



CONFIRMED MINUTES

Special Council Meeting Thursday, 24 October 2019

Date: Thursday, 24 October 2019

Time: 9.00am

Location: Council Chambers, York Town Hall, York

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**MINUTES OF SHIRE OF YORK
SPECIAL COUNCIL MEETING
HELD AT THE COUNCIL CHAMBERS, YORK TOWN HALL, YORK
ON THURSDAY, 24 OCTOBER 2019 AT 9.00AM**

The York Shire Council acknowledges the traditional owners of the land on which this meeting will be held.

1 OPENING

1.1 Declaration of Opening

Cr Denese Smythe, Shire President, declared the meeting open at 9.00am.

1.2 Disclaimer

The Shire President advised the following:

"I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material."

1.3 Standing Orders

Not Applicable

1.4 Announcement of Visitors

Nil

1.5 Declarations of Interest that Might Cause a Conflict

Nil

1.6 Declaration of Financial Interests

Nil

1.7 Disclosure of Interests that May Affect Impartiality

Nil

2 ATTENDANCE

2.1 Members

Cr Denese Smythe, Shire President; Cr Denis Warnick, Deputy Shire President; Cr Ashley Garratt; Cr Pam Heaton; Cr Stephen Muhleisen; Cr Kevin Trent; Cr David Wallace

2.2 Staff

Allen Cooper, Acting Chief Executive Officer

2.3 Apologies

Suzie Haslehurst, Executive Manager, Corporate & Community Services; Darren Wallace, Executive Manager, Infrastructure & Development Services; Helen D'Arcy-Walker, Council & Executive Support Officer

2.4 Leave of Absence Previously Approved

Nil

2.5 Number of People in the Gallery at Commencement of Meeting

There was no-one in the Gallery at the commencement of the meeting.

3 PUBLIC QUESTION TIME

Public Question Time is conducted in accordance with the Act and Regulations. In addition to this the Shire's Council Meetings Local Law 2016 states –

6.7 Other procedures for question time for the public

- (1) A member of the public who wishes to ask a question during question time must identify themselves and register with a Council Officer immediately prior to the meeting.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that—
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where—
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.

- (8) A member of the public shall have 2 minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where any questions remain unasked at the end of public question time they may be submitted to the CEO who will reply in writing and include the questions and answers in the agenda for the next ordinary Council meeting.
- (11) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

3.1 Written Questions – Current Agenda

Nil

3.2 Public Question Time

Nil

4 APPLICATIONS FOR LEAVE OF ABSENCE

Nil

5 PRESENTATIONS

5.1 Petitions

Nil

5.2 Presentations

Nil

5.3 Deputations

Nil

5.4 Delegates' reports

Nil

6 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

7 OFFICER'S REPORTS

SY161-10/19 ESTABLISHMENT OF CEO RECRUITMENT AND SELECTION COMMITTEE

File Number:	PE.REC.128
Author:	Allen Cooper, Acting CEO
Authoriser:	Allen Cooper, Acting CEO
Previously before Council:	Nil
Appendices:	1. DRAFT Terms of Reference - CEO Recruitment and Selection Committee 2. Appointing a CEO - Local Government Operational Guidelines Number 10

NATURE OF COUNCIL'S ROLE IN THE MATTER

Executive

PURPOSE OF REPORT

The previous CEO, Mr Paul Martin, resigned from the position on 1 July 2019 and finished with the Shire on Friday 13 September 2019.

As a result, Council commenced a process for recruiting and selecting a new CEO and established a CEO Recruitment and Selection Committee.

As this was a Committee established under section 5.8 of the *Local Government Act 1995*, tenure of the committee expired on election day in accordance with section 5.11 of the *Local Government Act 1995*.

Whilst there is no formal requirement to re-establish the committee it is recommended for the continuity of the process for the recruitment and selection of the CEO.

