

## 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 TUESDAY, 21 MARCH 2006 AND TUESDAY, 28 MARCH 2006**

### **ATTENDANCE AND APOLOGIES**

CMR J PATERSON                      Chairman  
CMR P CLOUGH  
CMR M ANDERSON  
CMR A FOX  
CMR S SMITH                      *from 1925 hrs*

### **Officers:**

Chief Executive Officer:                      G HUNT                      *from 1920 hrs*  
Director, Corporate Services:                      P SCHNEIDER  
Committee Clerk:                      L TAYLOR

### **In attendance:**

Ms Maria Saraceni                      Jackson McDonald, Solicitors  
Ms Joanne Alilovich                      Jackson McDonald, Solicitors

### **DECLARATION OF OPENING**

The Chairman declared the meeting open at 1740 hrs.

### **APOLOGIES/LEAVE OF ABSENCE**

Late Apology - Cmr Smith

### **CONFIRMATION OF MINUTES**

MINUTES OF THE CHIEF EXECUTIVE OFFICER – PERFORMANCE REVIEW COMMITTEE MEETING HELD ON 14 NOVEMBER 2005

**MOVED** Cmr Anderson, **SECONDED** Cmr Clough that the minutes of the meeting of the Chief Executive Officer – Performance Review Committee held on 14 November 2005 be confirmed as a true and correct record.

**The Motion was Put and**

**CARRIED (4/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson and Fox

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

Nil.

## **DECLARATIONS OF INTEREST**

### **Disclosure of Financial Interests**

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 – CEO Employment Contract Review
<b>Nature of Interest</b>	Financial
<b>Extent of Interest</b>	Mr Hunt is employed as CEO

### **Disclosure of interest affecting impartiality**

Commissioners 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 Commissioner/employee is also encouraged to disclose the nature of the interest.

<b>Name/Position</b>	<b>Mr Peter Schneider – Director Corporate Services</b>
<b>Item No/Subject</b>	Item 1 – CEO Employment Contract Review
<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.

## **ITEM 1                    CEO EMPLOYMENT CONTRACT REVIEW – [74574]**

**WARD:**                    All

**RESPONSIBLE**        Peter Schneider  
**DIRECTOR:**            Corporate Services

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### **PURPOSE**

The purpose of this report is to provide information to the CEO Performance Review Committee (the Committee) to allow it to review the Chief Executive Officer's Employment Contract.

### **EXECUTIVE SUMMARY**

During the initial performance review of the CEO, several contractual issues relating to the documented review procedure were identified.

Those issues were outlined in a report to the Committee at its meeting of 14 November 2005 (Attachment 1 refers). At that meeting the CEO also provided a list of contractual issues for consideration by the Committee (Attachment 2). At the request of the Committee the Director Corporate Services has briefed solicitors on the issues raised and sought the appropriate legal advice.

Representatives of the solicitors who drafted the original contract will be present at the meeting to provide advice as necessary.

*It is recommended:*

*That the CEO Performance Review Committee gives consideration to varying the Employment Contract of the CEO and refers its recommendations to Council.*

### **BACKGROUND**

At the Council meeting held on 7 June 2005 the Council resolved as follows when considering report CJ104-06/05 Chief Executive Officer - Performance Review Committee:

- 1        Council in accordance with Section 5.8 of the Local Government Act 1995, ESTABLISHES a Performance Review Committee consisting of five (5) Joint Commissioners as follows:

Chairman of Commissioners	Comr J Paterson
Deputy Chairman	Comr P Clough
Comr M Anderson	
Comr S Smith	
Comr A Fox	

- 2 The terms of reference for the Performance Review Committee be to:
  - (a) Review the Chief Executive Officer's performance in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment Contract;
  - (b) Prepare and table the concluded report, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract to the Council at a Council meeting for consideration and actioning;
  - (c) Review the Chief Executive Officer's performance on an on-going basis and when deemed necessary in accordance with the appropriate provisions contained within the Chief Executive Officer's Employment contract;
  - (d) Review the Key Performance Indicators to be met by the Chief Executive Officer.

