



SHIRE OF MT MARSHALL

MINUTES

Notice is hereby given that a Special Meeting of Council was held on Friday 26 February 2016, in Council Chambers, 80 Monger Street, Bencubbin commencing at 8:01am for the purpose of:

In accordance with Section 5.23(2)(a)(c) of the Local Government Act, this is a confidential item regarding a matter affecting an employee or employees.

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intentionally**

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In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by a member or officer of the Shire of Mt Marshall during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire of Mt Marshall. The Shire of Mt Marshall warns that anyone who has an application lodged with the Shire of Mt Marshall must obtain and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by the Shire of Mt Marshall in respect of the application.

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1.0 Purpose of Meeting

The purpose of the meeting was to discuss the personal matters of a staff member.

2.0 Declaration of Opening / Announcement of Visitors

The Presiding Member declared the meeting open at 8:01 am, and welcomed all to the meeting.

3.0 Record of Attendance / Apologies / Approved Leave of Absence

In Attendance

Cr RM Kirby	President / Presiding Member
Cr SE Faulkner	Deputy President
Cr ARC Sachse	Councillor
Cr WJ Beagley	Councillor
Cr HJ Shemeld	Councillor
Cr CT Lumsden	Councillor via telephone – see note below
Cr PA Gillett	Councillor

Ms Tanika McLennan	Finance and Administration Manager	
Ms Nadine Richmond	Executive Assistant	
Mr Stuart Putt	Member of the public	8:01 – 8:14am
Mr Michael Putt	Member of the public	8:01 – 8:14am
Mr Craig Walker	Member of the public	8:01 – 8:14am
Mr David Walker	Member of the public	8:01 – 8:14am
Mr Ian Sanders	Member of the public	8:01 – 8:14am
Mr Ben Sachse	Member of the public	8:01 – 8:14am
Mr Nick Gillett	Member of the public	8:01 – 8:14am
Mr Peter Waters	Member of the public	8:01 – 8:14am

Note: In accordance with Local Government (Administration) Regulations 1996 (r.14A), as there was no decision of Council to allow Cr CT Lumsden to attend the meeting by telephone, he cannot be considered present and all reference to his voting has been removed from the minutes.

Apologies

Nil

4.0 Standing Orders

2016/016 COUNCIL DECISION:

That Standing Orders be suspended for the duration of the meeting to allow for greater debate on items in the agenda.

Moved Cr SE Faulkner

Seconded Cr PA Gillett

Carried 6/0

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5.0 Public Questions

Public question time opened at 8:02am

5.0.1 Summary of Question from Mr Stuart Putt:

As first time Councillor and after your first four months in this privileged position, a period in which you have tried to destroy a federally funded community project, presided over a Council that has now left the Shire without the services of two of the most important jobs in the Shire being the CEO and Works Supervisor, and sullied the Shire's reputation possibly irreversibly to an extent that will impact the Shire's ability to fill these positions going forward, do you consider this to be

- a. A successful time for you as an inexperienced first time Councillor and Shire President;
- b. Do you think you have conducted yourself as a Councillor should and have you acted in the best interests of the Shire of Mt Marshall?

Summary of response from the Presiding Member:

The Presiding Member informed Mr Putt that she would take the question on notice to be addressed at the March Ordinary Meeting of Council.

5.0.2 Summary of Question from Mr Stuart Putt:

If going forward, the Shire cannot fill the position of CEO in an effective manner will you resign from your position as Shire President and as a Councillor for the Shire of Mt Marshall as under your leadership this Council has placed the Shire in this predicament?

Summary of response from the Presiding Member:

The Presiding Member informed Mr Putt that she would take the question on notice to be addressed at the March Ordinary Meeting of Council.

5.0.3 Summary of Question from Mr Peter Waters:

Does the Council have intentions to reduce or attempt to save on the Bencubbin complex extension from the agreed \$2.6 million? Given the fact that the BCRC is such a significant stakeholder and lengthy negotiations have taken place to agree on a budget figure, what right does the Council have to reduce the budget or attempt to scale this back with no consultation with key stakeholders including BCRC or National Stronger Regions as it should be made very clear here and now that the BCRC is happy with the budget negotiations and no reductions are to take place. Is council prepared to give that commitment?

Summary of response from the Presiding Member:

There have been no further decisions made by Council since the December meeting regarding the Bencubbin Recreation Complex. The next relevant decision to be made will be in regards to tenders.

