

Special Council Meeting

Minutes for Monday 3 February 2014

UNCONFIRMED



**shire of
kalamunda**

INDEX

1.0	OFFICIAL OPENING.....	3
2.0	ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED	3
3.0	PUBLIC QUESTION TIME	4
4.0	PETITIONS/DEPUTATION	4
5.0	ANNOUNCEMENTS BY THE MEMBER PRESIDING WITHOUT DISCUSSION.....	4
6.0	MATTERS FOR WHICH MEETING MAY BE CLOSED	4
7.0	DISCLOSURE OF INTERESTS.....	4
8.0	REPORTS TO COUNCIL	4
	01. STATE UNDERGROUND POWER PROGRAM – LOCALISED ENHANCEMENT PROJECT KALAMUNDA TOWN CENTRE.....	5
	02. CONFIDENTIAL REPORT DISPUTE IN RELATION TO THE FORMER CHIEF EXECUTIVE OFFICER	11
9.0	MEETING CLOSED TO THE PUBLIC.....	12
10.0	CLOSURE	19

MINUTES

1.0 OFFICIAL OPENING

The Presiding Member opened the meeting at 6.40pm, welcoming Councillors, representative from Jackson McDonald, Staff and Members of the Public Gallery.

2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

2.1 Attendance

Councillors

Sue Bilich	(Shire President) (Presiding Member)	North Ward
Margaret Thomas		North Ward
Simon Di Rosso		North Ward
Justin Whitten		South West Ward
Allan Morton		South West Ward
Noreen Townsend		South West Ward
Geoff Stallard		South East Ward
John Giardina		South East Ward
Andrew Waddell		North West Ward
Dylan O'Connor		North West Ward
Bob Emery		North West Ward

Members of Staff

Rhonda Hardy	Chief Executive Officer
Warwick Carter	Director Development Services
Charles Sullivan	Director Infrastructure Services
Darrell Forrest	Manager Governance
Sam Assaad	Manager Infrastructure Operations
Donna McPherson	Executive Research Officer to CEO / Minute Secretary

Legal Representation

Stephen Kemp	Jackson McDonald
Julius Skinner	Jackson McDonald

Members of the Public 0

Members of the Press 0

2.2 Apologies

Councillors

Frank Lindsey	South East Ward
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2.3 **Leave of Absence Previously Approved** Nil

3.0 PUBLIC QUESTION TIME

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of this meeting. For the purposes of Minuting, these questions and answers are summarised.

3.1 Nil.

4.0 PETITIONS/DEPUTATION

4.1 Nil.

5.0 ANNOUNCEMENTS BY THE MEMBER PRESIDING WITHOUT DISCUSSION

5.1 Nil.

6.0 MATTERS FOR WHICH MEETING MAY BE CLOSED

6.1 **02. CONFIDENTIAL REPORT Dispute in relation to the former Chief Executive Officer-** Provided under separate cover.
Reason for Confidentiality –Local Government Act 1995
Section 5.23 (2) (b) “the personal affairs of any person”.
Section 5.23 (2) (d) “legal advice obtained or maybe obtained by the Local government and which relates to a matter to be discussed at the meeting”

7.0 DISCLOSURE OF INTERESTS

7.1 Disclosure of Financial and Proximity Interests

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*.)

7.1.1 Nil.

7.2 Disclosure of Interest Affecting Impartiality

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

7.2.1 Nil.

8.0 REPORTS TO COUNCIL

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

01. State Underground Power Program – Localised Enhancement Project Kalamunda Town Centre

Previous Items	OCM 02/2013 (D&I 05/2013/)
Responsible Officer	Director Infrastructure Services
Service Area	Infrastructure Operations
File Reference	PG-STU-0189
Applicant	N/A
Owner	Various
Attachment 1	Nil

PURPOSE

1. To consider the detailed scope and estimate for the State Underground Power Program (SUPP) – Localised Enhancement Project (LEP) – Kalamunda Town Centre.
2. To consider whether Council should fully fund the cost of the proposed scope and if so determine which projects may be reduced in scope to provide funding in the 2014/2015 Capital Works Program.

