



CONFIRMED MINUTES

CEO PERFORMANCE REVIEW COMMITTEE MEETING

28 SEPTEMBER 2021

I certify that the minutes of the meeting of the CEO Performance Review Committee held on Tuesday, 28 September 2021 were confirmed on 22 November 2021.



Presiding Person



**CONFIRMED MINUTES
CEO PERFORMANCE REVIEW COMMITTEE MEETING
28 SEPTEMBER 2021**

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.

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

1.0 OPENING PROCEDURES

The Presiding Person declared the meeting open at 5.35pm.

Acknowledgement of Country

Shire of Mundaring respectfully acknowledges the Whadjuk people of the Noongar Nation, who are the traditional custodians of this land. We acknowledge Elders past, present and emerging and respect their continuing culture and the contribution they make to the region.

1.1 Announcement of Visitors

Nil

1.2 Attendance/Apologies

Members	Cr John Daw (Presiding Person) (President) Cr Darrell Jones Cr Doug Jeans (arrived at 5.37pm) Cr Ian Green	East Ward South Ward Central Ward West Ward
Staff	Garry Bird Anna Italiano	Acting Chief Executive Officer Minute Secretary
Apologies	Cr Jason Russell	West Ward
Absent	Nil	
Guests	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*).

Nil

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*).

Garry disclosed an interest affecting impartiality in Item 8.1 (Correction of Information presented to Committee meeting held 9 August 2021 – Item 8.3)) as the CEO is responsible for the employment contract of the Director of Corporate Services.

4.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

COMMITTEE DECISION RECOMMENDATION	CEOPR1.09.21
Moved by Cr Green	Seconded by Cr Jones

That the Minutes of the CEO Performance Review Committee Meeting held 9 August 2021 be confirmed.

CARRIED 3/0

For: Cr Daw, Cr Green and Cr Jones

Against: Nil

5.0 PRESENTATIONS

Nil

6.0 REPORTS OF EMPLOYEES

Nil

7.0 URGENT BUSINESS (LATE REPORTS)

Nil

8.0 CONFIDENTIAL REPORTS

Meeting Closed to Public at 5.37pm

The Local Government Act 1995, Part 5, Section 5.23 states in part:

- (2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following —
 - (a) a matter affecting an employee or employees; and
 - (b) the personal affairs of any person; and

- (c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
- (d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and
- (e) a matter that if disclosed, would reveal —
 - (i) a trade secret; or
 - (ii) information that has a commercial value to a person; or
 - (iii) information about the business, professional, commercial or financial affairs of a person, where the trade secret or information is held by, or is about, a person other than the local government; and
- (f) a matter that if disclosed, could be reasonably expected to —
 - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or
 - (ii) endanger the security of the local government's property; or
 - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety; and
- (g) information which is the subject of a direction given under section 23(1a) of the *Parliamentary Commissioner Act 1971*; and
- (h) such other matters as may be prescribed.

COMMITTEE DECISION		CEOPR2.09.21	
RECOMMENDATION			
Moved by	Cr Green	Seconded by	Cr Jones

That the Committee closes the meeting to members of the public, in accordance with s5.23(2) of the *Local Government Act 1995*, in order to consider the confidential reports as detailed below:

8.1 Correction of Information Presented to Committee Meeting held 9 August 2021 (Item 8.3)

Item 8.1 is considered confidential in accordance with the *Local Government Act 1995* section 5.23(2) (a) as it contains information relating to a matter affecting an employee or employees.

CARRIED 3/0

For: Cr Daw, Cr Green and Cr Jones

Against: Nil

5.37pm Cr Jeans entered the Committee Room

8.1 **Correction of Information Presented to Committee Meeting held 9 August 2021 (Item 8.3)**

File Code	P/F
Author	Garry Bird, Director Corporate Services
Senior Employee	Garry Bird, Director Corporate Services
Disclosure of Any Interest	Impartiality - Garry Bird, DCS
Attachments	1. Local Government Determination 2. Variation 2 to Local Govt CEO's and Elected Members - 24 June 2021 3. McLeods Legal Advice

COMMITTEE RECOMMENDATION MOTION	CEOPR4.09.21		
Moved by	Cr Jeans	Seconded by	Cr Green

That the Committee:

1. Notes the error made in Item 8.3 at the Committee Meeting held on 9 August 2021 (CEOPR7.08.21);
2. Recommends Council notes the corrected advice in regards to the components of the CEO's remuneration package, as presented in this report;
3. **Recommends Council notes that notwithstanding the error made, the CEOPRC endorses the original decision made to recommend a 1.5% increase to the CEO's base salary for 2021/22; and**
4. Notes the content of this report remains confidential and located on Mr Jonathan Throssell's personnel file.

CARRIED 4/0

For: Cr Daw, Cr Green, Cr Jones and Cr Jeans

Against: Nil

Meeting Opened to Public at 6.02pm

COMMITTEE DECISION RECOMMENDATION	CEOPR5.09.21		
Moved by	Cr Green	Seconded by	Cr Jeans

That the meeting again be opened to the public.

CARRIED 4/0

For: Cr Daw, Cr Green, Cr Jeans and Cr Jones

Against: Nil

9.0 CLOSING PROCEDURES

9.1 Date, Time and Place of the Next Meeting

Date to be determined

9.2 Closure of the Meeting

The Presiding Person declared the meeting closed at 6.02pm.



CONFIRMED MINUTES

CONFIDENTIAL ITEM 8.1

**CEO PERFORMANCE REVIEW
COMMITTEE MEETING**

28 SEPTEMBER 2021

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8.0 CONFIDENTIAL REPORTS

8.1 Correction of Information Presented to Committee Meeting held 9 August 2021 (Item 8.3)

File Code	P/F
Author	Garry Bird, Director Corporate Services
Senior Employee	Garry Bird, Director Corporate Services
Disclosure of Any Interest	Impartiality - Garry Bird, DCS
Attachments	<ol style="list-style-type: none">1. Local Government Determination ↓2. Variation 2 to Local Govt CEO's and Elected Members - 24 June 2021 ↓3. McLeods Legal Advice ↓

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 Committee is asked to consider the appropriate action to take in regards to an error in figures reported in Item 8.3 at the 9 August 2021 Committee meeting, which was in relation to the CEO's salary.

BACKGROUND

At the August 2021 Council Meeting, an increase to the CEO's Total Reward Package and base cash salary was unanimously approved as per the following Resolution:

"That Council:

1. *Approves an increase of 1.5% to the CEO's base salary for 2021/22; and*
2. *Notes the content of this report remains confidential and located on Mr Jonathan Throssell's personnel file."*

In the process of implementing this decision staff became aware that incorrect information was provided to the CEO Performance Review Committee and Council in reporting the CEO's existing salary details for the 2020/21 financial year.

This error was to understate the CEO's base salary by \$4,185, as per the following table, which also meant the reported superannuation component was also understated by \$397:

Components of total reward	Reported Package in	Correct Package
----------------------------	---------------------	-----------------

package	the CEOPRC agenda	
Base Salary	\$261,648	\$265,833
Superannuation (9.5% for 20/21)	\$24,857	\$25,254
Personal benefit value of a motor vehicle (note 3)	\$8884	\$8884
Associated FBT accrued (note 4)	\$11,089	\$11,089
Association membership fee (note 5)	\$531	\$531
Total Reward Package	\$307,009	\$311,591

The basis of the error was not using the amended salary details arising from the 2019 Review and using the base before that increase was applied.

