

14.1 ESTABLISHMENT OF THE CHIEF EXECUTIVE OFFICER'S PERFORMANCE REVIEW COMMITTEE

REPORT AUTHOR:	General Manager, Governance & Civic Affairs
GENERAL MANAGER:	Not Applicable
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ATTACHMENTS:	A

PURPOSE OF REPORT

The purpose of this report is to seek the approval of the Council for the establishment of the Chief Executive Officer's Performance Review Committee for 2023 (the Committee) and to appoint members to the Committee.

BACKGROUND

At its meeting held in October 2021, the Council adopted the new Contract of Employment for the Chief Executive Officer (the Contract), commencing on 1 November 2021 and expiring on 31 October 2026, which includes provisions regarding the Chief Executive Officer's Performance Review.

Schedule 3 of the Contract sets out the Performance Review process as follows:

- 1. The Council will appoint a Committee of the Council, comprising the Mayor, three (3) Elected Members and an independent Human Resource Specialist.*
- 2. The Chief Executive Officer will prepare a report or presentation to the Council in respect of the progress against each of the KPIs, SPOs and PDOs that has occurred during the review period.*
- 3. Using an appropriate survey tool, the performance of the Chief Executive Officer shall be appraised against each of the KPIs, SPOs, and PDOs.*
- 4. The appraisal shall require the Chief Executive Officer to undertake a self-appraisal.*
- 5. The appraisal shall also include a review of the remuneration included in Schedule 2 in accordance with the Contract of Employment.*
- 6. The Human Resource Specialist will prepare a draft report and the Committee of the Council will consider the findings and if satisfied discuss these with the Chief Executive Officer.*
- 7. At this time the Position Description shall be reviewed with the Chief Executive Officer and agreement reached in respect to any required variations.*
- 8. The Committee of the Council shall prepare a report to the Council on the outcomes of the appraisal and provide the Chief Executive Officer with a copy of the report. The report shall also include recommendations in respect of the remuneration review.*
- 9. Both the Chief Executive Officer and the Committee of the Council shall have the opportunity to make written comment on the report prior to presentation to the Council and such comment shall be included in the report.*
- 10. Should there be any areas of unsatisfactory performance the Council may require additional appraisals prior to the normal scheduled appraisal.*

The Performance Review therefore is based on the agreed Key Result Areas (**KRA's**) and Key Performance Indicators (**KPI's**), Strategic Performance Objectives (**SPO's**) and Personal Development Objectives (**PDO's**) that incorporate the requirements of the Chief Executive Officer's Position Description.

In order to formalise the process and to ensure that the requirements of the Contract of Employment are followed, it is proposed to formally establish the Review Panel as a Committee under Section 41 of the *Local Government Act 1999*.

RELEVANT POLICIES & STRATEGIC DIRECTIONS

Nil

FINANCIAL & BUDGET IMPLICATIONS

Nil

EXTERNAL ECONOMIC IMPLICATIONS

Not Applicable.

SOCIAL ISSUES

Not Applicable.

CULTURAL ISSUES

Not Applicable.

ENVIRONMENTAL ISSUES

Not Applicable

RESOURCE ISSUES

The Council's General Manager, Governance & Civic Affairs will facilitate the Chief Executive Officer's Performance Review.

RISK MANAGEMENT

Not Applicable.

CONSULTATION

- **Elected Members**
Nil.

- **Community**
Not Applicable.

- **Staff**
The Chief Executive Officer will be advised of the Council's intent to commence the 2023 Performance Review in accordance with the Contract.

- **Other Agencies**
Not Applicable.

DISCUSSION

The first step of the process involves the Council establishing the Panel, herein referred to as the Chief Executive Officer's Performance Review Committee (the Committee), and appointing the Mayor and Councillors Members to the Committee.

As part of establishing the Committee, the Terms of Reference for the Committee have also been prepared. A copy of the Terms of Reference for the Committee is contained within **Attachment A**.

The Terms of Reference ostensibly establish the Committee and provide the framework within which the Committee is to operate.

