



AGENDA FOR THE
ORDINARY COUNCIL MEETING
TO BE HELD ON
WEDNESDAY
17TH MARCH 2010



SHIRE OF MINGENEW
ORDINARY COUNCIL MEETING NOTICE PAPER
17TH MARCH 2010

Madam President and Councillors,

An ordinary meeting of Council is called for **Wednesday, 17th March 2010**, in the Council Chambers, Victoria Street, Mingenew, commencing at **2:30pm**.

Ian Fitzgerald
Chief Executive Officer
12th March 2010

MINGENEW SHIRE COUNCIL

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CHIEF EXECUTIVE OFFICER

12th March 2010

SHIRE OF MINGENEW

WRITTEN DECLARATION OF INTEREST IN MATTER BEFORE COUNCIL

Chief Executive Officer

Shire of Mingenew

PO Box 120

MINGENEW WA 6522

Dear Sir

Written Declaration of Interest in Matter before Council

I, _____ wish to declare an interest in the following item to be considered by Council at its meeting to be held on _____

Agenda Item _____

The type of interest I wish to declare is Financial/Proximity/Indirect/Financial/Conflict (impartiality) pursuant to Section 5.65 of the Local Government Act 1995/Clause 1.3 of Councils Adopted Code of Conduct.

The nature of my interest is _____

I wish to be present and participate in any discussion and/or decision making procedure relating to the item and therefore would like Council to declare that my interest in the matter is

The extent of my interest is _____

I understand that the above information will be recorded in the minutes of the meeting and placed in the Financial Interest Register.

Yours faithfully,

Signed

Date

CONTENTS PAGE

- 1 OPENING**
- 2 RECORD OF ATTENDANCE/ APOLOGIES/ LEAVE OF ABSENCE
(PREVIOUSLY APPROVED)**
- 3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**
- 4 PUBLIC QUESTION TIME**
- 5 APPLICATION FOR LEAVE OF ABSENCE**
- 6 PUBLIC FORUM (PETITIONS/ DEPUTATIONS/ PRESENTATIONS)**

Council conducts open Council meetings. Members of the public are asked that if they wish to address the Council they state their name and put the purpose of their address as precisely as possible. A maximum of 15 minutes is allocated for public forum. The length of time an individual can speak will be determined at the President's discretion.

- 7 CONFIRMATION OF PREVIOUS MEETING MINUTES**

That the Minutes of the Ordinary Council Meeting held on the 17th February 2010 be confirmed as true and accurate.

- 8 DISCLOSURES OF FINANCIAL AND OTHER INTERESTS**

Note: That under Section 5.65 of the Local Government Act 1995 care should be exercised by all Councillors to ensure that a "financial interest" is declared and that they refrain from voting on any matters which are considered that may come within the ambit of the Act.

- 9 REPORTS OF COMMITTEES AND OFFICERS**

- 9.1 HEALTH, BUILDING AND TOWN PLANNING**

- 9.2 WORKS AND SERVICES**

- 9.3 FINANCE AND ADMINISTRATION**

- 9.3.1 MIDWEST REGIONAL COUNCIL – FUTURE OF**

- 9.3.2 RESOURCE SHARING AGREEMENT – MINGENEW & THREE SPRINGS**

- 9.3.3 FINANCE REPORT FOR THE MONTH ENDING 28TH FEBRUARY 2010**

- 9.3.4 ACCOUNTS DUE AND SUBMITTED FOR PAYMENT**

- 10 ANNOUNCEMENT BY PRESIDENT AND COUNCILLORS**
- 11 ELECTED MEMBERS/ MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12 URGENT BUSINESS INTRODUCED BY DECISIONS OF THE MEETING**
 - (A) ELECTED MEMBERS
 - (B) OFFICERS
- 13 CONFIDENTIAL BUSINESS AS PER LOCAL GOVERNMENT ACT S5.23 (2)**
 - 13.1 CONFIDENTIAL ITEM
 - 13.2 CONFIDENTIAL ITEM
- 14 CLOSURE**

9.3.1 MID WEST REGIONAL COUNCIL – FUTURE OF

Agenda Reference: CEO 03/10-01
Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference:
Disclosure of Interest: Nil
Date: 11th March 2010
Author: Ian Fitzgerald, Chief Executive Officer

Signature of Author: _____

SUMMARY

At the request of the Mid West Regional Council, Council is requested to re-consider their on-going membership of the MWRC and their decision at the December meeting to give notice of its intention to withdraw.

