



Special Council Meeting

2 February 2022

Minutes

To: The President and Councillors

Here within the Minutes of the Special Council Meeting of the Shire of Toodyay held on the abovementioned date in the Council Chambers at the Shire of Toodyay, 15 Fiennes Street, Toodyay.

The Special Meeting was convened in accordance with section 5.4(a)(i) of the *Local Government Act 1995* for the purpose of considering the following reports:

6.1 Councillor Representation

and other matters related thereto.



Suzie Haslehurst
CHIEF EXECUTIVE OFFICER

Our Vision, Purpose and Values

The Shire of Toodyay works together with the community to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

Vision: We are a vibrant rural community that respects our environment, celebrates our past and embraces a sustainable future.

Purpose: Local Government and community working together to obtain the best possible social, economic, and environmental outcomes for the people of Toodyay.

Community Values: We value highly:

- Our sense of community support and spirit;
- Our natural environment and healthy ecosystems;
- Our rural lifestyle;
- Our historic town; and
- Our local economy built on agriculture and emerging tourism, arts and cultural opportunities.

Shire Values: To progress the community's aspirations, the Shire is guided by:

Integrity: We behave honestly to the highest ethical standard.

Accountability: We are transparent in our actions and accountable to the community.

Inclusiveness: We are responsive to the community and we encourage involvement by all people.

Commitment: We translate our plans into actions and demonstrate the persistence that produces results.

Disclaimer

Members of the public should note that in any discussion regarding any planning or other application that any statement or intimation of approval made by any member or officer of the Shire of Toodyay during the course of any meeting is not intended to be and is not to be taken as notice of approval from Council. No action should be taken on any item discussed at a Council Meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (*Copyright Act 1998*, as amended) and the express permission of the copyright owner(s) should be sought prior to reproduction.

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Public copies are available by contacting the Shire on (08) 9574 9300.

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There are no attachments

Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following Special Council Meeting, where the Minutes will be confirmed subject to any amendments made by the Council.

The "Confirmed" Minutes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Council Meeting are put together as a separate attachment to these Minutes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as separate Confidential Minuted Agenda Items.

Unconfirmed Minutes

These minutes were approved for distribution on 4 February 2022.



Suzie Haslehurst

CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 23 February 2022.

Signed:

Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.



1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

Cr R Madacsi, Shire President, declared the meeting open at 10.35am and read aloud an Acknowledgement of Country:

“I acknowledge the Ballardong Noongar people, the traditional custodians of the land where we meet today and the Yued and Whadjuk people, who are traditional custodians of respective lands within the wider Shire of Toodyay. I pay my respect to their Elders, past, present and emerging.”

2. RECORDS OF ATTENDANCE

Members

Cr R Madacsi	Shire President
Cr B Ruthven	Deputy Shire President
Cr C Duri	
Cr P Hart	
Cr S Pearce	
Cr M McKeown	

Staff

Ms S Haslehurst	Chief Executive Officer
Mr J Augustin	Manager Assets and Infrastructure
Ms T Bateman	Manager Corporate & Community Services
Mr H de Vos	Manager Development and Regulation
Mrs M Rebane	Executive Assistant

Visitors

S Dival
M Sinclair-Jones

2.1 APOLOGIES

Cr S McCormick
Cr D Wrench

2.2 APPROVED LEAVE OF ABSENCE

Nil.

3. DISCLOSURE OF INTERESTS

Nil

4. PUBLIC QUESTIONS (relating to the purpose of the meeting and *responded to by the Shire President unless otherwise indicated*)

Nil.

5. PUBLIC SUBMISSIONS (relating to the purpose of the meeting)

Ms S Dival addressed Council in relation to Agenda Item 6.1 Councillor Representation.

I am here to speak against the motion and I believe that we should fill the vacant position. The values for the Shire are integrity, accountability, inclusiveness and commitment. I believe that his motion goes against those values. Someone pointed out to me last night that they felt the Local Government Act 1995 was misinterpreted in the agenda. Now I have not had a chance to look at that but I do think that if there is any doubt of the interpretation of the Act in this case then vote for the motion. My reasons for speaking against the motion is about good governance and what is best for the community. So whatever the Act says or what the Electoral Commission's advice may have been I believe bears no relevance in what is best for the people of the community because what is best for the people of the community is representation, and governance that comes with that representation and I believe that is what you need to base your opinion on.

I put forward in my argument for this is that to not fill the position and reduce the number of councillors to just eight councillors gives precedence to a higher risk of a tied vote and I think it doesn't matter what the Committee or even a Council anywhere with an even number, where one member has the ability to cast a vote on a subject that is obviously contentious or close in support I do not believe that is good governance, in any situation no matter who that member is or what Council. Part of the agenda also brought forward the consideration that there were some proposed reforms by the Minister and it leads the way to reduce the numbers down to seven. I do not think that you can make decisions here today based on something that is proposed and that may or may not happen in the future. I think you have to make decisions based on what the facts are and what is in place today so I do not believe that should play a factor in your decision making.

