



## Shire of Cunderdin

### CONFIRMED Minutes of a Special Council Meeting

Dear Council Member,

A Special Meeting of the Cunderdin Shire Council was held on **Thursday 20<sup>th</sup> November 2014** in the Council Chambers, Lundy Avenue Cunderdin commencing **at 4:45pm**, for the purpose of:

1. For the election of the Shire President and Deputy Shire President for the Shire of Cunderdin for the period November 2014 to October 2015.
2. Consideration of the Vacant Councillor Position.

Peter Naylor  
**Chief Executive Officer**

## Table of Contents

<b>1.</b>	<b>Declaration of opening.....</b>	<b>3</b>
<b>2.</b>	<b>Record of Attendance, Apologies and Approved Leave of Absence .....</b>	<b>3</b>
<b>3.</b>	<b>Finance and Administration.....</b>	<b>4</b>
3.1	Election of Shire President .....	4
3.2	Election of Deputy Shire President.....	7
3.3	Shire of Cunderdin Councillor Representation .....	10
<b>4.</b>	<b>Closure of meeting.....</b>	<b>13</b>

## **AGENDA**

### **1. Declaration of opening**

**The Acting Shire President declared the meeting open at 4:45pm**

**The Shire of Cunderdin disclaimer was read aloud.**

The Local Government Act 1995 Part 5 Division 2 Section 5.25 and Local Government (Administration) Regulations 1996 Regulation 13

“No responsibility whatsoever is implied or accepted by the Shire of Cunderdin for any act, omission or statement or intimation occurring during this meeting. It is strongly advised that persons do not act on what is heard at this Meeting and should only rely on written confirmation of Council’s decisions, which will be provided within ten working days of this meeting”.

### **2. Record of Attendance, Apologies and Approved Leave of Absence**

#### **Record of attendances**

##### **Councillors**

Cr RC (Clive) Gibsone

Cr TE (Todd) Harris

Cr TA (Terri) Jasper

Cr NW (Norm) Jenzen

Cr DB (Doug) Kelly

Cr DG (Di) Kelly

Cr DA (Dennis) Whisson

#### **Apologies**

#### **On Leave of Absence**

#### **Staff**

Peter Naylor

Chief Executive Officer

Paul Godfrey

Deputy Chief Executive Officer

#### **Guests of Council**

Ken Baxter JP (to 4:51pm)

#### **Members of the Public**

#### **Applications for leave of absence**

### 3. Finance and Administration

#### 3.1 Election of Shire President

<b>Location:</b>	Shire of Cunderdin
<b>Applicant:</b>	Chief Executive Officer
<b>Date:</b>	7 <sup>th</sup> November 2014
<b>Author:</b>	Peter Naylor
<b>Item Approved by:</b>	Chief Executive Officer
<b>Disclosure of Interest:</b>	Nil
<b>File Reference:</b>	Nil
<b>Attachment/s:</b>	Nil

#### **Proposal/Summary**

For Council to elect the Shire President for the period November 2014 to October 2015.

#### **Background**

Provisions within the *Local Government Act 1995*, Schedule 2.3, Division 1, provide for the election of the Shire President by the Council.

Section 2.29 of the *Act* states that a person elected by the council as president has to make a declaration in the prescribed form before acting in the office.

Local Government (Constitution) Regulations 1998, C13, provides for the format in which the person elected as the president has to make the declaration.

#### **Comment**

The Acting Shire President vacated the Chair.

The Chief Executive Officer advised that written nominations for the position of Shire President have been received on behalf of Cr Clive Gibsone and Cr Doug Kelly.

Cr Gibsone accepted the nominations, however Cr Kelly declined.

The Chief Executive Officer called for any further nominations for the position of Shire President; there were no further nominations.

Therefore Cr Gibsone was duly elected unopposed to the position of Shire President for the Shire of Cunderdin for the ensuing period November 2014 to October 2015.

Cr Gibsone being duly elected to the position of Shire President made a declaration in the prescribed form before Mr Ken Baxter, Justice of the Peace.

