

14 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY A DECISION OF COUNCIL

14.1 CHIEF EXECUTIVE OFFICER

14.1.1 TROPICAL CYCLONE ILSA – EMERGENCY BUDGET ALLOCATIONS AND PROCUREMENT

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Proposed Meeting Date: 28 April 2023

Location/Address: N/A

Name of Applicant: N/A

Author Disclosure of Interest: Nil

REPORT PURPOSE

To seek Council's consideration of the status of 'emergency' for the purposes of any urgent budget allocation and procurements to address restoration of essential infrastructure and operations, arising from the consequences of Tropical Cyclone Ilsa.

BACKGROUND

On Thursday, 13 April 2023, Tropical Cyclone Ilsa crossed the coastline at Cape Keraudren/Pardoo as a Category 5 system. There was significant damage to Shire infrastructure at Cape Keraudren as well as damage to private stations at Pardoo, Yarrie, Muccan and Warawagine, together with Pardoo Roadhouse. As the cyclone progressed towards the eastern boundary of the East Pilbara District and the Northern Territory, further damage to Shire infrastructure resulted. The extent and likely cost of this damage is still being assessed and yet to be confirmed.

To assist in a rapid process to authorise expenditure to meet the costs of, and effect repairs, the following report makes recommendations to provide the Shire President with the discretion to approve emergency budget allocations and procurement where necessary and where it is not practicable to recall the Council by way of ordinary or special meeting. The Shire will ensure maximum use of the Disaster Relief Funding Arrangements WA (DRFAWA) and insurance to reduce the financial impact on the Shire.

COMMENTS/OPTIONS/DISCUSSIONS

Powers of the Shire President in an Emergency

Section 6.8 of the *Local Government Act 1995* provides the Shire President with limited power to approve in advance, expenditure from the Municipal Fund without the expenditure having been authorised by Council in the Budget:

Section 6.8

1. *A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*
 - a. *is incurred in a financial year before the adoption of the annual budget by the local government; or*
 - b. *is authorised in advance by resolution [Absolute Majority required]; or*
 - c. *is authorised in advance by the mayor or president in an emergency.*

Such circumstances exist during an emergency. Expenditure approved in advance by the Shire President must be reported to Council at its next ordinary meeting.

Definition of 'Emergency' for the purposes of s.6.8(1)(c)

Council should be aware there is some uncertainty as to whether the current stage of the emergency arising from Tropical Cyclone Ilsa constitutes an 'emergency' for the purposes of section 6.8(1)(c).

There is no State of Emergency in place pursuant to section 50 of the *Emergency Management Act 2005*, and formally, the emergency has passed. However, the consequences of the emergency are now being realised in the community's recovery from the destruction caused by the cyclone.

The Act provides no definition of 'emergency' and at the time of writing, legal advice had not been obtained given the timing of the ordinary council meeting and urgent nature of the subject matter. Legal advice will be sought.

However, in January 2023 the Shire of Derby West Kimberley determined to support the definition of 'emergency' for the purposes of section 6.8(1)(c) of the Act for the same purpose as this report canvasses to address likely but unknown emergency work requirements arising from Ex Tropical Cyclone Ellie and the associated flooding of that event.

As these impacts are assessed and identified for urgent repairs to restore critical infrastructure and access to communities, it may be considered that an emergency situation continues and that it is necessary to undertake immediate works to make safe critical infrastructure for which no budget has been allocated by Council, and where it would be considered prudent to proceed immediately before a special meeting of the Council can be convened.

Should Council accept that such circumstances constitute an 'emergency', then the Shire President may rely upon that support from the Council to approve in advance expenditure to undertake essential emergency works.

Proposed process of approval in advance of expenditure by the Shire President

To date no expenditure has been incurred for emergency works, however it is considered likely that the circumstances will arise where expenditure needs to be approved and where it is not practicable to call a special meeting of the Council.

The CEO will be required to specify the purpose of any proposed emergency expenditure, the estimated cost of the work, and the proposed allocation.

Prior to responding to such a request from the CEO, the Shire President should where practicable endeavour to seek the views of all Councillors on the proposal, before determining the CEO's request.

Should the Shire President approve the expenditure, the Act requires that the expenditure must be reported to the next Ordinary Council Meeting.

Temporary use of Funds from Reserves

Should Council determine to accept that an emergency exists for the purposes of section 6.8(1)(c) of the Act and support the Shire President in exercising the power to authorise expenditure, Council is recommended to make funds available from the Newman Airport Reserve on a temporary basis to provide sufficient cash flow if necessary for emergency expenditure.

The current purpose for the use of funds from the Newman Airport Reserve is:

"For the upgrading, maintenance and enhancement of the Newman Airport."

In order to authorise an allocation of funds from a Reserve, the proposed use of those funds must be consistent with the purpose of the Reserve. Section 6.11 of the Act provides that a change of purpose requires local public notice to be given for one (1) month. An exception to this requirement is in the circumstances of an emergency, where Council can approve by absolute majority, a change in the use of the funds pursuant to section 6.11(3)(b) of the Act and regulation 18 of the *Local Government (Financial Management) Regulations 1996*.

Should Council accept for that the conditions of an 'emergency' exist as detailed above in the report, Council may determine to support a change in the use of the funds in the Newman Airport Reserve to allow for the temporary use of funds for essential repairs arising from a disaster, where such funds are returned to the Reserve as soon as practicable.