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5.0.4 Summary of Question from Mr Peter Waters:

At the December Ordinary Meeting of Council Cr Shemeld voted against the motion where Council was to ask for the balance of NSRF funds of approximately \$57,000 for the Bencubbin Recreation Complex. If Cr Shemeld is acting in the best interest of the Shire of Mt Marshall as she is requested to do as an Elected Member of Council under section 2.10 of the Local Government Act 1995 will Cr Shemeld please explain why she voted in this manner seeing as though this would result in not one dollar cost for the Shire and approximately \$57,000 more in grant funding for the Shire for an important infrastructure project.

Summary of response from the Presiding Member:

The Presiding Member stated that once the Council as a whole has made a decision, regardless of the voting, Elected Members are supportive of the decision made. The Presiding Member does not believe an individual Councillor needs to explain the reasoning behind their vote.

5.0.5 Summary of question from Mr Nick Gillett:

The President stated at the November Council meeting that she wanted to improve the divide between North and South. What have you done to improve this divide and do you think the recent and confidential items discussed by Council which resulted in the CEO leaving the Shire will improve this divide?

Summary of response from the Presiding Member:

The Presiding Member confirmed that she stated she hoped to close the divide between the North and South of the Shire but there is still a lot of work to do to achieve this and there is not a short term solution. The Presiding Member stated that it was never her intention before the elections in October to have the CEO leave the Shire and had been happy to work with him.

5.0.6 Summary of question from Mr Nick Gillett:

It was a well-known rumour both throughout the Shire of Mt Marshall as well as local government throughout WA that the current CEO would be terminated should Beacon Councillors get the balance of power at the October 2015 elections. Would you describe the recent meeting and the option 1 decision which divided the Council from north based Councillors to South based Councillors an unfortunate voting scenario if the rumour was not correct? I am curious to know that had Councillor Gillett been available to attend the special meeting if he would have voted for option 1 or option 2 as if his vote was for option 2 this would suggest a north vs south difference of opinion. How can a group of seven elected members vote on the performance and continued employment of the CEO be so significantly different north to the south? Does this suggest you as President have a divided Council?

Summary of response from the Presiding Member:

This question was overlooked in the Presiding Member's responses and will be addressed at the next Ordinary Meeting of Council.

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5.0.7 Summary of question from Mr Nick Gillett:

How is the formation of a committee for the Bencubbin Recreation Complex redevelopment going?

Summary of response from the Presiding Member:

The Presiding Member expressed her desire to have had an item go to the February 2016 Ordinary Meeting of Council to appoint the Council representatives, however this did not happen. Once Council representatives have been appointed, the Bencubbin Community Recreation Council would be contacted to nominate their representatives.

5.0.8 Summary of question from Mr Craig Walker:

How much will it cost to appoint a new CEO and in the interest of transparency will the true cost of the CEO's termination settlement be made public.

Summary of response from the Presiding Member:

The Presiding Member advised Mr Walker that no decisions had been made yet as to how a new CEO would be recruited. After conferring with Ms Tanika McLennan the Presiding Member advised the approximate figure for the recruitment of a new CEO would be in the \$15,000 - \$20,000 range.

After conferring with Ms Tanika McLennan, the Presiding Member advised that some transparency may be evident from the public financial records.

Public question time closed at 8:13am

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6.0	Reports of Officers
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6.1	CONFIDENTIAL ITEM - Deed of Settlement and Release
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Report to be provided to Elected Members before the commencement of the meeting by the President.

2016/017 COUNCIL DECISION:

That, in accordance with Section 5.23(2)(a)(c), of the Local Government Act the meeting moves behind closed doors to discuss matters relating to an employee.
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Moved Cr SE Faulkner	Seconded Cr HJ Shemeld	Carried 6/0
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Members of the gallery left Council Chambers at 8:14am

2016/018 COUNCIL DECISION:

That the meeting adjourns for a brief recess at 8:42am

Moved Cr ARC Sachse	Seconded Cr HJ Shemeld	Carried 6/0
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2016/019 COUNCIL DECISION:

That the meeting reconvenes at 8:48am
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Moved Cr ARC Sachse	Seconded Cr WJ Beagley	Carried 6/0
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All those present when the meeting adjourned were present when the meeting was reconvened.

