



Town of Port Hedland

MINUTES

OF THE

**SPECIAL MEETING
OF THE TOWN OF PORT HEDLAND COUNCIL**

**ADJOURNED ON
THURSDAY 6 SEPTEMBER 2012
AT 5.23 PM**

AND

**RECOMMENCED ON
WEDNESDAY 12 SEPTEMBER 2012
AT 5:30 PM**

**IN COUNCIL CHAMBERS
McGREGOR STREET, PORT HEDLAND**

Purpose of Meeting: To consider
- *Validity of Council Decision 201213/091 made at the Ordinary Meeting held on 22 August 2012 regarding the change in Acting Chief Executive Officer arrangements.*

*Natalie Octoman
Acting Chief Executive Officer*

OUR COMMITMENT

To enhance social, environmental and economic well-being through leadership and working in partnership with the Community.

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ITEM 1 OPENING OF MEETING**1.1 Opening**

The Chairperson declared the Special Meeting open at 5:08pm and acknowledged the traditional owners, the Kariyarra people.

ITEM 2 RECORDING OF ATTENDANCE AND APOLOGIES**2.1 Attendance***Elected Members*

Councillor George J Daccache
Councillor Arnold A Carter
Councillor Jan M Gillingham
Councillor Michael (Bill) Dziombak
Councillor Gloria A Jacob
Councillor Julie E Hunt

Officers

Mr Ian Hill	Acting Chief Executive Officer
Ms Natalie Octoman	Director, Corporate Services
Mr Gordon MacMile	Director, Community Development
Mr Eber Butron	Director, Planning and Development
Ms Jenella Voitkevich	Acting Director, Engineering Services
Ms Debra Summers	Manager, Organisational Development
Mr Ayden Férdeline	Acting Coordinator, Governance

2.2 Apologies

Mayor Kelly A Howlett

2.3 Approved Leave of Absence

Councillor David W Hooper
Councillor George J Daccache *(Confirmed attendance)*

ITEM 3 RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil

ITEM 4 PUBLIC TIME

NOTE: Pursuant to section 7 (4)(b) of the Local Government (Administration) Regulations 1996, members of the public have the opportunity to ask questions pertaining only to relevant Council Business at Special Meetings.

7. *Question time for public, procedure for (Act s. 5.24(2))*
(4) *Nothing in subregulation (3) requires —*
(b) *a council at a special meeting to answer a question that does not relate to the purpose of the meeting; or*

Deputy Mayor opened Public Question Time at 5:10pm.

4.1 Public Question Time**4.1.1 *Mr Camilo Blanco***

What is the monetary value that determines whether an absolute majority or a simple majority vote is required, in relation to the employment of a Senior Officer?

Acting Chief Executive Officer advised there is no such correlation between the selection of vote and applicable financial implications.

Who is responsible for ensuring the vote in the agenda be managed in accordance with the Local Government Act 1995?

Acting Chief Executive Officer advised the Presiding person.

Has the voting system been manipulated to achieve a specific outcome?

Acting Chief Executive Officer advised that this question does not relate to the purpose of this Special Meeting of Council.

Deputy Mayor closed Public Question Time at 5:12pm.

Deputy Mayor opened Public Statement Time at 5:12pm.

4.2 Public Statement Time

Nil

Deputy Mayor closed Public Statement Time at 5:12pm.

ITEM 5 QUESTIONS FROM MEMBERS WITHOUT NOTICE**5.1 Councillor Gillingham**

Why we did not receive clarification from the Department of Local Government on the procedure for an absolute majority vote?

Deputy Mayor advised that a clarification was received.

5.2 Councillor Dziombak

Is the Department of Local Government in possession of the confidential agenda item considered by Council on 22 August 2012?

Acting Chief Executive Officer advised not to his knowledge.

Is the Department of Local Government aware of this Special Meeting? If so, when will they be involved in this Special Meeting?

Acting Chief Executive Officer advised any attempt to involve the Department in the meeting via teleconference would need to be via a decision of Council.

