

**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)**

Ward	: All
Category	: Operational
Subject Index	: Personnel File
Customer Index	: Personnel File
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item C18/5655 - Chief Executive Officer Recruitment - Special Meeting of Council 12 November 2018. Item M19/5711 - Chief Executive Officer Performance Review - Special Meeting of Council held 4 November 2019. Item M19/5711 Chief Executive Officer Performance Review - Governance Committee held 18 November 2020 Late Item M19/5721 – Governance Committee Meeting – Chief Executive Officer Performance Review Process Ordinary Council Meeting held 19 November 2019. Item M19/5726 – Chief Executive Officer Performance Review Process – Governance Committee – 2 December 2019 Item M20/5728 – Chief Executive Officer Performance Review – Governance Committee – 5 February 2020 Item M20/5729 – Chief Executive Officer Performance Review – Special Meeting of Council held 11 February 2020 M20/5781 – Planning For CEO Performance Appraisal – Governance Committee – 19 October 2020 M20/5789 – Planning for CEO Performance Appraisal – 17 November 2020 Ordinary Meeting of Council
Works Program	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Dean McAuliffe Manager People Services

**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)**

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	<b>Information</b>	<b><i>For the Committee to note.</i></b>

**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)****KEY ISSUES / SUMMARY**

- In accordance with Council resolution (Item C18/5655 – Chief Executive Officer Recruitment – Special meeting of Council 12 November 2018 a five year contract with the Chief Executive Officer (CEO) was entered into which became effective from 20 November 2018.
- In keeping with the requirements of the Local Government Act 1995 the CEO's contract contains a requirement for an annual review, and there are elements of the employment contract which must occur.
- The annual CEO performance review process is ultimately the determination of the Council. The operational management of the process is through the direction of the Mayor, on behalf of Council and the Governance Committee. The Governance Committee has been determined by the Council to be the reviewers of the CEO performance.
- It has been for the Governance Committee to discuss the CEO's performance, future expectations, performance criteria, performance development plan and review the salary package, for recommendation to the Council.
- Each year a defined process, which has been developed by the Administration, is reviewed by the Committee and adopted by the Council, incorporates a proposed performance survey to be completed by Elected Members.
- This year a consultant has been requested to review the CEO performance metrics and to review the performance review process and the consultant has sought comment from Committee Members.
- The 2019 review was concluded in February 2020 and the next 12 monthly review needs to be concluded by 11 February 2021, at the latest, but ideally by the end of December 2020.
- The then Presiding Member of the Governance Committee requested that an item be prepared for presentation to the Committee of "Planning the CEO Performance Appraisal".
- This matter was considered at the Governance Committee Meeting held 19 October 2020, where the Committee resolved to recommend to the Council that:
  - Mr Hutchison of Peopleistic Pty Ltd be engaged to review the existing CEO Performance Review process with the Governance Committee; and
  - following the process review the procurement process for a suitably qualified consultant to assist with the CEO Performance Review be commenced.
- The Governance Committee recommendations were presented to the 17 November 2020 Council Meeting where the Council deferred making a decision and referred the item back to the Governance Committee for further consideration.
- This matter was further considered by the Governance Committee at a meeting held 23 November 2020 and the Committee recommendation is dealt with in this report.

**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)****BACKGROUND**

The CEO was appointed on 20 November 2018. The *Local Government Act 1995* requires that the Council review the CEO's performance at least once a year in relation to every year of employment. In November 2019 the Council confirmed the process for the 2019 review, which was concluded in February 2020. Clause 7 of the CEO contract details that there needs to be a review of remuneration on an annual basis at a time that is no later than three months after the anniversary of the commencement date.

At the 18 November 2019 the Governance Committee recommended an amended performance review process which was then approved by the Council at the Ordinary Council meeting held 19 November 2019.

