



Special Council Meeting – 15 June 2022 – 1.1 – Request for Attendance by Electronic Means in Public Health Emergency

1.1 – Request for Attendance by Electronic Means in Public Health Emergency (SJ3764)	
Councillor	Councillor Singh
Disclosure of Officers 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> .

Background

On Sunday, 12 June 2022, Councillor Singh emailed the Chief Executive Officer advising that he had tested positive for COVID-19 on Thursday, 9 June 2022 and would be required to isolate for one week and requesting that he attend the 15 June 2022 Special Council Meeting via electronic means.

On Monday, 13 June 2022, Councillor Singh emailed the Chief Executive Officer with supplementary information to enable consideration under 14C of the *Local Government (Administration) Regulations 1996*.

Statutory Framework

Section 5.21 of the *Local Government Act 1995* states that each council member who is present at a meeting of the Council is entitled to one vote. Except for the specific exceptions below, in accordance with the *Local Government (Administration) Regulations 1996*, a Council Member must be physically present to participate.

The exceptions are:

- Approval under Regulation 14A to participate via telephone when the person is in a suitable place within Western Australia that is 150km or further from the meeting location (Absolute Majority);
- Approval under Regulation 14B to participate via telephone if a councillor is prevented from being physically present at a meeting of the council because of fire, flood, lightning, movement of land, storm, or any other natural disaster;
- Approval under Regulation 14C to participate via electronic means if:
 - (a) a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and
 - (b) because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting; and
 - (c) the member is authorised to attend the meeting by electronic means by —
 - (i) the mayor; or
 - (ii) the president; or
 - (iii) the council.

Contact Us

Enquiries

Call: (08) 9526 1111
Fax: (08) 9525 5441
Email: info@sjshire.wa.gov.au

In Person

Shire of Serpentine Jarrahdale
6 Paterson Street, Mundijong WA 6123
Open Monday to Friday 8.30am-5pm (closed public holidays)



www.sjshire.wa.gov.au



- A meeting declared under Regulation 14D to be an electronic meeting because:
 - a public health emergency, state of emergency or direction issued under either the *Public Health Act 2016* or *Emergency Management Act 2005* exists in the whole or a part of the area of the district of a local government; and
 - because of the public health emergency or state of emergency, the mayor, president or council considers it appropriate for the meeting to be held by electronic means.

In accordance with section 5.20 of the *Local Government Act 1995*, the authorisation from Council must occur through a resolution of Council.

Officer Comment

Councillor Singh is requesting an approval under Regulation 14C to participate via electronic means. An approval under Regulation 14C requires two conditions that both must be met:

1. a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and
2. because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting.

In February 2022, Council adopted Council Policy 3.3.7 – Electronic Meetings which provides a framework for determining approval under Regulation 14C. The policy states:

“An application to participate electronically under r14C should be made to the Chief Executive Officer at least 72 hours prior to the meeting. The person applying for electronic participation should provide in their application sufficient information to enable the decision-maker to determine if the requirements of r14C(a) and r14C(b) are met and must provide reasons why the Councillor will be prevented from attending the meeting in person.

The Chief Executive Officer will present the application in the first instance to the President for consideration.

As required, the application can be presented to Council for consideration as part of the attendances portion of the meeting. Council may authorise participation via a simple majority decision. The minutes of the meeting shall record whether electronic participation was granted or refused by the President or Council.”

In respect to the first element required by legislation, a State of Emergency is present having been most recently extended to 17 June 2022 by the Minister for Emergency Services and a Public Health Emergency is present having been most recently extended for a period of 14 days on 9 June 2022 by the Minister for Health.

In respect to the second element required by legislation, approval can be granted if because of the public health emergency or state of emergency, the member is unable, or considers it appropriate, to be present in person at a meeting.

The use of the term ‘because’ in the regulation means that a correlation or cause and effect needs to exist between the public health emergency and the inability to attend the meeting in person. In other words, to be approved to attend electronically, a Councillor must not be able to, or considers it inappropriate, to be present in person because of a State of Emergency or Public Health Emergency.



In the 13 June 2022 email, Councillor Singh advised that he tested positive for COVID-19 on Thursday, 9 June 2022 and will clear isolation on Thursday, 16 June 2022. Councillor Singh also provided a photo of a Rapid Antigen Test showing a positive result.

It is a requirement under the *COVID Transition (Testing and Isolation) Directions (NO15)* under the *Emergency Management Act 2005*, for a person to isolate for a period of 7 days after receiving a positive test result for COVID-19 after taking a Rapid Antigen Test.

To grant authorisation, Council must be satisfied that because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at the meeting.

In the event that Council authorises Councillor Singh to attend via electronic means, Officers will connect Councillor Singh via Microsoft teams. The connection to and from the Chambers is audio only. In the event that Council does not authorise Councillor Singh to attend via electronic means, Officers will take a moment to advise Councillor Singh via telephone while the meeting continues.

Options

Option 1

That Council:

1. In accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996*, AUTHORISES Councillor Singh to participate at the meeting via electronic means because a public health emergency or a state of emergency exists in the whole or a part of the area of the district of a local government; and because of the public health emergency or state of emergency, the member is unable, or considers it inappropriate, to be present in person at a meeting.
2. In accordance with clause 18.1 of the Shire's Standing Orders, RESOLVES to suspend the following clauses of the Standing Orders to facilitate the participation in the meeting via electronic means:
 - a. Clause 8.2 – Members to Occupy Own Seats
 - b. Clause 9.1 – Members wishing to Speak

Option 2

That Council in accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996* DOES NOT AUTHORISE Councillor Singh to participate at the meeting via electronic means as the required threshold criteria for participation under the Act has not been met.

Voting Requirements: Simple Majority

Officer Recommendation

That Council makes a determination in accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996* as set out in the options above.