



**AGENDA FOR THE  
SPECIAL MEETING OF COUNCIL  
TO BE HELD ON**

**Wednesday 3 April 2019**



**Special Meeting Notice**

**3 April 2019**

Pursuant to Regulation 12 (4) of the Local Government (Administration) Regulations 1996, notice is hereby given that a Special Meeting of the Shire of Mingenew Council is to be held on Wednesday 3rd April 2019, commencing at 6pm in Council Chambers at the Shire Offices, Victoria St.

The purpose of the meeting is to elect a Deputy President and discuss the current vacancy on Council.

Nils Hay  
Chief Executive Officer

29 March 2019

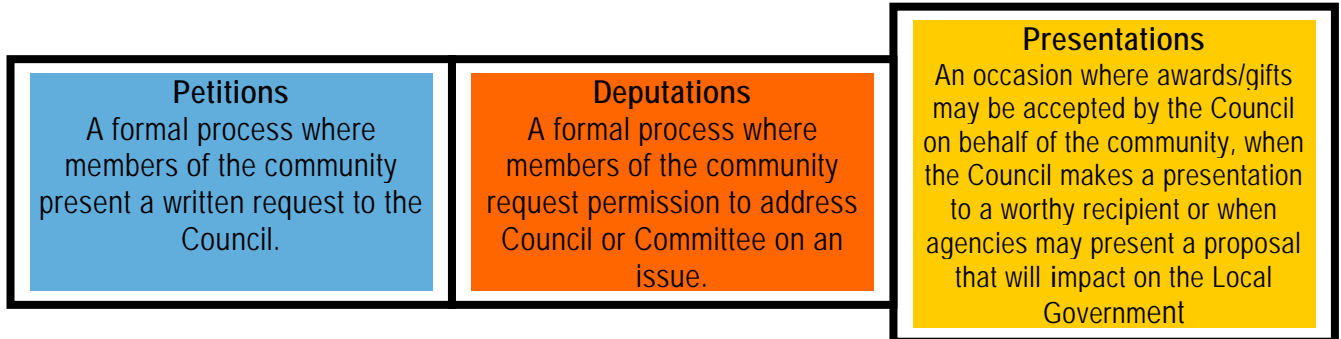
**DISCLAIMER**

The purpose of Council Meetings is to discuss, and where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the Local Government Act 1995 (Section 5.25 (e)) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person. The Shire of Mingenew expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a Member or Officer, or the content of any discussion occurring, during the course of the Council meeting.

## PROCEDURE FOR PUBLIC QUESTION TIME, DEPUTATIONS, PRESENTATIONS AND PETITIONS AT COUNCIL MEETINGS

Council thanks you for your participation in Council Meetings and trusts that your input will be beneficial to all parties. Council has a high regard for community input where possible, in its decision making processes.



### PROCEDURE FOR DEPUTATIONS

The Council allows for members of the public to make a deputation to Council on an issue related to Local Government business. Any person or group wishing to be received as a deputation by the Council shall send to the CEO an application:

- I. Setting out the agenda item to which the deputation relates;
- II. Whether the deputation is supporting or opposing the officer's or Committee's recommendation; and
- III. Include sufficient detail to enable a general understanding of the purpose of the deputation.

Notice of deputations need to be received by 5pm on the day before the meeting and agreed to by the Presiding Member. Please contact the Shire via telephone on 99281192 or email [governance@mingenew.wa.gov.au](mailto:governance@mingenew.wa.gov.au) to arrange your deputation.

Where a deputation has been agreed to, during the meeting the Presiding Member will call upon the relevant person(s) to come forward and address Council.

A Deputation invited to attend a Council meeting:

- I. is not to exceed five (5) persons, only two (2) of whom may address the Council, although others may respond to specific questions from Members;
- II. is not to address the Council for a period exceeding ten (10) minutes without the agreement of the Council; and
- III. additional members of the deputation may be allowed to speak with the agreement of the Presiding Member.

Council is unlikely to take any action on the matter discussed during the deputation without first considering an officer's report on that subject in a later Council agenda.

### PROCEDURE FOR PRESENTATION

Notice of presentations being accepted by Council on behalf of the community, or agencies presenting a proposal, need to be received by 5pm on the day before the meeting and agreed to by the Presiding Member. Please contact the Shire via telephone on 99281102 or email [governance@mingenew.wa.gov.au](mailto:governance@mingenew.wa.gov.au) to arrange your presentation.

Where the Council is making a presentation to a worthy recipient, the recipient will be advised in advance and asked to attend the Council meeting to receive the award.

