



CONFIRMED MINUTES

CEO PERFORMANCE REVIEW COMMITTEE MEETING

28 NOVEMBER 2018

I certify that the minutes of the meeting of the CEO Performance Review Committee held on Wednesday, 28 November 2018 were confirmed on 20 February 2019.


Presiding Person

**CONFIRMED MINUTES
CEO PERFORMANCE REVIEW COMMITTEE MEETING
28 NOVEMBER 2018**

ATTENTION/DISCLAIMER

The purpose of this Committee Meeting is to discuss and make recommendations to Council about items appearing on the agenda and other matters for which the Committee is responsible. The Committee has no power to make any decisions which are binding on the Council or the Shire of Mundaring unless specific delegation of authority has been granted by Council. No person should rely on or act on the basis of any advice or information provided by a Member or Employee, or on the content of any discussion occurring, during the course of the Committee Meeting.

The Shire of Mundaring expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any advice or information provided by a Member or Employee, or the content of any discussion occurring during the course of the Committee Meeting.

CONTENTS

1.0	OPENING PROCEDURES	4
1.1	ANNOUNCEMENT OF VISITORS/GUESTS	4
1.2	ATTENDANCE/APOLOGIES.....	4
2.0	ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION	4
3.0	DECLARATION OF INTEREST	4
3.1	DECLARATION OF FINANCIAL INTEREST AND PROXIMITY INTERESTS	4
3.2	DECLARATION OF INTEREST AFFECTING IMPARTIALITY	5
4.0	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS	5
	CEOPR1.11.18	5
5.0	PRESENTATIONS	5
6.0	REPORTS OF EMPLOYEES	5
6.1	CHIEF EXECUTIVE OFFICER – CONTRACT OF EMPLOYMENT.....	5
	MEETING PROCEDURES SUSPENDED	6
	CEOPR2.11.18	6
	MEETING PROCEDURES RESUMED.....	6
	CEOPR3.11.18	6
7.0	URGENT BUSINESS (LATE REPORTS)	6
8.0	CLOSING PROCEDURES	6
8.1	DATE, TIME AND PLACE OF THE NEXT MEETING.....	6
8.2	CLOSURE OF THE MEETING.....	6

**CEO PERFORMANCE REVIEW COMMITTEE
WEIR ROOM, SHIRE OF MUNDARING ADMINISTRATION CENTRE**

1.0 OPENING PROCEDURES

The Presiding Person declared the meeting open at 4.30pm.

Acknowledgement of Country

Shire of Mundaring respectfully acknowledges Noongar elders past and present and their people (specifically the Whadjuk people who are from this area) who are the traditional custodians of this land.

1.1 Announcement of Visitors/Guests

Nil

1.2 Attendance/Apologies

Members	Cr John Daw (President) (Presiding Person) Cr Lynn Fisher (Deputy President) Cr Toni Burbidge Cr Ian Green Cr Darrell Jones	East Ward Central Ward Central Ward West Ward South Ward
Staff	Jonathan Throssell Paul O'Connor	Chief Executive Officer Director Corporate Services
Apologies	Nil	
Absent	Nil	
Members of the Public	Nil	
Members of the Press	Nil	

2.0 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

Nil

3.0 DECLARATION OF INTEREST

3.1 Declaration of Financial Interest and Proximity Interests

Elected Members must disclose the nature of their interest in matters to be discussed at the meeting (*Part 5 Division 6 of the Local Government Act 1995*).

Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting (*Sections 5.70 and 5.71 of the Local Government Act 1995*).

The CEO disclosed a financial interest in item 6.1 (Chief Executive Officer – Contract of Employment) as the item refers to his contract of employment.

Director Corporate Services disclosed an indirect financial interest in item 6.1 (Chief Executive Officer – Contract of Employment) as he reports to the CEO.

3.2 Declaration of Interest Affecting Impartiality

An Elected Member or an employee who has an interest in a matter to be discussed at the meeting must disclose that interest (*Shire of Mundaring Code of Conduct, Local Government (Admin) Reg. 34C*).

Nil

4.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

COMMITTEE DECISION RECOMMENDATION		CEOPR1.11.18	
Moved by	Cr Fisher	Seconded by	Cr Jones

That the Minutes of the CEO Performance Review Committee Meeting held 31 October 2018 be confirmed.

