

Minutes

Of the Special Council Meeting

Location: Council Chambers, Municipal Offices
62-68 Ovens Street, Wangaratta

Date: 10 November 2016

Time: 6.00pm

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1. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We acknowledge the traditional owners of the land on which we are meeting. We pay our respects to their Elders and to Elders from other communities who may be here today.

2. OPENING PRAYER

Almighty God, we humbly ask thee to bless and guide this council in its deliberations so that we may truly preserve the welfare of the people whom we serve. Amen

3. PRESENT

COUNCILLORS:

MRS RUTH AMERY, MR HARVEY BENTON, MR HARRY BUSSELL, MR KEN CLARKE OAM, MR MARK CURRIE, MR DAVID FULLER, MR DEAN REES,

OFFICERS:

MR BRENDAN MCGRATH - CHIEF EXECUTIVE OFFICER, MS RUTH KNEEBONE - DIRECTOR CORPORATE SERVICES, MR ALAN CLARK - DIRECTOR INFRASTRUCTURE SERVICES, MS JAIME CARROLL - DIRECTOR COMMUNITY WELLBEING, MR BARRY GREEN - DIRECTOR DEVELOPMENT SERVICES

ADMINISTRATORS:

MRS AILSA FOX, MS IRENE GRANT, MR ROD ROSCHOLLER

4. ABSENT

NIL.

5. ACCEPTANCE OF APOLOGIES & GRANTING OF LEAVE OF ABSENCE

ORDER OF BUSINESS

6. CONFLICT OF INTEREST DISCLOSURE

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a '*conflict of interest*' in a decision if they would receive, or could reasonably be perceived as receiving, a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

Disclosure must occur immediately before the matter is considered or discussed.

PRESENTATION OF REPORTS

OFFICERS' REPORTS

7. CORPORATE SERVICES

7.1 OATH OF OFFICE

Meeting Type:	Special Council Meeting
Date of Meeting:	10 November 2016
Author:	Governance and Risk Advisor
File Name:	Special Meetings
File No:	10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to provide for Councillors' elect to take the statutory oath of office.

All Councillors' elect are now required to take the oath of office as required by Section 63 of the Local Government Act 1989.

All Councillors read and signed the Oath of Office as witnessed by the Chief Executive Officer.

Background

Section 63(1) of the *Local Government Act 1989* provides that a person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath of office specified in subsection (1A); and read the Councillor Code of Conduct and, in accordance with subsection (3), made a declaration stating that they will abide by the Councillor Code of Conduct.

Section 63(1A) of the Act provides that the following oath of office is to be taken by a Councillor in accordance with Division 2 of Part IV of the *Evidence (Miscellaneous Provisions) Act 1958*:

"I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of the Wangaratta Rural City Council and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

Section 63(2) of the Act specifies that the oath of office must be:

- (a) made before the Chief Executive Officer; and
- (b) dated and signed before the Chief Executive Officer; and
- (c) recorded in the minutes of the Council.

If a person elected to be a Councillor fails to take the oath of office within three months after the day on which the person was declared elected, the office of that Councillor becomes vacant.

Implications

Policy Considerations

The Governance and Meeting Conduct Local Law No. 2 of 2016 provides the form of the oath of office at Schedule 2 (refer attachment).

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

Section 63 of the Act sets out the legal/statutory provisions that must be complied with in order that a person elected to be a Councillor is capable of acting as a Councillor. These provisions include the taking of the oath of office.

Section 64 of the Act sets out the consequences of a failure to take the oath of office.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2013 – 2017 Council Plan (2016 Revision)

This report supports the 2013-2017 Council Plan:

Goal

We are Sustainable

It is non-negotiable that we will meet all of our legislative and compliance requirements.