BACKGROUND

3. In October 2012, the Minister for Energy advised the Shire of Kalamunda that the Kalamunda Town Centre had been included as an LEP in Round 5 of the SUPP.
4. A report was considered by Council in February 2013 (D&I05/2013) which provided the following advice:-
 16. *Under the SUPP arrangements, LEP's are jointly funded up to \$1 million comprising 50% by the local government (\$500,000), 25% by Western Power (\$250,000) and 25% by the State Government (\$250,000). Project costs over the \$1 million threshold are to be 100% funded by the Shire.*
 17. *The Shire will have to pay a non-refundable deposit of \$12,500 by the end of March 2013. The monies are provided for in the Design and Development (412) 2012/13 budget. In the event that the Shire is selected for funding allocation, the deposit will be credited to the Shire's costs under the funding agreement.*
 31. *Preliminary design costing are expect in April 2013, at this point the 50% funding allocation will be known and Council can determine whether they wish to proceed with the project or not. Should the costing be in excess of \$1 million, the excess amount would be 100% Shire funded. At this stage consideration could be given to scaling back the project to reduce the cost to the Shire.*

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5. The following recommendation was approved on 25 February 2013 (En Bloc OCM 02/2013):

That Council:

1. *Notes the selection of the Kalamunda Town Centre as a Localised Enhancement Project and authorises the Shire staff to proceed with the tasks listed in the Detailed Proposal Stage Responsibilities (Attachment 2) in respect to the State Underground Power Program – Localised Enhancement Project for the Kalamunda Town Centre.*
2. *Lists for consideration in the mid-year budget review \$12,500 for design costs.*
3. *Lists for consideration in the 2012/2013 budget \$500,000 for funding of the Localised Enhancement Project for the Kalamunda Town Centre.*
4. *Advise Western Power of the Shire's desire to proceed with the project.*

DETAILS

6. The detailed design work and cost estimate has been undertaken by Western Power, who has estimated the project cost to be \$1,500,000.
7. Western Power have based their estimate on a conservative assessment of the volume of rock to be encountered during the project. Based on experience the assessment is at the high end of the likely range and therefore it is anticipated that the project may be delivered at a lower cost.
8. In order to progress this project in the timeframe proposed by Western Power (commencement in April 2014), a decision by Council is required on whether to proceed. There are three options:
 1. Do not proceed with this project - \$500,000 savings in the 2013/2014 CAPEX program.
 2. Reduce the scope of the project to \$1,000,000 total project cost to conform with the existing budget allocation.
 3. Accept the full project scope and determine how to fund the balance (up to \$500,000). Based on project timing, this additional funding would be required in 2014/2015.
9. In order to fund the additional amount in 2014/2015, one or more projects/programs from the 2013/2014 Capital Works Budget need to be reduced in scope. An assessment of the Long Term Financial Plan (LTFP) has identified several possibilities as shown below.

10. The following projects and programs have been identified as appropriate for deferral/scope reduction and are listed in order of potential consequence:

Project	2013/2014 Budget	Comment	Available in 2014/2015 for the SUPP.
Reserves Signage Replacement (2013/2014)	\$150,000	<p>Reduce the scope of this activity to \$50,000, allowing the balance to be reallocated to the SUPP.</p> <p>It is not imperative that signage be upgraded at this point in time particularly given the possible amalgamation. It would be prudent to minimise expenditure on signage for this financial year until an outcome on amalgamation is known.</p>	\$100,000
Kalamunda Library Refurbishment (2013/2014)	\$426,000	<p>Reduce the scope of this activity to \$26,000 so that design work can be completed in 2013/2014, allowing the balance to be reallocated to the SUPP.</p> <p>The upgrade of the Kalamunda Library is not a critically imperative project and can be delayed and reallocated in future budgets.</p>	\$400,000

STATUTORY AND LEGAL CONSIDERATIONS

11. Changes to the CAPEX program requires consideration and approval by Council.

POLICY CONSIDERATIONS

12. Nil.

COMMUNITY ENGAGEMENT REQUIREMENTS

13. It is recognised if the recommendation of this report is accepted, there will be a need to manage community and stakeholder expectations for projects which have been reduced in scope.
14. The selection of projects has been made taking account of strategic objectives and priorities.