At the Council meeting held on 9 August 2005 the terms of reference of the Committee were extended to include (CJ46-08/05 Chief Executive Officer - Performance Review Committee refers):

- (a) Review the Chief Executive Officer's remuneration package, in accordance with the appropriate provisions within the Chief Executive Officer's Employment Contract;
- (b) Review the Chief Executive Officer's Employment Contract and make recommendations to Council in relation to varying the contract as and when necessary.

## **DETAILS**

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

At the Committee meeting held on 14 November 2005 it was resolved as follows:-

- 1 RECEIVES:
  - (a) Item 2 – CEO Employment Contract Review;
  - (b) the memorandum from the Chief Executive Officer in relation to his employment contract dated 14 November 2005 marked 'Private and Confidential' and forming Attachment 2 hereto;
- 2 REQUESTS that legal advice be provided to the next meeting of the CEO Performance Review Committee in relation to the issues raised in the CEO's memorandum referred to in 1(b) above.

Subsequent to the above meeting the Director Corporate Services met with the solicitors who originally drafted the CEO Employment Contract and provided them with the relevant contractual issues and background information to assist them in preparing appropriate advice for the Committee.

The issues under review are outlined in both attachments 1 and 2 appended to this report.

**Link to Strategic Plan:**

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

**Legislation – Statutory Provisions:**

Section 5.39 of the Local Government Act 1995 (the Act) together with Local Government (Administration) Regulations cover legislative requirements relating to contracts for CEOs and senior employees. The CEO's Employment Contract is compliant with these legislative requirements.

Clause 18.4 of the Employment Contract of the CEO allows for variation or replacement by agreement in writing signed by the parties.

**Risk Management considerations:**

Any recommendations made by the committee will be referred to Council for its ultimate decision.

**Financial/Budget Implications:**

There was a need to refer recommended contractual variations to solicitors for consideration. The costs associated with this will be covered by the centralised legal costs provision, contained within the 2005/06 Budget as varied by Council on 21 February 2006.

**Policy implications:**

Not Applicable.

**Regional Significance:**

Not Applicable.

**Sustainability implications:**

The 2005/06 Budget was structured on financial viability and sustainability principles. As detailed above, any legal costs associated with variations to the contract will be covered by the budget.

**Consultation:**

Not Applicable.

## COMMENT

Arrangements have been made for legal representatives to brief the Committee on the issues previously raised and any additional concerns that may have since arisen.

This, together with the information contained within this report and its attachments, is provided to assist the Committee in their review and in formulating any recommended changes for referral to Council.

## ATTACHMENTS

Attachment 1 "Confidential Report" CEO Employment Contract Review 14 November 2005

Attachment 2 "Confidential Memo" CEO Employment Contract Review 14 November 2005

## VOTING REQUIREMENTS

Simple Majority

**OFFICER'S RECOMMENDATION:** That the CEO Performance Review Committee GIVES consideration to varying the Employment Contract of the CEO and refers its recommendations to Council.

Extensive discussion took place with respect to Jackson McDonald's discussion paper (Confidential Attachment 1 refers) relating to variation of specific clauses contained within the Employment Contract of the CEO. Representatives from law firm, Jackson McDonald were requested to redraft clauses as discussed for consideration by Commissioners at the meeting of the CEO Performance Review Committee to be held on Tuesday, 28 March 2006, commencing at 5.00 pm.

Chief Executive Officer entered the Room at 1920 hrs and requested it be recorded that he was in attendance at the meeting to respond to questions from Commissioners. Chief Executive Officer advised his intention to declare a financial interest, as referred to earlier in the meeting.

*Cmr Smith entered the Room at 1925 hrs.*

## ADJOURNMENT OF MEETING

**MOVED** Cmr Anderson, **SECONDED** Cmr Fox that the meeting be **ADJOURNED**, the time being 2020 hrs, to be resumed on Tuesday, 28 March 2006 at 5.00 pm.

