



AGENDA

Dear Mayor and Councillors,

I respectfully advise that a **SPECIAL COUNCIL MEETING** will be held in the Civic Centre, McGregor St, Port Hedland, on Wednesday, 11 May 2022, commencing at 5:30pm

MEETING AGENDA ATTACHED

Yours faithfully

A handwritten signature in black ink, appearing to read "Carl Askew".

Carl Askew
Chief Executive Officer

6 May 2022

DISCLAIMER

No responsibility whatsoever is implied or accepted by the Town of Port Hedland for any act, omission, statement or intimation occurring during Council Meetings. The Town of Port Hedland disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission, and statement of intimation occurring during Council Meetings.

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Mr Carl Askew
Chief Executive Officer
Town of Port Hedland
PO Box 41
PORT HEDLAND WA 6721

Dear Mr Askew,

NOTICE PURSUANT TO SECTION 5.4(a)(i) – SPECIAL MEETING OF COUNCIL

Pursuant to section 5.4(a)(i) of the *Local Government Act 1995*, I give notice of a Special Meeting of the Council to be convened on Wednesday, 11 May 2022 at 5:30pm.

The purpose of the Special Council Meeting is to consider the motions carried by the electors at the Special Electors Meeting held on 12 April 2022.

Yours sincerely



Peter Carter

Mayor

28 April 2022

DISCLOSURE OF FINANCIAL/ IMPARTIALITY/ PROXIMITY INTERESTS

*Local Government Act 1995 – Section 5.65, 5.70 and 5.71
Local Government (Model Code of Conduct) Regulations 2021*

<i>This form is provided to enable members and officers to disclose an Interest in a matter in accordance with the regulations of Section 5.65, 5.70 and 5.71 of the Local Government Act and Local Government (Model Code of Conduct) Regulations 2021</i>			
Name			
Position			
Date of Meeting			
Type of Meeting (Please circle one)	Council Meeting/ Committee Meeting/ Special Council Meeting Workshop/ Public Agenda Briefing/ Confidential Briefing		
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality

Signature: _____ **Date:** _____

Important Note: Should you declare a **Financial or Proximity Interest**, in accordance with the Act and Regulations noted above, you are required to leave the room while the item is being considered.

For an **Impartiality** Interest, you must state the following prior to the consideration of the item:

“With regard to agenda item (read item number and title), I disclose that I have an impartiality interest because (read your reason for interest). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”

Order Of Business

Item 1	Opening of Meeting.....	5
Item 2	Acknowledgement of Traditional Owners and Dignitaries	5
Item 3	Recording of Attendance.....	5
3.1	Attendance.....	5
3.2	Attendance by Telephone / Instantaneous Communications	5
3.3	Apologies	5
3.4	Approved Leave of Absence	6
3.5	Disclosure of Interests.....	6
Item 4	Public Time.....	6
4.1	Public Question Time	6
4.2	Public Statement Time	6
Item 5	Questions from Members without Notice.....	6
Item 6	Announcements by Presiding Member without Discussion.....	6
Item 7	Declarations of All Members to Have Given Due Consideration to All Matters Contained in the Business Paper before the Meeting.....	6
Item 8	Reports of Officers	7
8.1	Regulatory Services	7
8.1.1	Response to Petition - Opposition to COVID-19 mandates	7
Item 9	New Business of an Urgent Nature (Late items)	13
Item 10	Closure.....	13
10.1	Date of Next Meeting	13
10.2	Closure.....	13

Item 1 Opening of Meeting

The Presiding Member is to declare the meeting open at [Enter Time](#).

Item 2 Acknowledgement of Traditional Owners and Dignitaries

The Presiding Member acknowledges the Kariyarra people as the Traditional Custodians of the land that we meet on and recognises their strength and resilience and he pays his respects to elders past, present and emerging.

Item 3 Recording of Attendance

Important note:

This meeting is being live streamed and audio recorded to facilitate community participation and for minute-taking purposes, which may be released upon request to third parties. In accordance with Section 6.16 of the Town of Port Hedland Local Law on Standing Orders members of the public are not permitted to use any visual or vocal electronic device or instrument to record the proceedings of any meeting unless that person has been given permission by the Presiding Member to do so. Members of the public are also reminded that in accordance with section 6.17(4) of the Town of Port Hedland Standing Orders Local Law mobile telephones must be switched off and not used during the meeting.

