

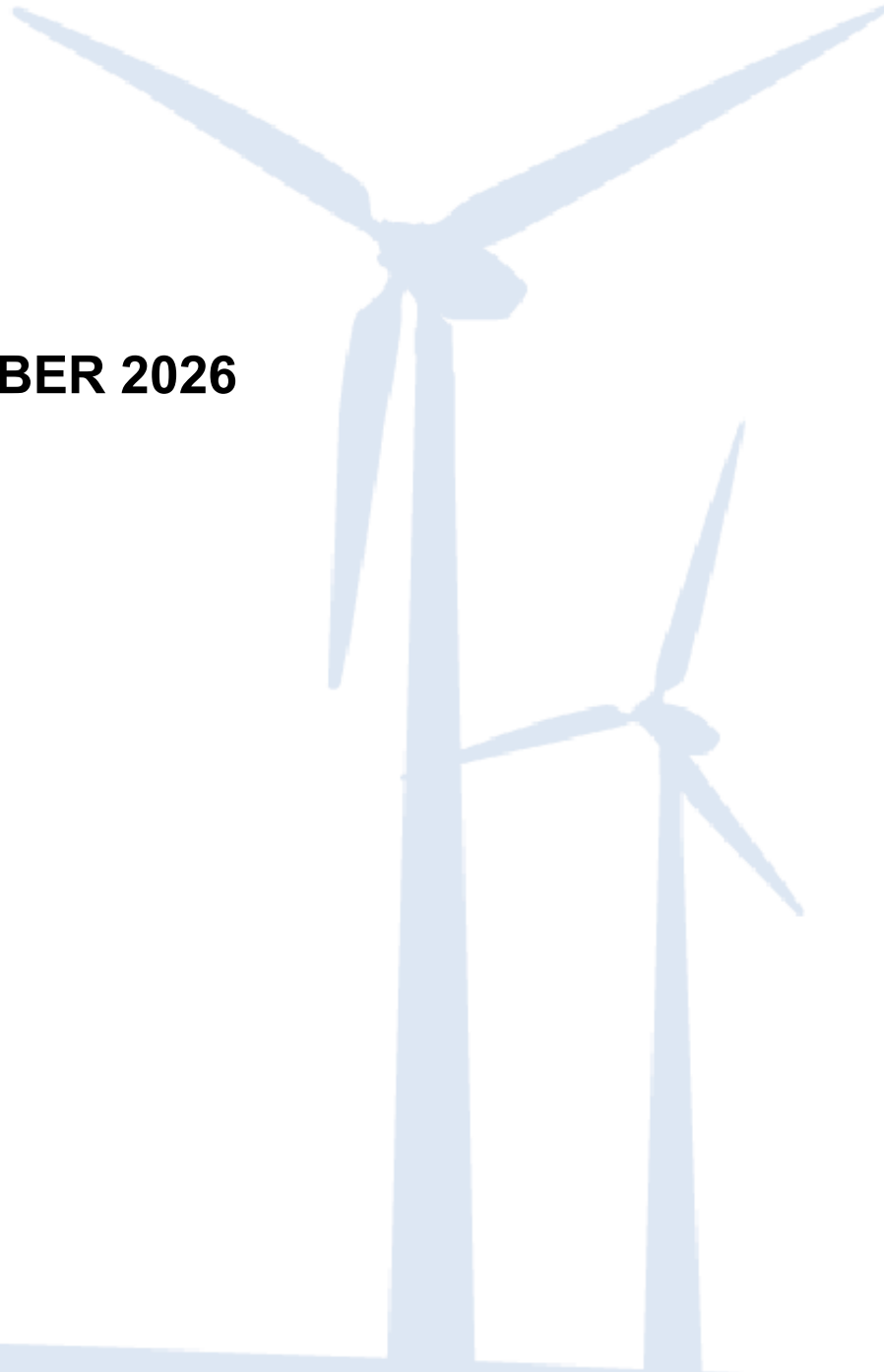


Shire of Esperance

SPECIAL COUNCIL

TUESDAY 8 SEPTEMBER 2026

MINUTES



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.