BACKGROUND

Council previously established a 'CEO Recruitment and Selection Committee' on 29 July 2019, Resolution 010719 as follows:

RESOLUTION 010719

Moved: Cr Kevin Trent Seconded: Cr Denese Smythe

That Council adopts the following process for the Chief Executive Officer recruitment and selection:

- 1. Requests the Chief Executive Officer to invite proposals from suitably qualified recruitment professionals to assist in the recruitment process of the new Chief Executive Officer in accordance with the scope of works set out in this report and present the responses received to the next Ordinary Council Meeting for Councils consideration.**
- 2. Establishes the Chief Executive Officer (CEO) Recruitment and Selection Committee and in accordance with Section 5.8 and Section 5.9(2)(a) of the Local Government Act 1995 adopts the Terms of Reference attached at Appendix 1.**

- 3. Authorises the Chief Executive Officer Recruitment and Selection Committee to liaise with the recruitment consultant (once appointed) in accordance with the Terms of Reference as attached at Appendix 1 and as follows:**
- **The Chief Executive Officer Recruitment and Selection Committee is to be an advisory Committee to Council for the duration of the CEO recruitment process in accordance with the Terms of Reference attached at Appendix 1;**
 - **The Chief Executive Officer Recruitment and Selection Committee is to coordinate the recruitment process in an appropriately confidential manner, including working with the appointed recruitment consultant to attract and select appropriate candidates; and**
 - **The Chief Executive Officer Recruitment and Selection Committee, with the assistance of the recruitment consultant, is to coordinate the advertising, search for candidates, short listing, development of interview process, conducting interviews, screening, assessing, conducting second round interviews, conducting referee checks, writing reports and contract preparation; and**
 - **The CEO Recruitment and Selection Committee is to report back to Council throughout the process and provide Council with sufficient advice to permit a determining decision to be made at an Ordinary Meeting of Council regarding the final selection, appointment and contracting of the CEO.**
- 4. Appoints all Councillors to the CEO Recruitment and Selection Committee;**
- 5. Requests the Chief Executive Officer seek quotes from suitably qualified consultants to facilitate a workshop attended by the recruitment consultant (once appointed) and Councillors only to establish and understand the specific capabilities that are being sought by Council of a new Chief Executive Officer and present these quotes to Council for consideration.**

CARRIED BY ABSOLUTE MAJORITY: 7/0

COMMENTS AND DETAILS

Regulation 18C of the *Local Government (Administration) Regulations* requires Council to establish a process for the selection and appointment of the CEO, this can either be done by the establishment of a Recruitment and Selection Committee or the whole Council to oversee the process. If a Committee is utilised Council will establish Terms of Reference to guide the Committee's advisory role.

Council resolved to establish a committee which was established under Section 5.8 of the *Local Government Act 1995* and comprised all Elected Members.

The Committee's Terms of Reference were:

- The CEO Recruitment and Selection Committee is to be an advisory Committee for the duration of the CEO recruitment process;
- The CEO Recruitment and Selection Committee is to coordinate the recruitment process in an appropriately confidential manner, including working with the appointed independent recruitment consultant to attract and select appropriate candidates;
- The CEO Recruitment and Selection Committee, with the assistance of the independent recruitment consultant, is to coordinate the advertising, search for candidates, short listing, development of interview process, conducting interviews, screening, assessing, conducting

- second round interviews, conducting referee checks, writing reports and contract preparation; and
- The CEO Recruitment and Selection Committee is to report back to Council throughout the process and provide Council with sufficient advice to permit a determining decision to be made at an Ordinary Meeting of Council regarding the final selection, appointment and contracting of the CEO.

It is proposed that the CEO Recruitment and Selection Committee is re-established following the recent local government elections.

The draft Terms of Reference for this re-establishment of the Committee are attached at Appendix 1 for Council's consideration.

The previous Committee has already undertaken some of the allotted duties and did report back to Council including but not limited to the following:

- Selection of a recruitment professional;
- Confirming the recruitment process; and
- Shortlisting of candidates.

OPTIONS

Council has options regarding the establishment and membership of the CEO Recruitment and Selection Committee. There is no legal requirement to establish such a committee, although it is recommended to assist the process. Council could choose not to establish a committee and consider each issue at a Special Council meeting. Council could also choose to only appoint a smaller number of Councillors to the CEO Recruitment and Selection Committee.

