

Special Meeting of Council


Minutes

Section 5.22 of the Local Government Act 1995

19 February 2019 (Adj.)
26 March 2019 (Res.)

Unconfirmed Minutes

These minutes were approved for distribution on 27 March 2019.



Stan Scott
CHIEF EXECUTIVE OFFICER

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following Ordinary Meeting of Council, 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 attachments to these Minutes with the exception of Confidential Items.

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

Confirmed Minutes

These minutes were confirmed at a meeting held on 23 April 2019.

Signed: 

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

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ATTACHMENTS *with separate index follows Item 10.*

Shire of Toodyay

SPECIAL COUNCIL MEETING 19 FEBRUARY 2019 (ADJOURNED)

MINUTES

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 11.35am.

2. RECORDS OF ATTENDANCE

Members

Cr B Rayner	Shire President
Cr T Chitty	Deputy Shire President
Cr J Dow	
Cr P Greenway	
Cr B Manning	
Cr E Twine	
Cr R Welburn	

Staff

Mr S Scott	Chief Executive Officer
Mrs M Rebane	Executive Assistant

Visitors

A Henshaw	M Sinclair-Jones	P Hart
J Hart	B Foley	G Appleby
L Graham		

2.1 APOLOGIES

Cr B Bell

2.2 LEAVE OF ABSENCE PREVIOUSLY APPROVED

Cr Brook – 25 September 2018 to 26 March 2019

3. DISCLOSURE OF INTERESTS

Mr S Scott, CEO, declared an interest in respect to Item 6.1 Further Contract CEO.

4. PUBLIC QUESTIONS (relating to the purpose of the meeting)

L Graham, on behalf of the Toodyay Progress Association

Summary of Question One

As the person who called this special meeting, what are the reasons for calling it?

The Special Meeting was called by the Shire President as a result of a request by Councillors during debate at the January Ordinary Council Meeting. The CEO was not present at the January 2019 Ordinary Council

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Meeting. This special meeting gives effect to Council Resolution No. 34/01/19 from the January 2019 Council Meeting.

Summary of Question Two

How and why was this date chosen?

The date was chosen by having regard to the commitments listed by Councillors in their respective calendars.

Summary of Question Three

How and why was the time of 11.30 chosen?

The time was chosen at the same time the date was made.

Summary of Question Four

As Council Resolution 30/01/19 sets a date some months away, as no later than 18 April 2019; what has changed since that meeting that required you to call a special meeting?

The resolution in question sets the date by which the action must be completed, and this special meeting is entirely consistent with the resolution.

L Graham

Summary of Question One

What has changed since that meeting?

The intention was that a meeting should be called so that Council and the CEO can discuss whether the Council and the CEO wish to enter into a new Contract of Employment for a further term. Discussion was meant to be in the form of holding a Special Meeting for that purpose.

Summary of Question Two

The January 2019 Council Meeting Minutes (page 106) indicated the following:

“The Officer’s Recommendation 2 was lost, thereby introducing two alternate motions, the second of which was carried. Council indicated, during discussion, that they wished to have a Special Meeting arranged within the next two weeks of the date of 22 January 2019 OCM to sit down with the CEO in relation to Point 1 of the carried resolution. The Shire President indicated that he, or a group of three Councillors could call a Special Council Meeting for this purpose.”

Who added that note to the minutes?

The Administration Minute taker in accordance with the requirements of regulation 11(da) of the Local Government (Administration) Regulations 1996 which state that the content of minutes of a meeting of a council is to include written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further

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consideration). This is in accordance with section 5.25(1) (f) of the Local Government Act 1995.

Summary of Question Three

How did Council indicate those wishes?

The CEO was not at the January 2019 Council Meeting. Discussions were held behind closed doors. Therefore the sooner the CEO AND Council meet with one another the sooner discussions can commence. I have a right as Shire President to call a Special Meeting at any time and that is what I have done.

Summary of Question Four

The minutes and agenda put before us indicate it was a Council decision made to call a Special Meeting. There is no mention of such wishes in the minutes so where is such an important decision of Council recorded?

I have a right as Shire President to call a Special Meeting at any time and that is what I have done.

Summary of Question Five

The Agenda for this meeting says this special meeting has been convened in accordance with Council Resolution 39/01/19.

Yes it has been called in accordance with Resolution No. 39/01/19.

Summary of Question Six

Which part of the resolution does convening this meeting accord with?