The net cash salary difference of an increase of 1.50% on the two different figures is calculated as per the below table:

Salary	1.50% Increase	Difference
\$261,648	\$265,572	\$3924
\$265,833	\$269,821	\$3988
		\$64

This error was immediately advised to Elected Members by the Director Corporate Services in an email dated 1 September 2021. In reporting the error, Elected Members were also advised if they were of the view that this error meant the decision to offer a 1.50% increase would have been different, a Notice of Meeting to rescind the Council decision would be required. Cr Jeans has since indicated his intention to submit a formal notice of motion to rescind the decision.

Due to the upcoming October local government elections and a desire to ensure that the appropriate process was followed to ensure good governance was observed, legal advice (**Attachment 3**) was obtained on how best to manage this error. Further comment is provided under the 'Statutory/Legal Implications' section of this report.

STATUTORY / LEGAL IMPLICATIONS

Section 5.39 (7) of the *Local Government Act 1995* refers:

5.39. *Contracts for CEO and senior employees*

(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.*

Section 7A of the *Salaries and Allowances Act 1975* requires the Salaries and Allowances Tribunal (SAT) at intervals of not more than twelve months to "inquire into and determine, the amount of remuneration, or the minimum and maximum amounts of remuneration, to be paid or provided to chief executive officers of local governments".

A copy of the 2021 SAT determination is attached (see **Attachment 1**). Further, a variation to this determination was issued on 24 June 2021 (see **Attachment 2**). It should be noted that the if the adopted 1.50% increase was applied to the correct figures, the total reward package would be \$317,307 (98.78% of Band 2).

A summary of the legal advice obtained advises that it is appropriate for Council to be given the opportunity to reconsider its original decision 'having regard to the revised information relating to the CEO's base salary'. However, in such reconsideration it would be preferable if the matter were to be reconsidered by the current Council who made the original decision (rather than after the elections, which will deliver six newly elected council members).

The advice considers the implications of a proposed notice of motion to rescind the council decision. Such a motion cannot proceed unless it complies with regulation 10 of the *Local Government (Administration) Regulations 1996* and clause 11.2 of the Shire's Meeting Procedures Local Law. This requires a notice of motion to rescind a decision of council to be signed by at least four elected members to comply with the requirements.

Accordingly, the advice states that, rather than dealing with the matter by way of a notice of motion, it is preferable for the matter to be considered, in the first instance, by CEOPRC. The advice notes that this "would also have the advantage of being consistent with the process that was followed in relation to the original decision as well as enabling the CEOPRC to make a recommendation to the Council...".

As a result of receiving the legal advice, the matter is presented to the CEOPRC for consideration.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

If the adopted 1.50% increase was applied to the correct base salary, the new salary details would be as follows:

Components of total reward package	2020/21	1.50% Increase
Base Salary	\$265,833	\$269,821
Superannuation (9.5% for 20/21, increased to 10% for 21/22)	\$25,254	\$26,982
Personal benefit value of a motor vehicle (note 3)	\$8884	\$8884
Associated FBT accrued (note 4)	\$11,089	\$11,089
Association membership fee (note 5)	\$531	\$531
Total Reward Package	\$311,591	\$317,307

It should be noted that there are no financial implications arising from this error from a budget perspective, as the 2021/22 Budget was prepared using the correct figures.

STRATEGIC IMPLICATIONS

Mundaring 2026 Strategic Community Plan

Priority 1 - Community

Objective 1.1 – Healthy, safe, sustainable and resilient community

Strategy 1.1.4 – Support community collaboration and community-led initiatives and activities

SUSTAINABILITY IMPLICATIONS

Nil

RISK IMPLICATIONS

Risk: That the Committee (and Council) have made the decision to offer a 1.50% cash salary increase to the CEO based on incorrect information and that a different decision would have been made if the correct information had been presented.		
Likelihood	Consequence	Rating
Unlikely	Insignificant	Low
Action / Strategy		
That the Committee consider the matter and make appropriate recommendation(s) to Council.		

EXTERNAL CONSULTATION

Nil

COMMENT

CEOPRC is asked to consider the information contained in this report and make any appropriate recommendations to Council as it sees is appropriate. Suggested recommendations are provided below.

VOTING REQUIREMENT

Simple Majority

RECOMMENDATION

That the Committee:

1. Notes the error made in Item 8.3 at the Committee Meeting held on 9 August 2021 (CEOPR7.08.21);
2. Recommends Council notes the corrected advice in regards to the components of the CEO's remuneration package, as presented in this report; and
3. Notes the content of this report remains confidential and located on Mr Jonathan Throssell's personnel file.

COMMITTEE DECISION MOTION

CEOPR3.09.21

Moved by Cr Jeans Seconded by Cr Green

That an additional dot point 3 be added as follows:

"Recommends Council notes that notwithstanding the error made, the CEOPRC endorses the original decision made to recommend a 1.5% increase to the CEO's base salary for 2021/22".

CARRIED 4/0

For: Cr Daw, Cr Green, Cr Jones and Cr Jeans

Against: Nil

COMMITTEE RECOMMENDATION MOTION

CEOPR4.09.21

Moved by Cr Jeans Seconded by Cr Green

That the Committee:

1. Notes the error made in Item 8.3 at the Committee Meeting held on 9 August 2021 (CEOPR7.08.21);
2. Recommends Council notes the corrected advice in regards to the components of the CEO's remuneration package, as presented in this report;
3. **Recommends Council notes that notwithstanding the error made, the CEOPRC endorses the original decision made to recommend a 1.5% increase to the CEO's base salary for 2021/22; and**
4. Notes the content of this report remains confidential and located on Mr Jonathan Throssell's personnel file.

CARRIED 4/0

For: Cr Daw, Cr Green, Cr Jones and Cr Jeans

Against: Nil

WESTERN AUSTRALIA
SALARIES AND ALLOWANCES ACT 1975
DETERMINATION OF THE SALARIES AND ALLOWANCES TRIBUNAL
ON LOCAL GOVERNMENT CHIEF EXECUTIVE OFFICERS AND ELECTED MEMBERS

Pursuant to Section 7A and 7B

8 April 2021

PREAMBLE

Statutory Context

1. Section 7A of the *Salaries and Allowances Act 1975* ('the SA Act') requires the Salaries and Allowances Tribunal ('the Tribunal') to "inquire into and determine, the amount of remuneration, or the minimum and maximum amounts of remuneration, to be paid or provided to chief executive officers of local governments".
2. Under Section 7B(2) of the SA Act, the Tribunal must inquire into and determine the amount of:
 - fees, or the minimum and maximum amounts of fees, to be paid under the *Local Government Act 1995* ('the LG Act') to elected council members for attendance at meetings;
 - expenses, or the minimum and maximum amounts of expenses, to be reimbursed under the LG Act to elected council members; and
 - allowances, or the minimum and maximum amounts of allowances, to be paid under the LG Act to elected council members.
3. By issuing this Determination, the Tribunal discharges its obligations under Section 8 of the SA Act, which requires determinations under sections 7A and 7B to be issued at intervals of not more than 12 months.

Considerations

4. The Tribunal has considered sections 2.7 to 2.10 and section 5.41 of the LG Act, which outlines the roles and responsibilities of local governments, councillors, mayors, presidents and their deputies, and the functions of local government Chief Executive Officers (CEOs).
5. The Tribunal invited individual local governments, the Department of Local Government, Sport and Cultural Industries, the Western Australian Local Government Association, Local Government Professionals WA and other interested individuals to provide information or submissions regarding developments across the sector.

6. Nineteen submissions were received. All submissions received were considered within the Tribunal's deliberations.

Band allocation model

7. The Tribunal continues to apply the four Band allocation model. The model allows a number of measurable and non-measurable factors to be considered when assessing appropriate levels of remuneration. The model is adjusted annually to accommodate incremental increases experienced by all organisations.
8. While some submissions argued for a change to the classification model, the Tribunal considers this model remains the best available for local government remuneration.
9. The Tribunal notes that the remuneration ranges provide some flexibility to local governments to set remuneration within the Band to which they are allocated. The Tribunal will only adjust a Band classification when a local government or regional local government can demonstrate a substantial and sustained increase in functions, roles or scope of the organisation.

