A Special Council meeting of the Shire of Esperance will be held at Council Chambers on 15 January 2019 commencing at 5pm to consider the matters set out in the attached agenda.

W M (Matthew) Scott

Chief Executive Officer
DISCLAIMER

No responsibility whatsoever is implied or accepted by the Shire of Esperance for any act, omission or statement or intimation occurring during Council or Committee meetings. The Shire of Esperance 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 or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person’s or legal entity’s own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by a member or officer of the Shire of Esperance during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire of Esperance. The Shire of Esperance warns that anyone who has any application lodged with the Shire of Esperance must obtain and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by the Shire of Esperance in respect of the application.

ETHICAL DECISION MAKING AND CONFLICTS OF INTEREST

Council is committed to a code of conduct and all decisions are based on an honest assessment of the issue, ethical decision-making and personal integrity. Councillors and staff adhere to the statutory requirements to declare financial, proximity and impartiality interests and once declared follow the legislation as required.

ATTACHMENTS

Please be advised that in order to save printing and paper costs, all attachments referenced in this paper are available in the original Agenda document for this meeting.
## Disclosure of Financial, Proximity or Impartiality Interests

**Local Government Act 1995 – Section 5.65, 5.70 and 5.71 and**

Local Government (Administration) Regulation 34C

<table>
<thead>
<tr>
<th>Agenda Briefing</th>
<th>Ordinary Council Meeting</th>
<th>Both Meetings</th>
</tr>
</thead>
</table>

Name of Person Declaring the Interest: ________________________________

Position: __________________________ Date of Meeting: __________________________

This form is provided to enable members and officers to disclose an interest in the matter in accordance with the regulations of Section 5.65, 5.70 and 5.71 of the Local Government Act and Local Government (Administration) Regulation 34C.

### Interest Disclosed

<table>
<thead>
<tr>
<th>Item No:</th>
<th>Subject:</th>
<th>Nature of Interest:</th>
<th>Type of Interest:</th>
<th>Financial</th>
<th>Proximity</th>
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Signature: __________________________ Date: __________________________

Office Use Only: Entered into interest Register: __________________________

Officer __________________________ Date: __________________________
Declaration of Interest (Notes for Your Guidance)

A member who has a Financial Interest in any matter to be discussed at a Council or Committee Meeting, which will be attended by the member, must disclose the nature of the interest:

a) In a written notice given to the Chief Executive Officers before the Meeting or;
b) At the Meeting, immediately before the matter is discussed.

A member, who makes a disclosure in respect to an interest, must not:

c) Preside at the part of the Meeting, relation to the matter or;
d) Participate in, or be present during any discussion or decision-making procedure relative to the matter, unless to the extent that the disclosing member is allowed to do so under Section 5.68 or Section 5.69 of the Local Government Act 1995.

Notes on Financial Interest (For your Guidance)
The following notes are a basic guide for Councillors when they are considering whether they have a Financial Interest in a matter.

1. A Financial Interest requiring disclosure occurs when a Council decision might advantageously or detrimentally affect the Councillor or a person closely associated with the Councillor and is capable of being measured in money terms. There are expectations in the Local Government Act 1995 but they should not be relied on without advice, unless the situation is very clear.

2. If a Councillor is a member of an Association (which is a Body Corporate) with not less than 10 members i.e sporting, social, religious ect, and the Councillor is not a holder of office of profit or a guarantor, and has not leased land to or from the club, i.e, if the Councillor is an ordinary member of the Association, the Councillor has a common and not a financial interest in any matter to that Association.

3. If an interest is shared in common with a significant number of electors and ratepayers, then the obligation to disclose that interest does not arise. Each case need to be considered.

4. If in doubt declare.

5. As stated in (b) above, if written notice disclosing the interest has not been given to the Chief Executive Officer before the meeting, then it must be given when the matter arises in the Agenda, and immediately before the matter is discussed.

6. Ordinarily the disclosing Councillor must leave the meeting room before discussion commences. The only exceptions are:

   6.1 Where the Councillor discloses the extent of the interest, and Council carries a motion under s.5.68(1)(b)(ii) of the Local Government Act; or

   6.2 Where the Minister allows the Councillor to participate under s.5.69(3) of the Local Government Act, with or without conditions.

Interests Affecting Proximity

1) For the purposes of this subdivision, a person has a proximity interest in a matter if the matter concerns;
a) a proposed change to a planning scheme affecting land that adjoins the person’s land;
b) a proposed change to the zoning or use of land that adjoins the person’s land; or
c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person’s land.

2) In this section, land (the proposal land) adjoins a person’s land if;
   a) The proposal land, not being a thoroughfare, has a common boundary with the person’s land;
   b) The proposal land, or any part of it, is directly across a thoroughfare from, the person’s land; or
   c) The proposal land is that part of a thoroughfare that has a common boundary with the person’s land.