It was during confidential behind closed doors discussions that the calling of a Special Meeting was made.

Summary of Question Seven

At the last Council Meeting the TPA made a formal submission to the Council and asked: How does a Council that is the subject of a formal inquiry now decide whether or not to enter into a new contract with the CEO who is also having his administration formally inquired into? Did you seek any advice from the Department as to processes Council has adopted in this regard? If so, what was the advice and who provided it? If not, why not?

The Department is responsible for holding the official inquiry. It is conducted by them. We run Council. The CEO contract is a matter to be decided upon by Council. I did not speak with the Department. I sought advice from WALGA.

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 WA Local Governments and negotiates service agreements for the sector.

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

Mr A Henshaw addressed Council regarding the purpose of the meeting.

Mr M Sinclair-Jones addressed Council regarding the purpose of the meeting.

6. PURPOSE OF MEETING

This meeting was called by the Shire President, Cr B Rayner on 4 Feb 2019.

The purpose of the Special Meeting is as follows:

“Considering and discussing with the CEO, whether the Council and the CEO wish to enter into a new Contract of Employment for a further term and matters related thereto”

6.1 Further Contract - CEO

The report is a Confidential Item distributed to Council as a separate CONFIDENTIAL Attachment, considered confidential in accordance with Section 5.23 (2) (a), (2) (b), (2) (c) and (2) (e) of the Local Government Act 1995.

While agendas and minutes are generally available to the public, there is a specific exemption for those papers relating to committee meetings or those parts of Council meetings that are not open to the public. (r.14 (2) and r.29 of the Local Government (Administration) Regulations 1996).

Agendas and Minutes of meetings or those parts of meetings that are closed to the public are also exempt from disclosure under Section 11 of Schedule 1 of the Freedom of Information Act 1992.

The Shire President requested a motion be moved in accordance with Standing Order 5.2 (2) that the meeting be closed to the public.

MOTION/COUNCIL RESOLUTION NO. 41/02/19

MOVED Cr Chitty

That Council move behind closed doors in accordance with Standing Order 5.2(2) order for confidential business to be discussed.

That in accordance with Standing Order 5.2 (5) while the resolution under sub-clause 5.2(2) remains in force, the operation of clause 7.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

MOTION CARRIED 7/0

The meeting was closed to the public in accordance with Section 5.23 (2) (a), (2) (b), (2) (c) and (2) (e) of the Local Government Act 1995.

All members of the public departed the Council Chambers at 11.53am.

The Shire President provided an overview in relation to this matter, having sought advice from WALGA.

Clarification was sought.

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Cr Greenway raised a Point of Order in respect to receiving legal clarification in regard to the terms of the contract.

Further clarification was sought.

Cr Manning moved a Procedural Motion as follows:

That under Clause 10.1 (f) of the Standing Orders that the meeting be now adjourned to 2.00pm on Tuesday 26 March 2019.

Cr Welburn seconded the motion.

Clarification was sought.

The Shire President adjourned the meeting at 12.21pm.

The Shire President resumed the meeting at 12.23pm.

The motion was put.

PROCEDURAL MOTION/COUNCIL RESOLUTION NO. 42/02/19

MOVED Cr Manning

SECONDED Cr Welburn

That under Clause 10.1 (f) of the Standing Orders that the meeting be now adjourned to 2.00pm on Tuesday 26 March 2019.

MOTION CARRIED 4/3

In accordance with Section 5.21(4) (b) of the Local Government Act 1995, Cr Manning requested that the vote of all members present be recorded. Councillors Manning, Chitty, Welburn and Twine voted for the motion. Councillors Rayner, Dow and Cr Greenway voted against the motion.

7. ADJOURNMENT OF MEETING

The Chairperson declared the meeting adjourned at 12.25pm.

Shire of Toodyay

SPECIAL COUNCIL MEETING 26 MARCH 2019 (RESUMED)

MINUTES

8. RESUMPTION OF MEETING

The Shire President resumed the Special Meeting open at 2.01pm.

The meeting is to continue from behind closed doors.

Record of Attendance

Members

Cr B Rayner	Shire President
Cr T Chitty	Deputy Shire President
Cr B Bell	
Cr C Brook	
Cr J Dow	
Cr P Greenway	
Cr B Manning	
Cr E Twine	
Cr R Welburn	

Staff

Mr S Scott	Chief Executive Officer
Mrs M Rebane	Executive Assistant

9. BUSINESS FROM PREVIOUS MEETING (IF ADJOURNED)

This meeting, being now resumed, will consider the Officer's Report provided for the meeting dated 19 February 2019.

