SHIRE OF CARNARVON

AGENDA

SPECIAL
COUNCIL MEETING
Wednesday 11 March 2020

Council Chambers, Stuart Street
CARNARVON, West Australia Phone: (08)
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Fax: ((08) 9941 1099
Website – www.carnarvon.wa.gov.au

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No responsibility whatsoever is implied or accepted by the Shire of Carnarvon for any act, omission or statement or intimation occurring during Council/Committee Meetings or during formal/informal conversations with Staff or Councillors. The Shire of Carnarvon 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/Committee Meetings or discussions. Any person or legal entity who acts or fails to act in reliance upon any statement 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 limitation of approval made by a member or officer of the Shire of Carnarvon during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Carnarvon. The Shire of Carnarvon warns that anyone who has an application lodged with the Shire of Carnarvon must obtain and only should rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attaching to the decision made by the Shire of Carnarvon in respect of the application.

To be noted that, in accordance with Regulation 11 of the Local Government (Administration) Regulations 1996, the minutes of the Council Meeting are a record of the decisions of the Council, any additional officers' advice, and explanatory notes as required. The minutes contain a **summary** of questions asked by members of the public and the answers given. The minutes **are not** a transcript of the proceedings of the meetings.

NOTICE OF MEETING

Notice is hereby given
Shire of Carnarvon
Special Council Meeting

will be held
on Wednesday 11 March 2020
in the Shire Council Chambers,
Stuart Street Carnarvon, commencing at
11.00am

David Burton
CHIEF EXECUTIVE OFFICER

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AGENDA

1.0 ATTENDANCES , APOLOGIES & APPLICATIONS FOR LEAVE OF ABSENCE

(The Local Government Act 1995 Section 2.25 provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. The leave cannot be granted retrospectively and an apology for non-attendance at a meeting is not an application for leave of absence.)

2.0 PUBLIC AND ELECTED MEMBER QUESTION TIME

(In accordance with Section 5.23 of the Local Government Act 1995, and Regulation 12(4) of the Local Government (Administration) Regulations 1996, public question time is made available at a Special Meeting of Council to allow members of the public the opportunity of questioning Council on matters relating to the purpose of the meeting only.

3.0 DECLARATIONS OF INTEREST

(Councillors and Staff are reminded of the requirements of Section 5.65 of the Local Government Act 1995, to disclose any interest during the meeting or when the matter is to be discussed.)

4.0 ITEMS FOR DISCUSSION

4.1 Recision of Motion FC 16/1/20

5.0 MATTERS FOR WHICH MEETING TO BE CLOSED TO MEMBERS OF THE PUBLIC

6.0 CLOSURE

4.1 REVOCATION OF MOTION FC16/1/20

File No:	ADM 1942
Date of Meeting:	11th March 2020
Location/Address:	Shire of Carnarvon
Name of Applicant:	Shire of Carnarvon
Author/s:	David Burton, Chief Executive Officer Maurice Werder, Executive Manager Corporate Services
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority / Absolute Majority
Previous Report:	28 January 2020

Summary of Item:

To consider the revocation of Motion FC16/1/20 passed at the Ordinary Meeting of Council held on 28th January 2020 and replace with another motion for action.

Description of Proposal:

Under advice from the Department of Local Government, Sports and Communities (the Department), the Motion passed by Council at the Ordinary Meeting of January 2020 is deemed unacceptable and requires a new motion. This item is to rescind the original motion and replace it with an alternative motion in keeping with the outcomes of the Inquiry.

Background:

The Inquiry into the Shire of Carnarvon resulted in the following Recommendations.

Inquiry Recommendations

It is recommended that:

1. The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General within 6 months of the report becoming final.
2. Following completion of the training referred to in Recommendation 1, and within 6 months of this report becoming final, the Shire CEO is to deliver to the Director General a comprehensive report;
   a. demonstrating the knowledge and understanding gained by the Shire from the training; and
   b. outlining the steps taken by the Shire to implement such knowledge and understanding,
   c. such report to be endorsed by Council.
3. The Shire of Carnarvon undertake a Governance Review as approved by the Director General within 6 months of the report becoming final and the report is to be made available to the Director General.
4. The Shire engage a suitably qualified person to manage any project over $1,000,000.