One of the implications, that being the financial implications I also believe should not have any bearing. The fact that it is not budgeted should have no bearing when everyone; individuals, businesses, and councils come up with things that are not budgeted for. In recent times the Administration has had staff resign. I presume there would not have been any question as to whether or not that position would need to be replaced. That was not budgeted for. You need to replace staff. I believe this is also a fact. I do not think the financial implications are a good enough reason, given good governance and the representation of the community to make that decision for that representation for that. It is not good

governance to base it on that financial implication. If we still had wards then one ward would be under-represented and I do not think we would be having this discussion. We do not have wards so I say that the whole community, as a whole, would be underrepresented if you make the decision to not fill the vacant position. I put it to every Councillor here that at some stage you put your hand up because you felt you had something to offer to the community and that you felt you had a role to play and that you wanted to represent the community. I put forward that I believe the best way to represent the community is by rejecting this motion and by filling that ninth vacancy so that the town of Toodyay, and the community of Toodyay is fully represented.

6. PURPOSE OF MEETING

6.1 Councillor Representation

Date of Report:	17 January 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	ICR81767/ICR82064/MEM1
Author:	M Rebane – Executive Assistant
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	Nil

PURPOSE OF THE REPORT

To consider and resolve the implications of the vacant office resulting from the resignation of an elected member.

BACKGROUND

On Saturday 15 January 2022, Cr Bell submitted a formal resignation as an elected member of the Shire of Toodyay, effective immediately.

Cr Bell is currently listed as a Primary Member on the Bush Fire Advisory Committee. He was also nominated as a Delegate for the Development Assessment Panel.

Council is requested to consider the following:

- Allowing the vacant Councillor office to remain unfilled subject to the approval of the Electoral Commissioner;
- Nomination of another Councillor to the Bush Fire Advisory Committee; and
- Nomination of a Delegate to the Development Assessment Panel.

COMMENTS AND DETAILS

When a Councillor resigns from office, sections 4.8, 4.9 and 4.10 of the *Local Government Act 1995* (the Act) prescribe the process for an extraordinary election regarding filling the vacant office.

Section 4.16 of the Act *Postponement of elections to allow consolidation* modifies the operation of sections 4.8, 4.9 & 4.10 in relation to holding of extraordinary elections.

Section 4.17 (4A) of the Act states that if an office of a Councillor is for a district that has no wards and at least 80% of the number of offices of members of the Council in the district are still filled, then the Council can allow, with the approval of the Electoral Commissioner, the vacancy created by a resignation to remain unfilled in accordance with Section 4.17(3).

The current reforms proposed by the Minister for Local Government include a recommendation for smaller local governments to reduce their Councillor numbers. Furthermore, Council has informally indicated a desire to investigate reducing the required number of offices for elected members from 9 to 7. If Council chooses to allow the current vacancy to remain unfilled until the next ordinary elections in 2023, there is an opportunity to commence this process.

Officers propose that Council seeks the approval of the Electoral Commissioner to allow the vacancy to remain unfilled until the 2023 ordinary elections or the implementation of the Minister's proposed reforms, whichever is the sooner.

Bush Fire Advisory Committee

The purpose of the Bush Fire Advisory Committee is to provide advice to the Council on matters pertaining to obligations within the Bush Fires Act and the organising, managing, resourcing and training of volunteer bush fire brigades.

This Committee is a mandated Committee established under Part V, Section 67 of the *Bush Fires Act 1954* and does not have any delegated authority. Meetings are held quarterly and membership includes representatives from relevant State government agencies and Shire Toodyay Volunteer Bush Fire Brigades along with two Councillors as primary members and one deputy Councillor member.

Council is requested to nominate a primary member to replace Cr Bell.

Development Assessment Panel

Development Assessment Panels (DAPs) have operated in Western Australia since 2011 and are intended to enhance planning expertise in decision making by improving the balance between technical advice and local knowledge. There are five panels covering the State. The current structure is a transitional arrangement to a future

model of no more than three panels, as outlined in the *Action Plan for Planning Reform*. Council nominates two primary delegates and two deputy delegates to be on this Panel. Training is provided for delegates.

Council is requested to nominate a delegate to replace Cr Bell.

IMPLICATIONS TO CONSIDER

Consultative:

The Western Australian Electoral Commission (WAEC) is the lead State agency for electoral services in WA. The WAEC also plays a key role in local elections. Advice was sought from the Manager of Election Events at the WAEC.

Strategic:

A key objective in the Shire of Toodyay Strategic Community Plan is Governance and the way the Shire leads and operates; a Council that engages with the community and provides good governance on behalf of the community.

Policy related:

In relation to the appointment of a nominee to the BFAC or to the DAP the Council Policy M.7 *Council Delegates Roles and Responsibilities* is to be considered.

Financial:

The cost of an extraordinary election would be approximately \$22,000. This has not been budgeted for. If Council requests and receives approval to allow the position to remain unfilled until the 2023 ordinary elections, a saving of approximately \$23,000 over the 22-month period would be realised.