IMPLICATIONS TO CONSIDER

Consultative

WA Local Government Association

Department of Local Government

Strategic

Whilst there is no reference to the appointment of a new CEO in the Strategic Community Plan or Corporate Business Plan, this decision of Council will be one of the most strategic decisions it makes and therefore should be given sound consideration.

Policy Related

Nil

Financial

There are currently no funds allocated in the 2019/20 budget for costs associated with the CEO Recruitment and Selection. Council will therefore need to make a budget amendment once the costs are known regarding recruitment consultants and advertising either as part of a future report to Council on this matter or at the 1st Quarter Finance and Costing Review.

Legal and Statutory

Section 5.36 of the Local Government Act 1995 states the following:

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 by No. 49 of 2004 s. 44; No. 17 of 2009]

Part 4 of the *Local Government (Administration) Regulations* states the following:

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.]

As it is recommended that a Committee of Council be established the following is a copy of Section 5.8, 5.9 and 5.10 of the *Local Government Act 1995* prescribe the details associated with establishing Committees of Council as per below:

5.8. Establishment of committees

A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

** Absolute majority required.*

5.9. Committees, types of

(1) In this section —

***other person** means a person who is not a council member or an employee.*

(2) A committee is to comprise —

- (a) council members only; or*
- (b) council members and employees; or*
- (c) council members, employees and other persons; or*
- (d) council members and other persons; or*
- (e) employees and other persons; or*
- (f) other persons only.*

5.10. Committee members, appointment of

(1) A committee is to have as its members —

- (a) persons appointed* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
- (b) persons who are appointed to be members of the committee under subsection (4) or (5).*

** Absolute majority required.*

(2) At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.

- (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the local government.*
- (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*
- (5) *If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —*
 - (a) *to be a member of the committee; or*
 - (b) *that a representative of the CEO be a member of the committee,**the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee.*

5.11. Committee membership, tenure of

- (1) *Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —*
 - (a) *the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or*
 - (b) *the person resigns from membership of the committee; or*
 - (c) *the committee is disbanded; or*
 - (d) *the next ordinary elections day, whichever happens first.*
- (2) *Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —*
 - (a) *the term of the person's appointment as a committee member expires; or*
 - (b) *the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or*
 - (c) *the committee is disbanded; or*
 - (d) *the next ordinary elections day, whichever happens first.*

Risk Related

The appointment of a CEO is an important function of the Council and one that could have significant risks. It is important that the process for the recruitment and selection of the Council's new CEO is conducted in a sound and compliant process to avoid any organisational and reputational risks.

Workforce

The organisation does not have the resources or capacity to manage this process in house hence an external consultant has been engaged to manage the process.

VOTING REQUIREMENTS

Absolute Majority: Yes

**RESOLUTION
011019****Moved: Cr Kevin Trent****Seconded: Cr David Wallace****That Council:**

- 1. Establishes the Chief Executive Officer (CEO) Recruitment and Selection Committee and in accordance with Section 5.8 and Section 5.9(2)(a) of the Local Government Act 1995 adopts the Terms of Reference attached at Appendix 1.**
- 2. Authorises the Chief Executive Officer Recruitment and Selection Committee to liaise with the recruitment consultant (once appointed) in accordance with the Terms of Reference as attached at Appendix 1 and as follows:**
 - The Chief Executive Officer Recruitment and Selection Committee is to be an advisory Committee to Council for the duration of the CEO recruitment process in accordance with the Terms of Reference attached at Appendix 1; and**
 - The Chief Executive Officer Recruitment and Selection Committee is to coordinate the recruitment process in an appropriately confidential manner, including working with the appointed recruitment consultant to attract and select appropriate candidates; and**
 - The Chief Executive Officer Recruitment and Selection Committee, with the assistance of the recruitment consultant, is to coordinate the advertising, search for candidates, short listing, development of interview process, conducting interviews, screening, assessing, conducting second round interviews, conducting referee checks, writing reports and contract preparation; and**
 - The CEO Recruitment and Selection Committee is to report back to Council throughout the process and provide Council with sufficient advice to permit a determining decision to be made at an Ordinary Meeting of Council regarding the final selection, appointment and contracting of the CEO.**
- 3. Appoints all Councillors to the CEO Recruitment and Selection Committee;**

