



CONFIRMED

MINUTES

FOR THE

SPECIAL COUNCIL MEETING

Held

8th March 2023

At

Shire of Dardanup
ADMINISTRATION CENTRE EATON
1 Council Drive - EATON

This document is available in alternative formats such as:
~ Large Print
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Upon request.

VISION STATEMENT

“The Shire of Dardanup is a healthy, self-sufficient and sustainable community, that is connected and inclusive, and where our culture and innovation are celebrated.”

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COUNCIL ROLE

Advocacy	When Council advocates on its own behalf or on behalf of its community to another level of government / body /agency.
Executive/Strategic	The substantial direction setting and oversight role of the Council e.g. Adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
Legislative	Includes adopting local laws, town planning schemes and policies.
Review	When Council reviews decisions made by Officers.
Quasi-Judicial	<p>When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.</p> <p>Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g.: under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</p>

DISCLAIMER

"Any statement, comment or decision made at a Council or Committee meeting regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.

Any person or entity that has an application before the Shire must obtain, and should only rely on, written notice of the Shire's decision and any conditions attaching to the decision, and cannot treat as an approval anything said or done at a Council or Committee meeting.

Any advice provided by an employee of the Shire on the operation of a written law, or the performance of a function by the Shire, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire should be sought in writing and should make clear the purpose of the request."

RISK ASSESSMENT

Inherent Risk	The level of risk in place in order to achieve the objectives of the Council and before actions are taken to alter the risk's impact or likelihood.
Residual Risk	The remaining level of risk following the development and implementation of Council's response.
Strategic Context	These risks are associated with achieving Council's long term objectives.
Operational Context	These risks are associated with the day-to-day activities of the Council.
Project Context	<p>Project risk has two main components:</p> <ul style="list-style-type: none">• Direct refers to the risks that may arise as a result of project, which may prevent the Council from meeting its objectives.• Indirect refers to the risks which threaten the delivery of project outcomes.

SHIRE OF DARDANUP

MINUTES OF THE SHIRE OF DARDANUP SPECIAL COUNCIL MEETING HELD ON WEDNESDAY, THE 8TH MARCH 2023, AT SHIRE OF DARDANUP - ADMINISTRATION CENTRE EATON, COMMENCING AT 4.00PM.

1 DECLARATION OF OPENING/ANNOUNCEMENTS OF VISITORS

The Presiding Member Cr. M T Bennett declared the meeting open at 4.00pm, welcomed those in attendance, referred to the Disclaimer, Acknowledgement of Country, Emergency Procedure and the Affirmation of Civic Duty and Responsibility on behalf of Councillors and Officers:

Acknowledgement of Country

The Shire of Dardanup wishes to acknowledge that this meeting is being held on the traditional lands of the Noongar people. In doing this, we recognise and respect their continuing culture and the contribution they make to the life of this region and pay our respects to their elders, past, present and emerging. The Shire of Dardanup also respects and celebrates all cultures of all our residents and visitors to our Shire.

Emergency Procedure

In the event of an emergency, please follow the instructions of the Chairperson who will direct you to the safest exit route. Once outside, you will be directed to an appropriate Assembly Area where we will meet (and complete a roll call).

Affirmation of Civic Duty and Responsibility

Councillors and Officers of the Shire of Dardanup collectively declare that we will duly, faithfully, honestly and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the Shire's Code of Conduct and Standing Orders to ensure efficient, effective and orderly decision making within this forum.

