



SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 6 JULY 2015
COMMENCING AT 5.00pm
AT THE YORK RECREATION &
CONVENTION CENTRE, YORK**

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SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL
HELD ON MONDAY, 6TH JULY, 2015, COMMENCING AT
5.00PM AT THE YORK RECREATION & CONVENTION CENTRE, 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

Commissioner, James Best, declared the meeting open at 5.00pm and announced that the meeting would be in recess for 30 minutes and reconvened to recommence at 5.30pm.

The Hon Paul Brown MLC made an announcement that Public Question Time would not be cut short. There will be an exhaustive process so questions can be asked, he stated to only ask questions not to make comments as comments would not be Minuted. He requested the gallery to be mindful of repetitive questions.

Commissioner, James Best, declared the meeting open at 5.36pm.

1.2 Announcement of Visitors

Commissioner, James Best welcomed Warren Pearce, CEO LGMA; Jonathon Throssell, Deputy President LGMA; Neil Douglas, Partner of McLeods Solicitors; Jenni Law, Director of Local Government Regulations & Support (Mentor/Monitor); Andrew Borrett, Department of Local Government & Communities, (Mentor/Monitor); Cr Karen Chappel, Shire President, Shire of Morawa, (Mentor/Monitor); Crs Pat Hooper, Denese Smythe; Freeman Gordon Marwick.

The Commissioner welcomed Tony Brown, Executive Manager of Governance & Organisational Services of WALGA to the meeting at 5.50pm.

The Commissioner welcomed Wayne Scheggia, Deputy CEO WALGA and Tim Lane, Manager Strategy & Reform WALGA to the meeting at 5.51pm.

1.3 Disclaimer

The Commissioner 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.”

- 1.4 Standing Orders
Clause 3.2 – Order of Business

Commissioner declared current Standing Orders will apply.

- 1.5 Announcement of Visitors
The Commissioner welcomed guests as mentioned previously who are here today to provide advice to him.

- 1.6 Declarations of Interest that Might Cause a Conflict

Financial Interests

Nil

Disclosure of Interest that May Affect Impartiality

Nil

2. ATTENDANCE

- 2.1 Commissioner
James Best

- 2.2 Staff
Graeme Simpson, Acting Chief Executive Officer; Gail Maziuk, Compliance/Human Resources; Matthew Davies, Payroll; 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 approximately 80 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

The Presiding Member to read the following statement in full 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 Written Questions – Current Agenda

Nil

4.2 Public Question Time

- *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 Commissioner stated that the Hon Paul Brown MLC has explained the effective meeting process for the evening. The Commissioner stated that he knew that some people in the gallery were upset and had concerns regarding this evening's Agenda item. From the outset it is about providing a good safe working environment for our Officers. Commissioner Best stated that only questions relating to the Agenda would be taken and there would be no need to repeat a question if it had already been asked. Given that Public Question Time is set for a minimum of 15 minutes in the Local Government Act he would extend it for 30 to 40 minutes so the issues can be discussed thoroughly.

There was a show of hands and 6 people indicated that they would be asking questions. Commissioner Best stated that there would be only two questions each and as it is a Special Council Meeting questions would be restricted to what is on the Agenda.

Commissioner Best stated that after the consideration of the report in the Agenda and before the Resolution put, that all official Visitors (except Freeman Gordon Marwick), the Acting CEO, minutes secretary and himself would meet 'behind closed doors' to consider a Confidential item.

Public Question Time commenced at 5.41pm

Ms Tricia Walers

I did put in a Petition to speak against the motion.

Response:

Commissioner Best stated that he would receive the Petition at Item 6.

Ms Jane Elise Ferro

Question 1:

When you arrived here in January you stated FOI applications would not be necessary in most cases because we could simply ask and documents would be provided. Why did you not follow through with this policy and eliminate the need for FOI's, rather than blame the residents now for the cost?

Response:

Commissioner Best responded that it was in the hope that most reasonable people would discuss the issue with elected members. There is a direct cost for a FOI Officer and responding to FOI's diverts the resources of the Shire.

The Acting CEO stated that there is a cost for a FOI Consultant specialist of one day per week and also a FOI staff member on part time duties. The Acting CEO is the final decision maker with an FOI application. The FOI process is very long and exhaustive. Currently we have spent \$85,000 on FOI's alone. At the moment we have nine applications still outstanding.

