



MINUTES

“SPECIAL” COUNCIL MEETING

The Menzies Council Chambers,
Shenton Street Menzies

Thursday March 3rd, 2011
Commencing At 9.28am

SHIRE OF MENZIES



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SHIRE OF MENZIES

SPECIAL COUNCIL MEETING

MARCH 3RD, 2011

Commencing at 9.28 am

In the Shire Council Chambers,
Shenton St, Menzies

A G E N D A

1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Deputy Shire President (Cr. Gregory Stubbs) declared the meeting open, welcomed the attendees and proceeded with the agenda as planned

2 RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE PREVIOUSLY APPROVED

Attendance:

Councillors

Cr Greg Stubbs	Deputy President
Cr Kevin Pusey	Councillor
Cr Ian Tucker	Councillor
Cr Aileen Kelly	Councillor
Cr Lloyd Lansdown	Councillor

Staff:

Mr Brian Seale	Chief Executive Officer
Ms Carol McAllan	Deputy Chief Executive Officer

Apologies

Cr Jill Dwyer	Councillor
Cr Gregory Dwyer	President.
Cr Ian Tucker	Councillor

3 RESPONSES TO PREVIOUS PUBLIC QUESTION TIME TAKEN ON NOTICE

Not applicable

4 PUBLIC QUESTION TIME

Not Applicable

5 DECLARATIONS OF INTEREST / APPLICATIONS FOR LEAVE OF ABSENCE.

Not Applicable

6 PETITIONS / DEPUTATIONS / PRESENTATIONS

Not applicable

7 CONFIRMATION OF PREVIOUS MINUTES

Not applicable

8 QUESTIONS ON NOTICE.

8.1 Questions on Notice

- Not applicable.
9 **REPORTS OF COMMITTEES AND OFFICERS**
 None

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9.1 Consideration to negotiate the renewal of the contract of employment for the incumbent CEO (Brian Seale).

*Councillors asked CEO various questions regarding the existing contract
Then asks CEO and Deputy CEO to vacate chambers*

*CEO vacates chambers at 10.16am
Deputy CEO vacates chambers at 10.16am*

*Council adjourns at 10.19am
Council resumes at 10.29am*

NOTES FROM DISCUSSION AS RECORDED BY CR. K. PUSEY.

*10.29am resume meeting
Council discussion/Reading of draft version2.*

- 1) Change: Page 8/12 6.10.2 to read 6.10.1 not 6.91
- 2) Change: Page 9/12 7.6 Add "Endorsed by Council"

*Discussion re: Study leave
Relocation Allowance
F.B.T. Entitlements
Annual Review*

*1.04pm Phone call to John Phillips (Consultant)
Teleconference with Cr's Stubbs, Lansdown, Kelly and Pusey.*

Questions: 6.2 page 6/12

*Q.1) Variance of Remuneration Allowances
 Explained. OK.*

*Q.2) 7.6 page 9/12
 Re Edit back to version 1.*

Q.3) Clarification on vehicle lease.

*Q.4) 6.1.2 FBT Page 6/12
 Clarification of FBT arrangements.*

Q.5) 6.1.4(d) Clarified (FBT)

*Q.6) If left would Allowances be carried or pro-rata?
 No, however, some may be negotiated.*

*Q.7) 7.4 page 9/12
 Clarification of 7.4
 Stay with same language for compliance*

ADVICE:

*Take KPI from 7th February and look at in review.
Ensure dates are realistic.
Make sure KPI's are actually measurable.*

The contract that we have discussed with continued:

*11.53am John Phillips sent Version 3 via Email.
Happy to offer to CEO
Final to CEO
OK for Council to offer to CEO*

Talked through revised draft with John Phillips and received advice.

12.10pm Conference call with John Phillips ended.

*12.10pm Council adjourns
12.17pm Council resumes*

12.17pm John Phillips back on Conference call.

*CEO returns to chambers at 12.18pm
Deputy CEO returns to chambers at 12.18pm*

*John Phillips walked through the draft with B Seale.
Draft /Version 3 is now final.
Advice from John Phillips to proceed*

12.23pm Conference phone call with John Phillips ends.