Christmas and Cocos Islands

10. In 2016, the Commonwealth and WA Governments entered an agreement under the *Christmas Island Act 1958* (Cth), the *Cocos (Keeling) Islands Act 1995* (Cth) and the *Indian Oceans Territories (Administration of Laws) Act 1992* (WA), by which the Tribunal has the power to determine the remuneration of local government CEOs and the fees, expenses and allowances for local government elected members of the Shires of Christmas Island and Cocos (Keeling) Islands.
11. This inquiry reviewed remuneration provided by the Shires of Christmas and Cocos (Keeling) Islands.

CONCLUSIONS

12. The Tribunal has determined that remuneration, fees, expenses and allowance ranges provided to CEOs and elected members will be maintained at current levels. The ranges remain appropriate within the wider framework of senior public offices and the current economic climate.
13. The Tribunal notes that each local government can set remuneration within the band to which it is allocated. Any increase, within the bands, must be determined by each local government through its own assessment of whether changes are justified.
14. In reviewing the classification framework, band allocation model and all other relevant information, the Tribunal has examined local governments with potential to change classification. However, the Tribunal considers no change is warranted at this time to the classification of any local government.

15. The Tribunal received some submissions requesting changes to the specific levels of allowances, such as the Regional Isolation Allowance or the annual allowances provided to elected members in lieu of expenses. The Tribunal has reviewed these allowances and has determined that no change is necessary.
16. The Tribunal noted a number of submissions raised a variety of issues, such as performance management, governance standards, workplace culture, qualifications and training, among others. Such issues are outside the Tribunal's powers. The Tribunal's functions are narrow and strictly defined in the SA Act (as identified in paragraphs 1 and 2). The Tribunal sets the appropriate levels of remuneration for the offices within its jurisdiction, not the specific office holders.
17. It is emphasised that fees and allowances, in lieu of reimbursement of expenses, provided to elected members are not considered payment for work performed in a manner akin to regular employment arrangements. Elected members are provided these fees and allowances to recognise the commitment of their time and to ensure they are not out of pocket for expenses properly incurred in the fulfilment of their duties. The Tribunal's original 2013 determination stated that "fees and allowances provided to elected members are not intended to be full time salaries for members". The Tribunal continues to recognise the degree of voluntary community service in the role of elected members.

The Determination will now issue

**DETERMINATION FOR LOCAL GOVERNMENT CHIEF EXECUTIVE OFFICERS
AND ELECTED MEMBERS PURSUANT TO SECTION 7A AND 7B OF THE
SALARIES AND ALLOWANCES ACT 1975**

PART 1: INTRODUCTORY MATTERS

This Part deals with some matters that are relevant to the determination generally.

1.1 Short title

This determination may be cited as the *Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2021*.

1.2 Commencement

This determination comes into operation on 1 July 2021.

1.3 Content and intent

- (1) The remuneration listed in this determination comprises all remuneration as defined under the *Salaries and Allowances Act 1975* as including salary, allowances, fees, emoluments and benefits.
- (2) The determination applies to
 - a. Chief Executive Officers (CEOs);
 - b. Acting Chief Executive Officers; and
 - c. Elected Members
- (3) The remuneration specified in this determination for CEOs is based on a person being appointed to one local government CEO position only. In the case of a person appointed to undertake the duties of more than one CEO position simultaneously, the relevant local governments must seek a determination from the Tribunal for the multiple CEO positions held by that person.
- (4) If a local government undergoes an amalgamation or a rezoning of local government boundaries, the local government is required to seek a new determination from the Tribunal.
- (5) This determination provides for the amount of fees, expenses and allowances to be paid or reimbursed to elected council members under the *Local Government Act 1995* ('the LG Act') Part 5 Division 8. The determination applies to elected council members

who are members of the council of a local government, and under section 3.66 of the LG Act.

- (6) Where the Tribunal has determined a specific amount for a fee, expense or allowance for elected council members of a local government or regional local government, the amount determined by the Tribunal will be payable to an eligible elected council member.
- (7) Where the Tribunal has determined a minimum and maximum amount for a fee, expense or allowance for elected council members of a local government or regional local government, each local government or regional local government council will set an amount within the relevant range determined and the amount set will be payable to an eligible elected council member.
- (8) The fees, expenses and allowances determined are intended to recognise the responsibilities of elected council members, mayors and presidents of local governments and chairmen of regional local governments and to remunerate them for the performance of the duties associated with their office.

1.4 Terms used

In this determination, unless the contrary intention appears -

chair means a person who is elected or appointed from among the members of a council of a regional local government as its chair;

committee meeting means a meeting of a committee of a council where the committee comprises –

- (a) council members only; or
- (b) council members and employees of the local government or regional local government;

council, in relation to:

- (a) a local government, means the council of the local government;
- (b) a regional local government, means the council of the regional local government;

council member, in relation to:

- (a) a local government –

(i) means a person elected under the LG Act as a member of the council of the local government; and

(ii) includes the mayor or president of the local government;

(b) a regional local government –

(i) means a person elected under the LG Act as a member of the council of a local government and who is a member of the council of the regional local government; and

(ii) includes the chair of the regional local government;

LG Regulations means the *Local Government (Administration) Regulations 1996*;

mayor means a council member holding the office of mayor, whether elected by the council from amongst its members or elected by the electors;

president means a council member holding the office of president, whether elected by the council from amongst its members or elected by the electors.

1.5 Pro rata payments

- (1) The Total Reward Package specified in this determination for CEOs is based on a person serving in the office on a full-time basis. The relevant range shall be payable on a pro rata basis if the position is undertaken on a part time basis.
- (2) The amount of a person's entitlement to remuneration, annual attendance fee or annual allowance specified in this determination shall be apportioned on a pro rata basis according to the portion of a year that the person holds office.

1.6 Local government band allocations

Unless the contrary intention appears, this determination allocates local governments to the bands set out in Schedule 1. Regional local governments (as constituted under Part 3 Division 4 of the LG Act) are allocated to a Band only with respect to CEOs.

PART 2: TOTAL REWARD PACKAGE

This Part deals with the remuneration payable to Chief Executive Officers.

2.1 GENERAL

- (1) Offices listed in this Part have been assigned by the Tribunal to one of four classifications designated Band 1 to Band 4.
- (2) Each classification (Band 1 to Band 4) has a commensurate Total Reward Package (TRP) range.
- (3) Typical components of a TRP include:
 - (a) Base salary;
 - (b) Annual leave loading;
 - (c) Associated FBT accrued (total annual amount of fringe benefits tax paid by the local government for all fringe benefits provided to a CEO);
 - (d) Association membership fees;
 - (e) Attraction/retention allowance, not being provided under Part 3;
 - (f) Personal benefit value of the provision of a motor vehicle for private use (if applicable) as defined under Part 5 of this determination;
 - (g) Cash bonus and performance incentives;
 - (h) Cash in lieu of a motor vehicle;
 - (i) Fitness club fees;
 - (j) Grooming/clothing allowance;
 - (k) Health insurance;
 - (l) School fees and/or child's uniform;
 - (m) Superannuation (all mandatory and non-mandatory employer superannuation contributions);
 - (n) Travel or any other benefit taken in lieu of salary;
 - (o) Travel for spouse or any other member of family;
 - (p) Unrestricted entertainment allowance;
 - (q) Utilities allowance (any water, power or other utility subsidy provided to the CEO); and
 - (r) Any other form of payment, in cash or not, in consideration as a reward or benefit of the CEOs duties.
- (4) The only exclusions from the TRP are:
 - (a) items listed in Parts 3, 4 and 5 of this determination (however, any superannuation guarantee associated with the payment of a Regional/Isolation Allowance and any associated FBT accrued from the

- provision of a motor vehicle or accommodation are to be included as part of the TRP);
- (b) employer obligations such as professional development (restricted to the CEO), reimbursement for genuine work expenses or the cost of recruitment and relocation expenses; and
- (c) items considered by the local government to be a tool of trade (i.e. equipment needed to undertake the duties of a CEO) and which are not a direct or indirect reward or benefit for the performance of duties as a CEO.

