



**SPECIAL COUNCIL MEETING
TUESDAY, 13 APRIL 2021**

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SPECIAL CHIEF EXECUTIVE OFFICER'S REPORT

NOTICE OF MEETING AND AGENDA

CR _____

PLEASE TAKE NOTICE that the next **SPECIAL COUNCIL MEETING** will be held in the Council Chambers, Orchard Avenue, Armadale at **5.15pm**

TUESDAY, 13 APRIL 2021

**JOANNE ABBISS
CHIEF EXECUTIVE OFFICER**

7 April 2021

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

2 RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Leave of Absence previously granted to Cr Silver

3 PUBLIC QUESTION TIME

Minimum time to be provided – 15 minutes (unless not required)

A procedure has been adopted by Council to ensure the orderly conduct of Public Question time and a copy of this procedure is attached to the Council Agendas made available in the public gallery.

The public's cooperation in this regard will be appreciated.

4 BUSINESS OF THE MEETING

SPECIAL CHIEF EXECUTIVE OFFICER'S REPORT

Report of the Chief Executive Officer.3

1.1 EXTRAORDINARY ELECTION – RIVER WARD

5 CLOSURE

1.1 - EXTRAORDINARY ELECTION - RIVER WARD

WARD : ALL
FILE No. : M/229/21
DATE : 7 April 2021
REF : NP
RESPONSIBLE : Chief Executive Officer
MANAGER

In Brief:

- The City must conduct an extraordinary election to fill the office of member of Council vacated by Cr H Jones.
- Council must set a date for the extraordinary election within one (1) month of the date the office became vacant otherwise the Electoral Commissioner will determine the date.
- The date of the extraordinary election is to be within four (4) months of the date the office became vacant, unless otherwise approved by the Electoral Commissioner.
- Recommend that Council:
 - Set the date for the extraordinary election for the River Ward to be the date of the ordinary local government elections being 16 October 2021, subject to the approval of the Electoral Commissioner.

Tabled Items

Nil

Decision Type

Legislative

The decision relates to general local government legislative functions such as adopting/changing local laws, town planning schemes, rates exemptions, City policies and delegations etc.

Executive

The decision relates to the direction setting and oversight role of Council.

Quasi-judicial

The decision directly affects a person's rights or interests and requires Councillors at the time of making the decision to adhere to the principles of natural justice.

Officer Interest Declaration

Nil

Strategic Implications

- 4.1 Visionary civic leadership and sound governance
- 4.1.3 Support the role of the elected body

Legal Implications

Local Government Act 1995

- Section 2.14 Extension of term in certain cases
- Section 2.20 Members of parliament disqualified
- Section 2.27 Procedure to determine qualification to retain membership of council
- Section 2.28 Days on which terms begin and end
- Section 2.30 Terms extended if ordinary elections delayed
- Section 2.32 How extraordinary vacancies occur in offices elected by electors
- Section 4.6 Election day for ordinary elections
- Section 4.8 Extraordinary elections
- Section 4.9 Election day for extraordinary election
- Section 4.16 Postponement of elections to allow consolidation
- Section 4.17 Cases in which vacant offices can remain unfilled
- Section 4.18 Certain elections to be held as one

Local Government (Elections) Regulations 1997

Council Policy/Local Law Implications

Nil

Budget/Financial Implications

Nil

Consultation

City's Lawyers Kott Gunning

BACKGROUND

At the State elections conducted on 13 March 2021 Cr Jones was successful in winning the seat of Darling Range. Under s.2.20(1) of the *Local Government Act 1995* (LG Act) a person is disqualified for membership of council if the person is a member of parliament.

On the 15 March 2021 the Chief Executive Officer received advice from Cr Jones pursuant to s.2.27(2) of the LG Act acknowledging that he is disqualified and as such as of that date his office of councillor became vacant.

COMMENT

Due to Cr Jones' success in the recent state elections, Council is required under s.4.8(1) of the LG Act to undertake an extraordinary election to fill the vacancy.

Under s.4.16(4) of the LG Act 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.

Section 4.9(1)(b) also provides that the Council must fix this date within one month of the vacancy occurring, otherwise the Electoral Commissioner will set the date.

In order to comply with the requirements of the LG Act the last date by which the Council has to fix the date for the extraordinary election is 14 April 2021.

Legal advice was sought which confirmed that Council can set this date as the next ordinary election date subject to approval of the Electoral Commissioner provided it does so by 14 April 2021.

The Electoral Commissioner has been approached to provide some guidance on the factors he would take into account in determining whether he would approve a request to hold the extraordinary election on the date of the ordinary elections.

His response has indicated that he takes into account:

- Whether the vacancy occurred within the period outlined in section 4.16(4) of the *Local Government Act 1995* (after the third Saturday in January in an election year but before the third Saturday in July in that election year); and
- the cost an extraordinary election can have on the finances on a local government and as such generally provides his agreement if requested by a Local Government.

If the Electoral Commissioner does not grant approval to hold the extraordinary election on the same day as the ordinary elections on 16 October 2021, then s.4.9(2) of the LG Act will apply. This provides that 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, it cannot be later than 4 months after the vacancy occurs.

With the ordinary elections only some seven (7) months away it would seem practical and economically beneficial to conduct the extraordinary election on the same day as the ordinary local government elections (16/10/21) and therefore Council's consideration is sought on this matter.

OPTIONS

The following options are available:

Option 1 – Council determine a date for the extraordinary election that falls within four (4) months of the vacancy occurring. This can be no later than 14 July 2021.

Option 2 – Make no decision and allow the Electoral Commissioner to determine the date.

Option 3 – Set the date as the date of the ordinary elections on 16 October 2021 subject to the Electoral Commissioner's approval.

CONCLUSION

The vacancy in the office of councillor resulting from Cr Jones's election to parliament took effect on 15 March 2021. The last date by which Council can fix the date of an extraordinary election is 14 April 2021. If Council do not determine a date then the Chief Executive Officer is required to inform the Electoral Commissioner that no date has been fixed and the Electoral Commissioner is then required to set the date of the extraordinary election.

Taking into account the length of time between the 15 March 2021 and the ordinary election date of 16 October 2021 it would be far more practical and economically beneficial to hold the extraordinary election on the 16 October 2021, however for this to occur, approval the Electoral Commissioner must provide his approval.

It appears that approval is generally given (but not guaranteed) by the Electoral Commissioner and as such it is recommended that Council support the recommendation as detailed below.

ATTACHMENTS

There are no attachments for this report.

RECOMMEND

CEO1/4/21

That Council:

Set the date for the extraordinary election for the River Ward to be the date of the ordinary local government elections being 16 October 2021, subject to the approval of the Electoral Commissioner.