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## **Chief Executive Officer Recruitment and Performance Review Committee**

**MEETING HELD ON**

**TUESDAY 13 APRIL 2021**

*This document is available in alternate formats upon request*

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**Note:**

Clause 15.10 of the City's *Meeting Procedures Local Law 2013* states:

*This local law applies generally to committee meetings except for clause 7.1 in respect of members seating and clause 7.8 in respect of limitation on members speaking.*

## CITY OF JOONDALUP

### MINUTES OF THE SPECIAL CHIEF EXECUTIVE OFFICER RECRUITMENT AND PERFORMANCE REVIEW COMMITTEE MEETING HELD IN CONFERENCE ROOM 1, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY 13 APRIL 2021.

#### ATTENDANCE

##### Committee Members

Cr Russ Fishwick, JP	<i>Presiding Member</i>	
Mayor Hon. Albert Jacob, JP	<i>Deputy Presiding Member</i>	
Cr Russell Poliwka		<i>from 5.31pm</i>
Cr Kerry Hollywood		
Cr Philippa Taylor		
Cr John Chester		
Cr John Raftis		<i>from 5.40pm</i>
Cr Christine Hamilton-Prime, JP	<i>Deputising for Cr John Raftis</i>	<i>until 5.40pm</i>

##### Observers

Cr Tom McLean, JP		
Cr Christine Hamilton-Prime, JP		<i>from 5.40pm</i>
Cr John Logan		

##### Officers

Mr Jamie Parry	Director Governance and Strategy
Mr Brad Sillence	Manager Governance
Mr Glenn Heaperman	Manager Human Resource Services

#### DECLARATION OF OPENING

The Presiding Member declared the meeting open at 5.30pm.

## **DECLARATIONS OF FINANCIAL INTEREST / PROXIMITY INTEREST / INTEREST THAT MAY AFFECT IMPARTIALITY**

### **Disclosures of Financial Interest / Proximity Interest**

Nil.

### **Disclosures of interest affecting Impartiality**

Elected Members (in accordance with clause 22 of Schedule 1 of the *Local Government [Model Code of Conduct] Regulations 2021*) 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 their interest.

<b>Name / Position</b>	<b>Mr James Pearson, Chief Executive Officer.</b>
<b>Item No. / Subject</b>	Item 1 – Standards for CEO Recruitment and Selection, Performance Review and Termination.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mr Pearson holds the position of Chief Executive Officer.

## **APOLOGIES AND LEAVE OF ABSENCE**

### **Apologies**

Mr James Pearson, Chief Executive Officer.

## **ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION**

Nil.

## **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.

## REPORT

### Disclosure of interest affecting Impartiality

<b>Name / Position</b>	<b>Mr James Pearson, Chief Executive Officer.</b>
<b>Item No. / Subject</b>	Item 1 – Standards for CEO Recruitment and Selection, Performance Review and Termination.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mr Pearson holds the position of Chief Executive Officer.

## ITEM 1 **STANDARDS FOR CEO RECRUITMENT AND SELECTION, PERFORMANCE REVIEW AND TERMINATION**

<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBERS</b>	00561, 108783
<b>ATTACHMENTS</b>	Attachment 1 <i>DLGSCI Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination</i> Attachment 2 <i>DLGSCI Explanatory Notes</i> Attachment 3 <i>Local Government (Administration) Amendment Regulations 2021</i> Attachment 4 <i>Draft City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination</i>
<b>AUTHORITY / DISCRETION</b>	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

### PURPOSE

For Council to adopt the *Model Chief Executive Officer Standards* (Model CEO Standards) for Chief Executive Officer (CEO) recruitment and selection, performance review and termination as required by the *Local Government (Administration) Amendment Regulations 2021*.

### EXECUTIVE SUMMARY

The *Local Government (Administration) Amendment Regulations 2021* (CEO Standards Regulations) were published in the *Government Gazette* on 2 February 2021, which introduced new regulations within the *Local Government (Administration) Regulations 1996* including new mandatory minimum model standards for the recruitment, selection, performance review and early termination of local government Chief Executive Officers (Model CEO Standards). The Model CEO Standards provide a framework for local governments to select a CEO in accordance with the principles of merit, probity, equity and transparency.

Local governments are required to prepare and adopt the Model Standards within three months of these regulations coming into effect (by 3 May 2021). Until such time as a local government adopts the Model Standards, the new regulations apply.

*It is therefore recommended that Council:*

- 1 *in accordance with section 5.39B(2) of the Local Government Act 1995 and the requirements of the Local Government (Administration) Regulations 1996, BY AN ABSOLUTE MAJORITY ADOPTS the City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination as detailed in Attachment 4 to this Report;*
- 2 *NOTES that a review of City of Joondalup policy and procedural requirements relating to the new requirements within the Local Government (Administration) Regulations 1996 and the standards detailed in part 1 above will be undertaken and presented to the Chief Executive Officer Recruitment and Performance Review Committee at a future meeting.*

## **BACKGROUND**

The *Local Government (Administration) Amendment Regulations 2021* were published in the *Government Gazette* on 2 February 2021, which introduced new regulations and mandatory minimum standards into the *Local Government (Administration) Regulations 1996* for the recruitment, selection, performance review and early termination of local government CEOs. In the main the Model CEO Standards have been included as a new Schedule 2 to the *Local Government (Administration) Regulations 1996*.

