

I hereby certify that the Minutes of the Ordinary Council Meeting held are a true and accurate record of the proceedings contained therein.

Shire President

Date



SHIRE OF WYNDHAM | EAST KIMBERLEY

**MINUTES
SPECIAL COUNCIL
MEETING**

07 May 2020

DISCLAIMER

Members of the Public are advised that recommendations to Council contained within this Agenda and decisions arising from the Council meeting can be subject to alteration.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

An audio and/or video record will be made of these proceedings to assist in the taking of minutes.

Signed on behalf of Council



VERNON LAWRENCE

ACTING CHIEF EXECUTIVE OFFICER

NOTES

- 1. Councillors wishing to make alternate motions to officer recommendations are requested to provide notice of such motions electronically to the minute taker prior to the Council Meeting.**
- 2. Councillors needing clarification on reports to Council are requested to seek this from relevant Officers prior to the Council meetings.**

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**SHIRE OF WYNDHAM EAST KIMBERLEY
SPECIAL COUNCIL e-MEETING AGENDA
KUNUNURRA COUNCIL CHAMBERS
HELD ON 07 MAY 2020 AT 5:00PM**

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

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An audio and/or video record will be made of these proceedings to assist in the taking of minutes.

Prior to commencement of this electronic meeting Council Members and other attendee connections by electronic means were tested and confirmed.

The Shire President reiterated that Meetings of Council are currently not open to the public due to coronavirus restrictions. However, for transparency, a limited number of journalists have been allowed to attend in person by application. The Shire will expedite minutes of the meeting to be available to members of the public within five working days.

The Shire President welcomed Vanessa Gordon and Peter Casey, CEO Recruitment consultants at Beilby Downing Teale to the meeting via video link.

The Shire President declared the Meeting open at 5:01pm.

**2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE
(PREVIOUSLY APPROVED)**

The Shire President asked Council Members and staff to confirm that they are connected and in attendance, with the following attendees so confirmed:

ATTENDANCE

Cr D Menzel	Shire President
Cr T Chafer	Deputy Shire President
Cr N Brook	Councillor (via Video Link)
Cr M Dear	Councillor
Cr J Farquhar	Councillor
Cr G Lodge	Councillor (via Video Link)
Cr M McKittrick	Councillor
Cr D Pearce	Councillor (via Video Link)
Cr A Petherick	Councillor
V Lawrence	Acting Chief Executive Officer
K Williams	Senior Governance and Risk Officer
C Cane	Minute Taker

Vanessa Gordon Bielby Downing Teale Consultant *(via Video Link)*
Peter Casey Bielby Downing Teale Consultant *(via Video Link)*

Rebecca Nadge Reporter – ABC Kimberley

APOLOGIES

N Kearns Director Planning and Community Development
F Heading Acting Director Corporate Services
S Dyson Director Infrastructure

3. DECLARATION OF INTEREST

The Shire President noted that Council Members and staff were requested to disclose any conflicts of interest prior to the eMeeting and welcomed any further conflicts of interest to be declared.

The Shire President read aloud the following listed disclosures of interest received before the meeting:

- Financial Interest

Councillor/Staff	Item	Title	Description of interest
Vernon Lawrence, Acting CEO	11.1	CEO Recruitment Process	I may be an applicant for the position and I am currently performing the role and receiving remuneration for doing so.
Nick Kearns, Director Planning and Community Development	11.1	CEO Recruitment Process	Employment

- Impartiality Interest

NIL

- Proximity Interest

NIL

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

NIL

5. PUBLIC QUESTION TIME

The Shire President noted that given the meeting is not open to the public, the community were advised by public notice that they can still submit questions via email prior to the meeting, which would be read aloud.

No Public Questions were received.

7. PETITIONS

NIL

8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION

NIL

9. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS

NIL

10. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Confidential attachments within Agenda item *11.1 CEO Recruitment Process*

11. REPORTS

Cr D Menzel moved that Council move in-camera to discuss the confidential attachments within Agenda item *11.1 CEO Recruitment Process*. Shire officers and the gallery were asked to depart Chambers. The Minute Taker, Senior Governance and Risk Officer and consultant remained.

