



**MINUTES
ORDINARY MEETING
OF COUNCIL**

17 MARCH 2020

**SHIRE OF CUE
Ordinary Council Meeting
MINUTES**

Held in the Council Chambers, 73 Austin Street Cue on
Tuesday 17 March 2020 commencing at 6:30pm

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1. DECLARATION OF OPENING

The Presiding Member welcomed those present and read the following disclaimer:

No responsibility whatsoever is implied or accepted by the Shire of Cue for any act, omission or statement or intimation occurring during this Meeting.

It is strongly advised that persons do not act on what is heard at this Meeting and should only rely on written confirmation of council's decision, which will be provided within fourteen (14) days of this Meeting.

PRESENT:

Councillor Ross Pigdon, Shire President

Councillor Les Price, Deputy Shire President

Councillor Ian Dennis

Councillor Ron Hogben

Councillor Leonie Fitzpatrick

Councillor Fred Spindler

Councillor Liz Houghton

STAFF:

Mr Rob Madson, Chief Executive Officer

Mr Richard Towell, Deputy Chief Executive Officer

Ms Tracy Bachraty, Customer Service Officer

VISITORS:

Mr Travis Bate, RSM Australia Pty Ltd

GALLERY:

Mr Marc Mele

Mr Gary Tegg

2. APOLOGIES AND APPROVED LEAVE OF ABSENCE

Nil

3. DISCLOSURE OF MEMBERS' INTERESTS

Nil

4. PUBLIC QUESTION TIME

Nil

5. CONFIRMATION OF MINUTES

Council Decision: 01032020

Voting Requirement: Simple Majority

MOVED: Cr Dennis

SECONDED: Cr Fitzpatrick

That the Minutes of the Ordinary Meeting of 18 February 2020 are confirmed as a true and correct record of the meeting.

CARRIED: 7/0

6. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7. DEPUTATIONS

Nil

8. PETITIONS

Nil

9. ANNOUNCEMENTS WITHOUT DISCUSSION

The President addressed the gallery regarding a summary of the COVID 19 virus update.

10. REPORTS

10.1 ACCOUNTS & STATEMENTS OF ACCOUNTS

APPLICANT: Shire of Cue
DISCLOSURE OF INTEREST: Nil
AUTHOR: Richard Towell – Deputy Chief Executive Officer
DATE: 13 March 2020

Matters for Consideration:

To receive the List of Accounts Due & Submitted to Ordinary Council Meeting on 17 March 2020 as attached – see [Appendix 1](#).

Background:

The local government under its delegated authority to the CEO to make payments from the municipal and trust funds is required to prepare a list of accounts each month showing each account paid and presented to Council at the next ordinary Council meeting. The list of accounts prepared and presented to Council must form part of the minutes of that meeting.

Comments:

The list of accounts is for the month February 2020.

Statutory Environment:

Local Government (Financial Management Regulations) 1996 – Clause 13.

Policy Implications:

Nil.

Financial Implications:

Nil.

Strategic Implications:

Nil.

Consultation:

Nil.

Officer's Recommendation:

Voting Requirement: Simple Majority

That Council endorse the payments for the period 1 February to 29 February 2020 as listed at [Appendix 1](#), which have been made in accordance with delegated authority per LGA 1995 S5.42.

Municipal Fund Bank	EFTs	8180 - 8267	\$317,441.35
Direct Debit Fund Transfer			\$ 29,117.37
Payroll			\$ 91,103.44
BPAY			\$ 739.35
Cheques			\$ -
Total			\$438,401.51

Council Decision: 02032020

Voting requirement: Simple Majority

MOVED: Cr Spindler

SECONDED: Cr Dennis

That Council endorse the payments for the period 1 February to 29 February 2020 as listed at [Appendix 1](#), which have been made in accordance with delegated authority per LGA 1995 S5.42.

Municipal Fund Bank	EFTs	8180 - 8267	\$317,441.35
Direct Debit Fund Transfer			\$ 29,117.37
Payroll			\$ 91,103.44
BPAY			\$ 739.35
Cheques			\$ -
Total			\$438,401.51

CARRIED: 5/2

AGAINST: Cr Houghton, Cr Fitzpatrick.

10.2 FINANCIAL STATEMENT

APPLICANT: Shire of Cue
DISCLOSURE OF INTEREST: Nil
AUTHOR: Richard Towell – Deputy Chief Executive Officer
DATE: 13 March 2020

Matters for Consideration:

The Statement of Financial Activity for the period ended 29 February 2020 including the following reports:

- Statement of Financial Activity
- Significant Accounting Policies
- Graphical Representation – Source Statement of Financial Activity
- Net Current Funding Position
- Cash and Investments
- Major Variances
- Budget Amendments
- Receivables
- Grants and Contributions
- Cash Backed Reserve
- Capital Disposals and Acquisitions
- Trust Fund

see [Appendix 2](#).

Background:

Under the *Local Government (Financial Management Regulations 1996)*, a monthly Statement of Financial Activity must be submitted to an Ordinary Council meeting within 2 months after the end of the month to which the statement relates. The statement of financial activity is a complex document but presents a complete overview of the financial position of the local government at the end of each month. The Statement of Financial Activity for each month must be adopted by Council and form part of the minutes.

Comments:

The Statement of Financial Activity is for the month of February 2020.

Statutory Environment:

Local Government (Financial Management Regulations) 1996 – Clause 14.

