

17.1 LATE ITEM – CERTIFICATION OF COMPLIANCE WITH THE SHIRE’S ADOPTED MODEL STANDARD FOR CEO RECRUITMENT, PERFORMANCE AND TERMINATION

ATTACHMENT(S)	Nil
FILE NO	ADM0650
APPLICANT	Nil
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DISCLOSURE OF INTEREST	Nil

STRATEGIC IMPLICATIONS	
Strategic Community Plan 2023-2033	Corporate Business Plan 2023 -2027
Community Outcomes	Corporate Initiative
Key Pillar: Broomehill-Tambellup Shire Support	
No specific Community Outcome	No specific Corporate Initiative

SUMMARY

This report recommends the Council’s certification in accordance with the *Local Government Act 1995* and *Local Government (Administration) Regulations 1996*, that the recruitment process for the appointment of a Chief Executive Officer (CEO) was conducted in accordance with the adopted Model Standards for CEO Recruitment, Performance and Termination.

BACKGROUND

On 2 February 2021, changes to the *Local Government Act 1995* and *Local Government (Administration) Regulations 1996* were promulgated. These changes mandated all local governments to follow a model set of standards when dealing with CEO recruitment, performance management and termination.

At the Ordinary Meeting of the Council held on 20 May 2021, the Council adopted pursuant to *section 5.39B (2) of the Local Government Act 1995*, the new Model Standards for Chief Executive Officer Recruitment, Performance and Termination (Policy 1.28). At the Ordinary Meeting of the Council held on 17 June 2021 the Council also adopted the process for the appointment of a CEO including provision to enable the appointment of an independent person as required by the Model Standards.

Regulation 18FB(3) of the Local Government (Administration) Regulations 1996 provides that a local government must certify, by an absolute majority resolution, that the process that was followed in relation to the recruitment of the Chief Executive Officer, was carried out in accordance with the local government’s adopted Standards for CEO Recruitment, Performance and Termination.

COMMENT

The recruitment process was undertaken between the dates of 26 October 2023, on which date the Council adopted the selection criteria and job description pursuant to Schedule 2 clause 5(2) of the *Local Government (Administration) Regulations Act 1996* and 19 December 2023, on which date the contract of employment was executed by the Shire President, incumbent CEO Anthony Middleton, and appointed CEO Karen Callaghan.

Each of the clauses that provide a requirement from the Standards are listed below, with a brief outline of those requirements and what the Shire did to satisfy the requirements of that clause.

Clause 5 – Determination of selection criteria and approval of job description form

Local governments are required to 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 perform the duties of the CEO, as well as adopting (by absolute majority) the job description form.

At the Special Meeting of the Council held on 26 October 2023, the Council adopted the selection criteria and job description pursuant to Schedule 2 clauses 5(1) and 5(2) of the *Local Government (Administration) Regulations Act 1996*.

Clause 6 – Advertising requirements

Local governments are required to comply with section 5.36(4) of the Act and regulation 18A of the Local Government (Administration) Regulations 1996, which requires the local government to advertise the position by Statewide public notice, and the notice must contain:

- *The details of the remuneration and benefits offered.*
- *Details of the place where applications for the position are to be submitted.*
- *The date and time for the closing of applications of the position.*
- *The duration of the proposed contract.*
- *A website address where the job description form for the position can be accessed.*
- *Contact details for a person who can provide further information about the position.*
- *Any other information the local government considers relevant.*

The position was advertised on Saturday 4 November 2023 and Saturday 11 November 2023 in the Local Government employment section of the West Australian newspaper; also on SEEK, LinkedIn and the Shire's website and Facebook pages. The advertisements and application pack contained all information as prescribed above.

Clause 7 – Job description form to be made available by local government

Local governments are required to provide a copy of the job description form to anyone who requests it by either referring to the web address listed in the advertisement (requirement of clause 6 above) or by emailing or posting a copy to the person if unable to access the website.

On all occasions, where a request for the job description form was requested, this request was actioned.

Clause 8 – Establishment of selection panel for employment of CEO

Local governments are required to establish a selection panel to conduct the recruitment of the CEO. This must consist of council members (as determined by the local government) and at least one independent person.

The Council resolved, at its meeting held on 26 October 2023 -

'A Chief Executive Officer Selection Panel be established as a committee of the Council pursuant to Section 5.9(2)(d) of the *Local Government Act 1995* as follows:

- a) The Committee shall be known as the CEO Selection Committee and is formed to satisfy Clause 8 of Schedule 2 of the *Local Government (Administration) Regulations 1996* relating to the establishment of a Selection Panel for the employment of a CEO;
- b) The duties of the Committee shall be to recommend to the Council a person to be appointed as CEO of the Shire of Broomehill-Tambellup pursuant to section 5.36 of the *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996*;
- c) The members of the Committee shall number 5 being the Shire President Cr White, Deputy Shire President Cr Barritt, Cr Wills, Cr Robinson, Cr Dewar and Bruce Trevaskis as an Independent Person as defined by Clause 8(1) of Schedule 2 of the *Local Government (Administration) Regulations 1996*; and
- d) The committee shall disband upon the signing by both parties of a suitable contract of employment with the selected candidate unless disbanded earlier.'

