

**LATE ITEMS FOR BRIEFING SESSION
TO BE HELD ON
4 OCTOBER 2005**

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REPORT |

LATE ITEM NO 1 – BRIEFING SESSION 4 OCTOBER 2005

APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER

00384 **13399**
 18058
 00561

WARD: All

RESPONSIBLE Garry Hunt
DIRECTOR: Office of CEO

PURPOSE

For the Council to give consideration to delegating authority to the Chief Executive Officer to be able to make appointments to the position of Acting Chief Executive Officer during periods of absence not exceeding one (1) calendar month.

EXECUTIVE SUMMARY

The Local Government Act 1995 provides that a local government is to appoint a person to the position of Chief Executive Officer (CEO) to ensure that the statutory provisions of the role are performed.

While the authority rests with the Council to appoint a CEO, the power to appoint a person to Act as CEO during periods of absence may be delegated.

During the employment of the permanent CEO there will be periods of time where he/she will be absent from the City of Joondalup for planned or unplanned purposes. It is therefore necessary to appoint another employee of the City to act in the position of CEO to ensure the statutory functions of the position are performed.

It is suggested that the power to appoint an employee of the City to act as CEO for periods of less than one (1) calendar month be delegated to the CEO. For any appointments for employees to act as CEO greater than one (1) month will be referred to the Council for consideration.

Any appointments to the acting CEO role will be only employees that hold the position of director and classified as a senior employee of the City of Joondalup, and will be based on workload and availability of the employee.

BACKGROUND

The Local Government Act 1995 requires that a local government employ a person to be the Chief Executive Officer.

In the past where the CEO is scheduled to be absent from the City and unable to fulfil the statutory duties of the position of the CEO, a report has been presented to the Council recommending another employee be appointed to the role of Acting CEO during the identified period of absence.

DETAILS

The CEO, throughout the course of his/her employment with the City of Joondalup, will be entitled to take periods of annual and sick leave and may be absent from the City for other reasons, which will prevent him/her from fulfilling his statutory obligations. As a result of these circumstances occurring from to time and for other circumstances it is advisable that a process be in place by which another employee of the City can be appointed to the role of Acting CEO.

Issues and options considered:

An option is to delegate the authority to the CEO to be able to appoint another employee of the City who is employed as the status of 'Director' and designated as a senior employee under the provisions of the Local Government Act 1995.

The alternative option that could be considered is to require the Council to maintain the power to appoint persons to the position of the CEO, regardless of the appointment being permanent or on an acting basis.

Link to Strategic Plan:

Outcome:	The City of Joondalup is recognised as an employer of choice.
Objective 4.5:	To manage our workforce as a strategic business resource.
Strategy 4.5.4	Implement best practice people-management policies and tools to assist in the achievement of the City's workforce objectives.

Legislation – Statutory Provisions:

Section 5.36 of the Local Government Act 1995 states:-

5.36. Local government employees

- 1 *A local government is to employ:*
 - a *a person to be the CEO of the local government; and*
 - b *such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.*
- 2 *A person is not to be employed in the position of CEO unless the council —*
 - a *believes that the person is suitably qualified for the position; and*
 - b *is satisfied* with the provisions of the proposed employment contract.*

**Absolute majority required.*

- 3 *A person is not to be employed by a local government in any other position unless the CEO: -
 - a *believes that the person is suitably qualified for the position; and*
 - b *is satisfied with the proposed arrangements relating to the person's employment.**
- 4 *If the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.*
- 5 *For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.*

Section 5.37(1) of the Local Government states: -

5.37. Senior employees

- 1 *A local government may designate employees or persons belonging to a class of employee to be senior employees.*

Section 5.39 (1), (1a) and (2) of the Local Government Act 1995 states: -

5.39. Contracts for CEO's and senior employees

- 1 *Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.*
 - 1a *Despite subsection (1) —
 - a *an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and*
 - b *a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.**
- 2 *A contract under this section —
 - a *in the case of an acting or temporary position, cannot be for a term exceeding one year;*
 - b *in every other case, cannot be for a term exceeding 5 years.**