2.2 LOCAL GOVERNMENT CLASSIFICATION

- (1) The ranges of TRP in Table 1 apply where a local government or regional local government has been classified into the relevant band.

Table 1: Local government band classification – Total Reward Package range

Band	Total Reward Package
1	\$250,375 - \$379,532
2	\$206,500 - \$319,752
3	\$157,920 - \$259,278
4	\$128,226 - \$200,192

- (2) Local governments have been classified in Schedule 1.
- (3) Regional local governments have been classified in Table 2 below.

Table 2: Regional local government band classification

Regional Local Government	Band
Bunbury-Harvey Regional Council	4
Eastern Metropolitan Regional Council	2
Mindarie Regional Council	3
Murchison Regional Vermin Council	4
Pilbara Regional Council	4
Rivers Regional Council	3
Southern Metropolitan Regional Council	2
Tamala Park Regional Council	2
Western Metropolitan Regional Council	4

- (4) A person who holds a dual appointment of the CEO of the Shire of Murray and the CEO of the Shire of Waroona, shall be entitled to receive a TRP range from the bottom

of Band 2 (\$206,500) to a maximum of \$351,727 (which represents the top of Band 2 plus 10%).

- (5) A person who holds a dual appointment of the CEO of the Shire of East Pilbara and the CEO of the Pilbara Regional Council, shall be entitled to receive a TRP range equivalent to the Band 2 range (\$206,500 - \$319,752).

PART 3: REGIONAL/ISOLATION ALLOWANCE

This Part deals with the Regional/Isolation Allowance that may be payable to Chief Executive Officers from local governments identified in this Part.

3.1 GENERAL

- (1) Local governments listed in Table 3 in this Part may provide a Regional/Isolation Allowance to a CEO, in addition to the CEO's Total Reward Package, in recognition of the regional and isolation factors which may affect the attraction and retention of the CEOs of those local governments.
- (2) There is no requirement to provide a Regional/Isolation Allowance to a CEO. Payment of this allowance is at the discretion of the local government, within the parameters set by the Tribunal.
- (3) When a local government chooses to use any or all of this allowance, the payment of the allowance should be properly justified and applied in a transparent manner considering the issues outlined in 3.2.
- (4) When a local government chooses to pay all or any of this allowance, it is to be paid to the CEO as salary.

3.2 DETERMINING APPROPRIATENESS AND RATE OF ALLOWANCE

- (1) When assessing the appropriateness of providing a Regional/Isolation Allowance, an eligible local government must consider the impact of factors outlined in 3.2(3) on attraction and retention of a CEO. In the event these factors have little or no impact, the Local Government should not provide this Allowance.
- (2) In the event a Regional/Isolation Allowance is considered appropriate, the amount of the Allowance should be proportionate to the circumstances faced by the Local Government.
- (3) The following factors should be considered when determining whether to apply the Regional/Isolation Allowance:
 - a) *Remoteness* - Issues associated with the vast distances separating communities within a Local Government or the distance of the Local Government from Perth or a Regional Centre;
 - b) *Cost of living* - The increased cost of living highlighted specifically in the Regional Price Index.
 - c) *Social disadvantage*: Reduced specialist health services, schooling opportunities for children, employment opportunities for spouse, reduced

- lifestyle commodities when compared to Perth and regional centres, and access to professional and personal support networks;
- d) *Dominant industry*: The impact that a dominant industry such a mining or agriculture has on an area and the ability to attract and retain people in the face of a dominant industry;
 - e) *Attraction/retention*: The ability to recruit suitably qualified candidates and being able to retain them in light of the above concerns in competition with positions in Perth, regional centres and private industry;
 - f) *Community expectations*: The pressures on a CEO to meet expectations when professional or operational expertise is not readily available.

3.3 REGIONAL/ISOLATION ALLOWANCE

Local governments eligible for the Regional/Isolation Allowance are listed in Table 3.

Table 3: Regional/Isolation Allowance

Local Government	Maximum Regional/Isolation Allowance Per Annum
Ashburton Shire	\$45,000
Broome Shire	\$35,000
Carnamah Shire	\$30,000
Carnarvon Shire	\$30,000
Chapman Valley Shire	\$30,000
Christmas Island Shire	\$80,000
Cocos (Keeling) Islands Shire	\$80,000
Coolgardie Shire	\$30,000
Coorow Shire	\$30,000
Cue Shire	\$40,000
Derby-West Kimberley Shire	\$45,000
Dundas Shire	\$30,000
East Pilbara Shire	\$45,000
Esperance Shire	\$25,000
Exmouth Shire	\$35,000
Geraldton-Greenough City	\$25,000
Halls Creek Shire	\$65,000
Irwin Shire	\$30,000
Jerramungup Shire	\$25,000
Kalgoorlie-Boulder City	\$30,000
Karratha City	\$60,000

Local Government	Maximum Regional/Isolation Allowance Per Annum
Kent Shire	\$10,000
Kondinin Shire	\$10,000
Kulin Shire	\$10,000
Lake Grace Shire	\$10,000
Laverton Shire	\$40,000
Leonora Shire	\$40,000
Meekatharra Shire	\$40,000
Menzies Shire	\$30,000
Merredin Shire	\$10,000
Mingenew Shire	\$30,000
Morawa Shire	\$30,000
Mount Magnet Shire	\$30,000
Mount Marshall Shire	\$10,000
Mukinbudin Shire	\$25,000
Murchison Shire	\$30,000
Narembeen Shire	\$10,000
Ngaanyatjarraku Shire	\$40,000
Northampton Shire	\$30,000
Nungarin Shire	\$10,000
Perenjori Shire	\$30,000
Port Hedland Town	\$60,000
Ravensthorpe Shire	\$30,000
Sandstone Shire	\$30,000
Shark Bay Shire	\$35,000
Three Springs Shire	\$30,000
Upper Gascoyne Shire	\$35,000
Westonia Shire	\$25,000
Wiluna Shire	\$40,000
Wyndham-East Kimberley Shire	\$45,000
Yalgoo Shire	\$30,000
Yilgarn Shire	\$25,000

PART 4: HOUSING ALLOWANCE

This Part deals with the Housing Allowance that may be payable to Chief Executive Officers.

4.1 GENERAL

- (1) In recognition of the need for local governments to provide accommodation as a result of a lack of suitable housing or recruitment issues, on either a permanent or temporary basis, local governments are able to utilise this allowance as required.
- (2) When a local government utilises this allowance, the payment of the allowance should be properly justified and applied in a transparent manner.
- (3) Any accommodation provided under this Part must be located within or adjacent to the local government area in which the CEO is employed.
- (4) Local governments should tailor the provision of any housing allowance to suit their particular circumstances. This may include the CEO making contributions towards the cost of the accommodation.