Risk Management

Risks	Likelihood	Consequence	Rating	Mitigation Action
A Councillor elect fails to take the oath of office	Unlikely	Moderate	Medium	Councillor unable to act as a Councillor. Section 64 of the Act

Consultation/Communication

Level of public participation	Promises to the public/stakeholders	Tools/Techniques
Inform	Inform the public of the taking of the oath of office	Record the taking of the oath of office in the minutes of this Special Meeting. Publish the minutes of this Special Meeting and make them available at the Council office and on Council's website.

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Options for Consideration

An option of not taking the oath of office will result in a person elected to be a Councillor not being capable of acting as a Councillor and if three months has elapsed after the day on which that person was declared elected, the office of that Councillor becomes vacant.

Conclusion

All Councillors' elect should take the oath of office as required by the Act.

Attachments

- 1 Oath of Office

7.2 COUNCILLOR CODE OF CONDUCT DECLARATION

Meeting Type: Special Council Meeting
Date of Meeting: 10 November 2016
Author: Governance and Risk Advisor
File Name: Special Meetings
File No: 10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to provide for Councillors elect to make the Councillor Code of Conduct declaration.

All Councillors elect are now required to make the Councillor Code of Conduct declaration as required by Section 63 of the Local Government Act 1989.

All Councillors signed the Code of Conduct as witnessed by the Chief Executive Officer.

Background

Section 63(1) of the Local Government Act 1989 provides that a person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath of office specified in subsection (1A); and read the Councillor Code of Conduct and, in accordance with subsection (3), made a declaration stating that they will abide by the Councillor Code of Conduct.

Section 63(3) of the Act specifies that the declaration by a person elected to be a Councillor that they have read the Councillor Code of Conduct and will abide by it must be:

- (a) in writing; and
- (b) witnessed by the Chief Executive Officer.

If a person elected to be a Councillor fails to make the Councillor Code of Conduct declaration within three months after the day on which the person was declared elected, the office of that Councillor becomes vacant.

Implications

Policy Considerations

The Local Government Victoria Circular 38/2016 provides guidance regarding the form of the declaration.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

Section 63 of the Act sets out the legal/statutory provisions that must be complied with in order that a person elected to be a Councillor is capable of acting as a Councillor. These provisions include the making of the Councillor Code of Conduct declaration.

Section 64 of the Act sets out the consequences of a failure to make the Councillor Code of Conduct declaration.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2013 – 2017 Council Plan (2016 Revision)

This report supports the 2013-2017 Council Plan:

Goal

We are Sustainable

It is non-negotiable that we will meet all of our legislative and compliance requirements.

Risk Management

Risks	Likelihood	Consequence	Rating	Mitigation Action
A Councillor elect fails to make the Councillor Code of Conduct declaration	Unlikely	Moderate	Medium	Councillor unable to act as a Councillor. Section 64 of the Act.

Consultation/Communication

Level of public participation	Promises to the public/stakeholders	Tools/Techniques
Inform	Inform the public of the taking of the oath of office	Record the taking of the oath of office in the minutes of this Special Meeting.

Options for Consideration

An option of not making the Councillor Code of Conduct declaration will result in a person elected to be a Councillor being not capable of acting as a Councillor and if three months has elapsed after the day on which that person was declared elected, the office of that Councillor becomes vacant.

Conclusion

All Councillors' elect should make the Councillor Code of Conduct declaration as required by the Act.

Attachments

- 1 Councillor Code of Conduct Declaration

7.3 MAYORAL TERM OF OFFICE

Meeting Type: Special Council Meeting
Date of Meeting: 10 November 2016
Author: Governance and Risk Advisor
File Name: Special Meetings
File No: 10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to provide for the determination of the Mayor's term of office.

RECOMMENDATION:

(Moved: Councillor K Clarke/Councillor D Rees)

That Council determines the Mayor's term of office as being one year.

Carried

Background

Council may resolve to elect a Mayor for a term of either one or two years, but must do so before the Mayor is elected. If Council does not so resolve otherwise, then the term of the Mayor remains as one year.

