MINUTES

FOR THE
GREATER SHEPPARTON CITY COUNCIL

SPECIAL COUNCIL MEETING

HELD ON
TUESDAY 27 SEPTEMBER 2011
AT 1.00PM
IN THE COUNCIL BOARD ROOM
90 WELSFORD STREET

COUNCILLORS:
Cr Geoff Dobson (Mayor)
Cr Michael Polan (Deputy Mayor)
Cr Cherie Crawford
Cr Chris Hazelman
Cr Jenny Houlihan
Cr Milvan Muto
Cr Kevin Ryan

VISION

GREATER SHEPPARTON
AS THE FOOD BOWL OF AUSTRALIA,
A SUSTAINABLE, INNOVATIVE
AND DIVERSE COMMUNITY
GREATER FUTURE
MINUTES
FOR THE
SPECIAL COUNCIL MEETING
HELD ON
TUESDAY 27 SEPTEMBER 2011 AT 1.00PM

CHAIR
CR GEOFF DOBSON

INDEX

1. ACKNOWLEDGEMENT ................................................................. 3
2. APOLOGIES ................................................................. 3
3. MANAGEMENT REPORTS ......................................... 3
4. NOTICES OF MOTION, AMENDMENT OR RESCISSION ............ 4
  4.1 Notice of Motion 4/2011 – Cr Hazelman – Section 86 Committee for Chief Executive Officer Recruitment .............................................. 4
PRESENT: Councillors Geoff Dobson, Michael Polan, Cherie Crawford, Chris Hazelman, Jenny Houlihan, Milvan Muto and Kevin Ryan

OFFICERS: Julie Salomon – Chief Executive Officer
Graeme Long – Acting General Manager Asset Development
Simon Rose – Acting General Manager Community Development
Dwight Graham – General Manager Corporate Services
Geraldine Christou – Acting General Manager Sustainable Development
Fiona Sawyer – Official Minute Taker.

1. ACKNOWLEDGEMENT

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

2. APOLOGIES
Nil.

3. MANAGEMENT REPORTS
Nil.
4. NOTICES OF MOTION, AMENDMENT OR RESCISSION

4.1 Notice of Motion 4/2011 – Cr Hazelman – Section 86 Committee for Chief Executive Officer Recruitment

Background
At the Ordinary Council Meeting on 16 August 2011 the Council resolved:

1. That having regard to specific legal advice from Council’s solicitors Russell Kennedy Proprietary Limited that Cr Muto should not participate in the selection process for a new CEO in a situation where internal applicants were candidates, because such involvement would in all probability constitute a breach of sections 340(1) and 540 of the Fair Work Act 1999 and arguably section 79D of the Local Government Act 1989, the Council calls on Cr Muto to voluntarily exclude himself from the process.

2. In the event of Cr Muto declining to exclude himself and having regard to the significant potential financial penalties applicable under the respective Acts that could be imposed on the Council and individual councillors personally the council also reserves the right to actively pursue the recovery of any incurred costs from Cr Muto.

Cr Muto was advised of the intention to move this motion prior to the meeting and chose to absent himself when the matter was debated.

Subsequent to the meeting Cr Muto has rejected the Council’s invitation and has declined to present any formal legal advice that has informed his decision nor has he advised the council of the basis of his decision.

At all times the intent of Council has been to ensure that the selection process of the new CEO is fair and reasonable and not subject to challenge by an unsuccessful candidate, and to comply with the express advice provided by Council’s Solicitor Russell Kennedy Pty Ltd and outlined in the 16 August 2011 resolution that Cr Muto should not participate in the selection of the Council’s Chief Executive Officer. Council has since received further advice from Russell Kennedy dated 8 September 2011, which outlines additional risks in relation to the formation of a special committee to appoint the Chief Executive Officer, which does not include Councillor Muto as a member when he has not voluntarily agreed to stand aside from the process.

