

**CITY OF MARION
AUDIT COMMITTEE MEETING
10 August 2010**

**REPORT RELATING TO:
Excellence in Governance**

Originating Officer: Andrew Lindsay, Manager Organisational Development
Director: Kathy Jarrett, Acting Director Community & Corporate Development
Subject: Internal Audit Report – Enterprise Bargaining Calculation
Ref No: AC100810F02
File No: 12.44.2.1

If the Audit Committee so determines, this matter may be considered in confidence under Section 90 (3)(h) of the Local Government Act 1999 on the grounds that the report contains legal advice.



Mark Searle
Chief Executive Officer

RECOMMENDATION:

1. That pursuant to Section 90(2) and (3)(h) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following persons Mark Searle (Chief Executive Officer), John Valentine (Acting Director Governance), Kathy Jarrett (Acting Director Community and Corporate Development) Kate McKenzie (Acting Manager Governance), and Jaimie Thwaites (Acting Executive Officer, Council Business) be excluded from the meeting as the Committee receives and considers information containing legal advice.

STRATEGIC OBJECTIVE:

Recognised for its Excellence in Governance

EG3.2 Ensure adequate resourcing of structures and systems of independent review e.g. Audit Committee, internal audit, Human Synergistics, Business Excellence

REPORT OBJECTIVE AND EXECUTIVE SUMMARY

Council's enterprise bargaining arrangements applying to its administration based employees employed pursuant to the South Australian Municipal Salaried Officers Award (excluding EMG and CMG members) provides for salary increases to be set and maintained at 6th highest within a reference group of 15 councils. In May 2010, it became apparent that Council had been paying administration based staff who fall under these arrangements such that they ranked 3rd highest of all councils in the reference group. An internal review was undertaken by Council staff to confirm the 3rd ranking relativity within the reference group and understand the reasons for the move from 6th to 3rd ranking.

In response, Ernst & Young were engaged to review the calculations performed by the Council to understand why the error occurred, what measures Council can put in place to prevent this from happening in the future and estimate the quantum of the increased salary expense incurred as a result of paying staff such that they ranked 3rd highest of all councils in the reference group. Additionally Council sought legal advice from Norman Waterhouse as to the options available to it to redress the inadvertent move to 3rd ranking.

The purpose of this report is to present to the Audit Committee a copy of the audit findings in relation to the review of council's enterprise bargaining calculation, and to seek the Committee's feedback accordingly.

RECOMMENDATION:

That the Audit Committee:

- 1. Note and provide feedback on the audit findings as detailed in the Ernst & Young Audit report, Managements response to those findings and process improvement ideas and the proposed approach to redressing the inadvertent movement of salary rates to a 3rd ranking.**
- 2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Committee orders that this report, the minutes arising from this report and any other information distributed at the meeting having been considered in confidence under Section 90(2) and (3)(h) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2010.**

BACKGROUND:

The City of Marion has since July 2004 had in place arrangements by way of Enterprise Bargaining Agreements (refer Attachment 1) to ensure salary rates for administration based employees employed pursuant to the South Australian Municipal Salaried Officers Award (excluding EMG and CMG) are set and maintained at 6th highest within a reference group of 15 councils. The current enterprise agreement which nominally expired as at 30 June 2010 is the second such agreement to contain the 6th position salary arrangements. This agreement is currently the subject of renegotiation.

The Enterprise Bargaining 6th ranking salary arrangements are prescribed by way of Clause 28 of the 2004 Enterprise Agreement and Clause 6 of the Enterprise Agreement Supplemental

Memorandum of Understanding shown at Attachment 1. Council undertook a review in May 2010 as prescribed in these arrangements to determine its annual salary position amongst the reference group of 15 Councils. This review concluded that the City of Marion was ranked 3rd highest of all councils in the reference group.