The Council has also adopted a set of Protocols which are to be followed during the Review process.

A copy of the Protocols form part of the Terms of Reference.

In respect to the appointment of the *independent Human Resource Specialist*, as part of the recent reforms to the *Local Government Act 1999* (the Act), Section 102A of the Act sets out the following:

- (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.*

Whilst the provisions of Section 102A (2) and (3) of the Act are new, this Council has, since 1997, engaged the services of an *independent Human Resource Specialist* to assist the Council with the Chief Executive Officer's Performance Review.

However, whilst the Council has previously appointed the *independent Human Resource Specialist* to the Committee to participate as an equal member of the Committee, on the basis of the requirement of Section 102A (2) of the Act, for the *qualified independent person* to provide advice to the Council, the *qualified independent person* will not be appointed to the Committee.

In order to facilitate the appointment of the *independent Human Resource Specialist*, the Terms of Reference contain a delegation to the Committee to consider and appoint the *independent Human Resource Specialist*.

To commence this process, invitations will be forwarded to relevant organisations seeking expressions of interest for the Committee's consideration.

OPTIONS

Not Applicable. The Council must now commence the process associated with the Chief Executive Officer's performance review.

CONCLUSION

The 2023 Chief Executive Officer's Performance Review will commence following the appointment of the *independent Human Resource Specialist*.

COMMENTS

Nil.

RECOMMENDATION 1

That pursuant to Section 90(2) and (3) of the *Local Government Act 1999* the Council orders that the public, with the exception of the Council staff present be excluded from the meeting on the basis that the Council will receive, discuss and consider:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

relating to the employment performance of the Chief Executive Officer and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

RECOMMENDATION 2

1. That pursuant to Section 41 of the *Local Government Act 1999*, the Chief Executive Officer's Performance Review Committee be established in accordance with the attached Terms of Reference.
2. That Mayor Robert Bria and the following Elected Members be appointed to the Chief Executive Officer's Performance Review Committee:
 1. Cr _____
 2. Cr _____
 3. Cr _____
3. That the Council advises the Chief Executive Officer that the Council intends to commence the Chief Executive Officer's Performance Review, in accordance with the Chief Executive Officer's Contract of Employment.

RECOMMENDATION 3

Under Section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that this matter having been considered in confidence under section 90(2) and (3)(a) of the Act, the report, discussion and minutes be kept confidential until the first meeting of the Chief Executive Officer Performance Review Committee.

Cr Duke moved:

That pursuant to Section 90(2) and (3) of the Local Government Act 1999 the Council orders that the public, with the exception of the Council staff [Acting Chief Executive Officer, Executive Assistant, Chief Executive's Office and Executive Assistant, Governance & Civic Affairs] present be excluded from the meeting on the basis that the Council will receive, discuss and consider:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)*

relating to the employment performance of the Chief Executive Officer and the Council is satisfied that, the principle that the meeting should be conducted in a place open to the public, has been outweighed by the need to keep the receipt/discussion/consideration of the information confidential.

Seconded by Knoblauch and carried unanimously.

Cr Whittington moved:

That pursuant to Section 41 of the Local Government Act 1999, the Chief Executive Officer's Performance Review Committee be established in accordance with the attached Terms of Reference.

Seconded Cr Holfeld and carried unanimously.

Call for Nominations for Appointment to the Chief Executive Officer's Performance Review Committee:

The Mayor called for nominations for appointment to the Chief Executive Officer's Performance Review Committee.

The following nominations were received:

- Cr Kevin Duke;
- Cr Josh Robinson;
- Cr John Callisto;
- Cr Garry Knoblauch; and
- Cr Grant Piggott.

Voting by Secret Ballot

A secret ballot was conducted. The Acting Chief Executive Officer was appointed as Returning Officer for the counting of votes.

Completion of Counting of Votes by Secret Ballot

The votes were counted, and the results were declared to the Council as follows:

- Cr Kevin Duke (8 votes);
- Cr Josh Robinson (4 votes);
- Cr John Callisto (6 votes);
- Cr Garry Knoblauch (6 votes); and
- Cr Grant Piggott (6 votes).

