



Confirmed Minutes
Burke Shire Council Special Meeting
Friday 27 September 2019
8.00am Council Chambers

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01. Opening of Meeting

The Chair declared the meeting open at 8.08am.

02. Record of Attendance

Cr Ernie Camp; Mayor – Chair
Cr Paul Poole; Deputy Mayor
Cr John Clarke
Cr John Yanner

Clare Keenan; Chief Executive Officer
Darren Thomson; Deputy Chief Executive Officer
Philip Keirle; Executive Manager Strategic Projects
Madison Marshall; Executive Assistant (Minutes)

02.01 LGR 2012 Section 276 – Attendance by teleconferencing

That Council, in accordance with section 276 of the Local Government Regulation 2012, allows the following person/s to take part in the meeting by teleconferencing:

- Ben Faith; Erscon

Moved: Cr Camp

Seconded: Cr Yanner

Carried 190927.01 4/0

03. Executive Management Reports

03.01 Caretaker Period

DEPARTMENT:	Office of the CEO
RESPONSIBLE OFFICER:	Clare Keenan; Chief Executive Officer
PREPARED BY:	Philip Keirle; Executive Manager Strategic Projects
DATE REPORT PREPARED:	24 September 2019
LINK TO COUNCIL PLAN/S:	NA

1. PURPOSE

To provide relevant information to Council for consideration re: the caretaker period of local government prior to the 28 March 2020 election.

2. BACKGROUND & PREVIOUS COUNCIL CONSIDERATION

The caretaker period commences when the Notice of Election is issued.

- a. In 2016, the Notice of Election was issued on Sat 6 Feb 2016: 42 days before polling day
- b. In 2012, the Notice of Election was issued on Sat 10 Mar 2012: 49 days before polling day

Burke was impacted by the last caretaker period significantly, given Council was required to split its CEO recruitment process into two phases to ensure the requirements of the caretaker period's "no major policy decisions" requirement was met.

3. PROPOSAL

That Council considers a range of items that may be impacted by the caretaker period of local government so that appropriate arrangements can be made to manage them:

- 1) Prohibition on election material during the caretaker period:
 - a. Newsletters
 - b. Radio interviews
 - c. Facebook posts
- 2) Contracts over \$200,000 (GST excl.):
 - a. Renewal of ROPS (Plant Hire);
 - b. DRFA Road Construction Contracts;
 - c. DRFA \$1m projects
 - d. W4Q 2019-21 projects
 - e. GRG ILUA
- 3) CEO appointment, remuneration, termination decisions are off limits;
- 4) EMT contracts (timing considerations);

4. FINANCIAL & RESOURCE IMPLICATIONS

Major policy decisions are defined in terms of financial value in the legislation, with any decision over \$200,000 (excl. GST) considered a major policy decision.

5. RISK

Risk Type	What could happen	Possible consequence
Legal	<ul style="list-style-type: none"> Major policy decisions deemed invalid for having been made during the caretaker period 	<ul style="list-style-type: none"> Reputational damage Legal issues

6. POLICY & LEGAL IMPLICATIONS

Instrument	Reference	Details
<i>Local Government Act 2009</i>	"Major Policy Decision"	<p>"major policy decision," for a local government, means a decision—</p> <p>(a) about the appointment of a chief executive officer of the local government; or</p> <p>(b) about the remuneration of the chief executive officer of the local government; or</p> <p>(c) to terminate the employment of the chief executive officer of the local government; or</p> <p>(d) to enter into a contract the total value of which is more than the greater of the following—</p> <p>(i) \$200,000;</p> <p>(ii) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report.</p>
<i>Local Government Act 2009</i>	90A Caretaker period	<p>(1) The caretaker period for a local government is the period during an election for the local government that—</p> <p>(a) starts on the day when public notice of the holding of the election is given under the Local Government Electoral Act, section 25(1); and</p> <p>(b) ends at the conclusion of the election.</p> <p>(2) There is no caretaker period during a by-election or fresh election.</p>

Instrument	Reference	Details
<i>Local Government Act 2009</i>	90B Prohibition on major policy decision in caretaker period	<p>(1) A local government must not make a major policy decision during a caretaker period for the local government.</p> <p>(2) However, if the local government considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the local government may apply to the Minister for approval to make the decision.</p> <p>(3) The Minister may give the approval if the Minister is satisfied that, having regard to exceptional circumstances that apply, it is necessary for the local government to make the major policy decision in the public interest.</p> <p>(4) The Minister's approval may be given on conditions with which the local government must comply.</p>
<i>Local Government Act 2009</i>	90C Invalidity of major policy decision in caretaker period without approval	<p>(1) A major policy decision made by a local government during a caretaker period for the local government is invalid to the extent the local government—</p> <p>(a) does not have the Minister's approval under section 90B to make the decision; or</p> <p>(b) does not comply with any conditions of the Minister's approval under section 90B(4).</p> <p>(2) A contract is void if it is the subject of a major policy decision that is invalid.</p> <p>(3) A person who acts in good faith in relation to a major policy decision of a local government, or in relation to a contract that is the subject of a major policy decision, but who suffers loss or damage because of any invalidity of the decision under subsection (1) or because the contract is void under subsection (2), has a right to be compensated by the local government for the loss or damage.</p> <p>(4) The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.</p>
<i>Local Government Act 2009</i>	90D Prohibition on election material in caretaker period	<p>(1) A local government must not, during a caretaker period for the local government, publish or distribute election material.</p> <p>(2) Election material is anything able to, or intended to—</p> <p>(a) influence an elector about voting at an election; or</p> <p>(b) affect the result of an election.</p> <p>(3) The prohibition under subsection (1) does not apply to making a how-to-vote card available under the Local Government Electoral Act 2011, section 179(6).</p>