FINANCIAL CONSIDERATION

15. The recommended projects for scope reduction and the amounts are listed below:

1.	Reserves Signage Replacement (2013/2014)	\$100,000
2.	Kalamunda Library Refurbishment (2013/2014)	\$400,000
	Total	<u>\$500,000</u>

STRATEGIC COMMUNITY PLAN

Strategic Planning Alignment

16. *Kalamunda Advancing: Strategic Community Plan to 2023*

OBJECTIVE 4.1 – To ensure land use plans provide long term sustainable population growth.

Strategy 4.1.2 Continue to pursue opportunities for new development and streetscape outcomes through the implementation of Town Centre Improvement Plans.

OBJECTIVE 4.7 – To ensure the selection, maintenance, inspection, renewal and disposal of all categories of assets within the Shire is managed efficiently.

Strategy 4.7.1 Maintain, refurbish or upgrade existing infrastructure, including public buildings, parks, reserves, local roads, footpaths, cycle ways, verges and drainage networks to encourage increased utilisation and extension of asset life.

SUSTAINABILITY

Social Implications

17. The proposed improvements to the Town Centre will make the area more attractive for the local residents as well as the visitors.

Economic Implications

18. The improved will assist local businesses in attracting more people thus improving the commercial viability of Town Centre area.

Environmental Implications

19. Undergrounding the power will result in more consistent and attractive landscaping for the Town Centre. Appropriate streetscape improvements will be undertaken once the power is underground including providing greater shade in summer and sunlight in winter.

RISK MANAGEMENT CONSIDERATONS

20.

Risk	Likelihood	Consequence	Rating	Action/Strategy
That the SUPP is not delivered.	Unlikely	Major	Medium	Ensure Western Power receive a response regarding Council's position on funding.
That the SUPP is delayed.	Possible	Minor	Medium	Ensure Western Power receive a response regarding Council's position on funding.
That a portion of the SUPP is undelivered.	Possible	Major	High	It is recommended option 3 is selected as it is unlikely the remaining road(s) would be funded in future SUPP rounds. If option 2 is approved then information would be provided to the community and stakeholders informing them of the decision.
That the SUPP cost exceed the current revised estimate.	Unlikely	Major	Medium	A conservative approach and sufficient contingency have been used in developing the current estimate by Western Power. Sufficient scope remains in the 2014/2015 CAPEX program to source additional funds if required.

OFFICER COMMENT

21. The option to reduce the scope of the project is not recommended for several reasons:

1. The portions of the project that are excluded (Barber Street) would be unlikely to attract support from a future SUPP as stand-alone projects.
2. The exclusion of a portion of the project would not allow the full realisation of the project concept and would generate negative community comment.
3. The exclusion of Barber Street would result in limited opportunities for amenity improvements around Town Square Gardens and the Town Mall. As these locations are a major attraction to visitors (through the markets), this would be seen as a negative outcome.

22. At any time, a higher priority project should be able to be included in the Long Term Financial Plan. The Town Centre Improvement Action Plan is a high priority for Council and as the SUPP is critical in delivering this plan, it is appropriate to consider and compare the priority of other projects. It is considered that the projects and programs recommended for deferral or reduction are lower priority.

