

# **Under Separate Cover - New Business of an Urgent Nature**

**Ordinary Council Meeting**

**Tuesday 7 December 2021**

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**13 NEW BUSINESS OF AN URGENT NATURE****13.1 New Business Of An Urgent Nature****13.1.1 Chief Executive Officer Resignation**

<b>Responsible Branch:</b>	Office of the Chief Executive Officer
<b>Responsible Directorate:</b>	Office of the Chief Executive Officer
<b>Authority/Discretion:</b>	Executive/Strategic
<b>Voting Requirement:</b>	Simple Majority Required
<b>Attachments:</b>	1. Andrew Brien Letter of Resignation [13.1.1.1 - 2 pages]

**SUMMARY**

For Council to note the resignation of the CEO, Mr Andrew Brien.

**OFFICER'S RECOMMENDATION**

**That Council notes the resignation of Mr Andrew Brien as Chief Executive Officer dated 6 December 2021, with the last working day to be Friday 25 February 2022 and a termination date of 4 March 2022.**

**BACKGROUND**

Nil.

**EXTERNAL CONSULTATION**

No consultation has yet occurred with the public or other agencies on this matter.

**OFFICER'S COMMENTS**

The CEO, Mr Andrew Brien, provided formal notification to the Mayor of his resignation on 6 December 2021 (**Attachment 1**).

As per clause 11.4(1) of the CEO Employment Contract, the CEO is to provide 3 months' notice in writing to the Mayor of his resignation.

In accordance with the above, the CEO has advised that his last day at the City of Bayswater will be 4 March 2021, with his final working day being Friday, 25 February 2021 (due to taking one week leave).

**LEGISLATIVE COMPLIANCE**

The CEO has provided formal notice of his resignation as per the requirements of the CEO Employment Contract.

**RISK ASSESSMENT**

In accordance with the City's Risk Management Framework, the officer's recommendation has been assessed against the City's adopted risk tolerance. Comments are provided against each of the risk categories.

<b>Officer's Recommendation</b>	<b>That Council notes the resignation of Mr Andrew Brien as Chief Executive Officer dated 6 December 2021, with the last working day to be Friday 25 February 2022 and a termination date of 4 March 2022.</b>	
<b>Risk Category</b>	<b>Adopted Risk Appetite</b>	<b>Risk Assessment Outcome</b>
Strategic Direction	Moderate	Low
Reputation	Low	Low
Governance	Low	Low
Community and Stakeholder	Moderate	Low
Financial Management	Low	Low
Environmental Responsibility	Low	Low
Service Delivery	Low	Low
Organisational Health and Safety	Low	Low
<b>Conclusion</b>	The CEO has provided formal notification of his resignation from the City of Bayswater to the Mayor, as required under the employment contract. A low risk has been assessed against Council's noting of the CEO's resignation.	

## FINANCIAL IMPLICATIONS

Nil.

## STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2021-2031, the following applies:

Theme: Leadership and Governance

Goal L4: Communicate in a clear and transparent way.

Provide the community with useful information about Council's policies, services and events and advise the community of engagement outcomes.

## CONCLUSION

The CEO has provided formal notification to the Mayor of his resignation from the City of Bayswater. The CEO's last day with the City will be 4 March 2022, with his last working day to be 25 February 2022.



6 December 2021

Mayor Filomena Piffaretti  
City of Bayswater

Dear Mayor Piffaretti

As per our previous discussions in relation to my employment with the City and my advice to you last week, it is with extreme reluctance that I am formally tendering my resignation as Chief Executive Officer with the City of Bayswater. As I have previously advised, this decision is not one that I have made lightly and whilst I was very much looking forward to working with you and your team over the next two years, an opportunity to move back into regional local government is something that I am passionate about. These opportunities do not come around very often so when they do, there is a requirement to consider them fully.

As I have indicated my contract requires that I provide 3 months' notice in writing. "*Clause 11.4 Termination by Officer at will. 11.4 (1) The Officer may, for any reason, terminate the employment on a date specified by the Officer at any time by giving 3 months' notice in writing to the Mayor.*" Accordingly, I would like this to be effective from 4 March 2022 with my last day of work 25 February 2022 to enable me to take a week of leave before commencing my new role. I am committed to working out my notice period to ensure that you are provided with all the support that I can arrange prior to my final day with Council.

Whilst I have indicated that I will be working out my notice period, I will also be taking a few days of leave during this period to assist in the transition to my new position. This will only be in terms of a day at a time and will be limited to a few occasions over the 3 month period. I am simply making this known in the spirit of transparency, noting that Council is still required to pay out my annual and long service leave entitlements.

I believe that I have achieved all I set out to at the City of Bayswater and I know it will continue to go from strength to strength under your leadership as Mayor and with the support of all Councillors the City is poised for great things. I have enjoyed the working relationship with yourself, firstly as the Deputy Mayor and more recently as the Mayor and have really appreciated the support that you have provided to me. In our discussions over the last few weeks I have made it clear that this is a decision that was made prior to the local government elections and this was confirmed with the timeframes around the recruitment process for the City of Kalgoorlie-Boulder.