Clarification was sought.

The CEO departed Council Chambers at 2.09pm.

OFFICER'S RECOMMENDATION

That Council consider and discuss with the CEO, whether the Council and the CEO wish to enter into a new Contract of Employment for a further term and matters related thereto.

The Shire President ruled that he would call for motions for or against in order and that nobody would interrupt anyone else.

The Shire President asked for someone to move the Officer's Recommendation.

Cr Twine foreshadowed an alternate motion as follows:

That Council:

- 1. commits to entering into negotiations with the CEO in regards to renewing his contract of employment for a**

period of two years from the date of expiry of the current contract; and

- 2. As previously discussed by Council and now included in the Department's Policy position paper, employ an independent advisor, being Dr Lianne Cretney-Barnes, from Board Connexions, to assist in these negotiations.**

Further clarification was sought.

Cr Chitty moved the Officer's Recommendation as follows:

That Council consider and discuss with the CEO, whether the Council and the CEO wish to enter into a new Contract of Employment for a further term and matters related thereto.

Cr Dow seconded the motion.

Clarification was sought.

The Shire President adjourned the meeting at 2.24pm.

The Shire President departed Council Chambers at 2.24pm.

The CEO and Shire President returned to Council Chambers at 2.25pm.

The Shire President resumed the meeting at 2.25pm.

Further clarification was sought.

The CEO departed Council Chambers at 2.32pm.

Cr Chitty sought leave to withdraw the motion under Standing Orders 9.15 (1).

MOTION/COUNCIL RESOLUTION NO. 67/03/19

MOVED Cr Chitty

SECONDED Cr Dow

That the motion be withdrawn in accordance with Standing Orders 9.15 (1).

MOTION CARRIED 9/0

The Officer's Recommendation was moved, and then withdrawn because the recommendation seemed to duplicate a resolution made at the January 2019 Council Meeting.

Cr Twine moved an alternate motion as follows:

That Council:

- 1. commits to entering into negotiations with the CEO in regards to renewing his contract of employment for a period of two years from the date of expiry of the current contract; and**
- 2. As previously discussed by Council and now included in the Department's Policy position paper, employ an independent advisor, being Dr Lianne Cretney-Barnes, from Board Connexions, to assist in these negotiations.**

Cr Greenway seconded the motion.

Clarification was sought.

Cr Manning foreshadowed an alternate motion as follows:

That Council not offer a new contract of employment to the CEO from the expiry date of the current contract.

Debate commenced.

Order of Debate: ET; PG; and RW.

Cr Welburn foreshadowed an amendment to the motion of 12 months.

Debate continued.

Order of Debate (cont'd): BM; JD; TC; CB; BB; and BR, then ROR: ET.

The motion was put.

ALTERNATE MOTION/COUNCIL RESOLUTION NO. 68/03/19

MOVED Cr Twine

SECONDED Cr Greenway

That Council:

1. commits to entering into negotiations with the CEO in regards to renewing his contract of employment for a period of two years from the date of expiry of the current contract; and
2. As previously discussed by Council and now included in the Department's Policy position paper, employ an independent advisor, being Dr Lianne Cretney-Barnes, from Board Connexions, to assist in these negotiations.

MOTION LOST 4/5

In accordance with Section 5.21(4) (b) of the Local Government Act 1995, Cr Manning requested that the vote of all members present be recorded. Councillors Dow, Greenway, Twine and Rayner voted for the motion. Councillors Chitty, Manning, Welburn, Bell and Brook voted against the motion.

Cr Manning moved an alternate motion as follows:

That Council:

1. **not offer a new contract of employment to the CEO from the expiry date of the current contract; and**
2. **Authorise the Shire President and Deputy Shire President to obtain a minimum of three quotes from a suitable recruitment firm for the recruitment of a new CEO to present to Council at the April 2019 Ordinary Council Meeting.**

Cr Brook seconded the motion.

Clarification was sought.

The motion was put.

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ALTERNATE MOTION/COUNCIL RESOLUTION NO. 69/03/19

MOVED Cr Manning

SECONDED Cr Brook

That Council:

1. not offer a new contract of employment to the CEO from the expiry date of the current contract; and
2. Authorise the Shire President and Deputy Shire President to obtain a minimum of three quotes from a suitable recruitment firm for the recruitment of a new CEO to present to Council at the April 2019 Ordinary Council Meeting.

