

10.3 MANAGER OF WORKS AND SERVICES:

Nil

ELECTED MEMBERS' MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN:

Nil

URGENT BUSINESS WITHOUT NOTICE WITH THE APPROVAL OF THE PRESIDENT OR MEETING:

12.1.1 Urgent Business –

Applicant:	N/A
File Ref. No:	ADM52
Disclosure of Interest:	Nil
Date:	15 th July 2021
Author:	Gary Sherry
Attachments:	Nil

Summary

Council is to consider reviewing urgent business relating to the resignation of the Chief Executive Officer.

Background – Nil

Comment

Staff are attempting to have the Agenda prepared at least a week before each Council Meeting. In completing this schedule, business of an urgent nature will arise from time to time in particular where commercial activities within the district would be delayed by Council not considering the item.

Statutory Environment

Shire of Cuballing – Standing Orders Local Law 1999 – Section 3.10:

3.10 Urgent Business Approved By the Person Presiding or by Decision

In cases of extreme urgency or other special circumstance, matters may, with the consent of the person presiding, or by decision of the members present, be raised without notice and decided by the meeting.

Strategic Implications – Nil

Policy Implications – Nil

Financial Implications – Nil

Economic Implication – Nil

Environmental Considerations – Nil

Consultation – Nil

Options

Council may resolve:

1. the Officer's Recommendation;
2. to not consider the urgent business.

Voting Requirements – Simple Majority

OFFICER'S RECOMMENDATION:

That Council consider the urgent business relating to the resignation of the Chief Executive Officer

12.1.2 Resignation of the Chief Executive Officer

Applicant: N/A
File Ref. No: Personal
Disclosure of Interest: Direct Financial Interest in that the author is the Officer in question
Date: 19th October 2021
Author: Gary Sherry
Attachments: Nil

Summary

Council is to consider the resignation of the Chief Executive Officer.

Background

On Friday 15th October the Chief Executive Officer (CEO) formally resigned from the Shire of Cuballing to take up a similar position with the Shire of Brookton. Mr Sherry's resignation advised that:

I wish to formally resign from the position of Chief Executive Officer of the Shire of Cuballing. I have accepted an alternative position as Chief Executive Officer of the Shire of Brookton.

Under the terms of my Employment Contract with the Shire of Cuballing, I wish to give the required three months notice of the termination of my employment on 15th January 2021.

I would take this opportunity to thank you, the Council and Shire of Cuballing for the opportunity to work in the position as Chief Executive Officer for the past seven years. This period has been a challenging time of significant change, but I have found it very rewarding personally.

I wish you, the Council and Shire staff the best for the future.

Comment

Mr Sherry has provided Council with the 3 month notice period required under his employment contract. This period expires on Saturday 15th January 2021.

Mr Sherry has requested Council to consider finishing his employment on Wednesday 5th January 2021. In making this request Mr Sherry has considered the leave requests of other senior staff, that Mr Sherry will be available to the Shire of Cuballing during the office closure period from Saturday 25th December to Monday 3rd January 2021 and that Mr Sherry was planning to take annual leave in January.

At the finalisation of this employment, Mr Sherry has requested that a period of two weeks be provided for him to pack his belongings and move from the Council residence provided as part of his employment contract.

Strategic Implications – Nil at this time.

Statutory Environment

Mr Sherry's Employment Contract, in part, reads:

11. TERMINATION

11.1 Automatic termination at end of Term

Unless the Term is extended or terminated earlier in accordance with this Contract, Your employment must conclude on the Expiry Date, without the requirement for either party to give notice.

11.2 Termination by the Local Government at will

- (1) This clause does not apply to a termination of Your employment under clause 11.3.
- (2) The Council may terminate Your employment at any time for any reason.
- (3) If the Council terminates Your employment under this clause, the Local Government must pay to You the lesser of –
 - (a) an amount equal to 100% of the Remuneration Package; or
 - (b) the balance of the Remuneration Package payable for the Term.
- (4) If the Council terminates Your employment under this clause as a result (wholly or partially) of an order made under section 2.1 of the Act, the Local Government must pay to You the lesser of –
 - (a) an amount equal to 100% of the annual Remuneration Package; or
 - (b) the balance of the Remuneration Package payable for the Term.
- (5) A payment under this clause –
 - (a) includes any and all other entitlements You may have in respect of termination of employment; and
 - (b) does not include payment for leave accrued but not taken at the date of termination.

11.3 Termination by the Local Government – Your default

- (1) Summary termination
The Council may summarily terminate Your employment at any time by notice in writing if You –
 - (a) are guilty of any serious misconduct or wilful neglect in the performance of the Functions;
 - (b) wilfully disobey any lawful direction by the Council;
 - (c) commit a serious breach of any of the provisions of this Contract;
 - (d) are convicted of a serious offence, or have been convicted of a 'serious local government offence' within the meaning of that term in section 2.22 of the Act; or
 - (e) do anything else which would lawfully enable the Local Government to terminate Your employment without notice.
- (2) Termination with notice
The Council may terminate Your employment at any time by giving You 4 weeks' notice in writing, or payment in lieu of notice, if –
 - (a) You commit a persistent breach of any of the provisions of this Contract and again breach the provision after being given notice of the breach by the Council;
 - (b) You become incapacitated by injury or illness from performing in full the Functions for an aggregate period of more than 90 days in any period of 12 consecutive months (but that period is not to include any accumulated paid leave taken);
 - (c) the Guardianship and Administration Board makes a guardianship order in relation to You under section 43 or section 64 of the Guardianship and Administration Act 1990; or
 - (d) You fail to substantially measure up to and achieve the Performance Criteria and continue to do so for a period of 4 weeks after the Council

gives You written notice of that failure and of the course of action which the Council wishes You to follow in order to address and correct that failure.

11.4 Termination by You at will

- (1) You may, for any reason, terminate Your employment on a date specified by You at any time by giving 3 months' notice in writing to the Council.
- (2) The period of notice may be varied by mutual agreement between the Council and You.

11.5 Deductions and set-off

On the termination of Your employment, or expiry of the Term, the Local Government may set-off any amounts that You owe the Local Government against any amount the Local Government owes You at the date of termination or expiry.

Policy Implications – Nil

Financial Implications – Nil

Mr Sherry, under his employment contract, is provided:

- rent free occupation of the residence; and
- utilities as part of his employment contract.

Following the resignation of Mr Sherry, Council will separately employ an Acting CEO until the search for a permanent officer is completed. At this time the cost of this action has not been calculated.

Economic Implications – Nil

Social Implications – Nil

Environmental Considerations – Nil

Consultation

Mr Sherry

Options

The Council can resolve:

1. the Officer's Recommendation;
2. an amended Officer's Recommendation with an alternative notice period or amended time to finish the residential tenancy.

Voting Requirements – Simple Majority

OFFICER'S RECOMMENDATION:

That Council accept the resignation of Chief Executive Officer Mr Gary Sherry and advise Mr Sherry that Council:

- 1. requires Mr Sherry to serve the entire 3 months notice period required under his employment contract; and**
- 2. will permit Mr Sherry to rent the Council residence under the terms of his employment contract for two weeks until Saturday 29th January 2021.**