Policy Implications:

Nil.

Financial Implications:

Nil.

Strategic Implications:

Nil.

Consultation:

RSM Australia Pty Ltd.

Officer's Recommendation:

Voting Requirement: Simple Majority

That Council receive the Financial Statements, prepared in accordance with the Local Government (Financial Management) Regulations, for the period ended 29 February 2020, as presented at [Appendix 2](#).

Council Decision: 03032020

Voting requirement: Simple Majority

MOVED: Cr Dennis

SECONDED: Cr Spindler

That Council receive the Financial Statements, prepared in accordance with the Local Government (Financial Management) Regulations, for the period ended 29 February 2020, as presented at Appendix 2.

CARRIED:7/0

10.3 COMPLIANCE AUDIT RETURN 2019

APPLICANT: Shire of Cue
DISCLOSURE OF INTEREST: Nil
AUTHOR: Richard Towell – Deputy Chief Executive Officer
DATE: 14 February 2020

Matters for Consideration:

Endorsement of the Compliance Audit Return 2019 as per [Appendix 3](#).

Background:

Each year a Local Government is required to complete a compliance audit return for the period 1 January to 31 December. Regulations require that the compliance audit return is reviewed by the audit committee prior to adoption by Council. Once adopted by Council a certified copy of the return along with a copy of the relevant section of the minutes and any additional information explaining or qualifying the return is to be submitted to the Executive Director, Department of Local Government and Communities by 31 March following the period to which the return relates.

Comments:

The Compliance Audit Return for the period 1 January 2019 to 31 December 2019 has been prepared by the Shire of Cue administration. The Return provides an internal control to assess statutory compliance and covers areas such as disclosure of interest, official conduct, tenders for providing goods and services, delegation of power and duties and appointment of senior employees.

Statutory Environment:

Local Government Act 1995, Section 7.13(1)(i).

7.13. Regulations as to audits

- (1) *Regulations may make provision —*
 - (i) *requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are —*
 - (i) *of a financial nature or not; or*
 - (ii) *under this Act or another written law.*

Local Government (Audit) Regulations 1996:

14. *Compliance audits by local governments*

(1) *A local government is to carry out a compliance audit for the period 1 January to 31 December in each year.*

(2) *After carrying out a compliance audit the local government is to prepare a compliance audit return in a form approved by the Minister.*

(3A) *The local government's audit committee is to review the compliance audit return and is to report to the council the results of that review.*

(3) *After the audit committee has reported to the council under sub regulation (3A), the compliance audit return is to be —*

(a) *presented to the council at a meeting of the council; and*

(b) *adopted by the council; and*

(c) *recorded in the minutes of the meeting at which it is adopted.*

15. *Certified copy of compliance audit return and other documents to be given to Departmental CEO*

(1) *After the compliance audit return has been presented to the council in accordance with regulation 14(3) a certified copy of the return together with —*

(a) *a copy of the relevant section of the minutes referred to in regulation 14(3)(c); and*

(b) *any additional information explaining or qualifying the compliance audit, is to be submitted to the Departmental CEO by 31 March next following the period to which the return relates.*

(2) *In this regulation —*

certified in relation to a compliance audit return means signed by —

(a) *the mayor or president; and*

(b) *the CEO.*

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Shire of Cue Strategic Community Plan 2017-2027

Outcome 2.1.3 Maintain accountability and financial responsibility

Consultation:

Rob Madson – Chief Executive Officer

Officer's Recommendation:

Voting Requirement: Absolute Majority

That Council, by absolute majority;

1. Accept the Audit Committee's recommendation to Council that Council adopt the 2019 Compliance Audit Return.
2. Adopt the 2019 Compliance Audit Report as presented in [Appendix 3](#).

Council Decision: 04032020

Voting requirement: Absolute Majority

MOVED: Cr Spindler

SECONDED: Cr Fitzpatrick

That Council, by absolute majority;

1. Accept the Audit Committee's recommendation to Council that Council adopt the 2019 Compliance Audit Return.
2. Adopt the 2019 Compliance Audit Report as presented in [Appendix 3](#).

CARRIED: 7/0

10.4 2019 – 2020 BUDGET REVIEW

APPLICANT:	Shire of Cue
DISCLOSURE OF INTEREST:	Nil
AUTHOR:	Richard Towell – Deputy Chief Executive Officer
DATE:	12 March 2020

Matters for Consideration:

To consider and adopt the Budget Review as presented in the Statement of Financial Activity for the period 1 July 2019 to 31 December 2019 as detailed in [Appendix 4](#).

Background:

A Statement of Financial Activity incorporating year to date budget variations and forecasts to 30 June 2020 for the period ending 31 December 2019 is presented for council to consider.

The *Local Government (Financial Management) Regulations 1996, regulation 33A*, requires that local governments conduct a budget review between 1 January and 31 March in each financial year. A copy of the review and determination is to be provided to the Department of Local Government within 30 days of the adoption of the review.

Comments:

The budget review has been prepared to include information required by the *Local Government Act 1995, Local Government (Financial Management) Regulations 1996* and Australian Accounting Standards. Council adopted a 10% and a \$25,000 minimum for the reporting of material variances to be used in the statements of financial activity and the annual budget review.