5.3 Councillor Jacob

I am unclear of the purpose of this meeting. Can you explain why we are here tonight?

Acting Chief Executive Officer referred to the second paragraph of the meeting request letter submitted by Councillors Carter, Dziombak and Gillingham. This letter is included in the Agenda under Item 10.

ITEM 6 DECLARATION BY MEMBERS TO HAVE GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPER PRESENTED BEFORE THE MEETING

Cr Daccache	Cr Jacob
Cr Hunt	

NOTE: Councillor Gillingham advised that she only received a copy of the agenda from the Director Corporate Services upon entering Council Chambers tonight and, therefore, has not had sufficient time to give due consideration to the content of the business paper.

Councillor Carter advised that as the administration has not provided written clarification from the Department of Local Government, as requested in the letter attached under Item 10, he does not feel comfortable being a part of the meeting.

Councillor Dziombak advised that he was taking his absence from the meeting because he only just received the written legal advice.

5:18pm Councillors Carter, Dziombak and Gillingham announced they would be leaving the meeting and left the room.

Acting Chief Executive Officer advised the Deputy Mayor that the meeting was counted out for want of a quorum.

Deputy Mayor Daccache, Councillor Jacob and Councillor Hunt remained in the room.

Deputy Mayor thanked members for their attendance and adjourned the meeting at 5:23pm, to be resumed on Wednesday, 12 September 2012 at 5:30pm.

**ITEM 1 RESUMPTION OF MEETING
WEDNESDAY, 12 SEPTEMBER 2012 AT 5:30PM****1.1 Opening**

The Chairperson declared the adjourned Special Meeting resumed at 5:34pm and acknowledged the traditional owners, the Kariyarra people.

ITEM 2 RECORDING OF ATTENDANCE AND APOLOGIES**2.1 Attendance***Elected Members*

Mayor Kelly A Howlett
Councillor Arnold A Carter
Councillor Jan M Gillingham
Councillor Michael (Bill) Dziombak
Councillor David W Hooper
Councillor Gloria A Jacob
Councillor Julie E Hunt

Officers

Ms Natalie Octoman	Acting Chief Executive Officer
Mr Gordon Macmile	Director Community Development
Mr Eber Butron	Director Planning and Development
Ms Debra Summers	Manager, Organisational Development
Mr Ayden Férdeline	Acting Coordinator, Governance
Ms Grace Waugh	Administration Officer, Governance

2.2 Apologies

Nil

2.3 Approved Leave of Absence

Councillor George J Daccache

NOTE: Pursuant to sections 3.4 and 13.4 of the Town of Port Hedland Local Law on Standing Orders, this meeting will continue at Item 6 'Declaration by members to have given due consideration to all matters contained in the business paper presented before the meeting', for it was at this part of the Special Meeting of Council held on 6 September 2012 that the meeting was counted out due to the absence of quorum and, subsequently, adjourned.

ITEM 6 DECLARATION BY MEMBERS TO HAVE GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPER PRESENTED BEFORE THE MEETING

Mayor Howlett	Cr Carter
Cr Gillingham	Cr Dziombak
Cr Hooper	Cr Jacob
Cr Hunt	

ITEM 7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Nil

ITEM 8 ANNOUNCEMENTS BY CHAIRPERSON WITHOUT DISCUSSION

Nil

ITEM 9 PETITIONS / DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

Nil

Disclaimer***IMPORTANT NOTE:***

Members of the public are cautioned against taking any action on Council decisions, on items on this evening's Agenda in which they may have an interest, until formal notification in writing by Council has been received. Decisions made at this meeting can be revoked, pursuant to the Local Government Act 1995.

ITEM 10 REPORTS OF OFFICERS

The former Acting Chief Executive Officer had received the attached request for a Special Meeting of Council.