All presentations will be received / awarded by the Shire President or an appropriate Councillor.

### PROCEDURE FOR PETITIONS

Please note the following protocol for submissions of petitions. Petitions must:

- be addressed to the Shire President.
- be made by electors of the district.
- state the request on each page of the petition.
- contain the names, addresses and signatures of the elector(s) making the request, and the date each elector signed.
- contain a summary of the reasons for the request.
- state the name and address of the person whom arranged the petition for correspondence to be delivered to, as correspondence is not sent to all the signatures on the petition.

Where a petition does not relate to or conform to the above it may be treated as an 'informal' petition and the Chief Executive Officer may at his discretion forward the petition to Council accompanied by an officer report.

### PROCEDURE FOR PUBLIC QUESTION TIME

The Council extends a warm welcome to you in attending any meeting of the Council. Council is committed to involving the public in its decision making processes whenever possible, and the ability to ask questions during 'Public Question Time' is of critical importance in pursuing this public participation objective.

Council (as required by the Local Government Act 1995) sets aside a period of 'Public Question Time' to enable a member of the public to put up to two (2) questions to Council. Questions should only relate to the business of Council and should not be a statement or personal opinion. Upon receipt of a question from a member of the public, the Shire President may either answer the question or direct it to a Councillor or an Officer to answer, or it will be taken on notice.

Having regard for the requirements and principles of Council, the following procedures will be applied in accordance with the Shire of Mingenew Standing Orders Local Law 2017:

1. Public Questions Time will be limited to fifteen (15) minutes.
  2. Public Question Time will be conducted at an Ordinary Meeting of Council immediately following "Responses to Previous Public Questions Taken on Notice".
  3. Each member of the public asking a question will be limited to two (2) minutes to ask their question(s).
  4. Questions will be limited to two (2) per person.
  5. Please state your name and address, and then ask your question.
  6. Questions should be submitted to the Chief Executive Officer in writing by 5pm on the day before the meeting and be signed by the author. This allows for an informed response to be given at the meeting.
  7. Questions that have not been submitted in writing by 5pm on the day before the meeting will be responded to if they are straightforward.
  8. If any question requires further research prior to an answer being given, the Presiding Member will indicate that the "question will be taken on notice" and a response will be forwarded to the member of the public following the necessary research being undertaken.
  9. Where a member of the public provided written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
  10. A summary of the question and the answer will be recorded in the minutes of the Council meeting at which the question was asked.
- **During the meeting, no member of the public may interrupt the meetings proceedings or enter into conversation.**
  - **Members of the public shall ensure that their mobile telephone and/or audible pager is not switched on or used during any meeting of the Council.**
  - **Members of the public are hereby advised that use of any electronic, visual or audio recording device or instrument to record proceedings of the Council is not permitted without the permission of the Presiding Member.**

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## SHIRE OF MINGENEW

### AGENDA FOR THE SPECIAL MEETING OF COUNCIL TO BE HELD IN COUNCIL CHAMBERS ON 03 APRIL 2019 COMMENCING AT 6pm

#### 1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

#### 2.0 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

#### 2.1 ELECTION OF DEPUTY PRESIDENT

**Location/Address:** Shire of Mingenew  
**Name of Applicant:** Shire of Mingenew  
**File Reference:** ADM0025  
**Disclosure of Interest:** Nil  
**Date:** 29 March 2019  
**Author:** Belinda Bow, Governance Officer  
**Authoring Author:** Nils Hay, Chief Executive Officer

#### Summary

Councillors are requested to elect a member from amongst themselves (other than the president) to fill the office of deputy president.

#### Attachment

Form 7- Declaration of Office

#### Background

On the 20<sup>th</sup> March 2019 Deputy President C. Lucken resigned from Council effective from the 21/03/2019. As per Schedule 2.3, Division 2, cl7(1)(b) of the Local Government Act 1995, Council is now required to elect a deputy president at its first meeting of council post the extraordinary vacancy (an extraordinary vacancy is a vacancy that occurs under s2.34(1) of the Act which includes resignation from office).

Over and above the role of a councillor, the deputy president is required to perform the following functions when either the office of president is vacant or in circumstances when the president is unavailable, unable or unwilling to do so:

- (a) presides at meetings in accordance with this Act; and
- (b) provides leadership and guidance to the community in the district; and
- (c) carries out civic and ceremonial duties on behalf of the local government; and
- (d) speaks on behalf of the local government; and
- (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
- (f) liaises with the CEO on the local government's affairs and the performance of its functions.