2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 Attendance

Cr. Michael Bennett	-	Shire President
Cr. Tyrrell Gardiner	-	Deputy Shire President
Cr. Peter Robinson	-	Elected Member
Cr. Mark Hutchinson	-	Elected Member
Cr. Patricia Perks	-	Elected Member
Cr. Luke Davies	-	Elected Member
Cr. S L Gillespie	-	Elected Member
Cr. Ellen Lilly	-	Elected Member (ATTENDED VIA MICROSOFT TEAMS)

Mr André Schönfeldt	-	Chief Executive Officer
Mr Phil Anastasakis	-	Deputy Chief Executive Officer
Ms Susan Oosthuizen	-	Director Special Projects & Community
Mr Theo Naudé	-	Director Infrastructure
Mr Murray Connell	-	Executive Manager Development Services
Mrs Donna Bailye	-	Governance Coordinator
Mrs Cathy Lee	-	Manager Governance & HR

2.2 Apologies

None.

2.3 Leave of Absence

None.

2.4 Previous Meetings

DATE	TYPE	CR. M T BENNETT	CR. L W DAVIES	CR. J DOW	CR. T G GARDINER	CR. S L GILLESPIE	CR. M R HUTCHINSON	CR. E P LILLY	CR. P R PERKS	CR. P S ROBINSON
SEPTEMBER 2022										
21/09/22	AF	✓	NA	✓	✓	LoA	✓	✓	Ap	✓
28/09/22	OCM	✓	✓	✓	✓	LoA	✓	✓	✓	✓
OCTOBER 2022										
10/10/22	WS Artwork – Dardanup Civic Precinct – RAC Grant	✓	NA	Ap	✓	✓	Ap	Ap	✓	NA
12/10/22	WS Cat L/L	✓	NA	✓R	✓	✓	✓	Ap	✓	Ap
19/10/22	AF	✓	NA	✓	✓	✓	✓	✓	Ap	✓R
26/10/22	CF	✓	NA	✓	✓	✓	✓	✓	✓	✓

DATE	TYPE	CR. M T BENNETT	CR. L W DAVIES	CR. J DOW	CR. T G GARDINER	CR. S L GILLESPIE	CR. M R HUTCHINSON	CR. E P LILLY	CR. P R PERKS	CR. P S ROBINSON
26/10/22	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
NOVEMBER 2022										
16/11/22	WS Rating	✓	NA	✓	Ap	Ap	✓	✓	Ap	LoA
16/11/22	AF	✓	NA	✓	Ap	✓	✓	✓	Ap	LoA
23/11/22	CF	✓	✓	✓	✓	✓	✓	✓	Ap	LoA
23/11/22	OCM	✓	✓	✓	✓	✓	✓	✓	Ap	LoA
30/11/22	WS REVIEW OF POLICIES CP034, CP128, CP070 & CP044	✓	NA	✓	✓	Ap	✓	✓	Ap	LoA
30/11/22	WS EATON AND DARDANUP PLACE PLANS	✓	NA	✓	✓	Ap	✓	✓	Ap	LoA
DECEMBER 2022										
7/12/22	WS GLEN HUON OVAL - TICKET FENCING	✓	NA	✓	✓	Ap	✓	✓	✓	✓R
7/12/22	AF	✓	NA	✓	✓	✓	✓	✓	✓	✓R
14/12/22	CF	✓	NA	✓	✓	✓	✓	✓	✓	✓
14/12/22	OCM	✓	✓	✓	✓	✓	✓	✓	✓	✓
JANUARY 2023										
18/01/23	AF	✓	LoA	Ap	✓	✓	✓	✓	LoA	✓R
25/01/23	CF	✓	LoA	✓	✓	✓	✓	✓	LoA	✓
25/01/23	OCM	✓	LoA	✓	✓	✓	✓	✓	LoA	✓
25/01/23	SCM ANNUAL ELECTORS MEETING	✓	LoA	✓	✓	✓	✓	✓	LoA	✓
FEBRUARY 2023										
1/02/23	WS CHRMAP DRAFT REPORT PRESENTATION	✓	NA	Ap	✓	✓	✓	✓	✓	Ap
1/02/23	WS DIFFERENTIAL RATES	✓	NA	✓	✓	✓	✓	✓	✓	Ap
8/02/23	WS REVIEW OF DRAFT MEMORIALS POLICY	✓	NA	Ap	✓	LoA	✓	✓	✓	Ap
13/02/23	BUREKUP COMMUNITY MEETING	✓		✓	✓		✓			Ap
14/02/23	DARDANUP COMMUNITY MEETING	✓			✓		✓	✓	✓	Ap
15/02/23	AF	✓	NA	Ap	✓	LoA	✓	✓	Ap	Ap
15/02/23	EATON COMMUNITY MEETING	✓			✓	✓		✓	✓	Ap
16/02/23	FERGUSON COMMUNITY MEETING	✓			✓			✓	✓	Ap

