

minutes

Chief Executive Officer Recruitment and Performance Review Committee

MEETING HELD ON **TUESDAY 14 APRIL 2020 AND RESUMED ON
4 JUNE 2020**

TABLE OF CONTENTS

Item No.	Title	Page No.
	Declaration of Opening	3
	Declarations of Interest	4
	Adjournment of Meeting	4
	Resumption of Meeting	5
	Apologies / Leave of absence	5
	Announcements by the Presiding Member without discussion	6
	Identification of matters for which the meeting may be closed to the public	7
	Petitions and deputations	8
	Reports	9
1	Confidential – Recruitment of Chief Executive Officer – Employment Contract of the Chief Executive Officer	9
2	Confidential – Recruitment of Chief Executive Officer – Request for Quotation for Recruitment Consultant	13
	Closure	15

CITY OF JOONDALUP

MINUTES OF THE SPECIAL CHIEF EXECUTIVE OFFICER RECRUITMENT AND PERFORMANCE REVIEW COMMITTEE MEETING HELD BY ELECTRONIC MEANS ON TUESDAY 14 APRIL 2020.

ATTENDANCE

Committee Members

Cr Russ Fishwick, JP	<i>Presiding Member</i>
Mayor Hon. Albert Jacob, JP	<i>Deputy Presiding Member</i>
Cr John Chester	
Cr Kerry Hollywood	
Cr Russell Poliwka	
Cr John Raftis	
Cr Philippa Taylor	

Officers

Mr Garry Hunt	Chief Executive Officer
Mr Brad Sillence	Manager Governance
Mr Glenn Heaperman	Manager Human Resources
Mrs Vivienne Stampalija	Governance Coordinator

Observers

Cr John Logan
Cr Tom McLean, JP
Cr Suzanne Thompson

Guests

Ms Renae Harding	Jackson McDonald and Partners - Partner
Ms Nish Sooriyapava	Jackson McDonald and Partners - Lawyer

DECLARATION OF OPENING

The Presiding Member declared the meeting open at 5.00pm.

DECLARATIONS OF INTEREST

Disclosures of Financial / Proximity Interest

Nil.

Disclosures of interest affecting impartiality

Elected Members (in accordance with Regulation 11 of the *Local Government [Rules of Conduct] Regulations 2007*) and employees (in accordance with the Code of Conduct) are required 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.

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 1 – Confidential – Recruitment of Chief Executive Officer – Employment Contract of the Chief Executive Officer.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt holds the position of Chief Executive Officer until 31 July 2020.

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 2 – Confidential – Recruitment of Chief Executive Officer – Request for Quotation for Recruitment Consultant.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt holds the position of Chief Executive Officer until 31 July 2020.

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 2 – Confidential – Recruitment of Chief Executive Officer – Request for Quotation for Recruitment Consultant.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt knows a number of the individuals named in the Request for Quotation submissions.

ADJOURNMENT OF MEETING

Following a point of order being raised by Mayor Jacob under clause 8.2(1)(c) of the *City of Joondalup Meeting Procedures Local Law 2013*, the Presiding Member adjourned the meeting at 5.08pm, until a date and time to be determined by the Presiding Member, to allow the alleged violation of the *City of Joondalup Code of Conduct* to be further investigated.

The meeting ADJOURNED at 5.08pm on 14 April 2020 with the following committee members being present at that time:

Cr Russ Fishwick, JP
 Mayor Hon. Albert Jacob, JP
 Cr John Chester
 Cr Kerry Hollywood
 Cr Russell Poliwka
 Cr John Raftis
 Cr Philippa Taylor

RESUMPTION OF MEETING

The Presiding Member declared the **Special Chief Executive Officer Recruitment and Performance Review Committee** meeting that commenced on 14 April 2020 **RESUMED** at 5.30pm on Thursday 4 June 2020, the following persons being present:

ATTENDANCE

Committee Members

Cr Russ Fishwick, JP	<i>Presiding Member</i>
Mayor Hon. Albert Jacob, JP	<i>Deputy Presiding Member</i>
Cr John Chester	
Cr Kerry Hollywood	
Cr Russell Poliwka	
Cr John Raftis	
Cr Philippa Taylor	

Officers

Mr Garry Hunt	Chief Executive Officer
Mr Brad Sillence	Manager Governance
Mr Glenn Heaperman	Manager Human Resources

Observers

Cr Nige Jones	<i>from 6.48pm</i>
Cr John Logan	
Cr Tom McLean, JP	
Cr Suzanne Thompson	<i>from 5.41pm</i>

Guests

Ms Renae Harding	Jackson McDonald and Partners - Partner
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APOLOGIES / LEAVE OF ABSENCE

Leave of Absence previously approved

Cr Christine Hamilton-Prime	1 May to 8 June 2020 inclusive.
Mayor Albert Jacob, JP	8 to 10 June 2020 inclusive.

ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

Cr Fishwick stated he wished to recap on the background behind the adjournment of the previous committee meeting.

Cr Fishwick reflected in the lead up to the 14 April 2020 Special Committee Meeting, a number of emails were circulated between elected members concerning various clauses in the Draft CEO Contract that had previously been distributed with the Agenda for the meeting.

Cr Fishwick stated in one of those emails, from a Committee Member commenting on the Draft CEO Contract and sent prior to the meeting, contained the following statement:

“I have had a first reading of the contract and the following are my views. I may add further comments as I am waiting on some feedback from people involved in such appointments.”.

Cr Fishwick reflected this statement caused some concern amongst elected members, indicating as it did, that the confidentiality of the documents prepared for and distributed to the Committee, for the CEO recruitment process, may have been breached. Cr Fishwick expressed these concerns extended to the integrity of the recruitment process and to the integrity of the Committee’s confidential deliberations.

Cr Fishwick added these concerns were raised with the relevant Committee Member shortly after the Special Committee Meeting commenced. Cr Fishwick stated in response to a request for the Committee Member to clarify the statement in their email, the Committee Member indicated that, as they had not previously been involved in the recruitment of a local government CEO, sought advice from a family member who is a lawyer about some clauses of the Draft CEO Contract.

Cr Fishwick highlighted on the basis of that disclosure, he as Presiding Member adjourned the meeting in order that legal advice be obtained in relation to potential breaches of the City’s *Code of Conduct*, and any implications for the integrity of the Committee’s CEO recruitment process.

Cr Fishwick indicated legal advice was sought from the City’s external legal advisor concerning the implications of the Committee Member’s disclosures, including any potential breaches of the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007* and the *Code of Conduct*, and what impact the disclosures may have had on the integrity of the Committee’s processes and deliberations.

Cr Fishwick mentioned the City’s external Legal Advisor advised there was a reasonable basis to conclude that the Committee Member’s actions in disclosing confidential information about the Draft CEO Contract may constitute breaches of the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007* and the City’s *Code of Conduct*.

Cr Fishwick stressed more significantly, the City’s external Legal Advisor noted, regardless of whether any one or more of these breaches may be established as a matter of law, the Committee Member’s disclosure of confidential information in seeking external legal advice was inconsistent with the lawful and proper role of a council member and adversely affected the integrity of the Committee’s processes and deliberations.

Cr Fishwick continued that the City's external Legal Advisor further advised that they reached this conclusion because of two key factors critical to the integrity of the Committee's processes, namely:

- 1 the necessity to ensure the maintenance of strict confidentiality among all Committee members
- 2 under section 5.41 of the *Local Government Act 1995*, it is the function of the CEO to provide advice and information to the Committee to enable it to make informed decisions including informed recommendations to the Council and the CEO had arranged for independent specialist advice to be provided by Jackson McDonald Lawyers. It is inconsistent with the *Local Government Act 1995*, and contrary to the fundamental principles of good governance, for an individual Committee member to seek their own legal advice on a matter that is the subject of the Committee's deliberations.