MOTION CARRIED 5/4

10. CLOSURE OF MEETING

The Chairperson declared the meeting closed at 3.31pm.

Attachments to Minutes

Special Council Meeting

Tues 19 Feb 2019 (Adj)
Tues 26 Mar 2019 (Res)

SUBMISSION

Submission made 1

PURPOSE OF MEETING

This meeting was called by the Shire President, Cr B Rayner on 4 Feb 2019.

The purpose of the Special Meeting is as follows:

"Considering and discussing with the CEO, whether the Council and the CEO wish to enter into a new Contract of Employment for a further term and matters related thereto"

6.1 Further Contract - CEO

Note: *The report is a Confidential Item distributed to Council as a separate **CONFIDENTIAL** Attachment, considered confidential in accordance with Section 5.23 (2) (a), (2) (b), (2) (c) and (2) (e) of the Local Government Act 1995.*

SUBMISSION TO COUNCIL ON CEO CONTRACT

Normally, the issue of the CEOs contract is left in the hands of Councillors and is of merely passing interest to the ratepayers and electors of this Shire. However, given the present circumstances the matter has now attracted a large amount of community interest.

As such, convening a meeting in the morning at short notice knowing full well that some Councillors are unable to attend at this time is conniving and denying full representation of the community on this important matter. One would have to suspect self-interest and a degree of nervousness to go ahead with a renewed contract whilst an investigation is in progress. It is irresponsible.

Those proposing to support such must be accountable for their actions. They need to question their reasons why they would do this before the results of the inquiry are known. They need to examine why there is an inquiry in the first instance because that inquiry isn't happening for no good reason.

The inquiry will be looking into a number of critical areas, most of which fall within the CEOs area of responsibility including breaching the Local Government Act and associated regulations. As those areas are directly within the CEOs remit it can, therefore, be assumed that the inquiry team will be focusing on the CEO in no small part.

A number of decisions made by Council recently are very germane to Council's deliberations today. I would remind Councillors of just one of those decisions.

In August 2018 an official Shire investigation conducted by the Deputy Shire President determined that the CEO made comments in the Shire's April 2018 Community newsletter which were "derogatory or improper" and that a breach of the Code of Conduct had occurred. As recently as the January 2019 Ordinary Council Meeting a motion put up to rescind the finding that a breach of the Code of Conduct had occurred was defeated and still the CEO refuses to apologise for and withdraw those statements. Council, to date, has not taken any action to compel the CEO to take the appropriate and expected actions.

The CEO's refusal to apologise for official misconduct treats the Shire Code of Conduct with contempt; renders it worthless as a sanction against derogatory or improper behaviour; sets a dangerous precedent for other Shire employees and Councillors to follow; and serves only to bring the Council, ie, all of you around this table, into further public disrepute and admonition.

Section 4.1.8 of the CEOs existing contract compels the CEO to "comply with the Local Government's Code of Conduct pursuant to Section 5.103 of the Act". With this one instance alone the CEO has clearly broken the terms of his contract and by doing so has also broken the law insofar as, by extension, it is a breach of a WA State law. It could be reasonably argued that this instance might have resulted in termination of the existing contract for the CEO or some other disciplinary action. However, for whatever reason – lack of resolve, lack of leadership or some other reason – Council has not gone down that path.

The very first page of the Shire's Code of Conduct states that breaches of that Code "harm our reputation, reduce public trust and disrupt the proper functioning of the Shire". Please dwell on those words.

A renewal of contract would, it is assumed, be renegotiated on a similar basis to the existing one. Such a contract has a stated end date; it also has clauses that deal with termination of the contract prior to the negotiated end date. Those clauses contain the financial arrangements that apply if termination occurs (barring certain provisions) and could represent a significant financial impost on the ratepayers of this Shire.

With the uncertainty surrounding the Formal Inquiry, until the outcome is known it would be exceptionally irresponsible of Council to enter into a renegotiated contract. Having legally provided a contract whilst the CEO is party to an investigation the Council would have knowingly taken the risk and would be liable to a payout if there was no liability severance clause. It would be a complete betrayal of the trust placed in Councillors' hands by the electorate.

Go with your conscience, don't be bullied. This is important for the community of Toodyay.