Your Ref: Council Decision 201213/091

4 September 2012

Mr Ian Hill
Acting CEO
Town of Port Hedland
McGregor Street
PORT HEDLAND WA 6721

Dear Sir

NOTICE OF SPECIAL COUNCIL MEETING

Pursuant to section 5.4 of the *Local Government Act 1995*, we hereby give notice to call a special meeting of Council at 5.00pm on Thursday 6 September 2012 in relation to the validity of Council decision 201213/091 made at the Ordinary Council Meeting on 22 August 2012, namely 'Change of Acting CEO Officer Arrangements'.

As the purpose of this meeting is to establish the validity of the Council decision, we request that a representative from the Department of Local Government, legal and/or compliance section, be available to provide advice to all Councillors regarding this matter.

Consequently, we further request that copies of the agenda, unconfirmed minutes and recording of the meeting be provided to the Department as soon as possible to allow them time to prepare for the advice that we will be seeking.

Yours faithfully



Cr Arnold Carter



Cr Michael Dziombak



Cr Jan Gillingham

The Acting Chief Executive Officer tabled the following advice received from the Town's legal counsel.



Our Ref
Your Ref

DFN:PORT-32446

6 September 2012

Mr Ian Hill
Acting Chief Executive Officer
Town of Port Hedland
P.O. Box 41
PORT HEDLAND WA 6721



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Denis McLeod
Neil Douglas
Fiona Gigich
David Nadebaum
Geoff Owen
Andrew Roberts
Craig Clarke
Peter Wittmann
David Nicholson
Peter Gillett
Elisabeth Stevenson (Special Counsel)
Trudi Firth (Associate)
Tim Beckett (Associate)

Dear Ian

Validity of appointment of Acting CEO

I refer to our telephone conference on 6 September 2012.

Background

As discussed, on 22 August 2012 Council of the Town resolved (4:3) to appoint Ms Natalie Octoman (Director of Corporate Services) Acting CEO for a period of 6 weeks. I understand that the appointment was made as you are departing on Sunday and the new CEO cannot take up his position for another six weeks.

On 5 September 2012 you received a Notice of Special Council Meeting giving notice to call a special meeting of Council at 5 p.m. on Thursday, 6 September 2012 in relation to the validity of Council's decision to appoint Ms Octoman as Acting CEO.

The Town has obtained the following advice from WALGA in relation to the validity of Council's decision:

"The decision that requires an absolute majority relates to the CEO's contract of employment, Section 5.36(2) (b). The Act is silent on Acting CEO's.

The DLG have confirmed that the Act is silent on Acting CEO's however state that it is probably good practice if LG's follow the principles as the permanent CEO."

I understand that the effect of the WALGA advice was that compliance with section 5.36(2)(b) was desirable in this instance, but not necessary as a matter of law.

Questions for advice

You have requested advice in relation to the following questions:

1. Whether the advice received from WALGA in relation to the Council's decision to appoint an acting CEO at its meeting on 22 August 2012 was correct?

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MIDLAND OFFICE: 35 SPRING PARK ROAD, MIDLAND
ALL CORRESPONDENCE TO CLAREMONT OFFICE

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Validity of appointment of Acting CEO

2. Whether the requests contained in the notice of Special Council Meeting must be complied with?
3. Whether the Special Council Meeting may address anything other than the matters specifically referred to in the Notice?

I have addressed each of these questions in turn below.

1. Whether the advice received from WALGA in relation to the Council's decision to appoint an acting CEO at its meeting on 22 August 2012 was correct?

- 1.1. Section 5.36 of the *Local Government Act 1995 (Act)* makes the following provision in relation to the employment of a person to be CEO:

"(1) A local government is to employ —
(a) a person to be the CEO of the local government; and
(b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.

(2) A person is not to be employed in the position of CEO unless the council —
(a) believes that the person is suitably qualified for the position; and
(b) is satisfied with the provisions of the proposed employment contract.*

** Absolute majority required."*

- 1.2. I understand that the Town sought WALGA's advice so to clarify whether Council was required to resolve by absolute majority to appoint the Acting CEO. As noted above, the motion to appoint the Acting CEO was passed 4:3, whilst an absolute majority requires more than 50 percent of the number of offices (whether vacant or not) of members of the Council (in this case 9).
- 1.3. The advice received from WALGA indicates that the Act is "silent on Acting CEOs". Whilst the Act does not address the question of Acting CEOs in any detail, it is not entirely silent on the issue.
- 1.4. Section 5.39 of the Act makes the following provision in relation to contracts for CEOs and senior employees:

"(1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.

