



SHIRE OF WYNDHAM | EAST KIMBERLEY

AGENDA SPECIAL COUNCIL MEETING

02 July 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

A handwritten signature in black ink, appearing to read 'V. E. Lawrence', written in a cursive style.

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 MEETING AGENDA
KUNUNURRA COUNCIL CHAMBERS
TO BE HELD ON 18 JUNE 2020 AT 5:00PM

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

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.

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

All public Meetings of Council now allow patrons attend in person from the Gallery. The Shire will continue to expedite minutes of the meeting to be available to members of the public within five working days.

The Shire President welcomed Vanessa Warden, CEO Recruitment Consultant at Beilby Downing Teal to the meeting via video link.

The Shire President declared the Meeting open at 5:00 pm.

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

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	
Cr M McKittrick	Councillor	
Cr D Pearce	Councillor	
V Lawrence	Acting Chief Executive Officer	
L Tunbridge	Manager Human Resources	
S Tasi	Minute Taker	
Vanessa Gordon	Beilby Downing Teale Consultant	(via Video Link)

APOLOGIES
Cr A Petherick

Councillor

S Dyson
N Kearns
F Heading

Director Infrastructure
Director Planning and Community Development
Acting Director Corporate Services

3. DECLARATION OF INTEREST

The Shire President noted that Council Members and staff were requested to disclose any conflict 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 am an applicant for the position which directly impacts my remuneration.

- Impartiality Interest

Councillor/Staff	Item	Title	Description of Interest
Cr D Menzel	11.1	CEO Recruitment Process	Several candidates are known to me
Cr T Chafer	11.1	CEO Recruitment Process	Two applicants are known to me
Cr N Brook	11.1	CEO Recruitment Process	Two applicants are known to me
Cr M Dear	11.1	CEO Recruitment Process	Two applicants are known to me
Cr J Farquhar	11.1	CEO Recruitment Process	An applicant is known to me
Cr G Lodge	11.1	CEO Recruitment Process	An applicant is known to me
Cr M McKittrick	11.1	CEO Recruitment Process	An applicant is known to me
Cr D Pearce	11.1	CEO Recruitment Process	Two applicants are known to me
L Tunbridge	11.1	CEO Recruitment Process	I work for the incumbent CEO who is an applicant for the position

- Proximity Interest

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

This item is to be considered behind closed doors as per the Local Government Act 1995 Section 5.23 (2)(c):

Confidential attachment(s) within Agenda item *11.1 CEO Recruitment*

11. REPORTS

Cr D Menzel moved that Council move-in camera to discuss the confidential attachments within Agenda item *1.1. CEO Recruitment*. Shire officers and the gallery were asked to depart Chambers. The Minute Taker, Manager Human Resources and Beilby Downing Teale Consultant remained.

Council Decision

Minute Number: 02/07/2020 - 118266

Moved: Cr D Menzel

Seconded: Cr T Chafer

That Council move in-camera at 05:03 pm.

Decision: 8/0

11.1 CEO Recruitment

Vernon Lawrence, Acting CEO, declared a financial interest as he is an applicant for the position which directly impacts his remuneration. The Shire President requested all Officers to depart Chambers for this item, with the exception of the Minute Taker, Senior Governance and Risk Officer, Manager Human Resources and Beilby Downing Teale Consultant remained. Officers left Chambers at 5.03 pm.

DATE:	29 June 2020
AUTHOR:	Senior Governance and Risk Officer
RESPONSIBLE OFFICER:	Manager Human Resources
FILE NO:	PL.21.225
DISCLOSURE OF INTERESTS:	A/CEO Vernon Lawrence

VOTING REQUIREMENT

Absolute Majority

OFFICER'S RECOMMENDATION

That Council;

- 1. Endorse the preferred candidate as recommended in the Candidate Selection Report provided by Beilby Downing and Teale, confidential attachment 1;**
- 2. Progress to contract negotiation, including the CEO employment contract, key performance indicators, performance appraisal process, probation period and start date with the preferred candidate; and**
- 3. Authorise the Shire President to facilitate the contract negotiation in conjunction with Beilby Downing and Teale and the Shire's Legal Advisor HopgoodGanim Lawyers.**

Council Decision:

Minute Number: 02/07/2020 – 118267

Moved: Cr T Chafer

Seconded: Cr J Farquhar

That Council

- 1. Endorse the preferred candidate as recommended in the Candidate Selection Report provided by Beilby Downing and Teale, confidential attachment 1;**
- 2. Progress to contract negotiation, including the CEO employment contract, key performance indicators, performance appraisal process, probation**

- period and start date with the preferred candidate; and
3. Authorise the Shire President to facilitate the contract negotiation in conjunction with Beilby Downing and Teale and the Shire's Legal Advisor HopgoodGanim Lawyers.

