act S. 2.29 (Declaration) requires that a person elected as president or as a Council Member has to make a declaration in the prescribed form before acting in the office.

ATTACHMENTS**1. Declaration by Council Members**

The following elected Council Members read aloud and signed the Declaration required under *the Local Government Act 1995*, and were formally sworn in, witnessed by Justice of the Peace, Peta Smallshaw:

1. Cr Brett Angwin
2. Cr Paul Bickerton
3. Cr Brian Ellison
4. Cr Wayne Foley
5. Cr Kerrissa O'Meara
6. Cr Andrew Twaddle



Form 7.

Declaration by elected member of Council [r. 13(1)(c)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998

Declaration by Elected Member

I, _____ of (1) _____,
having been elected to the office of Councillor of the SHIRE OF DERBY/WEST KIMBERLEY, declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the code of conduct adopted by the Shire of Derby/West Kimberley under section 5.104 of the *Local Government Act 1995*.

Declared at: _____ on _____

By: _____

Before me: _____

(1) Insert your residential address.

Derby

(08) 9191 0999 | 30 Loch Street
sdwk@sdwk.wa.gov.au | PO Box 94, Derby WA 6728

Fitzroy Crossing

(08) 9191 5355 | Flynn Drive
sdwk@sdwk.wa.gov.au | PO Box 101, Fitzroy Crossing



2 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS**3 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

A Councillor may attend council or committee meetings by electronic means if the member is authorised to do so by the President or the Council. Electronic means attendance can only be authorised for up to half of the Shire's in-person meetings they have attended in total, in any rolling 12 months prior period. Authorisation can only be provided if the location and the equipment to be used by the Councillor are suitable to enable effective, and where necessary confidential, engagement in the meeting's deliberations and communications.

4 DISCLOSURE OF INTERESTS**4.1 Declaration of Financial Interests****4.2 Declaration of Proximity Interests****4.3 Declaration of Impartiality Interests****5 APPLICATIONS FOR LEAVE OF ABSENCE****6 PUBLIC TIME**

Due to the nature of this meeting, being a Special Council Meeting, questions relating to matter relating to this agenda may be addressed.

6.1 Public Question Time**6.2 Public Statements****7 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

8 REPORTS

8.1 ELECTION AND SWEARING IN OF DEPUTY PRESIDENT

File Number: 4285

Author: Neil Hartley, Director - Strategic Business

Responsible Officer: Amanda Dexter, Chief Executive Officer

Authority/Discretion: Executive

SUMMARY

The Deputy President of the Council is elected for a two-year term of office and will take an oath and be sworn in before Justice of the Peace, Peta Smallshaw.

BACKGROUND

Schedule 2.3, Division 2 of the Local Government Act 1995 sets out an acceptable procedure to follow. The election is to be conducted in accordance with the procedure prescribed by the President as the first matter dealt with (vis. following the swearing in of the President - being a position elected by electors as part of the biennial election; and the Elected Members).

The Chief Executive Officer will act as the Returning Officer for this election. Nominations for the office are to be received in writing by the Returning Officer/CEO before the meeting, or during the meeting before the time (which will be announced by the Returning Officer/CEO) for the close of nominations.

Council Members are to vote on the matter by secret ballot as if they were electors voting at an election. The votes cast are to be counted, and the successful candidate determined in accordance with Schedule 4.1. That is, using the "optional preferential" counting system, which is exactly the same as how the votes were counted after the biennial election for Council Members (and would also have been for the President had there been more than one nomination).

The Returning Officer/CEO is to declare and give notice of the result in accordance with regulation 11F of the *Local Government (Constitution) Regulations 1998*.

Swearing in of Deputy Shire President - The same procedure as for Item 'swearing in of President' applies. Justice of the Peace, Peta Smallshaw will officiate.

Note: If, when the votes cast are counted, there is an equality of votes between two or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and, not more than seven days later, a special meeting of the council is to be held. Should this occur, it is intended to adjourn the meeting for a short period of time (10 to 20 minutes as declared by the President at the meeting) to enable the President to consider when a Special Council Meeting ought to be scheduled, and then resume the meeting. At this Special Council Meeting, any nomination for the office may be withdrawn, and further nominations may be made, before Council Members again vote.