3) In this section a reference to a person’s land is a reference to any land owned by the person or in which the person has any estate or interest.

**Interests Affecting Impartiality**

**Definition:** An interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected, but does not include an interest as referred to in Section 5.60 of the ‘Act’.

A member who has an **Interest Affecting Impartiality** in any matter to be discussed at a Council or Committee Meeting, which will be attended by the member, must disclose the nature of the interest;

   a) In a written notice given to the Chief Executive Officers before the Meeting or;
   b) At the Meeting, immediately before the matter is discussed.

**Impact of an Impartiality Closure**

There are very different outcomes resulting from disclosing an interest affecting impartiality compared to that of a financial interest. With the declaration of a financial interest, an elected member leaves the room and does not vote.

With the declaration of this new type of interest, the elected member stays in the room, participates in the debate and votes. In effect then, following disclosure of an interest affecting impartiality, the member’s involvement in the Meeting continues as if no interest existed.
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AGENDA

SPECIAL COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS ON 15 JANUARY 2019
COMMENCING AT 5PM

1. **OFFICIAL OPENING**

2. **ATTENDANCE**

   **Members**
   - Cr V Brown 
     - President 
     - Rural Ward
   - Cr N Bowman 
     - Deputy President 
     - Rural Ward
   - Cr J Parsons 
     - Town Ward
   - Cr S McMullen 
     - Town Ward
   - Cr S Payne 
     - Town Ward
   - Cr L McIntyre 
     - Town Ward
   - Cr R Padgurskis 
     - Town Ward
   - Cr D Piercey, JP 
     - Town Ward
   - Cr B Parker 
     - Rural Ward

   **Shire Officers**
   - Mr W M (Matthew) Scott 
     - Chief Executive Officer
   - Mr S Burge 
     - Director Corporate Resources
   - Mr M Walker 
     - Director Asset Management
   - Mr T Sargent 
     - Director External Services
   - Mrs H Hall 
     - Executive Assistant
   - Miss A McArthur 
     - Administration Officer – Executive Services

3. **APOLOGIES & NOTIFICATION OF GRANTED LEAVE OF ABSENCE**

4. **DECLARATIONS OF INTERESTS:**
   4.1 Declarations of Financial Interests – Local Government Act Section 5.60a
   4.2 Declarations of Proximity Interests – Local Government Act Section 5.60b
   4.3 Declarations of Impartiality Interests – Admin Regulations Section 34c

5. **PUBLIC QUESTION TIME**
6. PURPOSE OF MEETING

Item: 6.1

Annual Electors Meeting - Motions Carried

<table>
<thead>
<tr>
<th>Author/s</th>
<th>Matthew Scott</th>
<th>Chief Executive Officer</th>
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<tbody>
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<td>Chief Executive Officer</td>
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File Ref: D19/931

Applicant
N/A

Location/Address
N/A

Executive Summary
For Council to consider the motions from electors that were carried at the Annual Meeting of Electors, held on 17 December 2018.

Recommendation in Brief
That Council note the motions carried at the Annual Meeting of Electors and advise the Mover and Seconder of each motion accordingly.

Background
Subsequent to accepting the 2017/18 Annual Report, the Shire of Esperance held its Annual Meeting of Electors (AME), on the 17 December 2018, in accordance with the provisions of the Local Government Act 1995 and associated regulations. At the AME, six (6) motions in General Business were moved and subsequently carried by electors at the meeting, being:

**Motion 1**
Motion of no confidence in the CEO and to direct Council to terminate his contract immediately.

**Motion 2**
That the rates increase for 2019/2020 be kept at the CPI.

**Motion 3**
That the salary increases for the senior staff, that is the CEO and its Directors, also be kept at CPI.

**Motion 4**
That Council abandon Lot 12 Kirwan Road before more ratepayer’s funds are wasted and focus on finding a site with suitable hydrology and geology that ideally embraces all elements of the triple bottom line.

**Motion 5**
That elected members of Council, that their allowances be reviewed only after they have completed their training and be frozen for the duration of their time on Council.

**Motion 6**
That Council do something different to fix the fracture in the community, and work on a community development process to try and get this community working together in tough times.
Section 5.33 *Local Government Act 1995* requires all decisions made at electors’ meetings to be considered by Council at either the next Ordinary Council Meeting, or, if this is not practicable, at the next Ordinary Council Meeting or a Special Council Meeting for that purpose, whichever happens first. The December Ordinary Council Meeting occurred on 18 December 2018 (one day after the Annual Meeting) making it impractical to deal with the motions passed at the AME. On 9 January 2019 the Shire President called a Special Council Meeting for 15 January 2019 to consider the matters raised at the AME.