CARRIED BY ABSOLUTE MAJORITY: 7/0**RESOLUTION
021019****Moved: Cr David Wallace****Seconded: Cr Denis Warnick****That Council confirms that the Shire President will be the primary contact and liaison point between WALGA Recruitment and the Council during the recruitment process including contract negotiation.*****CARRIED BY ABSOLUTE MAJORITY: 7/0***

CEO Recruitment and Selection Committee

Membership	- All Councillors
Chairperson/Deputy	- Chairperson and Deputy Chair to be elected by the Committee in accordance with the Local Government Act 1995.
Officer Responsible	- Chief Executive Officer
Meeting Schedule	- As required
Meeting Location	- Shire of York
Quorum	- 4 Councillors
Delegated Authority	- Nil

FUNCTIONS:**1.0 NAME**

The name of the Committee is the CEO Recruitment and Selection Committee.

2.0 DISTRICT/AREA OF CONTROL

Shire of York.

3.0 VISION / PURPOSE

The CEO Recruitment and Selection Committee is to be an advisory Committee to Council for the duration of the CEO recruitment and selection process.

4.0 STATUTE**Local Government Act 1995****Subdivision 2 — Committees and their meetings****5.8. Establishment of committees**

A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

Shire of York Local Government (Council Meetings) Local Law 2016

The provisions of the above local law apply.

The Committee shall operate in accordance with the Local Government Act 1995 and the Shire of York Local Government (Council Meetings) Local Law 2016 with the following exceptions:

1. As the Committee has no delegated authority meetings are not open to the public; and
2. Order of Business at the meetings will be as outlined in Section 9 of this Terms of Reference.

5.0 ESTABLISHMENT

Established by Council Resolution on XXXXXXXX.

6.0 OBJECTIVES

- The CEO Recruitment and Selection Committee is to be an advisory Committee to Council for the duration of the CEO recruitment process;
- The CEO Recruitment and Selection Committee is to coordinate the recruitment process in an appropriately confidential manner, including working with the appointed independent recruitment consultant to attract and select appropriate candidates;

- The CEO Recruitment and Selection Committee, with the assistance of the independent recruitment consultant, is to coordinate the advertising, search for candidates, short listing, development of interview process, conducting interviews, screening, assessing, conducting second round interviews, conducting referee checks, writing reports and contract preparation; and
- The CEO Recruitment and Selection Committee is to report back to Council throughout the process and provide Council with sufficient advice to permit a determining decision to be made at an Ordinary Meeting of Council regarding the final selection, appointment and contracting of the CEO.

7.0 MEMBERSHIP

Local Government Act 1995

Part 5 – Division 2

5.11. Committee membership, tenure of

- (1) Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —
- (a) the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or
 - (b) the person resigns from membership of the committee; or
 - (c) the committee is disbanded; or
 - (d) the next ordinary elections day,
- whichever happens first.
- (2) Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —
- (a) the term of the person's appointment as a committee member expires; or
 - (b) the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or
 - (c) the committee is disbanded; or
 - (d) the next ordinary elections day,
- whichever happens first.

8.0 DELEGATED AUTHORITY

The Committee has no delegated authority and as such Committee meetings will not be open to the public.

9.0 ORDER OF BUSINESS AT MEETINGS

The Order of Business at Committee Meetings will be as follows:

1. OPENING
 - 1.1. Declaration of Opening
 - 1.2. Disclaimer
 - 1.3. Standing Orders

Terms of Reference

3/4

- 1.4. Declarations of Interest that Might Cause and Conflict
- 1.5. Declarations of Financial Interest
- 1.6. Disclosure of Interest that May Affect Impartiality
2. ATTENDANCE
 - 2.1. Members
 - 2.2. Staff
 - 2.3. Apologies
 - 2.4. Leave of Absence Previously Approved
3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS
4. OFFICERS REPORTS
5. QUESTIONS FROM MEMBERS WITHOUT NOTICE
6. BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING
7. CLOSURE

Appointing a CEO

Local Government Operational Guidelines Number 10

Selecting and appointing a Chief Executive Officer (CEO) is one of the most important tasks elected members may undertake during their term of office. Choosing the right person is critical to the success of the council and the local government.