4.2 APPLICABLE HOUSING ALLOWANCE

- (1) Where a local government owns a property and provides that property to the CEO for accommodation, the value of this accommodation will not be included in the Total Reward Package.
- (2) For reporting purposes, the value of the local government owned property shall be valued at the annual Gross Rental Value of the property as determined by the Valuer General.
- (3) Where a local government leases accommodation for the use of the CEO, the lease costs will not be included in the Total Reward Package.
- (4) For reporting purposes, the value of the local government leased property shall be the annual actual costs of the accommodation lease.

PART 5: MOTOR VEHICLE

This Part deals with the provision of motor vehicles to Chief Executive Officers.

5.1 GENERAL

- (1) For local governments generally, except those listed in Table 3 under Part 3 of this determination, the private benefit value of any motor vehicle provided to the CEO by the local government is to be included in the Total Reward Package.
- (2) For local governments listed in Table 3 under Part 3 of this determination, any motor vehicle provided to the CEO or an allowance provided to a CEO for use of a private motor vehicle for work-related purposes, is to be considered a tool of trade (i.e. a tool needed to undertake the duties of a CEO in these local governments) and any private benefit will not be considered as part of the Total Reward Package.

5.2 PRIVATE BENEFIT VALUE

- (1) The private benefit value of the motor vehicle will be dependent on the type of motor vehicle provided, method of ownership (i.e. local government owned or leased), maintenance and running costs, insurance, any applicable luxury car tax and the amount of private use of the vehicle (i.e. non-business use).
- (2) As a general rule, the private benefit value will be based upon the annual costs multiplied by the percentage of private use.
- (3) Local governments and CEOs will need to agree on the most appropriate way to record the amount of private use in order to calculate the private benefit value.

PART 6: MEETING ATTENDANCE FEES

This Part deals with fees payable to council members for attendance at council and other meetings

6.1 GENERAL

- (1) Pursuant to section 5.98(1)(b) of the LG Act, a council member who attends a council meeting is entitled to be paid the fee set by the local government or the regional local government within the range determined in section 6.2 of this Part for council meeting attendance fees.
- (2) Pursuant to section 5.98(1)(b) and (2A)(b) of the LG Act, a council member who attends a committee meeting or (at the request of the local government or regional local government) a meeting of a type prescribed in regulation 30(3A) of the LG Regulations is entitled to be paid the fee set by the local government or regional local government within the range determined in section 6.3 of this Part for attending committee meetings or, as the case requires, meetings of that type.
- (3) Each of the following meetings is a type of meeting prescribed in regulation 30(3A) of the LG Regulations -
 - (a) meeting of a WALGA Zone, where the council member is representing a local government as a delegate elected or appointed by the local government;
 - (b) meeting of a Regional Road Group established by Main Roads Western Australia, where the council member is representing a local government as a delegate elected or appointed by the local government;
 - (c) council meeting of a regional local government where the council member is the deputy of a member of the regional local government and is attending in the place of the member of the regional local government;
 - (d) meeting other than a council or committee meeting where the council member is attending at the request of a Minister of the Crown who is attending the meeting;
 - (e) meeting other than a council meeting or committee meeting where the council member is representing a local government as a delegate elected or appointed by the local government.
- (4) Pursuant to section 5.99 of the LG Act, a local government or regional local government may decide by an absolute majority that instead of paying council

members an attendance fee referred to in section 5.98(1) of the LG Act, it will pay all council members who attend council or committee meetings a fee set within the range for annual fees determined in section 6.4 of this Part.

- (5) Regulation 30(3C) of the LG Regulations prevents the payment of a fee to a council member for attending a meeting of a type prescribed in regulation 30(3A) of those regulations if –
- (a) the person who organises the meeting pays the council member a fee for attending the meeting; or
 - (b) the council member is paid an annual fee in accordance with section 5.99 of the LG Act; or
 - (c) the council member is deputising for a council member at a meeting of a regional local government and the member of the regional local government is paid an annual fee in accordance with section 5.99 of the LG Act.
- (6) In determining the fees set out in this Part, the Tribunal has taken into account a range of factors including –
- (a) the time required to prepare adequately for the meetings including consideration of agenda papers, site visits related to agenda items and consultation with council staff and community members;
 - (b) the role of the council member, mayor or president including, but not limited to, representation, advocacy, and oversight and determination of policy and local legislation;
 - (c) particular responsibilities associated with the types of meetings attended;
 - (d) responsibilities of a mayor, president or chair to preside over meetings; and
 - (e) the relative “size” of the local government as reflected in the Tribunal’s local government banding model.
- (7) The Tribunal has not determined a specific meeting attendance fee for the purposes of section 5.98(1)(a) or (2A)(a) of the LG Act.

6.2 COUNCIL MEETING ATTENDANCE FEES – PER MEETING

- (1) The ranges of fees in Table 4 and Table 5 apply where a local government or regional local government decides by an absolute majority to pay a council member a fee referred to in section 5.98(1)(b) of the LG Act for attendance at a council meeting.

Table 4: Council meeting fees per meeting – local governments

Band	For a council member other than the mayor or president		For a council member who holds the office of mayor or president	
	Minimum	Maximum	Minimum	Maximum
1	\$615	\$793	\$615	\$1,189
2	\$373	\$582	\$373	\$780
3	\$193	\$410	\$193	\$634
4	\$91	\$238	\$91	\$490

Table 5: Council meeting fees per meeting – regional local governments

	For a council member other than the chair		For a council member who holds the office of chair	
	Minimum	Maximum	Minimum	Maximum
All regional local governments	\$91	\$238	\$91	\$490

6.3 COMMITTEE MEETING AND PRESCRIBED MEETING ATTENDANCE FEES – PER MEETING

- (1) The ranges of fees in Table 6 and Table 7 apply where a local government or regional local government decides to pay a council member a fee referred to in –
- (a) section 5.98(1)(b) of the LG Act for attendance at a committee meeting; or
 - (b) section 5.98(2A)(b) of the LG Act for attendance at a meeting of a type prescribed in regulation 30(3A) of the LG Regulations.

Table 6: Committee meeting and prescribed meeting fees per meeting – local governments

For a council member (including the mayor or president)		
Band	Minimum	Maximum
1	\$308	\$396
2	\$186	\$291
3	\$97	\$205
4	\$46	\$119

Table 7: Committee meeting and prescribed meeting fees per meeting – regional local governments

For a council member (including the chair)		
	Minimum	Maximum
All regional local governments	\$46	\$119

6.4 ANNUAL ATTENDANCE FEES IN LIEU OF COUNCIL MEETING, COMMITTEE MEETING AND PRESCRIBED MEETING ATTENDANCE FEES

- (1) The ranges of fees in Table 8 and Table 9 apply where a local government or regional local government decides by an absolute majority that, instead of paying council members an attendance fee referred to in section 5.98 of the LG Act, it will pay an annual fee to all council members who attend council, committee or prescribed meetings.

Table 8: Annual attendance fees in lieu of council meeting, committee meeting and prescribed meeting attendance fees – local governments

Band	For a council member other than the mayor or president		For a council member who holds the office of mayor or president	
	Minimum	Maximum	Minimum	Maximum
1	\$24,604	\$31,678	\$24,604	\$47,516
2	\$14,865	\$23,230	\$14,865	\$31,149
3	\$7,688	\$16,367	\$7,688	\$25,342
4	\$3,589	\$9,504	\$3,589	\$19,534

Table 9: Annual attendance fees in lieu of council meeting, committee meeting and prescribed meeting attendance fees – regional local governments

	For a council member other than the chair		For a council member who holds the office of chair	
	Minimum	Maximum	Minimum	Maximum
All regional local governments	\$1,795	\$10,560	\$1,795	\$15,839

**PART 7: ANNUAL ALLOWANCE FOR A MAYOR, PRESIDENT, CHAIR,
DEPUTY MAYOR, DEPUTY PRESIDENT AND DEPUTY CHAIR**

This Part deals with annual allowances payable to mayors, presidents, chair and their deputies, in addition to any entitlement to meeting attendance fees or the reimbursement of expenses.