DATE	TYPE	Cr. M T BENNETT	Cr. L W DAVIES	Cr. J DOW	Cr. T G GARDINER	Cr. S L GILLESPIE	Cr. M R HUTCHINSON	Cr. E P LILLY	Cr. P R PERKS	Cr. P S ROBINSON
22/02/23	CF	✓	Ap	✓	✓	LoA	✓	✓	✓	✓
22/02/23	OCM	✓	Ap	✓	✓	LoA	✓	✓	✓	✓
24/02/23	WS FRAUD AWARENESS TRAINING			-			✓		✓	
MARCH 2023										
1/03/23	WS SHIRE OF DARDANUP LOCAL BIKE PLAN	✓	NA	-	✓	Ap	✓	✓	✓	Ap
1/03/23	WS REVIEW OF HERITAGE SURVEY	✓	NA	-	✓	✓	✓	✓	✓	Ap
8/03/23	WS INTEGRATED PLANNING COMMITTEE MEETING	✓	✓	-	✓	✓	✓	✓R	✓	✓
8/03/23	SCM	✓	✓	-	✓	✓	✓	✓R	✓	✓
15/03/23	AF			-						
22/03/23	CF			-						
22/03/23	OCM			-						

TYPE LEGEND	
AF	Agenda Forum
CF	Concept Forum
OCM	Special Council Meeting
SCM	Special Council Meeting
WS	Workshop

ATTENDANCE LEGEND	
✓	Attendance
✓R	Remote Attendance
Ap	Apology
LoA	Leave of Absence
NA	Non Attendance

3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

None.

4 PUBLIC QUESTION TIME

None.

5 APPLICATIONS FOR LEAVE OF ABSENCE

COUNCIL RESOLUTION

33-23

MOVED -

Cr. L W Davies

SECONDED -

Cr. S L Gillespie

THAT Cr. M R Hutchinson be granted leave of absence for the Ordinary Council Meeting to be held on the 26th April 2023.

CARRIED
8/0

6 PETITIONS/DEPUTATIONS/PRESENTATIONS

None.

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Note: The Minutes of the Ordinary Council Meeting [OCM] held on the 22nd February 2023 will be presented to the OCM to be held on the 22nd March 2023 for confirmation.

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

None.

9 ANNOUNCEMENTS OF MATTERS FOR WHICH MEETING MAY BE CLOSED

None.

10 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

None.

11 DECLARATION OF INTEREST

“Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.”

Key Management Personnel (which includes Elected Members, CEO and Directors) are reminded of their requirement to disclose biannually transactions between Council and related parties in accordance with Council Policy CnG CP039.

Shire President, Cr. M T Bennett asked councillors and staff if there were any Declarations of Interest to be made:

There were no Declarations of Interest made.

12 REPORTS OF OFFICERS AND COMMITTEES

12.1 EXECUTIVE REPORTS

12.1.1 Title: Consideration of an Extraordinary Election – Resignation of Cr Janice Dow

Reporting Department	Corporate & Governance Directorate
Responsible Officer	Mr André Schönfeldt - Chief Executive Officer
Reporting Officer	Mr André Schönfeldt - Chief Executive Officer
Reporting Officer	Mr Phil Anastasakis - Deputy CEO
Legislation	Local Government Act 1995
Council Role	Legislative.
Voting Requirement	Absolute Majority.
Attachments	Appendix ORD: 12.1.1 – Risk Assessment Tool

Overview

With the resignation of Cr Janice Dow on 23rd February 2023, it is proposed that Council write to the Electoral Commissioner requesting that the vacant office remains unfilled until the 2023 ordinary election.