At the Ordinary Meeting of January 28th, 2020, the following resolution was passed at Council:

COUNCIL RESOLUTION
Cr Fullarton/Cr Nelson

Council resolves to –

1. *Accept the report of the inquiry into the Shire of Carnarvon as prepared by the Department of Local Government, Sport and Cultural Industries;*
2. *Council notes, but does not adopt the recommendations of the report; and*
3. *That the report be referred to a court of competent jurisdiction for the potential breaches of trust to be dealt with as misconduct of those mentioned, and others, for the potential negligence and failings in their duties as detailed in the report, for that court's findings and remedies.*

CARRIED
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A copy of the original item from 28th January 2020 is included as Schedule 4.1.

The Shire President has since been advised by the Director General of the Department of that this is not acceptable as a response to the Inquiry and that further action will be taken by the Department to ensure compliance with the Inquiry.

Under the Local Government Act 1995, the Minister can take action to ensure compliance with an Inquiry:

8.15. Minister can take action to ensure that recommendations are put into effect

(1) The Minister may, if he or she thinks fit —

(a) after receiving advice under section 8.14(3) or (4); or

(b) after the time allowed by or under section 8.14(3) or (4) runs out, if no advice has been received by then,

order the local government, or any of its council members or employees, to give effect to any one or more of the recommendations in the report in a manner and within a time ordered by the Minister.

(2) If the Minister's order under subsection (1) is not complied with according to its terms the Minister may, by order, suspend the council of the local government.

[Section 8.15 amended: No. 31 of 2018 s. 12.]

8.15A. Local government may have to meet inquiry costs

If —

(a) an authorised person makes findings adverse to a local government, or to its council or any member, or to any of its employees; or

(b) an inquiry by an authorised person was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

[Section 8.15A inserted: No. 64 of 1998 s. 43.]

Division 1A — Intervention by the Minister in certain circumstances

[Heading inserted: No. 31 of 2018 s. 13.]

Subdivision 1 — Council may be suspended or required to undertake remedial action

[Heading inserted: No. 31 of 2018 s. 13.]

8.15B. Notice that council may be peremptorily suspended or required to undertake remedial action

(1) Before the Minister makes an order under section 8.15C(2), the Minister is to give a notice (a ***show cause notice****) in writing to the local government of the intention to do one or both of the following —*

(a) suspend the council of the local government;

(b) require the council, or one or more of the members of the council, to undertake such remedial action as is specified in the notice.

(2) Within 21 days of receiving a show cause notice, or such longer period as the Minister allows, the local government is to give the Minister a written response to the notice.

[Section 8.15B inserted: No. 2 of 2012 s. 22.]

Consultation:
Department of Local Government
Shire President

Statutory Environment:
Local Government Act 1995 (the Act), various areas.

Relevant Plans and Policy:
Nil.

Financial Implications:
The change in the motion will require Council to undergo additional training. Previously Officers were advised that the acceptable training would be delivered from the Australian Institute of Company Directors which would be at an approximate cost of $25,000

Risk Assessment:
If the rescission of the original motion is not accepted, then it is most likely that Council would be service with a notice to show cause as per Section 8.15B of the Act, which if no further action was taken, would lead to the suspension of the Shire.

Suspension of the Shire would be considered a severe reputation risk to the Shire and the implementation of a Commissioner would create a considerable cost.

Community & Strategic Objectives:

Goal 5: Civic

Strong and listening Council.

ITEM	OUTCOMES AND STRATEGIES
5.2	The Shire has a high standard of governance and accountability
5.2.1	Robust decision-making by culturally aware, well-informed and supported Councillors
5.2.2	Highly capable executive leadership and management
5.2.6	Compliance with the Local Government Act 1995 and all other relevant legislation and regulations
5.6	The Shire advocates on behalf of its community
5.6.1	The Shire develops partnerships with government and non-government organisations to achieve positive outcomes for the region

Comment:
When staff previously considered training, a quote was sought from the Public Section Commission (PSC) and the Australian Institute of Company Directors (AICD). Advice was given from the Department that the training from the PSC would not be acceptable and that the AICD training was preferred.

It was the authors intention to use the consideration of the workshops from Mr Omodei as a source of "upskilling" staff and Councillors in line with the Inquiry. Based on the previous information form the Department, it is unlikely that this would be acceptable, however this will be confirmed prior to the meeting.

Based on the information from the Department, there would appear to be no option but to accept the recommendation of the Inquiry and seek the training as required. As per the Inquiry, a Report will then be presented to Council for endorsement before being sent to the Director General.

Staff will be organizing the training as early as possible to ensure that the recommendations of the Inquiry are complied with.

Staff will also be looking at options for the Governance Review as per the Inquiry. If this cannot be organized within the timeframe, staff will be seeking an extension.