(1a) Despite subsection (1) —

(a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting;"

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Validity of appointment of Acting CEO

- 1.5. Section 5.39(1a)(a) thus contemplates an existing employee of a local government being appointed to act in the position of a CEO for a term not exceeding one year without a written contract for the position in which he or she is acting.
- 1.6. As the appointment of an employee of a local government to act in the position of a CEO for a term not exceeding one year does not require a written contract, then it follows necessarily by implication that section 5.36(2)(b) would not apply in these circumstances. The Act could not have intended that Council satisfy itself with the provisions of a proposed employment contract (by absolute majority) in circumstances where no written contract for the appointment is required.
- 1.7. The apparent intention of the Act in this respect is that the existing contract of the employee of the local government would continue to apply for the duration of that person's temporary appointment to act in the position of a CEO. Accordingly, a further written contract is not required and by inference the requirement for Council to satisfy itself with the provisions of the proposed employment contract by absolute majority also does not apply.
- 1.8. In this respect, the Act does distinguish between:
 - (a) an employee acting temporarily in the position of a CEO for a term not exceeding one year; and
 - (b) a person to be employed in the position of CEO (in a permanent rather than a temporary basis).
- 1.9. It is only in the latter case, where a person is to be employed in the position of a CEO, that the requirements under section 5.36(2) would apply.
- 1.10. As section 5.36(2) does not apply to a decision of Council to temporarily appoint an employee to act in the position of a CEO for a term not exceeding one year, it was not necessary for Council when making its decision to satisfy the requirement of an absolute majority under section 5.36(2)(b). The Act does not otherwise require that a decision of Council to appoint an employee to act in the position of a CEO on a temporary basis is a decision that requires an absolute majority.
- 1.11. Accordingly, I consider that Council's decision on 22 August 2012 to appoint an Acting CEO for a period of 6 weeks was validly made. I would therefore agree with WALGA's advice (stated to be confirmed by the Department of Local Government) that it was not necessary as a matter of law for Council to resolve to appoint the Acting CEO by an absolute majority.
- 1.12. The decision will remain valid until such time as it is changed or revoked in accordance with the Local Government (Administration) Regulations 1996 (**Regulations**) or otherwise declared invalid by a court of law.

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Validity of appointment of Acting CEO

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2. Whether the requests contained in the notice of Special Council Meeting must be complied with?

2.1. The notice of the special Council meeting contained the following requests:

"As the purpose of this meeting is to establish the validity of the Council decision, we request that a representative from the Department of Local Government, legal and/or compliance section, be available to provide advice to all Councillors regarding this matter.

Consequently, we further request that copies of the agenda, unconfirmed minutes and recording of the meeting be provided to the Department as soon as possible to allow them time to prepare the advice that we will be seeking."

2.2. The Act does not provide that a notice to the CEO setting out the date and purpose of a proposed Council meeting may also direct the CEO to undertake any actions preparatory to the meeting or otherwise convene the meeting in a particular manner.

2.3. The manner in which a Council meeting is to be convened by the CEO is addressed by section 5.5, which provides:

(1) The CEO is to convene an ordinary meeting by giving each council member at least 72 hours' notice of the date, time and place of the meeting and an agenda for the meeting.

(2) The CEO is to convene a special meeting by giving each council member notice, before the meeting, of the date, time, place and purpose of the meeting.

2.4. In my view, the CEO is only required to comply with section 5.5 in convening the special council meeting. The requests made by the three councillors responsible for issuing the notice of special council meeting, which purport to require action by officers of the Town prior to consideration of the relevant matter by a Special Council Meeting, do not have any statutory force and do not constitute a decision of Council.

