



## MISSION AND VALUES OF COUNCIL

*"A Sustainable Community that is inclusive, attractive, healthy and pleasant to live in, that uses our land so as to preserve our history and environment, respects the rights and equality of our citizens and manages our future growth wisely."*

# CONFIRMED MINUTES

FOR THE

SPECIAL MEETING OF COUNCIL HELD IN THE  
COUNCIL CHAMBERS AT 4.00PM

**13 JANUARY 2014**

## **OUR VISION**

*"A thriving and friendly community that recognises our history and embraces cultural diversity and economic opportunity, whilst nurturing our unique natural and built environment."*

## **OUR MISSION**

*"To deliver affordable and quality Local Government services."*

## **CORE VALUES OF THE SHIRE**

*The core values that underpin the achievement of the mission will be based on a strong customer service focus and a positive attitude:*

**Communication**

**Integrity**

**Respect**

**Innovation**

**Transparency**

**Courtesy**

### **DISCLAIMER**

The purpose of Council Meetings is to discuss, and where possible, make resolutions about items appearing on the agenda. Whilst Council has the power to resolve such items and may in fact, appear to have done so at the meeting, no person should rely on or act on the basis of such decision or on any advice or information provided by a Member or Officer, or on the content of any discussion occurring, during the course of the meeting.

Persons should be aware that the provisions of the Local Government Act 1995 (Section 5.25 (e)) establish procedures for revocation or rescission of a Council decision. No person should rely on the decisions made by Council until formal advice of the Council decision is received by that person. The Shire of Broome expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any resolution of Council, or any advice or information provided by a Member or Officer, or the content of any discussion occurring, during the course of the Council meeting.

**SHIRE OF BROOME**  
**SPECIAL MEETING OF COUNCIL**  
**13 JANUARY 2014**  
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## NOTICE OF MEETING

Dear Council Member,

The Shire of Broome will hold a Special Meeting of Council on Monday 13 January 2014 at 4.00pm in the Council Chambers, corner Weld and Haas Streets, Broome for the purpose of:

- DAP Application – MI Australia

Regards

A handwritten signature in black ink, appearing to read 'K R Donohoe', with a horizontal line underneath.

K R DONOHOE  
**Chief Executive Officer**  
3 December 2013

<b>1. OFFICIAL OPENING</b>
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The Chairman declared the meeting open at 4.01pm.

<b>2. ATTENDANCE AND APOLOGIES</b>
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Attendance:	Cr G Campbell	Shire President
	Cr J Bloom	Deputy Shire President
	Cr A Poelina	
	Cr M Manado	
	Cr C Mitchell	
	Cr M Lewis	(4.05pm)
	Cr D Male	

The Shire President advised that Cr H Tracey had submitted a request prior to the meeting seeking Leave of Absence for the Special Meeting of Council to be held on 13 January 2014.

**Moved: Cr C Mitchell**

**Seconded: Cr A Poelina**

***That Cr H Tracey be granted Leave of Absence for the Special Meeting of Council held on 13 January 2014.***

**CARRIED UNANIMOUSLY 6/0**

Apologies:	Cr P Matsumoto	
Officers:	Mr K Donohoe	Chief Executive Officer
	Mr S Mastroleambo	Director Corporate Services
	Mr M Dale	Director Engineering Services
	Ms M Teoh	Acting Director Development Services
	Ms J Moloney	Council Secretary
	Ms E Harding	Senior Customer Service Officer
	Ms R Piggin	Manager Governance
Public Gallery:	Valerie Sibosado	Yawuru
	Owen Torres	Jabbirr-Jabirr
	Dale Jones	
	Rowena Puertollano	
	Bart Pigram	Yawuru
	Julia Cox	
	Grady Powell	
	Kate McLean	Shire of Broome
	Fiona West	
	Richard Young	
	Sean Mulhall	Broome Port Authority
	Terrizita Corpois	
	Sally Wilkinson	NBY
	Elsta Foy	
	Trish Newton	
	Dave Dureau	

