

## SHIRE OF KELLERBERRIN

### MINUTES

Minutes of the Special Council Meeting held at the Shire of Kellerberrin Ex-Golf Clubhouse, Price Street Kellerberrin on Thursday 22<sup>nd</sup> December 2016, commencing at 6.32pm.

#### 1. DECLARATION OF OPENING:

6.32pm – Cr Forsyth, President/Presiding Person declared the meeting open.

#### 2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE:

##### Present:

|                      |  |
|----------------------|--|
| Cr. Forsyth          | President/Presiding Person               |
| Cr. O'Neill          | Deputy President                         |
| Cr. Leake            | Member                                   |
| Cr. White            | Member                                   |
| Cr. Steber           | Member                                   |
| Cr. Reid             | Member                                   |
| Cr. McNeil           | Member                                   |
| Mr Raymond Griffiths | Chief Executive Officer                  |
| Mrs Karen Oborn      | Deputy Chief Executive Officer – Minutes |

**Leave of Absence:** Nil

#### 3. ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION:

#### 4. DECLARATION OF INTERESTS: NIL

In accordance with Section 5.65 of the *Local Government Act 1995* the following disclosures of **financial** interest were made at the Council meeting held on **22 December 2016**.

| Date | Name | Item No. | Reason |
|------|------|----------|--------|
|      |      |          |        |

In accordance with Section 5.65 of the *Local Government Act 1995* the following disclosures of **closely association person and impartiality** interest were made at the Council meeting held on **22 December 2016**.

| Date | Name | Item No. | Reason |
|------|------|----------|--------|
|      |      |          |        |

In accordance with Section 5.60B and 5.65 of the *Local Government Act 1995* the following disclosures of **proximity** interest were made at the Council meeting held on **22 December 2016**.

| Date | Name | Item No. | Reason |
|------|------|----------|--------|
| NIL  |      |          |        |

## 5. BUSINESS

|                                |   |
|--------------------------------|---|
| <b>Agenda Reference:</b>       | 5.1   |
| <b>Subject:</b>                | Acting Chief Executive Officer                |
| <b>Location:</b>               | Shire of Kellerberrin                         |
| <b>Applicant:</b>              | Shire of Kellerberrin                         |
| <b>File Ref:</b>               | Personal                                      |
| <b>Disclosure of Interest:</b> | N/A   |
| <b>Date:</b>                   | 8 <sup>th</sup> November 2016                 |
| <b>Author:</b>                 | Mr Raymond Griffiths, Chief Executive Officer |

### BACKGROUND

Council's November 2016 Ordinary Meeting of Council. – 15<sup>th</sup> November 2016

**MIN 184/16 MOTION** - Moved Cr. Steber 2<sup>nd</sup> Cr. White

#### *That Council*

- 1. Delegates authority to the Chief Executive Officer to appoint an Acting Chief Executive Officer during the continued absence of the Chief Executive Officer when on leave for more than 5 continuous working days.*
- 2. Delegates the authority to the Chief Executive Officer to approve a rate of higher duties for the duration of the period as Acting CEO.*

CARRIED 7/0

### COMMENT

In presenting the item to the November Council Meeting, Council's CEO didn't realise that the appointment needed to be specific and unless it was undertaken in the form of a policy the above policy doesn't meet the requirements of the Local Government Act 1995.

Therefore a Special Meeting has been called to deal with the appointment of an Acting Chief Executive Officer for the duration of the Chief Executive Officer's leave which has been approved by Council's President effective from 3<sup>rd</sup> January 2017 to 10<sup>th</sup> February 2017.

### FINANCIAL IMPLICATIONS (ANNUAL BUDGET)

Council within its 2016/2017 Salaries and Wages Budget has an allocation for higher duties for the Deputy Chief Executive Officer.

This Budget allocation is based on the Chief Executive Officer taking 5 weeks of Annual Leave.

### POLICY IMPLICATIONS

#### STATUTORY IMPLICATIONS

##### LOCAL GOVERNMENT ACT 1995 (as amended)

##### **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 s. 21.]*

### **5.37. Senior employees**

- (1) A local government may designate employees or persons belonging to a class of employee to be senior employees.
  - (2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.
  - (3) Unless subsection (4A) applies, if the position of a senior employee 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.
  - (4A) Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.
  - (4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.
- [Section 5.37 amended by No. 49 of 2004 s. 45 and 46(4); No. 17 of 2009 s. 22.]*

### **5.38. Annual review of certain employees' performances**

The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

### **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;
  - (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 5.39 amended by No. 49 of 2004 s. 46(1)-(3).]

#### **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;
- (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.

#### **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;
- (b) ensure that advice and information is available to the council so that informed decisions can be made;
- (c) cause council decisions to be implemented;
- (d) manage the day to day operations of the local government;
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- (f) speak on behalf of the local government if the mayor or president agrees;
- (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);
- (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.

