



MINUTES FOR THE
ORDINARY COUNCIL MEETING
HELD ON
WEDNESDAY
17 MARCH, 2010



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**SHIRE OF MINGENEW
MINUTES OF THE ORDINARY MEETING HELD IN THE COUNCIL CHAMBERS,
MINGENEW, ON WEDNESDAY THE 17 MARCH, 2010**

Declaration of Councillor

Prior to the commencement of Council Meeting, Mrs Belinda Horwood undertook the Declaration Oath before Mr Ian Fitzgerald JP.

1.0 DECLARATION OF OPENING/ ANNOUNCEMENT OF VISITORS

The Presiding Member, Cr Michelle Bagley, declared the meeting open at 2:30pm.

2.0 ATTENDANCE

2.1 PRESENT

MA Bagley	President	Rural Ward
ET Hathaway	Deputy President	Town Ward
JL Holmes	Councillor	Town Ward
PJ Gledhill	Councillor	Town Ward
MP Pearce	Councillor	Town Ward
PJ Ward	Councillor	Rural Ward
BP Horwood	Councillor	Rural Ward

STAFF

IB Fitzgerald, JP	Chief Executive Officer
KA McGree	Senior Finance Officer
J Elliot	Project Officer

2.2 APOLOGIES

Nil

3.0 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

4.0 PUBLIC QUESTION TIME

John Elliott, Project Officer for the four Shires to be amalgamated addressed Council. John gave a run down on himself and what he has been employed to do for the Shires. Spoke on development of the business plan, key issues and communication as the amalgamation progresses.

5.0 LEAVE OF ABSENCE

Nil

6.0 PUBLIC FORUM (PETITIONS / DEPUTATIONS / PRESENTATIONS)

Nil

7.0 CONFIRMATION OF MINUTES FROM PREVIOUS MEETINGS

COUNCIL RESOLUTION – Item No. 7.0

031001

MOVED:

Cr PJ Gledhill

SECONDED:

Cr ET Hathaway

That the Minutes of the Ordinary Meeting of Council held on Wednesday, 17 February, 2010, be confirmed as a true and accurate record of proceedings

CARRIED
Voting(7/0)

8.0 DISCLOSURES OF FINANCIAL AND OTHER INTERESTS

Nil

9.0 REPORTS OF COMMITTEES AND OFFICERS

Prior to reports, President M Bagley suggested that Council look at Committee Representatives and made suggestions for replacements for the Committees that Mr McTaggart had been on.

COUNCIL RESOLUTION

031002

MOVED:

Cr JL Holmes

SECONDED:

Cr BP Horwood

- (a) Northern Country Zone of WALGA :** Cr M Bagley, Cr B Horwood
- (b) WALGA Conference Delegates :** Cr M Bagley, TBA
- (c) Mingenew Tourism and Promotions Committee :** Cr B Horwood, CEO
- (d) Lions Expo Liaison Committee :** Cr P Ward, Cr P. Gledhill
- (e) MRWA Regional Road Group :** Cr M Bagley, Cr P Ward, CEO
- (f) Mingenew Silver Chain Committee :** Cr M Pearce
- (g) Mid West Regional Council :** Cr M. Bagley, Cr E Hathaway
- (h) Mingenew Telecentre :** Cr J Holmes
- (i) Mingenew Autumn Group :** Cr P Gledhill, Cr M Pearce
- (j) Crime Prevention Plan Committee –** Will be with LEMC Committee
- (k) LEMC Committee** Cr P. Gledhill, Cr M. Pearce
- (l) Joint MI/TS Management Committee:** Cr M Bagley, Cr E Hathaway
- (m) LG Reform Working Group Delegates:** Cr M Bagley, Cr J Holmes
- (n) Shire of Mingenew Audit Committee:** All of Council.

CARRIED
Voting(7/0)

President M Bagley then read a letter out received from the Telecentre. It was resolved that this lay on the table and come to Council as a formal Agenda Item at the April Meeting. It was suggested that a set of financials which include budget comparisons are provided by the Telecentre for this item.

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 & COUNCIL RESOLUTION – ITEM 9.3.1

031003

MOVED:

Cr JL Holmes

SECONDED:

Cr MP Pearce

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

CARRIED
Voting(7/0)

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 & COUNCIL RESOLUTION – ITEM 9.3.2

031004

MOVED:

Cr MP Pearce

SECONDED:

Cr PJ Gledhill

That Council resolves to adopt the amended Resource Sharing Agreement as presented with the amendment to 7.10 to now read;

Joint Meetings will be held as required.

CARRIED
Voting(7/0)

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

OFFICER RECOMMENDATION & COUNCIL RESOLUTION – ITEM 9.3.3

031005

MOVED:

Cr ET Hathaway

SECONDED:

Cr PJ Ward

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

CARRIED
Voting(7/0)

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

OFFICER RECOMMENDATION & COUNCIL RESOLUTION – ITEM 9.3.4

031006

MOVED:

Cr PJ Gledhill

SECONDED:

Cr JL Holmes

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

CARRIED
Voting(7/0)

Note: Check safety strips on new glass doors at Recreation Centre

10.0 ANNOUNCEMENT BY PRESIDENT AND COUNCILLORS

Cr MA Bagley

Commented on the various meetings that she had attended over the last month;

- 18/02/10 Meeting with Minister Castrilli - Three Springs
- 22/02/10 Northern Country Zone AGM - Geraldton
- 23/02/10 Project Officer Interviews – Geraldton (Mingenew will be administering the project officer grant)
- 24/02/10 Main Roads ISA Workshop – Mingeneew
Farewell for Dr Kent Morison – Mingeneew
- 25/02/10 Regional Road Group Meeting - Geraldton
- 10/03/10 Structural Reform Working Group Meeting – Morawa
Meeting for Land Purchase - Mingeneew

Cr ET Hathaway

Meeting with Minister Castrilli and the Main Roads ISA Workshop.

Cr JL Holmes

Naming of the amalgamated Shire at the Structural Reform Working Group Meeting – this is ongoing. Is impressed with John Elliot as Project Officer.

Cr PJ Gledhill

Lions Club – there is no surplus money for the sports ground from the Expo Committee.

Cr MP Pearce

Silver Chain Meeting – need to support our new Doctor to enable retention of services. A two way radio for Lucy is being looked into with emergency channel 11. Cr Gledhill suggested that signs should be erected on Shire boundaries to state such. Issues with screen at front of Silver Chain – Cr Pearce has provided relevant contacts for such.

Cr PJ Ward

Any feedback from meeting with Minister Castrilli? The Chief Executive Officer advised that the water approval delay is sorted, with date of construction yet to be confirmed. Have fire break notices gone out? The Chief Executive Officer advised that a short notice was placed in this week's Mingeneew matters and the permit period (Restricted Burning) have been extended.

11.0 ELECTED MEMBERS / MOTIONS OF WHICH NOTICE HAS BEEN GIVEN

Nil

12.0 URGENT BUSINESS INTRODUCED BY DECISIONS OF THE MEETING

(A) ELECTED MEMBERS

Nil

(B) OFFICERS

Nil

13.0 CONFIDENTIAL BUSINESS AS PER LOCAL GOVERNMENT ACT S5.23 (2)

Two items brought to Councils attention and presented for discussion.

14.0 TIME AND DATE OF NEXT MEETING

The next Ordinary Meeting of Council to be held on Wednesday 21 April, 2010.

15.0 CLOSURE

At 3:30pm the President Cr MA Bagley declared the Meeting closed.

These minutes were confirmed at a meeting on 21 April, 2010.

Signed: _____

Presiding Officer

Date: 21 April, 2010