



3 SEPTEMBER 2026

Shire of Esperance

NOTICE OF MEETING AND AGENDA

A Special Council meeting of the Shire of Esperance will be held at Council Chambers on 8 September 2026 commencing at 2:00 PM to consider the matters set out in the attached agenda.

S Burge

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.

RECORDINGS

The Meeting will be live streamed. The recording will be made publicly available as soon as practical following the meeting.

Disclosure of Interest

☐ Agenda Briefing ☐ Ordinary Council Meeting ☐ Special Meeting

Details

Name of Person Declaring an Interest

Position

Date of Meeting

This form is provided to enable elected 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 1995* and the *Local Government (Administration) Regulations 1996*.

Interest Disclosed

Item Number

Item Title

Nature of Interest

Type of Interest: ☐ Financial ☐ Proximity ☐ Impartiality ☐ Behavioural Breach

Interest Disclosed

Item Number

Item Title

Nature of Interest

Type of Interest: ☐ Financial ☐ Proximity ☐ Impartiality ☐ Behavioural Breach

Interest Disclosed

Item Number

Item Title

Nature of Interest

Type of Interest: ☐ Financial ☐ Proximity ☐ Impartiality ☐ Behavioural Breach

Declaration

I understand that the above information will be recorded in the minutes of the meeting and recorded by the Chief Executive Officer in an appropriate register.

Signature

Date

Disclosure of Interest

Notes for Your Guidance



Financial Interest (Section. 5.60A. Local Government Act 1995)

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

- a. in a written notice given to the Chief Executive Officer before the Meeting;
or
- b. at the Meeting immediately before the matter is discussed.

A member, who makes a disclosure under section 5.65 must not:

- a. preside at the part of the meeting relating to the matter; or
- b. participate in, or be present during, any discussion or decision making procedure relative to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Sections 5.68 or 5.69 of the *Local Government Act 1995*.

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, pursuant to s. 5.60A or 5.61 of the *Local Government Act 1995*, 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 etc, 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 needs to be considered.
4. If in doubt declare.
5. As stated 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. Under s. 5.65 of the *Local Government Act 1995* failure to notify carries a penalty of imprisonment for 24 months and a fine of \$24 000.
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 1995*; or
- 6.2 Where the Minister allows the Councillor to participate under s.5.69(3) of the *Local Government Act 1955*, with or without conditions.

Proximity Interest (*Section. 5.60B Local Government Act 1995*)

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; or
 - 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 s 5.63(5) *Local Government Act 1995*) 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; or
 - 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.

Impartiality Interest

An interest, pursuant to *Regulation 22 of the Local Government (Model Code of Conduct) Regulations 2021*,

- a. That could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and
- b. Arising from kinship, friendship or membership of an association.

It does not include an interest as referred to in s. 5.60 *Local Government Act 1995*.

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 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.

Behavioural Breach Interest (*Section 5.105(4) Local Government Act 1995*)

Neither the complainant nor the respondent may –

- a. Preside at any part of a council meeting or committee meeting relating to the complaint; or
- b. Participate in, or be present during, any discussions or decision-making procedure of a council or committee relating to the complaint.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12,000

TABLE OF CONTENTS

1.	OFFICIAL OPENING	8
2.	ATTENDANCE	8
3.	APOLOGIES & NOTIFICATION OF GRANTED LEAVE OF ABSENCE	8
4.	DECLARATIONS OF INTERESTS:	9
4.1	Declarations of Financial Interests – Local Government Act Section 5.60a	9
4.2	Declarations of Proximity Interests – Local Government Act Section 5.60b	9
4.3	Declarations of Impartiality Interests – Admin Regulations Section 34c	9
4.4	Declarations of Behavioural Breach Interests – Local Government Act Section 5.105(4)	9
5.	PUBLIC QUESTION TIME	9
6.	PURPOSE OF MEETING	10
6.1	Extraordinary Local Government Election 2026	10
7.	MATTERS BEHIND CLOSED DOORS	17
7.1	Behavioural Complaints Findings & Reasons BC9; BC10; BC11; & BC12	17
8.	CLOSURE	18

SHIRE OF ESPERANCE

AGENDA

SPECIAL COUNCIL MEETING TO BE HELD IN COUNCIL CHAMBERS ON 8 SEPTEMBER 2026 COMMENCING AT 2:00 PM

1. OFFICIAL OPENING

The Shire of Esperance acknowledges the Nyungar and Ngadju people who are the Traditional Custodians of this land and their continuing connection to land, waters and community. We pay our respects to Elders past, present and emerging and we extend that respect to other aboriginal Australians today.

