

ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 17 May 2022
CONFIDENTIAL AGENDA BUSINESS ITEM

Item:	8.1
Responsible Officer:	Megan Sutherland Executive Manager Organisational Development Corporate Services
Subject:	Appointment of Consultant to undertake the CEO Performance and Remuneration Reviews
For:	Decision

1. Appointment of Consultant to undertake the CEO Performance and Remuneration Reviews – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- Chief Executive Officer, Andrew Aitken
- Director Community Capacity, David Waters
- Director Corporate Services, Terry Crackett
- A/Director Development & Regulatory Services, Melissa Bright
- Director Infrastructure & Operations, Peter Bice
- Executive Manager Governance & Performance, Lachlan Miller
- Governance & Risk Coordinator, Steven Watson
- Executive Manager Organisational Development, Megan Sutherland

be excluded from attendance at the meeting for Agenda Item 8.1: Appointment of Consultant to undertake the CEO Performance & Remuneration Review in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3)(d) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) that would, on balance, be contrary to the public interest, the disclosure of which could reasonably be expected to prejudice the commercial position of the business which supplied the information and to confer a commercial advantage on a third party.

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. Appointment of Consultant to undertake the CEO Performance and Remuneration Reviews – Confidential Item

SUMMARY

Council requires the services of an independent consultant to undertake the CEO's performance and remuneration review for the 2021-2022 year.

The purpose of this report is to receive the recommendation from the CEO Performance Review Panel regarding a consultant to undertake the 2021-22 review and for Council in consideration of that recommendation to resolve a position in relation to the consultant.

The use of an external consultant with required human resources experience satisfies the legal requirement to obtain and consider the advice of a qualified independent person on the CEO's performance review.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted**
- 2. To receive the recommendation from the CEO Performance Review Panel regarding the appointment of a consultant to conduct the 2021-22 CEO Performance Review.**
- 3. To determine that Rebecca Hunt of McArthur (SA) Pty Ltd fulfils the qualified independent person provisions of s120A(2) of the *Local Government Act 1999* to provide advice in relation to the 2021-22 CEO Performance Review**
- 4. That Council appoints McArthur (SA) Pty Ltd to undertake the CEO performance and remuneration review for 2021-2022 at a contract value of \$4,950.**

1. BACKGROUND

At its meeting held on 22 March 2022 Council resolved:

12.6 CEO Performance Review Process and Schedule

Moved Cr Mark Osterstock
S/- Cr Chris Grant

56/22

Council resolves:

- 1. That the report be received and noted.**
- 2. To undertake the 2022 CEO Performance Review and Remuneration Review using an external consultant.**
- 3. That the 2022 CEO Performance Review Panel (CEOPRP) Meeting and Process Schedule – External (Caretaker Period) as contained in Appendix 2, be adopted and the CEOPRP Presiding Member be delegated to amend the Process Schedule meeting/workshop dates as required in consultation with the Administration.**

Carried Unanimously

Request for Quote (RFQ)

The specification included in the Request for Quote (RFQ) detailed the two components required to be undertaken by the consultant, being the CEO performance review and the remuneration review.

Further the Specification in the Request for Quote required that the consultant was able to meet the work defined in the 2022 CEO Performance Review Panel Meeting and Process Schedule – External (Caretaker Period) (the “Schedule”) and to meet the legislative requirement for a qualified independent person (as discussed in legal implications below).

Proposals (quotations) were sought from three consultants, more than meeting the requirements of Council’s *Procurement Policy*.

One consultant lodged a proposal on time, one consultant lodged a late proposal and one declined to submit after deciding they were unable to commit to and meet the timeframes.

2. ANALYSIS

➤ **Strategic Management Plan/Functional Strategy/Council Policy Alignment**

Strategic Plan 2020-24 – A brighter future

Goal Organisation

Objective O1 We have the right people with the right knowledge and skills in the right jobs and they are supported and developed

Priority O1.4 Continue to support all staff through training, mentoring, coaching and development to enable the achievement of organisational and community goals

The requirement for the Panel, under delegation from Council, to undertake regular review of performance enables accountability to be demonstrated and any recommendations on performance and development of the CEO to be identified, supported and managed.

➤ **Legal Implications**

The CEO Performance Review Panel is a Section 41 Committee of Council under the *Local Government Act 1999* (the “Act”).

Section 99 of the Act sets out the role of the Chief Executive Officer and these factors are incorporated into the position description. An assessment of performance against the elements of the position description and the CEO Performance Targets form the CEO Performance Review process.

The regular review of the CEO’s performance needs to be undertaken appropriately to ensure the CEO is provided with a fair and consistent approach to performance reviews and that the process would stand up under scrutiny, as the process, review tool and outcomes of the review directly affect decisions made in relation to the CEO, his performance, remuneration and employment contract.

CEO Performance Review – s102A

The *Statutes Amendment (Local Government Review) Bill 2020*, underwent many changes before being finalised as the *Statutes Amendment (Local Government Review) Act 2021* (the “Amendment Act”), as discussed in the report to the Panel in 11 November 2021.

Specific legislative changes arising from the Amendment Act related to the CEO’s employment are now contained in Chapter 7 – Council staff, Part 1 – Chief Executive Officer of the LG Act.

Section 102A is a new section which provides that a council must review the performance of its CEO:

- (a) at least once on each year
- (b) if relevant, before reappointment of the CEO

To meet the updated *Local Government Act 1999* requirements (below), it is important that a consultant providing advice on the CEO performance review meets the definition of a **qualified independent person**.