Moved by Cr Hazelman
Seconded by Cr Ryan

That having regard to the resolution of Council on August 16th, the legal advice from Russell Kennedy Pty Ltd and Cr Muto’s negative responses to formal correspondence the Council now:

1. In exercise of the powers conferred by sections 86 and 87 of the Local Government Act 1989 (the Act), Council resolves that:

   a. From the 3rd October 2011, there be established as a special committee the “Appointment of Chief Executive Officer Special Committee”.
4. NOTICES OF MOTION, AMENDMENT OR RESCISSION

4.1 Notice of Motion 4/2011 – Cr Hazelman – Section 86 Committee for Chief Executive Officer Recruitment (continued)

b. The purposes of the Committee are those set out in the schedule to this resolution.

c. The members of the Committee are:
   i. Councillor Cherie Crawford;
   ii. Councillor Geoff Dobson;
   iii. Councillor Chris Hazelman;
   iv. Councillor Jenny Houlihan;
   v. Councillor Michael Polan;
   vi. Councillor Kevin Ryan;
   vii. Mr Des Bethke; and
   viii. Mr Neil MacLachlan.

d. The Committee is required to report to Council at the intervals specified in the schedule to this resolution.

e. The members of the Committee who are not Councillors are, pursuant to section 81(2A) of the Act, exempted from being required to submit a primary return or ordinary return.

f. The Chairperson of the Committee is Councillor Geoff Dobson

g. A quorum for the Committee is four members with voting rights.

h. All members of the Committee except for those listed below have voting rights on the Committee.
   i. Mr Des Bethke;
   ii. Mr Neil MacLachlan

i. There be delegated to the Committee the powers, duties and functions set out in the attached Instrument of Delegation (the Instrument).

j. The Instrument:
   i. comes into force immediately the common seal of Council is affixed to the Instrument; and
   ii. remains in force until a Chief Executive Officer appointed by the Committee assumes that position.
4. NOTICES OF MOTION, AMENDMENT OR RESCISSION

4.1 Notice of Motion 4/2011 – Cr Hazelman – Section 86 Committee for Chief Executive Officer Recruitment (continued)

2. Requires each councillor appointed to the Special Committee to sign an undertaking prepared by Council’s Solicitors Russell Kennedy Pty Ltd stating that:
   a. he or she will impartially consider each of the applicants on their merit
   b. she or he agrees to Council appointing Mr Neil MacLachlan, a representative of Pitcher Partners, Council’s Internal Auditors to be an independent observer to provide governance assistance and ensure the probity of the selection process; and
   c. he or she will treat each of the applicants with courtesy and respect and comply with all reasonable directions of the Mayor in relation to her or his behaviour.

3. Agrees that should Councillor Muto also sign this undertaking prior to 3 October 2011, he will be added as a member of the Special Committee.

Cr Dobson sought an extension of time to speak to the motion. GRANTED

The motion was put and carried.

Cr Muto called a division. Those voting in favour of the motion: Cr Dobson, Cr Hazelman, Cr Ryan, Cr Crawford, Cr Polan and Cr Houlihan. Those voting against the motion: Cr Muto.

Attachment
Instrument of Delegation and Schedule Applying to Appointment of Chief Executive Officer Special Committee

Meeting closed: 1.27pm
Confirmed

Chair
Greater Shepparton City Council

Instrument of Delegation

Appointment of Chief Executive Officer Special Committee

Greater Shepparton City Council (Council) delegates to the special committee established by resolution of Council passed on 27 September 2011 and known as the "Appointment of Chief Executive Officer Special Committee" (the Committee), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 27 September 2011;

2. the delegation:
   a. comes into force on 3 October 2011, upon which date the common seal of Council is to be affixed to this Instrument of Delegation;
   b. remains in force until a Chief Executive Officer appointed by the Committee assumes that position.
   c. is to be exercised in accordance with the guidelines or policies which Council from time to time adopts; and

3. all members of the Committee except for those listed below will have voting rights on the Committee.
   a. Mr Des Bethke
   b. Mr Neil MacLachlan
SCHEDULE

Powers and functions

To exercise Council's functions and powers to perform Council's duties in relation to the appointment of the Chief Executive Officer and for those purposes:

1. to determine a shortlist of applicants for interview;
2. to enter into a contract to appoint the preferred applicant;

Exceptions, conditions and limitations

The Committee is not authorised by this Instrument to:

1. enter into a contract for an amount which exceeds the approved budget
2. exercise the powers which, by force section 86 of the Act, cannot be delegated.

Report Back

The Committee is to report back the outcome of the Chief Executive Officer appointment process at the first ordinary Council meeting held after the appointment is made.