**That the Council approves the process for the Chief Executive Officer Performance Review as provided by the Mayor and amended by the Governance Committee – CEO Performance Review Process.**

The review was concluded in February 2020 and at the Special meeting of the Council held 11 February 2020 it was resolved:

**That the Council commence the process for the review of the Chief Executive Officer Performance, Performance Criteria and Remuneration Review for the period up to 30 June 2020 and then annually on that date thereafter. Any remuneration amendments are to take effect from 20 November of that same year.**

This resolution gave effect that the current review will cover the eight month period from November 2019 to 30 June 2020. This was to align with the end of the financial year and annual reporting period, and to ensure that future reviews will be completed by the outgoing Council and not be undertaken by newly Elected Members after biennial October elections.

The Local Government Act requires that a review be conducted "at least once a year in relation to every year of employment" so the current review will need to be concluded by 11 February 2021 at the latest, however, there is a preference to conclude the current review by the end of December 2020.

The next review period will be for the period 1 July 2020 to 30 June 2021.

The then Presiding Member of the Governance Committee requested that an item be prepared for presentation to the Committee on the "Planning the CEO Performance Appraisal". A report was prepared which was considered by the Governance Committee at its meeting held 19 October 2020.

The Governance Committee recommendation was presented to the 17 November 2020 Council Meeting and the Council resolved to defer the item and refer the report back to the Governance Committee for discussion and recommendation back to the Council at the December 2020 meeting or to a Special Meeting of Council.

**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)****DETAIL**

The Council had appointed Mr Todd Hutchison, Peopleistic Ply Ltd, to undertake work with the City on a process for the development of the Corporate Business Plan, now completed, and cultural change initiatives.

Following the completion of the Corporate Business Plan Mr Hutchison was also appointed to develop the CEO performance metrics for possible inclusion in the next CEO annual review and contract (1 July 2020 to 30 June 2021). The proposed metrics focus on five requirements areas: legislative / regulatory compliance; execution of approved plans; execution of Council meeting directives; operational effectiveness (internal); and customer relations effectiveness (external). It should be noted that the application of any amended metric would require agreement between the parties as per the CEO contract of employment as per clause 4 Performance Criteria and review and schedule 1 as per the process. **CEO Contract 2018.pdf**

Mr Hutchison had also been requested by an Elected Member(s) to provide facilitated advice on the CEO performance review process (flowchart). Mr Hutchison sought formal comment from Elected Members on the process and was looking at forming an Elected Members working group. It was intended that this group would provide recommendations on the performance review process, that would then be referred to the Administration for final review to ensure compliance against the CEO's contract, the *Local Government Act 1995* and to ensure procedural fairness and natural justice. Once assessed, the process was to be referred to the Governance Committee for consideration and referral to the Council for adoption.

For clarity Mr Hutchison and/or the working group were not being appointed to conduct the performance review as it still remains for the Council to appoint the Reviewer of the CEO performance in accordance with 4.3 - Selection of Reviewer – of the CEO's performance.

The future performance metrics have been developed and the review of the process flowchart was being undertaken and facilitated by Mr Hutchison. At the Governance Committee meeting held 19 October 2020 the Committee recommended that Mr Hutchison be formally engaged to undertake the process review and that he works through the existing process with the Governance Committee. The Committee also recommended that once the process had been reviewed that the CEO commence advertising for a consultant to assist with the review.

Mr Hutchison worked with the then Presiding Member of the Governance Committee and on 5 November 2020 the then Presiding Member presented an updated process map to the Manager People Services. The process map has subsequently been updated to align dates to scheduled meetings and reflect current position titles, responsibilities etc. and distributed to Elected Members in an Advice Note on 16 November 2020.

To progress the performance review the Committee needed to:

1. review the process,
2. review the survey tool, and
3. either reappoint the previous consultant or resolve to commence the advertising for a consultant and then undertake the selection and appointment process.

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The survey **CEO Appraisal Survey** was reviewed and amended by the Council at a Special Meeting of the Council held 4 November 2019 and the Council may wish to proceed with the same survey for this review.