Legal and Statutory:

Local Government Act 1995

4.8. Extraordinary elections

- (1) *If the office of a councillor or of an elector mayor or president becomes vacant under section 2.32 an election to fill the office is to be held.*
- (3) *An election under this section is called an **extraordinary election**.*

4.9. Election day for extraordinary election

- (1) *Any poll needed for an extraordinary election is to be held on a day decided on and fixed—*
 - (a) *by the mayor or president, in writing, if a day has not already been fixed under paragraph (b); or*
 - (b) *by the council at a meeting held within one month after the vacancy occurs, if a day has not already been fixed under paragraph (a).*
- (2) *The election day fixed for an extraordinary election is to be a day that allows enough time for the electoral requirements to be complied with but, unless the Electoral Commissioner approves or section 4.10(b) applies, it cannot be later than 4 months after the vacancy occurs.*

(3) *If at the end of one month after the vacancy occurs an election day has not been fixed, the CEO is to notify the Electoral Commissioner and the Electoral Commissioner is to —*

- fix a day for the holding of the poll that allows enough time for the electoral requirements to be complied with; and*
- advise the CEO of the day fixed.*

4.17. Cases in which vacant offices can remain unfilled

(3) *If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.*

Risk related:

The risk of having the vacant position remain unfilled is considered low.

Workforce related:

Appointment of another Councillor to the BFAC and the DAP involves Officer time by way of informing the BFAC, updating the website, and informing the A/Senior Policy and Project Officer from the Office of the Director General, Department of Planning, Lands and Heritage in relation to that nomination.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION 1

That Council:

1. Requests the Chief Executive Officer seek the approval of the Electoral Commissioner to allow the elected member vacancy created by Cr Bell's resignation to remain unfilled until the ordinary elections to be held in October 2023 or the implementation of the Minister's relevant proposed local government reforms, whichever is the sooner.
2. Notes that in accordance with section 4.17(4) of the *Local Government Act 1995*, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION 2

That Council:

1. Nominates Cr _____ as a Primary Delegate on the Bush Fire Advisory Committee.
2. Nominates Cr _____ as Delegate on the Development Assessment Panel.
3. Requests the CEO to inform the Department of Planning, Lands and Heritage of Council's delegate to the Development Assessment Panel.

Cr Pearce moved the Officer's Recommendation 1.

Clarification was sought.

Cr McKeown raised a Point of Order, in accordance with Standing Order 8.2 pertaining to Standing Order 2.2 in relation to the calling of the meeting and Council not having been presented with options.

The Presiding Member rejected the Point of Order in accordance with Standing Order 8.5 and stated that the Agenda has not precluded options being put forward as alternate motions or as moving and not voting for the recommendation.

Further clarification was sought.

Cr McKeown objected to the motion.

Cr Ruthven seconded the motion.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION 1/COUNCIL RESOLUTION NO. 01/02/22

MOVED Cr S Pearce

SECONDED Cr B Ruthven

That Council:

1. Requests the Chief Executive Officer seek the approval of the Electoral Commissioner to allow the elected member vacancy created by Cr Bell's resignation to remain unfilled until the ordinary elections to be held in October 2023 or the implementation of the Minister's relevant proposed local government reforms, whichever is the sooner.
2. Notes that in accordance with section 4.17(4) of the *Local Government Act 1995*, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

MOTION CARRIED 5/1 BY ABSOLUTE MAJORITY

The vote of all members present was recorded in accordance with Section 5.21(4)(b) of the Local Government Act 1995. Councillors Madacsi, Ruthven, Hart, Duri and Pearce voted for the motion. Councillor McKeown voted against the motion.

The Shire President received nominations as follows:

- Cr S McCormick – BFAC delegate nomination;
- Cr B Ruthven – Development Assessment Panel delegate nomination; and
- Cr S Pearce - Development Assessment Panel deputy delegate nomination.

Cr Hart moved the Officer's Recommendation, amended as follows:

That Council:

1. **Nominates Cr S McCormick as a Primary Delegate on the Bush Fire Advisory Committee.**
2. **Nominates Cr Ruthven as Delegate on the Development Assessment Panel.**
3. **Nominates Cr Pearce as Deputy Delegate on the Development Assessment Panel.**
4. **Requests the CEO to inform the Department of Planning, Lands and Heritage of Council's delegate to the Development Assessment Panel.**

Cr Duri seconded the motion.

The motion was put.

AMENDED OFFICER'S RECOMMENDATION 2 / COUNCIL RESOLUTION NO. 02/02/22

MOVED Cr P Hart

SECONDED Cr C Duri

That Council:

1. Nominates Cr S McCormick as a Primary Delegate on the Bush Fire Advisory Committee.
2. Nominates Cr Ruthven as Delegate on the Development Assessment Panel.
3. Nominates Cr Pearce as Deputy Delegate on the Development Assessment Panel.
4. Requests the CEO to inform the Department of Planning, Lands and Heritage of Council's delegate to the Development Assessment Panel.

MOTION CARRIED 6/0

7. CLOSURE OF MEETING

The Shire President declared the meeting closed at 11.34am.