

Special Meeting of Council Minutes

Council Chambers, McGregor St, Port Hedland

5:30pm Wednesday, 12 June 2019

Purpose of Meeting:

- Request for Legal Advice in relation to Ministerial Issue of Show Cause Notice

Distribution date:
14 June 2019

David Pentz

Chief Executive Officer

Our Vision

*To be Australia's leading
Port Town embracing
community, culture
and environment*





Mr David Pentz
Chief Executive Officer
Town of Port Hedland
P O Box 41
PORT HEDLAND WA 6721

Dear David,

SPECIAL MEETING OF COUNCIL

In accordance with Section 5.4 of the Local Government Act 1995, I hereby request that you arrange for a Special Meeting of Council to be held on Wednesday, 12 June 2019 at 5.30pm to consider the following matters:

- Look into the statutory process conducted by the Department of Local Government into the issuing of the Show Cause Notice;
- Legalities of the ownership of any report received by the Department of Local Government to populate the Show Cause Notice;
- If the Scope was achieved by the Mentor appointed in June 2018; and
- Response on the best way to respond to the Show Cause Notice with above information.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Camilo Blanco".

Camilo Blanco
Mayor

10 June 2019

Town of Port Hedland Office

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Item 1 Opening of Meeting

The Mayor declared the meeting open at 5:30pm.

Item 2 Acknowledgement of Traditional Owners and Dignitaries

The Mayor acknowledged the traditional custodians, the Kariyarra people, and recognises the contribution of Kariyarra Elders past, present and future, in working together for the future of Port Hedland.

Item 3 Recording of Attendance

3.1 Attendance

Mayor Camilo Blanco
Deputy Mayor Louise Newbery
Councillor Julie Arif
Councillor Richard Whitwell
Councillor George Daccache
Councillor Peter Carter (via telephone at 5:32pm)
Councillor Tricia Hebbard
Councillor Warren McDonogh
Councillor Telona Pitt

David Pentz	Chief Executive Officer
Anthea Bird	Director Corporate and Performance
Robert Leeds	Director Development, Sustainability and Lifestyle
Josephine Bianchi	Manager Governance
Tammy Wombwell	Governance Officer/ Minute Taker

Public	2
Media	1
Staff	3

3.2 Attendance by Telephone / Instantaneous Communications

A request to attend this Special Council Meeting via telephone has been received from Councillor Peter Carter, as he is in Perth, Western Australia.

CM201819/217 OFFICER'S RECOMMENDATION/ COUNCIL DECISION

MOVED: CR ARIF

SECONDED: CR MCDONOGH

That Council approve the attendance of Councillor Peter Carter at the 12 June 2019 Special Council Meeting via telephone whilst he is in Perth, Western Australia.

CARRIED BY ABSOLUTE MAJORITY 8/0

5:32pm Councillor Carter entered the meeting via telephone.

3.3 Apologies

Nil

3.4 Approved Leave of Absence

Nil

3.5 Disclosures of Interest

Nil

Item 4 Public Time

Important note:

'This meeting is being recorded on audio tape and streamed live online as an additional record of the meeting and to assist with minute-taking purposes which may be released upon request to third parties. If you do not give permission for recording your participation please indicate this at the meeting. The public is reminded that in accordance with Section 6.16 of the Town of Port Hedland Local Law on Standing Orders nobody shall 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 chairperson to do so. Members of the public are also reminded that in accordance with section 6.17(4) of the Town of Port Hedland Local Law on Standing Orders mobile telephones must be switched off and not used during the meeting.'

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.