7.1 GENERAL

- (1) Pursuant to section 5.98(5) of the LG Act, the mayor or president of a local government and the chair of a regional local government are entitled, in addition to any fees or reimbursement of expenses payable under section 5.98(1) or (2), to be paid the annual allowance set by the local government or regional local government within the range determined in section 7.2 of this Part.
- (2) Pursuant to section 5.98A(1) of the LG Act, a local government or regional local government may decide, by an absolute majority, to pay the deputy mayor or deputy president of the local government, or the deputy chair of the regional local government, an allowance of up to the percentage that is determined by the Tribunal of the annual allowance to which the mayor or president of the local government, or the chair of the regional local government, is entitled under section 5.98(5) of the LG Act. That percentage is determined in section 7.3 of this Part. This allowance is in addition to any fees or reimbursement of expenses payable to the deputy mayor, deputy president or deputy chair under section 5.98 of the LG Act.
- (3) In determining the allowances set out in this Part, the Tribunal has taken into account a range of factors including the following –
 - (a) the leadership role of the mayor, president or chair;
 - (b) the statutory functions for which the mayor, president or chair is accountable;
 - (c) the ceremonial and civic duties required of the mayor, president or chair, including local government business related entertainment;
 - (d) the responsibilities of the deputy mayor, deputy president or deputy chair when deputising;
 - (e) the relative “size” of the local government as reflected in the Tribunal’s local government banding model;
 - (f) the civic, ceremonial and representation duties particular to the Lord Mayor of Western Australia’s capital city.

7.2 ANNUAL ALLOWANCE FOR A MAYOR, PRESIDENT OR CHAIR

- (1) The ranges of allowances in Table 10 apply where a local government sets the amount of the annual local government allowance to which a mayor or president is entitled under section 5.98(5) of the LG Act.
- (2) The range of allowances in Table 11 apply where a regional local government sets the amount of the annual local government allowance to which a chair is entitled under section 5.98(5) of the LG Act.
- (3) Despite the provisions of subsection (1), the Perth City Council is to set the amount of the annual local government allowance to which the Lord Mayor is entitled within the range of \$61,509 to \$137,268.

Table 10: Annual allowance for a mayor or president of a local government

Band	For a mayor or president	
	Minimum	Maximum
1	\$51,258	\$89,753
2	\$15,377	\$63,354
3	\$1,025	\$36,957
4	\$513	\$20,063

Table 11: Annual allowance for a chair of a regional local government

	For a chair	
	Minimum	Maximum
All regional local governments	\$513	\$20,063

7.3 ANNUAL ALLOWANCE FOR A DEPUTY MAYOR, DEPUTY PRESIDENT OR DEPUTY CHAIR

- (1) The percentage determined for the purposes of section 5.98A(1) of the LG Act is 25 per cent.

PART 8: EXPENSES TO BE REIMBURSED

This Part deals with expenses for which council members are entitled to be reimbursed.

8.1 GENERAL

- (1) Pursuant to section 5.98(2)(a) and (3) of the LG Act, a council member who incurs an expense of a kind prescribed in regulation 31(1) of the LG Regulations is entitled to be reimbursed for the expense to the extent determined in section 8.2(1) to (5) of this Part.
- (2) Regulation 31(1) of the LG Regulations prescribes the following kinds of expenses that are to be reimbursed:
 - (a) rental charges incurred by a council member in relation to one telephone and one facsimile machine; and
 - (b) child care and travel costs incurred by a council member because of the member's attendance at a council meeting or a meeting of a committee of which he or she is also a member.
- (3) Pursuant to section 5.98(2)(a) and (3) of the LG Act, a council member who incurs an expense of a kind prescribed in regulation 32(1) of the LG Regulations is entitled to be reimbursed for the expense to the extent determined in section 8.2(6) to (8) of this Part.
- (4) Regulation 32(1) of the LG Regulations prescribes the following kinds of expenses that may be approved by a local government for reimbursement –
 - (a) an expense incurred by a council member in performing a function under the express authority of the local government;
 - (b) an expense incurred by a council member to whom paragraph (a) applies by reason of the council member being accompanied by not more than one other person while performing the function if, having regard to the nature of the function, the local government considers that it is appropriate for the council member to be accompanied by that other person; and
 - (c) an expense incurred by a council member in performing a function in his or her capacity as a council member.

8.2 EXTENT OF EXPENSES TO BE REIMBURSED

- (1) The extent to which a council member can be reimbursed for rental charges in relation to one telephone and one facsimile machine is the actual expense incurred by the council member.
- (2) The extent to which a council member can be reimbursed for child care costs incurred because of attendance at a meeting referred to in regulation 31(1)(b) of the LG Regulations is the actual cost per hour or \$30 per hour, whichever is the lesser amount.
- (3) The extent to which a council member of a local government can be reimbursed for reasonable travel costs referred to in regulation 31(1)(b) of the LG Regulations is:
 - (a) if the person lives or works in the local government district or an adjoining local government district, the actual cost for the person to travel from the person's place of residence or work to the meeting and back; or
 - (b) if the person does not live or work in the local government district or an adjoining local government district, the actual cost, in relation to a journey from the person's place of residence or work and back:
 - (i) for the person to travel from the person's place of residence or work to the meeting and back; or
 - (ii) if the distance travelled referred to in subparagraph (i) is more than 100 kilometres, for the person to travel from the outer boundary of an adjoining local government district to the meeting and back to that boundary.
- (4) The extent to which a council member of a regional local government can be reimbursed for reasonable travel costs referred to in regulation 31(1)(b) of the LG Regulations is the actual cost for the person to travel from the person's place of residence or work to the meeting and back.
- (5) For the purposes of subsections (3) and (4), travel costs incurred while driving a privately owned or leased vehicle (rather than a commercially hired vehicle) are to be calculated at the same rate contained in Section 30.6 of the *Local Government Officers' (Western Australia) Interim Award 2011* as at the date of this determination.
- (6) The extent to which a council member can be reimbursed for child care costs incurred in any of the circumstances referred to in regulation 32(1) of the LG Regulations is the actual cost per hour or \$30 per hour, whichever is the lesser amount.

- (7) The extent to which a council member can be reimbursed for intrastate or interstate travel and accommodation costs incurred in any of the circumstances referred to in regulation 32(1) of the LG Regulations is at the same rate applicable to the reimbursement of travel and accommodation costs in the same or similar circumstances under the *Public Service Award 1992* issued by the Western Australian Industrial Relations Commission as at the date of this determination.
- (8) The extent to which a council member can be reimbursed for any other cost incurred under regulation 32(1) of the LG Regulations is the actual cost upon presentation of sufficient evidence of the cost incurred.

PART 9: ANNUAL ALLOWANCES IN LIEU OF REIMBURSEMENT OF EXPENSES

This Part deals with annual allowances that a local government or regional local government may decide to pay.

9.1 GENERAL

- (1) Pursuant to section 5.99A of the LG Act, a local government or regional local government may decide by absolute majority that instead of reimbursing council members under the LG Act section 5.98(2) for all of a particular type of expense, it will pay all council members, for that type of expense, the annual allowance determined in section 9.2 of this Part or, as the case requires, an annual allowance within the range determined in that section.
- (2) Where a local government or regional local government has decided to pay council members an annual allowance for an expense of a particular type instead of reimbursing expenses of that type under section 5.98(2) of the LG Act, section 5.99A of the LG Act provides for reimbursement of expenses of that type in excess of the amount of the allowance.
- (3) In determining the maximum annual allowance for expenses of a particular type, the Tribunal has taken into account a range of factors including the following:
 - (a) the intent of the allowance to reflect the extent and nature of the expenses incurred and not to result in a windfall gain for council members;
 - (b) the capacity of local governments to set allowances appropriate to their varying operational needs;
 - (c) the particular practices of local governments in the use of information and communication technology (e.g. laptop computers, iPads); and
 - (d) the varying travel requirements of council members in local governments associated with geography, isolation and other factors.

