

# Minutes

Minutes of the Ordinary Council Meeting held on Tuesday 15 February 2022

I hereby certify that this is a true and correct record of the minutes of the Kempsey Shire Council ordinary meeting held Tuesday 15 February 2022



Mayor L J Hauville



The meeting commenced at 09:00 am.

**PRESENT:**

Councillors L J Hauville (Mayor and Chairperson), I A Bain, V Craigie, S R A Fergusson, J D Freeman, A P Patterson, K A Riddington and A D Wyatt

General Manager, C L Milburn; Director Corporate and Commercial, S M Mitchell; Director Operations and Planning, R A D Fish; and Manager Governance and Information Services, D S Thoroughgood.

The Mayor informed all present that council permits the electronic recording and broadcasting of the proceedings of council which are open to the public. Your attendance at this meeting is taken as consent of the possibility that your image and your voice may be recorded and broadcast to the public.

**1 OPENING PRAYER**

Cr Patterson delivered the opening prayer.

**2 ACKNOWLEDGEMENT OF COUNTRY**

Cr Riddington delivered the Acknowledgement of Country.

**3 APOLOGIES AND APPLICATIONS FOR A LEAVE OF ABSENCE BY COUNCILLORS**

**2022.12 RESOLVED (Cr Fergusson/Cr Riddington):**

**That the apology submitted by Councillor Campbell for non-attendance at the meeting be accepted and a leave of absence be granted.**

**CARRIED (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**4 CONFIRMATION OF MINUTES**

**2022.13 RESOLVED (Cr Bain/Cr Freeman):**

**That the minutes of the ordinary meeting of Kempsey Shire Council dated 25 January 2022 be confirmed.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

## 5 DISCLOSURES OF INTEREST

Cr Wyatt declared a non-pecuniary significant interest in item 9.7, Point Plomer Road at Big Hill Inclusion into Limeburners Creek National Park, for the reason that she was formerly employed by the National Parks and Wildlife Service Operations Group.

## 6 ITEMS PASSED BY EXCEPTION

2022.14 RESOLVED (Cr Freeman/Cr Wyatt):

That the recommendations contained in the following items be adopted:

- 8.1 Local Traffic Committee - 7th December 2021
- 9.6 Code of Conduct
- 9.8 Quarterly Development Activity Statistics & LEP Variations - Second Quarter 2021-2022
- 9.9 Statement of Cash and Investments - January 2022
- 11.2 Devil's Nook Road Cutting Landslip Remediation (Kempsey-Armidale Road) - Tender TQE21/50
- 11.3 Supply and Installation of Safety Barriers - Tender TQE21/55

CARRIED UNANIMOUSLY (8 / 0)

FOR: Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

AGAINST: Nil

## 8 REPORTS OF COMMITTEES

### 8.1 Local Traffic Committee - 7th December 2021

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Officer Alyson Hodgson, (Acting) Executive Assistant

File Number F21/1958

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2022.15 RESOLVED (Cr Freeman/Cr Wyatt):

That council notes the minutes and adopts the recommendations of the Local Traffic Committee meeting held 7 December 2021.

CARRIED UNANIMOUSLY (8 / 0)

FOR: Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

AGAINST: Nil

### 9.6 Code of Conduct

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Officer Daniel Thoroughgood, Manager Governance & Information Services

File Number F22/2017

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**2022.16 RESOLVED (Cr Freeman/Cr Wyatt):**

**That council:**

1. adopts the attached draft code of conduct, effective at the start of Wednesday 16 February 2022; and
2. adopts the attached draft procedures for the administration of the code of conduct, effective at the start of Wednesday 16 February 2022.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**9.8 Quarterly Development Activity Statistics & LEP Variations - Second Quarter - 2021-2022**

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**Officer** Lisa Kennedy, Team Leader Office Support

**File Number** F19/1831

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**2022.17 RESOLVED (Cr Freeman/Cr Wyatt):**

**That council receive and note the report.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**9.9 Statement of Cash and Investments - January 2022**

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**Officer** Ron Wood, Manager Financial Services

**File Number** F22/3106

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**2022.18 RESOLVED (Cr Freeman/Cr Wyatt):**

**That council receive and note the report.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**11.2 Devil's Nook Road Cutting Landslip Remediation (Kempsey-Armidale Road) - Tender TQE21/50**

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**Officer** Dylan Reeves, Manager Infrastructure Delivery

