Attachment 1
to
item 161

InConsult Pty Ltd Report on the
Review of Council's Third Party
Relationship with
Peppercorn Services Inc

Hawkesbury City Council

HAWKESBURY CITY COUNCIL

REVIEW OF 3RD PARTY RELATIONSHIPS

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1. INTRODUCTION

Hawkesbury City Council has relationships with a number 3rd parties for delivery of services to and within the community. Council understands the importance of managing risk associated with these services.

Following a series of risk workshops across Council which identified a number of risks relating to 3rd parties, Council has requested assistance in facilitating a review of corporate governance and oversight of Peppercorn Services Inc. (Peppercorn) who provide a range of community services on behalf of Council.

Peppercorn was established by Hawkesbury City Council in 2001 to operate Council's externally funded community services and to facilitate the community management of these services. Peppercorn works to deliver on a number of objectives in Council's Community Strategic Plan and its motto of "Bringing Hawkesbury Together" reflects this engagement. Council's involvement in the operations of Peppercorn is by the appointment of officers and a councillor to the Board, direct funding from Council and joint grant applications between Peppercorn and Council.

Peppercorn is therefore seen as associated with Council not withstanding some services being delivered from its own grant funding. Any failure to mitigate risk or other issues or incidents in relation to delivery of services on behalf of Council may have legal, reputational or financial consequences for Council. Furthermore, due to the symbiotic relationship, any governance failures, issues or incidents in its overall management or delivery of non-Council related services may also have a reputational impact for Council.

The review of Peppercorn will be used to inform Council's approach to:
- the oversight of 3rd party relationships
- developing standards for due diligence, contractual arrangements and monitoring and oversight to ensure that risks to Council are appropriately managed in relation to other 3rd party relationships.

2. REVIEW SCOPE AND ACTIVITIES

This report details the outcome of a high level review undertaken by InConsult Pty Ltd on behalf of Hawkesbury City Council in relation to Peppercorn Services Inc.

In order to conduct the review and evaluate Council's relationship with Peppercorn, we undertook the following activities.

- Identified and reviewed relevant Council governance and oversight standards (e.g. delegations, fraud, business continuity, procurement, code of conduct, conflicts of interest, business ethics)
- Reviewed applicable governance instruments (e.g. committee charters, delegations, terms of reference), legal structure (constitution) and service standards (e.g. legal contract, SLA, grant agreement).
- Met with Meagan Ang, Community Services Manager, Hawkesbury City Council who is responsible for oversight of Peppercorn Inc to discuss activities carried out by Peppercorn and associated risks that have the potential to impact on Council in terms of Health and Safety, Environment, Finance, Operations and Reputation.
- Met with Andrew Tuck, Executive Officer, Peppercorn Services Inc. to confirm activities and governance arrangements, discuss issues and challenges, risks, opportunities etc. that have the potential to impact on Council in terms of Health and Safety, Environment, Finance, Operations and Reputation.
- Identified key elements of better practice in managing third party relationships and evaluate the application of Council's governance and oversight standards to Peppercorn.
- Conducted a compliance audit of Peppercorn and Council compliance to relevant governance instruments and financial requirements. We considered:
    - Governance
    - Risk Management
    - Business Continuity
    - Privacy and Confidentiality
    - Transparency and reporting
    - Application of Council policies such as Code of Conduct, Procurement Policy

3. FINDINGS AND RECOMMENDATIONS

In conducting the review, we examined the documentation provided, conducted interviews and assessed the design and implementation of the existing 3rd party management arrangements. In doing so we examined whether the governance and risk management framework of Peppercorn Inc was reasonable and provided appropriate assurance to Hawkesbury City Council in relation to the risks to Council's reputation and financial position.