Cr Fishwick advised the City's external Legal Advisor therefore concluded that the City's interests in this matter would best be served by the Committee Member no longer being a member of the Committee, at least in respect of its current CEO recruitment processes. The Committee Member could be asked to voluntarily withdraw from any further involvement in the CEO recruitment processes of the Committee, or if that was not forthcoming, be asked to provide an undertaking that he will not make any further disclosures to any third party of any of the confidential documents or other information relating to the Committee's deliberations.

Cr Fishwick stated his purpose in providing this summary of events and advice is partly to explain the reasons for a longer adjournment than was desirable and to emphasise the critical importance for all Committee members to maintain strict confidentiality with respect to all documents and all Committee deliberations concerning the CEO recruitment process.

Cr Fishwick reiterated if a member of the Committee needs clarification on any aspect of the Contract or the recruitment process then that inquiry should be directed through him as the Presiding Member or the CEO. Furthermore, whilst the Committee is in session, inquiries concerning the CEO Contract can be directed to the lawyers engaged by the City for that purpose.

Cr Fishwick stressed it is not just the conduct of the Committee's processes at issue here but the confidence of the public at large. Furthermore the confidence of potential candidates is completely dependent on the utmost integrity of the Committee's processes being maintained at all times.

In closing, Cr Fishwick strongly urged all Committee Members to re-commit themselves to upholding these standards of good governance and integrity, so as to ensure that Council ultimately makes the right decision on an informed basis, in the best interests of the community that all Elected Members serve.

IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC

In accordance with Clause 5.2 of the City's *Meeting Procedures Local Law 2013*, this meeting was not open to the public.

PETITIONS AND DEPUTATIONS

Nil.

REPORTS

Disclosure of interest affecting impartiality

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 1 – Confidential – Recruitment of Chief Executive Officer – Employment Contract of the Chief Executive Officer.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt holds the position of Chief Executive Officer until 31 July 2020.

ITEM 1 CONFIDENTIAL – RECRUITMENT OF CHIEF EXECUTIVE OFFICER – EMPLOYMENT CONTRACT OF THE CHIEF EXECUTIVE OFFICER

WARD	All
RESPONSIBLE DIRECTOR	Mr Garry Hunt Office of the CEO
FILE NUMBER	74574
ATTACHMENT	Attachment 1 Draft Employment Contract of the Chief Executive Officer of the City of Joondalup (prepared by solicitors Jackson McDonald) including Position Description and 2019-20 Key Performance Indicators Refer to Elected Members Portal for Confidential Attachments 1 - 7 detailed in the report to Council on 11 February 2020 (JSC01-02/20) <i>(Please Note: The Report and Attachment is confidential and will appear in the official Minute Book only)</i>
AUTHORITY / DISCRETION	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

This report is confidential in accordance with Section 5.23(2)(a) of the *Local Government Act 1995*, which permits the meeting to be closed to the public for business relating to the following:

a matter affecting an employee or employees.

A full report was provided to Elected Members under separate cover. The report is not for publication.

Cr Thompson entered the electronic meeting at 5.41pm.

OFFICER'S RECOMMENDATION

That Council:

- 1 CONSIDERS the draft Employment Contract for the Chief Executive Officer appointee;
- 2 CONSIDERS the revised position description for the position noting that it will form part of the final Employment Contract;
- 3 RECOMMENDS to Council the draft Employment Contract of the Chief Executive Officer, including the revised position description and key performance indicators for the position be adopted.

MOVED Mayor Jacob, SECONDED Cr Poliwka that Council:

- 1 **SUPPORTS** the draft Employment Contract for the Chief Executive Officer appointee;
- 2 **SUPPORTS** the revised position description for the position noting that it will form part of the final Employment Contract;
- 3 **ENDORSES** the draft Employment Contract of the Chief Executive Officer, including the revised position description and key performance indicators as detailed in Attachment 2 to this Report, subject to the following amendments being included:
 - 3.1 In Clause 11.6 (c) replace “(ii)” with “(b)”;
 - 3.2 In Clause 11.6 (f) replace “(v)” with “(e)”;
 - 3.3 In Clause 14.8 replace “Council” with “the Mayor”;
 - 3.4 At the end of Clause 14.14, insert the following sentence:
“Any continuing professional development under this sub-clause is restricted to 10 full working days per calendar year.”;
 - 3.5 Delete Clause 14.17 and insert new Clause 14.17 as follows:
“14.17 If the CEO wishes to attend conferences outside Australia in any given year (based on the anniversary date of the Contract) the CEO must seek prior approval of the Council. The CEO must keep a record of all attendances under this sub-clause and prepare a report for Council within thirty (30) days of resuming work.”;
 - 3.6 In Clause 16.2 replace “they have” with “that he or she has”;
 - 3.7 In Clause 16.5 replace “authorized” with “authorised”;
 - 3.8 In Clauses 17.4, 17.7 and 17.10 replace “17.1417.4” with “17.14”;
 - 3.9 In Clause 17.5 (c) replace “X” with “six (6)”;
 - 3.10 In Clause 17.8 (a) replace “twelve (12)” with “six (6)”;
 - 3.11 In Clause 19.9 replace “appendices” with “Appendices”.

It was requested that Parts 3.4 and 3.5 of the original motion be voted upon separately.

Cr Fishwick advised he would put the votes for Part 1, Part 2, Parts 3.1 to 3.3, and Parts 3.6 to 3.11 collectively, followed by Parts 3.4 and 3.5 separately.

MOVED Mayor Jacob, SECONDED Cr Poliwka that Council:

- 1 SUPPORTS the draft Employment Contract for the Chief Executive Officer appointee;**
- 2 SUPPORTS the revised position description for the position noting that it will form part of the final Employment Contract;**
- 3 ENDORSES the draft Employment Contract of the Chief Executive Officer, including the revised position description and key performance indicators as detailed in Attachment 2 to this Report, subject to the following amendments being included:**
 - 3.1 In Clause 11.6 (c) replace “(ii)” with “(b)”;**
 - 3.2 In Clause 11.6 (f) replace “(v)” with “(e)”;**
 - 3.3 In Clause 14.8 replace “Council” with “the Mayor”;**
 - 3.6 In Clause 16.2 replace “they have” with “that he or she has”;**
 - 3.7 In Clause 16.5 replace “authorized” with “authorised”;**
 - 3.8 In Clauses 17.4, 17.7 and 17.10 replace “17.1417.4” with “17.14”;**
 - 3.9 In Clause and .5 (c) replace “X” with “six (6)”;**
 - 3.10 In Clause 17.8 (a) replace “twelve (12)” with “six (6)”;**
 - 3.11 In Clause 19.9 replace “appendices” with “Appendices”.**

The Motion was Put and

CARRIED (7/0)

In favour of the Motion: Cr Fishwick, Mayor Jacob, Crs Chester, Hollywood, Poliwka, Raftis and Taylor.

MOVED Mayor Jacob, SECONDED Cr Poliwka that Council:

- 3 ENDORSES the draft Employment Contract of the Chief Executive Officer, including the revised position description and key performance indicators as detailed in Attachment 2 to this Report, subject to the following amendments being included:**
 - 3.4 At the end of Clause 14.14, insert the following sentence:**

“Any continuing professional development under this sub-clause is restricted to 10 full working days per calendar year.”;

The Motion was Put and

CARRIED (6/1)

In favour of the Motion: Cr Fishwick, Mayor Jacob, Crs Chester, Poliwka, Raftis and Taylor.
Against the Motion: Cr Hollywood.

MOVED Mayor Jacob, SECONDED Cr Poliwka that Council:

3 ENDORSES the draft Employment Contract of the Chief Executive Officer, including the revised position description and key performance indicators as detailed in Attachment 2 to this Report, subject to the following amendments being included:

3.5 Delete Clause 14.17 and insert new Clause 14.17 as follows:

“14.17 If the CEO wishes to attend conferences outside Australia in any given year (based on the anniversary date of the Contract) the CEO must seek prior approval of the Council. The CEO must keep a record of all attendances under this sub-clause and prepare a report for Council within thirty (30) days of resuming work.”;

The Motion was Put and

CARRIED (6/1)

In favour of the Motion: Cr Fishwick, Mayor Jacob, Crs Chester, Poliwka, Raftis and Taylor.