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SHIRE OF ESPERANCE
MINUTES
OF THE SPECIAL COUNCIL MEETING
HELD IN COUNCIL CHAMBERS ON 8 SEPTEMBER 2026.

1. OFFICIAL OPENING

The Shire President declared the meeting open at 2:01pm and did an acknowledgement to country.

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.

The President welcomed Councillors, staff, guests and members of the public to the meeting.

2. ATTENDANCE

Members

Pres. R Chambers	President	
Cr J Obourne – via Teams	Deputy President	Town Ward
Vacant		Town Ward
Cr G McWilliam		Town Ward
Cr L de Haas		Town Ward
Cr S Starcevich		Rural Ward
Cr G Harp		Town Ward
Cr C Davies – via Teams		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
Mrs E Godwin	Administration Assistant
Ms C Smith	Manager Marketing and Communications

Members of the Public & Press

Tara Delandgraftt	Media - ABC
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3. APOLOGIES & NOTIFICATION OF GRANTED LEAVE OF ABSENCE

Previously Granted Leave of Absence

A leave of absence was previously granted to Councillor Graham for the period 26 August 2026 to 2 October 2026 inclusive.

4. DECLARATIONS OF INTERESTS:

4.1 Declarations of Financial Interests – Local Government Act Section 5.60a

Nil

4.2 Declarations of Proximity Interests – Local Government Act Section 5.60b

Nil

4.3 Declarations of Impartiality Interests – Admin Regulations Section 34c

Cr Obourne declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as she provided a witness statement.

Cr McWilliam declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as he provided a witness statement.

Cr Harp declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as he provided a witness statement.

Cr de Haas declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as she provided a witness statement.

Cr Starcevich declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as she provided a witness statement.

Pres Chambers declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as he provided a witness statement.

Mr Walker declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as he provided a witness statement.

Mr Burge declared an Impartiality Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as he provided a witness statement.

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

Cr de Haas declared a Behavioural Breach Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as she is one of the complainants and a witness.

Cr Starcevich declared a Behavioural Breach Interest in item 7.1 Behavioural Complaints Findings & Reasons BC9, BC10, BC11 and BC12 as she is one of the complainants and a witness.

5. PUBLIC QUESTION TIME

Nil Questions

6. PURPOSE OF MEETING

Item: 6.1

Extraordinary Local Government Election 2026

Author/s	Sarah Walsh	Coordinator Governance & Corporate Support
Authoriser/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

- A. WAEC Cost Estimate 2026
- B. WAEC Written Agreement to Conduct Extraordinary Election 2026

Item 6.1 Extraordinary Local Government Election 2026

Moved: Cr de Haas

Seconded: Cr McWilliam

S0926-118

Council Resolution

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.**

CARRIED

F7 - A0

*For: Cr McWilliam, Cr Davies, Cr de Haas, Cr Starcevich, Cr Harp, Cr Obourne,
Pres Chambers*



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.

Moving behind closed doors

Moved: Cr Starcevich

Seconded: Cr McWilliam

S0926-119

Council Resolution

That the meeting proceed behind closed doors in accordance with section 5.23(4) of the Local Government Act 1995, to consider the following items, which are considered confidential for the reasons indicated.

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

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

CARRIED

F7 - A0

*For: Cr McWilliam, Cr Davies, Cr de Haas, Cr Starcevich, Cr Harp, Cr Obourne,
Pres Chambers*

All members of the public left the Chamber at 2:09pm.

Cr de Haas declared a Behavioural Breach interest in the following item and left the Chamber at 02:09pm.

Cr Starceвич declared a Behavioural Breach interest in the following item and left the Chamber at 02:09pm.