Statutory Environment:

Local Government (Financial Management) Regulations 1996

Regulation 33A

- (1) *Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.*
- (2A) *The review of an annual budget for a financial year must —*
 - (a) *consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year; and*

(b) consider the local government’s financial position as at the date of the review; and

(c) review the outcomes for the end of that financial year that are forecast in the budget.

Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.

(3) A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review.

**Absolute majority required.*

(4) Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department.

Policy Implications:

The budget is based on the principles contained in the Strategic Community Plan and the Corporate Business Plan.

Financial Implications:

The proposed amendments are made with the intention of more accurately reflecting the predicted financial outcome for the 2019-2020 financial year.

Strategic Implications:

The Budget Review has been developed based on existing strategic planning documents adopted by council.

Consultation:

Travis Bate - RSM Australia Pty Ltd
 Rob Madson – Chief Executive Officer

Officer’s Recommendation:

Voting Requirement: Absolute Majority

That Council by absolute majority:

1. Accept the budget review as presented in [Appendix 4](#).
and;
2. Adopt the revised budget figures as budget amendments for the year ending 30 June 2020.

Council Decision: 05032020

Voting requirement: Absolute Majority

MOVED: Cr Spindler

SECONDED: Cr Hogben

That Council by absolute majority:

1. Accept the budget review as presented in *Appendix 4*.
and;
2. Adopt the revised budget figures as budget amendments for the year ending 30 June 2020.

CARRIED: 5/2

AGAINST: Cr Houghton, Cr Fitzpatrick

10.5 OUTSTANDING PAYMENT OF RATES (LAND ACQUISITION) 27 ROBINSON ST CUE

APPLICANT: Shire of Cue
 DISCLOSURE OF INTEREST: Nil
 AUTHOR: Richard Towell – Deputy Chief Executive Officer
 DATE: 4 March 2020

Matters for Consideration:

Considering exercising the power of sale under the Local government Act 1995 without commencing legal proceedings, due to the cost of the proceedings being greater than the value of the property.

Background:

At the Ordinary meeting of Council held on 20 February 2018, Council resolved the following;

Council Decision: 08022018

Voting requirement: Absolute Majority

MOVED: CR SPINDLER

SECONDED: CR PRICE

That Council:

1. *Exercise the power of sale under section 6.64(1)(b) of the Local Government Act 1995 to proceed to a public auction for the property located at 6 Dowley Street, 27 Robinson Street, 41 Wittenoom Street and 52A Stewart St all of Cue.*
2. *Exercise the power to re-vest the land to the Crown under section 6.74 (1) of the Local Government Act 1995 for the property located at 109 Austin Street and 44 Kinsella Street, in Cue and L66 Boyd Street, Reedy.*
3. *Should the public auction be unsuccessful then move to sell the property via private sale.*
4. *Any amount in excess of that required to clear the legal costs and rates be applied to other costs associated with the original claim.*
5. *In the case that the sale amount is insufficient to cover the rates arrears and legal costs that the amount in excess of the rates arrears and legal costs be written off.*
6. *Authorise the CEO to finalise this transaction.*

CARRIED: 6/0

Thomas John Edwards (deceased) is the registered proprietor of the property. Probate was granted to West Australian Trustees Limited. West Australian Trustees Limited merged with Perpetual Trustees WA Limited who then became liable for the administration of the Deceased's Estate.

For the purposes of section 1.4 of the *Local Government Act 1995* (WA), Perpetual Trustees WA Limited ("**Perpetual Trustees**") is the owner of Lot 2 on Plan 915, being the whole of the land contained in Certificate of Title Volume 62 Folio 101, more commonly known as 27 Robinson Street, Cue, Western Australia ("**Property**").

As at 11 February 2020, the Shire of Cue ("**Shire**") has imposed local government rates and charges against the Property in the sum of \$9,079.55 ("**Rates**").

A portion of the Rates have remained outstanding for a period of more than three (3) years.

Attempts to recover outstanding payments for the property have not been successful. The Shire has not attempted to recover the outstanding rates and services charges through legal proceedings.

Elders Real Estate has provided the Shire with an appraisal of the Property, attached at [Appendix 5](#), which estimates its market value to be between \$1,000.00 to \$2,000.00.

CS Legal, the Shire's solicitors acting in relation to debt recovery, estimates their costs and disbursements to commence legal proceedings against, and liaise with, Perpetual Trustees to be between \$5,000.00 and \$10,000.00, given that Perpetual Trustees will likely make the Shire prepare all documents on their behalf, for execution, and also a deed of agreement in relation to the proceedings.

Perpetual Trustees may also make the Shire indemnify Perpetual Trustees for any costs incurred on their behalf in engaging legal representation which are estimated to be between \$1,500.00 and \$5,000.00.

If the Shire was to instruct CS Legal to commence legal proceedings and liaise with Perpetual Trustees, CS Legal estimates their fees and Perpetual Trustees' legal indemnification to be between \$6,500.00 and \$15,000.00, which would exceed the estimated value of the Property.

Comments:

To exercise the power of sale under section 6.68 of the *Local Government Act 1995*, it is a prerequisite that the Shire has, within the period of three years prior to the exercise of the power of sale, at least once attempted to recover the monies due to the Shire by way of legal proceedings under section 6.56 of the *Local Government Act 1995*.

The prerequisite can be waived if the Shire has a reasonable belief that the cost of proceedings under that section will equal or exceed the value of the land. In order to

progress the power of sale without commencing legal proceedings, the decision to do so and the reasons for the decision are to be recorded in the minutes of the meeting at which the decision is made.