ATTACHMENT

An extract from the Minutes of the February 2010 MWRC meeting where this matter was discussed is attached.

BACKGROUND

The Shires of Carnamah, Coorow, Mingenew, Morawa, Mullewa, Perenjori and Three Springs formed the MWRC with an establishment date of 1 July 2006.

The establishment agreement provides the earliest withdrawal from the MWRC is 30 June 2010 and Carnamah and Coorow have given that notice.

The Shires of Mingenew, Mullewa and Three Springs gave notice in December 2009 of their intention to withdraw from the MWRC with effect from 30th June 2011.

COMMENT

The loss of two of the founding members, the impending structural reform of local government and the lack of any major project to manage has brought into question the long term future of the MWRC.

As can be seen from the attached extract of the MWRC minutes it has been requested that the member councils discuss the possible winding up of the MWRC by agreement of the participating councils effective as of 30th June 2010.

The indications from the Perenjori and Morawa delegates at the MWRC meeting were that their councils were unlikely to agree to the early winding up of the regional council.

The BROC councils are not interested in joining into a formal regional council with members of the MWRC. With Carnamah and Coorow having already given notice come the 1st July 2011 and presuming our proposed merger proceeds there will be only 1 member of the MWRC being the newly formed council including Mingenew.

The Establishment provides that the MWRC can be wound up if the members agree.

I have copied below legal advice the MWRC has received in relation to the withdrawal of the Shires of Carnamah and Coorow and in particular in relation to the distribution of assets. There is the real likelihood the Shire of Mingenew may be requested to make an additional payment to the MWRC to help meet any moneys payable to Carnamah and Coorow as a result of their withdrawal.

You advise that 2 of the Participants, the Shires of Coorow and Carnamah, have given notice, in accordance with the establishment agreement, that they intend withdrawing from the MWRC on 30 June 2010.

As requested my advice is as follows:

1. Firstly, the matter of a withdrawal by one or more Participants is a matter governed by the establishment agreement and is essentially a matter between the Participants themselves. The Mid West Regional Council is not a party to the establishment agreement and if any dispute or disagreement arises between the continuing Participants and the withdrawing Participants then that is a matter for those parties to deal with and not a matter for the MWRC.
2. If the MWRC proposes to facilitate any aspect of the withdrawal by the Shires of Coorow and Carnamah then it should only do so with the express written agreement of all of the Participants to that aspect.
3. As you correctly point out, the relevant provisions relating to the withdrawal of a Participant are set out in clause 13.

Under clause 13.4 there are 2 alternatives. The clause states:

“When the withdrawal of a Participant takes effect:



- (a) *the Participant is entitled to be paid an amount equal to the proceeds and any surplus funds which would have been payable if the WCRC was wound up; or*
- (b) *the Participant must pay to the WCRC an amount equal to the liability of debt which would be payable by the Participant if the WCRC was wound up,*

as the case may be.”

- 4. In effect clause 13.4 requires the position to be determined as if the MWRC was wound up.
- 5. The position in relation to winding up in dealt with by clauses 12.2 and 12.3.

Those provisions are set out below:

“12.2 Division of assets

If the WCRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the WCRC then the property and assets are to be realised and the proceeds along with any surplus funds are to be divided among each of the Participants in the same proportions as the contributions of a particular Participant to the assets of the WCRC bear to the total of such contributions by all Participants.

12.3 Division of liabilities

If the WCRC is to be wound up and there remains any liability or debt in excess of the realised property and assets of the WCRC then the liability or debt is to be met by each of the Participants in the same proportions as the contributions of a particular Participant to the assets of the WCRC bear to the total of such contributions by all Participants.”