**File Number** TQE21/50

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**Section 10A(2)(d)(i) - Commercial Position**

This report is submitted on a confidential basis as it involves commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. (*Local Government Act 1993*, section 10A(2)(d)(i))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

**2022.19 RESOLVED (Cr Freeman/Cr Wyatt):**

**That council accept the lump sum tender submitted by RIX Asset Management Pty Ltd for a lump sum amount of \$1,042,976 GST inclusive for TQE21/50 Devil's Nook Road Cutting Landslip Remediation (Kempsey-Armidale Road), in accordance with the tender documentation and tenderer's submission.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**11.3 Supply and Installation of Safety Barriers - Tender TQE21/55**

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**Officer** Dylan Reeves, Manager Infrastructure Delivery

**File Number** TQE21/55

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**Section 10A(2)(d)(i) - Commercial Position**

This report is submitted on a confidential basis as it involves commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. (*Local Government Act 1993*, section 10A(2)(d)(i))

On balance, the public interest in preserving the confidentiality of the commercial information supplied, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

**2022.20 RESOLVED (Cr Freeman/Cr Wyatt):**

**That council accept the following tenders as a panel supply contract for the supply and installation of road safety barrier systems in accordance with the tender documentation and the tender submissions received, for a period of 16 months commencing 21 February 2022 and concluding 30 June 2023.**

- 1. A1 Highways Pty Ltd**
- 2. GRI Road Services Pty Ltd**
- 3. Irwin Fencing Pty Ltd**
- 4. Schram Group Pty Ltd**
- 5. Western Safety Barriers Group Pty Ltd**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

AGAINST: Nil

## 7 MAYORAL MINUTES

Nil

## 9 REPORTS TO COUNCIL

### 9.1 Kempsey Shire Biodiversity Strategy 2022

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**Officer** Megan Jones, Environmental Planning Officer

**File Number** F19/1179

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**2022.21 RESOLVED (Cr Patterson/Cr Wyatt):**

**That council:**

1. consider the feedback received from the community within the context of the scope of the Biodiversity Strategy;
2. endorse the attached Biodiversity Strategy for the Kempsey Shire; and
3. note that the actions and associated deliverables within the strategy shall inform council's future Delivery Program and Operational Plan development, and the scope of specific projects where relevant.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

### 9.2 KLEP2013-AM-33 - 600 Macleay Valley Way, South Kempsey

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**Officer** Peter Orr, Senior Strategic Planning Officer

**File Number** KLEP2013-AM-33

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**2022.22 RESOLVED (Cr Patterson/Cr Riddington):**

**That council:**

1. delegate the general manager the authority to execute the planning agreement relating to 600 Macleay Valley Way, South Kempsey;
2. on execution of the planning agreement, progress to make the amendment to the local environmental plan, described as KLEP 2013 (Amendment 33), for the planning proposal which applies to 600 Macleay Valley Way, South Kempsey;
3. request the Parliamentary Counsel's Office to draft the legal instrument, KLEP 2013 (Amendment 33), under s 3.36(1) of the *Environmental Planning and Assessment Act 1979* to give effect to the final planning proposal;
4. endorse the general manager to exercise delegation from the Minister for Planning to make the amending instrument, KLEP 2013 (Amendment 33); and

- upon the making of KLEP 2013 (Amendment 33), the Department of Planning, Industry & Environment be requested to notify the plan on the NSW Legislation webpage.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

### **9.3 Delivery Program and Operational Plan 2021-22 - Second Quarter Progress Report**

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**Officer** Kathryn Parker, Corporate Performance Coordinator

**File Number** F19/2079

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**2022.23 RESOLVED (Cr Bain/Cr Riddington):**

**That council:**

- adopts the quarterly budget review for the period ending 31 December 2021 and approves the variations contained therein, noting the following adjustments:
  - approves an increase in the capital expenditure budget for the Waste Cell 4 project from \$4.972 million to \$7.221 million reflecting the additional costs required to complete the project; and
  - approves the reduction in the budget for project W4745 Road & Leachate upgrades by \$565k as these costs will form part of the Waste Cell 4 project budget above.
- receives and notes the progress achieved in delivering the delivery program and operational plan 2021-22;
- receives and notes the financial sustainability program status report;
- receives and notes the Key Performance Indicators report; and
- receives and notes the Grants Status Summary.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

### **9.4 Review of Committees and Appointment of Delegates**

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**Officer** Daniel Thoroughgood, Manager Governance & Information Services