The Mayor opened Public Question Time at 5:33pm

4.1 Public Question Time

Nil

The Mayor closed Public Question Time at 5:34pm

The Mayor opened Public Statement Time at 5:34pm

4.2 Public Statement Time

Nil

The Mayor closed Public Statement Time at 5:34pm

4.3 Petitions/Deputations/Presentations/Submissions

Nil

Item 5 Questions from Members without Notice

Nil

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 Camilo Blanco
- Deputy Mayor Louise Newbery
- Councillor Julie Arif
- Councillor Richard Whitwell
- Councillor George Daccache
- Councillor Peter Carter (via telephone at 5:32pm)
- Councillor Tricia Hebbard
- Councillor Warren McDonogh
- Councillor Telona Pitt

Disclaimer

Members of the public are cautioned against taking any action on Council decisions, on items on this evening's Agenda in which they may have an interest, until formal notification in writing by the Town has been received. Decisions made at this meeting can be revoked, pursuant to the Local Government Act 1995.

Item 8 Reports of Officers

8.1 Corporate and Performance**8.1.1 Request for Legal Advice in relation to Ministerial Issue of Show Cause Notice (*File No. 20/02/0003*)**

Author	Manager Governance
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 advice received by the Town's Legal Advisor, by the Town's Manager Governance, by the Western Australian Local Government Association and by the Department of Local Government, Sport and Cultural Industries to date, confirming that the process followed by the Minister for Local Government; Heritage; Culture and the Arts to issue the show cause notice as per section 8.15B of the *Local Government Act 1995* on 31 May 2019 is deemed to be correct;
 2. Request that the CEO or his delegate write to the Department of Local Government and the Minister for Local Government; Heritage; Culture and the Arts and seek clarification on how to access the information that informed the issuing of the show cause notice;
 3. Request that the CEO or his delegate, when assisting the Council in drafting its response to the show cause notice, make reference to the Council's concerns associated with the appointed mentor's performance as per the stipulated scope of works; and
 4. Request that the CEO or his delegate continue engaging with all Elected Members and assist them in preparing a response to the show cause notice issued by the Minister for Local Government; Heritage; Culture and the Arts.
-

CM201819/218 COUNCIL DECISION

MOVED: MAYOR BLANCO

SECONDED: CR PITT

That Council request the CEO or his delegate to seek legal advice for the following purposes:

1. Confirm the legality of the statutory process conducted by the Department into the issuing of the show cause notice;
2. Legalities of the ownership of any report received by the Department to populate the 'show cause notice';
3. Was the Scope achieved by the Mentor; and
4. Response on the best way to respond to the 'Show Cause Notice' with above information.

CARRIED 6/3

For: Mayor Blanco, Cr Carter, Cr Daccache, Cr Hebbard, Cr McDonogh, Cr Pitt
Against: Deputy Mayor Newbery, Cr Arif, Cr Whitwell

PURPOSE

The purpose of this report is for Council to consider the points included in the notice of Special Council Meeting put forward by the Town's Mayor on 10 June 2019. The notice requested the Council consider seeking legal advice in relation to a number of matters associated with the issuing of a show cause notice to the Town of Port Hedland Council by David Templeman, the Minister for Local Government; Heritage; Culture and the Arts on 31 May 2019. The Town's administration has considered the Mayor's notice and does not support the request for legal advice to be sought.

DETAIL

Background

Since the October 2017 Elections the Town's Council has experienced a series of issues which resulted in a breakdown in communication amongst its members. The Department of Local Government, Sport and Cultural Industries (the Department) was contacted by the Town's Administration, and this resulted in Department representatives traveling to Port Hedland for individual meetings with Elected Members and the Town's Administration, in order to assess the situation.

Based on the results of this process, the Department recommended that a mentor be appointed to work with Elected Members. On 27 June 2018 the Town Council resolved As follows:

"That Council;

- 1. Acknowledge in accordance with the attached Scope of Works the Department of Local Government's recommendation to appoint a suitable mentor; and*
- 2. Consider the allocation of funds to the amount of \$50,000 within the 2018/19 Financial Year for the remuneration, travel and accommodation expenses of the appointed mentor.*

CARRIED 7/1

For: Mayor Blanco, Deputy Mayor Newbery, Cr Arif, Cr Carter, Cr Hebbard, Cr McDonogh, Cr Pitt.

Against: Cr Daccache."