In conducting the review, we considered a range of sources of better practices in managing 3rd party relationships and assessing governance and risk management:

- ISO 37500 Outsourcing
- APRA Prudential Standard CPS 231 Outsourcing
- Promoting Better Practice (PBP) Checklist
- PBP Supplementary Checklist – Review of Collaborative Arrangements
- Governance Health Check Guide to Good Governance in Local Government (ICAC / LGMA)
- CivicRisk Mutual (Council's insurer) Continuous Risk Improvement Program Audit Tool

In conducting the review of Peppercorn, an assessment was made against these better practice criteria and the results documented in the 3rd Party Questionnaire. It should be noted however that not all aspects of these better practices may be appropriate for the size and business model of the organisation and there may be alternate methods of meeting the objective of the criteria.

For each recommendation, we have utilised the following priority rating criteria to guide management in the implementation of our recommendations.

High Priority. Most important in enabling effective management of risk

Medium Priority. Important to enhance management of risk

Low Priority. Important consideration to enhance efficiency and / or effectiveness

3.1 Design of Council's outsourcing framework

	Priority: High
Observations & implication	**Recommendations**
Council has in place a governance and risk management framework for its operational processes. This includes appropriate policies covering conflicts of interest, conduct, ethics, fraud and procurements. Council does not however have an explicit framework which outlines the: • approach to be followed when considering a decision to engage a 3rd party to carry out an ongoing activity on behalf of council • minimum criteria to be specified in a contract • required monitoring and oversight of a 3rd party in performing activities or delivering services to or on behalf of Council It is acknowledged that procurement policies and procedures may be applied in certain circumstances however they are not always relevant when Council obtains funding for an existing 3rd party to provide an activity or service. **Implication** A documented outsourcing framework would provide a consistent approach to conducting due diligence and risk identification to ensure that Council understands the risks involved with engaging with a 3rd party and that appropriate mechanisms are put in place to mitigate these risks.	1. Council to develop an explicit policy and procedures for material outsourcing arrangements. The documented process should cover: • Business case • Due diligence and risk assessment • Minimum contract requirements • Monitoring and reporting This should also include how to apply the procedures upon renewal of an existing relationship or when extending a relationship to other services. See Appendix A for Sample Policy Structure. 2. Council to ensure that copies of all policies expected to be complied with by 3rd parties (either in policy scope or stated in contract) are issued to them annually.

3.2 Council Contract with Peppercorn

	Priority: High
Observations & implication	**Recommendations**
Hawkesbury City Council entered into a Memorandum of Terms of Delegation with Peppercorn Services Inc in October 2013. This is a legally binding contract which provides the framework for delivery of services. The contract appears to end 4 years from date of Council resolution therefore may no longer be in force. The contract details scope of arrangement and services, service levels and performance requirement however it is understood these have changed. The current contract does not include clauses detailing requirement in relation to: • Pricing and Fee Structure • Confidentiality • Privacy • Information Security • Business continuity management • Sub-contracting • Audit and monitoring procedures • Reporting – content and frequency for individual services • Default arrangements and termination • Dispute resolution (mediation service) **Implication** A document which details the rights and obligations of both parties is essential to managing risk and ensuring expectations of both parties is clear and easily understood. If the document does not contain appropriate clauses then services may not be provided in the manner expected, risks may not be managed appropriately, and disputes may arise.	3. Council, in conjunction with Peppercorn, to review and revise the Memorandum of Terms of Delegation to ensure that relevant clauses are included to provide certainty to both parties and the contract can operate as a master agreement governing the relationship for all services delivered on behalf of Council. 4. Council to ensure a contract is entered into for each service delivered by Peppercorn on behalf of council. This will ensure that any Council requirements not included in the grant funding agreement are explicitly addressed. 5. Council seek legal advice to ensure the contract with Peppercorn mandates service levels related to service delivery, business continuity and risk analysis and response. These are all issues that the review uncovered which could be better controlled if specified in a contract.

