

# Minutes

## CEO Performance Review Committee

MEETING HELD ON MONDAY, 1 DECEMBER 2008

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# CITY OF JOONDALUP

## MINUTES OF THE CHIEF EXECUTIVE OFFICER – PERFORMANCE REVIEW COMMITTEE MEETING HELD IN CONFERENCE ROOM 2, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON MONDAY, 1 DECEMBER 2008

### ATTENDANCE

#### Committee Members:

Cr Russ Fishwick	<i>Presiding Person</i>	South Ward	
Mayor Troy Pickard	<i>Deputy Presiding Person</i>		<i>from 1734 hrs</i>
Cr Tom McLean		North Ward	
Cr Albert Jacob, JP		North Central Ward	
Cr Geoff Amphlett		Central Ward	<i>to 1802 hrs</i>
Cr Mike Norman		South-West Ward	
Cr Brian Corr		South-East Ward	<i>to 1831 hrs</i>

#### Officers:

Mr Mike Tidy	Director Corporate Services
Mrs Janet Foster	Administrative Services Coordinator

### DECLARATION OF OPENING

The Presiding Person declared the meeting open at 1733 hrs.

*Mayor Pickard entered the Room at 1734 hrs.*

### APOLOGIES/LEAVE OF ABSENCE

Nil.

### CONFIRMATION OF MINUTES

MINUTES OF THE CHIEF EXECUTIVE OFFICER – PERFORMANCE REVIEW COMMITTEE MEETING HELD ON 21 JULY 2008

**MOVED Cr Jacob SECONDED Cr Norman that the minutes of the meeting of the Chief Executive Officer – Performance Review Committee held on 21 July 2008 be confirmed as a true and correct record.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Crs Fishwick, McLean, Jacob, Amphlett, Norman and Corr, Mayor Pickard

### ANNOUNCEMENTS BY THE PRESIDING PERSON WITHOUT DISCUSSION

Nil.

## DECLARATIONS OF INTEREST

### Disclosure of Financial Interest

*A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration. An employee is required to disclose their financial interest and if required to do so by the Council must disclose the extent of the interest. Employees are required to disclose their financial interests where they are required to present verbal or written reports to the Council. Employees are able to continue to provide advice to the Council in the decision making process if they have disclosed their interest.*

<b>Name/Position</b>	<b>Mr Garry Hunt – Chief Executive Officer</b>
<b>Item No/Subject</b>	Item 1 – Chief Executive Officer – New Contract of Employment
<b>Nature of interest</b>	Financial
<b>Extent of Interest</b>	Mr Hunt holds the position of CEO.

### Disclosure of interest affecting impartiality

*Elected Members and staff are required under the Code of Conduct, in addition to declaring any financial interest, to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Elected Member/employee is also encouraged to disclose the nature of the interest.*

<b>Name/Position</b>	<b>Mr Mike Tidy - Director Corporate Services</b>
<b>Item No/Subject</b>	Item 1 – Chief Executive Officer – New Contract of Employment
<b>Nature of interest</b>	Interest that may affect impartiality
<b>Extent of Interest</b>	Due to the nature of his employment relationship with the CEO.

## IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS

Nil.

## PETITIONS AND DEPUTATIONS

Nil.

## REPORTS

### **ITEM 1 CHIEF EXECUTIVE OFFICER – NEW CONTRACT OF EMPLOYMENT - [74574]**

**WARD:** All

**RESPONSIBLE  
DIRECTOR:** Mr Michael Tidy  
Director Corporate Services

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#### **PURPOSE OF REPORT**

The purpose of this report is for the CEO Performance Review Committee (the committee) to progress the development of a new contract for the Chief Executive Officer (CEO).

#### **EXECUTIVE SUMMARY**

At its meeting on Tuesday 22 July 2008 Council resolved, in part, to enter into immediate negotiations/discussions with the CEO in relation to a new contract of employment and to appoint the Chief Executive Officer Performance Review Committee to undertake these.

*It is recommended that the Committee:*

1. *ENDORSES option 2, as set out in the report, for the development of the new contract of employment between the Chief Executive Officer and the City of Joondalup.*
2. *DETERMINES the changes required to be made to the existing contract in order to develop the new contract of employment between the Chief Executive Officer and the City of Joondalup.*

#### **BACKGROUND**

The CEO's current contract provides for a term of five (5) years commencing 31 January 2005 and concluding 30 January 2010.

The initial contract was reviewed in late 2005 and early 2006 resulting in a revised contract being concluded in April 2006. The revisions included issues raised by Council following the initial performance review and by the CEO. There was no change to the terms or major provisions of the contract. The changes were mostly minor in nature and related to tidying up and clarification of terms and provisions.

A copy of the current contract (Attachment 1) has been provided separately and confidentially to enable committee members to undertake the development of a new contract.

#### **DETAILS**

##### **Issues and options considered:**

There are essentially two options for developing a new contract:

1. Start with a clean slate and develop a new contract from scratch.

This could be a lengthy process and expensive. Unless there is complete dissatisfaction with the current agreement this course of action is not recommended.

