

## 14.1 LATE ITEM – SOUTH WARD VACANCY

|                                       |   |
|---------------------------------------|---|
| <b>Attachments:</b>                   | <a href="#">Appendix 1 WA Electoral Commissioner Shire of East Pilbara South Ward Vacancy</a> |
| <b>Responsible Officer:</b>           | <b>Steven Harding</b><br><b>Chief Executive Officer</b>                                       |
| <b>Author:</b>                        | <b>Joshua Brown</b><br><b>Manager Governance, Risk and Procurement</b>                        |
| <b>Proposed Meeting Date:</b>         | <b>26 August 2022</b>   |
| <b>Location/Address:</b>              | <b>N/A</b>  |
| <b>Name of Applicant:</b>             | <b>N/A</b>  |
| <b>Author Disclosure of Interest:</b> | <b>Nil</b>  |

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### REPORT PURPOSE

For Council to consider options relating to the vacancy arising from the passing of Councillor Anita Grace.

### BACKGROUND

On 14 August 2022, Councillor Anita Grace passed away following a long illness, which creates a vacancy on the elected Council.

### COMMENTS/OPTIONS/DISCUSSIONS

The WA Electoral Commission (WAEC) has provided advice to Shire officers confirming the requirements of section 4.17(4A) of the *Local Government Act 1995* (“the Act”) are met, and Council may allow Councillor Grace’s seat to remain unfilled. Section 4.17(3) provides that “the term of the member who held the office is to be regarded... as ending on the day on which it would have ended if the vacancy had not occurred”. In the event an intervening election is held, in accordance with section 4.17(4) of the Act, the vacancy must be filled at that time.

Section 4.17(4A) of the Act permits a seat on council to remain vacant where a ward with five (5) or more offices of councillor has at least 80 percent of the number of offices of councillor for the ward filled. In this case, South Ward has six (6) offices of councillor and five (5) councillors – that is 83.3 percent of the offices are filled. A decision to allow a vacancy to remain unfilled requires the approval of the WA Electoral Commissioner.

Reasons Council may consider this option, include as a mark of respect for the late Councillor Grace and her twenty-six years’ service; the community having recently participated in an extraordinary election; and avoiding the anticipated \$20,000 cost to ratepayers to conduct an extraordinary election.

The WA Electoral Commissioner, Robert Kennedy has provided his written approval to defer filling the vacancy until the next ordinary election. A copy of the Commissioner’s letter is attached as **Appendix 1** to the report.

Should however Councillors, determine to proceed to fill the vacancy, section 4.9 of the Act, provides that a date for the extraordinary election must be fixed by the President or at a Council meeting. That date must be determined within one month of the occurrence of the vacancy – that is by 13 September 2022 – for a date not

later than four months after the vacancy occurs. Alternatively, if no decision is made, the Shire must notify the Electoral Commissioner that no date has been fixed. The Electoral Commissioner would then proceed to fix a date.

Council officers have also been liaising with the WAEC with a view to establishing the arrangements for the conduct of such an election, should it be Council's wish to fill the vacancy.

In his letter (**Appendix 1**), the Electoral Commissioner has also provided confirmation of his preparedness to be responsible for the conduct of the extraordinary election.

The WAEC has suggested Friday, 2 December 2022 as the date for the extraordinary election.

The Electoral Commissioner has provided an estimate of \$14,500 (incl GST) for the conduct of a postal election. This estimate does not include costs that would be incurred directly by the Shire for media and promotional activities, and staffing (including overtime).

Previous elections have been held as postal ballots and it is understood that postal elections generally attract a higher turnout than in-person local government elections. Participation in WA local government elections is not compulsory.

In the alternative, Council may determine to hold an in-person election, which at the time of the last extraordinary election held in June of this year, was estimated to cost in the order of \$10,000 for the use of WAEC services. Additional costs would also be incurred for Shire staff resourcing and other overheads, estimated to be as much \$6,000, which would be required to assist with the election on, and in the lead up to Election Day. An in-person election would not be recommended as voting is limited to one day, electors must attend the polling booth to vote, and it is likely to disenfranchise electors working on the day and result in lower participation in an election.