It is essential that correct processes are followed so that every opportunity is given to the candidates to put the appropriate information forward so the council can choose the person most suited to the position. It is important that elected members understand that when they appoint a CEO they are entering into a contractual relationship with the CEO. A commitment to trust and good faith by both parties will lead to an effective relationship between the council and the CEO. This guideline has been developed to assist councils to conduct an effective process when selecting their new CEO.

Legislation

There are three sections of the Local Government Act 1995 (the Act) that have direct application to the appointment of a CEO. Section 5.36(2)(a) and (b) of the Act provides that a local government is not to employ a person to fill the position of CEO unless council believes that the person is suitably qualified for the position and is satisfied with the provisions of the proposed employment contract. Section 5.39 contains provisions for the contracts of CEOs. Section 5.40 requires that all employees are to be selected in accordance with the principles of merit and equity.

In addition to the above provisions of the Act the Local Government (Administration) Regulations 1996, regulations 18A, 18B, 18C, 18E, 18F and 19A also deal with advertising, contracts, and the selection and appointment process.

The principles of merit and equity refer to the process of filling vacancies whereby a thorough assessment is made of the candidates' skills, knowledge and abilities against the work related requirements of the vacancy. The process must be open, competitive and free from bias, unlawful discrimination, nepotism or patronage.

"Suitably qualified" is not defined in the legislation but the intention is not limited to academic qualifications. Through the position description and selection criteria the council needs to ensure that processes are in place to appoint the person that best meets the qualities required in terms of academic qualifications, experience, skills and knowledge.

Outsourcing the recruitment process

Depending on the size of the local government and the availability and skills of staff, outsourcing the recruitment process may be the best option.

Generally recruitment consultants provide a professional service and possess a wide range of knowledge and skills in staff recruitment. It is recommended that rigorous checks be conducted on any recruitment consultants before they are appointed to ensure they have the necessary skills and experience (local government recruitment experience would be beneficial) to effectively assist the council in its selection of a CEO.

An early decision needs to be made by council on whether it will handle the recruitment in-house or appoint a consultant to coordinate the appointment process. If a recruitment consultant is chosen, council should provide the consultant with a copy of these guidelines as part of the appointment process.

A recruitment consultant may be involved in the following aspects of the selection process:

- development or review of the position description;
- development of selection criteria;
- drafting of the advertisement;
- preliminary assessment of the applications;
- final shortlisting;
- drafting of the questions for interview;
- coordinating interviews; and
- finalising the contract.

If a decision is made to outsource the recruitment process it is imperative that the council maintains a high level of involvement in the process and enters into a formal agreement (contract) with the consultant. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process.

Reviewing necessary documentation

There are two very important documents that need to be reviewed and approved by council prior to advertising the position. These are the position description form and the Contract of Employment.

Given the importance of the position of CEO, a police clearance should also be sought.

Position description form

The position description form, particularly the selection criteria and performance criteria (where it is included in the position description form) should be reviewed prior to advertising. The council, a committee of council or the consultant (if one is used) should undertake this task.

Council needs to determine what they want their CEO to do and whether the selection criteria will facilitate the appointment of a person with the appropriate set of skills.

For example, it may be very important that a CEO work with diverse elements of the community such as developers, mine operators, Indigenous communities or other specific interest groups. Therefore, a selection criterion might be "Proven ability to work and negotiate with diverse groups in the community". If such criteria is not included an assessment of the applicants' abilities in this area may be overlooked. This is why councils must ensure when commencing the task of appointing a new CEO that the skills and qualities required are well understood and documented.

Selection criteria are generally classified as 'essential' or 'desirable'. Applicants who are able to satisfy all the essential criteria should be considered for interview.

If an application does not fully address the essential selection criteria the applicant should not be considered for interview.

However, on occasions an application may be received where the applicant has the skills and experience which indicate a capacity to satisfy the

essential selection criteria even though it is not clearly elaborated in their address of the selection criteria in their application. In these circumstances the application may warrant further consideration.

Desirable criteria are not an essential requirement of the position. They are normally identified to attract applicants who may have a wider range of skills and experience which an employer would consider desirable.