3.1 Attendance

Present:

- Mayor Peter Carter
- Deputy Mayor Tim Turner
- Cr Renae Coles
- Cr Elmar Zielke
- Cr Jan Gillingham
- Cr Ash Christensen
- Cr Flo Bennett
- Cr David Eckhart

In Attendance:

- Carl Askew (Chief Executive Officer)
- Karren MacClure (Director Corporate Services)
- Josephine Bianchi (Director Community Services)
- Craig Watts (Director Regulatory Services)
- Lee Furness (Director Infrastructure Services)
- Joyce Routledge (Acting Manager Governance)
- Jenna Brown (Acting Senior Governance Advisor)
- Christine Fairbrother (Corporate Support Officer/Minute Taker)

3.2 Attendance by Telephone / Instantaneous Communications**3.3 Apologies**

Nil.

3.4 Approved Leave of Absence

Nil.

3.5 Disclosure of Interests

Item 4 Public Time

Important note:

In accordance with section 6.7(3) of the Town of Port Hedland Local Law on Standing Orders, members of the public are required to complete a question form and place the completed form in the tray provided.

If the Presiding Member determines that questions and statements are out of order due to the use of an offensive or objectionable expression or are defamatory, they will not be recorded or responded to.

4.1 Public Question Time

4.2 Public Statement Time

Item 5 Questions from Members without Notice

Item 6 Announcements by Presiding Member without Discussion

Item 7 Declarations of All Members to Have Given Due Consideration to All Matters Contained in the Business Paper before the Meeting

Item 8 Reports of Officers

8.1 Regulatory Services

8.1.1	RESPONSE TO PETITION - OPPOSITION TO COVID-19 MANDATES
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Author:	Director Regulatory Services
Authorising Officer:	Chief Executive Officer
Disclosure of Interest:	The Author and Authorising Officer declare that they do not have any conflicts of interest in relation to this item.

OFFICER'S RECOMMENDATION

That Council:

1. Notes the intent of the Petition (as attached), and outcome of the Special Meeting of Electors held 12 April 2022.
2. Writes to the Premier to advise of the concerns raised at the Special Meeting of Electors and request a response to these concerns.

SIMPLE MAJORITY VOTE REQUIRED

PURPOSE

The purpose of this report is for Council to consider the outcome of the Special Meeting of Electors, which included requesting the Town of Port Hedland fund and initiate action in the Supreme Court of Western Australia for a judicial review of the COVID-19 mandates implemented by the State Government.

DETAIL

Responsibility for public health in Western Australia primarily lies with the State Government. On Sunday, 15 March 2020, Hon Francis Logan, Minister for Emergency Services, declared a State of Emergency in Western Australia with effect from 12:00am, Monday, 16 March 2020, due to the pandemic caused by the novel coronavirus sars-cov-2 (COVID-19). The declaration was enabled through s 56 of the *Emergency Management Act 2005*.

On Monday, 16 March 2020, Hon Roger Cook, Minister for Health, declared a Public Health State of Emergency, effective from 12:00am, Tuesday, 17 March 2020. The declaration was made under s 167 of the *Public Health Act 2016* and State Government Directions were enacted to help protect the Western Australian community. These declarations, which have been amended in response to the COVID-19 pandemic, have included mandatory vaccination for certain job roles within the community, mandatory vaccination to enter certain premises, restrictions on access to indigenous communities, limitations on venue occupancy and wearing of masks. The State of Emergency Declaration in response to the public health emergency provides authority to mandate vaccination and other such measures deemed necessary to mitigate the risk to public (including vaccination and control of entry to premises), in effect making these directions a lawful order.

COVID-19 vaccination mandates, issued in the latter part of 2021, required double dose vaccination for designated occupations and work roles. Requirement for a third booster

vaccination was also provided on 24 December 2021, making it compulsory for approximately 75% of the Western Australian workforce to be vaccinated to continue in their roles. A further mandate was issued limiting access to hospitality, entertainment, sporting, hospital and aged care facilities to persons who are double vaccinated.

As with all employers and owners/managers of venues and facilities within Western Australia, the Town of Port Hedland is legally obliged to implement the State Government mandates or face financial penalties for non-compliance. The Town staff and most patrons at mandated facilities have complied with the directions issued.

A petition was provided to the Town, signed by over 100 electors, seeking a Special Meeting of Electors to discuss community concerns in relation to the mandates, oppose the vaccination mandates and declare the Town of Port Hedland a “Pro-Choice” community. The petition further requested that the Town advise the Premier and State Parliament of these concerns and request they refrain from imposing further mandates in addition to removing all existing mandates in place.

Special Meeting of Electors

A Special Meeting of Electors was held on 12 April 2022 at the Civic Centre Gardens, attended by approximately 130 persons.