CARRIED 5/0

For: Cr Daw, Cr Fisher, Cr Burbidge, Cr Green and Cr Jones

Against: Nil

5.0 PRESENTATIONS

Nil

6.0 REPORTS OF EMPLOYEES

6.1 Chief Executive Officer – Contract of Employment

File Code	OR.MTG 6.2.3; P/F (Throssell)
Author	Paul O'Connor, Director Corporate Services
Senior Employee	Paul O'Connor, Director Corporate Services
Disclosure of Any Interest	Indirect Financial Interest
Attachments	1. Confidential - Letter - Renewal of Contract - Throssell (confidential)

Please refer to **Confidential Item 6.1** provided under separate cover.

4.36pm Meeting Procedures Suspended

COMMITTEE DECISION MOTION		CEOPR2.11.18	
Moved by	Cr Jones	Seconded by	Cr Burbidge

That Meeting Procedures be suspended.

CARRIED 5/0

For: Cr Daw, Cr Fisher, Cr Burbidge, Cr Green and Cr Jones

Against: Nil

4.36pm CEO and Director Corporate Services left the meeting room

5.34pm CEO and Director Corporate Services returned to the meeting room

5.34pm Meeting Procedures Resumed

COMMITTEE DECISION MOTION		CEOPR3.11.18	
Moved by	Cr Fisher	Seconded by	Cr Burbidge

That Meeting Procedures be resumed.

CARRIED 5/0

For: Cr Daw, Cr Fisher, Cr Burbidge, Cr Green and Cr Jones

Against: Nil

7.0 URGENT BUSINESS (LATE REPORTS)

Nil

8.0 CLOSING PROCEDURES

8.1 Date, Time and Place of the Next Meeting

The next CEO Performance Review Committee will be held in February 2019, date and time to be confirmed.

8.2 Closure of the Meeting

The Presiding Person declared the meeting closed at 5.45pm.



CONFIDENTIAL ITEM 6.1

CEO PERFORMANCE REVIEW COMMITTEE MEETING

28 NOVEMBER 2018

The reports in this confidential section of the agenda are clearly marked “Confidential” by the CEO for the purpose of confidential discussions during a committee or council meeting with members of the public excluded.

Councillors and staff are expressly forbidden to disclose information discussed at the meeting or contained in a confidential report unless it is in accordance with the Local Government (Rules of Conduct) Regulations 2007.

Please refer to the following sections of the Rules of Conduct:

6. Use of information

- (1) In this regulation –
 - “**closed meeting**” means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;
 - “**confidential document**” means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;
 - “**non-confidential document**” means a document that is not a confidential document.
- (2) A person who is a council member must not disclose –
 - (a) information that the council member derived from a confidential document; or
 - (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subregulation (2) does not prevent a person who is a council member from disclosing information –
 - (a) at a closed meeting; or
 - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
 - (c) that is already in the public domain; or
 - (d) to an officer of the Department; or
 - (e) to the Minister; or
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.

7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person’s office as a council member –
 - (a) to gain directly or indirectly an advantage for the person or any other person; or
 - (b) to cause detriment to the local government or any other person.
- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.

A breach of s 5.93 of the Local Government Act is considered a serious breach and can result in criminal prosecution with a penalty of \$10,000 or imprisonment for 2 years.

These confidential attachments are to be returned to the minute secretary at the conclusion of the Ordinary Council meeting on 11 December 2018.

6.0	REPORTS OF EMPLOYEES	4
6.1	CHIEF EXECUTIVE OFFICER - CONTRACT OF EMPLOYMENT	4

6.1 Chief Executive Officer - Contract of Employment

File Code	OR.MTG 6.2.3; P/F (Throssell)
Author	Paul O'Connor, Director Corporate Services
Senior Employee	Paul O'Connor, Director Corporate Services
Disclosure of Any Interest	Indirect Financial Interest
Attachments	1. Confidential - Letter - Renewal of Contract - Throssell (confidential)

CONFIDENTIAL - This document, in its entirety or any part thereof, is not to be released into the public domain nor is it to be disclosed or discussed outside of the Council of the Shire of Mundaring.

SUMMARY

The term of Mr Throssell's current contract of employment expires on 8 November 2019.

The contract requires Mr Throssell to notify Council, in writing, whether he seeks a renewal of the contract, and if so, for what term, not later than nine months before the expiry of the term.

Mr Throssell has sought a renewal of the contract by a further five years and his letter of request dated 20 November 2018 is attached (**Confidential Attachment 1**).