Against the Motion: Cr Hollywood.

Disclosures of interest affecting impartiality

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 2 – Confidential – Recruitment of Chief Executive Officer – Request for Quotation for Recruitment Consultant.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt holds the position of Chief Executive Officer until 31 July 2020.

Name/Position	Mr Garry Hunt, Chief Executive Officer.
Item No./Subject	Item 2 – Confidential – Recruitment of Chief Executive Officer – Request for Quotation for Recruitment Consultant.
Nature of interest	Interest that may affect impartiality.
Extent of Interest	Mr Hunt knows a number of the individuals named in the Request for Quotation submissions.

ITEM 2 CONFIDENTIAL – RECRUITMENT OF CHIEF EXECUTIVE OFFICER – REQUEST FOR QUOTATION FOR RECRUITMENT CONSULTANT

WARD	All
RESPONSIBLE DIRECTOR	Mr Garry Hunt Office of the CEO
FILE NUMBER	74574
ATTACHMENT	Attachment 1 Request for Quotation submissions received from eight individual groups or entities Refer to Elected Members Portal for Confidential Attachments 1 - 7 detailed in the report to Council on 11 February 2020 (JSC01-02/20) <i>(Please Note: The Report and Attachment are confidential and will appear in the official Minute Book only)</i>
AUTHORITY / DISCRETION	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

This report is confidential in accordance with Section 5.23(2)(a) of the *Local Government Act 1995*, which permits the meeting to be closed to the public for business relating to the following:

a matter affecting an employee or employees.

A full report was provided to Elected Members under separate cover. The report is not for publication.

Cr Jones entered the electronic meeting at 6.48pm.

OFFICER'S RECOMMENDATION

That Council:

- 1 NOTES the Request for Quotations received for the Chief Executive Officer Recruitment Consultant as detailed in Attachment 1 to this Report;
- 2 SELECTS preferred Chief Executive Officer recruitment consultant to progress to the recruitment process in accordance with the recruitment process detailed in the report to Council on 11 February 2020 (JSC01-02/20) which comprises the following items:
 - 2.1 Advertising
Preliminary review – long list applicants
Shortlist applicants*
Arrange and conduct interviews*
Due diligence*
Psychometric testing
Recommendation to Council. For appointment
Offer of employment and contract negotiations
Finalisation of process.

MOVED Cr Hollywood, SECONDED Cr Chester that Council:

- 1 **NOTES the Request for Quotations received for the Chief Executive Officer Recruitment Consultant as detailed in Attachment 1 to this Report;**
- 2 **SELECTS Lester Blades as the preferred Chief Executive Officer recruitment consultant to progress to the recruitment process in accordance with the recruitment process detailed in the report to Council on 11 February 2020 (JSC01-02/20) which comprises the following items:**
 - 2.1 **Advertising;**
 - 2.2 **Preliminary review – long list applicants;**
 - 2.3 **Shortlist applicants;**
 - 2.4 **Arrange and conduct interviews;**
 - 2.5 **Due diligence;**
 - 2.6 **Psychometric testing;**
 - 2.7 **Recommendation to Council. For appointment;**
 - 2.8 **Offer of employment and contract negotiations;**
 - 2.9 **Finalisation of process.**

The Motion was Put and

CARRIED (7/0)

In favour of the Motion: Cr Fishwick, Mayor Jacob, Crs Chester, Hollywood, Poliwka, Raftis and Taylor.

CLOSURE

There being no further business, the Presiding Member declared the meeting closed at 6.50pm; the following Committee Members being present at that time:

Cr Russ Fishwick, JP
Mayor Hon. Albert Jacob, JP
Cr John Chester
Cr Kerry Hollywood
Cr Russell Poliwka
Cr John Raftis
Cr Philippa Taylor