2. ATTENDANCE

Members

Pres. R Chambers	President	
Cr J Obourne	Deputy President	Town Ward
Vacant		Town Ward
Cr L de Haas		Town Ward
Cr S Starceвич		Rural Ward
Cr G Harp		Town Ward
Cr C Davies		Town Ward

Shire Officers

Mr S Burge	Chief Executive Officer
Mr M Walker	Director Asset Management
Mr R Greive	Director External Services
Mrs F Baxter	Director Corporate & Community Services
Miss E Godwin	Administration Assistant

Members of the Public & Press

3. APOLOGIES & NOTIFICATION OF GRANTED LEAVE OF ABSENCE

Cr G McWilliam	(Leave of Absence 29 July 2026 - 13 October 2026)
Cr W Graham	(Leave of Absence 26 August 2026 - 2 October 2026)

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**
- 4.4 Declarations of Behavioural Breach Interests – Local Government Act Section 5.105(4)**

5. PUBLIC QUESTION TIME

6. PURPOSE OF MEETING

Item: 6.1

Extraordinary Local Government Election 2026

Author/s	Sarah Walsh	Coordinator Governance & Corporate Support
Authorisor/s	Felicity Baxter Shane Burge	Director Corporate & Community Services Chief Executive Officer

File Ref: D26/27098

Applicant

Shire of Esperance

Location/Address

Town Ward

Executive Summary

For Council to consider how the Extraordinary Local Government Election 2026 will be conducted.

Recommendation in Brief

That Council appoints the Western Australian Electoral Commission (WAEC) to hold a Postal Election for the Shire of Esperance on 3 December 2026.

Background

In August 2026 Cr Johnston resigned from Council, creating a vacancy in the Town Ward which needs to be filled. Where Councils have chosen the Ward system, any position vacant longer than 12 months prior to the next statutory Election must hold an extraordinary election to fill the position.

Part 4 of the Act sets out the methods for Local Government Elections and offers Council options in the manner the Election will be conducted and who will conduct the Election (Returning Officer), however these decisions must be made at minimum 80 days prior to Election Day.

Under section 4.20 of the Act, the Chief Executive Officer of the Local Government is, by default, the Returning Officer. The Local Government can appoint another person, subject to the approval of the Western Australian Electoral Commissioner (s.4.20(2)) or should Council declare the WAEC responsible for the Election, an independent Returning Officer will be appointed. The Returning Officer's role is to effectively manage the entire election process and ensure compliance with the Local Government Electoral process and procedures.

On 27 August 2026, the WAEC provided a cost estimate of \$46,000 ex GST to conduct a postal election on behalf of the Shire of Esperance.

The process for engaging the WAEC to conduct local government elections now requires the administration to obtain Council endorsement prior to the WAEC committing in writing to conduct the election. Correspondence was sent to this effect on 31 August 2026.

Council must also decide the method of Election used. Under section 4.61 of The Act, there are two methods of conducting the election, In-person (default) or Postal. If Postal Election is the chosen method, the WAEC must be made responsible for conduct of the election (4.61(4)).

The WAEC has now provided written agreement to conduct the 2026 extraordinary local government election (Attached).

Officer's Comment

Council must consider which method to use for the election. In determining which method to adopt, Council should consider the following points regarding each alternative –

In-Person Election and CEO Returning Officer:

- Lower direct costs, however indirect costs (staff) are difficult to estimate or capture;
- Consistent with Federal and State Government Election process;
- Greater “Local Feel” to election process;
- Generally, a lower Voter turnout (13.5% turnout in 2005);
- Potential conflict of interest between Shire Administration and Candidates (potential to politicise the Administration)

Postal Election and Independent Returning Officer:

- Generally, a greater Voter turnout (32.71% in 2021, 31.27% in 2023 & 31.87% in 2025);
*Town Ward figures used for reference.
- High direct costs (very few indirect costs);
- Separation of the Shire Administration and Election process, especially if there are conflicts with Candidates;
- WAEC specialises in managing Elections, resulting in fewer compliance issues;
- Possible perception of election being impersonal and lack of focus on actual election day;
- Inconsistent with Federal and State Government election process (i.e. In-Person voting).

