

OFFICE OF THE CEO

11.3 Chief Executive Officer Employment Matters

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Department: People & Culture

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Division: Culture & Community

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Appendix:

1. Resignation Letter - Keith Baillie - 17 June 2020 (D20/106412)

Officer Direct or Indirect Conflict of Interest:

Status:

In accordance with Local Government Act 1989 –
Section 80C:

Defined as confidential information in accordance
with Local Government Act 2020, Section 3(1):

Yes

No

Yes

No

Reason: Nil

Reason: This report is presented to Council as a confidential document on the basis that it contains details relating to personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

Purpose

The purpose of this report is to receive and accept the resignation of Mr Keith Baillie from the position of Chief Executive Officer of Surf Coast Shire Council and to consider the appointment of an Acting Chief Executive Officer.

Summary

Mr Baillie has provided the Mayor with a letter of resignation giving notice of his intention to resign as CEO of the Surf Coast Shire Council in accordance with his contract of employment. Mr Baillie seeks a termination date of close of business on 31 July 2020.

Section 94 of the *Local Government Act 1989* governs decisions relating to the appointment of Council's Chief Executive Officer until 1 July 2021. Subsection (3) states 'A Council may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.'

It is unlikely Council will be able to satisfy Subsection (3) prior to date Mr Baillie ceases to be Chief Executive Officer.

Subsection (4A) states that 'Subsection (3) [...] does not apply if a Council appoints a person to act as its Chief Executive Officer for a period of not more than 12 months.'

Therefore Subsection (4A) allows for the appointment of an Acting Chief Executive Officer from 1 August 2020. This would allow Council time to recruit a new Chief Executive Officer.

11.3 Chief Executive Officer Employment Matters

Recommendation

That Council:

1. Receives and accepts the resignation of Mr Keith Baillie from the position of Chief Executive Officer of Surf Coast Shire Council effective from close of business 31 July 2020 as attached at Appendix 1.
2. Notes, in accordance with Section 94 of the *Local Government Act 1989*, it:
 - 2.1. must make a permanent appointment to the position of Chief Executive Officer as soon as is reasonably practicable after a vacancy in the position occurs.
 - 2.2. may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.
3. Appoints..... to act as the Chief Executive Officer of Surf Coast Shire Council from 1 August 2020 until either:
 - 3.1. the commencement of a Chief Executive Officer appointed by Council in accordance with Section 94 (3) of the *Local Government Act 1989*; or
 - 3.2. 31 July 2021, whichever is sooner.
4. Remunerates the Acting Chief Executive Officer in accordance with HR-29 Higher Duties Policy.
5. Deems that upon the appointee's acceptance of the role of Acting Chief Executive Officer this report, excluding Appendix 1, and resolution no longer be confidential.

Council Resolution

MOVED Cr David Bell, Seconded Cr Martin Duke

That Council:

1. Receives and accepts the resignation of Mr Keith Baillie from the position of Chief Executive Officer of Surf Coast Shire Council effective from close of business 31 July 2020 as attached at Appendix 1.
2. Notes, in accordance with Section 94 of the *Local Government Act 1989*, it:
 - 2.1. must make a permanent appointment to the position of Chief Executive Officer as soon as is reasonably practicable after a vacancy in the position occurs.
 - 2.2. may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.
3. Appoints Anne Howard to act as the Chief Executive Officer of Surf Coast Shire Council from 1 August 2020 until either:
 - 3.1. the commencement of a Chief Executive Officer appointed by Council in accordance with Section 94 (3) of the *Local Government Act 1989*; or
 - 3.2. 31 July 2021, whichever is sooner.
4. Remunerates the Acting Chief Executive Officer in accordance with HR-29 Higher Duties Policy.
5. Deems that upon the appointee's acceptance of the role of Acting Chief Executive Officer this report, excluding Appendix 1, and resolution no longer be confidential.

CARRIED 8:1

11.3 Chief Executive Officer Employment Matters

Report

Officer Direct or Indirect Interest

No officer involved in the preparation of this report has any conflicts of interest. However, General Managers Chris Pike, Anne Howard and Ransce Salan are recognised as having an interest in the matter as direct reports to the Chief Executive Officer.

Background

Mr Baillie commenced in the role of Chief Executive Officer of Surf Coast Shire Council on 19 January 2015.

Mr Keith Baillie has tendered his resignation as attached at Appendix 1 and proposes a contract termination date of close of business on 31 July 2020.