2.5. It is within the discretion of the acting CEO to determine what steps should be taken prior to the meeting, if any, to enable the CEO to properly advise the Council in relation to the matters the subject of the special council meeting.

3. Whether the Special Council Meeting may address anything other than the matters specifically referred to in the Notice?

3.1. Clause 2.1 of the Local Law makes the following provision in relation to matters that may be considered at a special meeting of Council:

"...Special meetings are those called to consider specific business, the nature of which shall be specified in the notice convening the meeting. No business shall be transacted at a special meeting other than that for which the special meeting has been called."

3.2. Clause 2.6 of the Local Law further provides:

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Validity of appointment of Acting CEO

- "2.6 No business shall be transacted at any meeting other than that specified in the notice relating thereto except –
- a. matters which the Act permits to be dealt with without notice;
 - b. matters which the standing orders permit to be dealt without notice."
- 3.3. The effect of clauses 2.1 and 2.6 is thus that no business other than the matters specified in the notice convening the special council meeting may be transacted at the meeting, unless they are permitted under the Act or the standing orders to be dealt with without notice.
- 3.4. The specific business referred to in the notice of the special council meeting is "... the validity of Council decision 201213/091 made at the Ordinary Council Meeting on 22 August 2012, namely "Change of Acting CEO Officer Arrangements". The notice further states that the "... purpose of this meeting is to establish the validity of the Council decision".
- 3.5. The notice thus only proposes to consider or establish the validity of Council's previous decision and does not propose to revoke or change that decision.
- 3.6. It follows that it would not be open to Council to consider a motion to revoke or change Council's previous decision, as that was not business that was specified in the notice of the special Council meeting.
- 3.7. In any case notice of a motion to revoke or change a previous Council decision would need to be given in accordance with clause 6.1 of the Local Law, which provides:
- "6.1 (1) Unless otherwise permitted by the Act or the standing orders, a member may only bring forward at a council meeting business in the form of a motion of which notice has been given, in writing, to the CEO.*
- (2) Notice of motion shall be given to the CEO either -*
- A. at the previous council meeting, or*
 - B. at least seven clear days before the council meeting at which it is to be brought forward."*
- 3.8. You have advised that notice of a motion to revoke or change Council's previous decision has not been given to the CEO in accordance with clause 6.1(2) of the Local Law. It follows that clause 6.1(1) would also preclude any member of the Council from bringing forward a motion for the revocation or change of Council's previous decision at the special Council meeting.

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Validity of appointment of Acting CEO

I trust this advice satisfies your requirements. Please contact me should you have any further queries in respect of this matter.

Yours sincerely



David Nicholson
Partner

201213/094 Council Decision

Moved: Mayor Howlett

Seconded: Cr Jacob

Based on the advice received from the Western Australian Local Government Association, the Department of Local Government and the formal legal advice received from McLeods, that Council takes no further action in relation to Council decision 201213/091 regarding the change in Acting Chief Executive Officer arrangements.

CARRIED 7/0

ITEM 11 REPORTS OF COUNCILLORS

Nil

ITEM 12 LATE ITEMS AS PERMITTED BY CHAIRPERSON/COUNCIL

Nil

ITEM 13 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

ITEM 14 CONFIDENTIAL ITEMS

Nil

ITEM 15 APPLICATIONS FOR LEAVE OF ABSENCE

201213/095 Council Decision

Moved: Cr Hooper

Seconded: Cr Hunt

That the following application for leave of absence:

- Councillor Jacob from 15 September 2012 to 18 September 2012.**

be approved.

CARRIED 7/0

ITEM 16 CLOSURE

16.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 26 September 2012, commencing at 5.30pm.

16.2 Closure

There being no further business, the Chairperson declared the Special Meeting closed at 5:43pm.

Declaration of Confirmation of Minutes

I certify that these Minutes were confirmed by Council at its Ordinary Meeting held on _____.

CONFIRMATION:

MAYOR

DATE