It is recommended that Council implement the decision to exercise the power of sale without commencing legal proceedings as the most cost effective and least complicated way forward to bring this matter to a close.

Statutory Environment:

LOCAL GOVERNMENT ACT 1995

1.4 . Terms used

owner , where used in relation to land —

(a) means a person who is in possession as —

(iv) a trustee, executor, administrator, attorney, or agent of a holder, lessee, tenant, or mortgagee, mentioned in this paragraph;

11.6.56. Rates or service charges recoverable in court

(1) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.

Part 6, Division 6, sections 6.63 to 6.75 and Schedules 6.2 and 6.3 of the Local Government Act 1995 (the Act) and Part 5 of the Local Government (Financial Management) Regulations 1996 (FMR) regulations 72 to 78 and Forms 2 to 7.

6.64 . Actions to be taken

(1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*

(a) from time to time lease the land; or

(b) sell the land; or

(c) cause the land to be transferred to the Crown; or

(d) cause the land to be transferred to itself.

(2) *On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.*

- (3) *Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.*

12. 6.68. Exercise of power to sell land

- (1) *Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the **power of sale**) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.*
- (2) *A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —*
- (a) has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or*
- (b) having made reasonable efforts to locate the owner of the property is unable to do so.*
- (3A) *A local government is to ensure that a decision to exercise a power of sale without having, within the period of 3 years prior to the exercise of the power of sale, attempted under section 6.56 to recover the money due to it and the reasons for the decision are recorded in the minutes of the meeting at which the decision was made.*

Policy Implications:

D.1 Debt Recovery – 2.2 Recovery of Rates Arrears

Financial Implications:

This course of action is the most cost effective for the Shire to progress the non-payment of rates, allowing the Shire to proceed with taking possession of the property and exercising the power of sale.

Strategic Implications:

Nil

Consultation:

CS Legal

Rob Madson – Chief Executive Officer

Officer's Recommendation:

Voting Requirement: Simple Majority

That Council: pursuant to section 6.68(2)(a) of the *Local Government Act 1995* (WA), resolves to exercise its power of sale under Part 6 Division 6 Subdivision 6 of the *Local Government Act 1995* (WA) over Lot 2 on Plan 915, being the whole of the land contained in Certificate of Title Volume 62 Folio 101, more commonly known as 27 Robinson Street, Cue, in the State of Western Australia noting that the Shire of Cue has not made an attempt to recover the outstanding money under section 6.56 of the *Local Government Act 1995* (WA) within the last 3 years for the reason that the Shire reasonably believes that the costs of proceedings under that section will equal or exceed the value of the Property.

Council Decision: 06032020

Voting requirement: Simple Majority

MOVED: Cr Spindler

SECONDED: Cr Price

That Council: pursuant to section 6.68(2)(a) of the *Local Government Act 1995* (WA), resolves to exercise its power of sale under Part 6 Division 6 Subdivision 6 of the *Local Government Act 1995* (WA) over Lot 2 on Plan 915, being the whole of the land contained in Certificate of Title Volume 62 Folio 101, more commonly known as 27 Robinson Street, Cue, in the State of Western Australia noting that the Shire of Cue has not made an attempt to recover the outstanding money under section 6.56 of the *Local Government Act 1995* (WA) within the last 3 years for the reason that the Shire reasonably believes that the costs of proceedings under that section will equal or exceed the value of the Property.

CARRIED: 7/0

10.6 OUTSTANDING PAYMENT OF RATES (LAND ACQUISITION) 41 WITTENOOM ST CUE

APPLICANT: Shire of Cue
 DISCLOSURE OF INTEREST: Nil
 AUTHOR: Richard Towell – Deputy Chief Executive Officer
 DATE: 4 March 2020

Matters for Consideration:

Considering exercising the power of sale under the Local government Act 1995 without commencing legal proceedings, due to the cost of the proceedings being greater than the value of the property.

Background:

At the Ordinary meeting of Council held on 20 February 2018, Council resolved the following;

Council Decision: 08022018

Voting requirement: Absolute Majority

MOVED: CR SPINDLER

SECONDED: CR PRICE

That Council:

7. *Exercise the power of sale under section 6.64(1)(b) of the Local Government Act 1995 to proceed to a public auction for the property located at 6 Dowley Street, 27 Robinson Street, 41 Wittenoom Street and 52A Stewart St all of Cue.*
8. *Exercise the power to re-vest the land to the Crown under section 6.74 (1) of the Local Government Act 1995 for the property located at 109 Austin Street and 44 Kinsella Street, in Cue and L66 Boyd Street, Reedy.*
9. *Should the public auction be unsuccessful then move to sell the property via private sale.*
10. *Any amount in excess of that required to clear the legal costs and rates be applied to other costs associated with the original claim.*
11. *In the case that the sale amount is insufficient to cover the rates arrears and legal costs that the amount in excess of the rates arrears and legal costs be written off.*
12. *Authorise the CEO to finalise this transaction.*

CARRIED: 6/0

Edward Earnest Clarkson (deceased) is the registered proprietor of the property. Probate was granted to the Public Trustee. At the time that the estate was reported to the Public Trustee, Mr Clarkson's family was unaware that he was the registered owner of the property.

