



11.2 – Consideration of appointment of the Western Australian Electoral Commissioner as being responsible for the conduct of the Fresh Election in the North Ward as a voting in person election (SJ3929)

Responsible Officer:	Manager Governance and Strategy
Senior Officer:	CEO
Disclosure of Officer's Interest:	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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Report Purpose

The purpose of this report is to enable Council to consider formally declaring the Electoral Commissioner to be responsible for the conduct of the fresh election in the North Ward to be conducted on a date set by the Court of Disputed Returns.

As noted in the Officer's report presented at the 11 July 2022 Special Council Meeting, this matter is presented urgently to enable Council to make a determination within the legislatively mandated timeframes in the *Local Government Act 1995* (the Act).

Relevant Previous Decisions of Council

Special Council Meeting – 11 July 2022 – SCM18/07/22 - COUNCIL RESOLUTION / Officer Recommendation

That Council:

- 1. RESOLVES that Saturday, 22 October 2022 is the preferred date of the fresh election in North Ward and REQUESTS that the Chief Executive Officer inform the Western Australian Electoral Commission and the Court of this resolution.*
- 2. NOTES that the swearing-in of Councillors elected would occur on Monday, 24 October 2022 with an induction of Councillors elected occurring prior to the holding on the November 2022 Ordinary Council Meeting.*
- 3. REQUESTS that the Chief Executive Officer seek the written agreement of the Western Australian Electoral Commissioner to conduct the fresh election in the North Ward as a voting in person election as defined in section 4.61 of the Act.*
- 4. NOTES that a resolution to declare the Western Australian Electoral Commissioner responsible for the election under section 4.20(4) of the Act must be made before 3 August 2022 following the Western Australian Electoral Commissioner's written agreement sought in point 3.*
- 5. REQUESTS that the Shire President write to the Minister to express interest in the Shire participating in electronic voting as soon as possible following the legislative reform program.*



Background

On 1 July 2022, the Court of Disputed Returns constituted by the Magistrates Court of Western Australia declared the result of the October 2021 Serpentine Jarrahdale Council election for the North Ward to be invalid.

The date of the fresh election will be set by the Magistrates Court following the receipt of submissions from the Shire and the Western Australian Electoral Commission.

At a Special Council Meeting held on 11 July 2022, Council resolved that Saturday, 22 October 2022 be the preferred date of the fresh election.

At the same meeting Council resolved to request that the Chief Executive Officer seek the written agreement of the Western Australian Electoral Commissioner to conduct the fresh election in the North Ward as a voting in person election as defined in section 4.61 of the Act.

Community / Stakeholder Consultation

Policy Concept Forum

Meeting Date	4 July 2022
Councillors in Attendance	Cr Rich, Cr Atwell, Cr Byas, Cr Duggin, Cr Strange

Statutory Environment

Section 4.20(4) of the Act states that a local government may, having first obtained the written agreement of the Electoral Commissioner, declare the Electoral Commissioner to be responsible for the conduct of an election. A declaration under section 4.20 of the Act must be made:

- by Absolute Majority; and
- be made more than 80 days before the election day.

Section 4.61 of the Act provides that an election can be conducted as either a postal election or voting in person election. A local government may decide by absolute majority to conduct an election as a postal election. In the absence of an alternative resolution, an election is to be conducted as a voting in person election.

Comment

At a Special Council Meeting held on 11 July 2022, Council resolved to request the Western Australian Electoral Commissioner to conduct the fresh election in the North Ward as a voting in person election as defined in section 4.61 of the Act. Officers notified the Electoral Commission of Council's decision on Tuesday, 12 July 2022.

On Friday 15 July 2022 the Western Australian Electoral Commissioner provided written agreement to the Shire to conduct the fresh election as a voting in person election. A copy of the agreement is contained in **Attachment 1**.



In providing the agreement, the WAEC has reiterated that the estimated costs of a voting in person election is approximately \$22,000. This figure is based on assumptions such as the number of electors and number and location of polling places which will be finalised with the appointed Returning Officer in the event that Council declares that WAEC to conduct the election.