Section 5.42 of the Local Government Act 1995 details which powers and duties may be delegated to the CEO and section 5.43 of the Local Government Act 1995 places certain limitations on what powers and duties can be delegated, as follows:

5.42. Delegation of some powers and duties to CEO

- 1 *A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

**Absolute majority required.*

- 2 *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

5.43. Limits on delegations to CEOs

A local government cannot delegate to a CEO any of the following powers or duties
—

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) appointing an auditor;*
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) borrowing money on behalf of the local government;*
- (g) hearing or determining an objection of a kind referred to in section 9.5;*
- (h) any power or duty that requires the approval of the Minister or the Governor;
or*
- (i) such other powers or duties as may be prescribed.*

Risk Management considerations:

The Local Government Act 1995 requires every local government to have a person appointed to the position to CEO, either in a permanent or temporary capacity. Failure to have someone employed within the role will mean many statutory duties assigned to the position of CEO will not be able to be performed.

Financial/Budget Implications:

Not Applicable

Policy implications:

There are no policy implications, however there will be a requirement to amend the corporate delegated authority manual if it is agreed to delegate the power to appoint an Acting CEO.

Regional Significance:

Not Applicable

Sustainability implications:

Not Applicable

Consultation:

Not Applicable

COMMENT

The Local Government Act 1995 requires that it is the Council that has the power to appoint a person to the position of CEO. However, the power to appoint a person to the position of CEO on an acting basis may be delegated by the Council to the CEO.

Circumstances may arise relating to the permanent CEO being required to be absent from the City of Joondalup for various reasons such as annual or sick leave. In these circumstances it is appropriate that the CEO be delegated the authority to be able to appoint another employee of the City who is employed as a 'Director' and is designated as a Senior Employee of the City as per the Local Government Act 1995.

It is recommended that in accordance with good governance principles, the ability for the CEO to appoint a person to the Acting position of CEO should not be for periods of no more than one (1) calendar month. All appointments for a City employee to act in the position of CEO greater than one (1) calendar month must be referred to the Council for consideration.

If the delegation is granted it is proposed that an arrangement be put in place whereby the position of Acting CEO is rotated amongst the Directors. Each Director will be assigned to a particular three-month period. If the CEO is absent from the City for a period less than one (1) calendar month, the Director assigned to the period during which the absence falls will automatically assume the role of Acting CEO. This would ensure, should there be any unforeseen circumstances, illness, accident or similar to the CEO, that an individual has already been designated to assume the role for that particular period and obviate the need for a Special Council meeting to be called in the event that unexpected situations arise.

It is believed this is an appropriate measure in terms of risk management. The intention would be that the appointment of a designated Acting CEO would be programmed in a way that is mindful of other work commitments and programmes of the individual Directors.

ATTACHMENTS

Not Applicable

VOTING REQUIREMENTS

Absolute Majority

RECOMMENDATION

That Council, BY AN ABSOLUTE MAJORITY, DELEGATES to the Chief Executive Officer the power to make appointments to the position of Acting Chief Executive Officer based on:

- 1 the City employee holding the substantive position of 'Director' and is designated a 'Senior Employee' as required by the Local Government Act 1995;**
- 2 Appointments being for no longer than one (1) calendar month, with all other appointments to the position of Acting Chief Executive Officer referred to the Council for determination.**

LATE ITEM NO 2 – BRIEFING SESSION 4 OCTOBER 2005

PERFORMANCE REVIEW COMMITTEE - CONCLUDED REPORT 74574

WARD: All

RESPONSIBLE Peter Schneider
DIRECTOR: Corporate Services and Resource Management

PURPOSE

To submit the CEO Performance Review Committee's concluded confidential report on the outcome of the CEO's initial performance review, for consideration of Council.