There are three key aspects that I am going to miss, firstly the Executive Leadership Team and their support and friendship, secondly the dedicated and professional staff that we have across the City, and finally, the opportunity to work with you as Mayor in taking the Council forward over the next few years. In the last month there has already been a positive change in focus and direction of the Council and I believe that this will continue to provide the momentum that is required to take the City to the next level, this shift in focus has made my decision to resign even more difficult.

I am aware of the challenges that my resignation will cause, especially given the time of year and as such I have taken the liberty of preparing the relevant reports to enable the Council to progress with the recruitment process in the shortest possible timeframes. There are a number of steps that need to be followed to ensure compliance with the legislation and all of these will be outlined in the reports to Council.

To assist with the transition process I am also making a number of changes to ensure that yourself and the Council is supported through my notice period and then up to the appointment of a new Chief Executive Officer. These changes will ensure that there is a continued focus on advocacy in the lead up to the Federal Election, increased administrative and governance support for yourself as Mayor along with the rest of the Councillors whilst ensuring that all administrative tasks related to my role are closed out appropriately. I have already commenced with these changes and will provide you with a separate briefing on this in the next few days.

I have also discussed this matter with the Directors who will put in place appropriate arrangements to ensure continuity of service during this time.

I appreciate the opportunity that the City has provided to me over the last four and half years and wish yourself as Mayor, the Councillors and all staff all the very best in the continued delivery of outcomes to the Bayswater residents, ratepayers and businesses.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Andrew Brien", with a stylized flourish at the end.

Andrew Brien  
**CHIEF EXECUTIVE OFFICER**

**13.1.2 Establishment Of CEO Recruitment Committee**

<b>Responsible Branch:</b>	Office of the Chief Executive Officer
<b>Responsible Directorate:</b>	Office of the Chief Executive Officer
<b>Authority/Discretion:</b>	Executive/Strategic Legislative
<b>Voting Requirement:</b>	<b><i>ABSOLUTE MAJORITY REQUIRED</i></b>
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. CEO Recruitment Standards and Guidelines [13.1.2.1 - 21 pages]</li> <li>2. Model Standards for CEO Recruitment, Performance and Termination [13.1.2.2 - 7 pages]</li> <li>3. Draft Chief Executive Officer Position Description [13.1.2.3 - 5 pages]</li> </ol>

**SUMMARY**

Following the resignation of the CEO, it is a requirement for Council to establish a CEO Selection Panel/Committee.

**OFFICER'S RECOMMENDATION**

That Council:

1. Establishes the CEO Recruitment Committee, comprising the following members:
  - (a) The Mayor;
  - (b) The Deputy Mayor;
  - (c) One Elected Member from each Ward, being:
    - i. \_\_\_\_\_ from Central Ward;
    - ii. \_\_\_\_\_ from North Ward;
    - iii. \_\_\_\_\_ from South Ward;
    - iv. \_\_\_\_\_ from West Ward; and
  - (d) One independent member, to be selected by the CEO Recruitment Committee.
2. Endorses the position description of the Chief Executive Officer as outlined in Attachment 3, noting it has been updated to reflect the current organisation structure.
3. Delegates authority to the CEO Recruitment Committee all powers necessary to enable the Committee to undertake all the administrative aspects of the recruitment process including:
  - a) The recruitment of an independent member to the Committee; and;
  - b) Appointment of a professional recruitment consultant.

***ABSOLUTE MAJORITY REQUIRED***

**BACKGROUND**

Following changes to the legislation, the Department of Local Government, Sport and Cultural Industries released a guideline in relation to the legislative changes to assist Councils in undertaking CEO recruitment. A copy of the guideline is included at **Attachment 1**.

**EXTERNAL CONSULTATION**

Nil.

**OFFICER'S COMMENTS**

Council is required to establish a CEO Selection Panel in accordance with s 5.39A(1) of the *Local Government Act 1995* (WA) ('the Act'), with legislative amendments flowing through the Local Government (Administration) Regulations 1996 (WA) ('the Regulations'). The following is required under the Act in relation to the Committee:

- The Panel is to comprise of Council members (the number of which must be determined by the local government) and at least 1 independent person (cl 8, Division 2 of the Regulations)
- Council must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government (cl 5(1), Division 2 of the Regulations)

These requirements mirror the Model Standards for CEO Recruitment, Performance and Termination which were adopted by Council on 23 March 2021 (**Attachment 2**).

It is recommended that Council establish the CEO Recruitment Committee with membership comprising the Mayor, Deputy Mayor and one Elected Member from each Ward. Noting the requirement to include an independent member on the Committee, it is recommended that the Panel be established as a formal Committee of Council to enable delegated authority to be granted for the recruitment and selection of the independent member. This will allow the process to be undertaken and an independent member selected prior the January Ordinary Council Meeting.