Ngaire Pigram	
Tony Lee	Yawuru
Mickio Corpus	Yawuru
Christine Elsasser	Envrions Kimberley
Jinunyili	Djugan
Allan Charlis	Yardoogarra
Naomi Panaia	
Kevin Smith	Roebuck Bay Working Group
Louise Middleton	
Jacinta Monck	
Vic Justice	Broome Port Authority
Nicola Kalmar	Broome Advertiser
Mieke Wevers	Shire of Broome
Victoria Gardener	Shire of Broome
Suzie Haslehurst	Shire of Broome

### 3. DECLARATION OF FINANCIAL INTEREST / IMPARTIALITY

IMPARTIALITY			
Councillor	Item No	Item	Nature of Interest
Cr M Manado	9.2.1	RESPONSIBLE AUTHORITY REPORT TO KIMBERLEY JOINT DEVELOPMENT ASSESSMENT PANEL – PROPOSED DRILLING FLUIDS FACILITY – PORTION OF LOT 621 PORT DRIVE AND PORTION OF LOT 698 PORT DRIVE, MINYIRR	<i>Impartiality – I have an association with Yawuru PBC as an ordinary member”.</i>

Cr M Lewis entered the Chambers at 4.05pm.

### 4. PUBLIC QUESTION TIME

The following questions were submitted prior to the Special Meeting of Council on the 13 January 2014 from Louise Middleton.

#### Question 1:

*The Broome Port is used for recreational activities by a majority of the community. How does the Broome Shire plan to keep the community safe, how is the proponent MI Australia going to meet its obligations to protect their workers and how is the Broome Port Authority going to keep all other users within the port area protected from exposure to alpha and gamma radiation.*

*Produced water, which is mostly brine, has the greatest likelihood for Ra-226 and Ra-228 concentration since brine would be the natural carrier of these radionuclides.*

*Drill cuttings are a radioactive waste product that must be disposed of. The concern about drill cuttings in landfills is that Ra-226 and Ra-228 can accumulate in leachate.*

#### Question 2:

*How will a spillage or leakage of produced water into the environment and groundwater be managed by the proponent MI Australia, the Broome Port Authority, Broome Shire Council and all other relevant government departments: Health, Water and Environment?*

*Where will these drill cuttings be removed to, how will these wastes be transported and who will be responsible for their disposal?*

**Question 3:**

*Where and how does MI Australia intend to transport, manage or dispose of their radioactive waste they will be producing, as there are no wastewater treatment plants to handle radioactive wastes in the Kimberley? Will the rock chips be incinerated before disposal in dedicated pits, or will they be disposed of within the Shire's solid waste landfills.*

*These are very legitimate concerns and ones that need to be addressed by the Broome Shire in their Responsible Authority Report.*

**Answer provided by the Acting Director Development Services**

*The draft Responsible Authority Report put forward to Council includes a condition that prior to the commencement of building works an Operational Environmental Management Plan (OEMP) is to be submitted and approved by the Shire of Broome. This OEMP is to include details on the management and transportation of hazardous materials, the details of which are to be prepared to the satisfaction of the Department of Health and any other relevant government agency.*

*Any waste from the Drilling Fluids facility will be transported to Port Hedland. The details of the disposal of waste are to be included in the OEMP which is to be endorsed by the Shire of Broome.*

\*\*\*\*\*

**The following questions were submitted prior to the Special Meeting of Council on the 13 January 2014 from Michael Corpus.**

**Question 1:**

*Why did it take decades for Yawuru to get their native title and yet it will take just 60 days for this company to get their approval?*

**Answer provided by the Acting Director Development Services**

*Under the planning Development Act 2005 there is a requirement where a development application does not require advertising that a determination is made within 60 days. If a decision is not made within that timeframe it is a 'deemed refusal'. Shire officers seek to process applications in accordance with the legislative requirements.*

**Answer provided by Shire President**

*There are a variety of reasons as these are two different processes bound by legislation. As the Acting Director Development Services has stated, there is a 60 day requirement.*

**Question 2:**

*How is it possible for the Department of Indigenous Affairs in their correspondence to the Shire claim that there are no Aboriginal Heritage sites within the Port Authority area or in particular at lot E3 when maps within Broome Port Authority's own publications show numerous maps claiming the very opposite?*

**Answer provided by the Acting Director Development Services**

*As part of the assessment process officers sought advice from the Department of Aboriginal Affairs. The Shire was advised there are no registered sites contained within the*

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Departmental database. This response is set out in the Schedule of Submissions attached to the report.