Clause 9 – Recommendation by selection panel

Local governments are required to:

- *Assess each applicant's knowledge, experience, qualifications against the selection criteria by or on behalf of the selection panel.*
- *Provide a summary of the panel's assessment of each applicant and a recommendation as to which applicant(s) are suitable to be employed as a CEO to the Council.*
- *If none of the applicants are considered suitable, recommend that a new recruitment process be carried out and any changes that should be made to the duties and responsibilities of the position.*

The selection panel must not recommend an applicant to the local government unless the selection panel has:

- *assessed the applicant as having demonstrated that their knowledge, experience, qualifications and skills to meet the selection criteria; and*
- *verified any academic or other tertiary level qualifications the applicant claims to hold; and*
- *whether by contacting referees provided by the applicant or making any other inquiries considered appropriate, verified the applicants character, work history, skills performance and any other claims made by the applicant.*

During the selection committee's deliberations, and through interviews with suitable candidates, the selection committee made assessments based on the adopted criteria and made a recommendation to the Council in accordance with the model standards requirements in a confidential report, which was prepared by Peter Casey of Mills Recruitment.

The recommendation was made following the candidate undergoing the Shire's selection processes including but not limited to, the candidate's ability to demonstrate that their knowledge, experience, qualifications and skills met the selection criteria, verifying their academic, or other tertiary level, qualifications and contacting referees to verify their character, work history, skills, performance and any other claims made by the candidate.

Clause 10 – Application of clause 5 where new process carried out

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.

This clause does not apply to this recruitment process, as the selection panel recommended an applicant as suitable to be employed in the position of CEO.

Clause 11 – Offer of employment in position of CEO

Local governments are to approve by absolute majority the making of an offer of employment to an applicant and the proposed terms of the contract of employment to be entered into with the applicant before making an offer of employment to that applicant.

The Shire did not make an offer of employment to the successful candidate prior to the resolution of the Council at its Ordinary Meeting of 15 December 2023, where the Council approved the offer by absolute majority.

Clause 12 – Variations to proposed terms of contact of employment

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.

This clause does not apply to this recruitment process, as the terms of the contract that was executed with the preferred candidate did not differ from the terms approved by the Council at its Ordinary Meeting of 15 December 2023.

Clause 13 – Recruitment to be undertaken on expiry of certain CEO contracts

Where the incumbent CEO will have held the position of CEO for a period of 10 or more consecutive years and the same time period has elapsed since a recruitment and selection process for the position was carried out, and the CEO has notified the local government that they wish to have their contract renewed upon its expiry, then before the expiry of the contract, the local government must carry out a recruitment process in accordance with these standards. Nothing prevents that CEO from being able to be selected as the preferred candidate.

This clause does not apply to this recruitment process, as this process was triggered by the departure of the previous substantive Chief Executive Officer.

Clause 14 – Confidentiality of information

Local governments must ensure that information relating to a recruitment process is not disclosed or made use of, except for the purpose of, or in connection with, that recruitment or selection process.

No breach of confidentiality occurred during the recruitment process.

Certification process

If the Council adopts the Officer recommendation to certify that the CEO recruitment process was performed in accordance with the adopted Model Standards of CEO Recruitment, Performance and Termination, the Chief Executive Officer will write to the Department of Local Government, Sport and Cultural Industries and provide a copy of the Council resolution, as required.

CONSULTATION

The Council appointed recruitment agency Mills Recruitment to facilitate the CEO recruitment process in accordance with *Schedule 2 — Model standards for CEO recruitment, performance and termination of the Local Government (Administration) Regulations 1996*.

STATUTORY ENVIRONMENT

The processes to be followed when recruiting a Chief Executive Officer must be in accordance with the terms set by the *Local Government Act 1995*, *Local Government (Administration) Regulations 1996* and the Shire of Broomehill-Tambellup's adopted Model Standards for CEO Recruitment, Performance and Termination.

The Shire has complied with these requirements in the performance of its functions and roles in the recruitment process.

Regulation 18FB(3) of the *Local Government (Administration) Regulations 1996* provides:

18FB. Certification of compliance with adopted standards for CEO recruitment

- (3) As soon as practicable after the person is employed in the position of CEO, the local government must, by resolution*, certify that the person was employed in accordance with the local government's adopted standards in relation to the recruitment of CEOs.*
- (4) The local government must give a copy of the resolution to the Departmental CEO within 14 days after the resolution is passed by the local government*

** Absolute majority required.*

FINANCIAL IMPLICATIONS

Nil.

POLICY IMPLICATIONS

Policy 1.28 Standards for CEO Recruitment, Performance and Termination.

RISK MANAGEMENT IMPLICATIONS

The risk implications if the Shire did not follow the adopted Standards for CEO Recruitment, Performance and Termination, is that the process may be challenged and cause negative outcomes to the Shire, as well as exposing it to reputational risk.

If the Council does not certify that the Standards were followed in the recruitment of the CEO, the Shire may be in breach of the *Local Government (Administration) Regulations 1996*.

ASSET MANAGEMENT IMPLICATIONS

Nil.

VOTING REQUIREMENTS

Absolute Majority

OFFICER RECOMMENDATION

That, in accordance with regulation 18FB of the Local Government (Administration) Regulations 1996, –

- 1. the recruitment process for appointment of the Chief Executive Officer is certified as having been undertaken in accordance with the model Standards for CEO Recruitment, Performance and Termination; and*
- 2. a copy of the Council resolution is provided to the Departmental CEO for the Department of Local Government, Sport and Cultural Industries as required.*