Council may decide that it would be more appropriate to attract applicants with a wider range of knowledge, experience and management skills than just local government. If this is the case the selection criteria should accommodate this.

Performance criteria

Performance criteria are quantitative and/ or qualitative measures of performance. There are two broad categories of performance criteria; those that have general application and apply at all times and specific criteria that apply for a limited period of time. An example of the first type would be, "Advice to council is relevant, accurate and timely." An example of the second type of performance criteria would be, "Calling of tenders for the new recreation centre is undertaken on time and in compliance with the law." It is obvious that the first is always going to be required, whereas the second is specific to the project of the new recreation centre.

Council may set ongoing permanent performance criteria that will be included in the contract. The successful applicant needs to be informed that performance criteria relevant to a specific project/s will also be subject to annual negotiation. These will be assessed at least once during each year.

In setting performance criteria, council will need to determine what it is they want their CEO to do over and above legislative requirements. Councils

need to be realistic in terms of their expectations and provide appropriate resources to facilitate achievement of performance criteria.

The performance criteria must be consistent with the position description and the selection criteria.

It is not essential that performance criteria relating to a specific project/s are identified prior to the appointment but, if not, they must be identified very soon after so that the new CEO is aware of what is required of him or her in the coming year or years.

Contract of employment

The council should review and amend, where necessary, the existing terms and conditions of the CEO contract before proceeding to advertise the position.

It is also recommended that council obtains advice on the contract where alterations or amendments are proposed and there is any (even slight) doubt as to the meaning of those alterations or amendments.

It should be noted that section 5.39(3) of the Act provides that an employment contract is of no effect unless it contains:

- an expiry date; and
- performance criteria for the purpose of reviewing the person's performance.

Regulation 18B of the Local Government (Administration) Regulations 1996 also requires that the contract contains a provision that places a limit on the maximum amount of remuneration that can be paid to a person should the contract be terminated prior to its expiry date.

Amendments to Regulation 19A of the Local Government (Administration) Regulations 1996 now sets that limit to a maximum of one year salary termination payment or the value of the remuneration for the balance of the period of contract that is left to run, whichever is the lessor of the two amounts.

To further assist local governments, model contracts have been developed by both the Western Australian Local Government Association (WALGA) and Local Government Managers Australia WA Division (LGMA).

CEO remuneration

Amendments to section 5.39(7) of the Act now provide for a CEO's remuneration to be determined by the Salaries and Allowances Tribunal under the Salaries and Allowances Act 1975.

Advertising the vacancy

Ideally, the position should be advertised as widely as possible to attract the best possible field of candidates. The minimum requirement for advertising under Local Government (Administration) Regulation 18A(1) is for the position to be advertised in a newspaper circulating generally throughout the State.

Regulation 18A(2) prescribes the minimum requirements to be included in an advertisement for the position of CEO. Those requirements are:

- the details of the remuneration and benefits offered;
- details of the place where applications for the position are to be submitted;

- the date and time for the closing of applications for the position;
- the duration of the proposed contract; and
- contact details for a person who can provide further information about the position.

In addition to the above, a local government is to include any other information in the advertisement which it believes is relevant.

The content and context of advertisements should be carefully considered. An attractive and well-constructed advertisement is more likely to attract the interest of potential candidates.

A comprehensive application kit comprising documentation relevant to the vacant position should be developed and provided to potential applicants on request. Reference to, and instructions on how to access the kit should be included in the advertisement.

Allow sufficient time within the advertisement for potential applicants to prepare and forward applications.

It is recommended that the position be open for a minimum of two weeks with a definite date and time after which applications will not be considered.

Confidentiality

From the beginning to the conclusion of the process, absolute confidentiality must be maintained by every person involved in the selection process. This cannot be emphasised enough as any information which finds its way into the public domain before a recommendation is made to council may well compromise the selection process.

Council should consider the use of a confidentiality agreement which requires all persons involved in the selection process to agree to appropriate levels of confidentiality.

Selection and appointment process

The selection and appointment process to be applied to a CEO position must be approved by council prior to advertising as prescribed under Local Government (Administration) Regulation 18C.