Voting Requirements: Simple Majority

RESOLVED SCM 01/2014

That Council:

1. Approve the delivery of the full scope of the State Underground Power Project – Localised Enhancement Project – Kalamunda Town Centre.
2. Approve the reduction in scope of the following programs from the 2013/2014 Capital Works Budget:

1. Reserves Signage Replacement (2013/2014)	\$100,000
2. Kalamunda Library Refurbishment (2013/2014)	\$400,000
Total	<u>\$500,000</u>

3. Approve the inclusion of the following item in the 2014/2015 CAPEX budget:

1. Kalamunda Town Centre State Underground Power Program Contribution	\$500,000
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Moved: **Cr Margaret Thomas**

Seconded: **Cr John Giardina**

Vote: <u>For</u> Cr John Giardina Cr Geoff Stallard Cr Simon Di Rosso Cr Margaret Thomas Cr Sue Bilich	<u>Against</u> Cr Noreen Townsend Cr Allan Morton Cr Justin Whitten Cr Bob Emery Cr Andrew Waddell Cr Dylan O'Connor
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LOST (5/6)

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

02. CONFIDENTIAL REPORT Dispute in relation to the former Chief Executive Officer

Reason for Confidentiality – Local Government Act 1995

Section 5.23 (2) (b) "the personal affairs of any person".

Section 5.23 (2) (d) "legal advice obtained or maybe obtained by the Local government and which relates to a matter to be discussed at the meeting"

Previous Items	Item 6.1 Special Council Meeting 9 September 2013 Item 6.1 Special Council Meeting 10 December 2012 Item 6.1 Special Council Meeting 5 December 2012 Item 6.1 Ordinary Council Meeting – 15 October 2012 Item 6.1 Special Council Meeting 20 September 2012 Item 6.1 Special Council Meeting 23 September 2013 Item 10.3.7 Ordinary Council Meeting November 2013
Responsible Officer	Chief Executive Officer
Service Area	Office of the Chief Executive Officer
File Reference	N/A
Applicant	N/A
Owner	N/A

Confidential Attachment 1 Order case management Direction from the Supreme Court of Western Australia
Reason for Confidentiality – Local Government Act 1995:
Section 5.23 (2) (b), "the personal affairs of any person".
Section 5.23 (2) (d) " legal advice obtained or maybe obtained by the Local government and which relates to a matter to be discussed at the meeting"

Confidential Attachment 2 Legal Advice
Reason for Confidentiality – Local Government Act 1995:
Section 5.23 (2) (b), "the personal affairs of any person".
Section 5.23 (2) (d) " legal advice obtained or maybe obtained by the Local government and which relates to a matter to be discussed at the meeting"

This item had been postponed from the December Ordinary Council Meeting, no Recommendation was put and the meeting was adjourned pending Council receiving further information.

RESOLVED SCM 18/2014

That Council:

1. In relation to setting a mandate for the claim being made by James Trail, agrees for the purpose of mediation that mandate option 10(c) as set out in Confidential Attachment 2 be approved and that the mandate remain confidential until such times as the litigation is finalised.

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2. In relation to setting a mandate for the counter claim being made by the Shire of Kalamunda in the dispute with James Trail, agrees for the purpose of mediation that mandate option 11(d) as set out in Confidential Attachment 2 (or as amended) be approved and that the mandate remain confidential until such times as the litigation is finalised.

Moved: **Cr Noreen Townsend**

Seconded: **Cr Dylan O'Connor**

Vote: **CARRIED UNANIMOUSLY (12/0)**

9.0 MEETING CLOSED TO THE PUBLIC

9.1 Meeting Closed to the Public

RESOLVED SCM 02/2014

That the meeting go behind closed doors to consider CONFIDENTIAL REPORT (provided under separate cover) Dispute in Relation to the Former Chief Executive Officer.

Moved: **Cr Bob Emery**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

The meeting closed to the public at time 6.44pm. All members of the public, staff, except for the CEO, Manager Governance and the Executive Research Officer, and the press left the meeting.

9.2 Suspension of Standing Orders

RESOLVED SCM 03/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be suspended.

