

MINUTES

Special Council Meeting Wednesday, 11 May 2022

Date: Wednesday, 11 May 2022

Time: 5:30pm

Location: Civic Centre
McGregor St
Port Hedland

Distribution Date: Thursday, 24 May 2022



Mayor

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

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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*

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| <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..... | 6 |
| Item 2 | Acknowledgement of Traditional Owners and Dignitaries | 6 |
| Item 3 | Recording of Attendance..... | 6 |
| 3.1 | Attendance | 6 |
| 3.2 | Attendance by Telephone / Instantaneous Communications | 6 |
| 3.3 | Apologies | 6 |
| 3.4 | Approved Leave of Absence | 7 |
| 3.5 | Disclosure of Interests..... | 7 |
| Item 4 | Public Time..... | 7 |
| 4.1 | Public Question Time | 7 |
| 4.1.1 | Mr Camillo Blanco..... | 7 |
| 4.1.2 | Ms Louisa Larado | 7 |
| 4.1.3 | Mr John Ashenden..... | 8 |
| 4.1.4 | Ms Merryn Browning | 8 |
| 4.1.5 | Ms Marie Graham | 9 |
| 4.1.6 | Ms Selina Dixon | 10 |
| 4.1.7 | Ms Melanie Cuomo | 10 |
| 4.1.8 | Mr Chris Skelton | 10 |
| 4.1.9 | Mr Adrian McRae..... | 11 |
| 4.2 | Public Statement Time | 11 |
| 4.2.1 | Mr Camillo Blanco..... | 11 |
| 4.2.2 | Ms Louisa Larado | 11 |
| 4.2.3 | Mr Rod Culleton..... | 12 |
| 4.2.4 | Mr Chris Skelton | 12 |
| 4.2.5 | Ms Lynne Taylor..... | 12 |
| 4.2.6 | Mr Joel Armstrong | 12 |
| 4.2.7 | Ms Bernice Davidson | 12 |
| 4.2.8 | Ms Joan Lever | 12 |
| 4.2.9 | Ms Roseline ShaDforth..... | 13 |
| 4.2.10 | Mr Ryan O'Connell..... | 13 |
| 4.2.11 | Mr John Ashenden..... | 13 |
| 4.2.12 | Ms Doris Koehler-Teufel..... | 13 |
| 4.2.13 | Mr George Rueben | 13 |
| 4.2.14 | Ms Merryn Browning | 13 |

| | | |
|---------|---|----|
| 4.2.15 | Mr Brenton Johannsen..... | 14 |
| 4.2.16 | Mr Chris Flesser | 14 |
| 4.2.17 | Ms Selina Dixon | 14 |
| 4.2.18 | Ms Leigh Gibbs..... | 14 |
| 4.2.19 | Mr Adrian McRae | 14 |
| 4.2.20 | Mrs Gloria Jacob..... | 15 |
| 4.2.21 | Ms Lorraine Butson..... | 15 |
| 4.2.22 | Ms Merryn Browning | 15 |
| 4.2.23 | Mr Adrian McRae | 15 |
| 4.2.24 | Ms Selena Dixon | 15 |
| Item 5 | Questions from Members Without Notice | 16 |
| Item 6 | Announcements by Presiding Member without Discussion..... | 16 |
| Item 7 | Declarations of All Members to Have Given Due Consideration to All Matters Contained in the Business Paper before the Meeting..... | 16 |
| Item 8 | Minutes to the Previous Special Electors Meeting | 17 |
| Item 9 | Questions from Members Without Notice Continued | 18 |
| 9.1.1 | Council Response to Petition - Opposition to COVID-19 Mandates | 18 |
| Item 10 | Reports of Officers | 21 |
| 10.1 | Regulatory Services | 21 |
| 10.1.1 | Response to Petition - Opposition to COVID-19 mandates | |
| Item 11 | New Business of an Urgent Nature (Late items) | 27 |
| Item 12 | Closure..... | 27 |
| 12.1 | Date of Next Meeting | 27 |
| 12.2 | Closure..... | 27 |

Item 1 Opening of Meeting

The Presiding Member declared the meeting open at 5:34 PM.