**Officer’s Comment**

As discussed in the Item background, Section 5.33 *Local Government Act 1995* (LGA) provides for what occurs with decisions made at an Electors’ meeting (both annual and special). Section 5.33(1) deals with when Council is required to consider decisions from the AME, while Section 5.33(2) deals with what Council must do, should it make a response to a decision (or motion) at the AME. Under this section, the LGA provides no power to an electors’ meeting (Annual or Special) to direct the Council or Shire to take any action or not to take any action on specific or general issue. Council is simply required to consider the motions passed, and if it chooses to make a decision (or resolution) in response to these motions, then the reason for these decisions are to be recorded in the minutes. Council has a variety of options available being:

1. Reject the motion(s)
2. Support the motion(s)
3. Amending the motion(s)
4. Note the motion(s)
5. Or a combination of the above

Council, however, is also required to ensure all actual Council decisions are lawful, in accordance with the relevant provisions of the LGA and related regulations, other legislation and law (such as contract and industrial), with reference to Council policies, local laws and currently uncompleted Council resolutions. This can create conflict between motions moved and passed at electors’ meetings, as there is no expectation for electors to have regard to these obligations (as they are not elected members nor may have access to all information regarding a specific matter). Council’s role is to balance the views that are expressed at the electors meeting, with those of the greater community and Council’s statutory obligations. This regrettably may result in motions at electors meeting being significantly modified or unable to be implemented, due to them being considered “ultra vires” (beyond the authority of Council).

Council should consider the following matters relating to the Motions passed at the AME.

**Motion 1**

1. An electors’ meeting has no power or authority to “direct Council” to take any action, or not to take any action (refer above).
2. Any decision made by the Council in relation to the employment of the CEO must be made lawfully and in accordance with relevant provisions of the LGA, the Local Government (Administration) Regulations, Industrial law, Council policies and the Shire’s employment contract with CEO.
3. Section 5.38 LGA requires an annual review of the CEO performance on an annual basis. The last CEO performance review occurred in March 2018, with Council determining a level of satisfactory performance that exceeded the job requirement.

5. Section 5.40 LGA requires Local Governments to apply various principles in respect to its employees (including the CEO), including principles of merit, equity and fairness.

6. Section 5.41 LGA prescribes the statutory function of the CEO, which specifically includes the requirement for the CEO to implement decisions of Council, regardless of personal or community views, and does not provide the CEO the ability to make strategic decisions that directs or controls the Local Government’s affairs (The Role of Council - Section 2.7 LGA). Community satisfaction (or dissatisfaction) with Council decisions (past or current) is not an equitable measure to be used to determine the performance of the CEO.

7. Councillors will need to consider this matter with reference to Regulations 7(1)(b) and 10(3), Local Government (Rules of Conduct) Regulations 2007, and may need to consider debating this matter behind closed doors, as provided under Section 5.23(2)(b).

**Motion 2**

1. Sections 6.32 and 6.34 LGA limits the amount of rates a Local Government can impose based on the budget deficiency (6.32) being within a range between 90% and 110% of the budget deficiency (6.34). The Budget deficiency effectively being defined as total non-rates income less total expenditure (with some exemptions and qualifications). Currently there is no statutory obligation to limit rates increases to any external measure.

2. In order to determine an appropriate rate increase in a responsible manner and in the interests of the community, Council must consider the broader budgetary context, by reference to the information available at the time that the budget is being considered. It would not be responsible or in the interests of the community for the Council to make an arbitrary final decision about a rate increase prior to considering budget requirements and community submissions (both internal and external).

3. Section 5.56 LGA requires all Local Governments to produce a “plan for the future”. Division 3 – Planning for the Future, Local Government (Administration) Regulations 1997, prescribes the content of the plan for the future, inclusive of the requirement for a Long Term Financial Plan, which is reviewed annually, generally prior to annual budget deliberations. The Long Term Financial Plan is a guiding and strategic document, based on long term known financial goals and obligations. The Long Term Financial Plan provides both Council and Community advice on future financial events which assist in determining possible future rate requirements and/or rate yield increases. The Council is not bound by the Long Term Financial Plan, however consideration is required on the potential long term consequences (Financial or otherwise) should the Annual Budget (including actual rate yield increases) vary significantly from the Long Term Financial Plan.

4. All community members have an opportunity to make submissions to Council during the review of a Long Term Financial Plan and Annual Budget considerations, including potential rate increases. Council has an obligation to consider all submissions but ultimately make decisions (Financial or otherwise) within their statutory authority and in the best interests of the entire community.