**Question 3:**

*Is the Shire Council confident that any decision made without the Yawuru Park Council endorsement will be legal and will not be challenged in the courts at a later date?*

**Answer provided by the Shire President**

*The Shire of Broome are not making a decision on this matter, the DAP as the decision making authority for this planning application will be. The Shire of Broome is the Responsible Authority submitting the Report. The matter is for DAP's consideration if and when they make a decision one way or another.*

*If challenged in court, that can be subject to judicial review.*

*The Shire of Broome is submitting the Responsible Authority Report.*

\*\*\*\*\*

**The following questions were submitted prior to the Special Meeting of Council on the 13 January 2014 from Rowena Purtollano**

**Question 1:**

*Given this confusing history and this ineffective planning process, does the Broome Shire, as the Responsible Authority have any faith in the DAP, DAP's process and or their determinations?*

*Given the highly technical nature of the proposed development, what experience in technology specialisation and expertise of high end engineering design do the DAP members have?*

**Answer provided by the Acting Director Development Services**

*The DAP panel has been set up through State legislation that is the Planning and Development Act 2005. This is the process the Shire has to comply with when assessing particular applications. The Shire of Broome is following the statutory process.*

**Question 2:**

*How confident can the Broome community be about decisions made by DAP and will decisions be based on scientific facts and technological understanding and with the health of our community and environment in mind?*

**Answer provided by the Acting Director Development Services**

*DAP members are appointed by the Minister of Planning. There are three 'new' DAP members, which I cannot speak about their qualifications, the Minister, by appointing them to this position has determined they have the necessary skills.*

*From previous experience, when the report is forwarded to DAP, the members read the report and the Presiding Member often seeks further clarification from the Shire officers on a wide range of matters. DAP members also visit the site as part of their consideration. As previously mentioned the DAP process is a legislated requirement.*

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**Question 3:**

Councillor Bloom is one of the Shire's representatives on the DAP and was quoted recently in a major national newspaper referring to coal seam gas production. Yawuru Country is being subjected to shale / tight gas, which is very different from coal seam gas.

Does the Shire Council have confidence that Councillor Bloom has the knowledge and or the impartiality needed to adequately address this proposal after her publically acclaimed predisposition?

**Answer provided by the Shire President**

Councillors swear under the Act to conduct themselves under the Act and in regard to conduct. A Financial interest or impartiality interest needs to be declared. This issue has nothing to do about coal seam gas production, it is about Lot No 621 Port Drive and portion of Lot 698 Port Drive, Minyirr. Councillor Bloom is not sitting on the DAP as she has a Leave of Absence and will not be in Western Australia at the time.

\*\*\*\*\*

The following questions were submitted prior to the Special Meeting of Council on the 13 January 2014 from Naomi Pigram.

**Question 1:**

How can Council endorse the Responsible Authority report given the:

lack of information on emissions and discharges

lack of information on public health matters during the production phase

lack of clarity on how cancer causing agents will be handled and transported

lack of information on how stormwater will be managed to make sure it will not impact on Roebuck Bay

Yawuru Native Title Holders Aboriginal Corporation RNTBC (Yawuru PBC) are opposed to the proposal

absence of consultation with the Yawuru Park Council

absence of community consultation.

**Answer provided by Acting Director Development Services**

Under the Shire of Broome Town Planning Scheme this particular application is not required to be advertised. It is assessed against the provisions of the planning scheme and through that process we seek further information. The preparation of the OEMP will address the matter of transportation and management of hazardous material. As part of the assessment process we undertook a site visit and considered the matters of stormwater management in some detail. There is evidence of some erosion within the adjoining coastal reserve the applicant is prepared to undertake works within the Coastal reserve to improve the environmental outcomes. This will be discussed with the Yawuru Park Council. Development can only occur if in accordance with the planning approval and conditions.

**Question 2:**

Given that the Shire has not received full advice from the Department of Health, Department of Environment Regulation and Yawuru Park Council, will the Council request an extension for the completion of a Responsible Authority Report?