Item 2 Acknowledgement of Traditional Owners and Dignitaries

The Presiding Member acknowledges the Kariyarra people as the Traditional Custodians of the land that we met on and recognises their strength and resilience and he paid 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 Clause 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 Clause 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)
Chaz Roberts (Acting 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)

Public Registered: 110

3.2 Attendance by Telephone / Instantaneous Communications

Nil.

3.3 Apologies

Craig Watts (Director Regulatory Services)

3.4 Approved Leave of Absence

Nil.

3.5 Disclosure of Interests

Nil.

Item 4 Public Time

Important note:

In accordance with clause 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

The Presiding Member declared Public Question Time open at 5:38 PM.

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| <h4>4.1.1 MR CAMILLO BLANCO</h4> |
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Why have you closed the meeting to the people outside. Can you explain is there a WA restriction on the number of people allowed to be in a room, is there a legal requirement for the meeting to be closed?

Mayor Carter provided the following response:

There is no requirement, the meeting is live streamed in the adjacent Gratwick Hall, we did this to give people space.

Cr Gillingham requested the doors of Chambers be opened for the public to hear the meeting.

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| <h4>4.1.2 MS LOUISA LARADO</h4> |
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In the agenda, on the bottom of page 10 of the CEO's recommendation, it says this matter is of high significance because of significant legal and reputational damage to the Town if we pursue the proposed resolutions. Can I ask you Mayor, if you think the CEO is referring to how our town's reputation is portrayed through the eyes of the State Government, or through our Port Hedland community?

Mayor Carter provided the following response:

The State Government.

Do you not think you should represent the people of the town of Port Hedland not the State of Western Australia?

Mayor Carter provided the following response:

I actually represent the whole town.

Mayor Carter as a father, are you happy to see your children growing up without the freedoms you experienced as a child.

Mayor Carter provided the following response:

Yes. I am.

4.1.3 MR JOHN ASHENDEN

Is it true that the State Government has applied pressure, or threatened, you and staff members with dismissal if you support the motions agreed to by the electors at the Special Electors Meeting?

Mayor Carter provided the following response:

No.

Then why have you told councillors that this is the case?

Mayor Carter provided the following response:

I have not told them that at all.

4.1.4 MS MERRYBN BROWNING

Do you agree the government is within its power to discriminate against those who have, and those who have not had the injections, and agree that the Covid-19 mandate should trigger the termination of peoples rights to work if they choose not to be dictated to with regard the vaccination?

Mayor Carter provided the following response:

That's a question for State Government.

In the agenda, it states that there are reputational and compliance risks associated with this item. With your reputation, have you done a risk rating in regards to supporting these motions that we put forward?

Mayor Carter provided the following response:

We are governed by the W.A Health Department and their risk assessment, they give us the information that we have tonight.

So the risk rating, you say you have done this?

Mayor Carter provided the following response:

The WA Health Department gives us the risk assessment.

How does the WA Health Department do the risk assessment on your reputation?

Mayor Carter provided the following response:

They guide us.

In your conclusion, it states that it is anticipated that, in time, the State Government will remove the Covid-19 mandates and directions. Can you tell me, do we know for sure, because 'anticipated' is a word that is not set in concrete, and why are we looking at just the Covid-19 mandates and not all mandates that give us autonomy over our own bodies?

Mayor Carter provided the following response:

That is up to the WA Health Department to give us that information.

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| 4.1.5 MS MARIE GRAHAM |
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Mr Mayor, does the Town of Port Hedland consider Council Chambers to be the elected members place of work?

The Chief Executive Officer provided the following response:

The Elected Members are not considered employees, it is a place they conduct business but it is not the only place.

Mr Mayor, in 2021 there were signs placed around the Town relating to the eligible dates of the Covid-19 vaccine doses, which have since been removed. Were these placed there by the Shire?

Mayor Carter provided the following response:

I'm not aware.

Can the Council please give their independent position, free of public health orders, on mandatory vaccinations on the rate payers of the town. Does the Council independently support mandatory Covid vaccinations?