9.2 ANNUAL ALLOWANCES DETERMINED INSTEAD OF REIMBURSEMENT FOR PARTICULAR TYPES OF EXPENSES

- (1) In this section:

ICT expenses means:

- (a) rental charges in relation to one telephone and one facsimile machine, as prescribed by regulation 31(1)(a) of the LG Regulations; or
- (b) any other expenses that relate to information and communications technology (for example, telephone call charges and internet service provider fees) and that are a kind of expense prescribed by regulation 32(1) of the LG Regulations;

travel and accommodation expenses means:

- (a) travel costs, as prescribed by regulation 31(1)(b) of the LG Regulations; or
 - (b) any other expenses that relate to travel or accommodation and that are a kind of expense prescribed by regulation 32(1) of the LG Regulations.
- (2) For the purposes of section 5.99A(b) of the LG Act, the minimum annual allowance for ICT expenses is \$500 and the maximum annual allowance for ICT expenses is \$3,500.
- (3) For the purposes of section 5.99A(a) of the LG Act, the annual allowance for travel and accommodation expenses is \$50.

SCHEDULE 1: LOCAL GOVERNMENT BAND ALLOCATIONS

Local Government	Band
Albany City	1
Armadale City	1
Ashburton Shire	2
Augusta-Margaret River Shire	2
Bassendean Town	3
Bayswater City	1
Belmont City	1
Beverley Shire	4
Boddington Shire	4
Boyup Brook Shire	4
Bridgetown-Greenbushes Shire	3
Brookton Shire	4
Broome Shire	2
Broomehill-Tambellup Shire	4
Bruce Rock Shire	4
Bunbury City	1
Busselton City	1
Cambridge Town	2
Canning City	1
Capel Shire	3
Carnamah Shire	4
Carnarvon Shire	2
Chapman Valley Shire	4
Chittering Shire	3
Christmas Island Shire	3
Claremont Town	3
Cocos (Keeling) Islands Shire	4
Cockburn City	1
Collie Shire	3
Coolgardie Shire	3
Coorow Shire	4
Corrigin Shire	4
Cottesloe Town	3
Cranbrook Shire	4
Cuballing Shire	4
Cue Shire	4

Local Government	Band
Cunderdin Shire	4
Dalwallinu Shire	3
Dandaragan Shire	3
Dardanup Shire	3
Denmark Shire	3
Derby-West Kimberley Shire	2
Donnybrook Balingup Shire	3
Dowerin Shire	4
Dumbleyung Shire	4
Dundas Shire	4
East Fremantle Town	3
East Pilbara Shire	2
Esperance Shire	2
Exmouth Shire	3
Fremantle City	1
Gingin Shire	3
Gnowangerup Shire	4
Goomalling Shire	4
Gosnells City	1
Greater Geraldton City	1
Halls Creek Shire	3
Harvey Shire	2
Irwin Shire	3
Jerramungup Shire	4
Joondalup City	1
Kalamunda Shire	2
Kalgoorlie-Boulder City	1
Karratha City	1
Katanning Shire	3
Kellerberrin Shire	4
Kent Shire	4
Kojonup Shire	3
Kondinin Shire	4
Koorda Shire	4
Kulin Shire	4
Kwinana City	1
Lake Grace Shire	4

Local Government	Band
Laverton Shire	3
Leonora Shire	3
Mandurah City	1
Manjimup Shire	2
Meekatharra Shire	3
Melville City	1
Menzies Shire	4
Merredin Shire	3
Mingenew Shire	4
Moorabool Shire	3
Morawa Shire	4
Mosman Park Town	3
Mount Magnet Shire	4
Mount Marshall Shire	4
Mukinbudin Shire	4
Mundaring Shire	2
Murchison Shire	4
Murray Shire	2
Nannup Shire	4
Narembeen Shire	4
Narrogin Shire	3
Nedlands City	2
Ngaanyatjarraku Shire	4
Northam Shire	2
Northampton Shire	3
Nungarin Shire	4
Peppermint Grove Shire	4
Perenjori Shire	4
Perth City	1
Pingelly Shire	4
Plantagenet Shire	3
Port Hedland Town	1
Quairading Shire	4
Ravensthorpe Shire	3
Rockingham City	1
Sandstone Shire	4
Serpentine-Jarrahdale Shire	2

Local Government	Band
Shark Bay Shire	4
South Perth City	2
Stirling City	1
Subiaco City	2
Swan City	1
Tammin Shire	4
Three Springs Shire	4
Toodyay Shire	3
Trayning Shire	4
Upper Gascoyne Shire	4
Victoria Park Town	2
Victoria Plains Shire	4
Vincent City	2
Wagin Shire	4
Wandering Shire	4
Wanneroo City	1
Waroona Shire	3
West Arthur Shire	4
Westonia Shire	4
Wickepin Shire	4
Williams Shire	4
Wiluna Shire	4
Wongan-Ballidu Shire	4
Woodanilling Shire	4
Wyalkatchem Shire	4
Wyndham-East Kimberley Shire	2
Yalgoo Shire	4
Yilgarn Shire	3
York Shire	3

Signed on 8 April 2021.

M Seares AO
CHAIR

B A Sargeant PSM
MEMBER

C P Murphy PSM
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL

LOCAL GOVERNMENT ELECTED MEMBERS EXPLANATORY NOTES

This section does not form part of the determination

1. Entitlements

The entitlement of a council member to a fee, allowance or reimbursement of an expense established under the LG Act, the LG Regulations and this determination, cannot be proscribed, limited or waived by a local government. Any eligible claim against those entitlements is to be paid in accordance with the applicable financial procedures of the local government.

2. Local governments to set amounts within the range determined

Where the Tribunal has determined a minimum and maximum amount for a fee, expense or allowance for members of the council of a local government or a regional local government, each council is to set, by absolute majority, an amount within the relevant range determined and the amount set will be payable to elected council members.

3. Superannuation

Nothing in this determination establishes a liability for the payment of superannuation by local governments. Elected council members are eligible for superannuation payments if their council has resolved unanimously to become an Eligible Local Governing Body (ELGB) pursuant to section 221A and section 221B of the *Income Tax Assessment Act 1936* (Cwlth). Where the council is an ELGB, it is deemed to have an employer/employee relationship with its elected council members and this attracts the application of a number of statutory obligations. Alternative arrangements described in Australian Taxation Office (ATO) Interpretative Decision ATO ID 2007/205 allow for elected council members and councils to agree for whole or part of meeting attendance fees to be paid into a superannuation fund. Where the council is an ELGB, fees for attendance at council, committee and prescribed meetings (whether paid via a per meeting fee or annual allowance) are to be inclusive of any superannuation guarantee liability. This information is not published by way of legal or financial advice.

SALARIES AND ALLOWANCES ACT 1975

DETERMINATION VARIATION

PREAMBLE

The Salaries and Allowances Tribunal has issued a determination to reflect the increase in the Superannuation Guarantee from 9.5% to 10%, effective from 1 July 2021.

DETERMINATION

The *Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2020*, issued on 8 April 2020, and the *Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2021*, issued on 8 April 2021, under sections 7A and 7B(2) of the *Salaries and Allowances Act 1975*, as amended from time to time, are hereby varied by a determination set out below.