**File Number** F22/2550

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**2022.24 RESOLVED (Cr Patterson/Cr Freeman):**

**That council:**

- determine appointments to committees, except the General Manager's Performance Review Panel;
- hold any election required for membership by open voting;
- review and re-make these appointments at its first ordinary meeting after 31 August 2022;
- dissolve the Economic Development and Tourism Committee;

5. dissolve the Gladstone Tennis Club and revoke its delegation; and
6. dissolve the Smithtown Hall Committee and revoke its delegation.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**2022.25 RESOLVED (Cr Wyatt/Cr Bain):**

**That council move into Committee of the Whole.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

Selection of 1 councillor for the Audit, Risk and Improvement Committee

Cr Freeman nominated Cr Riddington; Cr Riddington accepted the nomination.

Cr Riddington was selected unopposed.

Selection of 2 councillors for the Australia Day Awards Committee, in addition to the mayor.

Cr Hauville nominated Cr Campbell.

Cr Hauville nominated Cr Riddington.

Cr Campbell, and Cr Riddington, had already indicated that they would accept the nomination.

Cr Campbell, and Cr Riddington, were selected unopposed.

Selection of 1 councillor for the Bush Fire Management Committee & Zone Liaison Committee

Cr Bain self-nominated.

Cr Riddington nominated Cr Fergusson as an alternate delegate.

Cr Bain as a delegate, and Cr Fergusson as an alternate delegate, were selected unopposed.

Selection of 1 councillor for the ClubGRANTS Committee

Cr Hauville self-nominated.

Cr Hauville was selected unopposed.

Selection of 1 councillor for the Local Traffic Committee

Cr Hauville self-nominated.

Cr Patterson nominated Cr Riddington; Cr Riddington accepted the nomination.

An election was required and the mayor asked the General Manager to perform the role of returning officer.

An election by show of hands was held.

Voting for Cr Hauville were Councillors Bain, Hauville, Freeman and Craigie.



Voting for Cr Riddington were Councillors Riddington, Fergusson, Wyatt and Patterson.

The vote being tied the names of Cr Hauville and Cr Riddington were written on similarly sized slips of paper, placed in a box and mixed. The returning officer drew one name from the box.

Cr Riddington was the name drawn.

Cr Riddington was declared elected to the Local Traffic Committee.

Selection of 1 councillor for the Melville Hall Sport and Entertainment Centre Management Committee

Cr Wyatt nominated Cr Hauville; Cr Hauville accepted.

Cr Hauville was selected unopposed.

Selection of 1 councillor for the Mid North Coast Regional Arts Board

Cr Bain nominated Cr Campbell; Cr Campbell has already indicated that she will accept.

Cr Wyatt self-nominated as an alternate delegate.

Cr Campbell as a delegate, and Cr Wyatt as an alternate delegate, were selected unopposed.

Selection of 1 councillor for the Public Libraries Association North-East Zone Committee

Cr Bain self-nominated.

Cr Riddington self-nominated as an alternate delegate.

Cr Bain as a delegate, and Cr Riddington as an alternate delegate, were selected unopposed.

Selection of 1 councillor for the South West Rocks Sport & Recreation Association

Cr Craigie nominated Cr Freeman; Cr Freeman declined the nomination.

Cr Patterson nominated Cr Riddington; Cr Riddington accepted the nomination.

Cr Patterson self-nominated as an alternate delegate.

Cr Riddington as a delegate, and Cr Patterson as an alternate delegate, were selected unopposed.

**Recommendation of the Committee of the Whole:**

**That council make the following appointments to committees:**

- 1. Cr Riddington to the Audit, Risk and Improvement Committee;**
- 2. Cr Campbell, and Cr Riddington, to the Australia Day Awards Committee;**
- 3. Cr Bain, and Cr Fergusson as an alternate, to the Bush Fire Management Committee & Zone Liaison Committee;**
- 4. Cr Hauville to the ClubGRANTS Committee;**
- 5. Cr Riddington to the Local Traffic Committee, and that the delegate be approved to appoint a sub-delegate;**
- 6. Cr Hauville to the Melville Hall Sport and Entertainment Centre Management Committee**
- 7. Cr Campbell, and Cr Wyatt as an alternate, to the Mid North Coast Regional Arts Board**
- 8. Cr Bain, and Cr Riddington as an alternate, to the Public Libraries Association North-East Zone Committee**
- 9. Cr Riddington, and Cr Patterson as an alternate, to the South West Rocks Sport & Recreation Association**

