



MINUTES

SPECIAL MEETING OF COUNCIL

11 JULY 2023



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Ian McCabe
CHIEF EXECUTIVE OFFICER



Community Strategic Vision

Wagin is a community where individuals, families and businesses can invest and prosper, preserving the safe, affordable and inclusive country lifestyle and ensuring that Wagin is a place people like to live in and visit.

Council's Mission and Philosophy

The Shire of Wagin is a focussed Local Government providing progressive and innovative leadership that builds a sustainable future while supporting a vibrant, healthy and caring community.

Council's Guiding Values

- Governance and Leadership
- Honesty and Integrity
- Innovation and Creativity
- Community Focused
- Environmentally Aware

Shire of Wagin Strategic Community Plan 2020 - 2030



SHIRE OF WAGIN

Minutes for the Special Meeting of Council held in the Council Chambers, Wagin
on Tuesday 11 July 2023 commencing at 7.07 pm

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1. OFFICIAL OPENING

The Presiding Member, Cr Phillip Blight opened the meeting at 7.07pm.

2. DECLARATION OF PURPOSE OF MEETING

The purpose of this meeting is for Council to consider the position of acting Chief Executive Officer.

3. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

3.1 ATTENDANCE

Cr Phillip Blight	Shire President
Cr Greg Ball	Deputy Shire President
Cr Sheryll Chilcott	Elected Member
Cr Bronwyn Hegarty (by Teams)	Elected Member
Cr Geoff West (by Teams)	Elected Member
Cr Bryan Kilpatrick	
Cr Wade Longmuir	Elected Member
Cr Ann O'Brien	Elected Member
Ian McCabe	Chief Executive Officer
Donna George	Acting Deputy Chief Executive Officer

3.2 APOLOGIES

3.3 APPROVED LEAVE OF ABSENCE

3.4 VISITORS

4. PUBLIC QUESTION TIME

Council conducts open Council Meetings. Members of the public are asked that if they wish to address the Council that they state their name and put the purpose of their address as precisely as possible. A minimum of 15 minutes is allocated for public forum. The length of time an individual can speak will be determined at the President's discretion.

5. PETITIONS/DEPUTATIONS/PRESENTATIONS

6. DISCLOSURE OF FINANCIAL AND OTHER INTERESTS

6.1 DISCLOSURE OF FINANCIAL INTEREST – Local Government Act Section 5.60a



The CEO Ian McCabe tabled a declaration of financial interest in item 7.1.2

6.2 DISCLOSURE OF PROXIMITY INTEREST – Local Government Act Section 5.6

6.3 DISCLOSURE OF IMPARTIALITY INTEREST – Administration Regulation Section 34c

7. REPORTS TO COUNCIL

7.1 CHIEF EXECUTIVE OFFICER

7.1.1 APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER

PROPONENT:	Not Applicable
OWNER:	Not Applicable
LOCATION/ADDRESS:	Not Applicable
AUTHOR OF REPORT:	Ian McCabe, Chief Executive Officer
SENIOR OFFICER:	Not Applicable
DATE OF REPORT:	5 July 2023
PREVIOUS REPORT(S):	26 June 2023, item 13.3
DISCLOSURE OF INTEREST:	NIL
FILE REFERENCE:	PE.AR.1
STRATEGIC DOCUMENT REFERENCE:	All Key Result Areas
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Confidential report to Council 2. Confidential CV of preferred candidate 3. Policy A.22 Appointment or Employment of Acting CEO 4. Policy A.27 Standard for CEO Recruitment, Performance and Termination.

OFFICER RECOMMENDATION/4990 COUNCIL RESOLUTION

Moved Cr B. Kilpatrick

Seconded Cr S. Chilcott

That Council:

- 1. Consider the attached reports and appoint the preferred candidate as acting CEO on terms to be negotiated by the President according to policy and not exceeding the determination of the Salaries and Administration Tribunal of 6 April 2023.**
- 2. Propose a commencement date of 7 August 2023.**

Carried by ABSOLUTE MAJORITY 8/0

BRIEF SUMMARY

The Chief Executive Officer has tendered his resignation and Council is required to appoint an acting or permanent CEO. At the meeting of 27 June, Council delegated the CEO and President to develop a shortlist for Council's consideration and appointment. This item considers those actions and recommendations.

BACKGROUND/COMMENT

Section 5.36 (1) (a) of the Local Government Act 1995 states 'a local government is to employ a person to be the CEO of the local government'; and, the person is not to be employed unless 'council believes the person is suitably qualified for the position' (s. 5.36 (s) (a)); (and) 'is satisfied with the proposed arrangements relating to the person's employment' (ditto, sub-point (b)).

Section 5.39 (1a) (a) of the Act provides for the temporary employment of a CEO for up to one year (and up to three months without a contract). Council policies A.22 and A. 27 provide guidance on this process.