The Commissioner asked the Acting CEO how many FOI's we had received up to today.

The Acting CEO stated we did reach 70 FOI applications at one time and had to go back to some applicants to have the scope of FOI requests reduced.

Question 2:

Why did you not give us a briefing on the Shire's website until late this afternoon, when I and others were unable to read the content of this policy you are drafting to address Unreasonable Conduct so we could ask informed questions prior to your rubber stamping whatever you and Acting CEO Simpson have already decided?

Response:

The Commissioner said the Policy is in response to the increasing level of threat to the staff and the Acting CEO drafted a Policy to deal with unreasonable and disruptive conduct. Given the potential for a lack of quorum when the Council is reinstated, this is why it has been brought to a head tonight. Matters in the Policy are similar to the Ombudsman's Policy.

Ms Helena Gibbs

Question 1:

We require time to digest the Policy and we have not been given this time.

Response:

The Acting CEO stated the Policy has been drawn up from Eastern States Local Government Policy and conforms with the Ombudsman Policy. The information contained in it is an administrative process for staff to report to the CEO and then if necessary to Elected Members regarding nuisance, rude, threats to staff. It is a procedure on how we go about our business.

The Commissioner welcomed Tony Brown, Executive Manager of Governance & Organisational Services of WALGA to the meeting at 5.50pm.

Ms Helena Gibbs

Question 2

I'm questioning the process by which the Policy has been pre-approved.

The Commissioner welcomed Wayne Scheggia, Deputy CEO WALGA and Tim Lane, Manager Strategy & Reform WALGA to the meeting at 5.51pm.

Response:

The Commissioner stated that it is an Administration Policy to protect staff from unreasonable and disruptive conduct. Under Worksafe regulations it was important that this Policy be in place.

The Acting CEO stated the item that is in the report are staff procedures and it is not necessary to circulate to the public as it is really an in-house situation.

Mr Mike Gill

Question:

Some members of the community carry a duty of care to the community as a result of their qualifications i.e. Doctors, Lawyers and Engineers. In the event that their duty of care is engaged by becoming aware of a matter that impacts on the community how does the Shire propose to deal with this in the event that the CEO or staff are unable to comprehend the issue and then declare the community member unreasonable if they persist knowing the impacts of a negative event.

Response:

The Commissioner stated that it comes down to the conversation and the respect shown between the officers and the individual.

The Acting CEO said he understood the issue raised, most Local Government practising CEO's would have the experience of what happens in the community.

Ms Darlene Barratt

Question 1:

Who will be in charge of figuring out who is reasonable and who is not?

Response:

The Commissioner responded that it would be the CEO.

Question 2:

If he qualified adjudicator like in a Court?

Response:

The Acting CEO stated that another body would be involved. The decision would not be the CEO's alone. The CEO would consult with the appropriate agency e.g. CCC or Ombudsman.

Question 3:

Will there be documentation of the decision or will it be verbal?

Response:

The Acting CEO responded that it would initially be verbal contact with Departmental contacts first, then if the number of issues or complaints rose it would be in writing.

Question 4:

There would be legal loop holes if not in writing.

Response:

The Acting CEO stated that he does not see the issue, if the CEO puts forward the issue and the government agency say no, it may not be justified or unjustified.

Question 5:

Will it be in writing?

Response:

The Acting CEO responded yes it would be.

Question 6:

Does the Commissioner Best think he made the 2nd July meeting unruly because Public Question Time was cut to 15 minutes?

Response:

The Acting CEO stated there is a statutory period for Public Question Time stated in the Local Government Act.

The Commissioner stated that Public Question Time on 2nd July, 2015 was within the time frame in the Local Government Act.

Mr Bill Cebula

Question:

When Mr Michael Keeble was here he said that there was no Policy Manual and Mr Cebula offered his time to write one. Are we going to get a Policy Manual in the very near future?

Response:

The Commissioner said that this was discussed at the Transition Handover meeting today with the Department and elected members.

The Acting CEO there is an existing Policy Manual and it is up for review. The process will be that at least very month there will be a meeting with the elected members to go through the Policy Manual.

Mr Cebula stated that the Manual is out of date.