**Answer provided by the Acting Director Development Services**

The Department of Regulation operates under separate legislation/head of power regarding the operation of Prescribed Premise. The OEMP will require that the management plans are to industry standards and comply with State legislation.

There are provisions under the DAP process to seek an extension of time. This requires the approval of the applicant and approval of the Presiding member. Previously when the Shire of Broome has sought an extension while the applicant agreed, the extension was not granted.

**Question 3:**

Is the Shire aware that the WA Environmental Protection Authority is deliberating on whether to assess this proposal?

**Answer provided by the Acting Director Development Services**

Yes we are.

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The following questions were submitted at the Special Meeting of Council on the 13 January 2014 from Jacinta Monck.

**Question 1:**

Is the full 60 days being used before a final decision is made?

**Answer provided by Shire President**

This is required as we are the Responsible Authority to produce the report within 60 days.

**Answer provided by the Acting Director Development Services**

Day 1 was when the application was lodged on November 28. We are required to submit the Responsible Authority report with DAP on day 50. DAP then meet before the 60 days to ensure the matter is considered. The DAP meeting is scheduled for 23 January 2014.

**Question 2:**

Does the Shire have confidence in the Port Authority to manage the proposal since there is already evidence that they aren't adequately managing the area?

**Answer provided by Shire President**

Guidelines can be given by DAP to put these conditions in.

<b>5. MATTERS FOR WHICH MEETING MAY BE CLOSED</b>
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Nil

**9.**

**REPORTS  
OF  
OFFICERS**

# 9.1

## OUR PEOPLE



### ***PRIORITY STATEMENT***

Embracing our cultural diversity and the relationship between our unique heritage and people, we aim to work in partnership with the community to provide relevant, quality services and infrastructure that meet the needs and aspirations of our community and those visiting and doing business in our region.

Supporting and contributing to the well-being and safety of our community is paramount, as is our focus on community engagement and participation.

Council aims to build safe, strong and resilient communities with access to services, infrastructure and opportunities that will result in an increase in active civic participation, a reduction in anti-social behaviour and improved social cohesion.

There are no reports in this section.

## 9.2

# OUR PLACE



### ***PRIORITY STATEMENT***

The Shire of Broome has an abundance of unique natural features, coastal attractions, significant streetscapes, historic precincts and a mix of old and new urban developments.

Our aim is for all communities and settled areas, including the Broom Township, to be a place where the natural environment, on which life depends, is maintained, whilst at the same time the built environment contributes to the economy and a quality lifestyle for all.

Preserving the Shire's natural environment is a critical community outcome. Council will put into place strategies that nurture and improve the Shire's unique environment and biodiversity.

The Shire will work in partnership with the community and other agencies to ensure responsible and accountable management of both the natural and build environments is achieved in the short term and for future generations.

*For the purpose of the minutes it is noted that a revised Responsible Authority Report was circulated to Councillors' prior to the meeting.*

*With regard to Item 9.2.1 Cr M Manado disclosed that "I have an association with Yawuru PBC, as an ordinary member. As a consequence there may be a perception that my impartiality in the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly".*

**9.2.1 RESPONSIBLE AUTHORITY REPORT TO KIMBERLEY JOINT DEVELOPMENT ASSESSMENT PANEL – PROPOSED DRILLING FLUIDS FACILITY – PORTION OF LOT 621 PORT DRIVE AND PORTION OF LOT 698 PORT DRIVE, MINYIRR**

<b>LOCATION/ADDRESS:</b>	Portion of Lot 621 Port Drive and Portion of Lot 698 Port Drive, Minyirr
<b>APPLICANT:</b>	M-I Australia
<b>FILE:</b>	RES 28650
<b>AUTHOR:</b>	Senior Planning Officer
<b>CONTRIBUTOR/S</b>	Acting Director Development Services
<b>RESPONSIBLE OFFICER:</b>	Acting Director Development Services
<b>DISCLOSURE OF INTEREST:</b>	Nil
<b>DATE OF REPORT:</b>	7 January 2014

**SUMMARY:** An application for planning approval has been received for a Drilling Fluids Facility (DFF) on Portion of Lot 621 Port Drive and Portion of Lot 698 Port Drive. Due to the estimated development cost, this application will be determined by the Joint Kimberley Development Assessment Panel for consideration.