Due to a tie in votes (Councillors Callisto, Knoblauch and Piggott each receiving six (6) votes), an additional secret ballot was conducted for the remaining two (2) positions on the Committee.

The Acting Chief Executive Officer was again appointed as Returning Officer for the counting of votes.

Completion of Counting of Votes by Secret Ballot

- Cr John Callisto (6 votes);
- Cr Garry Knoblauch (9 votes); and
- Cr Grant Piggott (5 votes).

Cr Whittington moved:

1. *That Mayor Robert Bria and the following Elected Members be appointed to the Chief Executive Officer's Performance Review Committee:*

- *Cr Kevin Duke;*
- *Cr Garry Knoblauch; and*
- *Cr John Callisto.*

2. *That the Council advises the Chief Executive Officer that the Council intends to commence the Chief Executive Officer's Performance Review, in accordance with the Chief Executive Officer's Contract of Employment.*

Seconded by Cr Callisto and carried.

Cr Robinson moved:

Under Section 91(7) and (9) of the Local Government Act 1999, the Council orders that this matter having been considered in confidence under section 90(2) and (3)(a) of the Act, the report, discussion and minutes be kept confidential until the first meeting of the Chief Executive Officer Performance Review Committee.

Seconded by Cr Holfeld and carried unanimously.

Released

Attachment A

Confidential

Establishment of the Chief Executive Officer's Performance Review Committee

Released

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CHIEF EXECUTIVE OFFICER'S PERFORMANCE REVIEW COMMITTEE

TERMS OF REFERENCE

1. ESTABLISHMENT AND FUNCTION OF THE CHIEF EXECUTIVE OFFICER'S PERFORMANCE REVIEW COMMITTEE

- 1.1 Pursuant to section 41 of the *Local Government Act 1999* the Council establishes a Committee to be known as the Chief Executive Officer's Performance Review Committee ("the Committee").
- 1.2 The Committee will continue in existence until the Review has been completed and at that time, by operation of this Clause, will be wound up without any further decision of the Council.

2. OBJECTIVES

- 2.1 The Committee is established for the purposes of facilitating the review of the Chief Executive Officer's performance as required and in accordance with the Chief Executive Officer's Contract of Employment.
- 2.2 The Committee is charged with considering and appointing the *independent Human Resource Specialist (independent qualified person)* in accordance with Section 102A of the *Local Government Act 1999*, for the purpose of assisting and providing advice to the Committee.

3. MEMBERSHIP

- 3.1 Membership of the Committee will comprise:
 - Mayor Robert Bria;
 - Cr ;
 - Cr ; and
 - Cr .
- 3.2 The Council appoints the Mayor as the Presiding Member of the Committee.
- 3.3 Membership of the Chief Executive Officer's Performance Review Committee continues for the term of the Committee unless a member resigns from the Committee or is removed earlier by resolution of Council.

5. TERMS OF REFERENCE – OPERATIONAL MATTERS

- 5.1. The Committee shall act at all times in strict accordance with the *Local Government Act 1999*, and Part 2 of the *Local Government (Procedures at Meetings) Regulations 2013*.
- 5.2. The Committee shall meet at the Norwood Town Hall, 175 The Parade, Norwood, in accordance with the responsibilities imposed upon it at clause 7 of these Terms of Reference and otherwise on such dates and at such times as the Presiding Member of the Committee or the Committee by resolution may determine.
- 5.3. A quorum for a meeting of the Committee is three (3) Members of the Committee.
- 5.4. If the Presiding Member of the Committee is absent from a meeting then the Members present will determine between them who will preside at the meeting.
- 5.5. All decisions of the Committee shall be made on the basis of a majority decision of the members present.
- 5.6. Insofar as the *Local Government Act 1999* and Regulations and these Terms of Reference do not prescribe the procedure to be observed in relation to the conduct of a meeting of the Committee, the Committee may determine its own procedure.