Procurement and Tendering

Regulation 11(2)(a) of the *Local Government (Functions and General) Regulations 1996* provides that tenders do not have to be publicly invited according to the requirements of the Act if the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act

Ordinarily, tenders must be called for expenditure over \$250,000, with the determination of same being either by Council, or the CEO (under delegation from Council). The effect of this is that expenditure exceeding \$250,000 for the purposes of the emergency would not require the calling of tenders, where the Shire President approves an application for expenditure in advance from CEO for emergency related works pursuant to section 6.8(1)(c) of the Act.

The recommendation proposes that prior to seeking approval from the Shire President, the CEO consider whether it is practical and timely to advertise and determine the tender (by Council, or the CEO, under delegation) in accordance with the Act and Regulations, as though the emergency did not exist. If this the case, it is also proposed that the Shire President follow the same procedure as for the authorisation of expenditure, in that best efforts are made to contact and seek the view of all Councillors beforehand. Where a tender process is not used, each instance is to be reported to the following ordinary meeting of Council.

OPTIONS

1. Adopt the recommendation.
2. Support the recommendation subject to the provision of legal advice to support Council's position.
3. Reject the recommendation and convene special meetings as required to consider recommendations for emergency expenditure.

STATUTORY IMPLICATIONS

Section 6.8(1)(c) of the *Local Government Act 1995* provides the Shire President with the power to authorise expenditure in advance in an emergency, subject to reporting to the next ordinary council meeting.

POLICY IMPLICATION

Should Council support the recommendation it will create a policy position for the particular circumstances arising from the emergency arising from Tropical Cyclone Ilsa.

STRATEGIC COMMUNITY PLAN

2: Social

- 2 Safe, connected and family-friendly communities where all people thrive, and have their needs met at all ages and stages of life.
- 2.3 Advocacy and partnerships for addressing issues impacting safety of communities, and improving information sharing and coordination.
- 2.4 Promote healthy and safe lifestyle choices, and uphold public health and safety.

3. Built Environment

- 3.5 Continue to invest in public spaces, amenities and heritage protection across the Shire.

RISK MANAGEMENT CONSIDERATIONS

Service Interruption – Major
Reputation – Major
Compliance – Major
Finance – Minor

FINANCIAL IMPLICATIONS

The Shire is currently going through the impact assessment process to ensure maximum use of the Disaster Relief Funding Arrangements WA (DRFAWA) and insurance to reduce the impact on the Shire. Any expenditure authorised from the Newman Airport Reserve will be returned to the Newman Airport Reserve as soon as practicable.

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

1. Accepts that situations and circumstances may arise during the recovery from Tropical Cyclone Ilsa ("the Emergency") where specific, or sufficient budgeted funds are not available, as required, and where the Shire President may need to authorise such expenditure in advance, pursuant to section 6.8(1)(c) of the *Local Government Act 1995*.
2. Supports the exercise of such discretion by the Shire President, whilst noting that the Shire President should endeavour, where practicable, to consider the flowing hierarchy, before exercising the authority under s6.8(1)(c) of the *Local Government Act 1995*:
 - (a) Put such requests to an Ordinary Meeting of the Council meeting for consideration, and determination, where practicable, or
 - (b) Put such requests to a Special Council Meeting, either in person, or an electronic meeting, or by electronic attendance for consideration, and determination.
3. Requests that during the Emergency, before determining any application from the Chief Executive Officer to approve expenditure in accordance with section 6.8(1)(c) of the *Local Government Act 1995*, the Shire President endeavour to contact all Councillors, seeking their views on the application, whilst acknowledging that circumstances and timeframes may prevent this occurring, and that in such an event the Shire President has absolute authority to determine the application from the Chief Executive Officer. Where Councillors express their views on the application, the Shire President will give regard to, but not be bound by such responses, consistent with the provisions of s6.8 of the *Local Government Act 1995*.
4. Requests that any applications by the Chief Executive Officer to the Shire President seeking authority to incur expenditure during the Emergency, and which are to be referred to Councillors for comment, prior to determination, be based on specific proposed estimated expenditure rather than "englobo" amounts.
5. Notes the requirement of s6.8(2)(b) of the *Local Government Act 1995*, that any expenditure authorised in advance by the Shire President, due to the Emergency, be reported to the following Ordinary Council Meeting. Such information is to include details of the date when the expenditure was incurred, payee/beneficiary, the goods or services delivered, the amount paid (with, or without GST), and whether the expenditure is complete, or if there is ongoing expenditure to be incurred.
6. Approves for the purposes of completing essential works during the Emergency, the Shire President to under section 6.8(1)(c) authorise the Chief Executive Officer to determine expenditure without the need to go to tender, or obtain quotes pursuant to regulation 11(2)(a) of the *Local Government (Functions and General) Regulations 1996*, subject to consideration of the practicality and timeliness of undertaking a formal tender process, but if not so, to report same to Council, as per the prior requirement, and consistent with section 6.8(2)(b) of the *Local Government Act 1995*.

7. Pursuant to section 6.11(3)(b) of the *Local Government Act 1995* and regulation 18 of the *Local Government (Financial Management) Regulations 1996*, authorises an amendment to the purpose of the Newman Airport Reserve to incorporate the temporary use of funds for undertaking essential recovery works arising from an emergency.

ABSOLUTE MAJORITY REQUIRED