The term of this appointment to the office of deputy president is from 03 April 2019 (provided a result is declared on this day) to the start of the first meeting of council post the Shire's ordinary elections in October (even if not re-elected at the ordinary elections (as per s2.34(2) of the LGA).

Section 8 of Schedule 2.3, Division 2 of the Local Government Act 1995, outlines the process for the election of the deputy president. The process is as follows:

[Extracted from Section 8 of Schedule 2.3, Division 2 of the Local Government Act 1995]

## MINGENEW SHIRE COUNCIL SPECIAL MEETING AGENDA – 3 April 2019

- (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.

In the event of only one nomination being accepted by the person conducting the election, the Councillor nominated will be elected unopposed.

If there are two nominations accepted by the person conducting the election and the votes are tied, the person conducting the election is to draw lots in accordance with r77A of the Local Government (Elections) Regulations 1997. This process is prescribed below:

[Extracted from r77A of the Local Government (Elections) Regulations 1997].

- .....(2) As soon as possible after the occurrence of a circumstance under which the RO (Returning Officer) is required to draw lots under clause 5 of Schedule 4.1 of the LGA, the RO is to make out in respect of each of the tied candidates a slip bearing the candidate's name.
- (3) The RO is to place each of the slips in separate hollow opaque spheres of exact similarity, securely close the spheres, deposit the spheres in an empty container, and securely fasten the container.
- (4) Then the RO is to shake and rotate the container and permit anyone else present to do likewise if they so wish.
- (5) Then the RO is to open the container, take out and open one of the spheres to obtain the slip enclosed in it.
- (6) The steps set out in subregulations (2) to (5) are to be carried out in front of all the people present.
- (7) The candidate whose name appears on the slip obtained by the RO in accordance with subregulation is to be elected.

Once a result has been declared by the person conducting the election, the President is to swear in the Councillor to the office of deputy president.

### Comment

Nil

### Consultation

WALGA

### Statutory Environment

As referenced within body of report

**Policy Implications**

Nil

**Financial Implications**

There are no financial implications as a result of filling the extraordinary vacancy in the office of deputy president.

**Strategic Implications**

By completing this process, the Shire will be achieving the following Community Strategic Plan 2012 civic leadership outcomes:

4.5- Achieve a high level of compliance

4.2- An open and accountable local government that is respected, professional and trustworthy.

**Election Requirements**

The candidate who receives the greater or greatest number of votes is elected.

**VOTING PROCESS – ITEM 2.1**

**Nominations received:**

**Nominations closed at:**

**Vote count:**

**Result declared:**

**Councillor sworn in to the Office:**



Attachment 1- Declaration of Office



**Form 7. Declaration by Elected Member of Council [r. 13(1)(c)]**

**Local Government Act 1995  
Local Government (Constitution) Regulations 1998  
Declaration by Elected Member**

I, .....

of (1) .....

having been elected to the office of Deputy President of the Shire of Mingenew, declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the Local Government (Rules of Conduct) Regulations 2007.

Declared at Victoria St, Mingenew on 03 April 2019

by .....  
Councillor

Before me: .....  
Nils Hay  
Chief Executive Officer

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(1) Insert your residential address.

**3.0 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**4.0 PUBLIC QUESTION TIME/PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**

**5.0 DECLARATIONS OF INTEREST**

**6.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION**

**7.0 REPORTS BY THE CHIEF EXECUTIVE OFFICER**

**7.1 EXTRORDINARY ELECTION**

**Location/Address:** Shire of Mingenew  
**Name of Applicant:** Shire of Mingenew  
**File Reference:** ADM0026  
**Disclosure of Interest:** Nil  
**Date:** 29 March 2019  
**Author:** Belinda Bow, Governance Officer  
**Authoring Author:** Nils Hay, Chief Executive Officer

**Summary**

Council are requested to decide on whether an extraordinary election is to be called following the resignation of Cr C. Lucken.

**Attachment**

Nil

**Background**

On the 20<sup>th</sup> March 2019 Deputy President C. Lucken resigned from Council effective from the 21/03/2019. Cr Lucken was part way through a 4-year term which expires in October 2021. The Shire is due to have its ordinary elections in October this year. As it stands there will be 4 seats vacant at the ordinary election exclusive of the seat that Cr Lucken held.

In the case of this extraordinary vacancy Council has two options:

1. Council may direct the CEO to seek approval of the Electoral Commissioner to postpone and fix the ordinary elections day (19/10/19) as the day for holding the poll needed to fill the vacancy; or
2. Council may elect to hold an extraordinary election and fix the election day to fill the vacancy at a day within the next 4 months.