2. Use the existing agreement as a base and develop a new one by a process of exception ie change those clauses that need changing.

Given that there is an existing agreement and it has been in effect in its current form since April 2006 it would appear that there is a reasonable level of satisfaction with its operation. Assuming this is correct then by using the current agreement as the base and by exception only changing those clauses which either the Council or the CEO have an issue with will expedite the process and make for a less expensive outcome.

This is the recommended approach.

If the recommended approach is acceptable the following outline for progressing the negotiations/discussions through to a new agreement is proposed.

	<b>Step</b>	<b>Date</b>
1	With the agreement of the parties, use the existing contract of employment as a basis for the new document.	
2	Invite CEO to comment and offer his needs/expectations regarding any new clauses etc.	28/11/08
3	The committee to meet and identify any issues or changes they propose to the current agreement.	01/12/08
4	Chair of the committee write to the CEO and clearly state the key terms they wish to include. These should be, as a minimum, the new period of employment, the date of effect of operation of the contract (ie upon signing/agreement by the parties, not at the expiration of the current contract) and with the remuneration package details clause updated to the current position.	02/12/08
5	If necessary request CEO to meet the committee to discuss/clarify issues.	15/12/08
6	Draft the new contract and provide to CEO and the committee members with request for feedback. The original contract was prepared by Jackson McDonald, propose to use same when this point reached.	31/12/08
7	Determine a final draft. Consultant (John Phillips) to act as 'go between' if necessary.	W/ending 23/01/09
8	The committee to meet, discuss and agree on final form of contract. Following agreement provide copy to CEO.	W/ending 30/01/09
9	The committee to meet with CEO and agree in principle <sup>1</sup> on final draft contract.	W/ending 06/02/09
10	Table item for endorsement at first available Council meeting.	17/02/09
11	Sign and seal agreement and it commences from operative date	18/02/09

<sup>1</sup> Note: The Local Government Act 1995 provides that only Council can resolve to agree to the Contract of employment of the CEO.

**Link to Strategic Plan:**

Key Focus Area – Leadership and Governance

Objective 1.1 – To ensure that the processes of local governance are carried out in a manner that is ethical, transparent and accountable.

Objective 1.3 – To lead and manage the City effectively.

**Legislation – Statutory Provisions:**

Division 4 of the Local Government Act 1995 sets out provisions in relation to Local Government employees. Sections 5.36 to 5.39 deal with issues of contract with the CEO (a copy of these sections is at Attachment 2).

**Risk Management considerations:**

The Local Government Act 1995 requires that the employment of a CEO is to be governed by a written contract. As this proposal is to enter into a new contract before the expiry of the existing contract the risk of non compliance is negligible.

**Financial/Budget Implications:**

The costs of developing a new contract for the CEO are expected to comprise some legal expenses and possibly some consultant costs. Under the proposal to use the existing contract as the base for a new one, however, these are expected to be minimal and covered by general operational budget allocations.

**Policy Implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability Implications:**

Not Applicable.

**Consultation:**

Not Applicable.

**COMMENTS**

If the recommended approach is undertaken it is felt that developing a new contract for the CEO should be able to be concluded reasonably efficiently and in time for the first Council meeting in 2009.

## ATTACHMENTS

- Attachment 1            Revised Employment Contract of the Chief Executive Officer for the City of Joondalup (provided under separate confidential cover)
- Attachment 2            Extract of sections 5.36 to 5.39 of the Local Government Act 1995.

## VOTING REQUIREMENTS

Simple Majority

## OFFICER'S RECOMMENDATION

That the Chief Executive Officer - Performance Review Committee:

- 1    ENDORSES option 2, as set out in the Report, for the development of the new contract of employment between the Chief Executive Officer and the City of Joondalup;
- 2    DETERMINES the changes required to be made to the existing contract in order to develop the new contract of employment between the Chief Executive Officer and the City of Joondalup

The Director Corporate Services provided a summary of provisions that require confirmation or amendment – Confidential Appendix 1 refers.

Discussion ensued.

*During discussion, Cr Amphlett left the Room at 1802 hrs and Cr Corr left the Room at 1831 hrs.*

**MOVED Cr Jacob, SECONDED Cr McLean that the Chief Executive Officer - Performance Review Committee:**

- 1    **ENDORSES option 2, as set out in the Report, for the development of the new contract of employment between the Chief Executive Officer and the City of Joondalup;**
- 2    **DETERMINES the changes required to be made to the existing contract in order to develop the new contract of employment between the Chief Executive Officer and the City of Joondalup to be as outlined in Confidential Appendix 2;**
- 3    **REQUESTS the Chief Executive Officer to attend the next meeting of the Committee to discuss the issues identified as requiring clarification for the development of a new Contract of Employment.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Crs Fishwick, McLean, Jacob and Norman, Mayor Pickard

**MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION**

Nil

**CLOSURE**

There being no further business, the Presiding Person declared the Meeting closed at 1850 hrs; the following Elected members being present at that time:

Cr Russ Fishwick  
Cr Tom McLean  
Cr Albert Jacob  
Cr Mike Norman  
Mayor Troy Pickard