#### **Consultation**

Nil

## **Statutory Implications**

### Local Government Act 1995

#### **2.29. Declaration**

- (1) A person elected as an elector mayor or president or as a councillor has to make a declaration in the prescribed form before acting in the office.
  - (2) A person elected by the council as mayor, president, deputy mayor or deputy president has to make a declaration in the prescribed form before acting in the office.
  - (3) A declaration required by this section is to be taken or made before a prescribed person.
  - (4) A person who acts in an office contrary to this section commits an offence.
- Penalty: \$5 000 or imprisonment for one year.

#### **Schedule 2.3 — When and how mayors, presidents, deputy mayors and deputy presidents are elected by the council [Sections 2.11(1)(b) and 2.15]**

##### **Division 1 — Mayors and presidents**

###### 1. Terms used

In this Division —

extraordinary vacancy means a vacancy that occurs under section 2.34(1); office means the office of councillor mayor or president.

###### 2. When council elects mayor or president

(1) The office is to be filled as the first matter dealt with —

- (a) at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and
- (b) at the first meeting of the council after an extraordinary vacancy occurs in the office.

(2) If the first ordinary meeting of the council is more than 3 weeks after an extraordinary vacancy occurs in the office, a special meeting of the council is to be held within that period for the purpose of filling the office.

###### 3. CEO to preside

The CEO is to preside at the meeting until the office is filled.

###### 4. How mayor or president is elected

(1) The council is to elect a councillor to fill the office.

(2) The election is to be conducted by the CEO in accordance with the procedure prescribed.

(3) Nominations for the office are to be given to the CEO in writing before the meeting or during the meeting before the close of nominations.

(3a) Nominations close at the meeting at a time announced by the CEO, which is to be a sufficient time after the announcement by the CEO that nominations are about to close to allow for any nominations made to be dealt with.

(4) If a councillor is nominated by another councillor the CEO is not to accept the nomination unless the nominee has advised the CEO, orally or in writing, that he or she is willing to be nominated for the office.

(5) The councillors are to vote on the matter by secret ballot as if they were electors voting at an election.

(6) Subject to clause 5(1), the votes cast under subclause (5) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 (which deals with determining the result of an election) as if those votes were votes cast at an election.

(7) As soon as is practicable after the result of the election is known, the CEO is to declare and give notice of the result in accordance with regulations, if any.

[Clause 4 amended by No. 49 of 2004 s. 69(2)-(5); No. 66 of 2006 s. 14.]

###### 5. Votes may be cast a second time

(1) If when the votes cast under clause 4(5) are counted there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and the meeting is to be adjourned for not more than 7 days.

- (2) Any nomination for the office may be withdrawn, and further nominations may be made, before or when the meeting resumes.
- (3) When the meeting resumes the councillors are to vote again on the matter by secret ballot as if they were electors voting at an election.
- (4) The votes cast under subclause (3) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.

#### Local Government (Constitution) Regulations 1998

#### **13. Oaths, affirmations and declarations (s. 2.29, 2.42)**

- (1) For the purposes of sections 2.29 and 2.42 — [(a), (b) deleted] (c) the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is that in Form 7; (d) the form of declaration for a commissioner is that in Form 8.
- (2) A declaration required by section 2.29 to be made by a person elected as a mayor or president is to be made before —
  - (a) the immediate predecessor of the person in the office of mayor or president; or
  - (b) an authorised person.
- (3) A declaration required by section 2.29 to be made by a person elected as a councillor, deputy mayor or deputy president is to be made before an authorised person.
- (4) A declaration required by section 2.42 to be made by a person appointed as a commissioner is to be made before an authorised person.
- (5) In this regulation —  
authorised person means a person before whom a statutory declaration can be made under the Oaths, Affidavits and Statutory Declarations Act 2005.

#### **Policy Implications**

Nil

#### **Financial Implications**

Nil

#### **Strategic Implications**

Nil

**Cr RC (Clive) Gibsone was duly elected to the position of Shire President of the Shire of Cunderdin for the ensuing period November 2014 to October 2015.**

**Newly elected Shire President, Cr Gibsone made a declaration in the prescribed form before Mr Ken Baxter, Justice of the Peace.**

The Shire President, Cr Gibsone, assumed the Chair.

