

Special Council Meeting – 28 July 2021 – 1.1 – Request for Attendance by Electronic Means in Public Health Emergency

1.1 – Request for Attendance by Electronic Means in Public Health Emergency (SJ3599)

Councillor	Councillor Coales
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 Thursday, 22 July 2021, Councillor Coales emailed Councillors stating that:

“The changes to the quarantine arrangements in Western Australia will prevent me from physically attending the Chambers to participate in the recently advertised Special Council Meeting on 28th July. I'm seeing your permission to participate electronically as permitted under the special arrangements in place during this current state of emergency.”

In support of his application, Councillor Coales attached a copy of his G2G pass indicating that under the category of Active Australian Military he would be required to self-quarantine.

The subsequent correspondence from Councillor Coales and the Shire President, Councillor Michelle Rich regarding this matter is contained in **attachment 1**.

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

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- 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 Coales 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 respect to the first element, a State of Emergency and Public Health Emergency is present having been most recently extended to 30 July 2021 by the Minister for Emergency Services in the Extension of State of Emergency Declaration 16.

In respect to the second element, 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. This interpretation was supported in advice received by Officers from the Department of Local Government, Sport and Cultural Industries.

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.

Options

Option 1

That Council:

1. In accordance with Regulation 14C of the *Local Government (Administration) Regulations 1996*, AUTHORISES Councillor Coales 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 Coales to participate at the meeting via electronic means as the required threshold criteria for participation under the Act has not been met.

Attachments (available under separate cover)

- **1.1 – attachment 1** – Correspondence related to request for attendance via electronic means in public health emergency (E21/8468)

Voting Requirements: Simple Majority

Officer Recommendation

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