



Shire of  
Serpentine  
Jarrahdale

# Special CEO Employment Committee Meeting

## Agenda

**Monday, 1 May 2023**

**5:30pm**

**Purpose:** Considering the documented process by which the CEO's performance is reviewed in accordance with Schedule 2 of the *Local Government (Administration) Regulations 1996*

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### Contact Us

#### Enquiries

Call: (08) 9526 1111

Fax: (08) 9525 5441

Email: [info@sjshire.wa.gov.au](mailto:info@sjshire.wa.gov.au)

#### In Person

Shire of Serpentine Jarrahdale

6 Paterson Street, Mundijong WA 6123

Open Monday to Friday 8.30am-5pm (closed public holidays)



[www.sjshire.wa.gov.au](http://www.sjshire.wa.gov.au)



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Dear Committee Member

A Special CEO Employment Committee Meeting for the Shire of Serpentine Jarrahdale will be held on Monday, 1 May 2023 in the Council Chambers, Civic Centre, 6 Paterson Street, Mundijong – commencing at 5:30pm.

**Frazer Sullivan**

**Director Corporate Services**

21/04/2023

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## **Agenda**

- 1. Attendances and apologies (including leave of absence):**
- 2. Public Questions:**
- 3. Deputations:**
- 4. Declaration of Committee Members and Officers interest:**
- 5. Receipt of minutes or reports and consideration of adoption of recommendations from Committee meetings held since the previous Council meetings:**



## 6. Reports for consideration:

<b>6.1 – Consideration of documented process by which the CEO’s performance is reviewed in accordance with Schedule 2 of the <i>Local Government (Administration) Regulations 1996 (SJ2071)</i></b>	
<b>Responsible Officer:</b>	Manager Governance and Strategy
<b>Senior Officer:</b>	Director Corporate Services
<b>Disclosure of Officer’s Interest:</b>	No Officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

### Authority / Discretion

Executive	The substantial direction setting and oversight role of the Council such as adopting plans and reports, accepting tenders, directing operations and setting and amending budgets.
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### Report Purpose

The purpose of this report is to enable the CEO Employment Committee to consider the documented process by which the CEO’s performance is reviewed in accordance with Schedule 2 of the *Local Government (Administration) Regulations 1996* and make recommendations to Council.

### Relevant Previous Decisions of Council

*Ordinary Council Meeting – 20 February 2023 – OCM005/02/23 - COUNCIL RESOLUTION*

- 1. RECEIVES the Unconfirmed Minutes of the CEO Employment Committee Meeting held on 6 February 2023 (E23/1608).*
- 2. ADOPTS CEO Employment Committee Resolution CEO003/02/23 and:*
  - 1. Having received the agreement of the CEO, APPOINTS Angie Dominish of Price Consulting to be the independent facilitator in accordance with Clause 16 of the Standards for CEO Recruitment, Performance and Termination for a period of two years, being the 2023 and 2024 processes.*
  - 2. REQUESTS that arrangements are made for the independent facilitator to prepare a draft process for CEO performance review processes in writing for consideration of the CEO and Council in time for consideration by the CEO Employment Committee on Monday, 1 May 2023, including processes and arrangements for future CEO KPI setting.*
- 3. RESOLVES that a Special CEO Employment Committee Meeting be held on Monday, 1 May 2023 at 5:30pm in the Council Chambers, Shire of Serpentine Jarrahdale Civic Centre, 6 Paterson Street, Mundijong, for the purpose of ‘Considering the documented process by which the CEO’s performance is*



*reviewed in accordance with Schedule 2 of the Local Government (Administration) Regulations 1996’.*

4. *REQUESTS that arrangements are made for a workshop to enable the CEO to provide a status update / report on 2022-23 CEO KPIs in March 2023, to be held on Wednesday, 8 March 2023 commencing at 6pm.*

## **Background**

Under section 5.38 of the Act the local government is required to review the performance of the CEO annually.

Section 5.39A of the Act specifies that Regulations may prescribe model standards for local governments in relation to matters including the review of the performance of CEOs. These are set out in schedule 2 of the *Local Government (Administration) Regulations 1996*. In June 2021, Council adopted the standards as Shire of Serpentine Jarrahdale Standards for CEO Recruitment, Performance and Termination.