6. REPORTING

- 6.1. The Committee does not enjoy the delegation of any powers, functions and duties of the Council but acts in accordance with these Terms of Reference and any additional authorisations provided by the Council.
- 6.2. All decisions of the Committee will, therefore, constitute recommendations to the Council.
- 6.3. In recognition of the fact that the Committee deals with the 'personal affairs' (as defined in the Act) of the Chief Executive Officer, the Committee is required to give consideration to issues of confidentiality in the performance of its functions.

7. TERMS OF REFERENCE – FUNCTIONS AND RESPONSIBILITIES

- 7.1. The Committee is charged with undertaking the following functions:
 - a. facilitating the review of the Chief Executive Officer's performance as required by Clause 11 of the Chief Executive Officer's Contract of Employment;
 - b. assessing the Chief Executive Officer's performance by reference to the extent to which the Chief Executive Officer has discharged the objectives, responsibilities and duties as set out in the Contract of Employment and as required by Schedule 3 of the Contract of Employment; and

in discharging its powers, duties and functions the Committee must do so in accordance with the Protocols adopted by the Council as attached to these Terms of Reference.

8. WINDING UP OF COMMITTEE

- 8.1. The Committee will be wound up without further action by the Council upon the finalisation of the Chief Executive Officer's Performance Review process required by Clause 1.2 of these Terms of Reference.



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Protocols to be used to Conduct the Performance Review of the Chief Executive Officer

1. The Council must nominate the Members of the Committee by no later than two weeks before the review is due to commence. The Mayor will chair the Committee.
2. At least six (6) weeks prior to appointing the Independent Human Resource Specialist (*independent qualified person* in accordance with Section 102A of the *Local Government Act 1999*) to provide advice to the Committee, a transparent selection process to be managed by a nominated senior Manager other than the Chief Executive Officer, must be undertaken.
3. The candidates to be considered by the Council for appointment to assist and provide advice to the Committee must be approved by the Chief Executive Officer prior to commencement of this selection process.
4. The Council must deliver a written "Terms of Reference" to the Committee at the time of nomination.
5. The Committee will be provided with a copy of the Chief Executive Officer's current Contract of Employment, and the previously agreed statements of "objectives, responsibilities and duties" and "performance criteria" of the Chief Executive Officer against which the Chief Executive Officer is to be reviewed and assessed. The Committee will also receive a copy of the previous written annual review report which may include criteria for development/improvement against which the Chief Executive Officer may also need to be assessed, together with the outcome of any mid term action plan required from the previous year's Report.
6. At the first meeting of the Committee, the Members must first agree on a methodology for the review process and relevant protocols for undertaking the Review and Assessment.
7. Committee Members shall not disclose any details of the Review to any other person, must keep all documents provided to them confidential and must return all documents so provided to them for the purpose of the Review, to the Mayor for secure and confidential storage at the completion of the Review.
8. The Independent Human Resource Specialist shall provide relevant professional advice to the Committee and be responsible for fully supporting the Committee and preparing the Report as required by the Committee after consultation with the Chief Executive Officer.
9. The Chair of the Committee shall be responsible for calling and organising meetings of the Committee which shall be held in confidence.
10. The assessment report developed for the Committee shall include details of the methodology used and the findings of each stage of the Review process including a summary of the outcomes of qualitative methods such as interviews but will not include material which could breach the confidentiality of participants in the Review process.
11. The Chief Executive Officer will have the opportunity to comment on both the preliminary report and the final report of the Committee, before the latter is delivered to the Council with the intent that the Committee and the Chief Executive Officer have agreed on the final Report and the recommendations.
12. Any matters which cannot be agreed by the Committee and the Chief Executive Officer, shall be clearly identified in the final Report, but the only matters to be referred to the Council for action must be of substance regarding the failure of the Chief Executive Officer to meet expected performance and which would warrant the Council commencing a formal warning procedure as provided in the Chief Executive Officer's Contract of Employment.