Discussion

Section 94 of the *Local Government Act 1989* governs matters pertaining to the appointment of Council's Chief Executive Officer. This section of the Act will be repealed on 1 July 2021 and replaced by sections of the *Local Government Act 2020*. Section 94 requires the following:

- (1) A Council must appoint a natural person to be its Chief Executive Officer.
- (1A) The Council must make a permanent appointment to the position of Chief Executive Officer as soon as is reasonably practicable after a vacancy in the position occurs.
- (3) A Council may only appoint a person to be its Chief Executive Officer after it has invited applications for the position in a notice in a newspaper circulating generally throughout Victoria and has considered all applications received by it that comply with the conditions specified in the notice.
- (4A) Subsection (3) also does not apply if a Council appoints a person to act as its Chief Executive Officer for a period of not more than 12 months.

It is unlikely Council will be able to satisfy Subsection (3) prior to the termination of Mr Baillie's contract.

Subsection (4A) allows for the appointment of an Acting Chief Executive Officer from 1 August 2020. This would permit Council time to recruit a new Chief Executive Officer.

Remuneration

HR-29 Higher Duties Policy is an organisational management policy applying to staff employed by the Chief Executive Officer. It provides a standard approach for the remuneration of officers temporarily working in more senior positions than their substantive role. This policy does not apply to the appointment of an Acting Chief Executive Officer.

Section 5 Payment for Higher Duties provides for employees performing higher duties in a senior officer role to be remunerated with an additional payment equal to half of the difference between the employee's usual salary and the salary of the higher level position.

This approach is deemed suitable for Council to apply to this appointment of an Acting Chief Executive Officer.

Council Plan

Theme 5 High Performing Council

Objective 5.1 Ensure Council is financially sustainable and has the capability to deliver strategic objectives

Reporting and Compliance Statements:

Local Government Act 2020 – LGA 2020

Implications	Applicable to this Report
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Policy/Relevant Law (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes
Environmental/Sustainability Implications (Consideration of the Governance Principles under s.9 of LGA 2020)	No

11.3 Chief Executive Officer Employment Matters

Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020)	No
Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	Yes
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	No
Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	Yes
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	No
Risk Assessment	Yes
Communication	Yes
Human Rights Charter	No

Governance Principles - Local Government Act 2020 (LGA 2020)

Actions in relation to the appointment of a Chief Executive Officer are likely to have a material impact on all of the Governance Principles, an example being 'achieving best outcomes for the municipal community'.

Policy/Relevant Law

Section 94 (The Chief Executive Officer) of the *Local Government Act 1989* applies to the appointment of a Chief Executive Officer.

Public Transparency

It is recommended that, following consideration of this matter, Council resolves that this report and Council's resolution no longer be deemed confidential in the interests of public transparency.

Financial Management

Costs associated with this report's recommendations will be met from within the organisation's operating budget.

Risk Assessment

This report addresses the following risks to Council:

1. Section 94 (1) of the *Local Government Act 1989* - Council must appoint a natural person to be its Chief Executive Officer.
 - 1.1. Given the likelihood that it will not be possible to make an appointment in accordance with Section 94 (3) prior to Mr Baillie's departure, the report recommends appointing a person to act as Chief Executive Officer.
2. Section 94 (7) of the *Local Government Act 1989* - A contract of employment as Chief Executive Officer between a Council and a person is void if it is made in circumstances that are contrary to this section.
 - 2.1. This report advises Council of its obligations to act in accordance with Section 94.

Communication

When it is no longer deemed confidential, Council's resolution will be communicated through a media release, social media channels and directly to key stakeholders. The Council report and resolution will be added to the minutes of the Council Meeting.

11.3 Chief Executive Officer Employment Matters

Options

Option 1 – Receive and accept the resignation of Mr Baillie and appoint an Acting Chief Executive Officer from 1 August 2020.

This option is recommended by officers as it provides the best opportunity to ensure compliance with the *Local Government Act 1989* and allows time for Council to conduct a successful recruitment process for a new Chief Executive Officer.

Option 2 – Receive and note the resignation of Mr Baillie and commence a recruitment process to appoint an Acting Chief Executive Officer from 1 August 2020.

This option is not recommended by officers as it is unlikely that Council can secure the best candidate in accordance with Section 94 of the *Local Government Act 1989* before Mr Baillie's departure.

Conclusion

Council is required to appoint a person as Chief Executive Officer following the resignation of Mr Keith Baillie. The *Local Government Act 1989* provides for a person to be appointed to act as Chief Executive Officer. This will allow Council time to secure a long-term replacement for Mr Baillie.