

SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 5 MAY, 2014
COMMENCING AT 4.09pm
IN THE LESSER HALL, YORK**

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SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL
HELD ON MONDAY, 5 MAY 2014, COMMENCING AT
4.09M IN THE LESSER HALL, YORK

The York Shire Council acknowledges the traditional owners of the land on which this meeting will be held.

1. OPENING

1.1 Declaration of Opening

Cr Matthew Reid, Shire President, declared the meeting open at 4.09pm.

I would like to acknowledge the Ballardong People, the Traditional Owners of the land on which we are gathered and pay my respects to their Elders both past and present.

1.2 Disclaimer

The Shire President advised the following:

"I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material."

1.3 Suspension of Standing Orders (undergoing the repeal process) – Clauses 1 to 19 excluding Clause 8.5.1 which states "No person is to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council."

Moved: _____ Seconded: _____ Carried:

1.4 Announcement of Visitors

Nil

1.5 Declarations of Interest that Might Cause a Conflict

Financial Interest

Cr Pat Hooper – 9.2.1 – Financial – Applicant for Item

Cr Tony Boyle – 9.2.1 – Financial – Legal Opinion on Defamation

Disclosure of Interest that May Affect Impartiality
Nil

2. ATTENDANCE

2.1 Members

*Cr Matthew Reid, Shire President; Cr Mark Duperouzel, Deputy Shire President
Cr Denese Smythe, Cr Pat Hooper, Cr Tony Boyle, Cr David Wallace*

2.2 Staff

Michael Keeble, Chief Executive Officer; Tyhscha Cochrane, Deputy Chief Executive Officer; Helen D'Arcy-Walker, Executive Support Officer

2.3 Apologies

Nil

2.4 Leave of Absence Previously Approved

Nil

2.5 Number of People in Gallery at Commencement of Meeting

There were 30 people in the Gallery at the commencement of the meeting.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Previous Public Questions Taken on Notice

Nil

4. PUBLIC QUESTION TIME

Cr Reid read the following statement at the commencement of Public Question Time:

Statement by the Presiding Member at the Opening of Public Question Time at Ordinary and Special Council Meetings

"Public Question Time is provided for under the provisions of Section 5.24 of the Local Government Act and the Local Government (Administration) Regulations 1996.

To provide equal opportunity for people to ask questions a limit of two (2) questions per person per time will be applied. If there is time available in Public Question Time people may be given the opportunity to ask a further two (2) questions at a time.

Procedures

- Questions submitted in writing prior to the meeting will be dealt with initially.
- Questions from the floor will be taken in the order recorded in a register.
- Statements, opinions and attachments will not be recorded in the minutes.
- Questions requiring research will be taken on notice and a response will be prepared in a reasonable timeframe. The original questions and the response will be included in the Agenda and Minutes of the next Ordinary Council meeting.
- Questions may be deemed inappropriate because they contain defamatory remarks or offensive language, they question the competency of elected members or staff, they relate to the personal affairs of elected members or staff, they relate to legal processes and confidential matters or they have been responded to previously and these will not be accepted or recorded in the Minutes.
- The minutes may only record a summary of the question asked and the response given.

- Where possible questions asked should be submitted in writing at the completion of question time or at the end of the meeting.
- At Special Council Meetings questions must relate to the items on the Agenda.
- Shire of York guidelines for Public Question Time are included on the meeting agenda.”

PRESIDING OFFICER

21 October 2013

4.1 Public Question Time – Written Questions – Current Agenda

Public Question Time commenced at 4.13pm

Mrs Roma Paton

Question 1:

Hasn't enough Ratepayers money been wasted on legal fees pursuing/targeting residents over the last nine years?

Response:

Unable to define 'enough'. Cr Reid happy to discuss after the meeting.

Question 2:

Question does not relate to the meeting, therefore will not be included.

4.2 Public Question Time

Mrs Heather Saint

Question 1:

I note that Cr Hooper and Boyle are the 'Applicants' for this Agenda item and both have declared a financial interest. Could they please clarify if the funding for legal opinion being requested today is for the benefit of the Shire of York as a whole or are they requesting personal financial assistance for legal advice?

Response:

Personal financial assistance.

Question 2:

I also note that there are not Appendices or documents tabled so, if the answer to my first question is 'personal', have they each completed an application for legal representation and relevant section 7.1(a) disclaimer for their request?

Response:

No

Question 3:

Under legislation, any expenditure of a local government's funds must be justified on the basis that the expenditure will 'provide for a good government of persons in its district'. Council must satisfy itself that the expenditure can be justified. As the Shire has already wasted an unconscionable amount of Municipal funds on obtaining legal advice on unnecessary or trivial matters in the past, with no benefit to the community as a whole, could you please explain what this current request would achieve and how it would be in the public interest to approve the funding?

Response:

CEO stated that he could have made a decision on the request however he wanted to include the whole of the Council and to be transparent in the decision making process.

Mrs Tanya Richardson

Question 1:

Terminology – can you please clarify the Agenda item?

Response:

Cr Hooper replied he wished to seek a legal opinion on defamation by a poster placed in the window of a vehicle that was parked in various locations in Avon Terrace and outside the Shire office.

Cr Boyle stated he also wished to seek a legal opinion on defamation by a poster, as well he is a member of five Boards and the allegation of being fraudulent could affect his position on the various Boards.

His general integrity in the community has also been compromised.

Question 2:

Was not accepted as was not relevant to the meeting.

Ms Darlene Barratt

Question 1:

When are certain Councillors going to stop with going after people in the community that they don't agree with on a personal basis and start acting in a professional manner for the benefit of the community?

Response:

Taken on Notice

Mr Simon Saint

Question 1:

I emailed both Cr Hooper and Cr Boyle last week with the information, why didn't they contact him.