Mayor Carter provided the following response:

I think we are all governed by the Public Health Act in a State of Emergency.

4.1.6 MS SELINA DIXON

Mayor, do you agree it's okay to have someones child removed from their custody at the hands of something that isn't approved and is an expirement?

Mayor Carter provided the following response:

That is personal preference.

4.1.7 MS MELANIE CUOMO

In your agenda it stated the Council expects mandates to end soon. At what date do you expect mandates to end, considering you expect them to end soon, though in the last 48 hours the Premier has rolled forth mandates until January 2023? At what point will everyone start standing up to this Premier?

Mayor Carter provided the following response:

That is up to the WA Health Department.

Are you elected to serve the people of this town, or are you elected to serve the Government?

Mayor Carter provided the following response:

I am elected to serve the community of the Town of Port Hedland.

4.1.8 MR CHRIS SKELTON

Am I any less a member of this community than I was 2 years ago when I was raising funds for various parts of the community?

Mayor Carter provided the following response:

No you are not.

Why has my community stood by while I have been discrimated against and barred from attending bars, clubs and restaurants with my family members. My community, my elected members, have stood by and allowed it to happen and say that it is a decision by the Health Department?

Mayor Carter provided the following response:

It is under Public Health Act. Correct.

Why not push back Mayor Carter? Stand up for us, we elect you, stand up for us.

Mayor Carter provided the following response:

Thank you.

4.1.9 MR ADRIAN MCRAE

You have said that you represent “all” the community. Do you imply by representing “all” the community, that us here are a minority?

Mayor Carter provided the following response:

No you are implied as people of our community.

Prior to the jab injection roll out, the Pilbara and the Kimberley had an 80% unvaccinated rate. Are you aware that in representing all the community, you have an overwhelming majority that did not want this jab, but only took the jab under coercion of losing their job or being subjugated from the rest of our society and our community?

Mayor Carter provided the following response:

That was under the Public Health Act.

Do you understand that 80% of the community is on our side with this?

Mayor Carter provided the following response:

Yes, I understand your comment.

The Presiding Member declared Public Question Time closed at 6:00 PM.

4.2 Public Statement Time

The Presiding Member declared Public Statement Time open at 6:01 PM.

4.2.1 MR CAMILLO BLANCO

Mr Blanco urged for the motions put forward at the Special Electors Meeting be considered by the Council. Mr Blanco would like to hear the deliberation of the Council and hear their opinions relating to loss of jobs and livelihoods due to the vaccine mandate. He addressed the loss of jobs, the unaffordability of housing resulting from loss of jobs, and people moving away from town. Mr Blanco would like to let the courts decide if the Government has the power to strip peoples rights to provide for their families.

4.2.2 MS LOUISA LARADO

Ms Larado described this meeting as make or break for the community and urged the Council to make the best decision for the community regardless of the Towns reputational concerns. Ms Larado expressed her concerns for the loss of human rights and freedoms relating to the vaccine mandates and described her personal experience around this. Ms Larado asked for the Council to fight for the people of the Town and Australia as a whole.

4.2.3 MR ROD CULLETON

Mr Culleton introduced himself as a former Federal Senator. Mr Culleton went on to address the issues with the State relying on the Public Health Act without obtaining whether there is a reasonable excuse under s.122 of the Public Health Act, and using State law to override Commonwealth law, resulting in an automatic right to go to the High Court. Mr Culleton also discussed that with the establishment of the Corporations Act 2001, the State Government revoked their powers to regulate corporations and that corporations are bound by Commonwealth law, not state law.

4.2.4 MR CHRIS SKELTON

Mr Skelton expressed his passion for his community which he has been a part of for 15 years. Mr Skelton urged the Council to stand with the community and defend their rights.

4.2.5 MS LYNNE TAYLOR

Ms Taylor informed the Council of her history in the town. Ms Taylor expressed her feelings about the Covid vaccine and her desire not to receive it after having a bad reaction to a flu vaccine in the past. Ms Taylor expressed her disappointment in the Town for not doing something about the mandates sooner.