The Commissioner responded that if you have any suggestions to see your elected members. The new and updated Policies will be put before the November Council Meeting.

Mr John Oliver

Question 1:

I hear that the elected members will be returning tomorrow. Do you have confidence that they will be able to do the job?

Response:

The Commissioner responded he has full confidence in the elected members. The elected members have had extensive training over the last six months.

Question 2:

The policy you are putting up tonight appears to be policy on the run. The staff have the full support of the community. It is the leadership of the Council that has not been sufficient. Requested the Commissioner apologise to the community as he did not quite make it in York.

Response:

The Commissioner stated that the situation is that the staff have expressed concerns regarding their personal safety. Staff have had a stop work meetings to discuss the issue.

The Acting CEO said the events did occur and the staff have been concerned over a long period of time now, some action needed to be taken. This has not come about quickly it has been building over a period of time.

The Commissioner stated that the Policy requires an absolute majority. There are only four elected members and this is only on the cusp of having an absolute majority. Given the risk of not having an absolute majority in July and in August one elected member is going on extended leave, therefore the Policy has been put forward this evening.

Mrs Kerry Oliver

Question 1:

I was commissioned by Michael Keeble to write a policy. Why wasn't this policy taken up and adopted long ago?

Response:

The Commissioner stated that the Acting CEO was not aware there was a draft policy on this particular subject.

Question 2:

Council come back tomorrow, why not wait until then?

Response:

The Commissioner stated that Council could not take the risk that there was not a specific policy on unreasonable conduct in place come tomorrow. In time, if the elected members wish to modify this policy then they can do so with all the other reviewed Policies that will be adopted after the October elections.

Mr Chris Winton

Question 1:

In the information given the FOI figures are costing \$800,000 over the last 18 months with only \$80,000 being in the last six months. Why didn't you have this policy up and running six months ago?

Response:

The Commissioner stated that the Acting CEO brought it to his attention on Friday.

The Acting CEO stated that it was brought to a head on Friday. A stop work meeting and discussion was held with staff regarding issues that have been ongoing since before Christmas. We have been trying to keep the situation under control.

Question 2:

You seem to be acting in remote control giving minimum time for the review of the policy.

Response:

The Commissioner thanked Mr Winton for his opinion. The Policy is measured and based on the Ombudsman's policy. The Commissioner is comfortable with the Acting CEO's recommendation to adopt the draft Policy.

Mr Kim Hack

Question:

Can any decisions made in the last six months be rescinded by the elected members?

Response:

The Commissioner responded that it is possible, however the elected members would require to have an absolute majority of four councillors.

Ms Darlene Barratt

Question 1:

It is written in the legislation that that elected members can be involved with Council meetings via the telephone, is this the case?

Response:

The Acting CEO stated that for elected members to be involved in Council meetings it has to be by prior arrangement and within a regular townsite within Western Australia. It is not able to be carried out when an elected member is overseas.

Question 2:

Why are we talking about insolvency tonight when at the last meeting we were buying buildings?

Response:

The Acting CEO responded that the insolvency came about as that over \$800,000 in cash has been used up in with the Reports, Legal Fees, Consultants to replace staff, staff payouts, Marketing Consultants and Governance. In a normal Local Government these costs would not occur. If the same thing happens next year then we will be insolvent. It is another thing to raise a loan to add to our assets, the annual repayments are spread of the 10 year life of the loan.

Mr Simon Saint

Question:

We are talking about unreasonable conduct, on the 4th April, 2014 I received a shocking letter from Mr Ray Hooper. I lodged a complaint on the 11th April, 2014, the complaint has still not been answered.

Response:

The Commissioner stated that we have been in formal mediation with Mr & Mrs Saint with Mr Graham Castledine. Mr Castledine has responded to you.

The Acting CEO stated the complaint was about the previous CEO who has since resigned and left and asked, what more can we do about this situation? What more can be done? The previous CEO is no longer an employee.

Mr Saint said – as Acting CEO are you refusing to deal with this complaint?

The Acting CEO said he hasn't refused to deal with it, it happened so far back and the Officer has left. He is no longer an employee of the Shire and it is time to move on.

The Commissioner stated that Public Question Time has gone on for 45 minutes and we will not continue going around in circles.