Response:

Cr Hooper stated that the email was not sent to records and therefore was not entered in to.

Question 2:

Will it be Defence or Prosecution?

Response:

Not sure which way to go. Depends on opinion given.

Ms Darlene Barratt

Question 2:

What is the benefit of this going ahead?

Response:

Cr Hooper stated he simply wants to know if there is protection under the Act.

Question 3:

Has the Council checked the Local Government Act for the answers and not taken a section out of context?

Response:

You may be correct need to find out. Has validity.

Question 4:

Act – makes Council liable.

Response:

Crs Hooper and Boyle requested a Special Meeting.

Mr Julian Krieg

Question 1:

With the exit of our previous CEO has Councillors organised an Audit.

Response:

Forensic audit has been requested on Credit Card statements from current financial year back, which will provide an interim report.

Question 2:

Why are we putting money into a legal opinion, we should wait until the Audit has been completed.

Response:

CEO stated, will require patience and wait for the results of the audit in two or three weeks time. Briefed the Auditors last Thursday.

Question 3:

Can we delay this until we get report and clarification.

Response:

Yes, within Council discretion.

Mr Simon Saint

Question 3:

Council can not sue for defamation.

Response:

Could be correct.

Ms Darlene Barratt

Question 5:

Instead of getting legal opinion could this not be done under the Act?

Response:

CEO stated that we would prefer to go to a Solicitor who specialises in this and have an independent body to look at the big picture. The Department of Local Government would only give a view based on the Act.

Question 6:

Is there not someone in Local Government who can give advise.

Response:

If Council go ahead, need skilled advice in way forward. Once in a while need to spread the net a little wider.

Public Question Time was declared closed by the Shire President at 4.36pm

5. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

6. PETITIONS / PRESENTATIONS / DEPUTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Nil

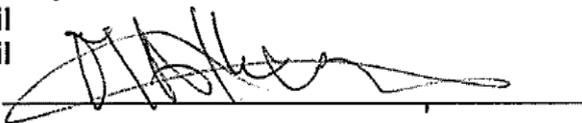
8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

9. OFFICER'S REPORTS

9.2 Administration Reports

9. OFFICER'S REPORTS
9.2 ADMINISTRATION REPORTS
9.2.1 Legal Opinion

FILE NO: C18
COUNCIL DATE: 5 May 2014
REPORT DATE: 2 May 2014
LOCATION/ADDRESS: N/A
APPLICANT: Cr J P Hooper & Cr A S Boyle
SENIOR OFFICER: CEO, Michael Keeble
REPORTING OFFICER: DCEO, Tyhscha Cochrane
DISCLOSURE OF INTEREST: Cr Hooper – Financial Interest
Cr Boyle – Financial Interest
APPENDICES: Nil
DOCUMENTS TABLED: Nil
REPORT APPROVED BY THE CEO: 

Summary:

Crs Hooper and Boyle request the Shire to obtain a legal opinion in relation to matters circulated in a public forum.

Background:

N/A

Consultation:

Councillors

Statutory Environment:

Calling a Special Council meeting has been conducted in accordance with the Local Government Act 1995 section 5.3 – 5.5:

5.3. Ordinary and special council meetings

- (1) A council is to hold ordinary meetings and may hold special meetings.
- (2) Ordinary meetings are to be held not more than 3 months apart.
- (3) If a council fails to meet as required by subsection (2) the CEO is to notify the Minister of that failure.

5.4. Calling council meetings

An ordinary or a special meeting of a council is to be held —

- (a) if called for by either —
 - (i) the mayor or president; or
 - (ii) at least $\frac{1}{3}$ of the councillors,in a notice to the CEO setting out the date and purpose of the proposed meeting; or
- (b) if so decided by the council.

5.5. Convening council meetings

(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.

LOCAL GOVERNMENT ACT 1995 - SECT 9.56

9.56 . Certain persons protected from liability for wrongdoing

(1) A person who is —

(a) a member of the council, or of a committee of the council, of a local government; or

(b) an employee of a local government; or

(c) a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class,

is a protected person for the purposes of this section.

(2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or under any other written law may have been capable of being done whether or not this Act or that law had been enacted.

(4) This section does not relieve the local government of any liability that it might have for the doing of anything by a protected person.

(5) In this section —

(a) a reference to the doing of anything includes a reference to the omission to do anything;

(b) a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1)(a), (b) or (c), as the case may be.

Policy Implications:

DE 30 – Instruct Legal Action could be applicable, however when implementing this Delegation it did not contemplate this delegation being used for this purpose.

Financial Implications:

Unknown at this stage however it could be in the range of \$800-\$1,000. Should this report be passed funds will be allocated from legal expenses in Schedule 4. It is unknown how much a previous legal matter has cost to date, as invoices are not at hand.

Strategic Implications:

This stance is not considered to be a precedent for future issues.

Voting Requirements:

Absolute Majority Required: No

Site Inspection:

Site Inspection Undertaken: Not Applicable

Cr Hooper and Cr Boyle declared a Financial Interest to this item and left the room at 4.36pm

RESOLUTION

010514

Moved: Cr Duperouzel

Seconded: Cr Wallace

For the purpose of discussion only

“That Council:

- 1. Approve the Chief Executive Officer to obtain a legal opinion concerning matters circulated in a public forum from a suitably qualified Solicitor to a value of up to \$1,000.”***

AGAINST: 3/1

Cr Hooper and Cr Boyle returned to the room at 4.44pm

Motion Lost:

The Shire President, Cr Matthew Reid believed the way forward is to wait for the report on the Credit Card before taking any further action.

10. CLOSURE

Cr Reid thanked everyone for their attendance and declared the meeting closed at 4.44pm