- 6. In other words, there would need to be a “notional winding up” as at 30 June 2010. The Participants would need to determine what the position would be if there were to be a realisation of the property and assets of the MWRC and if all of the liabilities and debts were to be brought to account.
- 7. If all of the Participants were in agreement then, this might be determined by obtaining an independent valuation of the assets and liabilities of the MWRC.
- 8. As mentioned earlier, the MWRC should only facilitate this if it has the express written agreement of all of the Participants including the withdrawing Participants.
- 9. My understanding of the position, based on your letter and our telephone discussion, is that, if there was an agreed amount to be paid to the Shires of Coorow and Carnamah then the MWRC would not wish to make that payment (on behalf of the on-going Participants) because of the lack of funds and that the MWRC would wish the on-going Participants to make that payment.

Whether the MWRC is able to make the payment from funds on hand is a matter for the MWRC to decide.

10. If the MWRC decides not to make the payment then the on-going Participants must do so. In this regard, clause 13.5 provides that *“the Participants (other than the Participant which has withdrawn) must pay the amount in the proportions equal to their respective equities in the WCRC”*.

I trust that this sufficiently clarifies the position.

I should reiterate that this advice is provided to the MWRC and not to the Participants themselves and that the Participants should obtain their own legal advice as necessary.

CONSULTATION

MWRC

STATUTORY ENVIRONMENT

Local Government Act 1995

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

The withdrawal from the MWRC would save the annual contribution of \$25,000 plus the time and cost of attending and hosting meetings. There is no indication of what costs will possibly be incurred with the withdrawal of Carnamah and Coorow and the theoretical distribution of assets as at 30th June 2010.

STRATEGIC IMPLICATIONS

The demise of the MWRC will remove a formal body to take issues forward but the relationship we currently have with our neighbouring local governments, The Minister for Local Government and the Department of Local Government and our impending merger should see a strong voice for our community being retained.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 9.3.1

That Council re-affirms their intention to withdraw from the Mid West Regional Council as at 30th June 2011.

0210.9.1.1 FUTURE OF THE MID WEST REGIONAL COUNCIL

FILE REFERENCE: 401.05

REPORTING OFFICER: Suzanne Ward – Chief Executive Officer

PROPONENT: Cr Nino Messina – Chairman MWRC

DISCLOSURE OF INTEREST: Direct Financial Interest being employees of the MWRC

DATE OF REPORT: 19th January 2010

SUMMARY: Proposal to “Wind Up” the Mid West Regional Council.

BACKGROUND: Cr Nino Messina has requested an agenda item be presented to discuss the possible winding up of the MWRC by agreement of the participants effective June 30, 2010.

COMMENT: This move is being brought on by the recent notice of withdrawal of Mullewa, Mingenew and Three Springs effective 30th June 2011 (appendix i and ii attached to agenda item), the pending amalgamations and the earlier notices of withdrawal from Coorow and Carnamah which are effective 30th June 2010.

CONSULTATION: Cr N Messina and S Ward.

STATUTORY ENVIRONMENT: Section 3.63 of the Local Government Act 1995 provides for the dissolution or partial dissolution of a regional local government: -

(1) A regional local government is to be wound up —

(a) at the direction of the Minister; or

(b) in accordance with the establishment agreement.

(2) A participant may, in accordance with the establishment agreement, withdraw from the regional local government and cease to be a participant.

Clause 12.1 of the Establishment Agreement of the Mid West Regional Council provides for the winding up of the MWRC by “agreement of the participants”. In order to be quite clear on the intention and meaning of this clause in the agreement, John Woodhouse (Legal Consultant and author of the MWRC Establishment Agreement) was consulted for an interpretation. An extract from John’s reply follows: -

As you have noted, clause 12 of the establishment agreement is to the effect that the regional local government may be wound up “by agreement”.

In my view, this means that the agreement is required by the participants. There is no “agreement” unless all of the participants are in agreement. Put another way, there would need to be a resolution from each of the councils of the 7 participants.