Ms Darlene Barratt

Under the Local Government Act ...

The Commissioner asked Ms Barratt to sit down and be silent, as she had previously asked her questions.

Ms Sandra Paskett

Question 1:

With regards to the new Policy and with respect to the Ombudsman, would you consider that the person making the decision should be someone outside of the Shire regarding unreasonable behaviour of a person.

Response:

The Acting CEO replied that once the information gets to him he would pass it on either to a Head of Department or the Ombudsman.

Question 2:

That is not what the Policy says, that is why I would like the Policy changed to say refer to the Ombudsman.

If it is down to the CEO this does not sit comfortably with the community.

Response:

The Commissioner stated that in the first instance it will be with the CEO, if the person is not happy then they can appeal to the Ombudsman. A safe and workable policy is required.

Question 3:

Are you not looking at changing the Policy?

Response:

The Commissioner replied he wasn't.

Mr Peter Boyle**Question 1:**

Was your role to smooth the path way for the elected members?

Response:

The Commissioner stated it was making decisions for the future. It was also incumbent on him to provide a safe working environment for staff and elected members.

Question 2:

Mr Boyle stated that the Commissioner had failed in his role. That is why I moved the motion of no confidence with regards to the Commissioner the other day.

Ms Liz Christmas**Question 1:**

With respect, earlier it was stated by the Acting CEO that the matter between Simon Saint and Ray Hooper was a private matter. As the letter was written on Shire letterhead how can this be a private matter?

Response:

The Commissioner responded that it was now a private matter as Ray Hooper no longer works for the Shire.

The Acting CEO stated that as Mr Ray Hooper no longer works for the Shire, he has no authority to insist he takes action.

Ms Tricia Walters**Question 1:**

The Acting CEO has taken the decision to address staff concerns about their safety, what Policy will be adopt with regards to the safety of Councillors? As a Councillor I was subjected to abuse.

Response:

The Commissioner replied that the role of an elected member is a difficult balancing act. Sometimes difficult decision are made by Council. It is regrettable that this abuse has happened. Elected members also need protection and there is a need for Councillors to work together with the community.

Ms Walters stated that this should not have happened to me and it should not happen to any other Councillor. There is no protection for elected members.

Dr James Plumridge

Question 1:

Stated that he was concerned about the report and OH&S issue. Does not believe a word of it. I cannot image that there would be any incident to harm staff. How many incidents have occurred that would make staff afraid to walk down the street? Does not know anyone in York who would do this. I am a keen blogger and do not do it anonymously and would not threaten the staff.

Response:

The Acting CEO stated some staff have been intimidated over the telephone, etc.

Question 2:

What counts as intimidation?

Response:

The Commissioner stated the issue is about perceptions. If someone is feeling threatened to the point that the staff member may feel the need to move to another job, needs to be about the issue and not continue attacking the staff members. The staff were concerned enough to raise the matter with their Union.

The Commissioner stated the past several questions were the same or similar to previously asked and he proposed to close Public Question Time.

The Commissioner closed Public Question Time at 6.47pm.

Ms Felicity Ranger

Question 1:

Mr Simpson has stated the cost of FOI. If the information had been available the cost would have reduced. How much of this money has been spent on the SITA proposal?

Response:

The Commissioner stated not one cent of that calculated as part of the Fitz Gerald costs.

Question 2:

Why aren't we using a local person?

Response:

The Commissioner replied that McLeods are specialists in Planning Law & Local Government.

The Commissioner once again closed Public Question Time at 6.50pm

5. **APPLICATIONS FOR LEAVE OF ABSENCE**

Nil

6. **PETITIONS / PRESENTATIONS / DEPUTATIONS**

Ms Tricia Walters presented her petition.

At approximately 10.00 hrs today I came to the Front Counter at the Shire Office to look at the Agenda for the Special Council Meeting. It was not there. I completed a petition form and left it on the front counter.

Mr Commissioner you have been appointed by the Government to replace what was perceived to be a dysfunctional Council and to provide good governance and transparency in the decision making process, yet today I was faced with something that was anything but transparent.

Mr Commissioner, I believe that since no details were available to any member of the community and remained unknown until just before the meeting, the Agenda lacks transparency and good governance, for which the duly elected Council was stood down. In the spirit of transparency and good governance, I request that this item should be withdrawn and dealt with by the duly elected members.