ATTACHMENTS

Nil

The Returning Officer/CEO called for nominations in writing for the position of Deputy Shire President. The following nominations were received:

1. Cr _____ Nominated in writing by Cr _____
2. Cr _____ Nominated in writing by Cr _____
3. Cr _____ Nominated in writing by Cr _____

Ballot papers were drawn. The meeting was adjourned at (time) to prepare the ballot papers and resumed at (time).

The vote was conducted by secret ballot using the “optional preferential” counting system, with the Acting Chief Executive Officer as the Returning Officer.

The Returning Officer/CEO declared Cr _____ elected as Deputy Shire President for a period of two years.

Cr _____ having read aloud and signed the Declaration required under the Local Government Act 1995, was formally sworn in as Deputy Shire President before Justice of the Peace, Peta Smallshaw.

Note: Notice of the result will be provided in accordance with regulation 11F of the Local Government (Constitution) Regulations 1998.

8.2 BALLOT FOR SEATING ORDER FOR COUNCIL MEMBERS**File Number: 4252****Author: Neil Hartley, Director - Strategic Business****Responsible Officer: Amanda Dexter, Chief Executive Officer****Authority/Discretion: Administrative****SUMMARY**

Consistent with the Shire's Standing Orders Local Laws, and as has historically occurred following past elections, a ballot will be conducted by the Chief Executive Officer for the order of seating of Council Members in the Chambers.

This report is to endorse the seating position for the Deputy President and the balloted seat positions for individual Council Members.

DISCLOSURE OF ANY INTEREST

Nil applicable.

BACKGROUND

The President, Deputy President (by historic convention), Chief Executive Officer, Shire Staff and Minute Taker all have pre-assigned seats. Seating for remaining Council Members are numbered as Elected Member 3 – 9. As has historically occurred following past elections, a ballot has been conducted by the Chief Executive Officer for the order of seating of these Council Members in the Chamber.

The President will invite Council Members to take their seats after the ballot.

Please see attached plan of Council Chamber seating arrangements.

STATUTORY ENVIRONMENT

Shire of Derby/West Kimberley Standing Orders clause 8.2 (Members to Occupy Own Seats) outlines that at the first meeting after each ordinary elections, the CEO is to allot by random draw, a position at the Council table to each Council Member. Council Members are to occupy that seat at Council Meetings until Council resolves otherwise.

POLICY IMPLICATIONS

Nil applicable.

FINANCIAL IMPLICATIONS

Nil applicable.

STRATEGIC IMPLICATIONS

GOAL	OUR PRIORITIES	WE WILL
1. Leadership and Governance	1.2 Capable, inclusive and effective organisation	1.2.1 Provide strong civic leadership

RISK MANAGEMENT CONSIDERATIONS

RISK	LIKELIHOOD	CONSEQUENCE	RISK ANALYSIS	MITIGATION
Legal & Compliance: Non-compliance with the Shire's Standing Orders can result in a breach of the Code of Conduct.	Rare	Moderate	Low	Council Members to comply with ballot draw
Reputation: Non-compliance with the Shire's Standing Orders could result in negative media.	Rare	Moderate	Low	Council Members to comply with ballot draw

CONSULTATION

The process is consistent with the Shire's Standing Orders. There is no community consultation necessary on this occasion.

COMMENT

Nil applicable.