4.2.6 MR JOEL ARMSTRONG

Mr Armstrong thanked the Town staff, Councillors and public for attending the meeting and listening to peoples statements. Mr Armstrong read a article from a media platform detailing loss of lives due to the vaccine. He expressed his concerns for the wellbeing of people involved in the lockdown mandates and the impact isolation has on mental health and relationships. Mr Armstrong went on to explain the irreversible effect the vaccine has on children.

4.2.7 MS BERNICE DAVIDSON

Ms Davidson explained her personal experience with the loss of family members due to the Covid vaccine. Ms Davidson described her faith as a Christian woman and acknowledged her freedom of choice. Ms Davidson described some family members as being medical professionals and the advice she has received against getting this vaccine. She urged the Council to stand up for their people.

4.2.8 MS JOAN LEVER

Ms Lever introduced herself as an Aboriginal woman and a primary school teacher by occupation who has not worked for two years as she does not want the vaccination. Ms Lever urged the Council to protect the future of the people and return their freedoms. Ms Lever identifies as a Christian woman and stated most laws come from the Ten Commandments, which were made to create peace. She asked the Council to "let us be free again".

4.2.9 MS ROSELINE SHADFORTH

Ms Shadforth advised she has been in this town for 20 years. Ms Shadforth described having Covid as like having the typical flu for two days, the same as you have every year. Ms Shadforth described the vaccine as killing people and as a Christian woman she feels compelled to speak the truth.

4.2.10 MR RYAN O'CONNELL

Mr O'Connell addressed the effects the mandates have had on everyone with regard to socialising, attending loved ones ceremonies and the ability to work and provide for ones family. Mr O'Connell described how businesses in town, including big mining companies, have been affected by the mandates, some forced to close their doors. He explained how people have left the town while others are hanging on by a thread. Mr O'Connell shared his opinion about the withholding of scientific evidence from the Government on the vaccine and shared concerns about future agendas being pushed from the Government and what more freedoms may be taken away.

4.2.11 MR JOHN ASHENDEN

Mr Ashenden thanked the Kariyarra people, members of council and the people in attendance. Mr Ashenden made reference to the ANZACs who fought for our freedoms and rights. Mr Ashenden questioned whether there has been one dollar spent towards a study on the impact the vaccine mandate has had on our community, our general health, our mental health and the moral health of our community. He urged the Council to do what's right and help the people.

4.2.12 MS DORIS KOEHLER-TEUFEL

Ms Koehler-Teufel advised that she moved to town in 2003 from Germany, and thought this was a democratic country. She describes the vaccine mandate as a "scare campaign" and wonders why the court system is allowing this to happen and with no opposition. These mandates prevented Ms Koehler-Teufel from returning to Germany to visit her mother before she passed. Ms Koehler-Teufel encouraged the Council to stand up for a democratic country and to think about the future.

4.2.13 MR GEORGE RUEBEN

Mr Rueben identifies as a Torres Strait Islander, he moved to Port Hedland from Townsville. Mr Rueben advised he worked as a railway worker and train driver but was recently terminated from his employment as a result of his stance against the vaccination. He went on to describe peace with his decision, to lose his income, as he is a man of faith. Mr Rueben shared a prayer for the Councillors and the Mayor to support them with their decision.

4.2.14 MS MERRYBN BROWNING

Ms Browning spoke of past trauma and how this has affected her experience with the mandates and how we should all have the right to informed consent, with permission granted in full knowledge of the consequences. Ms Browning commended those who have had the

vaccination but questions how many of those who received it did so with full knowledge of the risks and benefits. Ms Browning read out the meanings of informed consent and duress.

4.2.15 MR BRENTON JOHANNSSEN

Mr Johannsen spoke about how he has been travelling around the countryside with family to understand what has been going on within the community. Mr Johannsen informed the council he is going to run for the electorate of Durack and wanted an understanding of all the areas. Mr Johannsen described bullying surrounding the mandates and that for every one person willing to speak up there were 100 people behind them not speaking up. He explained the division he has witnessed within families and friendships due to the mandate. Mr Johannsen said that on his travels to the various towns, he has encountered businesses that have had to change their business structures in order to allow their businesses to operate as emporiums to avoid falling under the mandate categories.