Advice was received from Mr Scott Roffey of WALGA workplace solutions.

2016/020 COUNCIL DECISION:

That Council endorse the amended Deed of Settlement and Release between the Shire of Mt Marshall and Mr Dirk Sellenger.
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Moved Cr ARC Sachse	Seconded Cr PA Gillett	Carried 6/0
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2016/021 COUNCIL DECISION:

That the meeting comes out from behind closed doors

Moved Cr SE Faulkner

Seconded Cr PA Gillett

Carried 6/0

Cr SE Faulkner left Council Chambers at 9:31am

Cr SE Faulkner returned to Council Chambers at 9:33am

The Presiding Member read aloud Council resolution 2016/020

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6.2 Appointment of Acting CEO

LOCATION/ADDRESS: N/A
NAME OF APPLICANT: N/A
FILE REFERENCE: STAFF
AUTHOR: Tanika McLennan – Finance and Administration Manager
DISCLOSURE OF INTEREST: Financial – ACEO
DATE: 25 February 2016
ATTACHMENT NUMBER: Nil
CONSULTATION: President Kirby
STATUTORY ENVIRONMENT: Local Government Act 1995 –

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

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STATUTORY ENVIRONMENT:

- (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.

Administration Regulations –

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STATUTORY ENVIRONMENT: Regulation 18A 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 —

- the value of one year's remuneration under the contract; or
- 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.

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STATUTORY ENVIRONMENT:

POLICY IMPLICATIONS: Nil

FINANCIAL IMPLICATIONS: Employment of an Acting CEO is within budget

STRATEGIC IMPLICATIONS: Nil

VOTING REQUIREMENT: Simple Majority

2016/022 OFFICER RECOMMENDATION/COUNCIL DECISION:

That:

1. Ms Tanika McLennan be appointed as Acting CEO from Monday 29 February 2016 until 16 March 2016 or an Acting CEO from outside of the organisation can be recruited, whichever occurs first; and
2. That Ms McLennan's remuneration during the period she is Acting CEO be equivalent to her remuneration during the period she was Acting CEO from December 2015 to January 2016.

Moved Cr PA Gillett

Seconded Cr ARC Sachse

Carried 6/0

BACKGROUND:

Chief Executive Officer, Dirk Sellenger, has tendered his resignation effective Friday 26 February 2016.

COMMENT:

Mr Sellenger's resignation means that it is now necessary to recruit a Chief Executive Officer. Cr Kirby has advised that this process will commence at a later date.

Timeline for Recruiting a CEO

Advertisement of position	March/April	
Applications close	April	
Selection of shortlisted applicants, and arrangement of interviews	April	Special Council Meeting to decide, unless delegated
Interviews Decision / appointment by Council	May	Conduct interviews with Council Special Meeting to follow, or on a separate day Appointment must be a Council decision
Period for negotiation and finalisation of contract with preferred applicant	May	Allow 1-2 weeks
If required, confirmation of appointment by Council	June	Special Mtg or June Council Mtg

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New CEO commencement	September	Presumed 3 month notice period for new CEO Often one to two weeks leave taken between positions, and for relocation
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Acting CEO

As a period of approximately 6 months is required for recruitment between Mr Sellenger's departure and the new CEO's arrival, it is necessary to appoint an Acting CEO. Council's Finance and Administration Manager and former CEO at the Shire of Trayning, Ms Tanika McLennan, has previously acted in this capacity during Mr Sellenger's absence and has advised that she is willing to perform these duties for a limited time, not extending beyond 16 March 2016. Due to the commitments of her current role it is not practical to extend the period beyond this length of time and Council will need to recruit an Acting CEO from outside of the organisation to fill this position during the recruitment process.

2016/023 COUNCIL DECISION:

That:

- 1. WALGA workplace solutions be engaged to commence recruitment process for a CEO;**
- 2. WALGA workplace solutions be engaged to commence the recruitment process for an Acting CEO; and**
- 3. an allowance of approximately twenty thousand dollars be made in the budget for the recruitment of an Acting CEO and CEO.**

Moved Cr PA Gillett

Seconded Cr SE Faulkner

**Carried 6/0
Absolute Majority**

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7.0	Closure of Meeting
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The Presiding Member declared the meeting closed at 9:43am

These Minutes were confirmed by the Council at its Ordinary Meeting held on 22 March 2016.

Date

Cr RM Kirby

President