The Shire’s standards, which are consistent with those in the Administration Regulations, state:

### *Division 3 — Standards for review of performance of CEOs*

#### *15. Overview of Division*

*This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.*

#### *16. Performance review process to be agreed between local government and CEO*

*(1) The local government and the CEO must agree on —*

- (a) the process by which the CEO’s performance will be reviewed;*
- (b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria; and*
- (c) the appointment of an independent facilitator to assist the local government and CEO to undertake the review and performance criteria setting processes.*

*(2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.*

*(3) The matters referred to in subclause (1) must be set out in a written document.*

#### *17. Carrying out a performance review*

*(1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.*

*(2) The local government must —*

- (a) collect evidence regarding the CEO’s performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and*
- (b) review the CEO’s performance against the contractual performance criteria and any additional performance criteria, based on that evidence.*



*18. Endorsement of performance review by local government* Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

*19. CEO to be notified of results of performance review* After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of —

*(a) the results of the review; and*

*(b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.*

At the February 2023 Ordinary Council Meeting, Council resolved that a Special CEO Employment Committee be held on Monday, 1 May 2023 at 5:30pm consider the documented process by which the CEO's performance is reviewed in accordance with Schedule 2 of the *Local Government (Administration) Regulations 1996*.

At the same meeting, Council requested that arrangements be made for the independent facilitator to prepare a draft process for CEO performance review processes in writing for consideration of the CEO and Council in time for consideration by the CEO Employment Committee on Monday, 1 May 2023, including processes and arrangements for future CEO KPI setting.

The purpose of this report is to enable the Committee to consider and make recommendations in relation to the written document set out in Clause 16 of the Standards being the process by which the CEO's performance will be reviewed.

The Independent Person has prepared a draft documented process for CEO performance review as contained in **Attachment 1**. This drafted documented process has been named CEO Performance Review Cycle.

### **Community / Stakeholder Consultation**

A workshop with the independent facilitator appointed by the Shire was held on 8 March 2023 for Councillors for the purpose of providing a status update and report on the 2022-23 CEO KPIs. The workshop was attended by Cr Rich, Cr Strange and Cr Mack.

To comply with the Council's request, a CEO Employment Committee meeting has been scheduled to enable the Committee to consider the draft. Within the framework provided by the Shire's Standing Orders, the Committee has the option to suspend Standing Orders and engage with Officers, including the CEO as well as the independent person at this Committee Meeting. These options are discussed further in the comment section.

### **Statutory Environment**

In addition to the legislation referenced above, the *Local Government Amendment Bill 2023* proposes a series of amendments related to the model standards. The Bill proposes to amend section 5.39A by:

*(3) Without limiting subsection (1), the model standards may —*

*(a) provide for a local government to involve, in ways specified in the model standards, a member of a panel of persons established by the Departmental CEO; and*

*(b) confer functions on members of the panel; and*



- (c) *provide for the Departmental CEO to authorise a local government not to involve a member of the panel as the local government would otherwise be required to under a provision included in the model standards under paragraph (a).*
- (4) *For the purposes of any provision included in the model standards under subsection (3), regulations may provide for the establishment of a panel of persons by the Departmental CEO.*
- (5) *Without limiting subsection (4), regulations made for the purposes of that subsection may do any of the following —*
- (a) provide for a local government to pay fees to a member of the panel;*
  - (b) provide for a local government to reimburse expenses of a member of the panel;*
  - (c) for the purposes of paragraph (a) or (b) (but without limiting either of those paragraphs), provide for any provision of section 5.100 to apply (with or without modifications) as if the member of the panel were a committee member.*

The timetable for implementation of the Bill is not known. The Bill is set to commence at different times based on the development of Regulations by the Department. The process adopted by Council may need to be amended when more information regarding the contents and timing of the Regulations becomes available.

In the meantime, the draft process takes into account the current legislation and standards and factors-in the potential changes to the legislation as much as can occur under the existing legislative framework. As required by future legislative amendments, draft revisions the process will be presented to the Committee for consideration.

Notwithstanding, the draft process in **attachment 1** accords with the current legislation and meets the Shire's regulatory obligations.

## **Comment**

In previous years the agreed approach has been documented through a range of records and agreements and arrangements between the Council and the CEO. An agreed single documented process that can be used across years is a simpler and cleaner arrangement.

A draft of the proposed process is presented to the Committee to consider in **attachment 1**.

The draft process was prepared by the Independent Person appointed by the Council per its previous resolution.