A check list is provided at Attachment 1 in this guideline to assist local governments with following an appropriate sequence in the selection and appointment process.

Extensive consideration should be given to the overall process, especially the shortlisting, as to whether preliminary interviews will be conducted and whether final interviews will be with full council.

Council must be very clear about the methods, techniques and questions used during the selection process.

It is essential that the council manages the process professionally and that members involved in the process have a thorough understanding of their roles and responsibilities.

Council may decide to establish a committee or panel to coordinate the preliminaries of the selection process. This committee or panel should liaise with the employment consultant if one is appointed.

If council establishes a formal committee (in accordance with the Act), then it can delegate its powers and duties to that committee.

It should be noted that, unlike council committees established under the Act, any selection panel that is appointed cannot be delegated any powers or duties by council, nor can the Mayor or President be delegated any power to make decisions on behalf of council, i.e. approve the conditions of the contract.

The respective roles of a consultant, council committee/panel, full council and individual elected members must be clear.

Applicants should be shortlisted according to their capacity to address the relevant selection criteria. Where there is a large pool of applicants, the most competitive should be shortlisted for interview. It is the responsibility of the selection panel/committee to determine how many applicants it will interview. Their assessment must involve detailed consideration of the applications and may involve a preliminary interview. The selection panel/committee should be provided with the full list of applicants, not just those recommended for short listing and interviews.

Elected members may act as referees for applicants. This most often occurs when a person already employed by the local government applies for the CEO position. When this occurs it is recommended that the member provide a written referee report prior to interview (assuming the applicant is granted an interview).

Elected members should declare any previous association with a potential applicant at the time of shortlisting if they are part of the selection panel/committee established for the purpose. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If a member's relationship with an applicant is significant and may result in claims of nepotism, patronage or bias the member should exclude themselves from the selection process.

Where rating scales and other scoring tools are used to assess the relative performance of applicants, it is important that all elected members and other members involved in the interview understand how these are applied so they produce meaningful results. The selection panel/committee may also consider using psychological or other testing as part of the selection process.

Conducting the interview

The interview process can be challenging for both panel members and applicants.

It is a practice in local government that the full council be involved with the final interview and selection. This is perfectly understandable, as all members of council have to work closely with this person and trust them.

Often, all elected members feel they need to be involved in the assessment and final selection.

If this does not occur it is desirable that at the very least, all members of council have the opportunity to meet the recommended applicant prior to the appointment being considered by council.

Applicants should be provided with at least five working days notice of the impending interview wherever possible to allow them to adequately prepare. Obviously, if you are a council in regional Western Australia and are expecting an applicant to travel, then sufficient time needs to be allowed. Interviewing over a weekend may be an option.

It is important to provide an environment that puts the interviewee at ease and allows them to perform at the highest possible level. In this regard, consideration should be given to environmental factors such as location

and lighting. A well organised process will ensure that everything runs smoothly.

The importance of the chairperson in managing the interview process cannot be overstated. The chairperson is responsible for ensuring that the interview is managed efficiently and effectively.

Ideally, all elected members who are to be in attendance at the final interview should be involved in planning the interview process.

Each applicant must be subject to the same assessment method, i.e. the interview questions or any tests to be undertaken. It is quite acceptable for the panel to ask additional questions to clarify a point or tease out further information during the interview.

It is not necessary for all elected members to have the opportunity to ask a question. Often, it is best to allocate the questions to a small group of elected members (a maximum of 3 is ideal) which ensures consistency of approach.

At the conclusion of the interview it is appropriate to provide the applicant with an opportunity to clarify any issues with the selection panel/committee.

Making a decision

The council should not make a decision to appoint an applicant until all available information has been considered. This includes, but is not limited to, assessment of interview performance, quality of application, referee reports, copies of reports written by the applicant and the results of any psychological or other tests (if used).

The council must be satisfied regarding the claims by the applicant about their relative experience and qualifications.

Local Government (Administration) Regulation 18E makes it an offence for a person to provide false information relating to their academic qualifications.

A police clearance should be sought and considered, given the importance of the position of CEO.

Referee reports are an important part of the process and should be in writing and address the relevant selection criteria for the position.