The mentor was engaged for a period of six months commencing in July 2018 and ending in December 2018. The Town's administration understands that at a confidential briefing that followed the Ordinary Council Meeting on 12 December 2018 the mentor verbally advised the Council of its intention to report to the Minister that in his opinion the Town Council should be dismissed. This matter was widely advertised through traditional media channels as well as on social media. To date, the Town Council and the Town Administration are not in receipt of a formal written report by the mentor.

Show Cause Notice

Following this, on 31 May 2019 the Town of Port Hedland Council was issued with a show cause notice (attachment 1) by Minister Templeman in accordance with section 8.15B of the *Local Government Act 1995* (the Act).

On Thursday 6 June Minister Templeman attended a meeting in Port Hedland with all Elected Members to discuss the points outlined in the notice. After this meeting the Mayor and other Elected Members expressed their concerns to the Town's administration in relation to the process followed by the Department of Local Government and Minister Templeman that led to the issuing of the show cause notice. The general assumption seemed to be that the Town Council should have been given a report by the Department of Local Government outlining the details of the "complaints and concerns" the Minister made reference to in his notice, and perhaps a period of time given to the Town Council to address these points, before a show cause notice was to be issued.

Process Associated with Issuing of Show Cause Notice

The Acting CEO sought immediate advice on this matter from the Town's Manager Governance and Legal Advisor, the Western Australian Local Government Association (WALGA) and the Department for Local Government. The Acting CEO advised all Elected Members on 7 June that according to the Town's Manager Governance, the Town's Legal Advisor and WALGA, the process followed by the Minister in issuing a show cause notice to the Town Council was statutorily correct. This advice was further supported by communications from a Department's representative, and sent to all Elected Members by the CEO on 10 June 2019.

Request for Special Council Meeting

The Mayor has since issued a notice to the CEO requesting that a Special meeting be called for the Council to seek legal advice on the following points:

1. Look into the statutory process conducted by the Department into the issuing of the show cause notice;
2. Legalities of the ownership of any report received by the Department to populate the 'show cause notice';
3. Was the Scope achieved by the Mentor; and
4. Response on the best way to respond to the 'Show Cause Notice' with above Information.

The Town's administration consideration of each of the above points is as follows:

1. Look into the statutory process conducted by the Department into the issuing of the show cause notice

The Town's administration considers to have already received and to have provided all Elected Members with correct information related to the process followed by Minister Templeman in issuing a show cause notice to the Town Council. The Town's Manager Governance, the Town's Legal Advisor, WALGA and the Department have all confirmed that in their opinion the process followed by Minister Templeman complies with section 8.15B of the Act. As such the Town's administration does not consider further legal advice on this matter to be warranted.

2. Legalities of the ownership of any report received by the Department to populate the 'show cause notice'

The Town's administration recommends that the Town Council directly requests Minister Templeman's office and the Department of Local Government for the information that has assisted the Minister in forming his view that a show cause notice had to be issued to the Town. The Town believes that this information can be requested at any time and that a formal Council resolution in this respect is not required. Should the Council be seeking to gain information that is the property of the Department and the Minister's office, it is most likely that it will have to be requested through a Freedom of Information process. However, this application will probably not be able to be considered in full until the process associated with the show cause notice has been completed.

3. Was the Scope achieved by the Mentor

The Town's administration is of the opinion that it is the Town Council that has full authority to determine whether the mentor it appointed at the 27 June 2018 meeting achieved the points outlined in the associated scope of works. The Town Council entered into a legally binding agreement with the mentor, and if during the six months the mentor was engaged for, or soon after the completion of his appointment, the Council believed it had reasonable grounds to contest the mentor's performance, the Council had the authority to dispute it in full or in part. As such, the Town does not recommend that legal advice is sought for a matter over which the Town Council already has full authority to make a determination upon.