Under the terms of the will the residuary of the estate was Joan Olive Evans (deceased). The family of the late Mrs Evans does not wish the Public Trustee to take any further action in respect to the property and are agreeable to the Shire exercising its power to sell the property due to non-payment of rates.

For the purposes of section 1.4 of the *Local Government Act 1995* (WA), the Public Trustee is the owner of Lot 417 on Deposited Plan 222353, being the whole of the land contained in Certificate of Title Volume 1044 Folio 512, more commonly known as 41 Wittenoom Street, Cue WA ("**Property**").

As at 11 February 2020, the Shire of Cue ("**Shire**") has imposed local government rates and charges against the Property in the sum of \$11,512.97 ("**Rates**").

A portion of the Rates have remained outstanding for a period of more than three (3) years.

Attempts to recover outstanding payments for the property have not been successful. The Shire has not attempted to recover the outstanding rates and services charges through legal proceedings.

Elders Real Estate has provided the Shire with an appraisal of the Property, attached at [Appendix 5](#), which estimates its market value to be between \$1,000.00 to \$2,000.00.

CS Legal, the Shire's solicitors acting in relation to debt recovery, estimates their costs and disbursements to commence legal proceedings against, and liaise with, the Public Trustee to be between \$5,000.00 and \$10,000.00, given that the Public Trustee will likely make the Shire prepare all documents on their behalf, for execution, and also a deed of agreement in relation to the proceedings.

The Public Trustee may also make the Shire indemnify the Public Trustee for any costs incurred on their behalf in engaging legal representation which are estimated to be between \$1,500.00 and \$5,000.00.

If the Shire was to instruct CS Legal to commence legal proceedings and liaise with the Public Trustee, CS Legal estimates their fees and the Public Trustees' legal indemnification to be between \$6,500.00 and \$15,000.00, which would exceed the estimated value of the Property.

Comments:

To exercise the power of sale under section 6.68 of the Local Government Act 1995, it is a prerequisite that the Shire has, within the period of three years prior to the exercise of the power of sale, at least once attempted to recover the monies due to the Shire by way of legal proceedings under section 6.56 of the *Local Government Act 1995*.

The prerequisite can be waived if the Shire has a reasonable belief that the cost of proceedings under that section will equal or exceed the value of the land. In order to progress the power of sale without commencing legal proceedings, the decision to do so and the reasons for the decision are to be recorded in the minutes of the meeting at which the decision is made.

It is recommended that Council implement the decision to exercise the power of sale without commencing legal proceedings as the most cost effective and least complicated way forward to bring this matter to a close.

Statutory Environment:

LOCAL GOVERNMENT ACT 1995

1.4 . Terms used

owner , where used in relation to land —

- (a) means a person who is in possession as —
 - (iv) a trustee, executor, administrator, attorney, or agent of a holder, lessee, tenant, or mortgagee, mentioned in this paragraph;

13.6.56. Rates or service charges recoverable in court

- (1) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.

Part 6, Division 6, sections 6.63 to 6.75 and Schedules 6.2 and 6.3 of the Local Government Act 1995 (the Act) and Part 5 of the Local Government (Financial Management) Regulations 1996 (FMR) regulations 72 to 78 and Forms 2 to 7.

6.64 . Actions to be taken

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*
 - (a) from time to time lease the land; or*
 - (b) sell the land; or*
 - (c) cause the land to be transferred to the Crown; or*

(d) cause the land to be transferred to itself.

- (2) On taking possession of any land under this section, the local government is to give to the owner of the land such notification as is prescribed and then to affix on a conspicuous part of the land a notice, in the form or substantially in the form prescribed.*
- (3) Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.*

14.6.68. Exercise of power to sell land

- (1) Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b) (in this Subdivision and Schedule 6.3 referred to as the **power of sale**) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due to it.*
- (2) A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —*
 - (a) has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or*
 - (b) having made reasonable efforts to locate the owner of the property is unable to do so.*
- (3A) A local government is to ensure that a decision to exercise a power of sale without having, within the period of 3 years prior to the exercise of the power of sale, attempted under section 6.56 to recover the money due to it and the reasons for the decision are recorded in the minutes of the meeting at which the decision was made.*

Policy Implications:

D.1 Debt Recovery – 2.2 Recovery of Rates Arrears

Financial Implications:

This course of action is the most cost effective for the Shire to progress the non-payment of rates, allowing the Shire to proceed with taking possession of the property and exercising the power of sale.

Strategic Implications:

Nil

Consultation:

CS Legal

Rob Madson – Chief Executive Officer

Officer’s Recommendation:

Voting Requirement: Simple Majority

That Council: pursuant to section 6.68(2)(a) of the *Local Government Act 1995 (WA)* Council resolves to exercise its power of sale under Part 6 Division 6 Subdivision 6 of the *Local Government Act 1995 (WA)* over Lot 417 on Deposited Plan 222353, being the whole of the land contained in Certificate of Title Volume 1044 Folio 512, more commonly known as 41 Wittenoom Street, Cue, in the State of Western Australia noting that the Shire of Cue has not made an attempt to recover the outstanding money under section 6.56 of the *Local Government Act 1995 (WA)* within the last 3 years for the reason that the Shire reasonably believes that the costs of proceedings under that section will equal or exceed the value of the Property.