Council is required, within two months of Council receiving the above notification, to advise Mr Throssell in writing of the Shire's intention to either advertise the Position or to offer him a renewal of contract of employment and, if so, on what terms.

This report recommends Council, through the Chief Executive Officer Performance Review Committee (CEOPRC), resolve to offer Mr Throssell a renewal of his current contract for a period of five years.

BACKGROUND

Mr Throssell commenced in the position of Chief Executive Officer (CEO) with the Shire of Mundaring in August 2005 for a five year term. His contract was reviewed and renewed by Council in July 2009 (C17.07.09) for a further five years, to 31 August 2014.

In August 2012, Council agreed to renew Mr Throssell's contract for a further five year term, from 1 September 2012 to 31 August 2017 (C14.08.12).

In November 2016 agreed to renew Mr Throssell's contract of employment for a three year term, from 9 November 2016 to 8 November 2019 (C12.11.16).

Mr Throssell has advised that he is seeking a five year term with the contract renewal.

STATUTORY / LEGAL IMPLICATIONS

Clause 2.2 of Mr Throssell's current contract of employment is as follows:

"2.2 Extension of Term

- (1) In accordance with section 5.39(4) of the Act, this Contract is renewable, and the Term may be extended, by agreement between the parties.*
- (2) Neither the Shire nor the Employee has any obligation to agree to this Contract being renewed or to the Term being extended.*
- (3) The Employee must, not later than nine months before the expiry of the Term, notify the Council in writing whether or not the Employee seeks a renewal of this Contract and, if so, for what term.*
- (4) Within two months of the Council receiving that notification, the Council must advise the Employee in writing of the Shire's intention to either advertise the Position or to offer the Employee a renewal of this Contract and, if so, on what terms.*
- (5) If there is any delay in the Council giving the Employee the notice in writing under clause 2.2(4), the Term is deemed to be extended for a period equal to the period of the delay, but not to exceed 12 months.*
- (6) If the Council and the Employee agree to an extension of the Term, then, subject to that agreement -*
 - (a) this Contract will continue to apply unless amended in writing by the parties; and*
 - (b) clause 2.1 is to be read as though it refers to the extended Term."*

Clause 2.2 (3) has been enacted and the process commenced to consider an offer of renewal of contract to Mr Throssell.

In accordance with section 5.39(4) of the *Local Government Act 1995*, the contract is renewable, and the term may be extended, by agreement between the parties.

A renewal of contract does not mean there is a need for a new contract document between the parties, as the existing contractual arrangements and conditions will continue. It does indicate a renewal of contract for a further agreed period of employment.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

In accordance with s5.39 (7) of the *Local Government Act 1995*, 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.

The CEO's Total Reward Package for 2018, as noted by Council on 11 September 2018 (C19.09.18), is to remain at its existing level as Mr Throssell elected not to seek a variation to his remuneration package for the 2018/19 period.

The Total Reward Package is therefore in accordance with the parameters of the Salaries and Allowances Tribunal determination for 2018 and is within the 2018/19 budget provision.

An early termination of the existing CEO contract would result in a remuneration settlement that may include an unbudgeted termination payment. The Shire would also incur recruitment costs and employee costs to cover the vacancy and associated backfilling of positions.

STRATEGIC IMPLICATIONS

Mundaring 2026 Strategic Community Plan

Priority 1 - Governance

Objective 1.1 – A fiscally responsible Shire that prioritises spending appropriately

Strategy 1.1.4 – Practice effective governance and financial risk management

It is important that a local government employ a CEO to provide advice to its Council and administer the day to day operations of the local government.

CEOs are selected by the Council, and their contracts of employment contain criteria that their performance is reviewed on an annual basis. The CEO is the conduit between the elected members of the Council and the local government employees.

The CEO's function is to:

- advise Council in relation to the local government's functions;
- ensure that advice and information is available to Council so that informed decisions can be made;
- cause Council decisions to be implemented;
- manage the day to day operations of the local government;
- liaise with the mayor or president on the local government's affairs and performance of functions;
- speak on behalf of the local government if the mayor or president agrees;
- be responsible for the employment, management, supervision, direction and dismissal of other employees; and
- ensure that the records and documents of the local government are properly kept.