### 3.2 Election of Deputy Shire President

<b>Location:</b>	Shire of Cunderdin
<b>Applicant:</b>	Chief Executive Officer
<b>Date:</b>	7 <sup>th</sup> November 2014
<b>Author:</b>	Peter Naylor
<b>Item Approved by:</b>	Chief Executive Officer
<b>Disclosure of Interest:</b>	Nil
<b>File Reference:</b>	Nil
<b>Attachment/s:</b>	Nil

#### **Proposal/Summary**

For Council to elect the Deputy Shire President for the period November 2014 to October 2015.

#### **Background**

Provisions within the *Local Government Act 1995*, Schedule 2.3, Division 1, provide for the election of the Deputy Shire President by the Council.

Section 2.29 of the *Act* states that a person elected by the council as deputy president has to make a declaration in the prescribed form before acting in the office.

Local Government (Constitution) Regulations 1998, C13, provides for the format in which the person elected as the deputy president has to make the declaration.

#### **Comment**

The Chief Executive Officer advised that written nominations for the position of Deputy Shire President have been received on behalf of Cr Dennis Whisson, Cr Todd Harris and Cr Norm Jenzen.

Cr Whisson accepted the nomination, however Cr Harris and Cr Jenzen declined.

The Chief Executive Officer called for any further nominations for the position of Deputy Shire President; there were no further nominations.

Therefore Cr Whisson was duly elected unopposed to the position of Deputy Shire President for the Shire of Cunderdin for the ensuing period November 2014 to October 2015.

Cr Whisson being duly elected to the position of Deputy Shire President made a declaration in the prescribed form before Mr Ken Baxter, Justice of the Peace.

#### **Consultation**

Nil

#### **Statutory Implications**

*Local Government Act 1995*

#### **2.29. Declaration**

- (1) A person elected as an elector mayor or president or as a councillor has to make a declaration in the prescribed form before acting in the office.
  - (2) A person elected by the council as mayor, president, deputy mayor or deputy president has to make a declaration in the prescribed form before acting in the office.
  - (3) A declaration required by this section is to be taken or made before a prescribed person.
  - (4) A person who acts in an office contrary to this section commits an offence.
- Penalty: \$5 000 or imprisonment for one year.

### **Schedule 2.3 Division 2 — Deputy mayors and deputy presidents**

#### **6. Terms used In this Division —**

extraordinary vacancy means a vacancy that occurs under section 2.34(1); office means the office of deputy mayor or deputy president.

#### **7. When the council elects the deputy mayor or deputy president**

- (1) If the local government has an elector mayor or president the office of deputy mayor or deputy president is to be filled as the first matter dealt with —
  - (a) at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and
  - (b) at the first meeting of the council after an extraordinary vacancy occurs in the office.
- (2) If the local government has a councillor mayor or president the office of deputy mayor or deputy president is to be filled —
  - (a) as the next matter dealt with after the mayor or president is elected at the first meeting of the council after an inaugural election or a section 4.13 or 4.14 election or after an ordinary elections day; and
  - (b) subject to subclause (3), as the first matter dealt with at the first meeting of the council after an extraordinary vacancy occurs in the office.
- (3) If at a meeting referred to in clause 2(1)(b) the deputy mayor or deputy president is elected to be the mayor or president, the resulting extraordinary vacancy in the office is to be filled as the next matter dealt with at the same meeting.

#### **8. How deputy mayor or deputy president is elected**

- (1) The council is to elect a councillor (other than the mayor or president) to fill the office.
- (2) The election is to be conducted in accordance with the procedure prescribed by the mayor or president, or if he or she is not present, by the CEO.
- (3) Nominations for the office are to be given to the person conducting the election in writing before the meeting or during the meeting before the close of nominations.
- (3a) Nominations close at the meeting at a time announced by the person conducting the election, which is to be a sufficient time after the announcement by that person that nominations are about to close to allow for any nominations made to be dealt with.
- (4) If a councillor is nominated by another councillor the person conducting the election is not to accept the nomination unless the nominee has advised the person conducting the election, orally or in writing, that he or she is willing to be nominated for the office.
- (5) The council members are to vote on the matter by secret ballot as if they were electors voting at an election.
- (6) Subject to clause 9(1) the votes cast under subclause (5) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.
- (7) As soon as is practicable after the result of the election is known, the person conducting the election is to declare and give notice of the result in accordance with regulations, if any.