**Comments**

There are several important factors for Councillors to consider when deciding upon the correct course of action and, in no particular order, they are outlined below:

**1) Potentially significant change to Council composition**

The Shire's strategic risk register notes of several risks that should be noted by council:

- I. The failure to govern effectively, transparently and in compliance with legislation.
- II. Inability to manage community expectations and increasing demands of community groups

- III. Failure to meet organisational objectives through effective/efficient use of human resources and effective workforce planning.

The above risks had the following identified as contributors to an increased risk ranking:

- a) Change in council composition- change in direction/focus
- b) Knowledge loss due to turnover of councillors

Council instability (high turnover and the associated knowledge loss) can contribute to strategic risk. This is because to be an effective councillor and provide leadership and good governance for the district, councillors require an awareness and understanding of state and federal legislation, roads, planning processes, government agencies and committees, local standing orders, integrated planning and the differentiation between that of council and that of administration. Much of this comes from training and experience.

Whilst the CEO can and does provide guidance to Councillors via way of reports, it does take time for persons new to local government to successfully understand the role of Councillor.

Given that four Council's seven seats will be open for nomination come October 2019 there is the potential for a significant change to the Council's composition at the later end of the year. If Council were to postpone the date of filling the extraordinary vacancy to that of the ordinary elections, up to five new councillors could be elected. It is noted that filling the currently vacant seat will only give the new Councillor up to five months in the role prior to the October 2019 election.

## **2) Duplication of on-boarding processes**

Should Council elect to fill the currently vacant seat by extraordinary election, there will necessarily be an on-boarding process for the new Councillor (including formal and informal training, as well as completion of Primary Returns et cetera). Following the October election, a similar process will need to take place again for the newly elected/re-elected Councillors. This will require some duplication of administration processes and investment of administrative/finance staff time.

In mid-May 2019 we will be changing Governance Officers (as our current GO goes on leave and her replacement commences, if all goes to plan); this will be relevant from a resourcing point of view, depending upon the experience of the replacement, as they will likely be instrumental in the election process.

## **3) Financial Cost of an extraordinary election**

As per the Concept Forum report from February 2019 (when postal voting was discussed): "Previously, management and counting of the votes have occurred internally, which has minor materials cost, but some staff time (including overtime rates for staff working over the election weekend). With overtime and on-costs, an estimated \$2,000 - \$3,000."

It will also be necessary to consider the cost of advertising the election, both formally statewide, and locally. Depending upon the timing (assuming the timeframe above) these costs will all fall due in the current financial year.

In essence, Council's decision must weigh up the benefits of having the vacant seat filled for approximately five months with the financial and resourcing costs of leaving it vacant until the October 2019 Election.

## **Timing**

The following table outlines the statutory timeframes for the extraordinary election process:

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Days from Polling Day	Election Activities or Events	Relevant Act sections or Regulations
70 to 56	Between these days, the CEO of the local government is to give Statewide public notice of the closing date and time for elector enrolments.	LGA s4.39(2)
56	Last day for the local government's CEO to advise the Electoral Commissioner of the need to prepare an updated residents roll.	LGA s4.40(1)
56	Advertising may begin for council nominations from 56 days, and no later than 45 days, before election day.	LGA s4.47(1)
50	<b>Close of Rolls – 5.00pm</b>	LGA 4.39(1)
45	Last day for advertisement to be placed calling for council nominations.	LGA s4.47(1)
44	<b>Nominations Open</b> First day for candidates to lodge completed nomination papers, in the prescribed form, with the Returning Officer. Nominations are open for 8 days.	LGA s4.49(a)
38	If a candidate's nomination is withdrawn not later than 4.00pm on this day, the candidate's deposit is to be refunded.	LGA s4.50 Reg. 27(5)
37	<b>Close of Nominations – 4.00pm</b>	LGA 4.49(a)
36	Last day for the Electoral Commissioner to prepare an updated residents roll for the election. Last day for the local government's CEO to prepare an owners and occupiers roll.	LGA s4.40(2) LGA s4.41(1)
36	Returning Officer to give Statewide public notice of the election as soon as practicable but no later than 19 days before election day.	LGA s4.64(1)
22	The preparation of any consolidated roll (combined roll of residents, owners and occupiers) under regulation 18(1) is to be completed on or before this day.	LGA s4.38(1) Reg. 18(1)(2)
19	Last day for the Returning Officer to give Statewide public notice of the election.	LGA s4.64(1)
4	Close of absent voting and close of postal vote applications for 'voting in person' elections – 4.00pm.	LGA s4.68(1)(c) Reg. 37(3)(4)
1	Close of early voting for 'voting in person' elections – 4.00pm.	LGA s4.71(1)(e) Reg. 59(2)
0	<b>Election Day</b> Close of poll – 6.00pm.	LGA s4.7 LGA s4.68(1)(e)