The draft process has been reviewed and agreed to by the CEO as required by legislation per the correspondence contained in **attachment 2**.

When considering the matter, the Committee may wish to suspend standing orders to enable a discussion of the components of the draft.

A procedural motion to suspend standings orders would be:

*That Standing Orders 9.5, 9.6, 10.7 and 10.13 be suspended in order to enable a discussion of the components of the draft process.*

The Committee may wish also to invite the CEO to answer any questions that the Committee has and provide feedback on any changes that the Committee proposes or seeks to propose. This would not require a resolution or procedural motion and could be facilitated by Officers present at the meeting through a request of a member.



The independent person appointed by Council will also be available at the Committee Meeting to answer any questions that the Committee may have.

Alternatively, the CEO Employment Committee may wish to defer the matter for consideration at a subsequent CEO Employment Committee meeting. If this was the case the Committee Meeting would need to be expedited. A deferral of the decision will delay commencement of the process to review the CEO's performance in 2023.

### **Options and Implications**

#### Option 1

That the CEO Employment Committee RECOMMENDS that Council:

1. NOTES the CEO's correspondence in **attachment 2** agreeing to the process for conducting the CEO performance review contained in **attachment 1**.
2. ADOPTS Council Policy - CEO Performance Review Cycle as contained in **attachment 1** as the documented process for conducting the CEO performance review in accordance with the Shire of Serpentine Jarrahdale Standards for CEO Recruitment, Performance and Termination.

#### Option 2

That the CEO Employment Committee having obtained the written agreement of the CEO at the meeting, RECOMMENDS that Council ADOPTS Council Policy - CEO Performance Review Cycle as contained in **attachment 1** as the documented process for conducting the CEO performance review in accordance with the Shire of Serpentine Jarrahdale Standards for CEO Recruitment, Performance and Termination, with the following amendments:

- [to be specified by the Councillor moving the motion]

#### Option 3

That the CEO Employment Committee RECOMMENDS that Council:

1. DEFERS consideration of the matter.
2. RESOLVES to hold a Special CEO Employment Committee meeting on Monday, 22 May 2023 commencing at 7pm for the purpose of considering the documented process for the CEO's performance review.
3. NOTES that the deferral of a decision in this matter will delay the commencement of the CEO's performance review process in 2023.

Option 1 is recommended.

### **Conclusion**

In accordance with the Shire's of Serpentine Jarrahdale Standards for CEO Recruitment, Performance and Termination a draft documented process for future CEO performance prepared by the Independent Person appointed by Council and with the agreement of the CEO is presented for the Committee's consideration in **attachment 1**.





**Attachments (available under separate cover)**

- **6.1 - attachment 1** – Draft Council Policy - CEO Performance Review Cycle (E23/5270)
- **6.1 – attachment 2** – Correspondence from the CEO regarding Draft Council Policy – CEO Performance Review Cycle (E23/5272)

**Alignment with our Strategic Community Plan**

<b>Outcome 4.2</b>	A strategically focused Council
<b>Strategy 4.2.3</b>	Provide clear strategic direction to the administration

**Financial Implications**

Nil.

**Risk Implications**

Risk has been assessed on the Officer Options and Implications:

Officer Option	Risk Description	Controls	Principal Consequence Category	Risk Assessment			Risk Mitigation Strategies (to further lower the risk rating if required)
				Likelihood	Consequence	Risk Rating	
1	There are considered to be no material risks with this option.						
2	There are considered to be no material risks with this option.						
3	The commencement of the process to review the CEO's performance will be delayed resulting in an organisational management impact		Organisational Performance	Possible	Minor	MODERATE	



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**Voting Requirements:** Simple Majority

**Officer Recommendation**

**That the CEO Employment Committee RECOMMENDS that Council:**

- 1. NOTES the CEO's correspondence in attachment 2 agreeing to the process for conducting the CEO performance review contained in attachment 1.**
- 2. ADOPTS Council Policy - CEO Performance Review Cycle as contained in attachment 1 as the documented process for conducting the CEO performance review in accordance with the Shire of Serpentine Jarrahdale Standards for CEO Recruitment, Performance and Termination.**

*Please note that the CEO Employment Committee does not have delegated authority to make decisions. All recommendations of the CEO Employment Committee are presented to Council for ratification.*



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**7. Motions of which notice has been given:**

**8. Urgent business:**

**9. Closure:**