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

Moved: Cr Obourne
Seconded: Cr McWilliam

S0926-120

Council Resolution

That Council, by simple majority pursuant to Council's Code of Conduct Behaviour Complaints Management and the Shire's Code of Conduct for Council Members, Committee Members and Candidates adopted in accordance with Section 5.104 of the Local Government Act 1995

Resolves to:

- 1. Receive the Investigation Reports for Complaints BC9; BC10; BC11 and BC12 with Confidential Attachments as undertaken by an Independent Assessor;**
- 2. Agree with the findings of the Reports;**
- 3. Determine that the Respondent:**
 - a. Did breach Clause 2.3(a) of the Shire of Esperance Code of Conduct for Council Members, Committee Members and Candidates;**
 - b. Did not breach Clause 2.3(d) of the Shire of Esperance Code of Conduct for Council Members, Committee Members and Candidates.**
- 4. Take no further action to address the behaviour due to the resignation of the Councillor.**
- 5. Request the Complaints Officer to advise complainants and respondent in writing of the outcome.**
- 6. In accordance with Regulation 29A of the Local Government (Administration) Regulations 1996 that the Findings and Reasons (Attachment AG) as amended be made available for public inspection by including it as attachment to the minutes of the meeting.**

**CARRIED
F5 - A0**

For: Cr McWilliam, Cr Davies, Cr Harp, Cr Obourne, Pres Chambers

Shire of Esperance – Behaviour Complaints
Findings and Reasons Report

DIVISION 3 BEHAVIOUR COMPLAINT

Council Meeting Date: 8 September 2026

Parties:

Same subject submissions

1. Complainant Chantelle Hoffrichter vs Councillor Johnston
2. Complainant Sam Starceвич vs Councillor Johnston
3. Complainant Leonie de Haas vs Councillor Johnston
4. Complainant Christiane Smith vs Councillor Johnston

Matter:

1. Complaints were submitted by Chantelle Hoffrichter; Sam Starceвич, Leonie De Haas and Christiane Smith against respondent Gemma Johnston over alleged breaches of the Shire's previous Code of Conduct, arising from an incident at a post-meeting social function on 21 October 2025. The investigation consolidated multiple related complaints into a single matter, Chantelle Hoffrichter's submission, and considered witness evidence, documentary material, and submissions from both parties.
2. Regarding the alleged breach of Clause 2.3(a) of the Shire's "Model Code of Conduct for Council Members, Committee Members and Candidates, the Council determined, on the balance of probabilities, that the respondent did engage in conduct that constituted harassment toward the complainant. This behaviour occurred during the sundowner event, where the respondent repeatedly attempted to photograph the complainant despite clear objections and visible distress. Witness evidence consistently described the respondent's actions as persistent, intimidating, and inappropriate, resulting in the complainant feeling threatened and leaving the event prematurely.

Findings:

With respect to the complaints lodged, Council found that Councillor has breached the following:

Shire of Esperance – Council Policy 00048 Code of Conduct for Council Members, Committee Members and Candidates:

Clause 2.3(a) of the Code of Conduct:

(A) A Council Member must not harass another person

SANCTION-

No further action be taken as Cr Johnston resigned as a Councillor on the 25 August 2026.

Cr de Haas returned to the Chamber at 02:19 PM

Cr Starcevich returned to the Chamber at 02:19 PM

Coming from behind closed doors

Moved: Cr McWilliam

Seconded: Cr Harp

S0926-121

Council Resolution

That the meeting come from behind closed doors.

CARRIED

F7 - A0

*For: Cr McWilliam, Cr Davies, Cr de Haas, Cr Starcevich, Cr Harp, Cr Obourne,
Pres Chambers*

All Members of the public returned to the Chamber at 2:20pm

The Presiding Member read aloud the Resolution for item 7.1

8. CLOSURE

The President declared the meeting closed at 2:23pm.

These Minutes were confirmed at a meeting held on _____

Signed _____

Presiding Member at the meeting at which the Minutes were confirmed.

Dated _____