3.3 Peppercorn Board and Organisational Governance

	Priority: Low
Observations & implication	**Recommendations**
The governance framework of Peppercorn Services Inc. is derived from its constitution which was updated in 2019. Peppercorn operates in a complex legal and regulatory environment therefore sector knowledge, specific skills and experience is required. The Board comprises representatives from Hawkesbury City Council, Anglicare and Hawkesbury District Health Service. Board members are provided with the complex and comprehensive Peppercorn Essentials Induction Kit (Peppercorn Essentials, Governance Essentials, Peppercorn In-Depth and Governance In-Depth). Peppercorn has policies in place outlining responsibilities of the Board, Governance Structure and Committees, Board Relationship with Management and Role and Responsibility of Executive Officer. **Implication** Failure to fully understand the legal requirements and fiduciary duties of Board members may result in ineffective governance.	6. It is suggested that Peppercorn encourage directors to undertake the Australian Institute of Company Directors course.

3.4 Peppercorn Policy Governance

	Priority:	Low
Observations & implication	**Recommendations**	

Observations & implication	Recommendations
Peppercorn has in place a comprehensive suite of policies and procedures, which is more expansive than often seen in larger organisations. These policies and procedures are generally current and up-to-date with most documents labelled with approval date and next review date. These policies and procedures are extensive and comprise over 200 documents and cover the governance and risk management topics expected. A number of these policies reference relevant standards however are not necessarily aligned with these standards. There also appears to be potential duplication of some policies and procedures listed on the Policy Register. For example: • Pro 2-17-8 Organisational Risk Management • Pro 2-26-1 Organisational Risk Management It is acknowledged that the Aged Care Quality Standards Assessment commissioned by Peppercorn also recently made several recommendations in relation to policy governance. **Implication** A large number of related procedures may: • make it difficult to ensure consistency; • may be challenging to maintain and communicate efficiently and effectively; and • may be difficult for stakeholders to read and understand. Strong policy governance is essential to effective compliance however a balance is required to ensure efficient and effective rather than leading to a tick-a-box compliance culture.	7. It is suggested that overtime Peppercorn consider whether some policies could be combined with the relevant procedure and some procedures be combined to form an effective procedural manual.

3.5 Peppercorn's Risk Management Framework

	Priority:	Medium
Observations & implication	**Recommendations**	

Observations & implication	Recommendations
The Executive Officer conducts all risk assessments and provides reports on residual risk to the Board on a rolling basis (area by area). The Board does not receive any reports which include the inherent risk i.e. the level of risk if controls failed or were not operating effectively. Peppercorn does not have a risk management function to facilitate the risk management process nor review and challenge the assessment of risk. Furthermore, Peppercorn does not have an internal audit function to provide independent reports to the Board on its operation and delivery of services. On an ad-hoc basis an independent consultant may be engaged to conduct a review of a program to ensure that requirements are being met. E.g. Aged Care Quality Standards. There does not however appear to a strategic program of independent review. The independent review or self-assessments against mandatory standards appear to be the primary driver of the expansion in the risk register in recent times. The risk register contains a number of granular risks and broken controls (categorised as risks) which may undermine the efficiency and effectiveness of the risk management processes. The risk register includes risk categories that are not aligned with the categories in the risk assessment criteria. Risk Ownership on the risk register is limited to Board, Executive, Community Care, Transport and Children & Families which is only partially aligned with the functional organisational structure. This may indicate that the register is not complete. There does not appear to be a clear mechanism for escalation or reporting of material issues or incidents to Council. **Implication** A failure to ensure consistent application of the risk management process may undermine efficiency and effectiveness and result in some risks not being mitigated appropriately.	8. Peppercorn should review its approach to documentation of risks on the risk register to ensure that it is consistent with the risk management process and materially complete. 9. Peppercorn to provide Council with an inherent and residual risk report for each service delivered on behalf of Council. 10. Council to work with Peppercorn on developing a strategic internal audit plan which should, at a minimum, cover the services delivered on behalf of Council. 11. Peppercorn to develop incident management procedures which include escalation and reporting of material issues and incident to the Board and Council.