DISCUSSION:

The May 2010 review identified a difference in salary data provided by 7 of the 15 reference councils recorded in the prior May 2008 review process. In response to these findings a decision was made to engage Council's internal auditors Ernst & Young to conduct an audit of the May 2008 review process to confirm the findings of Council staff, understand why the error occurred, what measures Council can put in place to prevent this from happening in the future and estimate the quantum of the increased salary expense incurred.

Provided at Appendix 3 is copy of the Audit Report prepared by Ernst & Young. In summary the audit findings are;

- The May 2008 review included incorrect salary data provided by 7 of the 15 reference councils.
- This incorrect salary data led to the incorrect conclusion by Council that its annual salary was ranked at 9th position.
- Based on the above conclusion Council then applied the required salary adjustment factor in increasing salaries retrospectively from 1 July 2007 by 1.09%
- The application of the salary adjustment factor had the resultant unintended affect of moving Council from the required 6th ranked position to 3rd ranked.
- The total gross income (inclusive of 'ad hoc' payments) of the 1.09% adjustment from 1 July 2007 to the final pay run of the 2009 – 2010 financial year amounts to \$285,144.

Appendix 4 sets out Managements response to the process improvement ideas set out in Section 3 (page 6) of the Ernst & Young Audit Report.

A number of confidential briefings on this matter have been provided to Elected Members, most recently at the 3rd August 2010 Elected Member's Forum.

Council has sought legal advice from Norman Waterhouse as to the legal and industrial options available to it to redress the inadvertent move to 3rd ranking. Provided at Appendix 2 is a copy of the advice of Sathish Dasan of Norman Waterhouse Lawyers. In summary this advice states;

- An employer is prima facie entitled to recover monies paid by mistake.
- However the law does not permit recovery where an employee/s has changed his or her position (e.g. financial commitments) such that they would suffer loss if forced to repay.
- Options available for Council are;
 - Not seek recovery of overpayments
 - Stop overpayment and agree not to recover overpayments
 - Not seek recovery of overpayments and recoup the overpayment from future EA increases.
 - Seek recovery of overpayments through periodic salary deduction over a negotiated period.
 - Put to employees the option of repaying overpayments through salary deduction or reduction of future pay increases.
 - Use the EA conflict resolution procedure before the South Australian Industrial Relations Commission for conciliation and/or arbitration of an outcome.

Following full consideration of all matters and the briefing of Elected Members it is proposed to not seek recovery of overpayments and utilise the current Enterprise Agreement negotiations to reinstate Councils 6th ranked position through future pay increases.

Modeling of this approach has been undertaken to determine the quantum of such future pay increase (refer Attachment 5). This has confirmed a 3.27% pay increase applied over the 3 years term of the next Enterprise Agreement will reinstate a 6th ranking relativity.

The proposed 3.27% pay increase is well within Councils 2010-2010 budgeted wage provision of 4.5%.

Full and frank discussion concerning these matters has occurred with the Enterprise Agreement Development Team comprising management, staff and ASU representatives. Whilst the ASU bargaining claim includes a demand for 6% per annum pay increases over 3 years there has been an appreciation of the circumstances of the overpayment and general consensus forming for the need to reinstate the 6th ranking relativity.

Feedback is now sought from the Audit Committee in relation to the audit findings and management's associated responses.

CONCLUSION:

The Ernst & Young Audit Report provided in this report has been undertaken in response to Council becoming aware that it has been paying administration based staff employed pursuant to the South Australian Municipal Salaried Officers Award (excluding EMG and CMG) such that they ranked 3rd highest where the enterprise bargaining arrangements provides for salary increases to be set and maintained at 6th highest within a reference group of 15 councils.

The key focus of the Audit was to review the calculations performed by the Council to understand why the error occurred, what measures Council can put in place to prevent this from happening in the future and estimate the quantum of the increased salary expense incurred as a result of paying staff such that they ranked 3rd highest of all councils in the reference group.

The recommendations contained within the Report have been addressed by management resulting in the establishment of an extensively improved process that has been process mapped.