Costs for the Governance Review will be allocated under the Consultancy Ledger and will not require authorization under Section 6.8 of the Act.

OFFICER'S RECOMMENDATION

Motion 1
Council accept to rescind Motion FC 16/1/2020 dated 28th January 2020, Report of the Enquiry into the Shire of Carnarvon. The motion does not comply with Sections 8.15 (A) (B) and Section 8.16 of the Local Government Act 1995.

Motion 2
Council rescind Motion FC 16/1/2020 dated 28th January 2020 report of the Enquiry into the Shire of Carnarvon.

Motion 3
That Council resolves to:

1. *Accept the Report of the Inquiry into the Shire of Carnarvon as prepared by the Department of Local Government, Sport and Cultural Industries*

2. *Require the CEO to prepare a plan to implement the recommendations from the report as listed:*
   - *(a) The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General within 6 months of the report becoming final.*
   - *(b). Following completion of the training referred to in Recommendation 1, and within 6 months of this report becoming final, the Shire CEO is to deliver to the Director General a comprehensive report;*
     - *(i) demonstrating the knowledge and understanding gained by the Shire from the training; and*
     - *(ii) outlining the steps taken by the Shire to implement such knowledge and understanding,*
     - *(iii) such report to be endorsed by Council.*
   - *(c). The Shire of Carnarvon undertake a Governance Review as approved by the Director General within 6 months of the report becoming final and the report is to be made available to the Director General.*
   - *(d). The Shire engage a suitably qualified person to manage any project over $1,000,000.*

3. *That the report be referred to a court of competent jurisdiction for the potential breaches of trust to be dealt with as misconduct of those mentioned, and others, for the potential negligence and failings in their duties as detailed in the report, for that court's findings and remedies.*

SCHEDULE 4.1

8.2.7 REPORT OF THE INQUIRY INTO THE SHIRE OF CARNARVON

File No:	ADM 1942
Date of Meeting:	28 January 2020
Location/Address:	Shire of Carnarvon
Name of Applicant:	Shire of Carnarvon
Author/s:	David Burton, Chief Executive Officer Maurice Werder, Executive Manager Corporate Services
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Previous Report:	

Summary of Item:
This report reviews the 'Report of the Inquiry into the Shire of Carnarvon' and looks at some of the options for the Council and the Shire to address.

Description of Inquiry Report:
The Authorised Inquiry was instigated by several complaints from electors and the review of a Probity Audit that was conducted on the Shire in 2013.
On 8 January 2018, the Deputy Director General of the Department authorised an inquiry in accordance with section 8.3(2) of the Act. The Terms of Reference directed the inquiry to the following aspects of the Shire and its operations and affairs beginning 1 January 2011 to:

- Inquire into and report on the operations and affairs of the Shire of Carnarvon (Shire) for potential breaches of the Act and associated Regulations that will encompass aspects of the Shire and associated business entities that has, has had, may have or may have had dealings with the Shire, and the operations and practices related to tendering, procurement and financial management, from 1 January 2011 to the present day.

The report is available at this link: Report of the Inquiry into the Shire of Carnarvon on the DLGSC website and at Schedule 8.2.7 Report of the Inquiry into the Shire of Carnarvon.

Summary of key findings

Finding 01: The CEO has failed to discharge the duty imposed on him by section 10 of the State Records Act 2000 (SRA) by not ensuring that provision(s) 1.2 and 2.2 of the Record Keeping Plan was complied with in these respects to retention of vital infrastructure documents of the fascine wall and ensuring electronic mail, of importance was retained, which was contrary to the duty imposed by section 17 of the State Records Act.

Finding 02: The CEO has failed in his duties imposed by section 10(2) of the State Records Act 2000 by ensuring the records of the local government are properly kept under s5.41(h) of the Local Government Act 1995 in accordance with the Record Keeping Plan.

Finding 03: The perception of bias toward Curnow Group Pty Ltd by Mr Wall regarding the affording of information to them which was not readily available to all tenderers is significantly high.

Finding 04: The lack of proper oversight and monitoring of the contractor or the contract has led to a likely cost to the State of Western Australia and the Shire of Carnarvon of a significant amount of money, during and since the completion of the project.

Finding 05: The CEO did not adequately discharge the responsibility he had under the s5.41(g) of the Local Government Act 1995 for the management, supervision and direction of employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the potential costs due to employees' actions and inactions.