**Motion 3**

1. Section 5.41 provides the CEO, not the Council, the responsibility for determining salary increases for all employees including senior employees (other than himself), with reference to
parameters such as the contractual entitlements of the employee under their relevant employment contract, current overarching organisational industrial agreements, the procedures applying to the salary review process, and any relevant determinations of the Salaries and Allowances Tribunal;

2. Any salary increase for the CEO is determined by the Council, with reference to parameters such as the contractual entitlements of the CEO, current overarching organisational industrial agreements, the procedures applying to the performance and salary review process and policy and the relevant determinations of the Salaries and Allowances Tribunal.

3. Arbitrary and public attempts to change contract conditions (employment or otherwise) without first negotiating and obtaining agreement with contracted parties may significantly impact on Councils commercial reputation and organisational morale.

4. Councillors will need to consider this matter with reference to Regulations 7(1)(b) and 10(3), Local Government (Rules of Conduct) Regulations 2007, and may need to consider debating this matter behind closed doors, as provided under Section 5.23(2)(b).

**Motion 4**

1. Council resolution S0218-026 sets out four (4) requirements to be finalised before Council is prepared to make any further decisions on Lot 4 Kirwan Road. Item 2(c) of this resolution requires the potential costs of providing any additional assessment information required by the Environmental Protection Authority (EPA) to be considered by Council. As the Public Environmental Review (PER) Scoping Document has only been recently approved by the EPA, there has been no opportunity for Council to consider the financial cost of implementing the Scoping Document. Council would need to consider potentially rescinding resolution SO218-026 if it was to support this motion to avoid having conflicting resolutions.

**Motion 5**

1. Allowances (as well as fees) are payable to Council members under and in accordance with the Division 8 LGA and part 8 Local Government (Administration) Regulations 1996 and the determinations of the Salaries and Allowances Tribunal.

2. Council has no power to ‘freeze’ (or otherwise fail to pay) any allowance or fee to which an individual Council member is entitled based on a further qualification such as training, performance or any other measure, therefore this motion should be considered “ultra vires”.

**Motion 6**

1. The Shire is about to release its community perception survey, which should assist Council and the community in identifying and evaluating this community “fracture" (perceived or otherwise) and possibly provide some positive options to move forward.

2. The Shire has actively communicated the reasons behind all Council decisions and will continue to do so. This being said, neither the Shire and/or Council can control the activities of parties that oppose or are dissatisfied with some Council decisions. A collective community effort is required to solve this issue.

Given the above points for each motion, the Officers recommendation is for Council to note each motion, and advise the relevant Mover and Seconder of each motion from the AME. As always, Councillors have the ability to move their own motions, which may or may not be representative of the Officer’s recommendation. Council also has the option to deal with each recommendation separately or collectively.
Consultation
The attendance of 89 electors at the AME is considered to be the community consultation on this matter.

Advice has been sourced from the Shire’s legal representative, McLeod’s Barristers and Solicitors, confirming some of the legal and statutory implications associated with some of the motions carried. This report has been reviewed by WALGA.

Financial Implications
Regulation 18B, Local Government (Administration) Regulations 1996, prescribes the maximum amount of money to be paid to the CEO or senior employee should employment be terminated prior to the relevant contract of employment expiry date.

Asset Management Implications
Nil

Statutory Implications
The statutory implications associated with this item are:
Section 2.7 The Role of the council, Local Government Act 1995
Section 5.23 Meetings generally open to the public, Local Government Act 1995
Section 5.33 Decisions made at electors’ meetings, Local Government Act 1995
Section 5.38 Annual review of certain employees’ performance, Local Government Act 1995
Section 5.40 Principles affecting employment by local governments, Local Government Act 1995
Section 5.41 Functions of CEO, Local Government Act 1995
Section 5.56 Planning for the future, Local Government Act 1995
Section 6.32 Rates and service charges, Local Government Act 1995
Section 6.34 Limit on revenue or income from general rates, Local Government Act 1995
Division 8 Fees, expenses and allowances, Local Government Act 1995
Local Government (Administration) Regulations 1996
Local Government (Rules of Conduct) Regulations 2007

Policy Implications
Council HR 15: CEO Performance Review

Strategic Implications
Strategic Community Plan 2017 - 2027
Community Leadership
Community confidence and trust in Council
Provide transparent and accountable leadership

Environmental Considerations
Nil
Attachments
Nil

Officer’s Recommendation - Motion 1

That Council note Motion 1 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

Officer Recommendation - Motion 2

That Council note Motion 2 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

Officer Recommendation - Motion 3

That Council note Motion 3 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

Officer Recommendation - Motion 4

That Council note Motion 4 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

Officer Recommendation - Motion 5

That Council note Motion 5 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

Officer Recommendation - Motion 6

That Council note Motion 6 from the Annual Meeting of Electors (December 2018) and instruct the CEO to advise the Mover and Seconder of Motion of Council’s resolution.

Voting Requirement Simple Majority

7. CLOSURE