

Minutes of the Shire of Tammin Special Council meeting held at Council Chambers, 1 Donnan Street, Tammin, on Monday, 31 August 2009.

The President has requested a Special meeting of the Council of the Shire of Tammin to be convened on Monday, 31 August 2009 in the Council Chambers, 1 Donnan Street, Tammin commencing at 4.30pm.

Meeting Purpose:

To discuss and resolve seeking assistance in the recruitment process for the Chief Executive Officer vacancy.

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

Cr R Stokes declared the meeting open at 4.30pm.

2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Present

Cr R.J. Stokes	President (Presiding Person)
Cr K.L. Caffell	Deputy President
Cr S.J. Jefferies JP	Member
Cr B.F. Stokes	Member
Cr M.K. Wheeldon	Member

Mr M.G. Oliver	Chief Executive Officer
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Visitors

Nil

Apologies

Cr M.D. Greenwood	Member
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Leave of Absence

Nil

3. PUBLIC QUESTION TIME

Nil.

4. DECLARATION OF MEMBER'S INTERESTS IN AGENDA ITEMS

Nil.

5. AGENDA ITEM

5.1 Chief Executive Officer Vacancy (PERS-23)

Author – MG Oliver, CEO, 26 August 2009 Interest – Nil

BACKGROUND

Mr Oliver has tendered his resignation as Chief Executive Officer, effective 27 November 2009.

COMMENT

Mr Glenn Bone has been appointed Acting Chief Executive Officer for the period 12 October 2009 through 20 November 2009 whilst Mr Oliver is on leave. Mr Bone has indicated he is available to stay on for a period if required.

FINANCIAL IMPLICATIONS

No provision has been made in the 2009/10 Budget for this purpose.

POLICY IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

Section 5.36 of the Local Government Act provides that:

- (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) 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.
- (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 5.39 provides that:

- (1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.
- (1a) Despite subsection (1) —
 - (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
 - (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.
- (2) A contract under this section —
 - (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
 - (b) in every other case, cannot be for a term exceeding 5 years.
- (3) A contract under this section is of no effect unless —
 - (a) the expiry date is specified in the contract;
 - (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
 - (c) any other matter that has been prescribed as a matter to be included in the contract has been included.
- (4) A contract under this section is to be renewable and subject to subsection (5), may be varied.
- (5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.
- (6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b) from being terminated within that period on the happening of an event specified in the contract.
- (7) A report made by the Salaries and Allowances Tribunal, under section 7A of the *Salaries and Allowances Act 1975*, containing recommendations as to the remuneration to be paid or provided to a CEO is to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.

Section 5.40 provides that the following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity;
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage;
- (c) employees are to be treated fairly and consistently;
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground;
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

Regulation 18A of the Local Government (Administrative) Regulations provides (in relation to s. 5.36(4) and 5.37(3)):

- (1) If a position of CEO, or of senior employee, of a local government becomes vacant, the local government is to advertise the position —
 - (a) on a notice board exhibited to the public at the local government's offices, if the position is —
 - (i) to be filled on a part time basis by a person who is also employed by another local government; or
 - (ii) an acting position for a term not exceeding one year;or
 - (b) otherwise, in a newspaper circulating generally throughout the State.
- (2) An advertisement referred to in subregulation (1) is to contain —
 - (a) the details of the remuneration and benefits offered;
 - (b) details of the place where applications for the position are to be submitted;
 - (c) the date and time for the closing of applications for the position;
 - (d) the duration of the proposed contract;
 - (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 18B provides 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 18C provides that 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 18E provides that 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.

Regulation 18F provides that 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 19A provides (in relation to s. 5.50(3))

- (1) The value of a payment or payments made under section 5.50(1) and (2) to an employee whose employment with a local government finishes after 1 January 2010 is not to exceed in total —
 - (a) if the person accepts voluntary severance by resigning as an employee, the value of the person's final annual remuneration; or
 - (b) in all other cases, \$5 000.
- (2) In this regulation "final annual remuneration" in respect of a person, means the value of the annual remuneration paid, or payable, to the person by the local government which employed that person immediately before the person's employment with the local government finished.

STRATEGIC PLAN IMPLICATIONS

Nil

FUTURE PLAN IMPLICATIONS

Nil

COMMUNITY CONSULTATION

Nil

STAFF RECOMMENDATION

That Council provides direction.

Simple Majority Required

Cr R Stokes tabled a proposal and quote from WALGA Workplace Solutions.

MIN 154/08 MOTION – Moved Cr Caffell 2nd Cr B Stokes

That the quote and process proposed by WALGA be accepted and the position of Chief Executive Officer be advertised for a 2 year term with a salary range of \$90,000 to \$110,000 and a package of \$130,000 to \$153,000. Further, an advertising budget, including WEB presence, of \$4,500 be approved.

CARRIED BY AN ABSOLUTE MAJORITY 5/0

6. CLOSURE OF MEETING

There being no further business the Chairman closed the meeting at 5.50pm.

Tabled before the Ordinary Council meeting on 17 September 2009.

Cr R.J. Stokes, Chairman