Decision: 8/0

PURPOSE

To progress the preferred candidate for the position of Chief Executive Officer.

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 18 June 2020 Special Council Meeting, Council resolved;

Council Decision

Minute Number: 18/06/2020 - 118238

Moved: Cr D Pearce

Seconded: Cr M McKittrick

That Council:

1. ***Approve the shortlisting of candidates as amended in confidential attachment 1;***
2. ***Authorise the Consultant Beilby Downing Teal to facilitate with Council the interviews of shortlisted candidates in the week 22 June 2020 to 26 June 2020 and in line with the adopted CEO Recruitment Process and Strategy.***

Carried: 9/0

At the 02 June 2020 Special Council Meeting, Council resolved;

Council Decision

Minute Number: 02/06/2020 - 118234

Moved: Cr M McKittrick

Seconded: Cr T Chafer

For Council to:

1. ***Select and approve a long list of candidates for the CEO recruitment process as amended in Confidential Attachment 1; and***
2. ***Approve the Consultant Beilby Downing Teal to commence the shortlisting process in line with the adopted recruitment strategy.***

Carried: 9/0

In accordance with the resolution, the Consultant conducted preliminary interviews and testing of the selected candidates in line with the CEO Recruitment Strategy.

At the 07 May 2020 Special Council Meeting, Council resolved;

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 Teal 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 according to the adopted process.**

Carried: 9/0

STATUTORY IMPLICATIONS

Local Government Act 1995:

- 1) 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.*
- 2) *Absolute majority required.*
 - (1) *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.*
- (2) *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.*
- b) (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.*
 - (a) (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.*
 - (i) *[Section 5.36 amended: No. 49 of 2004 s. 44; No. 17 of 2009 s. 21.]*

3) *Local Government Administration Regulations:*

- 4) 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 sub regulation (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.*
 - (i) *[Regulation 18A inserted: Gazette 31 Mar 2005 p. 1037-8; amended: Gazette 19 Aug 2005 p. 3872; 3 May 2011 p. 1594.]*
- 5) 18B. *Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))*
 - (i) *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 —*
 - 6) *the value of one year's remuneration under the contract; or*

- 7) *the value of the remuneration that the person would have been entitled to had the contract not been terminated.*
 - (i) *[Regulation 18B inserted: Gazette 13 May 2005 p. 2086.]*
- 8) 18C. *Selection and appointment process for CEOs*
 - (i) *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.*
 - (ii) *[Regulation 18C inserted: Gazette 31 Mar 2005 p. 1038.]*
- 9) 18D. *Performance review of CEO, local government's duties as to*
 - (i) *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.*
 - (ii) *[Regulation 18D inserted: Gazette 31 Mar 2005 p. 1038.]*
- 10) 18E. *False information in application for CEO position, offence*
 - (i) *A person must not, in connection with an application for the position of CEO of a local government —*
- 11) *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*
- 12) *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.*
 - (i) *Penalty: a fine of \$5 000.*
 - (ii) *[Regulation 18E inserted: Gazette 31 Mar 2005 p. 1038-9; amended: Gazette 19 Aug 2005 p. 3872; 4 Mar 2016 p. 650.]*
- 13) 18F. *Remuneration and benefits of CEO to be as advertised*
 - (i) *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).*
 - (ii) *[Regulation 18F inserted: Gazette 31 Mar 2005 p. 1039.]*
- 14) 18G. *Delegations to CEOs, limits on (Act s. 5.43)*
 - (i) *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 —*
- 15) *section 7.12A(2), (3)(a) or (4); and*
- 16) *regulations 18C and 18D.*
 - (i) *[Regulation 18G inserted: Gazette 31 Mar 2005 p. 1039.]*

POLICY IMPLICATIONS

Code of Conduct Council Members, Committee Members and Employees

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

Focus Area 4: Civic Leadership

Goal 3.3: Develop and retain skilled people that business need to succeed

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

Council met at a Special Council Meeting held 18 June 2020 where candidates were shortlisted to progress to interview. Following this meeting, relevant candidate interviews were completed.

Consultant Beilby Downing Teale will submit a recommendation report to Council as an attachment to this report outlining the preferred candidate based on the results from the candidate interviews. In accordance with the recruitment process and strategy the agreed consultant will undertake verification and reference checking of the preferred candidate and progress to contract negotiation in line with the above recommendation, with a further Council decision required to execute the employment contract.

ATTACHMENTS

This item is to be considered behind closed doors as per the Local Government Act 1995 Section 5.23 (2)(c):

Confidential Attachment 1: Candidate Selection Report

Council Decision

Minute Number: 02/07/2020 - 118268

Moved: Cr D Menzel

Seconded: Cr D Pearce

That Council move out of camera at 5:21 pm.

Decision: 8/0

Members of the Gallery and Officers were invited back in to Chambers. The Shire President read the Council Resolution 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 5:23 pm.