Instrument	Reference	Details
<i>Local Government Act 2009</i>	"Major Policy Decision"	<p>major policy decision, for a local government, means a decision—</p> <p>(a) about the appointment of a chief executive officer of the local government; or</p> <p>(b) about the remuneration of the chief executive officer of the local government; or</p> <p>(c) to terminate the employment of the chief executive officer of the local government; or</p> <p>(d) to enter into a contract the total value of which is more than the greater of the following—</p> <p>(i) \$200,000;</p> <p>(ii) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report.</p>

7. CRITICAL DATES & IMPLICATIONS

The caretaker period is likely to commence in early to mid-February 2020.

8. CONSULTATION

- Department of Local Government, Racing and Multicultural Affairs.
- Review of other Council guidelines for the caretaker period.

9. CONCLUSION

Council needs to be aware of restrictions on making major policy decisions during the caretaker period to avoid making these decisions without first receiving a Ministerial exemption.

10. OFFICER'S RECOMMENDATION

1. That Council note the contents of the report.

03.01 Caretaker Period

- 1. That Council note the contents of the report.**

Moved: Cr Camp

Seconded: Cr Clarke

Carried 190927.02 4/0

04. Closed Session Reports

That Council move into closed session to discuss confidential items as stated in the *Local Government Regulation 2012* in Chapter 8 Administration, Part 2 Local government meetings and committees, under *Sections 275 (1) (e and h)*.

(e) contracts proposed to be made by it;

(h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

Council moved into closed session at 8.21am.

Moved: Cr Yanner

Seconded: Cr Poole

Carried 190927.03 4/0

Attendance

Ben Faith from Erscon phoned into the meeting at 8.37am.

Move into Open Session

That the meeting resume in open session to consider recommendations arising out of the closed session.

Council resumed open session at 9.21am.

Moved: Cr Poole

Seconded: Cr Yanner

Carried 190927.04 4/0

04.01 Closed Session - Temporary Delegation: Gregory Showgrounds

- 1. That Council note the contents of the report; and**
- 2. That Council, pursuant to section 257 of the Local Government Act 2009, delegates to the CEO the power to enter into large-sized contractual arrangements for the supply of goods and services with a supplier from a register of pre-qualified suppliers to complete the Gregory Showgrounds Bar and Kitchen construction and fit out.**

Moved: Cr Poole

Seconded: Cr Yanner

Carried 190927.05 4/0

04.02 Tender 2019-29 DRFA Restoration Works - Gregory to Lawn Hill Road

1. That the report/attachment be deemed a confidential document and be treated as such in accordance with Local Government Regulation 2012 in Chapter 8 Administration, Part 2 Local government meetings and committees, under Sections 275 (1)(e) and that the document remain confidential unless council decides otherwise by resolution; and
2. That Council notes the contents of the report and relevant attachments; and
3. That Council awards the “2019-29 DRFA Restoration Works – Gregory Lawn Hill Road” to Spence Contracting in the amount of \$859,667.82 subject to Council’s receipt of Queensland Reconstruction Authority (QRA) Value for Money Assessment and final QRA endorsement of the scope of works.
4. That Council, under s257 of the Local Government Act 2009, delegates authority to the CEO to enter into a contractual arrangement with Spence Contracting to complete the “2019-29 DRFA Restoration Works – Gregory Lawn Hill Road” scope of works, subject to the conditions in Item 3 of this resolution (above).

Moved: Cr Poole

Seconded: Cr Camp

Carried 190927.06 4/0

Attendance

Ben Faith from Erscon left the meeting at 9.26am.

Philip Keirle and Darren Thomson left the meeting at 9.26am.

That Council move into closed session to discuss confidential items as stated in the *Local Government Regulation 2012* in Chapter 8 Administration, Part 2 Local government meetings and committees, under *Sections 275 (1) (a)*.

(a) the appointment, dismissal or discipline of employees.

Council moved into closed session at 9.27am.

Moved: Cr Camp

Seconded: Cr Poole

Carried 190927.07 4/0

Attendance

Clare Keenan left the meeting at 9.29am.

Move into Open Session

That the meeting resume in open session to consider recommendations arising out of the closed session.

Council resumed open session at 9.32am.

Moved: Cr Poole

Seconded: Cr Yanner

Carried 190927.08 4/0

04.03 Chief Executive Officer contract of employment

That Council extends the Chief Executive Officer's contract by 18 months from the expiration date of the current contract.

Moved: Cr Camp

Seconded: Cr Clarke

Carried 190927.09 4/0

05. Closure of meeting

The Chair declared the meeting close at 9.35am.

I hereby certify that these pages numbered 1 to 9 – constitute
the Confirmed minutes of the Special Council Meeting of Burke
Shire Council held on Friday 27 September 2019.

Mayor Cr Ernie Camp