**2022.26 RESOLVED (Cr Bain/Cr Freeman):**

**That the ordinary council meeting be resumed.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**2022.27 RESOLVED (Cr Freeman/Cr Patterson):**

**That the recommendation of the committee be adopted.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**At this stage 10.29 am the meeting adjourned for morning tea and upon resumption at 10.50 am all present at the adjournment were in attendance.**

### **9.5 Code of Meeting Practice**

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**Officer** Daniel Thoroughgood, Manager Governance & Information Services

**File Number** F22/922

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### **RECOMMENDATION**

**That council:**

- 1. provide public notice of its intention to adopt the attached draft code of meeting practice for a period of not less than 28 days, and accept submissions for not less than 42 days; and**
- 2. receive a report at the April ordinary meeting of council concerning the draft code of meeting practice, and any submissions received, for adoption.**

**2022.28 RESOLVED (Cr Hauville/Cr Bain):**

**That this matter be deferred until the April 2022 ordinary council meeting.**

**CARRIED (4 / 4)**

**FOR:** Cr Bain, Cr Craigie, Cr Hauville and Cr Wyatt

**AGAINST:** Cr Fergusson, Cr Freeman, Cr Patterson and Cr Riddington

**The motion was carried by the casting vote of the mayor.**

### **9.7 Point Plomer Road at Big Hill Inclusion into Limeburners Creek National Park**

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**Officer** Tony Green, Project Manager

**File Number** R12/20

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Cr Wyatt declared a non-pecuniary significant interest in item 9.7, Point Plomer Road at Big Hill Inclusion into Limeburners Creek National Park, for the reason that she was formerly employed by the National Parks and Wildlife Service Operations Group and left the Chamber at 11:01 am.

**2022.29 RESOLVED (Cr Patterson/Cr Bain):**

That council concur with the reservation of part of Point Plomer Road at Big Hill for inclusion in Limeburners Creek National Park and the National Parks and Wildlife Service be advised in writing accordingly.

**CARRIED UNANIMOUSLY (7 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson and Cr Riddington

**AGAINST:** Nil

Cr Wyatt returned to Chamber at 11:09 am.

**2022.30 RESOLVED (Cr Bain/Cr Fergusson):**

That council considers a matter of great urgency, under clause 9.3 in the the code of meeting practice, in relation to extending the due date for submissions to DA2100258 which are currently due to close on 28 February 2022.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

The mayor ruled that the business should be considered as a matter of great urgency as it requires a decision by the council before the next scheduled ordinary meeting of the council.

**2022.31 RESOLVED (Cr Bain/Cr Wyatt):**

That council extend the community notification period for DA2100258, on Baker Drive at Crescent Head, for a period of two weeks to close on 14 March 2022.

**CARRIED (6 / 2)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Hauville, Cr Riddington and Cr Wyatt

**AGAINST:** Cr Freeman and Cr Patterson

## **10 NOTICES OF MOTION/QUESTIONS WITH NOTICE**

### **10.1 NOTICES OF MOTION**

Nil

## **11 CONFIDENTIAL REPORTS**

**2022.32 RESOLVED (Cr Riddington/Cr Bain):**

That council form itself into the Confidential Session, and at this stage, the meeting be closed to the public to permit discussion of the confidential business items listed for the reasons as stated in the Agenda.

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

### **11.1 Legal Matters**

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**Officer** Daniel Thoroughgood, Manager Governance & Information Services

**File Number** F19/1960

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#### **Section 10A(2)(g) – Legal Proceedings**

This report is submitted on a confidential basis as it involves advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (*Local Government Act 1993*, section 10A(2)(g))

On balance, the public interest in preserving the confidentiality of the advice, outweighs the public interest in openness and transparency in council decision making by discussing the matter in open meeting.

**2022.33 RESOLVED (Cr Patterson/Cr Riddington):**

**That council receive and note the report.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

**2022.34 RESOLVED (Cr Freeman/Cr Bain):**

**That the ordinary council meeting be resumed.**

**CARRIED UNANIMOUSLY (8 / 0)**

**FOR:** Cr Bain, Cr Craigie, Cr Fergusson, Cr Freeman, Cr Hauville, Cr Patterson, Cr Riddington and Cr Wyatt

**AGAINST:** Nil

## **12 CONCLUSION**

**There being no further business, the Mayor then closed the meeting, the time being 11:51 am.**