POLICY IMPLICATIONS: *None Applicable.*

FINANCIAL IMPLICATIONS: *Clauses 12.2 and 12.3 of the Establishment Agreement provide for the Division of Assets and Liabilities. If the MWRC is to be wound up and there remains (after satisfaction of all its debts and liabilities) any property and assets, then the property and assets are to be realised and the proceeds along with any surplus funds are to be divided among the participating councils. Similarly, should there be any liability or debt in excess of assets, then the liability or debt is to be met by the participating councils.*

STRATEGIC IMPLICATIONS: *None applicable.*

VOTING REQUIREMENT: *Simple Majority*

ELECTED MEMBER

RECOMMENDATION: *The Mid West Regional Council discuss the possible winding up of the MWRC by agreement of the participants effective June 30, 2010.*

Moved: *Cr. Nino Messina* **Seconded:** *Cr. Michelle Bagley*

COUNCIL DECISION: *a) The Mid West Regional Council discuss the possible winding up of the*

MWRC by agreement of the participants effective June 30, 2010

CARRIED 6/0

MINUTE REF: *02/10-02*

Moved: *Cr. Michelle Bagley* **Seconded:** *Cr. Nino Messina*

b) The Mid West Regional Council elected members discuss the future and possible winding up of the MWRC by agreement of the participants effective June 30, 2010 with their Individual Councils.

CARRIED 4/2

MINUTE REF: 02/10-03

Reason for deviation to Elected Member Recommendation: Council wished to ensure the direction to Elected Members to take the item back for discussion at individual councils was defined.

9.3.2 RESOURCE SHARING AGREEMENT – MINGENEW & THREE SPRINGS

Agenda Reference: CEO 03/10-02
Location/Address: Shire of Mingenew and Shire of Three Springs
Name of Applicant: Joint Management Committee
File Reference:
Disclosure of Interest: Nil
Date: 11th March 2010
Author: Ian Fitzgerald, Chief Executive Officer

Signature of Author: _____

SUMMARY

A revised Resource Sharing Agreement was presented for Council's consideration at the December Council meeting but was laid on the table for clarification to be sought on the section relating to "joint Council meetings". Mr. Neil Douglas from McLeod's Solicitors has provided clarification on that issue and that is included within this report. The Agreement is presented for Council's adoption.

ATTACHMENT

A copy of the revised Resource Sharing Agreement is attached.

BACKGROUND

The original document was prepared by consultant Stephen Goode and lawyer Mr Neil Douglas and adopted by both Councils in July 2008.

COMMENT

There has been no change to the overall intent from the original Resource Sharing Agreement. The Agreement has been updated to reflect the current resource sharing arrangements between the two shires which now include 5 administration staff and the changes in position names that have taken place since the initial Agreement was established.

The updated Agreement reflects the contract extension granted to the CEO bringing his total contract period to five years, and therefore the Agreement has been adjusted to a five year term to bring both terms into line.

In discussions with Neil Douglas from McLeod's Barristers and Solicitors it was recommended a termination clause be included that allows for the winding up of the Resource Sharing Agreement in the event of an amalgamation. There are other clauses (12.2 and 12.3) that allow for a shire to withdraw from the Agreement providing due notice is given. The new clause would see the Agreement automatically wound up on the event of an amalgamation involving either one or both of the participating shires.

Following the discussions at the December Council meeting advice was sought from Mr. Douglas on the section relating to joint council meetings. That advice is copied below:

“the references, in clauses 7.9-7.12, to ‘joint meetings’ of the Councils as I understand the position, these meetings would not be ‘Council meetings’ under the Local Government Act 1995, but simply meetings of all elected members from both local governments.

I agree with the Department's view that the Local Government Act does not contemplate joint council meetings. However, it would be possible, for example –

for each Council to hold its own Council meetings at the same venue, and on the same day or night (either in separate rooms at the same time, or with one following the other in the same room); and

before or after those formal Council meetings, the elected members from both local governments could meet together – as a discussion forum, or information sharing forum, rather than as a meeting where binding decisions were made.”