Council Decision

Minute Number: 07/05/2020 - 118215

Moved: Cr D Menzel

Seconded: Cr T Chafer

That Council move in-camera at 5:07pm.

Carried: 9/0

11.1. CEO RECRUITMENT PROCESS

Vernon Lawrence, Acting CEO, declared a financial interest as he may be an applicant for the position and is currently performing the role and receiving remuneration for doing so.

The Shire President requested all Officers to depart Chambers for this item, with the exception of the Minute Taker, the Senior Governance and Risk Officer and the consultant Beilby Downing Teale who was invited to dial in to the meeting. Officers left Chambers at 5.07pm.

DATE:	07 May 2020
AUTHOR:	Senior Governance and Risk Officer
RESPONSIBLE OFFICER:	Senior Governance and Risk Officer
FILE NO:	PL.02.1
DISCLOSURE OF INTERESTS:	Vernon Lawrence, Acting CEO, declared a financial interest as he may be an applicant for the position and is currently performing the role and receiving remuneration for doing so.

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council:

- 1. Note the proposed timeline for the process as contained in confidential attachment 1;**
- 2. Endorse the CEO Position Description and Selection Criteria as contained in confidential attachment 2;**
- 3. Endorse the general terms of the draft CEO Employment Contract as contained in confidential attachment 3;**
- 4. Endorse the advertisement and advertising strategy and salary range as contained in confidential attachment 4;**
- 5. Endorse the CEO Recruitment Proposal and application process from Beilby Downing Teale as contained in confidential attachment 5;**
- 6. Endorse the additional information for candidates as contained in confidential attachment 6; and**
- 7. Remove the delegation to the CEO Review and Selection Panel to conduct the CEO Recruitment Process and instead take a whole of Council approach in accordance with the adopted process.**

Council discussed the Officer's Recommendation, including the attachments and made several minor amendments to the documents.

Cr T Chafer moved a motion to include the amendments made by Council.

Council Decision

Minute Number: 07/05/2020 - 118216

Moved: Cr T Chafer

Seconded: Cr A Petherick

That Council:

- 1. Note the proposed timeline for the process as contained in confidential attachment 1;**
- 2. Endorse the CEO Position Description and Selection Criteria as contained in confidential attachment 2, as amended;**
- 3. Endorse in principle, the general terms of the draft CEO Employment Contract as contained in confidential attachment 3;**
- 4. Endorse the advertisement and advertising strategy and salary range as contained in confidential attachment 4, as amended;**
- 5. Endorse the CEO Recruitment Proposal and application process from Beilby Downing Teale as contained in confidential attachment 5;**
- 6. Endorse the additional information for candidates as contained in confidential attachment 6; and**
- 7. Remove the delegation to the CEO Review and Selection Panel to conduct the CEO Recruitment Process and instead take a whole of Council approach in accordance with the adopted process.**

Carried: 9/0

PURPOSE

For Council to adopt the key documents as outlined in the approved Chief Executive Officer Recruitment Process and for the Shire to commence advertising for the outlined position.

NATURE OF COUNCIL'S ROLE IN THE MATTER

Leader - plan and provide direction through policy and practices

BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE

At the 10 December 2019 Ordinary Council Meeting Council resolved;

Council Decision

Minute Number: 10/12/2019 - 118150

Moved: Cr J Farquhar

Seconded: Cr M Dear

That Council:

- 1. Accepts the Chief Executive Officer's written notice of resignation as provided to the Shire President on 9 December 2019 and in accordance with section 11.4 of his Contract of Employment, with an effective resignation date of close of business 31 January 2020;**
- 2. Agrees to the Terms and Conditions contained in the Chief Executive Officer's letter of resignation;**
- 3. Appoints the Director Corporate Services, Vernon Lawrence, as Acting Chief Executive Officer from 27 January 2020, for a period not exceeding 6 months or upon the commencement of a new Chief Executive Officer, whichever is sooner, and that the Director Corporate Services position be backfilled;**
- 4. Requests the Chief Executive Officer start the recruitment process for a new Chief Executive Officer by acquiring a minimum of three quotations for the provision of Chief Executive Officer Recruitment Services to be considered by the CEO Review and Selection Panel;**
- 5. Delegate to the CEO Review and Selection Panel the authority to determine and engage a suitable Recruitment Consultant to assist in the advertising search, shortlisting of candidates and contract development for the upcoming vacancy of CEO and commence that process; and**
- 6. Makes provision in its mid-year budget review process for the cost of the CEO recruitment process and any adjustment to the new CEO Total Remuneration Package in accordance with Section 5.39 (7) of the Local Government Act 1995.**