In any case, the Administration recommends deferring an election to fill the vacancy left by the passing of Councillor Grace to the next ordinary election.

## **STATUTORY IMPLICATIONS/REQUIREMENTS**

Consistent with section 4.17 of the *Local Government Act 1995*.

## **POLICY IMPLICATIONS**

No existing policy implications.

## **STRATEGIC COMMUNITY PLAN**

### **5: Governance**

#### *Governance*

G1 Vibrant local democracy, forward-thinking civic leadership, and transparent stewardship of the community's assets and resources.

G1.1 *Continued focus on good governance, transparency and community and stakeholder engagement in significant decisions, including place-based plans.*

## **RISK MANAGEMENT CONSIDERATIONS**

Compliance – Low.

## **FINANCIAL IMPLICATIONS**

No additional budget resources are required. Should Council determine to proceed with an extraordinary election, the existing budget allocation would be expected to be sufficient to cover those costs.

## **VOTING REQUIREMENTS**

Absolute Majority.

## **OFFICER'S RECOMMENDATION**

**That Council:**

- 1. Pursuant to section 4.17(3) of the *Local Government Act 1995*, allows the vacancy in the office of councillor for South Ward to remain unfilled and, subject to section 4.17(4), the term of Councillor Grace is to be regarded as ending on the day on which it would have ended if the vacancy had not occurred; and**
- 2. With respect to (1), notes that the Electoral Commissioner has approved the deferral of an election for the vacancy in accordance with section 4.17(3).**

**ABSOLUTE MAJORITY REQUIRED**



LGE 282

Mr Steven Harding  
Chief Executive Officer  
Shire of East Pilbara  
PMB Box 22  
NEWMAN WA 6753

Dear Mr Harding

### **Councillor vacancy**

I refer to a phone call from your Governance Manager, Mr Joshua Brown on 16 August 2022 advising of the passing of Councillor Grace creating a vacancy in the South Ward. During this call it was advised that the Council wanted to look at two options of either allowing the vacancy to remain unfilled or conduct an extraordinary election for the Shire of East Pilbara as a postal election.

If council wishes to have the vacancy remain unfilled, approval is given under section 4.17(4A) of the Local Government Act 1995 to defer filling this vacancy until the next ordinary local government elections.

The estimated cost to conduct the extraordinary election would be \$14,000 including GST which has been based on the following assumptions:

- 2,516 electors;
- response rate of approximately 30%;
- appointment of a local Returning Officer and
- count to be conducted in Newman.

Costs not incorporated in this estimate include:

- non-statutory advertising (i.e. additional advertisements in community newspapers and promotional advertising);
- any legal expenses other than those that are determined to be borne by the Western Australian Electoral Commission in a Court of Disputed Returns; and
- one local government staff member to work in the polling place on election day.

The Commission is required by the *Local Government Act 1995* to conduct local government elections on a full cost recovery basis. Please note that this is an estimate only and may vary depending on a range of factors including the cost of materials or number of replies received. The basis for our charges is all materials at cost and a margin on staff time only.

In accordance with section 4.20(4) of the *Local Government Act 1995*, I agree to be responsible for the conduct of the extraordinary election for the Shire of East Pilbara if required, on a date to be set by Council.

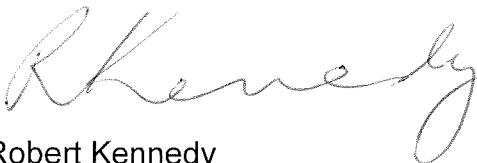
If the Shire of East Pilbara wishes to have an extraordinary election conducted as a postal election to fill the vacancy, Council will now need to pass the following two motions by absolute majority:

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 extraordinary election; and
2. decide, in accordance with section 4.61(2) of the *Local Government Act 1995* that the method of conducting the extraordinary election will be as a postal election.

An election schedule is enclosed for Friday 2 December 2022, which is a date that has been suggested for the election.

If you have any further queries please contact Kay Heron Manager Election Events on 9214 0430.

Yours sincerely



Robert Kennedy  
**ELECTORAL COMMISSIONER**

22 August 2022

Enc.