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Reporting of inherent risk is required to identify risk exposure in the event of control failure. This is necessary to prioritise control monitoring and allocation of limited resources to reviews. Without a strategic program of review of key activities, understanding of control weaknesses and gaps against quality standards may not be identified which is necessary to prioritise improvements and enhance the management of risk. Incident reporting and escalation procedures are required to ensure that stakeholders are informed of material issues and incidents in a timely manner. This will then enable effective response.	

3.6 Peppercorn's Business Continuity Planning

	Priority:	Medium
Observations & implication	**Recommendations**	

Observations & implication	Recommendations
The agreement between Council and Peppercorn does not include expectations in relation to business continuity planning nor include any reporting requirement to provide assurance that the business continuity arrangements meet Council's expectations.	12. Peppercorn to conduct a periodic review of Business Impact Analysis for all functions to ensure that Peppercorn identifies key activities and determines Maximum Acceptable Outage and Recovery Time Objectives with reference to Peppercorn and Council's risk appetite.
Peppercorn has in place a Business Continuity and Disaster Management and Planning Policy which includes requirements for Business Impact Analysis (BIA) and a Business Continuity Plan (BCP) and provides a commitment for annual review of the BIA and BCP and annual test of the BCP.	13. Peppercorn to ensure all key activities, Recovery Time Objectives and recovery strategy are listed in an the BCP and review and test annually.
A BIA does not appear to be in place which identifies key activities, their recovery objectives and dependencies. The Draft BCP updated in December does not identify key activities and recovery objectives as required by the standards referenced in the policy. The annual update has not been met with the previous version dated Oct 17. A structured test has not been conducted annually however Peppercorn has had to respond to various incidents (bushfire, flood, storm).	14. Peppercorn to conduct annual walkthrough discussion with primary and alternates members of CMT prior to conducting an exercise.
Implication The Business Impact Analysis (BIA) is the foundation for business continuity planning. Without a current BIA to identify key activities and associated dependencies upon IT systems, workplace and staffing, equipment there may be an over or under investment in recovery capabilities.	
During a disruption, it is critical to quickly establish capabilities and determine recovery options. The identification of recovery priorities and resourcing needs in the BCP would allow the Crisis Management Team (CMT) to ensure that sufficient resources are available to support the recovery of key activities and avoid a potentially unacceptable impact on Peppercorn operations.	
The best BCP is the one that works for the CMT. The BCP helps provide a clear and structured approach to assist the CMT in prompt decision making during a major disruption. Where there are errors, omissions	

| or inconsistencies in documentation, unnecessary confusion and delays during a crisis event are possible.

Any limitations in understanding the BCP and recovery capabilities reduce the effectiveness of managing the response to a disruption. | |

3.6 Monitoring and oversight of Peppercorn in delivering services

	Priority:	Medium

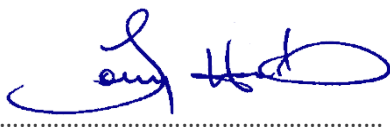| Observations & implication	Recommendations
As Council representatives have positions on the Board of Peppercorn, these officers and councillor received information in relation to the management and operation of Peppercorn and its delivery of services on behalf of Council. All Board members sign a confidentiality agreement in which they agree to keep confidential any information that has been entrusted to them. The Board receives reports in relation to the services provided. These reports do not explicitly indicate whether these services are provided on behalf of Council, who the funder is nor adherence to any agreed quality standards. The reports do include agreed performance measures and are provided to the Directors each quarter however they are not presented to a Board meeting which may result in limited discussion of performance of programs that have missed performance targets during the quarter. Peppercorn does not provide any reports directly to Council as these have not been requested and are not a requirement in the current agreement. It is acknowledged that the Aged Care Quality Standards Assessment commissioned by Peppercorn also recently made a recommendation in relation to quality monitoring systems that may have implication for design of reporting. **Implication** A structured process for regular reports against agreed benchmarks to Council would enhance openness and transparency, enable effective monitoring and increase confidence in Peppercorn's ability to deliver agreed services.	15. Peppercorn to provide a quarterly report demonstrating adherence to any agreed performance and quality standards for each service activity by funder / lead agency to the facilitate Board oversight and discussion. 16. Peppercorn to provide Council with a report on a quarterly basis in relation to each of the services provided on behalf of Council and adherence to any agreed performance and quality standards.