Council determined at the meeting of 27 June to consider the recruitment of an acting CEO and delegate the task of assessing a field of candidates to the CEO and President. This task was undertaken with the support of Mr Tony Brown of the Western Australian Local Government Association (WALGA) by review of CV's, discussion with possible candidates and a review of all information by the CEO and President. The attached reports and recommendations are provided for Council's consideration and decision.

CONSULTATION/COMMUNICATION

Mr Tony Brown, Executive Director Member Services, WALGA.

Cr P. Blight, President.

STATUTORY/LEGAL IMPLICATIONS

Part 5, Division 4 Local Government Act 1995.

POLICY IMPLICATIONS

Council Policies A.22 Appointment or Employment of Acting CEO; and A.27 Standard for CEO Recruitment, Performance and Termination, are relevant.

FINANCIAL IMPLICATIONS

This item does not create material additional financial obligations to Council; recruitment will be provided for in the 2023/24 budget.



STRATEGIC IMPLICATIONS

The role of CEO addresses all Key Result Areas.

VOTING REQUIREMENTS

Absolute Majority

A.22. TEMPORARY EMPLOYMENT OR APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER (CEO)

POLICY NUMBER	A.22
POLICY TYPE	ADMINISTRATION
DATE ADOPTED	26 May 2020
REVIEW DATE	27 April 2021 (Council Resolution #4528)
DELEGATION APPLICABLE	NO

OBJECTIVE

To provide clear guidance on the provisions that apply to the appointment of a person as Acting Chief Executive Officer (A/CEO) for the period of less than one year; and in periods of extended leave or absences appoint a person to perform the duties of the Chief Executive Officer.

Section 5.36 of the *Local Government Act 1995* requires that local government is to employ a CEO and such other persons as the Council believes are necessary to enable the function of the local government and the functions of Council to be performed.

Section 5.39 of the Act requires the Shire to have a policy on the temporary employment of a CEO. On the basis, where a CEO is to be externally recruited for periods of less than one year, Council approval shall be required for the recruitment process and the appointment of any recommended candidate.

In accordance with Section 5.36(2) & 5.37(1) of the *Local Government Act 1995*, all Senior Employees employed by the Shire are considered to be suitably qualified to act in the position of Chief Executive Officer and the Deputy Chief Executive Officer is designated as a Senior Employee for the purposes of the Act.

PROCEDURES

Appointment of Acting CEO for period of less than one year

Periods expected to be six months or longer, up to 12 months:

1. In cases where the CEO position is expected to be vacant for six months or longer, up to 12 months maximum, Council is not bound by any decision made in regard to periods up to six months. This is because short periods of Acting CEO may be shared by two or more senior employees. However, for longer periods, it is preferable to appoint one employee as Acting CEO to provide stability and consistency, in these circumstances a separate report will be presented to Council for a decision; and
2. Alternatively, Council may wish to temporarily employ a person who is not a current Shire of Wagin employee in the position of CEO for a term not exceeding 12 months.

In the event of planned absences (e.g. Annual or Long Service Leave) of greater than 5 days an appointment of an Acting CEO is made through a Council Resolution.

In the event of unplanned absences (e.g. Sick or Personal Leave) of greater than 5 days,

Council will be required to hold a Special Council Meeting where DCEO or other designated Senior Employee will be appointed by Council Resolution.

Appointment to the role of Acting CEO must be confirmed in writing and requires an absolute majority vote.

REMUNERATION

In all the circumstances outlined above any Senior Employee who is appointed Acting CEO will receive the same salary (cash component) as the CEO's current salary whilst acting in this position.

For the temporary employment of a person who is not a current Shire of Wagin employee in the position of CEO for a period not exceeding 12 months, the Council will determine a remuneration package payable to the appointed person.

FORMS AND TEMPLATES

Nil

GUIDELINES

- *Local Government Act 1995*
- *Local Government (Administration) Amendment Regulations 2021*

HISTORY

- 27 April 2021 (Council Resolution #4528)

RESPONSIBLE OFFICER

- Chief Executive Officer



A.27 STANDARD FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION POLICY

POLICY NUMBER	A.27
POLICY TYPE	ADMINISTRATION
DATE ADOPTED	2 August 2022 (Council resolution #4824)
REVIEW DATE	
DELEGATION APPLICABLE	NO

OBJECTIVE

This Policy is adopted in accordance with section 5.39B of the *Local Government Act 1995*.

Division 1 — Preliminary provisions

1. Citation

These are the Shire of Wagin Standards for CEO Recruitment, Performance and Termination.