VOTING REQUIREMENT

Simple majority

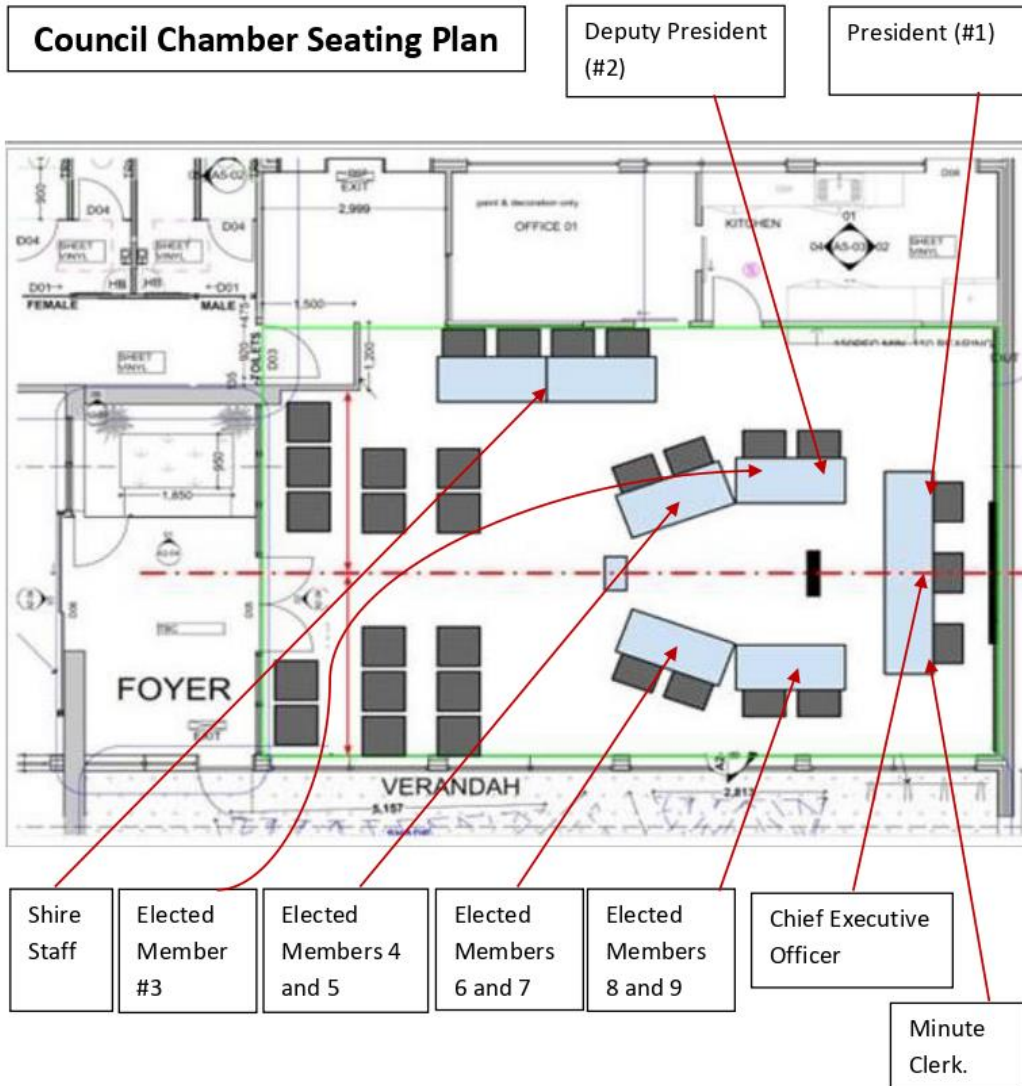
ATTACHMENTS

- Council Chamber Seating Plan**

RECOMMENDATION

THAT COUNCIL:

- 1. Endorsed the Council Chamber seating positioning for the President; Deputy President, Chief Executive Officer and other Shire Officers;**
- 2. Notes the order of Seating Ballots drawn by individual Council Members; and**
- 3. Endorses the seating positions as follows:**
 - (a) EM3 Seat: Cr_____;**
 - (b) EM4 Seat: Cr_____;**
 - (c) EM5 Seat: Cr_____;**
 - (d) EM6 Seat: Cr_____;**
 - (e) EM7 Seat: Cr_____;**
 - (f) EM8 Seat: Cr_____; and**
 - (g) EM9 Seat: Cr_____.**



9 NEW BUSINESS OF AN URGENT NATURE

10 CLOSURE

10.1 Date of Next Meeting

The next ordinary meeting of Council will be held Thursday, 26 October 2023 in the Council Chambers, Clarendon Street, Derby.

10.2 Closure of Meeting