In addition, as clearly stipulated to all Elected Members directly by Minister Templeman on Thursday 6 June 2019, the opinion that the mentor might have provided to the Department and the Minister on the Town Council, represents but a part of the body of evidence the Minister considered as part of the show cause notice formulation. Should the Council determine to seek legal advice and then receive a legal opinion that the mentor has not met all the points outlined in the scope of works, the Town's administration considers this to be merely a tangential matter, of no direct impact on the list of other issues outlined in the show cause notice. As such, the Town's administration believes that legal advice on this point is not warranted. As a point of clarification, the Town's administration is not aware of any Elected Members having formally expressed issues in relation to the mentor's performance throughout his appointment to the Town or to the mentor.

Nevertheless, the Town's administration recommends that if the Council strongly believes that the mentor did not fully achieve the scope of works under which he was engaged for, it should outline this in its correspondence to Minister Templeman as part of its response to the show cause notice. The Town Council can also express any concerns it might have in relation to the mentor's performance directly to the mentor.

4. Response on the best way to respond to the 'Show Cause Notice' with above information

As the Town's administration has indicated that points 1 to 3 above are not warranted, it follows that point 4 is redundant.

Notwithstanding the above, the Town's administration will continue to support Elected Members in formulating and preparing correspondence to Minister Templeman as a formal response to the show cause notice it has been issued. The Town has already engaged Elected Members at a confidential briefing on 5 June 2019 and following Minister Templeman's visit on 6 June 2019, and commenced collating all relevant information provided, so that a response to Minister can be formally considered at a Special Council Meeting to be held prior to 21 June 2019.

However, should the Town Council determine that this process would be better conducted by a third party (ie. the Town's external legal advisors), the Town's administration will endeavour to facilitate this process, following a specific Council resolution on the matter. The Town's administration has received an estimate of the cost associated with this external support and advice (confidential attachment 2), and this has been listed under the financial implications section of the report.

LEVEL OF SIGNIFICANCE

In accordance with Policy 4/009 'Significant Decision Making', this matter is not considered to require public consultation.

CONSULTATION

Internal

- Manager Governance
- Legal Advisor
- Executive Leadership Team

External Agencies

- WALGA
- Department of Local Government, Sport and Cultural Industries
- Town's external legal advisor

LEGISLATION AND POLICY CONSIDERATIONS

Section 8.15B of the Act deals with the issuing of a show cause notice.

The following Town policy was considered in relation to this item:

- Policy 1/009 Legal Representation – Costs Indemnification

FINANCIAL AND RESOURCES IMPLICATIONS

An initial approximate estimate by the Town's external legal advisors to give advice on the four points raised by Mayor Blanco in the notice for this meeting by the end of this week is \$3,000 to \$3,500.

The Town has also sought an estimate on receiving legal advice to assist with a preparation of a response to the show cause notice in full. The response received to this request by the Town's external legal advisors is, quoted in part, as follows: *"Given the breadth of the issues raised in the notice if the Town was to respond in detail on every point this would require a thorough factual investigation on each point, which would be a very time consuming exercise and I expect difficult to undertake in the time remaining to respond to the notice. The costs associated with a detailed response of this nature would be significant and potentially in the vicinity of \$15,000 - \$20,000, given the scope of issues and factual investigation that would be required. Even if a detailed response of this nature was prepared, it is unlikely to address all concerns or issues raised by the Department."*

STRATEGIC AND SUSTAINABILITY IMPLICATIONS

The following sections of the Council's Strategic Community Plan 2018-2028 are applicable in the consideration of this item:

- 4.a.3** A positive narrative and unique brand is developed and promoted
- 4.b.3** Transparent and regular governance reporting and communication to the community is undertaken
- 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

RISK MANAGEMENT CONSIDERATIONS

There is a reputational risk associated with this item because of the perception associated with the manner with which the Town Council is handling the process associated with the issuing of the show cause notice by Minister Templeman. The risk rating is considered to be extreme (25) which is determined by a likelihood of (5) and a consequence of (5).

It is considered that this risk might somewhat decrease by the adoption of the officer's recommendation.