Implications

Policy Considerations

Council's Governance and Meeting Conduct Local Law No.2 of 2016 relates to this report.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

Section 71(2) of the Local Government Act 1989 provides that before a Mayor is elected under this section, the Council may resolve to elect a Mayor for a term of two years.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2013 – 2017 Council Plan (2016 Revision)

This report supports the 2013-2017 Council Plan:

Goal

We are Sustainable

It is non-negotiable that we will meet all of our legislative and compliance requirements.

Consultation/Communication

Level of public participation	Promises to the public/stakeholders	Tools/Techniques
Inform	Inform the public of the length of the Mayor's term of office.	Record the length of the Mayor's term of office in the minutes of this Special Meeting. Publish the minutes of this Special Meeting and make them available at the Council office and on Council's website.

Options for Consideration

The two options for consideration are that the Mayor's term of office is either one year or two years.

Conclusion

Council should decide the most appropriate length of office for the elected Mayor.

Attachments

Nil.

7.4 ELECTION OF MAYOR

Meeting Type: Special Council Meeting
Date of Meeting: 10 November 2016
Author: Governance and Risk Advisor
File Name: Special Meetings
File No: 10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

The *Local Government Act 1989* stipulates that Council must elect a Mayor at a meeting open to the public. This report relates to the election of the Mayor for the Wangaratta Rural City Council.

RECOMMENDATION:

That Council:

1. *call for nominations for the position of Mayor of the Wangaratta Rural City Council; and*
2. *confirm (insert name) is elected as Mayor, and be subsequently elected for the term of office as determined by Council in agenda item 7.3.*

Brendan McGrath, Chief Executive Officer invited nominations for the position of Mayor.

***Councillor Ken Clarke OAM nominated Councillor Ken Clarke OAM
Councillor Dean Rees nominated Councillor Dean Rees.***

The Chief Executive Officer called for a show of hands for each nominee in alphabetical order.

Councillor Ken Clarke OAM received – 4 Votes (majority).

The Chief Executive Officer declared Councillor Ken Clarke OAM elected as Mayor for the term of 1 year.

Mayor Ken Clarke OAM was installed in the chair by the Chief Executive Officer.

Background

The Act requires that at a meeting of the Council that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.

The important role of the Mayor is set out in section 73AA of the Act. The Mayor is required to demonstrate Council and community leadership by:

- (a) Providing guidance to councillors about what is expected of a councillor including:
 - (i) The role of a councillor;
 - (ii) The observation of the councillor conduct principles; and
 - (iii) The observation of the Councillor Code of Conduct;
- (b) Acting as the principal spokesperson for Council which includes:
 - (i) Speaking publicly on behalf of Council both in the media and at public events; and
 - (ii) Liaising with important stakeholders from the community, business and other tiers of government to promote the interests of Council and the local community;
- (c) Supporting good working relations between councillors which includes:
 - (i) Fostering positive relationships between councillors;
 - (ii) Encouraging cooperation among councillors;
 - (iii) Promoting unity; and
 - (iv) Being alert to personal abuse, bullying, intimidation and other unacceptable behaviour and being responsible for addressing these issues;
- (d) Carrying out the civic and ceremonial duties of the office of mayor in a respectful and dignified manner by diligently and responsibly:
 - (i) Representing Council at important civic functions in the municipality including celebrating significant occasions such as Australia Day and Anzac Day;
 - (ii) Hosting civic functions;
 - (iii) Officiating at other local municipal events such as citizenship ceremonies; and
 - (iv) Presenting Council awards such as local Citizen of the Year.

Implications

Policy Considerations

The Wangaratta Rural City Council Governance and Meeting Conduct Local Law No. 2 of 2016 provides guidance regarding the process of the election of the Mayor.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

Section 71(1) of the Act provides that at a meeting of the Council that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

2013 – 2017 Council Plan (2016 Revision)

This report supports the 2013-2017 Council Plan:

Goal

We are Sustainable

It is non-negotiable that we will meet all of our legislative and compliance requirements.

