

SHIRE OF KENT



SPECIAL MEETING MINUTES

DATE: Wednesday 26 October 2022

TIME: 1:00pm

VENUE: Council Chambers,
Richmond Street, Nyabing WA 6341

PETER CLARKE
A/CHIEF EXECUTIVE OFFICER

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Peter Clarke

A/CHIEF EXECUTIVE OFFICER

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1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The meeting was opened at 1:06pm by the Shire President.

2. RECORD OF ATTENDANCE/APOLOGIES AND APPROVED LEAVE OF ABSENCE

Members

Cr S Crosby	Shire President
Cr K Johnston	Deputy Shire President
Cr D Gray	Member
Cr G Hobley	Member
Cr R Jury	Member (Via video link)
Cr T Borgward	Member

Staff

P Clarke	A/Chief Executive Officer
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Members of the Public

Peter Casey – Mills Recruitment (Via video link)

Apologies

Cr J Germain	Member
Cr W Tapscott	Member

Members on Approved Leave of Absence

3. DISCLOSURES OF INTEREST

Nil

4. PUBLIC QUESTION TIME

Nil

5. APPLICATIONS FOR LEAVE OF ABSENCE

Section 5.25 *Local Government Act 1995*

6. **CONFIRMATION AND RECEIVING OF MINUTES/BUSINESS ARISING**
Nil
7. **ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION**
Nil
8. **PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS**
Nil
9. **OFFICER REPORTS**
Nil
10. **ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
Nil
11. **NEW BUSINESS OF AN URGENT NATURE AGREED TO BY RESOLUTION OF COUNCIL**
Nil
12. **MATTERS BEHIND CLOSED DOORS**

That the meeting be closed to the public in accordance with section 5.23 Local Government Act 1995, 5.5.23(2))

- Matters affecting employee(s)
- Personal affairs of any person(s), including financial and/or commercial Contracts
- Commercial Confidentiality
- Legal advice/matters
- Public safety/security matters where public knowledge may be prejudicial.

OCM2223/058 - COUNCIL RESOLUTION (Procedural Motion)

MOVED Cr KV Johnston / Cr TD Borgward

That Council closes the meeting to the public at 1:07pm to consider matters of a confidential nature behind closed doors.

**CARRIED 6/0
By Simple Majority**

CONFIDENTIAL ITEM**12.1.1 CHIEF EXECUTIVE OFFICER RECRUITMENT & APPOINTMENT**

PROPOSED MEETING DATE:	19 October 2022
PROPONENT:	N/A
LOCATION:	N/A
AUTHOR:	N/A
REPORTING OFFICER:	Peter Clarke – Acting Chief Executive Officer
FILE NO:	Peter Clarke – Acting Chief Executive Officer
ASSESSMENT NO:	N/A
ATTACHMENTS:	<ul style="list-style-type: none"> • (A) Attachment 1 - Proposed CEO Employment Contract • (A) Attachment 2 - Summary of CEO Selection Committee Assessment • (B) Appendix 1 - Advertisement • (B) Appendix 2 - Interview Questionnaire • (B) Appendix 3 - Candidate Overview • (B) Appendix 3 - Candidate Referee Report 1 • (B) Appendix 3 - Candidate Referee Report 2
DISCLOSURE OF INTEREST:	Nil

PURPOSE

To review and approve a recommendation from the CEO Selection Committee to make an offer of employment for the position of CEO with the Shire of Kent to a preferred candidate with the proposed terms contained in the Contract of Employment.

BACKGROUND

At the Ordinary meeting of Council held on 17 August 2022, the following was resolved in respect to the Recruitment process for the Chief Executive Officer position with the Shire of Kent.

OCM2122/020 – COUNCIL RESOLUTION

MOVED Cr SR Crosby / Cr KV Johnston

That Council approves of the process and suggested timeframe for the recruitment of the CEO position, and appoints Mills Recruitment to assist Council in the overall process.

**CARRIED 8/0
By Absolute Majority**

OCM2122/021 – COUNCIL RESOLUTION

MOVED Cr SR Crosby / Cr DP Gray

That Council, in accordance with Clause 8 of the Standards for Chief Executive Officer Recruitment and Selection, Performance Review and Termination, appoints the whole of Council to the CEO Selection Panel for the Recruitment of the new Chief Executive Officer position:-

**CARRIED 8/0
By Absolute Majority**

OCM2122/022 – COUNCIL RESOLUTION**MOVED Cr SR Crosby / Cr JN Germain**

That, Liz Guidera and Rachel Kirby be approached as the Independent Person on the CEO Selection Panel for the Recruitment of the new Chief Executive Officer position with the Shire President appointing either persons subject to availability.

**CARRIED 8/0
By Absolute Majority**

In relation to the above resolution, the Shire President confirmed to Council that Cr Liz Guidera, Shire President with the Shire of Katanning, had accepted the independent person nomination on the CEO Selection Panel.

The position was advertised in the Local Government Job Directory, SEEK and on the Shire's website during the application period.

COMMENT

The selection process was undertaken in accordance with principles of merit and equity and also in accordance with the appropriate legislative requirements as detailed in the *Local Government Act 1995*, the *Local Government (Administration) Regulations 1996* and the *Shire of Kent Adopted Standards for CEO Recruitment, Performance and Termination*.

STATUTORY IMPLICATIONS

Local Government Act (1995)

Local Government (Administration) Regulations 1996

Shire of Kent Adopted Standards for CEO Recruitment, Performance and Termination

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.*

5.39. Contracts for CEO and senior employees

- (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; and
 - (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 CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A.
- (8) A local government is to ensure that subsection (7) is complied with in entering into, or renewing, a contract of employment with a CEO.