102A—Chief executive officer—performance review

- (1) A council must review the performance of its chief executive officer—
 - (a) at least once in each year that the chief executive officer holds office as chief executive officer; and
 - (b) if relevant, before reappointment of the chief executive officer.
- (2) The council must obtain and consider the advice of a qualified independent person on a review under subsection (1).
- (3) In this section—

qualified independent person means a person who is—

 - (a) not a member or employee of the council; and
 - (b) determined by the council to have appropriate qualifications or experience in human resource management.

➤ **Risk Management Implications**

The appointment of an independent consultant to undertake the CEO Performance and Remuneration Review will assist in mitigating the risk of:

Deficient CEO performance review practices resulting in a lack of accountability and loss of stakeholder confidence.

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Low (2D)	Low (2D)

Non-achievement of CEO Performance Targets resulting in loss of community benefit and/or opportunities and/or stakeholder confidence.

Inherent Risk	Residual Risk	Target Risk
High (3B)	Medium (3C)	Medium (3C)

Note: there are many other controls that also assist in managing these risks.

➤ **Financial and Resource Implications**

Costs associated with using an external consultant to undertake the CEO Review process are provided for within the draft 2022-2023 Governance and Performance Department budget.

➤ **Customer Service and Community/Cultural Implications**

There is a community expectation that the performance of the CEO is reviewed in a sound, fair and comprehensive manner.

➤ **Sustainability Implications**

Not applicable.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: The CEO performance Review Panel considered the CEO performance and remuneration review Consultant at its 12 May 2022 meeting.

Council Workshops: Not applicable.

Advisory Groups: Not applicable.

External Agencies: Norman Waterhouse Lawyers
Performance Review & Remuneration Consultants.

Community: Not applicable.

Proposals

Details of the proposal against the RFQ is provided (**Appendix 1**).

Of the two proposals received, only one is able to be accepted as the second was received past the quote response deadline. Through advice from Council's procurement and governance areas, Council are unable to accept the second quote.

Consultant A - Rebecca Hunt of McArthur (SA) Pty Ltd

The consultant meets the requirements of the RFQ for both CEO performance review and remuneration review processes.

The consultant has extensive experience in providing a range of human resource services to companies overseas and in Australia, working with all levels of Government and commercial clients. This includes undertaking executive performance and remuneration reviews throughout the Local Government sector servicing regional, rural, and metropolitan Councils and other organisations in South Australia. The consultant holds tertiary qualifications however not specifically related to human

resources management. She is however a member of the Australian Human Resources Institute.

Referee reports from client councils confirmed a high degree of satisfaction with the performance review services provided by the consultant.

Given the above, it is open for the Council to form a view as to whether she holds 'appropriate qualifications or experience in human resources management' and therefore her suitability as a 'qualified independent person'.

Consultant B

Unable to be included as received after the deadline.

Consultant C

Decided not to respond.

CEO Performance Review Panel Recommendation

The Panel considered a report at its 12 May 2022 meeting regarding the RFQ process for the CEO Performance Review and Remuneration Consultant. In considering the requirements of s102A and the work to be undertaken to complete the 2021-22 CEO Performance and Remuneration Review in accordance with the Schedule, the Panel resolved as follows (minutes unconfirmed):

10.1.1 Advice on Consultant – Confidential Item

Moved Mayor Jan-Claire Wisdom
S/- Cr Chris Grant

PRP9/22

The CEO Performance Review Panel resolves:

- 1. That the report be received and noted**
- 2. To recommend to Council that McArthur (SA) Pty Ltd be appointed to undertake the CEO performance and remuneration review for 2021-2022.**

Carried

3. OPTIONS

The Council has the following options:

- i. To appoint the consultant (Consultant A) who has provided a proposal. This would facilitate the process being undertaken as per the Schedule. It will also work positively toward meetings the new legal obligations. (Recommended)**

- II. Not appoint a consultant. This would result in a breach of s102A(2) in relation to receiving the advice of a qualified independent person. (Not Recommended)
- III. Seek further proposals from other consultants. This would negatively impact the successful completion of the review to meet the timeframes in the Schedule. (Not Recommended)

4. APPENDIX

- (1) Consultant Quote Comparisons

Appendix 1

Consultant Quote Comparisons



2022 CEO PERFORMANCE AND REMUNERATION REVIEW CONSULTANT REQUEST FOR QUOTE COMPARISONS

Quote Evaluation Criteria	Consultant A	Consultant B	Consultant C
1. Completion of the Form of Quote	Completed required form and information	Unable to accept quote as provided after the deadline	Decided not to provide a quote
2. Compliance with the Specifications	Detailed work to be undertaken in accordance with the Schedule		
3. Warranties and guarantees of services	No specific statement made		
4. Timeframe for the completion of the Services	Work will be completed in accordance with the schedule of dates provided in the Schedule		
5. Demonstrated experience in completing similar projects	This consultant has experience undertaking CEO performance and remuneration reviews in numbers of South Australian Council's		
6. Referees; and	5 Local Government referees were provided		
7. Insurance.	Relevant insurances provided and current		

3. Advice on preferred Consultant to undertake the CEO Performance and Remuneration Reviews – Duration of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 8.1 in confidence under sections 90(2) and 90(3) (d) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	be retained in confidence until the final CEO Performance and remuneration review report is received by Council
Related Attachments	be retained in confidence until the final CEO Performance and remuneration review report is received by Council
Minutes	be retained in confidence until the final CEO Performance and remuneration review report is received by Council
Other	NIL