4.2.16 MR CHRIS FLESSER

Mr Flesser explained he missed question time and would be reading his questions out as a statement. Mr Flesser read the following questions;

1. Which health department provides the advice to the Council.
2. Who specifically provides the advice and can you provide the documents.
3. In the Town of Port Hedland, who does the risk assessment around the mandates and with that can you provide relevant documents.
4. Which individual signs off on the mandates specifically within the Town of Port Hedland.
5. Is there a third party contractor, consultant, RDR, who advised the Council whether the mandate policies were good bad or indifferent.

4.2.17 MS SELINA DIXON

Ms Dixon acknowledged the extreme pressure placed on the Councillors in dealing with the decision of these motions. Ms Dixon provided information about the vaccine mandate effects on her livelihood and her career as a family support worker, as she chose not to threaten those in her care to take the vaccine or face detrimental consequences. Ms Dixon addressed her loss of trust in the healthcare system and the lack of reporting on the effects of this vaccine. She expressed concerns for the future generations if this mandate is not challenged.

4.2.18 MS LEIGH GIBBS

Ms Gibbs encouraged the Council to consider the children and their future in relation to the control they will have over their own bodies if the mandate is not dropped. Ms Gibbs feels this is the opportunity to defend and secure the body sovereignty and freewill of our descendants. She urges the Council to make the right choice for humanity with the future in mind and read out a verse from the Bible.

4.2.19 MR ADRIAN MCRAE

Mr McRae read out some statistics on the deaths and illnesses related to the Covid vaccine, which he believes to be grossly underestimated by as much as 90%. Mr McRae addressed

cancer concerns relating to children who receive the vaccine, as well as the increased number of cases of Pericarditis, the life expectancy of those who develop the condition and the requirement for heart transplants as the only means of survival. Mr McRae described the recent judicial reviews of the mandate around the country and New Zealand and the results. He pleaded for the Council to work in unison with the community and to make the right decision for the whole of Australia and to lead the team.

4.2.20 MRS GLORIA JACOB

Mrs Jacob addressed the public in attendance and sympathised with their pleas and stories, however, she pointed out that what the group was doing was not addressing the resolution items that the Council were deliberating on at this meeting. Mrs Jacob stated that the resolution in the agenda was not what the people had come to ask.

4.2.21 MS LORRAINE BUTSON

Ms Butson thanked all the presenters of the evening in support of the four motions put forward at the Special Electors Meeting on 12 April 2022. Ms Butson stated that the Premier may not be here for a long time but following the decision by the Councillors, this is going to go on for a long time after.

4.2.22 MS MERRYBN BROWNING

Ms Browning responded to Mrs Jacob, thanking her and agreeing they should work together with the Town. Ms Browning stated she was not on the electoral roll when she moved to town but wanted to be enrolled as an elector to be able to give other people their rights and freedoms. Ms Browning believes as a community we have the power to make a difference. Ms Browning asked to have the four motions brought forward for consideration.

4.2.23 MR ADRIAN MCRAE

Mr McRae asked the councillors to raise a motion to bring back their resolutions from the Special Electors Meeting for voting.

4.2.24 MS SELENA DIXON

Ms Dixon responded to Mrs Jacob's statement and went on to state that members of the group are nurses, teachers, dentists, mechanics, the people that work in those industries which without them there would be no one in those roles. Ms Dixon went on to say without freedom, the group are unable to return to their industries to support their community.

The Presiding Member declared Public Statement Time closed at 7:53 PM.

Cr Ash Christensen called for a recess at 7:53 PM.

The Presiding Member declared a recess at 7:53 PM.

The Presiding Member declared the meeting resumed at 8:03 PM.