[Clause 8 amended by No. 64 of 1998 s. 54(2)-(4); No. 49 of 2004 s. 69(6)-(9).]

#### **9. Votes may be cast a second time**

- (1) If, when the votes cast under clause 8(5) are counted, there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and, not more than 7 days later, a special meeting of the council is to be held.



- (2) Any nomination for the office may be withdrawn, and further nominations may be made, before or when the special meeting is held.
- (3) When the special meeting is held the council members are to vote again on the matter by secret ballot as if they were voting at an election.
- (4) The votes cast under subclause (3) are to be counted, and the successful candidate determined, under Schedule 4.1 as if those votes were votes cast at an election.

#### Local Government (Constitution) Regulations 1998

#### **13. Oaths, affirmations and declarations (s. 2.29, 2.42)**

- (1) For the purposes of sections 2.29 and 2.42 — [(a), (b) deleted] (c) the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is that in Form 7; (d) the form of declaration for a commissioner is that in Form 8.
- (2) A declaration required by section 2.29 to be made by a person elected as a mayor or president is to be made before —
  - (a) the immediate predecessor of the person in the office of mayor or president; or
  - (b) an authorised person.
- (3) A declaration required by section 2.29 to be made by a person elected as a councillor, deputy mayor or deputy president is to be made before an authorised person.
- (4) A declaration required by section 2.42 to be made by a person appointed as a commissioner is to be made before an authorised person.
- (5) In this regulation —  
authorised person means a person before whom a statutory declaration can be made under the Oaths, Affidavits and Statutory Declarations Act 2005.

#### **Policy Implications**

Nil

#### **Financial Implications**

Nil

#### **Strategic Implications**

Nil

**Cr Whisson was duly elected to the position of Deputy Shire President of the Shire of Cunderdin for the ensuing period November 2014 to October 2015.**

**Newly elected Deputy Shire President, Cr Whisson made a declaration in the prescribed form before Mr Ken Baxter, Justice of the Peace.**

### 3.3 Shire of Cunderdin Councillor Representation

Location:	Shire of Cunderdin
Applicant:	Chief Executive Officer
Date:	7 <sup>th</sup> November 2014
Author:	Peter Naylor
Item Approved by:	Chief Executive Officer
File Reference:	Nil
Attachments:	Nil

#### **Proposal/Summary**

For Council to consider future Councillor representation following the passing of Cr Rod Carter.

#### **Background**

With the passing of Cr Carter, and the vacant Councillor position arising, Council has three (3) options to consider:

1. Conducting an extraordinary election to fill the vacancy created by the resignation.
2. Apply to the Electoral Commissioner for approval under Section 4.17 (3) & (4A) of the Local Government Act 1995 (following an absolute majority by Council) to reduce the number of offices of Council to seven (7) members and filling the vacancy at the next Local Government Elections in October 2015.
3. Submit a proposal to the Local Government Advisory Board (LGAB) for the number of members to be reduced in a permanent capacity from eight to seven, in accordance with the provisions of Schedule 2.2 of the Local Government Act 1995.

For Council to consider option 3 it is recommended that option 2 be carried out in the first instance.

Option 2 is a distinct possibility as the Shire does not have wards and at least 80% of the offices of member of Council are still filled.

Under Schedule 2.2 Council can decide to carry out a review to reduce in a permanent capacity the number of members or however can propose to the LGAB that this be treated as a minor matter (absolute majority required), in which case a review is not necessary. Also the Shire of Cunderdin discontinued the Ward system in 2002.

The reduction can then be implemented as soon as possible or at the time of the 2015 elections.

#### **Comment**

Minister for Local Government preference for Councillor representation is a reduction in member numbers to increase ratio of members per elector.