Change to Officer Recommendation - No Change.

OFFICER RECOMMENDED RESOLUTION & COUNCIL RESOLUTION

34-23 MOVED - Cr. P R Perks SECONDED - Cr. P S Robinson

THAT Council:

1. **Advises the Electoral Commission of the resignation of Councillor Janice Dow;**
2. **Requests the WA Electoral Commissioner that the office vacated by the resignation of Cr. Janice Dow remain vacant and Council be authorised to defer filling the vacancy until the October 2023 ordinary elections for the following reasons:**
 - a) **The process for writing to the Electoral Commissioner, receiving a response and initiating the election procedures may result in the election occurring in May 2023, leaving only 4 months until the next ordinary election;**
 - b) **Delaying the election until October 2023 will not create adverse issues for Council;**
 - c) **As Council has no wards, the people of Dardanup and surrounds are not adversely affected by leaving the office vacant;**

- d) **At least 80% of the number of offices of members of the council in the district are still filled;**
- e) **The additional cost of running an extraordinary election that is not budgeted for will have an adverse effect on the ratepayers; and**
- f) **The impost on electors being requested to participate in two election processes within a 6 month period.**

CARRIED

8/0

By Absolute Majority

Background

Cr. J Dow officially tendered her resignation in writing, effective 23rd February following the Ordinary Council meeting held 22nd February 2023. Cr. J Dow was elected to Council in October 2017 and current term is due to expire in October 2025.

Legal Implications

Local Government Act 1995 Sections 2.32, 4.8, 4.9, 4.16 and 4.17:

2.32. How extraordinary vacancies occur in offices elected by electors

The office of a member of a council as an elector mayor or president or as a councillor becomes vacant if the member —

- (a) *dies; or*
- (b) *resigns from the office; or*
- (c) *does not make the declaration required by section 2.29(1) within 2 months after being declared elected to the office; or*
- (d) *advises or accepts under section 2.27 that he or she is disqualified, or is declared to be disqualified by the State Administrative Tribunal acting on an application under section 2.27; or*
- (da) *is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council; or*
- (db) *is dismissed under section 8.15L or 8.25(2); or*
- (e) *becomes the holder of any office or position in the employment of the local government; or*
- (f) *having been elected to an office of councillor, is elected by the electors to the office of mayor or president of the council.*

4.8. Extraordinary elections

- (1) *If the office of a councillor or of an elector mayor or president becomes vacant under section 2.32 an election to fill the office is to be held.*
- (2) *An election is also to be held under this section if section 4.57 or 4.58 so requires.*
- (3) *An election under this section is called an extraordinary election.*

4.9. 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).

4.16. Postponement of elections to allow consolidation

- (1) This section modifies the operation of sections 4.8, 4.9 and 4.10 in relation to the holding of extraordinary elections.
- (2) If a member's office becomes vacant under section 2.32 (otherwise than by resignation) on or after the third Saturday in July in an election year and long enough before the ordinary elections day in that year to allow the electoral requirements to be complied with, any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.
- (3) In the case of a member's office becoming vacant under section 2.32 by resignation, if —
- (a) the resignation takes effect, or is to take effect, on or after the third Saturday in July in an election year but not later than one month after the ordinary elections day in that year; and
- (b) the CEO receives notice of the resignation long enough before that ordinary elections day to allow the electoral requirements to be complied with,
- any poll needed for the extraordinary election to fill the vacancy is to be held on that ordinary elections day.
- (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.