#### **5.42. Delegation of some powers and duties to CEO**

- (1) A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

*\* Absolute majority required.*

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

*[Section 5.42 amended by No. 1 of 1998 s. 13.]*

#### **5.43. Limits on delegations to CEO**

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;

- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;
- (h) any power or duty that requires the approval of the Minister or the Governor;
- (i) such other powers or duties as may be prescribed.

[Section 5.43 amended by No. 49 of 2004 s. 16(3) and 47; No. 17 of 2009 s. 23.]

#### **5.44. CEO may delegate powers and duties to other employees**

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
  - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
  - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions imposed by the local government on its delegation to the CEO.

- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.
- (5) In subsections (3) and (4) —  
**conditions** includes qualifications, limitations or exceptions.

[Section 5.44 amended by No. 1 of 1998 s. 14(1).]

#### **5.45. Other matters relevant to delegations under this Division**

- (1) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984* —
  - (a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and
  - (b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.
- (2) Nothing in this Division is to be read as preventing —
  - (a) a local government from performing any of its functions by acting through a person other than the CEO; or
  - (b) a CEO from performing any of his or her functions by acting through another person.

#### **5.46. Register of, and records relevant to, delegations to CEO and employees**

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

## **SALARIES AND ALLOWANCES ACT 1975**

### **Section 7A. Recommendations as to remuneration of local government CEOs**

- (1) The Tribunal shall, from time to time, inquire into and make a report containing recommendations as to the remuneration to be paid or provided to chief executive officers of local governments.
- (2) A report of the Tribunal made under this section shall be —
  - (a) in writing; and
  - (b) signed by the members.
- (3) A copy of every report made by the Tribunal under this section shall be published in the *Gazette*.

## **LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS 1996**

### **Part 4 — Local government employees**

*[Heading inserted in Gazette 26 Aug 2011 p. 3482.]*

#### **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 in Gazette 31 Mar 2005 p. 1037-8; amended in 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 in 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 in Gazette 31 Mar 2005 p. 1038.]*

**18D. Performance review of CEO, local government's duties as to**

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

*[Regulation 18D inserted in Gazette 31 Mar 2005 p. 1038.]*

**18E. False information in application for CEO position, offence**

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

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

Penalty: \$5 000.

*[Regulation 18E inserted in Gazette 31 Mar 2005 p. 1038-9; amended in Gazette 19 Aug 2005 p. 3872.]*

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

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

*[Regulation 18F inserted in Gazette 31 Mar 2005 p. 1039.]*

**18G. Delegations to CEOs, limits on (Act s. 5.43)**

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

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



(b) regulations 18C and 18D.

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

**19. Delegates to keep certain records (Act s. 5.46(3))**

Where a power or duty has been delegated under the Act to the CEO or to any other local government employee, the person to whom the power or duty has been delegated is to keep a written record of —

- (a) how the person exercised the power or discharged the duty; and
- (b) when the person exercised the power or discharged the duty; and
- (c) the persons or classes of persons, other than council or committee members or employees of the local government, directly affected by the exercise of the power or the discharge of the duty.

**19A. Payments in addition to contract or award, limits of (Act 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.

[Regulation 19A inserted in Gazette 31 Mar 2005 p. 1032.]

**STRATEGIC COMMUNITY PLAN IMPLICATIONS - Nil**

**CORPORATE BUSINESS PLAN IMPLICATIONS - Nil**  
**(Including Workforce Plan and Asset Management Plan Implications)**

**TEN YEAR FINANCIAL PLAN IMPLICATIONS - Nil**

**COMMUNITY CONSULTATION**

Chief Executive Officer

**ABSOLUTE MAJORITY REQUIRED – YES/NO**

**STAFF RECOMMENDATION**

That Council:

1. appoints Mrs Karen Oborn, Deputy Chief Executive Officer as the Shire of Kellerberrin's Acting Chief Executive Officer for the period Tuesday, 3<sup>rd</sup> January 2017 to Sunday 12<sup>th</sup> February 2017 inclusive; and
2. Pay 100% higher duties for the duration of the period as Acting CEO.

## **COUNCIL RECOMMENDATION**

**MIN 218/16 MOTION** - Moved Cr. Reid 2<sup>nd</sup> Cr. Steber

*That Council rescinds Minute 184/16*

CARRIED 7/0

## **COUNCIL RECOMMENDATION**

**MIN 219/16 MOTION** - Moved Cr. McNeil 2<sup>nd</sup> Cr.O'Neill

*That Council:*

- 1. appoints Mrs Karen Oborn, Deputy Chief Executive Officer as the Shire of Kellerberrin's Acting Chief Executive Officer for the period Tuesday, 3<sup>rd</sup> January 2017 to Sunday 12<sup>th</sup> February 2017 inclusive; and*
- 2. Pay 100% higher duties for the duration of the period as Acting CEO.*

CARRIED 7/0

**CLOSURE OF MEETING** – 6.45 pm

### **NEXT COUNCIL MEETING**

Ordinary Council Meeting Tuesday, 21<sup>st</sup> February 2017