There is also the opportunity for the Council to progress the review by reappointing, Mr John Phillips of JCP Consulting who assisted last year's review process. Should the Council resolve with his appointment this would result the removal of four steps of stage one of the process.

The Committee and the Council will also need to review and approve the new performance metrics. Clarification will be required to determine what period these metrics can be applied to as we are almost half way through the next review period i.e 1 July 2020 to 30 June 2021).

**STAKEHOLDER ENGAGEMENT****I. COMMUNITY**

No community consultation occurred during the period in question.

**II. OTHER AGENCIES / CONSULTANTS**

There has been no liaison with any other agencies or Consultants beyond Mr Hutchison.

**STATUTORY AND LEGAL IMPLICATIONS**

Section 5.16(1) of the *Local Government Act 1995*, states that "*Under and subject to section 5.17, a local government may delegate to a committee any of its powers and duties other than this power of delegation*"  
Absolute Majority required.

Section 5.23 (2)(a) of the *Local Government Act 1995* states that a meeting by a Council or Committee, or part of a meeting, may be closed to members of the public if a matter affecting an employee is being dealt with.

Section 5.38 of the *Local Government Act 1995* states the requirement to review a CEO's performance at least once a year in relation to every year of employment.

Section 5.39 (7) of the *Local Government Act 1995* states that a CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal.

**FINANCIAL IMPLICATIONS**

Costs will be incurred for the consultant to under the additional work described in this report.

The fee for the Performance Review Consultant, when appointed has been included in the 2020-21 operational budget. Any change to the salary package of the CEO as a result of the review, when conducted, will be reflected in the operational budget for 2020-2021.

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**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

The risk management implications of non-compliance with processes and legislative requirements may leave the City open to challenge on decisions or processes. There are no Environmental Management Implications in this report.

<b>Risk Statement &amp; Consequence</b>	<b>Level of Risk</b>	<b>Risk Treatment</b>
That milestone dates to complete the CEO Performance Review are critical dates not met.	<b>Low</b>	Develop and endorse a process, survey tool and appoint consultant to assist with the conduct of the CEO Performance Review.
That the performance Criteria/metrics for the next twelve months are not determined	<b>Low</b>	Defined process that includes this stage, adopt the reviewed performance metrics.

**POLICY IMPLICATIONS**

Not applicable

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The requirement for a performance review within a twelve month period is mandatory.

The alternative option to the Officer Recommendation is for the Committee/Council to advertise the appointment of a consultant, consider applications and for the Committee to recommend a consultant to the Council. Should this be preferred further delays to the process will occur. The Committee could also review and approve a new or amended survey tool. If this is desired but cannot be undertaken at this Committee Meeting then further delays to the process will occur.

**CONCLUSION**

This report provides an update to the Council on the current status of the planning for the CEO performance review. The report recommends that the process be reviewed and approved and in order to comply with the review date that the previous consultant appointment be reappointed and the survey tool from the last review be used.

It was intended that the current review was to be completed by the end of December 2020 however; with the deferral of this matter at the November Meeting this is now unlikely. To comply with the legislative requirement that a review be undertaken within a 12 month period, the current review must be concluded by 11 February 2021.

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**M20/5798 – PLANNING FOR CEO PERFORMANCE APPRAISAL (REC) (CONFIDENTIAL ATTACHMENTS)****COMMITTEE RECOMMENDATION**

**That the Council:**

- 1. appoint Mr John Phillips of JCP Consulting to assist with the November 2019 – June 2020 CEO performance review.**
- 2. approves the process for the Chief Executive Officer Performance Review as presented, subject to the deletion of the processes involved in advertising and selecting the consultant and the addition of a CEO Question and Answer session and presentation to and discussion with the Governance Committee being added to the first box in stage 4.**
- 3. approves a modified survey tool using the 2019-2020 CEO Performance Criteria to be used for the 2020 Chief Executive Officer Performance Review.**