5.40. Principles affecting employment by local governments

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; and
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and
- (c) employees are to be treated fairly and consistently; and
- (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; and
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Work Health and Safety Act 2020*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and
- (c) cause council decisions to be implemented; and
- (d) manage the day to day operations of the local government; and
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and
- (f) speak on behalf of the local government if the mayor or president agrees; and
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

POLICY IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Shire of Kent Community Strategic Plan 2017 – 2027

Civic Leadership Objective – Continually enhance the Shire’s organisational capacity to service the needs of our community

The appointment of a permanent CEO is crucial to the above strategic goal.

RISK IMPLICATIONS

The risk to the organisation is high if the Selection Committee’s recommendation is not adopted. Failure to appoint a CEO could lead the Shire to being in breach of Section 5.36 of the *Local Government Act (1995)*

VOTING REQUIREMENT

Absolute Majority

OCM2223/059 - COUNCIL RESOLUTION

MOVED Cr KV Johnston / Cr GW Hobley

That pursuant to Clause 9(2) of the Shire of Kent’s Adopted Standards for CEO Recruitment, Performance and Termination, the summary of the CEO Selection Committee’s assessment of each CEO applicant be received.

**CARRIED 6/0
By Absolute Majority**

OCM2223/060 - COUNCIL RESOLUTION

MOVED Cr DP Gray / Cr TD Borgward

That:

- (a) The making of an offer to Mr Adam Seiler as named in Confidential Attachment 1 for the position of CEO at the Shire of Kent as the candidate the Council believes to be the person most suitably qualified for the position; and***
- (b) The proposed terms of the CEO Employment Contract detailed in Confidential Attachment 2, being for a period of five (5) years inclusive of a Total Reward Package valued at \$204,850.00 per annum calculated in accordance with the 7 April 2022 Salaries and Allowances Tribunal Local Government Determination Band 4 range be approved.***

**CARRIED 6/0
By Absolute Majority**

OCM2223/061 - COUNCIL RESOLUTION

MOVED Cr DP Gray / Cr GW Hobley

That:

- a) ***The President and Acting CEO be authorised to execute the CEO employment contract subject to Mr Adam Seiler agreeing to enter into the proposed terms of the CEO Employment Contract without amendment; and***
- b) ***Subject to Mr Adam Seiler accepting the proposed terms of the CEO Employment Contract, he be appointed to the position of CEO at the Shire of Kent.***

**CARRIED 6/0
By Absolute Majority**

Prior to Mr Casey retiring from the meeting, the Shire President, on behalf of Council, thanked Mills Recruitment, and Mr Casey in particular, for the professional way in which the CEO recruitment process was conducted on behalf of Council.

OCM2223/062 - COUNCIL RESOLUTION

MOVED Cr TD Borgward / Cr KV Johnston

That Council extends its thanks to Councillor Guidera, Shire President at the Shire of Katanning, for her participation as the Independent Person on the CEO Selection Panel and that by way of thanks Council provides Councillor Guidera with a \$200 gift voucher to the Nyabing Community Hub.

**CARRIED 6/0
By Simple Majority**

OCM2223/063 - COUNCIL RESOLUTION (Procedural Motion)

MOVED Cr KV Johnston / Cr TD Borgward

That Council re-open the meeting to the general public at 1:11pm.

The Shire President then read the motion as moved behind closed doors.

OCM2223/059 - COUNCIL RESOLUTION

MOVED Cr KV Johnston / Cr GW Hobley

That pursuant to Clause 9(2) of the Shire of Kent's Adopted Standards for CEO Recruitment, Performance and Termination, the summary of the CEO Selection Committee's assessment of each CEO applicant be received.

**CARRIED 6/0
By Absolute Majority**

OCM2223/060 - COUNCIL RESOLUTION

MOVED Cr DP Gray / Cr TD Borgward

That:

- (c) The making of an offer to Mr Adam Seiler as named in Confidential Attachment 1 for the position of CEO at the Shire of Kent as the candidate the Council believes to be the person most suitably qualified for the position; and***
- (d) The proposed terms of the CEO Employment Contract detailed in Confidential Attachment 2, being for a period of five (5) years calculated in accordance with the 7 April 2022 Salaries and Allowances Tribunal Local Government Determination Band 4 range be approved.***

**CARRIED 6/0
By Absolute Majority**

OCM2223/061 - COUNCIL RESOLUTION

MOVED Cr DP Gray / Cr GW Hobley

That:

- c) The President and Acting CEO be authorised to execute the CEO employment contract subject to Mr Adam Seiler agreeing to enter into the proposed terms of the CEO Employment Contract without amendment; and***
- d) Subject to Mr Adam Seiler accepting the proposed terms of the CEO Employment Contract, he be appointed to the position of CEO at the Shire of Kent.***

**CARRIED 6/0
By Absolute Majority**

OCM2223/062 - COUNCIL RESOLUTION

MOVED Cr TD Borgward / Cr KV Johnston

That Council extends its thanks to Councillor Guidera for her participation as the independent person on the selection panel and that by way of thanks Council provides Councillor Guidera with a \$200 gift voucher to the Nyabing Community Hub.

**CARRIED 6/0
By Simple Majority**

13. MEETING CLOSED

There being no further business the Shire President Cr Scott Crosby, closed the meeting at 1:12pm.

I certify these minutes were confirmed at the Ordinary Meeting of Council held 16 November 2022.

Scott Crosby
.....
Cr Scott Crosby – Shire President

16/11/22
.....
Date