Consultation/Communication

Level of public participation	Promises to the public/stakeholders	Tools/Techniques
Inform	Inform the public of the taking of the election of the Mayor.	Record the election of the Mayor in the minutes of this Special Meeting. Publish the minutes and make them available at the Council office and on Council's website.

Options for Consideration

There are no options to the election of a mayor as it is required by the Act.

Conclusion

Nominations should be called for the position of Mayor of the Wangaratta Rural City Council and a Mayor should be subsequently elected.

Attachments

Nil

Mayor Ken Clarke OAM - Commencement Speech

- Noted his passion for the Wangaratta Area and surrounds and his appreciation to be re-elected after an absence of 26 years.
- Thanks to fellow Councillors for their confidence in him.
- Three major issues that will be brought back to the Council table: Planning scheme amendment C69, Aquatic Strategy and future management of the Saleyards.
- Thank you to the voters in the City ward for having the confidence for his representation.
- Thanks to the Administrators for steering the ship for the past three years.
- Thank you to his family for their support.

7.5 DEPUTY MAYOR

Meeting Type: Special Council Meeting
Date of Meeting: 10 November 2016
Author: Governance and Risk Advisor
File Name: Special Meetings
File No: 10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council to provide for the determination of the appointment of a Deputy Mayor.

RECOMMENDATION:

That Council:

- 1. makes a determination on the establishment of the position of Deputy Mayor of Wangaratta Rural City Council for a term of office equivalent to the term of office of the Mayor as resolved by Council in agenda item 7.3; and*
- 2. having determined to appoint a Deputy Mayor, call for nominations for the position of Deputy Mayor of the Wangaratta Rural City Council and that a Deputy Mayor be subsequently elected for a term of office equivalent to the term of office of the Mayor as resolved by Council in agenda item 7.3; and*
- 3. determine the person holding the position of Deputy Mayor is appointed as Acting Mayor, if there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act; and*
- 4. confirm (insert name) is elected as Deputy Mayor, and be subsequently elected for the term of office as determined by Council in agenda item 7.3.*

Councillor H Benton moved a motion:

That Council deal with items 1 and 2 of the Recommendation presented.

- 1. makes a determination on the establishment of the position of Deputy Mayor of Wangaratta Rural City Council for a term of office equivalent to the term of office of the Mayor as resolved by Council in agenda item 7.3; and***
- 2. having determined to appoint a Deputy Mayor, calls for nominations for the position of Deputy Mayor of the Wangaratta Rural City Council and that a Deputy Mayor be subsequently elected for a term of office equivalent to the term of office of the Mayor as resolved by Council in agenda item 7.3.***

Seconded Councillor D Fuller

Carried

Mayor K Clarke OAM invited nominations for the position of Deputy Mayor:

**Councillor H Bussell nominated Councillor Bussell;
Councillor R Amery nominated Councillor Benton;
Councillor H Benton Accepted the nomination.**

Mayor K Clarke OAM called for a show of hands in alphabetical order for each nominee.

Votes Recorded:

Councillor H Benton received four votes.

Mayor K Clarke OAM then declared Councillor H Benton with a majority of votes elected as Deputy Mayor for a 1 year term.

Councillor H Benton moved the following motion:

- 1. that Councillor H Benton as the person holding the position of Deputy Mayor is appointed as Acting Mayor, if there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act.**
- 2. confirms Councillor H Benton is elected as Deputy Mayor, and be subsequently elected for the term of office as determined by Council in agenda item 7.3**

Seconded Councillor M Currie

Carried

Background

The Wangaratta Rural City Council Governance and Meeting Conduct Local Law No. 2 of 2016 (the Local Law) provides that Council **may** elect a Deputy Mayor.

Clause 11(2) of the Local Law provides that if Council resolves to elect a Councillor to the position of Deputy Mayor, Council must also resolve to appoint the person holding the position of Deputy Mayor as Acting Mayor, if there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act.