12.24pm Minutes now being taken by B Seale and C McAllan

*Council adjourns at 12.29pm
Council resumes at 1.28pm.*

9.1 CONSIDERATION TO NEGOTIATE THE RENEWAL OF THE CONTRACT OF EMPLOYMENT FOR THE INCUMBENT C.E.O. (B.W.SEALE.)

SUBMISSION TO:	Ordinary Meeting of Council
LOCATION:	Shire of Menzies
APPLICANT:	N/A
FILE REF:	
DISCLOSURE OF INTEREST:	None
DATE:	March 3rd, 2011
AUTHOR:	Brian Seale, Chief Executive Officer
SIGNATURE OF AUTHOR:	
SENIOR OFFICER:	Brian Seale, Chief Executive Officer
SIGNATURE OF SENIOR OFFICER:	

SUMMARY.

To consider the rescinding of the current resolutions as resolved on Thursday, February 24th, 2011 relative to the offer to the C.E.O. of a replacement contract of employment and to consider the contract conditions as proposed and to be negotiated with the officer, with the potential to offer a contract of employment from July 17th, 2011 for two years to conclude on July 16th, 2013, as a result of these negotiations.

BACKGROUND:

1. Council addressed this issue on February 24th, 2011 as item 9.31, as attached and noted as appendix "A".
2. Council decisions, as hand recorded from the February 24th, 2011 meeting, resolved to offer a replacement contract to the C.E.O. for two years; subject to a satisfactory performance review being tabled with Council prior to July 15th, 2011 (copy of this record is appended and narrated as appendix "B.")
3. Council entered into a contract of employment with the incumbent CEO in 2008 with commencement 17/7/08. A copy of this contract is appended and narrated as appendix "C."
4. Copies of Council resolutions dated 23/7/09, 11/3/10, and 28/10/10 are appended to illustrate the history of this process and to illustrate that Council endorsed the K.P.I's in October 2010 for the final term of the contract to July 2011. These are appended and noted as appendix "D."
5. Council is in receipt of formal advices from a one third of council seeking the convening of the special meeting of Council to re-consider this matter and a copy is appended and narrated as appendix "E."
6. An extract from the Local Government Act 1995 from clause 5.4 and 5.5 is also appended and narrated as appendix "F."
7. All Councillors were notified as required by section 5.5 of the Act and a copy of this confirmation is appended and narrated as appendix "G."
8. As a result of the negotiations undertaken with Councils consultant (John Phillips) on February 7th, 2011, a draft contract was determined and issued to all parties concerned, seeking the CEO's views and being in receipt of the draft contract on Saturday February 26th, 2011, these views of response were communicated to John Phillips on Sunday February 27th, 2011, which sought some minor variations to the proposal offered, which were then incorporated into a revised contract as issued to Councillors on March 2nd, 2011, where a copy is appended at appendix "H."
9. Furthermore, a schedule of cost associated with the total variations from the current contract to the replacement is reflected in the appendix as attached at "I.", setting out the cost of the variations to this package.

COMMENT:

The process required in this matter revolves around the potential of Council to:

1. Consider Rescission of the five current series of resolutions as adopted on February 24th, 2011.
2. Evaluating the variations to the proposed new contract and total variation package being offered and determining if these are acceptable to the heart of council.
3. Consider resolving to offer the C.E.O. a new contract of employment based on the facts as presented by Council's consultant and as negotiated with the incumbent officer as a finalized agreement between the parties.
4. It is further pertinent to note that the K.P.I.s as offered (and attached) reflect an expected achievement date prior to the proposed commencement date of this contract, where it is quite unreasonable to expect the achievement of a "Key Performance Indicator" prior to the commencement of the contract. (i.e.) The February to June 2011 period applies to the current employment contract period and constitutes a different issue for council consideration than the current issue of the replacement contract. As the attached decision of council (dated 28/10/10) illustrates the resolution of acceptance of the K.P.I.'s for the year ended July 2011, and any variation to that should be the subject of separate advices and not impacted by the current negotiations relative to the period commencing July 2011.

CONSULTATION:

John Phillips: from the W.A.L.G.A. group.