The planning assessment undertaken as part of this DAP Application has highlighted an outstanding planning issue that requires resolution by the Broome Port Authority (BPA), whereby residential premises exist in a zone which provides for the development of hazardous and offensive industries.

This report requests that Council endorse the Responsible Authority Report and recommends that Council requests the Chief Executive Officer to write to the BPA and request that the outstanding issue of residential premises within the Port zone is resolved.

## **BACKGROUND**

### History

An application for site works was considered and conditionally approved by the Shire of Broome on 19 December 2013 under delegated authority (PA 2013/226) for Portion of Lot 621 Port Drive and Portion of Lot 698 Port Drive, Minyirr. This approval allows for clearing of site, installation of site drainage sumps and re-grading of site levels, removal of existing abandoned waterlines, and relocation of utilities running across the site.

This approval was conditional on the applicant providing an earthworks construction management plan and detailed stormwater design prior to commencement of site disturbing works. These details have yet to be provided.

An application for planning approval was lodged on 28 November 2013 by M-I Australia for a proposed Drilling Fluids Facility (DFF) on Portion of Lot 621 Port Drive and Portion of Lot

698 Port Drive. The total estimated cost of the development associated with the application is \$12.5 million. The application is required to be determined by the Joint Development Assessment Panel (JDAP) in accordance the Planning and Development (Development Assessment Panel) Regulation 2011 (the Regulations).

Shire officers have assessed the application against the relevant planning frameworks and provide the attached report as the recommended Responsible Authority Report.

Attachment 1: Responsible Authority Report

## **COMMENT**

According to regulation 8 of the Regulations a Council does not have power to make a planning determination on applications referred to the JDAP. Only JDAP can make determinations of planning approvals referred to it. Regulation 12(5) (a) requires a responsible authority to provide DAP with a report that contains a recommendation on how the application should be determined. As the report is to be provided by the 'responsible authority' and as no delegation of authority exists for officers to provide this report, the report is presented to Council for consideration.

As such, this report does not recommend the proposal to Council for determination, but rather requests Council to consider and endorse the attached Officer's report as the Responsible Authority Report to be presented to DAP. Should Council not support the officer's recommendation, the officer's recommendation would then become an alternative recommendation within the Responsible Authority Report and whatever recommendation is endorsed by Council then becomes the substantive recommendation in the report to the DAP. If Council determine to not to support the officer's recommendation reasons for this must be provided.

The planning assessment undertaken as part of this DAP Application has highlighted an outstanding planning issue that requires resolution from the BPA. The ongoing use of buildings within the BPA area for residential premises is an inappropriate land use within an area where the objectives are to allow for the development of noxious and hazardous industries. The ongoing use of these residences could constrain the future development of the Port as a strategic supply base and increases the risk that such industries could impact on human health and safety. It is therefore recommended that Council request the Chief Executive Officer to correspond with the BPA requesting that this matter is resolved.

## **CONSULTATION**

In accordance with Clause 9.4.1 of TPS4 the application was not required to be advertised for public comment.

The application was referred to the following agencies for consideration and comment;

- Department of Water
  - Department of Environment and Regulation
  - Department of Aboriginal Affairs
  - Department of Fire and Emergency Services
  - Department of Health
  - Main Roads WA
  - Department of Parks and Wildlife
-

Seven (7) submissions were received from the referral agencies – the details of these responses are set out in the Responsible Authority Report and associated attachments.

The application was incorrectly referred to Nyamba Buru Yawuru Ltd (NBY) who have provided a submission which has been made available to Councillors.

The adjoining land is within the Conservation Estate, management responsibility resides with the Shire of Broome and Yawuru, administered through the Yawuru Park Council (YPC), the application has now been referred for YPC its consideration. Due to availability of Park Council members and the timeframe for convening a Special Park Council Meeting, this cannot occur within the statutory timeframes.

The final design of the stormwater drainage system is likely to require referral to the Yawuru Park Council. This referral would be required to address possible works within the Conservation Estate to address downstream erosion control. This would be undertaken once the final design of the stormwater drainage system has been designed.