## ELECTION TIMETABLE Local Government Extraordinary Election

| Days to Polling Day | Local Government Act  | References to Act/Regs     | Day              | Date                          |
|---------------------|---|----------------------------|------------------|-------------------------------|
| 80                  | Last day for agreement of Electoral Commissioner to conduct postal election.  | LGA 4.20 (2)(3)(4)         | Tue              | 13/09/2022                    |
| 80                  | A decision made to conduct the election as a postal election cannot be rescinded after the 80th day.  | LGA 4.61(5)                | Tue              | 13/09/2022                    |
| 70                  | Electoral Commissioner to appoint a person to be the Returning Officer of the Local Government for the election.  | LGA 4.20 (4)               | Fri              | 23/09/2022                    |
| 70<br>to<br>56      | Between the 70th/56th day the CEO is to give Statewide public notice of the time and date of close of enrolments.<br><b>Preferred date Wednesday 28 September 2022</b>              | LGA 4.39(2)                | Fri<br>to<br>Fri | 23/09/2022<br>to<br>7/10/2022 |
| 56                  | Last day for for the CEO to advise the Electoral Commissioner of the need to prepare a residents roll.  | LGA 4.40(1)                |                  | 7/10/2022                     |
| 56                  | Advertising may begin for nominations from 56 days and no later than 45 days before election day.<br><b>Preferred date Wednesday 12 October 2022</b>                                | LGA 4.47(1)                | Fri              | 7/10/2022                     |
| 50                  | Close roll 5.00 pm  | LGA 4.39(1)                | Thu              | 13/10/2022                    |
| 45                  | Last day for advertisement to be placed calling for nominations.  | LGA 4.47(1)                | Tue              | 18/10/2022                    |
| 44                  | <b>Nominations Open</b><br>First day for candidates to lodge completed nomination paper, in the prescribed form, with the Returning Officer. Nominations period is open for 8 days. | LGA 4.49(a)                | Wed              | 19/10/2022                    |
| 38                  | If a candidate's nomination is withdrawn not later than 4.00 pm on the 38th day before election day, the candidate's deposit is to be refunded.                                     | Reg. 27(5)                 | Tue              | 25/10/2022                    |
| 37                  | <b>Close of Nominations</b><br>4.00 pm on the 37th day before election day.   | LGA 4.49(a)                | Wed              | 26/10/2022                    |
| 36                  | Last day for the CEO to prepare & certify an owners & occupiers roll for the election. Last day for the Electoral Commissioner to prepare & certify a residents roll.               | LGA 4.41(1)<br>LGA 4.40(2) | Thu              | 27/10/2022                    |
| 29                  | Lodgement of election packages with Australia Post. Week Commencing   | Approx                     | Thu              | 3/11/2022                     |
| 22                  | The preparation of any consolidated roll under subregulation (1) be completed on or before 22nd day before election day.  | Reg. 18(2)                 | Thu              | 10/11/2022                    |
| 19                  | Last day for the Returning Officer to give Statewide public notice of the election.<br><b>Preferred date Wednesday 2 November 2022</b>  | LGA 4.64(1)                | Sun              | 13/11/2022                    |
| 4                   | Commence processing returned election packages  | Approx                     | Mon              | 28/11/2022                    |
| 0                   | <b>Election Day</b><br>Close of poll 6.00 pm  | LGA 4.7                    | Fri              | 2/12/2022                     |

| Post Election Day | Post Declaration  | References to Act/Regs | Day | Date       |
|-------------------|---|------------------------|-----|------------|
| 5                 | Election result advertisement.  | LGA 4.77               | Wed | 7/12/2022  |
| 14                | Report to Minister. The report relating to an election under section 4.79 is to be provided to the Minister within 14 days after the declaration of the result of the election.             | Reg.81                 | Fri | 16/12/2022 |
| 28                | An invalidity complaint is to be made to a Court of Disputed Returns, constituted by a magistrate, but can only be made within 28 days after notice is given of the result of the election. | LGA 4.81(1)            | Fri | 30/12/2022 |