Motions raised and supported by the attendees included: -

ELECTORS MOTION 1

That the Town of Port Hedland apply to the Supreme Court of Western Australia, pursuant to Order 56 of the Supreme Court Rules 1971, for judicial review of the following decisions, each of which is adversely affecting the personal, occupational and commercial interests of residents of, businesses operating in, and visitors to, the Town of Port Hedland:

Pertaining to State of Emergency Declaration and Extensions;

- a. Declaration of State of Emergency made at 12.45pm on 15 March 2020, by Francis Michael Logan, the Minister for Emergency Services, under section 56 of the Emergency Management Act 2005 (WA).*
- b. Extension of State of Emergency Declaration from 25 March 2022 to 8 April 2022 made at 9.35am on 22 March 2022, by Stephen Noel Dawson, the Minister for Emergency Services, under section 58 of the Emergency Management Act 2005 (WA).*
- c. Extension of State of Emergency Declaration from 8 April 2022 to 22 April 2022 made at 11.55am on 5 April 2022, by Stephen Noel Dawson, the Minister for Emergency Services, under section 58 of the Emergency Management Act 2005 (WA).*

Pertaining to Business and Community Activity Directions;

- d. Proof of Vaccination Directions (No 5) made at 11.25am on 25 February 2022, by Christopher Dawson, Commissioner of Police and State Emergency Co-Ordinator, under sections 61, 67 and 72A of the Emergency Management Act 2005.*
- e. COVID Transition (Public Health and Social Measures) Directions (No 2) made at 10.25am on 29 March 2022, by Christopher Dawson, Commissioner of Police and State Emergency Co-ordinator, under sections 61, 67 and 72A of the Emergency Management Act 2005.*

Pertaining to Mandatory Vaccination Directions;

- f. Resources Industry Worker (Restrictions on Access) Directions (No. 3) made at 1.48pm on 24 February 2022, by Andrew Robertson, the Chief Health Officer, under sections 157(1)(e), 157(1)(k), 180 and 190(1)(p) of the Public Health Act 2016 (WA).*
- g. Booster Vaccination (Restrictions on Access) Directions (No. 2) made at 6.42pm on 7 January 2022, by Andrew Robertson, the Chief Health Officer, under sections 157(1)(e), 157(1)(k), 180 and 190(1)(p) of the Public Health Act 2016 (WA).*

ELECTORS MOTION 2

That the Town of Port Hedland apply to the Supreme Court of Western Australia, pursuant to Order 56 of the Supreme Court Rules 1971, for judicial review of any future decision which has the effect of replacing, superseding, varying or extending, or otherwise deals with the same subject matter as, any of the decisions referred to in resolutions 1(a) to (g).

ELECTORS MOTION 3

That the Town of Port Hedland Council direct the CEO to:

- a. Ensure, on Council approval, that this Supreme Court challenge be lodged with the Supreme Court registrar within 28 days of this motion gaining council approval.*
- b. Adjust the 2021/22 budget and allocate up to, \$500,000.00 for the Supreme Court challenge and any associated legal proceedings referencing this direction.*

ELECTORS MOTION 4

That the Local Government will seek and allow (but not delay) any Western Australian local government body and/or private sector, listed below, to contribute to financially supporting this challenge:

- a. Other Local Governments across the State;*
- b. Western Australian Local Government Association (WALGA);*
- c. Local Government Professionals WA; and,*
- d. Other professional bodies, associations, business entities and individual Australians.*

Motions related to the original petition intending to declare the Town a “Pro-Choice” community and associated provisions were not supported.

Legal Advice

Legal advice obtained by the Town indicates that if Council were to adopt the motions from the Special Meeting of Electors, taking action against the State in the Supreme Court may be “ultra-vires”, meaning that the Town is acting beyond its powers under the general functions provision of the Local Government Act 1995. It is arguable that the proceedings of the nature proposed are not within the scope of the Town’s general function as they do not directly pertain to the good government of persons in the Towns district, but rather relate to broader matters of State Government policy that are not within the legislative remit of the Town.

Further, it could be questioned whether seeking a judicial review would be considered “good governance” given the potential costs of such action, with no guarantee of a successful outcome. Supreme Court legal challenges of the nature proposed by the motions (which seeks to challenge seven State government decisions, together with any future decisions replacing, superseding, varying or extending those decisions) would be an extremely expensive exercise,

the costs of which may well exceed the amount of the proposed budgetary allocation (\$500,000) considering also that if the proceeding was ultimately unsuccessful, the Town would likely be liable for the legal costs of the State.

Legal proceedings to challenge decisions concerning State Government vaccination mandates in Western Australia have already been commenced by other parties. There would appear to be limited utility in commencing proceedings of a similar nature prior to the judicial determination of any existing proceedings that are on foot. Similar Supreme Court actions opposing the mandates already underway include the matter of Falconer vs. Chief Medical Officer and Commissioner of Police which is still to be heard. Falconer is petitioning that the imposition of vaccination mandates and his subsequent removal from employment as a Police officer was illegal. The legal argument of the actions already underway would be similar to those proposed by the electors meeting, therefore it is further suggested that Council wait to consider the outcomes of the current Supreme Court actions prior to the Town reconsidering if it would take any action of its own.