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**RESUMPTION OF MEETING – 28 MARCH 2006**

**MOVED Cmr Anderson SECONDED Cmr Smith that the meeting be RESUMED.**

**The Motion was Put and**

**CARRIED (4/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson and Smith

**The Meeting RESUMED at 1710 hrs on 28 March 2006, the following persons being present:**

CMR J PATERSON – Chairman  
CMR P CLOUGH  
CMR M ANDERSON  
CMR A FOX *from 1713 hrs*  
CMR S SMITH

**Officers:**

Chief Executive Officer: G HUNT *from 1806 hrs to 1835 hrs*  
Director, Corporate Services: P SCHNEIDER  
Committee Clerk: L TAYLOR

**In attendance:**

Ms Maria Saraceni Jackson McDonald, Solicitors

**Apology**

Late Apology – Cmr Fox

*Cmr Fox entered the Room at 1713 hrs.*

Discussion ensued in relation to the redrafted clauses of the CEO's Employment Contract as prepared by Jackson McDonald following the meeting held on 21 March (Confidential Attachment 2 refers).

**MOVED Cmr Clough, SECONDED Cmr Fox that Clause 9.2 be DELETED.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**MOVED Cmr Smith, SECONDED Cmr Fox that Clause 11.3 (f) be AMENDED to read:**

**11.3 (f) The report of the Performance Review Committee is to contain:**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**MOVED Cmr Fox, SECONDED Cmr Clough that in relation to Clause 12.6 (f), the word “installed” be DELETED.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

Further discussion took place in relation to the amendments to the contract as requested by Commissioners at the meeting held on 21 March 2006.

**MOVED Cmr Smith, SECONDED Cmr Anderson that Clause 15.2 (b) be AMENDED to read as follows:**

**15.2 (b) access Council facilities unless *required* to attend a meeting *at the Council offices*;**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**MOVED Cmr Fox, SECONDED Cmr Anderson that the CEO be invited to join the meeting at this point to discuss proposed amendments to his Employment Contract.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

Chief Executive Officer entered the Room at 1806 hrs and requested it be recorded that he was in attendance at the meeting to respond to further questions from Commissioners in relation to requested variations to his Employment Contract.

**MOVED Cmr Smith, SECONDED Cmr Fox that in relation to Clause 14.7 (b) the following words be DELETED:**

**“.....in accordance with the relevant policy and procedure.”**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**MOVED Cmr Anderson, SECONDED Cmr Smith that the following words be ADDED to the end of Clause 14.7 (c):**

**“.....within 30 days from his return to work.”**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

**MOVED Cmr Fox, SECONDED Cmr Anderson that Clause 14.7 (b) be AMENDED to reflect that more than four (4) conferences outside of the State require the approval of Council.**

**The Motion was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

*Chief Executive Officer left the Room at 1835 hrs.*

**MOVED Cmr Fox, SECONDED Cmr Clough that the Employment Contract for the CEO, as amended, be presented to the Council meeting to be held on 4 April 2006, subject to the document reflecting the changes as agreed to by the Committee.**

**AMENDMENT MOVED Cmr Anderson, SECONDED Cmr Smith that the Motion be reworded to read:**

**“Subject to the amendments that have been reflected in the final document as agreed to by the Committee, the Employment Contract for the CEO be presented to the Council meeting to be held on 4 April 2006.”**

**The Amendment was Put and**

**CARRIED (5/0)**

**In favour of the Amendment:** Cmr Paterson, Clough, Anderson, Smith and Fox

**The Original Motion as amended, being:**

**That, subject to the amendments that have been reflected in the final document as agreed to by the Committee, the Employment Contract for the CEO be presented to the Council meeting to be held on 4 April 2006.**

**was Put and**

**CARRIED (5/0)**

**In favour of the Motion:** Cmr Paterson, Clough, Anderson, Smith and Fox

## **CLOSURE**

There being no further business, the Chairman declared the Meeting closed at 1837 hrs; the following Commissioners being present at that time:

CMR J PATERSON  
CMR P CLOUGH  
CMR M ANDERSON  
CMR A FOX  
CMR S SMITH