OPTIONS

Option 1 – Adopt the officer's recommendation

Option 2 – Adopt the following option as listed by the Mayor in the notice for this Special Council Meeting:

That Council request the CEO or his delegate to seek legal advice for the following purposes:

1. Look into the statutory process conducted by the Department into the issuing of the show cause notice;
2. Legalities of the ownership of any report received by the Department to populate the 'show cause notice';
3. Was the Scope achieved by the Mentor; and
4. Response on the best way to respond to the 'Show Cause Notice' with above information.

CONCLUSION

The Town's administration has carefully considered the points outlined in the Mayoral notice to call this Special Council Meeting. The Town's administration does not believe that it is in the best interests of the Town Council to seek legal advice on any of the matters outlined in the notice, and as such it has recommended an alternative course of action for the Council to consider.

ATTACHMENTS

1. Show cause notice
2. Confidential – legal opinion on preparing a response to the show cause notice

ATTACHMENT 1 TO ITEM 8.1.1

SHOW CAUSE NOTICE
Local Government Act 1995

[Section 8.15B]

To: The Town of Port Hedland

Attention: Mayor Camilo Blanco

This Show Cause Notice is given pursuant to Section 8.15B of the *Local Government Act 1995*.

1. Based on the significant nature of complaints and concerns relating to the Town, I have formed the view that the local government of the Town is unable to properly perform the functions set out in the *Local Government Act 1995* in relation to providing for the good governance of persons in the district.
2. I am satisfied that an analysis of the complaints and concerns identifies *inter alia*:
 - A. Credible evidence of conflict between senior administration staff and elected members of the Council, as well as evidence of significant and ongoing conflict within the Council, to an extent that the levels of communication necessary for good decision processes have been compromised;
 - B. Ongoing complaints alleging bullying and harassment of staff and elected members;
 - C. Continued observed aggression and abuse between elected members and allegations of ongoing denigrating comments by elected members;
 - D. Leaking of confidential council information by elected members;
 - E. Concerns about Council decision making and the failure of the Council to govern the Town's affairs and properly perform the functions in relation to overseeing the allocation of the Town's resources and finances more generally;
 - F. Failure of elected members to engage in conflict resolution and to effectively engage with the Mentor commissioned by the Town; and
 - G. Ongoing breaches of the *Local Government Act 1995* and systemic governance issues.
3. I am also satisfied that the behaviours demonstrated by the councillors are bringing the Town into disrepute, and that community members have lost confidence in the ability of the elected members to effectively and efficiently represent and manage the interests of the community.
4. I am further satisfied that the Council lacks capacity to properly address these matters, based on the ongoing complaints.
5. Furthermore, I am advised that the involvement of senior officers in the Department, as well as a Mentor engaged by the Town, has failed to resolve these matters, and failed to bring an end to the conflict between members of the Council. I am of the view that there is no realistic prospect that the Council will be able to address these matters in the future.

6. The matters referred to in this Notice provide significant evidence of a serious and ongoing failure of the Council to ensure that the Town properly acquits its functions, and render it incapable, without intervention, to act as the local government's governing body.
7. I hereby give notice of my intention to suspend the Council of the Town of Port Hedland.
8. I also give notice of my intention to require all elected members of the Council to undertake training, of a kind approved by the Director General, during the suspension period.
9. This Notice should be presented to Council at the first opportunity to enable the preparation and submission of a response by the Town by 21st June 2019.



HON DAVID TEMPLEMAN MLA
**MINISTER FOR LOCAL GOVERNMENT;
HERITAGE; CULTURE AND THE ARTS**

31 MAY 2019

Item 9 Matters for Which Meeting May Be Closed (Confidential Matters)

Nil

Item 10 Closure

10.1 Date of Next Meeting

The next Ordinary Meeting of Council will be held on Wednesday 26 June 2019, commencing at 5:30pm, with the Public Agenda Briefing being held on Wednesday 19 June 2019, commencing at 5:30pm.

10.2 Closure

There being no further business, the Mayor declared the meeting closed at 6:01pm.