Finding 06: Mr Wall has failed to undergo any due diligence regarding the purchase of stage two sheet pile.

Finding 07: The CEO did not adequately discharge the responsibility he had under s5.41(g) of the Local Government Act for the management supervision and direction of other employees (including Mr Wall), and this failure by the CEO has caused, or contributed to the lack of due diligence by Mr Wall as identified in Finding 6.

Finding 08: The Administration of the Shire of Carnarvon failed to adhere to their own Purchasing Policy F003 when engaging in use of the company Carnarvon Hardrock.

Inquiry Recommendations

It is recommended that:

1. The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General within 6 months of the report becoming final.
2. Following completion of the training referred to in Recommendation 1, and within 6 months of this report becoming final, the Shire CEO is to deliver to the Director General a comprehensive report;
    a. demonstrating the knowledge and understanding gained by the Shire from the training; and
    b. outlining the steps taken by the Shire to implement such knowledge and understanding,
    c. such report to be endorsed by Council.
3. The Shire of Carnarvon undertake a Governance Review as approved by the Director General within 6 months of the report becoming final and the report is to be made available to the Director General.
4. The Shire engage a suitably qualified person to manage any project over $1,000,000.

Consultation:

The Department of Local Government inquiry investigated the records of the Shire including correspondence and financial documentation. Interviews were conducted with relevant persons during the period in question as shown in the inquiry report.

Statutory Environment:

Section 8.3 of the Local Government Act 1995 gives the Director General of the Department of Local Government, Sport and Cultural Industries the authority to inquire into all local governments and their operations and affairs. This function was delegated to the Deputy Director General as per Regulation 35B of the Local Government (Functions and General) Regulations 1996.

Financial Implications:

The financial implications for the Shire depend cost of the required governance and accountability training. The Shire is exploring the options available from three suggested suppliers of this level of training and this will be reported back to council before implementation.

Risk Assessment:

The Inquiry Report has been presented to the Shire. As with most inquiry Reports if the report is accepted as published there is the risk that claims will be made that it does not resolve all the issues and the responsibilities of certain persons involved in the original activities. The failure to accept the report will mean that the history of the past will dominate the Council the Shire and the Carnarvon community well into the future. It will magnify divisions within the community and adversely influence the decision making and cohesiveness of the Council.

Community & Strategic Implications:

The proposed recommendation aligns with the Strategic Community Plan 2018 – 2028 in the following ways:

Goal 5: Civic

Strong and listening Council.

ITEM	OUTCOMES AND STRATEGIES
5.2	The Shire has a high standard of governance and accountability
5.2.1	Robust decision-making by culturally aware, well-informed and supported Councillors
5.2.2	Highly capable executive leadership and management
5.2.3	Risks are well managed
5.2.6	Compliance with the Local Government Act 1995 and all other relevant legislation and regulations
5.4	Sound financial and asset management
5.4.4	Financial transactions are accurate and timely
5.4.5	Procurement ensures probity, fairness, level playing field for local suppliers, and value for money
5.5	The right people with the right skills in a productive workplace
5.5.1	All staff are provided with adequate training and equipment to undertake their role, including cultural awareness training

Comment:
If the report is accepted as published there may be claims made that it does not resolve all the issues and the responsibilities of certain persons involved in the original activities.
If the report is not accepted it could mean that the history of the past will dominate the Council, the Shire and the Carnarvon community well into the future. It will magnify divisions within the community and adversely influence the decision making and cohesiveness of the Council.

OFFICER'S RECOMMENDATION

That Council resolves to:

1. *Accept the Report of the Inquiry into the Shire of Carnarvon as prepared by the Department of Local Government, Sport and Cultural Industries*

2. *Require the CEO to prepare a plan to implement the recommendations from the report as listed:*
    1. *The elected members and Shire staff undertake governance and accountability training, and any other such training, as determined appropriate by the Director General within 6 months of the report becoming final.*
    2. *Following completion of the training referred to in Recommendation 1, and within 6 months of this report becoming final, the Shire CEO is to deliver to the Director General a comprehensive report;*
        a. *demonstrating the knowledge and understanding gained by the Shire from the training; and*
        b. *outlining the steps taken by the Shire to implement such knowledge and understanding,*
        c. *such report to be endorsed by Council.*
    3. *The Shire of Carnarvon undertake a Governance Review as approved by the Director General within 6 months of the report becoming final and the report is to be made available to the Director General.*
    4. *The Shire engage a suitably qualified person to manage any project over $1,000,000.*

Voting Requirements
Simple majority