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4. CONCLUSION

The report concludes that Hawkesbury City Council has a strong relationship with Peppercorn Services Inc. and its constitution guarantees strong engagement. There are significant opportunities to ensure that there is greater clarity of expectations, increase transparency in relation to how services are being delivered and enhance understanding of how risks to Council are being managed.

This report makes a number of recommendations designed to enable the Hawkesbury City Council to put in place an enhanced framework for managing 3rd party relationships and enhance oversight of the management of risks and delivery of services by Peppercorn.
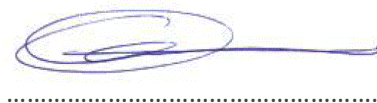
Overall, we make 16 recommendations. Most of these relate to Council's framework for managing 3rd parties, the existing contract with Peppercorn and reporting to Council. A number of the recommendations are reliant on Peppercorn to agree to review current practices.

It is recognised that implementation of some recommendations will be relatively straightforward whilst others will require more detailed consideration. Accordingly, we have divided the recommendations into three categories based on our view of their complexity and urgency: high, medium and low. Ultimately it will be a matter for management to determine the timeframe and priority of each recommendation.

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APPENDIX A – SAMPLE OUTSOURCING POLICY AND PROCEDURE

1. Purpose
2. Scope and Definition of Outsourcing
3. Roles and Responsibilities
4. Selection and Approval Process
    i. Complete Outsourcing Business Case and risk assessment
    ii. Identify potential service providers;
    iii. Prepare a formal tender request based on the Local Government tendering provisions and establish an appropriate selection process;
    iv. Evaluate tenders received or document the results of the selection process;
    v. Recommend an appropriate service provider;
    vi. Undertake a due diligence review and document the results;
    vii. Request a draft contract from service provider and review to ensure contract address all minimum requirements and service criteria
    viii. If required, liaise with legal advisors to assist in due diligence and contract review process;
    ix. Document monitoring plan
    x. Document contingency plan in case of failure or early termination
    xi. Submit Business Case, due diligence, risk assessment and monitoring plan with contract for approval
    xii. Obtain approval of all documentation and outsourcing contracts
5. Minimum contract requirements
    i. the scope of the arrangement and services to be supplied;
    ii. commencement and end dates;
    iii. review provisions;
    iv. pricing and fee structure (e.g. amount, frequency, invoicing, credit terms);
    v. service levels and performance requirements (e.g. consider content, frequency, format, timelines, benchmarks);
    vi. confidentiality, privacy and security of information requirements (e.g. this may allow Council or an expert the opportunity to obtain and review information security or attain a letter of representation);
    vii. business continuity plans (e.g. consider allowing Council the opportunity to obtain and review BCP or test results or attain a letter of representation);
    viii. insurance requirements (minimum coverage and annual provision of certificate of currency);
    ix. subcontracting (e.g. provider should remain responsible, even after any subcontracting to another party. Consider rules and limitations);
    x. liability and indemnity (e.g. impact of negligence, rights);
    xi. audit and monitoring procedures;
    xii. incident reporting and escalation;
    xiii. dispute resolution arrangements (e.g. conciliation and arbitration process);
    xiv. default arrangements; and
    xv. termination provisions (e.g. consider notice period, rights, responsibilities, accessibility and ownership of records).
6. Renewal and / or Expansion of existing agreement
Appendix A – Outsourcing Business Case Template