A commentary and assessment of the two options for the two types of election method was set out in the Officer's report to the Special Council Meeting held on 11 July 2022. There is no new information in this regard.

Following the provisions of section 4.20 a formal resolution of Council declaring the Electoral Commissioner to be responsible for the conduct of an election is required to give effect to Council's resolution at the 11 July 2022 Special Council Meeting.

A Council resolution to this effect will enable the Electoral Commissioner and Officers to proceed with arrangements for the fresh election on a date set by the Court of Disputed Returns without delay in accordance with legislation.

If Council does not agree to this approach, Council's resolution made at the November 2018 Ordinary Council meeting would prevail and the fresh election would be held as a postal election. This could create some confusion given Council's resolution at the 11 July 2022 Special Council Meeting.

Under section 4.20 of the Act, if the fresh election is set to be held on Council's preferred date of Saturday, 22 October 2022, a declaration in this regard cannot be made or changed after 3 August 2022.

Options and Implications

Option 1

That Council

1. In accordance with section 4.20 of the *Local Government Act 1995*, having first obtained the written agreement of the Electoral Commissioner, **DECLARES** the Electoral Commissioner to be responsible for the conduct of the fresh election in the North Ward on a date fixed by the Court of Disputed Returns; and
2. **RESOLVES** that the fresh election be held as a voting in person election as defined in section 4.61 of the Act
3. **REQUESTS** that the Chief Executive Officer write to the Electoral Commissioner advising of Council's resolution.

Option 2

That Council:

1. **NOTES** that in the absence of a resolution to the contrary that the fresh election in the North Ward will be conducted as a postal election in accordance with Council's resolution made at the November 2018 Ordinary Council Meeting; and
2. **REQUESTS** that the Chief Executive Officer write to the Electoral Commissioner advising of Council's resolution.



Option 1 is recommended.

Conclusion

To give effect to Council's resolution made at the 11 July 2022 Special Council Meeting within the timeframes set out in the Act it is recommended that Council formally resolve to declare the Western Australian Electoral Commission as responsible for the fresh election in the North Ward and that the election be held as a voting in person election.

Attachments

- **11.2 - attachment 1** – Serpentine Jarrahdale Agreement Letter Voting in Person Fresh Election (E22/8923)

Alignment with our Strategic Community Plan

Outcome 4.1	A resilient, efficient and effective organisation
Strategy 4.1.1	Provide efficient, effective, innovative, professional management of Shire operations to deliver the best outcome for the community within allocated resources
Outcome 4.2	A strategically focused Council
Strategy 4.2.3	Provide clear strategic direction to the administration

Financial Implications

The costs associated with a voting in person election (\$22,000) are estimated by the WAEC to be less than those of a postal election (\$30,000). Both an in person and postal election may also have costs associated with securing a venue for a polling place. This could be several thousand dollars depending on the location.

Costs for the election will be funded from the election reserve. A budget variation to give effect to this will be presented at the first quarter budget review.



Risk Implications

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	That the decision to hold a voting in person election may result in lower participation rates and associated community concern.		Reputation	Likely	Moderate	SIGNIFICANT	
2	That the decision to hold a postal election contrary to Council's previous determination may result in community concern related to the integrity of the election and a compromise in relationship between the Shire and the WAEC.		Reputation	Unlikely	Major	SIGNIFICANT	

Voting Requirements: Absolute Majority (section 4.20 of the Act)

Officer Recommendation

That Council

1. In accordance with section 4.20 of the *Local Government Act 1995*, having first obtained the written agreement of the Electoral Commissioner, **DECLARES** the Electoral Commissioner to be responsible for the conduct of the fresh election in the North Ward on a dated fixed by the Court of Disputed Returns; and
2. **RESOLVES** that the fresh election be held as a voting in person election as defined in section 4.61 of the Act
3. **REQUESTS** that the Chief Executive Officer write to the Electoral Commissioner advising of Council's resolution.