



**MINUTES
SPECIAL MEETING**

OF COUNCIL

30 APRIL 2009



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SPECIAL MEETING OF COUNCIL
TO BE HELD ON
30 APRIL 2008

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SHIRE OF GINGIN

MINUTES OF THE SPECIAL MEETING OF THE SHIRE OF GINGIN HELD IN THE COUNCIL CHAMBER ON THURSDAY, 30 APRIL 2009, COMMENCING AT 2.03 PM

DISCLAIMER

Members of the Public are advised that decisions arising from this Special Council Meeting can be subject to alteration.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

ORDER OF BUSINESS

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President declared the Meeting open at 2.03 pm and extended a welcome to Councillors and Staff.

2. RECORD OF ATTENDANCE

Councillors – CW Fewster (Shire President), AJ Jarvis (Deputy Shire President), AR Alderson, M Aspinall, RA Beale, DC Brady, GA Gifford and DW Roe.

Staff - SD Fraser (Chief Executive Officer).

3. APOLOGIES AND LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillors FC Hough and AW Maley.

4. **PUBLIC QUESTION TIME**

Nil.

5. **APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

6. **PETITIONS/PRESENTATIONS/DEPUTATIONS**

Nil.

7. OFFICERS' REPORTS

7.1 DEPUTY CHIEF EXECUTIVE OFFICER - BROOKE POVAH

FILE: PER/127
AUTHOR: SIMON FRASER - CHIEF EXECUTIVE OFFICER
REPORT DATE: 29 APRIL 2009

The Shire President advised that given the issues to be discussed at this Special Meeting pertain specifically to an employee, it would be prudent, in accordance with the provisions of Section 5.23(2)(a), (b), (c) and (e)(iii) of the *Local Government Act, 1995*, for the entire Meeting to be closed to Members of the Public.

RESOLUTION SM09.0001

Moved Councillor Alderson that this Special Meeting of Council be closed to Members of the Public given that the only issue to be discussed relates to a former contracted employee and the discussions may involve deliberation on the personal, professional and financial affairs of the person.

CARRIED UNANIMOUSLY

THE SHIRE PRESIDENT DECLARED THE MEETING CLOSED TO MEMBERS OF THE PUBLIC AT 2.04 PM.

The Shire President requested the Chief Executive Officer to remain in the Council Chamber. As no other Staff or Members of the Public were in attendance, no departures from the Council Chamber occurred.

The Shire President alerted Councillors to a Confidential Agenda which had been prepared to assist them in their deliberations at the Special Meeting.

OFFICER INTEREST DECLARATION

Nil.

BACKGROUND

Council, at its Meeting of 21 April 2009, considered an Agenda Item in relation to the Deputy Chief Executive Officer's Contract of Employment. As a result of Council's deliberations at this Meeting, the following Resolution materialised:

RESOLUTION 09.0105

Moved Councillor Brady that Council:

- 1. Confirm that it does not wish to enter into negotiations with Ms Povah in relation to a new Contract of Employment; and*

2. *Authorise the Chief Executive Officer to initiate advertising for a replacement Deputy Chief Executive Officer.*

CARRIED UNANIMOUSLY

Subsequent to this decision of Council, four Councillors forwarded notice to the Chief Executive Officer confirming their desire to have a Special Meeting of Council convened in order to reconsider the decision of Council not to review the Contract of Employment of the Deputy Chief Executive Officer.

This Meeting has been convened in response to the request of the four Councillors.

A Notice of the Special Meeting of Council was forwarded to all Councillors on 28 April 2009.

In the Notice of Special Meeting, the Chief Executive Officer advised that *No Agenda has been prepared for the Special Meeting.*

On the morning of 29 April 2009, the Shire President contacted the Chief Executive Officer and confirmed that, in his opinion, it would be prudent for an Agenda to be prepared, such Agenda containing all exchanges between the Shire and the Deputy Chief Executive Officer. In accordance with this request, a Confidential Information Package has been prepared and circulated to Councillors.

COMMENT

Nil.

STATUTORY ENVIRONMENT

The Deputy Chief Executive Officer's employment, given that the position is a "Designated Senior Officers" position under the provisions of Section 5.37 "Senior Employees" of the *Local Government Act, 1995*, is governed by a Contract of Employment in accordance with the provisions of Section 5.39 "Contracts for CEOs and senior employees" of the Act.

Section 5.37 of the Act prescribes as follows:

LOCAL GOVERNMENT ACT 1995 - SECT 5.37

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 *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.*
- 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).]

Section 5.39 of the Act prescribes as follows:

LOCAL GOVERNMENT ACT 1995 - SECT 5.39

5.39 Contracts for CEO's 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).]

To assist Council in its deliberations in respect of this matter, a copy of the Deputy Chief Executive Officer's Contract of Employment (now expired) is attached as **Appendix 1**.

The Chief Executive Officer advised that, in accordance with the provisions of Section 5.37(2) of the Act, Council may accept or reject his recommendation in relation to the employment of a designated "Senior employee". The Chief Executive Officer further confirmed that, if Council decided to reject his recommendation, it was required to inform him of the reasons for it so doing.

POLICY IMPLICATIONS

Nil.

BUDGET IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

Nil.

VOTING REQUIREMENTS – SIMPLE MAJORITY

RESOLUTION SM09.0002

Moved Councillor Brady that Council reaffirm Resolution 09.0105 arising from its Meeting of 21 April 2009, acknowledging its obligation to pay any statutory and/or contractual entitlement owing to Ms Povah.

CARRIED UNANIMOUSLY

MOTION

Moved Councillors Alderson and Jarvis that Council:

- 1. Subject to Ms Povah entering into a Deed of Release and Settlement in respect to her employment with the Shire of Gingin and the cessation thereof, make a "without prejudice" offer to Ms Povah to pay a single, economy-class return airfare or a cash equivalent to assist her in her relocation back to the United States; and**
- 2. Confirm that the offer set out in Part 1 of this Resolution is conditional upon the Shire residence situated at 3 Fewster Street, Gingin being vacated by no later than 30 June 2009.**

**FOR: COUNCILLORS ALDERSON, BEALE, GIFFORD, JARVIS AND ROE
AGAINST: COUNCILLORS ASPINALL, BRADY AND FEWSTER**

MOTION LOST DUE TO THE FAILURE TO ACHIEVE AN ABSOLUTE MAJORITY DECISION (BEING A MINIMUM OF SIX COUNCILLORS) WHICH WAS NECESSARY GIVEN THAT THE MOTION RELIED ON THE EXPENDITURE OF UNBUDGETED FUNDS.

RESOLUTION SM09.0003

Moved Councillor Aspinall that the Meeting again be open to the public.

CARRIED UNANIMOUSLY

THE SHIRE PRESIDENT DECLARED THE MEETING OPEN TO THE PUBLIC AT 3.10 PM.

AT THE TIME OF DECLARING THE MEETING OPEN TO THE PUBLIC, NO MEMBERS OF THE PUBLIC OR STAFF RE-ENTERED THE COUNCIL CHAMBER.

8. CLOSURE OF MEETING

There being no further business, the Shire President declared the meeting closed at 3.10 pm.

Councillor CW Fewster
Shire President