Moved: **Cr John Giardina**

Seconded: **Cr Dylan O'Connor**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

Standing Orders were suspended at time 6.45pm.

9.3 **Resumption of Standing Orders**

RESOLVED SCM 04/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be resumed.

Moved: **Cr Noreen Townsend**

Seconded: **Cr Margaret Thomas**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

Standing Orders were resumed at 8.11pm.

9.4 **Meeting Reopen to the Public**

RESOLVED SCM 05/2014

That the meeting reopen to the public.

Moved: **Cr Justin Whitten**

Seconded: **Cr Bob Emery**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

9.5 **Meeting Adjourned**

RESOLVED SCM 06/2014

That the Special Council Meeting be adjourned until 7.45pm Monday 10 February 2014.

Moved **Cr Margaret Thomas**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

9.6 The Presiding Member declared the meeting adjourned at 8.14pm.

9.7 The Presiding Member declared the meeting be recommenced at 7.49pm on Monday 10 February 2014. The meeting was opened to the public.

9.8 Attendance at the time of the recommencement:

Councillors

Sue Bilich	(Shire President) (Presiding Member)	North Ward
Margaret Thomas		North Ward
Simon Di Rosso		North Ward
Justin Whitten		South West Ward
Allan Morton		South West Ward

Noreen Townsend	South West Ward
Geoff Stallard	South East Ward
John Giardina	South East Ward
Frank Lindsey	South East Ward
Andrew Waddell	North West Ward
Dylan O'Connor	North West Ward
Bob Emery	North West Ward

Members of Staff

Rhonda Hardy	Chief Executive Officer
Warwick Carter	Director Development Services
Charles Sullivan	Director Infrastructure Services
Gary Ticehurst	Director Corporate Services
Darrell Forrest	Manager Governance
Sam Assaad	Manager Infrastructure Operations
Donna McPherson	Executive Research Officer to CEO / Minute Secretary

Members of the Public 0

Members of the Press 0

Apologies Nil

9.9 **State Underground Power Program – Localised Enhancement
Project Kalamunda Town Centre**

The Presiding Member advised that during the adjournment of the Special Council Meeting a Notice of Motion had been submitted proposing to revoke Resolution SCM 01/2014. The Notice of Motion is in accordance with the *Local Government Act 1995* and Standing Orders.

RESOLVED SCM 07/2014

1. That the motion comprising Resolution SCM 01/2014 passed earlier at this Special Council Meeting be revoked.

Moved	<u>Cr John Giardina</u>
Seconded:	<u>Cr Frank Lindsey</u>
Supported	<u>Cr Dylan O'Connor</u>
Supported	<u>Cr Margaret Thomas</u>
Vote:	CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)

Rationale:-The underground power project is considered a critical component of the overall plans for the development plans for the Kalamunda Town Centre. The Council has previously agreed to the proposals to improve the town centre and without undergrounding the power these proposals will be less effective.

This opportunity to take advantage of government funding for the underground power project should not be rejected as it would be many years before such an opportunity is made available again.

Funding for the majority of the additional cost is proposed to be sourced from a project within the same vicinity and will therefore not impact on other localities within the Shire.

Cr Giardina presented a motion for consideration by Council. The motion received a seconder and was put to the vote.

9.10 RESOLVED SCM 08/2014

That Council:

1. Approve the delivery of the full scope of the State Underground Power Project – Localised Enhancement Project – Kalamunda Town Centre.
2. Approve the reduction in scope of the following programs from the 2013/2014 Capital Works Budget:

1.	Reserves Signage Replacement (2013/2014)	\$100,000
2.	Kalamunda Library Refurbishment (2013/2014)	\$400,000
	Total	\$500,000

3. Agree that the points 2.1 and 2.2 are considered by Council at a future date
4. Approve the inclusion of the following item in the 2014/2015 CAPEX budget:

1.	Kalamunda Town Centre State Underground	
2.	Power Program Contribution	\$500,000

Moved: **Cr John Giardina**

Seconded: **Cr Margaret Thomas**

Vote: **CARRIED UNANIMOUSLY (12/0)**

9.11 **Meeting Closed to the Public**

RESOLVED SCM 09/2014

That the meeting go behind closed doors to consider CONFIDENTIAL REPORT (provided under separate cover) Dispute in Relation to the Former Chief Executive Officer.