Given the potential for higher Elector turnouts and ability to more accurately estimate the cost of election, it is recommended that the election be a Postal Election managed by the Electoral Commissioner. It should also be noted that the proposed election date is a business day, which could affect the turnout rate of an in-person vote.

Even though the WAEC (and their appointed Returning Officer) will manage the election, it does not prevent the Shire assisting in the electoral process, especially in the early stages. The Administration will work with the Returning Officer on matters such as electoral advertising and helping to promote the Local Government Elections.

It is noted that the successful candidate's term will end at the 2027 ordinary election.

Alternative Considerations

As explained above, Council may choose the in-person method for the election. If this is the method chosen, it may be best for the election to be held on Saturday 12 December 2026 to achieve a higher turnout rate.

The WAEC were asked if there were any other ways to fill the vacancy, or if it could remain unfilled until the October 2027 election. The WAEC confirmed that due to the timing, the position should not be left vacant. As there are no other alternatives to fill the position, an extraordinary election would be required.

An alternative election date may be considered, however the date proposed of 3 December 2026 is the first day available for the WAEC to conduct the election. If this is determined not to suit Council, their next available date would be early in 2027.

Council has 1 month after the vacancy occurs to set a date of the election, and the election needs to be held within 4 months, unless the Electoral Commissioner gives his approval. As the vacancy occurred on 25 August, the election date needs to be set before 25 September.

If the election date is not set by Council within this timeframe, the CEO needs to write to the Electoral Commissioner, advising that it hasn't happened in accordance with section 4.9(3) of the *Local Government Act 1995* and the Electoral Commissioner will set a date for the extraordinary election.

Consultation

Chief Executive Officer
WA Electoral Commission

Financial Implications

There are different financial implications for the two possible methods, as below:

Postal Vote

The quoted cost submitted by the WAEC to conduct a post vote is \$46,000 ex GST with the possibility of adjustment for any unanticipated cost increases from their suppliers, count staff required etc.

In-person Vote

Should Council decide to run an in-person election, then potentially a lower budget will need to be provided, as there wouldn't be mailing costs etc., however as previously stated it will be difficult to capture all indirect costs (staffing) associated with running an Election.

Asset Management Implications

Nil

Statutory Implications

Local Government Act 1995
Part 4 – Elections and Other Polls
Local Government (Election) Regulations 1997

Policy Implications

Nil

Strategic Implications

Council Plan 2022 – 2032
Performance - Outcome 10. Effective Governance and Partnerships
Objective 10.1. Provide transparent, accountable and effective leadership and resource management

Environmental Considerations

Nil

Attachments

- A¹. WAEC Cost Estimate 2026
- B¹. WAEC Written Agreement to Conduct Extraordinary Election 2026

Officer's Recommendation

That Council;

1. **Declare in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for the conduct of the 2026 extraordinary election together with any other elections or polls which may be required; and**
2. **Decide, in accordance with section 4.61(2) of the *Local Government Act 1995* that the method of conducting the election will be as a postal election; and**
3. **Set the date for the extraordinary election to be held on Thursday, 3 December 2026.**

Voting Requirement

Absolute Majority



Mr Shane Burge
Chief Executive Officer
Shire of Esperance
PO Box 507
ESPERANCE WA 6050

Dear Mr Burge,

Date for Local Government Extraordinary Election 2026

Thank you for recent correspondence advising of the resignation of Councillor Gemma Johnston and confirming that an extraordinary election may be required for the Shire of Esperance.

I note that as per section 4.9(1) of *the Local Government Act 1995*, Council has one (1) month after the vacancy occurring (the day the resignation is received) to decide on and fix the election day for the extraordinary election. The *Local Government Act 1995* allows for either the WAEC to conduct the extraordinary election or for the Local Government to conduct the election in-house, with the CEO as the Returning Officer.