2. Terms used

(1) In these standards —

Act means the Local Government Act 1995;

additional performance criteria means performance criteria agreed by the local government and the CEO under clause 16(1)(b);

applicant means a person who submits an application to the local government for the position of CEO;

contract of employment means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;

contractual performance criteria means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;

job description form means the job description form for the position of CEO approved by the local government under clause 5(2);

local government means the Shire of Wagin;

selection criteria means the selection criteria for the position of CEO determined by the local government under clause 5(1) and set out in the job description form;

selection panel means the selection panel established by the local government under clause 8 for the employment of a person in the position of

CEO

- (2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

Division 2 — Standards for recruitment of CEOs

3. Overview of Division

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

4. Application of Division

- (1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the employment of a person in the position of CEO.
- (2) This Division does not apply —
- (a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or
 - (b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause 13(2).

5. Determination of selection criteria and approval of job description form

- (1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government.
- (2) The local government must, by resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out —
- (a) the duties and responsibilities of the position; and
 - (b) the selection criteria for the position determined in accordance with subclause (1).

6. Advertising requirements

- (1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the *Local Government (Administration) Regulations 1996* regulation 18A.
- (2) If clause 13 applies, the local government must advertise the position of CEO in the manner referred to in the *Local Government (Administration) Regulations 1996* regulation 18A as if the position was vacant.

7. Job description form to be made available by local government

If a person requests the local government to provide to the person a copy of the job description form, the local government must —

- (a) inform the person of the website address referred to in the Local Government (Administration) Regulations 1996 regulation 18A(2)(da); or

to access that website address —

- (i) email a copy of the job description form to an email address provided by the person; or
- (ii) mail a copy of the job description form to a postal address provided by the person.

8. Establishment of selection panel for employment of CEO

(1) In this clause —

independent person means a person other than any of the following —

- (a) a council member;
 - (b) an employee of the local government;
 - (c) a human resources consultant engaged by the local government.
- (2) The local government must establish a selection panel to conduct the recruitment and selection process for the employment of a person in the position of CEO.
- (3) The selection panel must comprise —
- (a) council members (the number of which must be determined by the local government); and
 - (b) at least 1 independent person.

9. Recommendation by selection panel

- (1) Each applicant's knowledge, experience, qualifications and skills must be assessed against the selection criteria by or on behalf of the selection panel.
- (2) Following the assessment referred to in subclause (1), the selection panel must provide to the local government —
 - (a) a summary of the selection panel's assessment of each applicant; and
 - (b) unless subclause (3) applies, the selection panel's recommendation as to which applicant or applicants are suitable to be employed in the position of CEO.
- (3) If the selection panel considers that none of the applicants are suitable to be employed in the position of CEO, the selection panel must recommend to the local government —
 - (a) that a new recruitment and selection process for the position be carried out in accordance with these standards; and
 - (b) the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.
- (4) The selection panel must act under subclauses (1), (2) and (3) —
 - (a) in an impartial and transparent manner; and

- (b) in accordance with the principles set out in section 5.40 of the Act.
- (5) The selection panel must not recommend an applicant to the local government under subclause (2)(b) unless the selection panel has —
 - (a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications and skills meet the selection criteria; and
 - (b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and
 - (c) whether by contacting referees provided by the applicant or making any other inquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance and any other claims made by the applicant.
- (6) The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel under this clause.

10. Application of cl. 5 where new process carried out

- (1) This clause applies if the local government accepts a recommendation by the selection panel under clause 9(3)(a) that a new recruitment and selection process for the position of CEO be carried out in accordance with these standards.
- (2) Unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria —
 - (a) clause 5 does not apply to the new recruitment and selection process; and
 - (b) the job description form previously approved by the local government under clause 5(2) is the job description form for the purposes of the new recruitment and selection process.

11. Offer of employment in position of CEO

Before making an applicant an offer of employment in the position of CEO, the local government must, by resolution of an absolute majority of the council, approve —

- (a) the making of the offer of employment to the applicant; and
- (b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.

12. Variations to proposed terms of contract of employment

- (1) This clause applies if an applicant who is made an offer of employment in the position of CEO under clause 11 negotiates with the local government a contract of employment (the negotiated contract) containing terms different to the proposed terms approved by the local government under clause 11(b).
- (2) Before entering into the negotiated contract with the applicant, the local government must, by resolution of an absolute majority of the council, approve the terms of the negotiated contract.

13. Recruitment to be undertaken on expiry of certain CEO contracts

- (1) In this clause —
- commencement day** means the day on which the *Local Government (Administration) Amendment Regulations 2021* regulation 6 comes into operation.
- (2) This clause applies if —
- (a) upon the expiry of the contract of employment of the person (the incumbent CEO) who holds the position of CEO —
- (i) the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and
- (ii) a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day;
- and
- (b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.
- (3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be employed in the position of CEO after the expiry of the incumbent CEO's contract of employment.
- (4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be employed in the position of CEO.