The holding of joint council meetings has been carried out previously as suggested in paragraph (a) above – the meetings were held at the same venue following one another. The author understands that neither Council found benefit in the holding of regular joint council meetings and as such the process has not continued. It may be appropriate for clause 7.10 of the Agreement to be amended to reflect less frequent joint meetings; for example to be held every 6 months or simply as required.

STATUTORY ENVIRONMENT

Local Government Act 1995

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

As reported previously to Council the resource sharing arrangements have produced a financial savings to both shires.

STRATEGIC IMPLICATIONS

The resource sharing arrangements have helped to demonstrate the advantages in working more closely with our neighbours and to some extent have assisted with the consideration of a merger of the Shires of Mingenew, Morawa, Perenjori and Three Springs.

VOTING REQUIREMENTS

Simple Majority

OFFICER RECOMMENDATION – ITEM 9.3.2

That Council resolves to adopt the amended Resource Sharing Agreement as presented.

9.3.3 FINANCE REPORT FOR FEBRUARY 2010

Agenda Reference: SFO 03/10 - 01
Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference:
Disclosure of Interest: Nil
Date: 10th March 2010
Author: Kylie McGree

Signature of Author: _____

SUMMARY

The Monthly Statement of Financial Activity report for the month ending 28th February 2010 is presented to Council for adoption.

ATTACHMENT

Finance Report for February 2010

BACKGROUND

Financial Regulations require a monthly statement of financial activity report to be presented to Council.

COMMENT

Council's operating surplus as at the 28 February, 2010 is \$939,792.00.

SUMMARY OF FUNDS – SHIRE OF MINGENEW	
Municipal Funds	\$368,612.19
Business Maximiser Fund (Municipal)	\$410,369.56
Trust Account	\$29,042.25
Reserve Account	\$530,728.45

Rates Outstanding	\$52,866.67
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It should be noted that Rates Outstanding as at end of February, 2009 was \$56,135.54

The final instalment notices will be issued in March with payment on 30 April, 2010. Over 30 ratepayers have elected to pay by instalments.

Debtor's accounts continue to be monitored with all efforts being made to ensure that monies are recovered. \$87,686.91 was owing to Council as at 28 February, 2010 with a few Debtors 60 days or more. Erin Greaves is following up on these outstanding accounts.

The Statement of Financial Activities Report contains explanations of Councils adopted variances for the 2009 / 2010 financial year.

STATUTORY ENVIRONMENT

Local Government Act 1995

Financial Management Regulations 1996

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

As presented

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION – ITEM 9.3.3

That Council adopt the Monthly Statement of Financial Activity for the month ending the 28th February 2010.

9.3.4 ACCOUNTS DUE AND SUBMITTED FOR PAYMENT

Agenda Reference: AO 03/10 - 01
Location/Address: Shire of Mingenew
Name of Applicant: Shire of Mingenew
File Reference:
Disclosure of Interest: Nil
Date: 10th March 2010
Author: Julie Borrett

Signature of Author: _____

SUMMARY

Council to confirm the payment of creditors for the month of February in accordance with the Local Government (Financial Management) Regulations 1996 section 13(1).

ATTACHMENT

Copy of list of accounts due (EFT & cheque payments), which will enable Council to confirm the payment of its creditors in accordance with Local Government (Financial Management) Regulations 1996, Section 13 (1).

BACKGROUND

Financial Regulations require a schedule of payments made through the Council bank accounts to be presented to Council for their inspection. The list includes details for each account paid incorporating the payee's name, amount of payment, date of payment and sufficient information to identify the transaction.

COMMENT

Invoices supporting all payments are available for inspection. All invoices and vouchers presented to Council have been certified as to the receipt of goods and the rendition of services and as to prices, computations and costings, and that the amounts shown were due for payment.

STATUTORY ENVIRONMENT

Local Government Act 1995, Section 6.4

Local Government (Financial Management) Regulations 1996, Sections 12, 13 and 14

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Nil

VOTING REQUIREMENTS

Simple Majority

STAFF RECOMMENDATION – ITEM 9.3.4

That Council confirm the accounts as presented for February 2010 be authorised for payment.