EXECUTIVE SUMMARY

The CEO Performance Review Committee (the Committee) provided its assessment report of the CEO's performance against his Key Performance Indicators (KPIs) to Council at its meeting of 20 September 2005. The report was provided to the CEO at the same time it was submitted to Council and a comment period was provided for.

The CEO has endorsed the report as an accurate reflection of the review, therefore that report becomes the concluded report, which is resubmitted to Council for consideration in accordance with the CEO's Employment Contract.

It is recommended that Council ADOPTS the Performance Review Committee's Concluded Initial Performance Review report as LAID ON THE TABLE at the Council meeting held on 11 October 2005 and marked 'Confidential'.

BACKGROUND

At the Council meeting held on 20 September 2005, when considering late Item No. 2 Performance Review Committee - CEO Initial Performance Review, Council resolved as follows:-

- 1 ENDORSES the Performance Review Committee's satisfactory findings and conclusions about the CEO's performance during the period 31 January 2005 to 31 July 2005, inclusive;
- 2 ENDORSES further discussion between the CEO and the Performance Review Committee to review and vary the Key Performance Indicators going forward with recommendations to be referred to Council;
- 3 CONGRATULATES the CEO on his achievements in relation to meeting the relevant conditions of his Employment Contract relating to Key Performance Indicators.

The following related reports have previously been considered by Council:

C53-09/05	Minutes of the Chief Executive Officer Performance Review Committee
C46-08/05	Chief Executive Officer - Performance Review Committee
CJ104-06/05	Chief Executive Officer - Performance Review Committee
C2-01/05	CEO Recruitment and Appointment

DETAILS

Issues and options considered:

The Committee met on several occasions between 19 July and 6 September 2005 in order to progress the CEO's initial performance review in accordance with the relevant clauses of the CEO's Employment Contract.

As a result of those meetings the Committee arrived at its own assessment, judged against the Key Performance Indicators (KPIs) for the period 31 January to 31 July 2005, inclusive.

The Committee's confidential report was presented to the Council meeting of 20 September 2005 where it was considered and endorsed by Council.

The review process specified within the CEO's Employment Contract allows for a comment period by the CEO, on the matters contained within the report. Any such comments and comments in reply thereto of the committee or any individual member of the committee are to form an appendix to the Committee's report and the concluded report tabled at the next Council meeting.

The CEO has endorsed the report as an accurate reflection of the review, therefore the Committee's report endorsed by Council at its meeting of 20 September 2005, now becomes the concluded report.

Link to Strategic Plan:

Objective 4.5 - To manage our workforce as a strategic business resource.

Legislation – Statutory Provisions:

In accordance with section 5.38 of the Local Government Act 1995 the performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

Clause 11.2 of the CEO's Employment Contract requires that his performance is to be reviewed initially within thirty days after the sixth month of his employment under his contract.

Risk Management Considerations:

The performance review process is designed to evaluate and assess the CEO's performance against Key Performance Indicators on a periodic basis and the

Performance Review Committee is required to refer its concluded report to the Council for consideration and actioning. Schedule 2 of the CEO's Employment contract details the initial Key Performance Indicators to be achieved by the CEO.

Financial/Budget Implications:

Not applicable.

Policy Implications:

Not applicable.

Regional Significance:

Not applicable.

Sustainability Implications:

KPIs for the CEO have ongoing sustainability implications underpinning them.

Consultation:

Not applicable.

COMMENT

The CEO has endorsed the Committee's report as an accurate reflection of his review therefore the original report becomes the concluded confidential report, which is to be tabled for consideration by Council.

ATTACHMENTS

Attachment 1 - "Confidential Report" Chief Executive Officers Concluded Initial Performance Review (to be tabled at the Council meeting).

VOTING REQUIREMENTS

Simple majority.

RECOMMENDATION

That Council ADOPTS the Performance Review Committee's Concluded Initial Performance Review Report as LAID ON THE TABLE at the Council meeting held on 11 October 2005 and marked 'Confidential'.