The council may source a referee who is not one nominated by an applicant, providing they advise the applicant of their intention to do so.

In the event that a referee who was not nominated by the applicant provides a report that contains negative comments, the applicant should be given the opportunity to respond to any such comments.

Finalising the appointment

Eventually, after considering all the information available to it, the selection panel/committee then has to make a decision on which applicant is the most suitable for appointment.

A selection report should be prepared for consideration by council which documents the assessment of each applicant interviewed. The report should identify the most suitable applicant/s and include a recommendation for council to approve an offer of appointment.

Following the decision of council to approve an offer to appoint, with the contract negotiations finalised and the preferred applicant accepting the offer of appointment, council is required to make the formal and final appointment of the CEO.

It is strongly recommended that the successful applicant not commence duties with the local government until the contract is signed.

The unsuccessful applicants (including those not interviewed) should be notified of the decision and offered the opportunity to seek feedback on their application or interview performance if they were granted an interview.

Should an unsuccessful applicant request feedback, it is recommended that the chairperson of the interview panel/selection committee provide this. If a recruitment consultant is used they can undertake this task.

Local Government (Administration) Regulation 18F does not allow a local government to increase the value of a CEO's remuneration and benefits in excess of those advertised when finalising the appointment.

For further reading it is suggested reference should be made to:

- sections 5.36, 5.39 and 5.40 of the Local Government Act 1995;
- Local Government (Administration) Regulations 1996 18A, 18B, 18C, 18E, 18F and 19A;
- Salaries and Allowances Tribunal website: www.sat.wa.gov.au/LocalGovernmentCEOs

Attachment 1

CEO recruitment and appointment check list

- Council to (preferably in conjunction with a professional HR adviser);

- Develop a profile of the preferred applicant (i.e. desired and essential skills, abilities, knowledge and qualifications).
- Approve an agreed salary package (set a suitable salary package that complies with the determination under section 7A of the Salaries and Allowances Act 1975).

Review necessary documentation (contract of employment and position description).

NB: The key provisions to be included in the contract are: an expiry date, performance criteria and reference to the limit placed on the remuneration to be paid should the contract be terminated prior to the expiry date.

Approve a process to be used for the selection and appointment of the CEO (i.e. stages of the process, who is to be involved and to what extent, whether a consultant is appointed and their role in the process).

NB: It is good practice for council to formally adopt a process to ensure transparency, clarity and a shared understanding. Once adopted, the process should be followed unless found to be flawed, in which case a decision should be made to amend the process as soon as possible.

Advertise the position inviting applications from suitably qualified applicants (advertisement to contain information set out in 18A(2) of the Local Government (Administration) Regulations 1996).

Applicants to be short listed (may be undertaken by consultants, selection panel/ committee or council).

NB: It is noted that in most cases this is done by the consultants or the selection panel/committee in conjunction with the consultants.

Conduct interviews of the short listed applicants (may be undertaken by consultants, selection panel/ committee or council).

NB: This may be done prior to the final decision to appoint if availability of preferred applicant is limited due to travel arrangements etc. If not interviewed by the entire council it is recommended that all elected members meet with the preferred applicant prior to final appointment.

Select preferred applicant/s (make recommendation for council to offer the position to the 1st preferred applicant subject to contractual negotiations, within the designated salary package, including the preliminary performance criteria to be contained in the contract).

NB: If 1st preferred applicant is not accepted or declines the offer, a decision may be made on any 2nd or 3rd preferred applicant in line until an offer and acceptance is reached or until no preferred applicants are appointed (applicant's identity may remain confidential until such time a final appointment is made).

Approve the formal and final appointment (must be decision by council that it: (i) believes the person is suitably qualified for the position of CEO; and (ii) is satisfied with the provisions of the proposed CEO employment contract).

NB: Absolute majority decision required for (ii).

NB: All legislative references are from the Local Government Act 1995 and associated regulations.

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8 CLOSURE

The Shire President thanked everyone for their attendance and closed the meeting at 9.10am.

The minutes were confirmed by the Council as a true and accurate record at the Council Meeting held on 25 November 2019.

SHIRE PRESIDENT