The Mayor is considered to be absent, incapable of acting or refusing to act, if the Mayor is on a leave of absence.

If the Mayor is not in attendance at a Council Meeting the Deputy Mayor must take the Chair in accordance with clause 18 of the Local Law, but is not considered to be the Acting Mayor.

The term of a Deputy Mayor is identical to the term of the Mayor.

If a Deputy Mayor position is not established then section 73(3) of the Act applies which provides for the appointment of an Acting Mayor where there is vacancy in the office of Mayor, or the Mayor is absent, incapable of acting, or refusing to act.

Implications

Policy Considerations

Council's Governance and Meeting Conduct Local Law No. 2 of 2016 relates to this report.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

Section 71 of the *Local Government Act 1989* relates to the Election of Mayor. Section 73 relates to the Precedence of the Mayor and provides for the appointment of an Acting Mayor.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

Options for Consideration

The two options are to either:

1. elect a Deputy Mayor who will then be Acting mayor in the absence of the Mayor throughout the Mayor's term; or
2. choose not to elect a Deputy Mayor, instead choosing an Acting Mayor in the absence of the Mayor.

Option 1 may be a more efficient method of providing for an Acting Mayor in the Mayor's absence.

Option 2 may provide opportunities for more than one Councillor to experience the role of the Mayor which in turn may assist future determinations of the position of Mayor.

Conclusion

Council may make a determination as to whether or not a Deputy Mayor position is established and a Deputy Mayor subsequently elected.

Attachments

Nil.

7.6 APPOINTMENTS TO COMMITTEES

Meeting Type: Special Council Meeting
Date of Meeting: 10 November 2016
Author: Governance and Risk Advisor
File Name: Special Meetings
File No: 10.020.012

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This report is presented to Council for consideration of appointments of Councillors to committees.

RECOMMENDATION:

(Moved: Councillor H Bussell/Councillor R Amery)

That Council defers consideration of appointments to committees to a future meeting of Council.

Carried

Background

The annual appointment of Councillors to committees and bodies is prescribed to occur at the meeting to elect the Mayor by the Governance and Meeting Conduct Local Law No. 2 of 2016.

Council nominates or appoints representatives and delegates to Council advisory committees, Special Committees and other associated committees and bodies annually, or as needed (***refer attachment***). Participation is an essential part of a Councillor's representative role.

A Councillor appointed as a representative to a committee will represent the position of Council, and report back to Council at an Ordinary Council Meeting on the issues or progress of the committee, and any recommendations made by the committee for Council to consider.

In allocating representative roles to councillors, consideration should be given to councillors' areas of interest and priorities and a fair and reasonable sharing of workload and time demands.

Implications

Policy Considerations

Council advisory committee and special committee charters provide for the type, number and role of Councillor representatives.

A number of charters refer to the appointment of the holders of specific Councillor portfolios. A decision regarding the use and, if required, the allocation of portfolio appointments is required precedent to the allocation of committee appointments. If portfolio appointments are not to be used, the motion appointing Councillor representatives should also vary the various committee charters.

It is recommended that additional time be provided to Councillors to consider the forgoing issues before resolving the matter.

Financial/Economic Implications

There are no financial or economic implications identified for the subject of this report.

Legal/Statutory

There are no legal/statutory implications identified for the subject of this report.

Social

There are no social impacts identified for the subject of this report.

Environmental/Sustainability Impacts

There are no environmental/ sustainability impacts identified for this subject of this report.

Conclusion

Insufficient time has elapsed since the election of Councillors to allow for proper consideration of the use and allocation of councillor portfolios and the subsequent allocation of committee and other representative roles and, if needed, the attendant committee charter variations. Consequently, Council should defer consideration of appointments to committees to a future meeting of Council.

Attachments

- 1 Council and Other Committees and Bodies with Councillor Representation

8. CLOSURE OF MEETING

The Meeting closed at 6.28pm.