The current ratio for the Shire of Cunderdin is one (1) Councillor to 112 electors, a reduction in members to seven (7) would increase the ratio to 1:128. Not a huge change but probably more in accordance with Ministers wishes.

Without trying to pre-empt Council or the communities views or final decision on the future amalgamation of the Shire it does seem feasible that Council can consider a permanent reduction in the

number of members from eight to seven without a severe reduction of councillor/elector representation.

### **Consultation**

Department of Local Government and Communities.

### **Statutory Implications**

*Local Government Act 1995*

#### **2.32. How extraordinary vacancies occur in offices elected by electors**

*The office of a member of a council as an elector mayor or president or as a councillor becomes vacant if the member —*

- (a) dies; or*
- (b) resigns from the office; or*
- (c) does not make the declaration required by section 2.29(1) within 2 months after being declared elected to the office; or*
- (d) advises or accepts under section 2.27 that he or she is disqualified, or is declared to be disqualified by the State Administrative Tribunal acting on an application under section 2.27; or*
- (da) is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council; or*
- (e) becomes the holder of any office or position in the employment of the local government; or*
- (f) having been elected to an office of councillor, is elected by the electors to the office of mayor or president of the council.*

*[Section 2.32 amended by No. 55 of 2004 s. 686; No. 24 of 2005 s. 58; No. 1 of 2007 s. 5.]*

#### **4.17. Cases in which vacant offices can remain unfilled**

- (1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and 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.*
- (2) If a member's office becomes vacant under section 2.32 —*
  - (a) after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but*
  - (b) before the third Saturday in July in that election year, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, 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.*
- (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.*

*\* Absolute majority required.*

*(4A) Subsection (3) applies —*

- (a) if —*
  - (i) the office is for a district that has no wards; and*
  - (ii) at least 80% of the number of offices of member of the council in the district are still filled;*
- or*
- (b) if —*

- (i) the office is for a ward for which there are 5 or more offices of councillor; and
  - (ii) at least 80% of the number of offices of councillor for the ward are still filled.
- (4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.
- [Section 4.17 amended by No. 49 of 2004 s. 31; No. 66 of 2006 s. 8; No. 17 of 2009 s. 12.]

**Schedule 2.2 - Clause 5. Local government may propose ward changes or make minor proposals**

A local government may, whether or not it has received a submission —

- (a) carry out a review of whether or not an order under section 2.2, 2.3(3) or 2.18 should, in the council's opinion, be made; or
  - (b) propose\* to the Advisory Board the making of an order under section 2.2(1), 2.3(3) or 2.18(3) if, in the opinion of the council, the proposal is —
    - (i) one of a minor nature; and
    - (ii) not one about which public submissions need be invited;
 or
  - (c) propose\* to the Minister the making of an order changing the name of the district or a ward.
- \* Absolute majority required.

**Policy Implications**

Nil

**Financial Implications**

Minor financial savings.

**Strategic Implications**

Nil

**Recommendation 3.3**

That Council:

1. Proposes to permanently reduce the number of offices of Councillor for the Shire of Cunderdin from eight to seven.
2. Requests the Electoral Commissioner to approve the reduction of the Shire of Cunderdin number of offices of Council to seven members with one vacancy being held over until the October 2015 Local Government Elections.
3. Presents a submission to the Local Government Advisory Board requesting that the proposal to permanently reduce the number of offices of Council from eight to seven is one of a minor nature and not one about which public submissions need to be invited.

Moved: Cr \_\_\_\_\_

Seconded: Cr \_\_\_\_\_

Vote: Absolute majority

Carried/Lost: \_\_\_/\_\_\_

**Resolution 3.3**

**That Council:**

- 1. Requests the Electoral Commissioner to approve the reduction of the Shire of Cunderdin number of offices of Council to seven members with one vacancy being held over until the October 2015 Local Government Elections.**

**Moved: Cr Terri Jasper**

**Seconded: Cr Dianne Kelly**

**Vote: Absolute majority**

**Carried: 5/2**

**4. Closure of meeting**

There being no further business the Shire President declared the meeting closed at 5:01pm.