SUSTAINABILITY IMPLICATIONS

Nil

RISK IMPLICATIONS

Risk: Reputational/People/Financial – Council may not offer the CEO an extension of contract of employment.		
Likelihood	Consequence	Rating
Possible	Major	High
Action / Strategy		
<p>People - should Council resolve not approve an extension of the existing contract, there could be an impact on the Shire employees through the creation of uncertainty of future direction and security of tenure, and leadership style.</p> <p>Reputational – community reaction to a change of CEO when the CEO has been rated by Council as a good performer over a long period of time. A clear communication plan would need to be actioned by Council.</p> <p>Financial - an early termination of contract may result in costs not budgeted for to cease the existing contract, payment of appropriate remuneration to an acting CEO and resultant backfilling of positions, plus the recruitment process.</p>		
Risk: Reputational/People - CEO may not accept Council's term of contract if varied from CEO request.		
Likelihood	Consequence	Rating
Possible	Major	High
Action / Strategy		
<p>Should Council resolve to present an offer of a shorter term than that sought by the CEOPRC, there is a risk that Mr Throssell will not accept it and negotiations would be required to seek a resolution. This will take further resources and time and potentially provide a distraction to Mr Throssell's effectiveness in undertaking his responsibilities. Alternatively, Mr Throssell may elect to not continue as CEO.</p> <p>Should Council not resolve an agreed term, there is a reputational risk to Council. A clear communication plan would need to be to be actioned by Council.</p>		

EXTERNAL CONSULTATION

Nil

COMMENT

Legal advice was obtained in 2017 on the following matters to assist CEOPRC and Council in their deliberations:

- As Council is offering a further contract of employment, a new contract document is not required as the existing one was previously agreed and approved by both concerned parties and reflects current legislation and industrial relation requirements.
- The agreed term of contract should commence upon the date of Council approval or shortly thereafter.
- Council cannot approve a term exceeding five years.

The existing contract of employment with Mr Throssell reflects the following:

- Agreed entitlements and conditions approved by Council.
- The contract accords with current legislation and all pertinent decisions of the Salaries and Allowances Tribunal.
- The CEO's Total Reward Package for 2018, as noted by Council on 11 September 2018 (C19.09.18), is to remain at its existing level as Mr Throssell elected not to seek a variation to his remuneration package for the 2018/19 period. The Total Reward Package is in accordance with the parameters of the Salaries and Allowances Tribunal determination for 2018 and is within the 2018/19 budget provision.

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Committee determines its recommendation to Council in regard to Mr Throssell's request of a renewal of his current contract for a period of five years.

**COMMITTEE RECOMMENDATION
MOTION**

CEOPRC4.11.18

Moved by Cr Fisher

Seconded by Cr Green

That:

1. Council agrees to renew the contract of employment with Mr Jonathan Throssell as the Chief Executive officer of Shire of Mundaring for a three year term; and
2. This Committee recommendation remain confidential until the matter has been considered by Council.

CARRIED 5/0

For: Cr Daw, Cr Fisher, Cr Burbidge, Cr Green and Cr Jones

Against: Nil

Reasons:

1. A contract for three years is the most common CEO contract duration, according to advice from WALGA;
2. A contract for three years provides certainty for Shire employees of continuity of leadership style and certainty of future direction; and
3. A contract for three years provides every Elected Member an opportunity to have input into the decision about the CEO contract duration, at least once during their four year term.



Office of the Chief Executive
Our Ref: P/F

20 November 2018

Cr John Daw
President
Shire of Mundaring

Dear Cr Daw

CONTRACT OF EMPLOYMENT

I am writing to advise you about my contract of employment with the Shire.

The term of my current contract of employment expires on 8 November 2019. In accordance with section 5.39(4) of the *Local Government Act 1995*, the contract is renewable, and the term may be extended, by agreement between the parties.

In accordance with my contract, not later than nine months before the expiry of the term I am required to notify the Council, in writing, whether I seek a renewal of the contract and if so, for what term.

This letter is to inform you that I seek to renew my contract and extend my term by a further five years. Accordingly, a report will be prepared for Council's consideration. As discussed, while not within the terms of reference of the CEO Performance Review Committee, I agree to this matter being considered by that Committee prior to Council. I note a meeting of the CEO Performance Review Committee is scheduled for Wednesday 28 November 2018 to this end.

For your information, within two months of Council receiving this notification, Council must advise me in writing of the Shire's intention to either advertise the Position or to offer me a renewal of my contract and, if so, on what terms.

Please contact me if you have any queries about this issue.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Jonathan Throssell".

Jonathan Throssell
CHIEF EXECUTIVE OFFICER