Council Decision: 07032020

Voting requirement: Simple Majority

MOVED: Cr Spindler

SECONDED: Cr Hogben

That Council: pursuant to section 6.68(2)(a) of the *Local Government Act 1995 (WA)* Council resolves to exercise its power of sale under Part 6 Division 6 Subdivision 6 of the *Local Government Act 1995 (WA)* over Lot 417 on Deposited Plan 222353, being the whole of the land contained in Certificate of Title Volume 1044 Folio 512, more commonly known as 41 Wittenoom Street, Cue, in the State of Western Australia noting that the Shire of Cue has not made an attempt to recover the outstanding money under section 6.56 of the *Local Government Act 1995 (WA)* within the last 3 years for the reason that the Shire reasonably believes that the costs of proceedings under that section will equal or exceed the value of the Property.

CARRIED: 7/0

10.7 LOCAL GOVERNMENT HOUSE TRUST- DEED OF VARIATION

APPLICANT: WA Local Government Association
 DISCLOSURE OF INTEREST: Nil
 AUTHOR: Rob Madson –Chief Executive Officer
 DATE: 12 March 2020

Matters for Consideration:

A request by the WA Local Government Association (WALGA) for Council's consent by formal resolution to a variation to the Trust Deed for the Local Government House Trust.

Background:

The Shire of Cue is a unit holder and beneficiary to the Local Government House Trust, holding 1 unit as advised in WALGA's recent Quarterly Report Q4 2019 (copy attached at [Appendix 6](#)).

The Trust's Board of Management is seeking to vary the Trust Deed in order to assist the Trust's income tax exempt status. As stipulated by the Deed, the Trust requires consent of at least 75 per cent of all beneficiaries in order to execute this variation.

As a beneficiary, the Shire of Cue is requested to consent to the Deed of Variation, attached at [Appendix 7](#).

Further details on the particular Deed Variations and objectives to be achieved by this variation, as provided by WALGA, are outlined below:

Background on the Local Government House Trust

The Local Government House Trust ("The Trust") exists primarily to provide building accommodation for the Western Australian Local Government Association. Since January 2014, the Trust has provided WALGA with accommodation at 170 Railway Parade West Leederville.

The current trust deed commenced in 1993 and was amended in 2002 to reflect the merger of the metropolitan and country associations into WALGA. The current Trust Deed pronounces WALGA as Trustee and unit holders as Beneficiaries, with the Trustee holding property and associated monies "upon Trust" and in proportion to the units provided.

Commencement date of the current deed is 17 February 1993, with a vesting date 79 years from commencement - which means that the Trust ends in 2072.

The Trust is exempt from income tax on the basis of being a State / Territory Body (STB) pursuant to Division 1AB of the Income Tax Assessment Act 1936.

Trust Deed Variation

Trust Deed amendments set out in the Deed of Variation are based on legal advice and are intended to assist the Trust's income tax exempt status by strengthening the position that the Trust is a State / Territory Body (STB).

Legal advice identified that the Trustee's ability to retire and appoint a new Trustee might affect the Trust's classification as a State or Territory Body (STB). This view, while based upon highly technical grounds, is a risk nonetheless.

Subsequently the Deed of Variation aims to strengthen the position that the Trust is a STB through the following amendments:

1. removing the existing Trustee's power to retire and appoint a new Trustee (Clause 2.1 and 2.2 (22.3) of the Deed of Variation)
2. enabling the beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and
3. ensuring that the Board of Management is the 'governing body' of the Trust (Clause 2.3 of the Deed of Variation)

The three proposed amendments when applied to the relevant clauses inserted by the Deed of Variation dated 5 June 2002 will subsequently read as follows (proposed amendments shown in red text):

1. Variation 2.1 amends clause 22.1 to point to additional clause:

22.1 Any Trustee of the Trust may retire as Trustee of the Trust. ~~The~~ **Subject to clause 22.3, the** right to appoint any new or additional trustee or trustees of the Trust is hereby vested in the retiring or continuing trustee. A corporation or incorporated association may be appointed as Trustee of the Trust.

2. Variation 2.2 inserts two new clauses:

22.3 The retiring or continuing trustee shall only be entitled to appoint any new or additional trustee of the Trust with the consent of not less than 75% of the Beneficiaries.

22.4 The Beneficiaries may at any time by Special Resolution:

- (a) remove a Trustee from the office as Trustee of the Trust; and
- (b) appoint such new or additional Trustee.

3. Variation 2.3 insert a new clause 13A

13A Delegation to the Board of Management

Unless the Beneficiaries otherwise direct (such direction to be given by not less than 75% of the Beneficiaries), the Trustees shall delegate all of the powers authorities and discretions contained in subclauses (a) to (x) of clause 12 to the Board of Management. The Trustees shall, at the direction of the Board of Management, do such things as may be necessary to give effect to the exercise of a power, authority or discretion by the Board of Management.

Comment

The first two amendments outlined above remove powers granted to the Trustee in the 2002 Deed Variation resulting from the merger to a single Association representing WA Local Governments. These amendments which previously facilitated the transfer of trusteeship to the then new Western Australian Local Government Association are removed, but with the clarification that any appointment must be with the consent of the beneficiaries.

The final amendment intends to confirm that power rests with the Board of Management. As the Board of Management comprises Local Governments, this satisfies the requirements of a STB for tax purposes. This amendment reflects the actual operation of the Trustee in implementing the decisions of the Board of Management whilst retaining sufficient operational discretion to place and renew investments and pay suppliers.