14. Confidentiality of information

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

Division 3 — Standards for review of performance of CEOs

15. Overview of Division

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

16. Performance review process to be agreed between local government and CEO

- (1) The local government and the CEO must agree on —
 - (a) the process by which the CEO's performance will be reviewed; and
 - (b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.
- (2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.
- (3) The matters referred to in subclause (1) must be set out in a written document.

17. Carrying out a performance review

- (1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.
- (2) The local government must —
 - (a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and
 - (b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

18. Endorsement of performance review by local government

Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

19. CEO to be notified of results of performance review

After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of —

- (a) the results of the review; and
- (b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

Division 4 — Standards for termination of employment of CEOs

20. Overview of Division

This Division sets out standards to be observed by the local government in relation

to the termination of the employment of CEOs.

21. General principles applying to any termination

- (1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.
- (2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including —
 - (a) informing the CEO of the CEO's rights, entitlements and responsibilities in relation to the termination process; and
 - (b) notifying the CEO of any allegations against the CEO; and
 - (c) giving the CEO a reasonable opportunity to respond to the allegations; and
 - (d) genuinely considering any response given by the CEO in response to the allegations.

22. Additional principles applying to termination for performance related reasons

- (1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.
- (2) The local government must not terminate the CEO's employment unless the local government has —
 - (a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or any other review of the CEO's performance, identified any issues (the performance issues) related to the performance of the CEO; and
 - (b) informed the CEO of the performance issues; and
 - (c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and
 - (d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.
- (3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12-month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

23. Decision to terminate

Any decision by the local government to terminate the employment of a CEO must be made by resolution of an absolute majority of the council.

24. Notice of termination of employment

- (1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.
- (2) The notice must set out the local government's reasons for terminating the employment of the CEO.

GUIDELINES

- *Local Government Act 1995*
Special Council Meeting





HISTORY

- Nil

REVIEWED

- Chief Executive Officer

7.1.2 TERMINATION OF CEO

PROPONENT:	Not Applicable
OWNER:	Not Applicable
LOCATION/ADDRESS:	Not Applicable
AUTHOR OF REPORT:	Donna George, Acting Deputy Chief Executive Officer
SENIOR OFFICER:	Ian McCabe, Chief Executive Officer
DATE OF REPORT:	5 July 2023
PREVIOUS REPORT(S):	Not Applicable
DISCLOSURE OF INTEREST:	McCabe, Financial Interest
FILE REFERENCE:	PE.EC.1
STRATEGIC DOCUMENT REFERENCE:	All Key Result Areas
ATTACHMENTS:	NIL

Prior to consideration of this matter, the CEO Mr. I. McCabe tabled a financial interest to the President.

Mr. I. McCabe left the room at 7.17pm

OFFICER RECOMMENDATION/4991 COUNCIL RESOLUTION

Moved Cr S. Chilcott

Seconded Cr G. Ball

That Council:

1. Propose a CEO termination and remuneration date of 6 August 2023 to align with the commencement date of the acting CEO.
2. Authorise the payment of salary in lieu of notice; entitlements and residual executive leave as at the termination date.
3. Authorise the purchase of furnishings from the CEO, beneficial to the shire and assessed as fair value by the Manager of Finance, to a maximum amount of \$1,000.

Carried by ABSOLUTE MAJORITY 8/0

The resolution was amended with the addition of point 3 to facilitate furnishing of shire property for incoming relief officers.

BRIEF SUMMARY

The CEO has tendered his resignation with notice to 21 September 2023. With the appointment of an acting CEO and by mutual agreement, the nominal officer's end date will be brought forward to coincide with commencement of the acting CEO.



BACKGROUND/COMMENT

The CEO has tendered his resignation with three months' notice to 21 September 2023. The period of notice is to facilitate recruitment. With the appointment of an acting CEO, the CEO will be terminated by mutual agreement at a date coinciding with the commencement of the acting CEO. The outgoing CEO will be paid entitlements and salary in lieu of notice.

CONSULTATION/COMMUNICATION

CEO; Manager of Finance. The CEO consulted the President as to end date.

STATUTORY/LEGAL IMPLICATIONS

Employment contract.

POLICY IMPLICATIONS

Policy A.27 Standard for CEO Recruitment, Performance and Termination.

FINANCIAL IMPLICATIONS

There is some duplication in salary due to the CEO ending service prior to 21 September with payment of salary in lieu of notice; however, there are savings due to long service leave entitlements provided for but not accessed. Additionally, the CEO is not seeking compensation to the value of the Total Reward Package for the period of notice following termination.

STRATEGIC IMPLICATIONS

All key result areas.

VOTING REQUIREMENTS

Absolute Majority

The CEO Mr. I. McCabe returned to the room at 7.40pm.

8. CLOSURE

There being no further business, the President closed the meeting at 7.42pm.

I certify that this copy of the Minutes is
a true and Correct records of the
meeting held on
11 July 2023

Signed

.....


Presiding Elected Member