Key features of these new regulations include the requirement:

- to establish a selection panel comprised of council members and at least one independent person to conduct the recruitment and selection process for the position of CEO
- to establish a performance review process by agreement between the local government and the CEO
- to conduct a recruitment and selection process where an incumbent CEO has held the position for a period of ten or more consecutive years on expiry of the CEO's contract.

In addition, requirements for advertising vacant CEO positions have been updated to align with amendments to state-wide public notice provisions.

Local governments are required to prepare and adopt the Model Standards within three months of the regulations coming into effect (by 3 May 2021).

## **DETAILS**

The *Local Government (Administration) Amendment Regulations 2021* (CEO Standards Regulations) introduce mandatory minimum standards for the recruitment, selection, performance review and termination of employment in relation to local government CEOs. The aim of the Model CEO Standards is to provide local government with a consistent and equitable process for CEO recruitment, performance review and termination across all local governments, in accordance with the principles of merit, equity and transparency.

It is a requirement that local governments prepare and adopt the Model CEO Standards within three months of the Model CEO Standards coming into operation (by 3 May 2021). Until such time as a local government prepares and adopts its own CEO Standards, the Model CEO Standards detailed within regulations apply.

It is important to note that local governments may introduce additional standards where appropriate, however, any additional standards must be consistent with the Model CEO Standards that have been introduced as part of the *Local Government (Administration) Amendment Regulations 2021*.

Given the City has recently appointed a CEO there are no priority actions from the new Regulations requiring attention.

The City has reviewed the current CEOs employment contract terms and conditions and City processes against the standards and identified only a few minor differences, which can be accommodated within the new standards. Specifically, these relate to the following:

- Clause 8: The Model Standards require appointment of an “Independent person” to the selection panel. The Chief Executive Officer Recruitment and Performance Review Committee does not currently have an “Independent person” as part of its membership (independent person is not the consultant engaged to assist).

This will not present an issue until a CEO recruitment process is required.

- Clause 13: Recruitment to be undertaken on expiry of certain CEO contracts, which relates to the recruitment to be undertaken if the CEO has held the position for a period of 10 or more consecutive years.

The current CEO employment contract has a renewable clause within it, however, there is no immediate impact given the contract is less than five years old, and upon renewal this may need to be varied to ensure that the 10-year limit / horizon is recognised.

- Terms of Reference of the CEO Recruitment and Performance Review Committee, as the Guidelines suggest broader content in the Terms of Reference when it comes to the recruitment and selection responsibilities which the Committee hold.

The suggestion is that this could be managed by a policy or revised Terms of Reference, the options of which require further consideration.

- Division 3: It is recommended in the Guidelines that an “Independent Observer” be part of the CEO Performance Review, the Committee of which currently includes only Elected Members. Significantly the regulations do not detail how this proposal might operate.

The Guideline also recommends Council develop a policy to guide the performance review process, the employment contract is highly prescriptive and may make the need for a policy unnecessary. Again, this is a matter requiring further consideration.

#### Current Policies / Delegations / Procedures

The City will need to review its current policies, delegations and procedures to ensure they meet the requirements of the Model CEO Standards.

This will necessarily require a review of the following:

- Delegation for appointment of an Acting CEO (refer Item 1.6 under the Council's *Register of Delegated Authority*).
- Procedures for appointment of the CEO (refer to the role of the Chief Executive Officer Recruitment and Performance Review Committee).
- Procedures for performance review of the CEO (governed by procedures contained within the CEO Employment Contract).
- Procedures for termination of the CEO (governed by the terms and conditions of the Employment Contract).
- Terms of Reference of the Chief Executive Officer Recruitment and Performance Review Committee.

#### Chief Executive Officer Recruitment and Performance Review Committee

The procedures related to the above have generally been in the remit of the Chief Executive Officer Recruitment and Performance Review Committee, the role of which is as follows:

- Recommend to Council the selection and appointment process of a Chief Executive Officer.
- Recommend to Council the preferred consultant to assist with the recruitment process for a Chief Executive Officer.
- Undertake the interview of preferred applicant(s) on the advice of the appointment consultant's shortlisted applicants for the position of Chief Executive Officer.
- Recommend to Council the appointment of a preferred applicant as Chief Executive Officer under the terms and conditions of an agreed Chief Executive Officer Employment Contract.
- Review the Chief Executive Officer's performance in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment Contract.
- Prepare and table the concluded report, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract to Council.
- Review the Chief Executive Officer's performance on an on-going basis as and when deemed necessary in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment Contract.
- Review the Key Performance Indicators to be met by the Chief Executive Officer.
- Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract.
- Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract as and when necessary.