### **STATUTORY ENVIRONMENT**

The Planning and Development (Development Assessment Panel) Regulations 2011 sets out the following:

8. *Applications to be determined by DAPs*

(1) *Despite any other provision of the Act or a planning instrument, any DAP application for approval of development within a district for which a DAP is established –*

- (a) *must be determined by the DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and*
- (b) *cannot be determined by the local government for the district or the Commission.*

12. *Responsible authority must report to DAP*

*(1) For the purposes of this regulation, a development application that is forwarded by a local government to the Commission in accordance with a region planning scheme is taken to have been made to the Commission.*

### **POLICY IMPLICATIONS**

There is no policy implications associated with the recommendation contained in this report. Relevant planning policies have been considered in the Officers' report attached.

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

**Our Place Goal – Help to protect the nature and built environment and cultural heritage of Broome whilst recognising the unique sense of the place:**

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A built environment that reflects arid tropical climate design principles and historical built form.

## VOTING REQUIREMENTS

*Simple Majority*

### REPORT RECOMMENDATION:

*That Council:*

- 1. Endorse the attached Officer's report as the Responsible Authority Report to be presented to the Joint Kimberley Development Assessment Panel.*
- 2. Request the Chief Executive Officer write to the Broome Port Authority requesting that they resolve the outstanding issue of residential premises within the Port zone so it does not have future repercussions on future long term development of the Port.*

### COUNCIL RESOLUTION:

*Moved: Cr A Poelina*

*Seconded: Cr M Manado*

*That Council:*

- 1. Endorse the attached Officer's report as the Responsible Authority Report to be presented to the Joint Kimberley Development Assessment Panel.*
- 2. Request the Chief Executive Officer write to the Broome Port Authority requesting that they resolve the outstanding issue of residential premises within the Port zone so it does not have future repercussions on future long term development of the Port.*
- 3. Requests the Kimberley Development Assessment Panel to ensure that the Operational Environment Management Plan (OEMP) is subject to public comment prior to the commencement of any site disturbance or building works.*

**CARRIED UNANIMOUSLY 7/0**

Attachment: [54 pages](#)

**Reason:** *That the Operational Environment Management Plan (OEMP) is subject to public comment before any site works commence.*

## 9.3

# OUR PROSPERITY



### ***PRIORITY STATEMENT***

Our region has grown significantly over the past years in terms of population, economy and industry – this will continue! Balancing ecological sustainability with economic growth and retaining the 'look and feel' of Broome and its environs are an ongoing challenge for the region. Encouraging appropriate investment and business development opportunities to ensure a strong, diverse economic base is essential for community prosperity and the success of our future generations.

Focusing on developing clear pathways linking education with employment for our youth and the community at large is essential as we aim to retain our local people and continue to build a skilled and highly motivated workforce.

Business and Industry partnerships must be fostered to ensure sustainable economic growth is achieved, along with the provision of affordable and equitable services and infrastructure. Ensuring development meets community needs and legislative requirements whilst creating close community relationships and enhancing our understanding of local heritage and cultural issues will continue to be a major focus. The built environment must contribute to the economy, long term viability of the region and provide a quality lifestyle for all.

There are no reports in this section.

## 9.4

# OUR ORGANISATION



### ***PRIORITY STATEMENT***

Council will strive to create an environment where local governance is delivered in an open and accountable manner; where we provide leadership to the region in such areas as planning and financial management; where the community has the opportunity to contribute to the Council's decision making thereby fostering ownership of strategies and initiatives.

In delivering open, accountable and inclusive governance, we will be ever mindful that we operate within a highly regulated environment that requires a high level of compliance.

Council will strive to be the conduit between the other spheres of government and the community, translating State and Federal law, policy and practice into customer focussed, on ground service delivery that support's Broome's unique lifestyle.

The Region is experiencing significant change with Council dedicated to sound governance, effective leadership and innovation, and high quality services. Building organisational capacity is a priority with a commitment to delivering services to the community in a sustainable, effective and accountable way.

There are no reports in this section.

**10.**

**REPORTS**

**OF**

**COMMITTEES**

There are no reports in this section.

<b>11. MEETING CLOSURE</b>
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The Chairman declared the meeting closed at 4.34pm.