Delete 'Table 1: Local government band classification – Total Reward Package' under Part 2.2 and include the following:

Table 1: Local government band classification – Total Reward Package range

Band	Total Reward Package
1	\$250,375 - \$381,278
2	\$206,500 - \$321,223
3	\$157,920 - \$260,471
4	\$128,226 - \$201,113

Signed on 24 June 2021.

M Seares AO

B A Sargeant PSM

CHAIR

MEMBER

SALARIES AND ALLOWANCES TRIBUNAL



Our Ref
Your Ref

ND:MUND:47082

17 September 2021

Mr Garry Bird
Director Corporate Services
Shire of Mundaring
7000 Great Eastern Highway
MUNDARING WA 6073

By email: DCORS@mundaring.wa.gov.au

Dear Garry

Proposed review of Council decision

Thank you for your instructions in your email on 14 September 2021.

1. Documents

Attached to your email was a brief seeking urgent legal advice. The brief, headed 'Legal Advice and Services – Committee/Council Decision Based on Incorrect Advice and implementation of that Decision', contained extracts from –

- (1) an email on 31 August 2021 from you to elected members;
- (2) an email response from Cr Doug Jeans on 6 September 2021; and
- (3) various subsequent emails (each undated) being –
 - (a) from you to Cr Jeans;
 - (b) from the Shire President to you;
 - (c) from the CEO to the Shire President; and
 - (d) from the Shire President to the CEO.

I have also obtained, from the Shire's website, a copy of the *Shire of Mundaring Meeting Procedures Local Law 2015*. For the purposes of this advice, I am proceeding on the basis that there have been no amendments, or at least no relevant amendments, to the version of the *Meeting Procedures Local Law* that was published in the *Government Gazette* on 18 December 2015. If that is not the case, would you please let me know.

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2. Background

In essence, as I understand the position –

- (1) at its August 2021 meeting, the Council approved an increase of 1.5% to the CEO's base salary for 2021-22;
- (2) it was subsequently discovered that there was an error in the information provided to the CEO Performance Review Committee (CEOPRC) and the Council in relation to the proposed salary increase;
- (3) the error appears to have been that the CEO's base salary for 2019-20 was used instead of his base salary for 2020-21;
- (4) the error was brought to the attention of all elected members in your email of 31 August 2021;
- (5) in that email, elected members were invited to consider whether the decision to offer an increase of 1.5% would have been different if the correct information had been provided and, if so, 'to submit the necessary Notice of Motion to rescind the Council decision';
- (6) Cr Doug Jones requested that a 'Notice of Motion be prepared to rescind' the Council decision;
- (7) as a result of advice from the CEO that, under the Meeting Procedures Local law, the matter could not be considered as 'urgent business' for the September Council meeting, the Shire President indicated that it should be considered by the Council at its October meeting (as per the process of a formal notice of motion);
- (8) the next ordinary Council meeting is scheduled for 12 October 2021 – before the 16 October 2021 local government elections;
- (9) the 6 current Council members whose terms expire on 16 October 2021 are not standing for re-election; and
- (10) both the CEO and yourself, as Director Corporate Services, have declared a financial interest in the matter.

3. Your questions

The questions that you have asked are –

- '1. Have staff provided correct advice to council members on how best to manage this error and how it should be managed in accordance with the *Local Government Act 1995* and accompanying regulations and the Shire's *Meeting Procedures Local Law*?

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2. How should the CEO and Director Corporate services best manage their declared financial interest in the matter?
3. Can you advise as to any other appropriate course of action to resolve this matter?'

4. Review of advice given to elected members

Having reviewed the information set out in the legal brief, I think that there is a reasonable basis for the advice that has been provided to elected members 'on how best to manage this error'.

In my view, the critical first step was to bring this matter to the attention of all elected members. It appears that elected members were informed, quickly and in detail, of the error, the relevant circumstances and how it might be dealt with.

Given that the decision in question was made by the Council, I think that it is appropriate that the Council itself should be given the opportunity to reconsider its original decision, having regard to the revised information relating to the CEO's base salary. There are several aspects associated with a reconsideration by the Council.

First, it would clearly be preferable if the matter were to be reconsidered by the Council constituted by the same members who made the original decision – rather than, after the 16 October 2021 elections, by a Council that (as I understand the position) will have 6 new members. On this basis, the matter could be considered by the Council at the ordinary Council meeting scheduled for 12 October 2021, or at a special Council meeting convened any time before the 16 October 2021 elections.

Second, 'a Notice of Motion ... to rescind' the regional Council decision (as requested by Cr Jeans) could not progress unless it complied with the requirements of regulation 10 of the *Local Government (Administration) Regulations 1996* and clause 11.2 of the Meeting Procedures Local Law. Therefore, if an elected member wanted the Council to consider revoking the original decision, the elected member would need to arrange for a notice of motion to that effect to be signed by the requisite number of elected members (being at least 4) and to comply with the other legislative requirements.

Third, and in any event, it may not be appropriate for the Council's proposed reconsideration of its original decision to be initiated by way of a notice of motion to revoke. A preferable alternative, in my view, would be for the matter to be considered, in the first instance, by the CEOPRC. This would also have the advantages of being consistent with the process that was followed in relation to the original decision as well as enabling the CEOPRC to make a recommendation to the Council (rather than that recommendation being made by the Administration).

5. Whether original decision implemented

The Council's original decision to approve an increase of 1.5% to the CEO's base salary for 2021/22 was made at the August 2021 Council meeting. It is necessary to consider whether

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that decision has been implemented (such as a payment by the Shire to the CEO based on the approved 1.5% increase).

In the terms of clause 11.3 of the Meeting Procedures Local Law, if 'action has been taken ... to implement the decision' then the Council cannot consider a motion to revoke or change the original decision 'without having considered a statement of impact prepared by or at the direction of the CEO of the legal and financial consequences of the proposed revocation ...'.

A potentially more significant legal consequence is that, as a general principle, a Council decision cannot lawfully be revoked if action has been taken to implement it. I understand from our recent telephone discussion that no payment has been made to the CEO in reliance on, or calculated by reference to, the 1.5% increase approved by the Council at the August 2021 meeting. The question of whether, and if so to what extent, action has been taken to implement the Council decision may also depend on other aspects of the factual circumstances, including the content of the communications between the Council and CEO in relation to this matter.

However, on the information that you have provided, I think that it would be reasonable for the Shire to proceed on the basis that no material action has been taken to implement the Council's original decision.

6. Management of declared financial interests

You have informed me that you and the CEO have each declared a financial interest in this matter. It is evident that the CEO has a financial interest but it is not clear what, if any, financial interest you would have.

The legislative obligations on a local government employee who has a financial interest in a matter do not extend beyond disclosure of the interest (see sections 5.70 and 5.71 of the *Local Government Act*). Similarly, the express code of conduct obligations on a local government employee who has any other type of interest in a matter do not extend beyond disclosure of the matter (see regulation 19AD of the *Local Government (Administration) Regulations* – the substance of which should be replicated in the Shire's code of conduct for employees).

However, there are broader common law obligations, as well as governance principles, that also apply in situations of this type. In addition to appropriate disclosure of the relevant interest, the general principle is that an employee with a relevant interest should, as far as practicable, separate themselves from the decision making process. In the present circumstances, the most effective means of achieving this would be for another senior employee of the Shire, other than you or the CEO, to provide advice and information to the Council and the CEOPRC in relation to the original decision and their proposed reconsideration of that decision.

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I trust that this is sufficient for your present purposes. If you would like to discuss these matters or if you need anything further, please let me know.

Yours sincerely



Neil Douglas
Partner

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Email: neil.douglas@mcleods.com.au

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