A review of current policies, delegations and procedures to ensure they meet the requirements of the Model CEO Standards will be submitted to the Chief Executive Officer Recruitment and Performance Review Committee for review.

#### Issues and options considered

It is a requirement that local governments prepare and adopt the Model CEO Standards within three months of the Model CEO Standards coming into operation (that is by 3 May 2021).

The Council can either:

- adopt the City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination as presented in Attachment 4 to this Report or
- adopt the City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination as presented in Attachment 4 to this Report with further amendments, noting that local governments may only introduce additional standards that are consistent with the Model CEO Standards as prescribed in the *Local Government (Administration) Amendment Regulations 2021*.

The City is not recommending any major changes between the Model CEO Standards and the draft City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination (Attachment 4 refers).

One of the major difficulties with the way the Model CEO Standards have been drafted, is that it has used the term 'local government' throughout the model provisions as opposed to Council, or the City. To ensure the City's code is workable and easily understood as to the roles and responsibilities of the parties in the process, the draft City of Joondalup Standards, interchanges the term local government with either "Council" or the "City" (being the body corporate), being conducive of the required level of decision-making authority that is required (that is needing to be a decision of the Council or an administrative function of the body corporate).

#### **Legislation / Strategic Community Plan / Policy implications**

**Legislation**                      *Local Government Act 1995.*  
*Local Government (Administration) Amendment Regulations 2021.*  
*Local Government (Administration) Regulations 1996.*

#### **Strategic Community Plan**

<b>Key theme</b>	Governance and Leadership.
<b>Objective</b>	Corporate capacity.
<b>Strategic initiative</b>	Demonstrate accountability through robust reporting that is relevant and easily accessible by the community.
<b>Policy</b>	Not applicable.

#### **Risk management considerations**

Local governments are required to adopt the Model CEO Standards (with or without amendment) within three months of the CEO Standards Regulations coming into effect. Although a local government would need to abide by the requirements of the Model CEO Standards if it does not adopt its own standards within that time, a local government would be deemed non-compliant with the legislative provisions.

The City has reviewed the current CEOs contract terms and conditions against the Model CEO Standards and identified only a few minor differences, which can be accommodated within the new standards adopted for the City. As such, it is considered that the Model CEO Standards can be adopted.

**Financial / budget implications**

Not applicable.

**Regional significance**

Not applicable.

**Sustainability implications**

Not applicable.

**Consultation**

Industry consultation has occurred with the Western Australian Local Government Association, Local Government Professionals WA and the Department of Local Government, Sport and Cultural Industries.

It should be noted that at its meeting held on 19 November 2019 (Item CJ150-11/19 refers), Council endorsed the City of Joondalup's submission in response to the Department of Local Government Sport and Cultural Industries' invitation to comment on its Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination.

**COMMENT**

The *Local Government (Administration) Amendment Regulations 2021* (CEO Standards Regulations) bring into effect changes to the *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996* by introducing mandatory minimum standards that cover the recruitment, selection, performance review and early termination of local government chief executive officers.

The Model CEO Standards provide a framework for local governments to select a CEO in accordance with the principles of merit, probity, equity and transparency.

The City of Joondalup, as are all local governments, are required to prepare and adopt the Model CEO Standards within three months of these regulations coming into effect (by 3 May 2021).

The City has reviewed the Model CEO Standards and it is considered they can be applied to the City of Joondalup.

**VOTING REQUIREMENTS**

Absolute Majority.

*Cr Poliwka entered the meeting room at 5.31pm.*

*Cr Raftis entered the meeting room at 5.40pm.*

**MOVED Mayor Jacob, SECONDED Cr Poliwka that Council:**

- 1** in accordance with section 5.39B(2) of the *Local Government Act 1995* and the requirements of the *Local Government (Administration) Regulations 1996*, **BY AN ABSOLUTE MAJORITY ADOPTS** the City of Joondalup Standards for CEO Recruitment and Selection, Performance Review and Termination as detailed in Attachment 4 to this Report;
- 2** **NOTES** that a review of City of Joondalup policy and procedural requirements relating to the new requirements within the *Local Government (Administration) Regulations 1996* and the standards detailed in part 1 above will be undertaken and presented to the Chief Executive Officer Recruitment and Performance Review Committee at a future meeting.

**The Motion was Put and**

**CARRIED (7/0)**

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

*Appendix 1 refers*

*To access this attachment on electronic document, click here: [Attach1agnCEO210413.pdf](#)*

## **CLOSURE**

There being no further business, the Presiding Member declared the meeting closed at 5.52pm; the following Committee Members being present at that time:

MAYOR HON. ALBERT JACOB, JP  
CR JOHN CHESTER  
CR RUSS FISHWICK, JP  
CR KERRY HOLLYWOOD  
CR RUSSELL POLIWKA  
CR JOHN RAFTIS  
CR PHILIPPA TAYLOR