The Commissioner thanked Ms Walters for her petition.

7. **CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS & NOTES OF THE AGENDA SETTLEMENT BRIEFING**

Nil

8. **ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil

9. **OFFICER'D REPORTS**

The Commissioner announced that the Council would go 'Into Camera' to discuss the item 'Dealing with Unreasonable Conduct'.

The meeting was adjourned at 6.57pm

RESOLUTION

060715

"That the Commissioner:

Go "Into Camera" to consider the item 'Dealing with Unreasonable Conduct at 6.57pm.'

The Commissioner Declared the Motion Carried

The meeting adjourned to the YRCC Committee Room.

**RESOLUTION
070715**

“That the Commissioner:

Come “Out of Camera” at 7.32pm.’

The Commissioner Declared the Motion Carried

Ms Jenni Law did not return to the meeting.

The Acting CEO tabled Item 9.2.1 - Dealing with Unreasonable Conduct

9.1 Development Services

Nil

9.2 Administration Reports

9. OFFICER'S REPORTS

9.2 ADMINISTRATION REPORTS

9.2.1 Dealing with Unreasonable Conduct

FILE NO:

COUNCIL DATE: 6 July 2015

REPORT DATE: 6 July 2015

LOCATION/ADDRESS: N/A

APPLICANT: Shire of York

SENIOR OFFICER: G K Simpson, A/CEO

REPORTING OFFICER: G K Simpson, A/CEO

DISCLOSURE OF INTEREST: Nil

APPENDICES:

1. An Unsustainable Path, York Shire Council Heading for Insolvency
2. Freedom of Information – Cost to Shire of York
3. Policy – Dealing with Unreasonable Conduct

DOCUMENTS TABLED: Nil

REPORT APPROVED BY THE A/CEO: *Graeme Simpson*

Summary:

There has been an escalation in the number of repetitive questions and Freedom of Information applications that do not serve any useful purpose.

The Shires administration is in danger of being overwhelmed because of the legislative requirements and time frames imposed and additional staff resources have been engaged.

Background:

The unreasonable conduct has been increasing over the past two financial years and staff have been directed away from their routine duties.

Consultation:

Commissioner

York Police – Sergeant Gubanyi

Department of Local Government & Communities

Statutory Environment:

Local Government Act 1995

Policy Implications:

The proposed policy will be an additional policy.

Financial Implications:

The additional costs for Freedom of Information questions has amounted to \$85,000 in the 2014/15 financial year and no records have been kept for other staff time absorbed on persistent questions about a single issue.

Strategic Implications:

Diverting staff resources away from their prescribed duties has resulted in lost opportunities.

Voting Requirements:

Commissioner's Voting Support

Site Inspection:

Site Inspection Undertaken: Not Applicable

Triple bottom Line Assessment:

Economic Implications:

Lost opportunities have affected the Shires ability to apply for grant funds to improve the economy or to employ an Economic Development Officer.

Social Implications:

The abuse and ill informed criticism of the Commissioner and staff has resulted in the Shire being considered to be an 'Unsafe Workplace'.

Environmental Implications:

Nil

Officer Comment:

Community perceptions have resulted in the Shire expending a sum of \$807,824.00 on legal fees, reports, payouts to sacked staff. The independent umpires have found there are no cases of criminal behaviour but there is still a disconnection between some members of the community and the various findings.

ASB Comment

Not Applicable

**RESOLUTION
0890715**

"That the Commissioner:

- 1. Publish the appendix documents showing the financial costs incurred by the administration in dealing with accusations and claims that have had no useful purpose.***
- 2. Adopt the Shire of York policy titled 'Dealing with Unreasonable Conduct'."***

The Commissioner Declared the Motion Carried

9.6 Confidential Reports

9.6.1 Dealing with Unreasonable Conduct

10. CLOSURE

The Commissioner stated that this is his final address as Commissioner and it has been a testing time over the last six months, however there are a lot of good things in York that people should be proud to live in York but there is a need to protect it.

The Commissioner thanked Neil Douglas, LGMA, WALGA, Department of Local Government and Cr Karen Chappell, Shire President of Morawa for their attendance and closed the meeting at 7.34pm.