To assist your Council in making this decision, I am writing to advise you that the earliest date that the Western Australian Electoral Commission (WAEC) can conduct an extraordinary election is **Thursday 3 December 2026**. This is also our preferred date for the election.

This letter also serves as your cost estimate. The WAEC has estimated the cost to conduct this election at approximately **\$46,000** (ex GST). This cost has been based on the following assumptions:

- The method of election will be postal
- 1 Councillor vacancy
- 7,550 electors
- response rate of approximately 30%
- appointment of a local Returning Officer
- the Shire providing all other electoral officers to assist in the conduct of the election
- count to be conducted at your office using CountWA.

The WA Electoral Commission conducts elections on the basis of full accrual cost recovery, in accordance with *the Local Government (Elections) Regulations 1997*. This means if the actual costs to conduct the election are less or greater than what we have estimated, the final cost may differ from the estimate we have provided.

We aim to keep additional costs at a minimum, however examples of where cost increases may arise include:

- you select Australia Post Priority Service for the lodgement of your election package
- casual staff are required to be provided for the issuing of Replacement Election Packages
- casual staff are required to be provided to assist the Returning Officer on election day or with the count at night
- unanticipated cost increases from our suppliers

I would also highlight that the ongoing situation in the Middle East may impact on estimates and we will continue to liaise with you as we get closer to the event to confirm your estimate. We will keep you informed of any unanticipated cost increases if they emerge.

The WA Electoral Commission is committed to conducting elections impartially, effectively, efficiently and professionally. Following each election event, we review our performance and identify ways to improve our service delivery. If you have any suggestions for improvements we can make to deliver your election, your feedback is welcome at all times.

Please advise us in writing as soon as practicable that you accept to take this cost estimate to Council, so I can provide you with my written agreement to conduct the election in a separate letter. Both the cost estimate letter, and the written agreement letter then need to be taken to Council for a decision.

The WA Electoral Commission is available to you to provide any further advice or support. If you have any queries please contact Phil Richards, Service Delivery Manager, at lgelections@waec.wa.gov.au.

Yours sincerely,



Dennis O'Reilly
ELECTORAL COMMISSIONER

27 August 2026



Mr Shane Burge
Chief Executive Officer
Shire of Esperance
PO Box 507
ESPERANCE WA 6050

Dear Mr Burge,

Written Agreement: 2026 Local Government Extraordinary Election

Thank you for your correspondence dated 31 August 2026 in which you accept to take the Western Australian Electoral Commission's cost estimate for your 2026 local government extraordinary election to your next Council meeting.

I am pleased to provide this letter as my written agreement to be responsible for the conduct of your local government extraordinary election. In order to finalise this agreement, please submit the following motions to Council for a postal election as required under the *Local Government Act 1995*:

1. declare, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for the conduct of the 2026 extraordinary election, together with any other elections or polls which may be required;
2. decide, in accordance with section 4.61(2) of the *Local Government Act 1995* that the method of conducting the election will be as a postal election.

Please note:

- the above motions must be presented to Council as drafted and cannot be amended in any way
- both the Cost Estimate letter, and this Written Agreement letter should be attached to the item for Council's consideration
- the above motions must be passed by an absolute majority

Once the Council passes the above mentioned motions, please forward confirmation to us via the email address below. We will then proceed with arrangements for your election.

The WA Electoral Commission is available to you to provide any further advice or support. For any queries, please contact please contact Phil Richards, Service Delivery Manager via email at lgelections@waec.wa.gov.au.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "D O'Reilly".

Dennis O'Reilly
ELECTORAL COMMISSIONER

31 August 2026

7. MATTERS BEHIND CLOSED DOORS

Officer's Comment:

It is recommended that the meeting is behind closed doors for the following item, in accordance with section 5.23(4) of the Local Government Act 1995.

Item: 7.1

Behavioural Complaints Findings & Reasons BC9; BC10; BC11; & BC12

CONFIDENTIAL ITEM

This report is considered confidential in accordance with the Local Government Act 1995, as it relates to prescribed information (Section 5.23(4)(g)).

8. CLOSURE