STATUTORY ENVIRONMENT:

Local Government Act 1995 – Section 5.36. 2 (b.) requires the council to be satisfied by the Contractual conditions by an Absolute Majority.

Local Government Act 1995 section 5.25 provides guidance regarding Council meetings.

Local Government Administration Regulations clause 10(1.) (a.)- Requires the absolute majority to rescind a previous motion of Council.

POLICY IMPLICATIONS:

None

FINANCIAL IMPLICATIONS:

Contract conditions will impact on the Shire, where budget parameters will be required for 2011/12.

VOTING REQUIREMENTS:

“Absolute” Majority required

MOVED Cr Lansdown

SECONDED Cr Pusey

1. In accordance with Section 5.25 of the Local Government Act 1995 and clause 10.(1.) (a.) of the Local Government (Administration) regulations 1996, Council consider the revocation of the following council decision at item 11.2 (Confidential Business behind closed doors.) and.”Carried as tabulated below” at the ordinary council meeting held on February 24th, 2011.

- 1) To accept draft contract from the consultant. Offer draft contract to CEO for consideration.

4/3 **“Carried”**

Cr Dwyer (G), Cr Dwyer (J) and Cr Tucker do not wish to offer contract.

- 2) Review to be finalized by the first week in July. The contract to be signed only subject to a satisfactory review.

7/0 **“Carried”**

- 3) Engage a consultant to conduct the review. List of Consultants to be presented to the March meeting for Council decision.

7/0 **“Carried”**

- 4) The outcome of the review to be presented to Council prior to the 14th July 2011

7/0 **“Carried”**

- 5) The signing of the contract, subject to a satisfactory review to be signed no later than 15th July 2011

7/0 **“Carried”**

Carried 4/0
Absolute Majority

MOVED Cr Pusey

SECONDED Cr Lansdown

2. Council revoke the following council decisions in relation to the C.E.O.’s contract of employment as resolved on February 24th, 2011.

- 1) To accept draft contract from the consultant. Offer draft contract to CEO for consideration.

4/3 **“Carried”**

Cr Dwyer (G), Cr Dwyer (J) and Cr Tucker do not wish to offer contract.

- 2.) Review to be finalized by the first week in July. The contract to be signed only subject to a satisfactory review.

7/0 **“Carried”**

- 3.) Engage a consultant to conduct the review. List of Consultants to be presented to the March meeting for Council decision.

7/0 **“Carried”**

4.) The outcome of the review to be presented to Council prior to the 14th July 2011

7/0 “Carried”

5.) The signing of the contract, subject to a satisfactory review to be signed no later than 15th July 2011

7/0 “Carried”

**Carried 4/0
Absolute Majority.**

MOVED Cr Lansdown

SECONDED Cr Kelly

That the Council approve the “Final C.E.O. Contract 2011-2013” as presented by John Phillips on 3rd March 2011 and it be offered to Mr. B.W. Seale

Carried 4/0

Moved Cr Kelly

Seconded Cr Pusey

The attached K.P.I's to the “Final C.E.O Contract 2011-2013” be reviewed and updated prior to 17th July 2011

Carried 4/0

Moved Cr Kelly

Seconded Cr Lansdown

The “Final C.E.O Contract 2011-2013” be executed/signed/sealed as soon as possible by both parties but no later than 24th March 2011

Carried 4/0

Note: Council arrived at these resolutions after consulting with John Phillips, the appointed Consultant. Further to John Phillips advice, signing of the contract is now only a formality. The Final version of the “2011-2013 CEO Contract” will commence on 17th July 2011

10 STATUS REPORTS

10.1 Shire of Menzies Status Report

Not applicable.

11 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN
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11.1 Elected Members motions with previous notice.

11.2 Confidential Business to be held behind closed doors.

NEXT MEETING / MEETING CLOSURE

The next Meeting will be held on Thursday, March 24th, 2011 at the Shire of Menzies Council Chambers, commencing at 9.00am.

There being no further business to discuss, the President declared the meeting closed at: 2.35 pm..

These Minutes were confirmed as a True and Accurate record of proceedings at the Ordinary meeting of Council, held on Thursday March 24th, 2011.

**Confirmed by the Shire of Menzies President,
Cr. Gregory Dwyer**

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