Carried: 6/0

The Shire of Wyndham East Kimberley has awarded Beilby Downing Teal for the CEO recruitment process, and as such consultation has occurred on behalf of Council between the Administration and the Consultant to arrive at a recommended draft recruitment process for Council consideration.

At the 24 March 2020 Council resolved;

Council Decision

Minute Number: 24/03/2020 - 118195

Moved: Cr M McKittrick

Seconded: Cr T Chafer

That Council adopt the CEO Recruitment Process as contained in attachment 1 of this report.

Carried: 9/0

The process formalised the step by step arrangements, workshops and Council decision making required to fairly recruit a Chief Executive Officer to the Shire of Wyndham East Kimberley.

In accordance with this process, Council held a workshop with the Consultant Bielby Downing Teale on Thursday, 30 April 2020 to facilitate the construction of the key documents required for advertising. Council have workshopped the key documents, reviewed, and then sent to the consultant for collating.

Of note, and in accordance with the process, each of the Shire's nine (9) Councillors will be actively involved in the recruitment of the CEO. The CEO Performance Appraisal Committee

STATUTORY IMPLICATIONS

Local Government Act 1995 5.36. Local government employees

- (1) *A local government is to employ —*
 - (a) *a person to be the CEO of the local government; and*
 - (b) *such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.*
- (2) *A person is not to be employed in the position of CEO unless the council —*
 - (a) *believes that the person is suitably qualified for the position; and*
 - (b) *is satisfied* with the provisions of the proposed employment contract.*

** Absolute majority required.*

- (3) *A person is not to be employed by a local government in any other position unless the CEO —*
 - (a) *believes that the person is suitably qualified for the position; and*
 - (b) *is satisfied with the proposed arrangements relating to the person's employment.*
- (4) *Unless subsection (5A) applies, if the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.*
- (5A) *Subsection (4) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.*
- (5) *For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.*

[Section 5.36 amended: No. 49 of 2004 s. 44; No. 17 of 2009 s. 21.] Local Government (Administration Regulations) 1996

18A. Vacancy in position of CEO or senior employee to be advertised (Act s. 5.36(4) and 5.37(3))

- (1) *If a position of CEO, or of a senior employee, of a local government becomes vacant, the local government is to advertise the position in a newspaper circulating generally throughout the State unless it is proposed that the position be filled by —*
 - (a) *a person who is, and will continue to be, employed by another local government and who will fill the position on a contract or contracts for a total period not exceeding 5 years; or*
 - (b) *a person who will be acting in the position for a term not exceeding one year.*
- (2) *An advertisement referred to in subregulation (1) is to contain —*
 - (a) *the details of the remuneration and benefits offered; and*
 - (b) *details of the place where applications for the position are to be submitted; and*
 - (c) *the date and time for the closing of applications for the position; and*
 - (d) *the duration of the proposed contract; and*

(e) contact details for a person who can provide further information about the position; and

(f) any other information that the local government considers is relevant.

[Regulation 18A inserted: Gazette 31 Mar 2005 p. 1037-8; amended: Gazette 19 Aug 2005 p. 3872; 3 May 2011 p. 1594.]

18B. Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))

For the purposes of section 5.39(3)(c), a contract governing the employment of a person who is a CEO, or a senior employee, of a local government is to provide for a maximum amount of money (or a method of calculating such an amount) to which the person is to be entitled if the contract is terminated before the expiry date, which amount is not to exceed whichever is the lesser of —

(a) the value of one year's remuneration under the contract; or

(b) the value of the remuneration that the person would have been entitled to had the contract not been terminated.

[Regulation 18B inserted: Gazette 13 May 2005 p. 2086.] 18C. Selection and appointment process for CEOs

The local government is to approve a process to be used for the selection and appointment of a CEO for the local government before the position of CEO of the local government is advertised.

