

Special Meeting of Council

Minutes

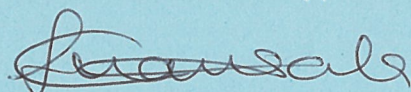
Section 5.22 of the Local Government Act 1995

16 June 2020

6.1 Commencement Date - CEO

Unconfirmed Minutes

These minutes were approved for distribution on 16 June 2020.



Chileya Luangala
ACTING CHIEF EXECUTIVE OFFICER

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the following Ordinary Meeting of Council, where the Minutes will be confirmed subject to any amendments made by the Council.

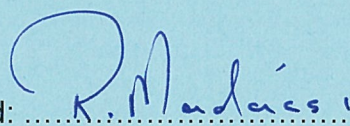
The "Confirmed" Minutes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Council Meeting are put together as attachments to these Minutes with the exception of Confidential Items.

Confidential Items or attachments that are confidential are compiled as separate Confidential Minuted Agenda Items.

Confirmed Minutes

These minutes were confirmed at a meeting held on 23 June 2020.

Signed: 

Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.

Shire of Toodyay

SPECIAL MEETING – 16 JUNE 2020

CONTENTS

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	1
2. RECORDS OF ATTENDANCE	1
3. DISCLOSURE OF INTERESTS	1
4. PUBLIC QUESTIONS (relating to the purpose of the meeting).....	1
5. PUBLIC SUBMISSIONS (relating to the purpose of the meeting).....	1
6. PURPOSE OF MEETING	2
6.1 Commencement Date - CEO	2
7. CLOSURE OF MEETING	6

THERE ARE NO ATTACHMENTS

Shire of Toodyay

MINUTES

SPECIAL MEETING – 16 JUNE 2020

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 3.03pm.

2. RECORDS OF ATTENDANCE

Members

Cr R Madacsi	Shire President
Cr B Ruthven	Deputy Shire President
Cr T Chitty	attending by telephone at 3.04pm.
Cr P Hart	
Cr S Pearce	

Staff

Mrs C Luangala	Acting CEO/Manager Corporate & Community Services
Mrs M Rebane	Executive Assistant

Visitors

M Sinclair-Jones
P Ruthven
A McCann

2.1 APOLOGIES

Cr B Bell
Cr P Greenway
Cr B Rayner

3. DISCLOSURE OF INTERESTS

The Chief Executive Officer advised that no disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting.

4. PUBLIC QUESTIONS (relating to the purpose of the meeting)

Nil

5. PUBLIC SUBMISSIONS (relating to the purpose of the meeting)

Nil

6. PURPOSE OF MEETING

6.1 Commencement Date - CEO

Date of Report:	8 June 2020
Applicant / Proponent/s:	Shire of Toodyay
File Reference:	HR421
Author:	M Rebane – Executive Assistant
Responsible Officer:	C Luangala – Acting CEO
Previously Before Council:	28 April 2020 Ordinary Council Meeting
Author's Disclosure of Interest:	Nil
Nature of Council's Role in the matter:	Executive
Confidential Attachment.	CEO Contract provided as a separate confidential attachment.
Voting Requirements:	Absolute Majority

PURPOSE OF THE REPORT

To consider an amendment to the commencement date of the CEO's contract.

BACKGROUND

At an Ordinary Council Meeting held on 28 April 2020, Council resolved (Council Res. No. 150/04/20) as follows:

That:

1. The Shire of Toodyay Council employs Suzanne Lorraine Haslehurst as the Chief Executive Officer (CEO) of the Shire of Toodyay;
2. The Council believes that Suzanne Lorraine Haslehurst is suitably qualified for the position of CEO of the Shire of Toodyay.
3. The Council is satisfied with the provisions of the employment contract, as attached.
4. Council authorises the affixing of the common seal of the Shire of Toodyay to the Employment Contract, as attached.

CONSULTATION IMPLICATIONS

Following the Special Meeting held on 4 June 2020, advice was sought from the Department of Local Government in relation to whether the report presented at that meeting needed to specify Absolute Majority or not. Their advice was as follows:

Under s5.36 of the *Local Government Act 1995*:

- (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.**

Therefore, it is the Department's view that technically an absolute majority vote is required. If the council is to signify that it is to be satisfied by absolute majority with the provisions of the contract and the date change is a provision in the contract, then it should follow that any change would need council to signify that it is satisfied with that change by absolute majority.

STRATEGIC IMPLICATIONS

There are no adverse strategic implications envisaged from this report.

POLICY IMPLICATIONS

There are no adverse policy implications envisaged from this report.

FINANCIAL IMPLICATIONS

There are no adverse financial implications envisaged from this report.

LEGAL AND STATUTORY IMPLICATIONS

Division 4 of the *Local Government Act 1995* states as follows:

5.36. Local government employees

- (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.

5.39. Contracts for CEO 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; and
 - (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 CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A.
- (8) A local government is to ensure that subsection (7) is complied with in entering into, or renewing, a contract of employment with a CEO.

18B. Contracts of CEOs and senior employees, content of (Act s. 5.39(3)(c))

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 —

- (a) the value of one year's remuneration under the contract; or
- (b) the value of the remuneration that the person would have been entitled to, had the contract not been terminated.

18F. Remuneration and benefits of CEO to be as advertised

The remuneration and other benefits paid to a CEO on the appointment of the CEO are not to differ from the remuneration and benefits advertised for the position under section 5.36(4).

RISK IMPLICATIONS (including DAIP)

There are no adverse risk implications envisaged from this report.

SOCIAL IMPLICATIONS

There are no adverse social implications envisaged from this report.

ENVIRONMENTAL IMPLICATIONS

There are no adverse environmental implications envisaged from this report.

ECONOMIC IMPLICATIONS

There are no adverse economic implications envisaged from this report.

OFFICER COMMENT / DETAILS

Any discussion in respect to the commencement date of the CEO may require to be done behind closed doors if parts of the contract are to be spoken about. This would be in accordance with Section 5.23 (2) (a), (2) (b), (2) (c) and (2) (e) of the *Local Government Act 1995*.

The incoming CEO indicated through the Shire President that they may be able to commence their duties earlier. The date given was 22 June 2020.

The detail in the actual contract stated as follows:

6. Commencement Date 3 August 2020
7. Term Four (4) years
8. Expiry Date 2 August 2024

OFFICER'S RECOMMENDATION

That Council:

1. authorise the Shire President to amend the commencement date in the signed contract to 22 June 2020 and the expiry date to 21 June 2024; and
2. authorise that the contract amendments be initialled by the Shire President and the incoming CEO.

Cr Ruthven moved the Officer's Recommendation.

The Shire President called for any objections to the motion.

There being no objections the Shire President declared that the motion was carried unanimously.

Clarification was sought.

Debate commenced.

The motion was put.

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. 188/06/20

MOVED Cr Ruthven

That Council:

1. authorise the Shire President to amend the commencement date in the signed contract to 22 June 2020 and the expiry date to 21 June 2024; and
2. authorise that the contract amendments be initialled by the Shire President and the incoming CEO.

MOTION CARRIED BY ABSOLUTE MAJORITY 5/0

As the meeting was being live-streamed, and in accordance with Section 5.21(4)(b) of the *Local Government Act 1995*, the Shire President requested that the vote of all members present be recorded.

7. CLOSURE OF MEETING

The Shire President declared the meeting closed at 3.05pm.

The electronic meeting ended at 3.05pm.