The utility of the proposed proceedings is uncertain in circumstances where the challenged mandates may well be reviewed and potentially withdrawn prior to the hearing or final determination of the proceedings. The progressive relaxation of the COVID related restrictions has already commenced and in time is likely to result in the revocation of many of the decisions the subject of the proposed proceedings (including the current State of Emergency, which could not be maintained indefinitely). Legal advice suggests that by the time any action was prepared and commenced in the Supreme Court, this would likely be a moot point as most, if not all, mandates are expected to be lifted in the coming months.

Other advice

WALGA has also advised that they are aware of 13 other Local Government Authorities that have each held a Special Meeting of Electors in relation to COVID-19 mandates, with the majority of those Councils noting the motions from their Special Meeting of Electors and directing the concerns of the residents to the State Government. Several of these Councils noted that their respective Local Government Authorities are reliant on public health advice provided by the State Government and Chief Medical Officer, are required to follow public health guidelines and restrictions, and that supporting motions against the legislated mandates and directions is outside the jurisdiction of Local Government.

WA Country Health Service advise that COVID-19 vaccination rates within the State currently exceed 95% for the first dose, with first dose vaccination rates within the East Pilbara region (including Town of Port Hedland) exceeding 68% for the first dose. These statistics suggest widespread acceptance of vaccination as a means to minimise the spread and reduce the severity of the disease. Furthermore, as seen in the Eastern States, as the community responds to COVID-19 and there are decreasing virulence and hospitalisations, current mandates and directions are expected to ease.

LEVEL OF SIGNIFICANCE

In accordance with Policy 4/009 'Significant Decision Making', this matter is considered to be of high significance, because of significant legal and reputational damage to the Town if we pursued the proposed resolutions. Implementation of the COVID-19 mandates are a State Government requirement, which the Town has little control over.

CONSULTATION

Internal

Executive Management Team
Manager Environmental Health and Community Safety
A/Manager Governance

External Agencies

WA Police
WA Country Health Service
McLeods Barristers and Solicitors

Community

Nil

LEGISLATION AND POLICY CONSIDERATIONS

Part 12 Divisions 3, 4 and 5 of the *Public Health Act 2016* applies whereby an authorised emergency officer may undertake actions to mitigate against a serious public health risk, including quarantine, vaccination, closure of premises and exercise any serious public health incident power.

Legal advice received indicates that if Council were to endorse the motions from the Special Meeting of Electors, action to seek a judicial review of the COVID-19 mandates by the Supreme Court may be outside the scope of the general function of local government. While many Local Government Authorities have directed the concerns raised at their Special Meeting of Electors to the State Government, none have initiated action in the Supreme Court or any other court.

FINANCIAL AND RESOURCES IMPLICATIONS

There are no budgetary implications from adopting the Officers recommendation.

If Council were to consider supporting the motions from the Special Meeting of Electors including providing \$500,000 in unbudgeted funds, any monetary allocation towards this action would require a decision by Absolute Majority.

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

The following section of the Town's Strategic Community Plan 2018-2028 is applicable in the consideration of this item:

- 4.b.4 Constructive forums are provided for discussion and the representation of the diversity of views and needs that impact on the Town's developments, programs and policies

There are no significant identifiable environmental, social or economic impacts relating to this item.

RISK MANAGEMENT CONSIDERATIONS

There is a reputational and compliance risk associated with this item because by endorsing a pro-choice/mandate free local government and commencing action for a judicial review in the Supreme Court, the Town would be acting directly against the State Government and a valid law. The risk rating is considered to be high (12), which is determined by a likelihood of likely

(4) and a consequence of moderate (3). This risk will be eliminated by the adoption of the officer's recommendation.

OPTIONS

Option 1 – Adopt officer's recommendation

Option 2 – Amend officer's recommendation

Option 3 – Do not adopt officer's recommendation

CONCLUSION

Whilst the Town is sympathetic and acknowledges the comments made by electors in relation to the mandatory vaccination requirement, the Town has implemented all State Government Health directives.

As seen in other states, it is anticipated that the State Government will in time remove COVID-19 mandates and directions. However, until such time as this has occurred, the Town should, and will continue to undertake its obligations about Health Directions made by the WA Government.

ATTACHMENTS

1. Petition - Cover letter to Mayor (under separate cover)
2. Petition - Signatures (under separate cover)
3. Special Electors Meeting Minutes (under separate cover)

Item 9 New Business of an Urgent Nature (Late items)

Nil.

Item 10 Closure

10.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 25 May 2022 commencing at 5:30pm.

10.2 Closure

There being no further business, the Presiding Member declared the meeting closed at [enter time](#).