These amendments provide greater power to beneficiaries through the Board of Management, and as such it is anticipated they will be considered acceptable.

Comments:

Council has been requested to grant consent for the Trustee to formally execute the Deed of Variation. The document does not require signing by the Shire of Cue.

An excerpt from the 1994 Trust Deed, detailing the powers, authorities and discretions contained in Clause 12, is attached at [Appendix 8](#).

Statutory Environment:

Local Government House Trust Deed clauses detailed above.

Policy Implications:

Nil.

Financial Implications:

Nil.

Strategic Implications:

Nil.

Consultation:

Cr Les Price – WALGA Murchison Country Zone Representative

Officer’s Recommendation: **Voting Requirement:** Simple Majority

That Council grant consent for the Trustee to formally execute the Deed of Variation of the Local Government House Trust, as supplied by the WA Local Government Association on 19 February 2020, presented at [Appendix 7](#).

Council Decision: 08032020	Voting requirement: Simple Majority
MOVED: Cr Price	SECONDED: Cr Houghton
That Council grant consent for the Trustee to formally execute the Deed of Variation of the Local Government House Trust, as supplied by the WA Local Government Association on 19 February 2020, presented at Appendix 7 .	
CARRIED: 7/0	

10.8 MINING LEASE APPLICATION CUE TOWNSITE

APPLICANT: Mr Gary Tegg

DISCLOSURE OF INTEREST: Proximity interest - The author is owner of a 1/3 share in mining tenement P 20/2285 which adjoins proposed tenement P 20/2393.

AUTHOR: Rob Madson - Chief Executive Officer

DATE: 13 March 2020

Matters for Consideration:

Objection to the granting of a mining licence for a tenement encroaching on Cue townsite.

Background:

Mr Gary Tegg lodged tenement application P 20/2393 on 28 June 2019. In accordance with Council policy C.1, and after seeking clarification from Council at an information Forum, I lodged an objection to the tenement application on behalf of the Shire as the majority of the tenement area is within the Cue townsite boundary. Mr Tegg has since requested that the objection be reconsidered and he be allowed to conduct limited mining activity on the land. I have deferred consideration of the Shire's objection and requested more detail in relation to Mr Tegg's proposed intentions for the tenement in order for the matter to be presented to Council for reconsideration. Mr Tegg's response is attached at [Appendix 10](#).

The proposed tenement encompasses the area formerly held by Golden State Mining as mining lease M 20/548, which itself comprised former tenements P 20/2026, P 20/2067 and P 20/2232, previously held by Western Mining.

Western Mining were granted permission to conduct scrape and detect operations on tenement P 20/2026 to a depth of 200mm at the Council meeting of 15 April 2014.

Following a request from Western Mining to approve mining activity contained in a proposed programme of works on mining tenements which encroach upon the Cue town site, Council, at their meeting of 21 November 2017, passed the following resolution:

That Council indicate its approval of the mining activities proposed by Western Mining detailed in their programme of work application to the Department of Mines and petroleum dated 13 November 2017, subject to adherence to the conditions contained in the document titled Western Mining Pty Ltd, Management Plan – P 20/2026, November 2017.

Following a later request to amend that approval, Council, at their meeting of 19 June 2018, passed the following resolution:

That Council agree to amend the approval granted to Western Mining on 21 November 2017 of mining activities on tenements encroaching on the Cue townsite by including

additional areas on tenements P 20/2026 and P 20/2067 as detailed in the plan contained at Appendix 8.

Comments:

I have agreed to submit Mr Tegg’s request for reconsideration of the Shire’s objection as Council has previously granted approval for mining activity in this area. Should Council agree to withdraw the objection, Mr Tegg will be required to make a further application to Council seeking approval for his Programme of Work prior to mining activity commencing.

Statutory Environment:

Sections 23 to 26 of the *Mining Act 1978*.

Policy Implications:

Council policy C.1 refers:

Cue Townsite

1.1 The shire generally opposes the granting of any mining lease or license that may affect;

a) The satisfactory continuation of existing urban uses within and adjacent to the existing townsite; and

b) The planned use of the land in the vicinity of the townsite.

c) The Council may by decision permit limited mining activities within Cue townsite but only under conditions that will be determined at the time by the Council.

1.2 The Council may approve mining activities close to but external from the Cue townsite and such conditional approval may include but will not be limited to landscaping, dust/noise suppression measures, and any other provisions considered by the Council to be necessary to protect and preserve the amenity of the existing nearby uses especially residential uses.

Financial Implications:

Should the tenement be granted, the property will be assessed and rates applied.

Strategic Implications:

Nil

Consultation:

Gary Tegg - Applicant

Officer's Recommendation:

Voting Requirement: Simple Majority

That Council:

1. Continue with the objection against mining tenement application P 20/2393 on the grounds that Council is opposed to mining activity within the Cue townsite.

OR

2. Withdraw the objection to mining tenement application P 20/2393.

Council Decision: 09032020

Voting requirement: Simple Majority

MOVED: Cr Fitpatrick

SECONDED: Cr Dennis

That Council withdraw the objection to mining tenement application P 20/2393.