4.17. Cases in which vacant offices can remain unfilled

- (1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.
- (2) If a member's office becomes vacant under section 2.32 —
- (a) after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but
- (b) before the third Saturday in July in that election year,
- the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.
- (3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow* the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the

member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

* Absolute majority required.

(4A) **Subsection (3) applies —**

(a) **if —**

(i) **the office is for a district that has no wards; and**

(ii) **at least 80% of the number of offices of member of the council in the district are still filled;**

or

(b) **if —**

(i) **the office is for a ward for which there are 5 or more offices of councillor; and**

(ii) **at least 80% of the number of offices of councillor for the ward are still filled.**

(4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

Council Plan

13.1 - Adopt best practice governance.

13.2 - Manage the Shire's resources responsibly.

14.2 - Ensure equitable, inclusive and transparent engagement and decision- making.

Environment - None.

Precedents

Council's most recent resolution to write to the WA Electoral Commissioner regarding the resignation of an elected member was at the Ordinary Council Meeting held 18th July 2018, (Res: 235-18).

Budget Implications

If Council chooses to hold an extraordinary election a quote will be sought from the WA Electoral Commission the cost of running the election. The quote from the WAEC for the 2023 ordinary election costs is \$64,000 GST Inc.

No funds are allocated in the 2022/23 budget for an election.

Budget – Whole of Life Cost - None.

Council Policy Compliance - None.

Risk Assessment

The Risk Management Governance Framework has been considered in arriving at the officer recommendation. Please refer to [Appendix ORD: 12.1.1] for full assessment document.

TIER 2 – ‘Low’ or ‘Moderate’ Inherent Risk.	
Risk Event	Consideration of an Extraordinary Election – Resignation of Cr. J Dow
Inherent Risk Rating (prior to treatment or control)	Moderate (5 - 11)
Risk Action Plan (treatment or controls proposed)	Council resolve that a letter be written to the Electoral Commissioner requesting that the position left vacant remain vacant until October Ordinary Election.
Residual Risk Rating (after treatment or controls)	As the Inherent Risk Rating is below 12, this is not applicable.
Risk Category Assessed Against	<p>Financial Council has budgeted for an Ordinary election that has been quoted by WAEC as higher than anticipated. A Special Election has not been budgeted for.</p> <p>Legal and Compliance There are legal implications for the Shire if the process of requesting the position remain unfilled is not followed.</p> <p>Reputational The ratepayers and electors are unlikely to support two election processes within a period of six months.</p>

Officer Comment

The resignation of Cr. J Dow requires the Council or the Shire President to consider holding an extraordinary election as required by the *Local Government Act 1995*, Section 4.9, within one month of the vacancy occurring.

If the President or Council fails to meet the deadline to set a date, the date can be set by the Electoral Commissioner.

Cr. J Dow’s term of office expires in October 2025.

It is recommended that Council consider a further option, that being to request that the office remain vacant [*Local Government Act 1995* S4.17(3) & S4.17 (4A)(a)] until October 2023.

The Chief Executive Officer will need to write to the Electoral Commissioner advising of the resignation of Cr. J Dow and requesting to defer filling the vacancy until the October 2023 ordinary elections, citing section 4.17 (4A)(a) of the LGA 1995.

END REPORT

13 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

None.

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

None.

15 PUBLIC QUESTION TIME

None.

16 MATTERS BEHIND CLOSED DOORS

None.

17 CLOSURE OF MEETING

The Presiding Officer advises that the date of the next:

- Ordinary Meeting of Council will be Wednesday, the 22nd March 2023, commencing at 5.00pm at the Shire of Dardanup - Administration Centre Eaton.

There being no further business the Presiding Officer declared the meeting closed at 4.01pm.



CONFIRMATION OF MINUTES

“As the person presiding at the meeting at which these minutes were confirmed on the 22nd of March 2023, I certify that these minutes have been confirmed as a true and accurate record of proceedings”.

Signature: 

Email: michael.bennett@dardanup.wa.gov.au