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2	Election results declared and published.	LGA s4.77
2 - 14	Report to Minister. The report relating to an election under section 4.79 is to be provided to the Minister within 14 days after the declaration of the result of the election. (See Online 'Form 20' at <a href="http://www.dlgc.wa.gov.au">www.dlgc.wa.gov.au</a> )	LGA s4.79(1)(2) Reg. 81
Within 28 days of result publication	An invalidity complaint can be made to a Court of Disputed Returns, constituted by a magistrate, but can only be made within 28 days after notice is given of the result of the election.	LGA s4.81(1)
Within 2 months of result declaration	Newly elected members to make their declarations of office.	LGA s2.29(1)(2) LGA s2.32(c) LGA s2.34(1)(c)
Within 3 months of members making declarations	Newly elected members to lodge their Primary Returns with the local government's CEO.	LGA s5.75(1)

The soonest that an election can be advertised is Saturday 6 April 2019. This would mean that the election date would need to fall between Saturday 1 June and Saturday 15 June. Council is able to set a date on either a weekday or weekend during this period.

The June Ordinary Council Meeting is scheduled for Wednesday 19 June, so it would be anticipated that this would be the new Councillor's first meeting.

As an extraordinary election, utilising the longer allowed timeframes will allow the Shire to maximise the notice given to the public, which will hopefully improve awareness, nominations and voter turnout.

### Consultation

Lyn Fogg, WALGA Governance Advisor

### Statutory Environment

#### **s4.9. Election day for extraordinary election**

- (1) Any poll needed for an extraordinary election is to be held on a day decided on and fixed —
- (a) **by the mayor or president, in writing**, if a day has not already been fixed under paragraph (b);
  - or
  - (b) by the council at a meeting **held within one month after the vacancy occurs**, if a day has not already been fixed under paragraph (a).-
- (2) The election day fixed for an extraordinary election is to be a day that allows enough time for the electoral requirements to be complied with but, unless the Electoral Commissioner approves or section 4.10(b) applies, **it cannot be later than 4 months** after the vacancy occurs.

#### **s4.16. Postponement of elections to allow consolidation**

- (4) If a member's office becomes vacant under section 2.32 —
- (a) after the third Saturday in January in an election year; but
  - (b) before the third Saturday in July in that election year,

the council may, with the approval of the Electoral Commissioner, fix the ordinary elections day in that election year as the day for holding any poll needed for the extraordinary election to fill that vacancy.

**Policy Implications**

Nil

**Financial Implications**

As noted above, there would a financial cost to Council if an extraordinary election was to be held prior to the Ordinary Council elections in October 2019. This will include both staff time and advertising to manage the election, a well as the on-boarding of the new Councillor.

Should Council leave the seat vacant, there will be a saving of approximately \$1,500 in Councillor sitting fees for the months from June to October.

**Strategic Implications**

By completing this process, the Shire will be achieving the following Community Strategic Plan 2012 civic leadership outcomes:

4.2- An open and accountable local government that is respected, professional and trustworthy.

**Voting Requirements**

Simple Majority

**OFFICER RECOMMENDATION – ITEM 7.1**

That Council:

1. Direct the Chief Executive Officer to seek the approval of the Electoral Commissioner to postpone filling the vacant Council seat and fix the date of the 2019 ordinary local government election (19 October 2019) as the date for holding the poll needed to fill the vacancy; or
2. Elect to hold an extraordinary election to fill its vacant seat; and
3. Fix [date between Saturday 1 June and Saturday 15 June 2019] as the date for the extraordinary election; and
4. Direct the Chief Executive Officer to give Statewide public notice of the closing date and time for elector enrolments on Saturday 6 April 2019.

**8.0 ELECTED MEMBERS/MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**9.0 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**

**9.1 ELECTED MEMBERS**

**9.2 STAFF**

**10.0 CONFIDENTIAL ITEMS**

Nil

**11.0 CLOSURE**

These minutes were confirmed at an Ordinary Council meeting on 17 April 2019.

Signed \_\_\_\_\_  
Presiding Officer

Date: \_\_\_\_\_