CARRIED: 7/0

11. MOTIONS BY MEMBERS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

12 MOTIONS FOR CONSIDERATION AT THE NEXT MEETING

Nil

13. NEW BUSINESS OF AN URGENT NATURE

13.1 LATE ITEM - REPORT ON AUDIT MATTER

APPLICANT: Shire of Cue
 DISCLOSURE OF INTEREST: Nil
 AUTHOR: Richard Towell – Deputy Chief Executive Officer
 DATE: 17 March 2020

Matters for Consideration:

Receiving of the report prepared to address matters identified as significant by the Auditor in the 2018-2019 Audit Report.

Background:

Section 7.12 of the *Local Government Act 1995* requires a local government to prepare a report addressing any matters identified as significant by the Auditor in the Audit Report and present this report to the Audit Committee to address the significant matters raised and outline what action(s) the Local government has taken or intends to take in respect of each of the matters raised. This report has been prepared and is attached as an [Appendix](#).

Comments:

The report has been prepared in the format recommended in Departmental Circular 05-2019, Local Government Auditing to identify the matters and outline actions taken or intended to be taken to address the matters.

Statutory Environment:

Local Government Act 1995

7.12A. Duties of local government with respect to audits

- (4) *A local government must —*
 - (a) *prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and*
 - (b) *give a copy of that report to the Minister within 3 months after the audit report is received by the local government.*
- (5) *Within 14 days after a local government gives a report to the Minister under subsection (4)(b), the CEO must publish a copy of the report on the local government’s official website.*

Local Government (Audit) Regulations 1996

16. *Functions of audit committee*

An audit committee has the following functions —

- (f) to oversee the implementation of any action that the local government —*
- (ii) has stated it has taken or intends to take in a report prepared under section 7.12A(4)(a);*

Policy Implications:

Nil

Financial Implications:

Nil

Strategic Implications:

Shire of Cue Strategic Community Plan 2017-2027

Outcome 2.1.3 Maintain accountability and financial responsibility.

Consultation:

Rob Madson – Chief Executive Officer

Travis Bate – RSM Australia Pty Ltd

Council Decision:

Voting Requirement: Simple Majority

That Council receives the report addressing the significant matters raised in the 2018-2019 Audit Report.

Council Decision: 10032020

Voting requirement: Simple Majority

MOVED: Cr Fitzpatrick

SECONDED: Cr Price

That Council receives the report addressing the significant matters raised in the 2018-2019 Audit Report.

CARRIED: 7/0

14 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Council Decision: 11032020 **Voting requirement:** Simple Majority

MOVED: Cr Fitzpatrick **SECONDED:** Cr Spindler

That the meeting be closed to members of the public to discuss confidential matters.

CARRIED: 7/0

7.28pm, The gallery and visitors left the meeting.

7.28pm, Ms Bachraty left the meeting.

14.1 TENDER – CUE RAILWAY STATION REFURBISHMENT

APPLICANT: Shire of Cue
DISCLOSURE OF INTEREST: Nil
AUTHOR: Rob Madson – Chief Executive Officer
DATE: 12 March 2020

Matters for Consideration:

Awarding of the tender RFT 2020-01 for the refurbishment of the Cue Railway Station.

Council Decision: 12032020 **Voting requirement:** Simple Majority

MOVED: Cr Price **SECONDED:** Cr Dennis

That Council award tender RFT 2020-01 for refurbishment of Cue Railway Station to Hi Constructions (Aust) Pty Ltd, with the contract having an estimated value of \$241,720.25 + GST as calculated by submitted rates.

CARRIED: 5/2

AGAINST: Cr Houghton, Cr Fitzpatrick

14.2 CONFIDENTIAL ITEM – STAFF MATTER

A report on this item, prepared by Fitz Gerald Strategies, is attached at [Appendix 9](#) which is provided under a separate cover.

Council Decision: 13032020	Voting requirement: Simple Majority
MOVED: Cr Spindler	SECONDED: Cr Houghton
That Council consider this confidential report and notes the nature of the CEO performance review outcome.	
CARRIED: 7/0	

Council Decision: 14032020	Voting requirement: Simple Majority
MOVED: Cr Dennis	SECONDED: Cr Houghton
That Council resolves to adopt the report and notes that the CEO’s performance review for the 2018/2019 year resulted in a high degree of Council satisfaction with the performance by the CEO.	
CARRIED: 6/1	
AGAINST: Cr Fitzpatrick	

Council Decision: 15032020	Voting requirement: Simple Majority
MOVED: Cr Dennis	SECONDED: Cr Hogben
That Council resolves to increase the CEO’s cash remuneration by increasing the cash component of the Remuneration Package by 2%.	
CARRIED: 6/1	
AGAINST: Cr Fitzpatrick	

Council Decision: 16032020	Voting requirement: Simple Majority
MOVED: Cr Houghton	SECONDED: Cr Dennis
That Council resolves to adopt a new set of performance criteria for use when conducting future CEO Performance Reviews.	
CARRIED: 7/0	

Council Decision: 17032020	Voting requirement: Simple Majority
MOVED: Cr Fitzpatrick	SECONDED: Cr Houghton
That the meeting be reopened to members of the public.	
CARRIED: 7/0	

Mr Rob Madson, Mr Richard Towell and Ms Tracy Bachraty returned to the meeting at 8.16pm.

15 CLOSURE

The Presiding Member thanked those present for attending the meeting and declared the meeting closed at 8.18pm

<p>To be confirmed at Ordinary Meeting on the 21 April 2020.</p> <p>Signed:.....</p> <p>Presiding Member at the Meeting at which time the Minutes were confirmed.</p>
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