Item 5 Questions from Members Without Notice

Cr Jan Gillingham asked the following questions:

The four motions which were carried at the Special Electors Meeting on 12 April 2022, and then a floor motion that was put down on 27 April 2022 to have the motions brought to and voted on at a Special Meeting of Council, which is tonight, was there any particular reason why they didn't actually go into the Officer's recommendation?

The four motions which are in the agenda item tonight, can I ask through the Chair, are they a true and correct as put up at the Electors Meeting on the 12 April 2022?

The Mayor provided the following responses:

That will come up under 9.1.1 and to the best of my knowledge, yes they are.

Cr Jan Gillingham proposed the following:

I would like to move the floor motion now, and the floor motion is "I request to put up the four motions carried at the Special Meeting of Electors on 12 April 2022 for consideration; and, 1 and 2 of the officer's recommendation on today's agenda be removed."

CM202122/192 COUNCIL DECISION**MOVED: CR GILLINGHAM****SECONDED: CR ZIELKE****COUNCIL RECOMMENDATION**

That Council put up the 4 motions carried at the Special Electors Meeting on 12 April 2022 for consideration; and recommendation 1 and 2 of the officer's report in tonight's agenda item be removed.

CARRIED (5/3)

In Favour: Cr Coles, Cr Zielke, Cr Gillingham, Cr Christensen, Cr Bennett

Against: Mayor Carter, Cr Turner, Cr Eckhart

Item 6 Announcements by Presiding Member without Discussion

Nil.

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

The following Elected Members declared that they had given due consideration to all matters contained in the agenda:

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

Item 8 Minutes to the Previous Special Electors Meeting

That Council note the Minutes of the Special Electors Meeting including the following amendment to item 3.1 Attendance and the recording of the registered attendees.

Item 9 Questions from Members Without Notice Continued

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| 9.1.1 Council Response to Petition - Opposition to COVID-19 Mandates |
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Council moved at Item 5 (Questions from Members Without Notice) of this Agenda that the 4 motions carried at the Special Meeting of Electors on 12 April 2022 be voted on by Council as follows:

CM202122/193 COUNCIL DECISION

MOVED: CR GILLINGHAM

SECONDED: CR ZIELKE

That Council:

1. *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).*

CARRIED (5/3)

In Favour: Cr Coles, Cr Zielke, Cr Gillingham, Cr Christensen, Cr Bennett
Against: Mayor Carter, Cr Turner, Cr Eckhart

CM202122/194 COUNCIL DECISION

MOVED: CR GILLINGHAM

SECONDED: CR ZIELKE

That Council: *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).*

CARRIED (5/3)

In Favour: Cr Coles, Cr Zielke, Cr Gillingham, Cr Christensen, Cr Bennett
Against: Mayor Carter, Cr Turner, Cr Eckhart

CM202122/195 COUNCIL DECISION

MOVED: CR GILLINGHAM

SECONDED: CR ZIELKE

That 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.*

NOT CARRIED (4/4)

In Favour: Cr Coles, Cr Zielke, Cr Gillingham, Cr Bennett
Against: Mayor Carter, Cr Turner, Cr Christensen, Cr Eckhart

CM202122/196 COUNCIL DECISION

MOVED: CR GILLINGHAM

SECONDED: CR ZIELKE

That Council: *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.

CARRIED (5/3)

In Favour: Cr Coles, Cr Zielke, Cr Gillingham, Cr Christensen, Cr Bennett
Against: Mayor Carter, Cr Turner, Cr Eckhart

Item 10 Reports of Officers

10.1 Regulatory Services**10.1.1 RESPONSE TO PETITION - OPPOSITION TO COVID-19 MANDATES**

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.

MOTION LAPSED

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

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 11 New Business of an Urgent Nature (Late items)

Nil.

Item 12 Closure

12.1 Date of Next Meeting

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

12.2 Closure

There being no further business, the Presiding Member declared the meeting closed at **9:04 PM**.

DECLARATION OF CONFIRMATION OF MINUTES

I certify that these Minutes were confirmed by the Council at its Ordinary Council Meeting on 25 May 2022.

CONFIRMATION:



PRESIDING MEMBER

25 May 2022

DATED