Moved: **Cr Simon Di Rosso**

Seconded: **Cr Justin Whitten**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

The meeting closed to the public at time 8.09pm. All members of the public, staff except the CEO, Manager Governance and Executive Research Officer, and press left the meeting.

9.12 **Suspension of Standing Orders**

RESOLVED SCM 10/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be suspended.

Moved: **Cr Justin Whitten**

Seconded: **Cr Dylan O'Connor**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

Standing Orders were suspended at time 8.10pm. Cr Thomas left the meeting at 8.13pm and returned at 8.15pm.

9.13 **Resumption of Standing Orders**

RESOLVED SCM 11/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be resumed.

Moved: **Cr Justin Whitten**

Seconded: **Cr Allan Morton**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

Standing Orders were resumed at 9.23pm.

9.14 **Meeting Reopen to the Public**

RESOLVED SCM 12/2014

That the meeting reopen to the public.

Moved: **Cr John Giardina**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

The meeting opened to the public at time 9.24pm

9.15 **Meeting Adjourned**

RESOLVED SCM 13/2014

That the Special Council Meeting be adjourned until 7.15pm Monday 17 February 2014.

Moved **Cr Margaret Thomas**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (11/0)**

9.16 The Presiding Member declared the meeting adjourned at 8.14pm on 3 February 2014.

Meeting Recommence following Adjournment

RESOLVED SCM 14/2014

That the meeting recommence following adjournment on 10 February 2014.

Moved: **Cr Simon Di Rosso**

Seconded: **Cr Justin Whitten**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

9.17 The Presiding Member declared the meeting be recommenced at 7.49pm on Monday 17 February 2014 and welcomed the Shire's legal representative form Jackson McDonald The meeting was opened to the public.

9.18 Attendance at the time of the recommencement:

Councillors

Sue Bilich	(Shire President) (Presiding Member)	North Ward
Margaret Thomas		North Ward
Simon Di Rosso		North Ward
Justin Whitten		South West Ward
Allan Morton		South West Ward
Noreen Townsend		South West Ward
Geoff Stallard		South East Ward
John Giardina		South East Ward
Frank Lindsey		South East Ward
Andrew Waddell		North West Ward
Dylan O'Connor		North West Ward
Bob Emery		North West Ward

Members of Staff

Rhonda Hardy	Chief Executive Officer
Darrell Forrest	Manager Governance
Donna McPherson	Executive Research Officer to CEO / Minute Secretary

Legal Representation

Stephen Kemp

Jackson McDonald

Members of the Public

0

Members of the Press

0

Apologies

Nil

9.19 **Meeting Closed to the Public**

RESOLVED SCM 15/2014

That the meeting go behind closed doors to consider CONFIDENTIAL REPORT (provided under separate cover) Dispute in Relation to the Former Chief Executive Officer.

Moved: **Cr Justin Whitten**

Seconded: **Cr Andrew Waddell**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

The meeting closed to the public at time 7.19 pm.

9.20 **Suspension of Standing Orders**

RESOLVED SCM 16/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be suspended.

Moved: **Cr Justin Whitten**

Seconded: **Cr Allan Morton**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

Standing Orders were suspended at time 7.20pm.

9.21 **Resumption of Standing Orders**

RESOLVED SCM 17/2014

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be resumed.

Moved: **Cr Noreen Townsend**

Seconded: **Cr John Giardina**

Vote: **CARRIED UNANIMOUSLY/ABSOLUTE MAJORITY (12/0)**

Standing Orders were resumed at 8.25pm.