[Regulation 18C inserted: Gazette 31 Mar 2005 p. 1038.] 18D. Performance review of CEO, local government's duties as to

A local government is to consider each review on the performance of the CEO carried out under section 5.38 and is to accept the review, with or without modification, or to reject the review.

[Regulation 18D inserted: Gazette 31 Mar 2005 p. 1038.] 18E. False information in application for CEO position, offence

A person must not, in connection with an application for the position of CEO of a local government —

(a) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant that the person knows is false in a material particular; or

(b) make a statement, or give any information, as to academic, or other tertiary level, qualifications held by the applicant which is false or misleading in a material particular, with reckless disregard as to whether or not the statement or information is false or misleading in a material particular.

Penalty: a fine of \$5 000.

[Regulation 18E inserted: Gazette 31 Mar 2005 p. 1038-9; amended: Gazette 19 Aug 2005 p. 3872; 4 Mar 2016 p. 650.]

18F. Remuneration and benefits of CEO to be as advertised

The remuneration and other benefits paid to a CEO on the appointment of the CEO are not to differ from the remuneration and benefits advertised for the position under section 5.36(4).

[Regulation 18F inserted: Gazette 31 Mar 2005 p. 1039.] 18G. Delegations to CEOs, limits on (Act s. 5.43)

Powers and duties of a local government exercised under the following provisions are prescribed under section 5.43(i) as powers and duties that a local government cannot delegate to a CEO —

(a) section 7.12A(2), (3)(a) or (4); and

(b) regulations 18C and 18D.

[Regulation 18G inserted: Gazette 31 Mar 2005 p. 1039.]

POLICY IMPLICATIONS

Councillors and Staff must adhere to the Shire of Wyndham East Kimberley Code of Conduct for Council Members, Committee Members and Employees at all times when making decisions in relation to the CEO Recruitment process.

FINANCIAL IMPLICATIONS

The Shire Budget has been amended to include the cost of the CEO recruitment process. The amount estimated is \$32,000

STRATEGIC IMPLICATIONS

Strategic Community Plan 2017-2027

Goal 4.2: Good decision making through engagement with the community

Goal 4.4: Sustainably maintain the Shire's financial viability

Goal: 4.1: Effective representation through advocacy at a regional, state and national level

Goal: 4.3: Ensure a strong and progressive organisation delivering customer focused services

RISK IMPLICATIONS

Risk: Failure to attract and retain suitably qualified and experienced technical staff to meet organisational requirements.

Control: Employment of recruitment consultant to ensure the most effective recruitment outcome.

COMMUNITY ENGAGEMENT

No community engagement is required.

COMMENTS

The documents have been prepared by consultant Bielby Downing Teale and represent the information collaboratively supplied by all nine (9) of the Shire's Councillors. The adoption of these documents align with the Local Government Act 1995, Local Government (Administration Regulations) 1996 and the Departmental Guidelines for CEO recruitment issued by the Department of Local Government, Sport and Cultural Industries.

Any Council member who is unable to meet the required panel member commitments should at this meeting move to remove their position from the recruitment panel. This is to ensure that each potential candidate is assessed fairly and with the same panel.

ATTACHMENTS

Confidential attachments provided under separate cover. These items are to be considered behind closed doors as per the Local Government Act 1995 Section 5.23 (2)(a) and (c):

Confidential Attachment 1 - Proposed Timeline

Confidential Attachment 2 - Position Description and Selection Criteria

Confidential Attachment 3 - Draft CEO Contract

Confidential Attachment 4 - Advertisement, Advertising Strategy and Application Process

Confidential Attachment 5 - CEO Recruitment Proposal Beilby Downing Teale

Confidential Attachment 6 - Additional Information for candidates

Council Decision

Minute Number: 07/05/2020 - 118217

Moved: Cr D Menzel

Seconded: Cr T Chafer

That Council move out of camera at 6:13pm.

Carried: 9/0

Members of the Gallery and Officers were invited back in to Chambers. The Shire President read the Council Resolutions aloud.

12. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

NIL

13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

NIL

14. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

NIL

15. MATTERS BEHIND CLOSED DOORS

NIL

16. CLOSURE

The Shire President declared the meeting closed at 6:16pm.