



**Shire of Derby /  
West Kimberley**

# **AGENDA**

## **Special Council Meeting Thursday, 20 June 2019**

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

**Date: Thursday, 20 June 2019**

**Time: 4.45pm**

**Location: Council Chambers  
Clarendon Street  
Derby**

**Amanda O'Halloran**

**Chief Executive Officer**





## Our Guiding Values

### **Respectful**

By being helpful, friendly and supportive

### **Integrity**

Through honesty, accountability and ethical behaviour

### **Leadership**

By the Shire at the local and regional level and through encouragement of community leaders

### **Knowledgeable**

By being well informed and accurate in what we do

### **Building Good Relationships**

By being communicative, responsive and inclusive

## 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 Elected 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 Elected 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

Councillors wishing to make alternative motions to officer recommendations are requested to provide notice of such motions in written form to the Director Corporate and Community Services prior to the Council meeting.

### DECLARATIONS OF INTERESTS

Elected 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."*

Regulation 34C (Impartiality) states;

*"interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association."*

**2019 MEETING DATES**

At its Ordinary Meeting of Council on 28 November, 2018, Council adopted the following meeting dates for 2019;

|          |                   |         |                           |
|----------|-------------------|---------|---------------------------|
| January  |                   |         | Council in Recess         |
| Thursday | 28 February 2019  | 5.30 pm | Council Chambers, Derby   |
| Thursday | 28 March 2019     | 1.00 pm | Library, Fitzroy Crossing |
| Tuesday  | 30 April 2019*    | 5.30 pm | Council Chambers, Derby   |
| Thursday | 30 May 2019       | 5.30 pm | Council Chambers, Derby   |
| Thursday | 27 June 2019      | 1.00 pm | Library, Fitzroy Crossing |
| Thursday | 25 July 2019      | 5.30 pm | Council Chambers, Derby   |
| Thursday | 29 August 2019    | 5.30 pm | Council Chambers, Derby   |
| Thursday | 26 September 2019 | 1.00 pm | Council Chambers, Derby   |
| Thursday | 31 October 2019   | 5.30 pm | Council Chambers, Derby   |
| Thursday | 21 November 2019  | 1.00 pm | Library, Fitzroy Crossing |
| Thursday | 12 December 2019  | 5.30 pm | Council Chambers, Derby   |

\* amended to 18 April 2019 at 12.00pm Council Chambers, Derby.

Council's Compliance and Strategic Review Committee and the Housing and Works 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 an Elected 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 an Elected 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.

**Order Of Business**

|          |  |           |
|----------|--|-----------|
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**1 DECLARATION OF OPENING, ANNOUNCEMENT OF VISITORS****2 ATTENDANCE VIA TELEPHONE/INSTANTANEOUS COMMUNICATIONS**

In accordance with regulation 14A of the Local Government (Administration) Regulations 1996 Council must approve (by Absolute Majority) the attendance of a person, not physically present at a meeting of Council, by audio contact. The person must be in a 'suitable place' as approved (by absolute majority) by Council. A 'suitable place' means a place that is located in a townsite or other residential area and 150km or further from the place at which the meeting is to be held.

**3 DISCLOSURE OF INTERESTS**

Section 5.65 and 5.70 of the *Local Government Act 1995* requires an Elected Member or officer who has an interest in any matter to be discussed at a Committee/Council Meeting that will be attended by the Elected Member or officer must disclose the nature of the interest in a written notice given to the Chief Executive Officer before the meeting; or at the meeting before the matter is discussed.

An Elected Member who makes a disclosure under section 5.65 or 5.70 must not preside at the part of the meeting relating to the matter; or participate in; or be present during, any discussion or decision making procedure relating to the matter, unless allowed by the Committee/Council. If Committee/Council allow an Elected Member to speak, the extent of the interest must also be stated.

**3.1 Declaration of Financial Interests****3.2 Declaration of Proximity Interests****3.3 Declaration of Impartiality Interests****4 PUBLIC TIME****4.1 Public Question Time****4.2 Public Statements****5 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

## REPORTS

### 6 EXECUTIVE SERVICES

#### 6.1 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 Shire President Geoff Haerewa and Cr Peter McCumstie's attendance at the Ordinary Council Meeting held 27 June 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  |
|-----------------------------------|------------|-------------|---------------|---|
| Legal & Compliance:<br>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 June 2019 Ordinary Council Meeting not being achieved. On this basis this item approval for Shire President Geoff Haerewa and Cr Peter McCumstie's 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 Haerewa and Cr Peter McCumstie attendance at the Council Meeting held 27 June 2019 via telephone or instantaneous communications in accordance with regulation 14A(1) of the *Local Government (administration) Regulations 1996*;**
- 2. APPROVES Kimberley Development Commission, 7 Ebony Street, Kununurra and Perth, Western Australia, as a suitable place for Councillor attendance in accordance with regulation 14A(4) of the *Local Government (Administration) Regulations 1996*.**

**7 NEW BUSINESS OF AN URGENT NATURE**

**8 CLOSURE**

**8.1 Date of Next Meeting**

The next ordinary meeting of Council will be held Thursday, 27 June 2019 in the Library, Fitzroy Crossing.

**8.2 Closure of Meeting**