Clause 8, Division 2 of the Regulations as well as Council's adopted Model Standards for CEO Recruitment, Performance and Termination provides that the independent member cannot be:

- A Council Member;
- An employee of the local government; or
- A human resources consultant engaged by the local government.

Since the introduction of legislation, it is noted that independent members to recruitment panels have been previous CEOs, or senior employees with knowledge of the role of CEOs in local governments. Examples of potential independent members provided by the Department include:

- Former Elected Members or former staff members of the Local Government;
- Former or current Elected Members (such as the Mayor or Shire President) or staff members of another local government;
- A prominent or highly regarded member of the community; or
- A person with experience in the recruitment of CEOs and senior executives.

Council is required to review the position description of the CEO, which must be undertaken before advertising can occur and endorsed by an absolute majority of Council. Given that Council recently undertook a review of the CEO's contract and performance in late 2020 (in which no amendments were requested to the position description), it is recommended that Council endorse the position description as amended in **Attachment 3** to reflect the current organisational structure. As the legislation requires Council endorse the position description of the CEO by an absolute majority, should Council request further time to review the position description this will result in delays to beginning the recruitment process or require Council to convene a Special Council Meeting during the December/January recess.

The appointment of an external recruitment consultant is the subject of a separate report. It is recommended that the CEO Recruitment Committee also be granted delegated authority to appoint the recruitment consultant following a request for quote process. As part of the recruitment process, Council is required to give Statewide public notice (in accordance with section 5.36(a) of the Act and regulation 18A of the Regulations), which includes:



- Details of the remuneration and benefits offered;
- Details of the place where applications are to be submitted;
- The date and time applications close;
- The duration of the proposed contract;
- A web address where the position description can be accessed;
- Contact details for a person who can provide further information; and
- Any other relevant information.

It is noted that the CEO Recruitment Committee will not appoint a new CEO. The CEO Recruitment Committee's role is to assess each applicant's knowledge, experience, qualifications and skills against the selection criteria, with the summary of the Committee's assessment of each applicant and the Committee's recommendation as to which applicant or applicant is suitable for the position of CEO is to be presented to Council. Once Council has employed a new CEO, Council must by an absolute majority resolution certify that the person was employed in accordance with Council's adopted standards in relation to the recruitment of CEOs (Regulation 18FB of the Regulations).

Council may also wish to consider whether the CEO Recruitment Committee will require administrative support during the process.

### **LEGISLATIVE COMPLIANCE**

The establishment of the CEO Recruitment Committee is in accordance with the requirements of s 5.39(A) (CEO recruitment) and s 5.8 (establishment of Committees) of the *Local Government Act 1995* (WA).

### **RISK ASSESSMENT**

In accordance with the City's Risk Management Framework, the following options have been assessed against the City's adopted risk tolerance. Comments are provided against each of the risk categories.

<b>Officer's Recommendation</b>	<p><b>That Council:</b></p> <ol style="list-style-type: none"> <li>Establishes the CEO Recruitment Committee, comprising the following members: <ol style="list-style-type: none"> <li>The Mayor;</li> <li>The Deputy Mayor;</li> <li>One Elected Member from each Ward, being: <ol style="list-style-type: none"> <li>_____ from Central Ward;</li> <li>_____ from North Ward;</li> <li>_____ from South Ward;</li> <li>_____ from West Ward; and</li> </ol> </li> <li>One independent member, to be selected by the CEO Recruitment Committee.</li> </ol> </li> <li>Endorses the position description of the Chief Executive Officer as outlined in <u>Attachment 3</u>, noting it has been updated to reflect the current organisation structure.</li> <li>Delegates authority to the CEO Recruitment Committee all powers necessary to enable the Committee to undertake the administrative aspects of the recruitment process including: <ol style="list-style-type: none"> <li>The recruitment of an independent member to the Committee; and;</li> <li>Appointment of a professional recruitment consultant.</li> </ol> </li> </ol>
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<b>Risk Category</b>	<b>Adopted Risk Appetite</b>	<b>Risk Assessment Outcome</b>
Strategic Direction	Moderate	Low
Reputation	Low	Low
Governance	Low	Low
Community and Stakeholder	Moderate	Low
Financial Management	Low	Low
Environmental Responsibility	Low	Low
Service Delivery	Low	Low
Organisational Health and Safety	Low	Low

<b>Conclusion</b>	The above option is consistent with the legislative requirements and is considered a low risk to Council.
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<b>Option 2</b>	<p><b>That Council:</b></p> <ol style="list-style-type: none"> <li>Establishes the CEO Recruitment Committee, comprising the following members: <ol style="list-style-type: none"> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>_____;</li> <li>One independent member, to be selected by the CEO Recruitment Committee.</li> </ol> </li> <li>Requests the CEO Recruitment Committee undertake a review of the Chief Executive Officer position description, with any recommended changes presented to Council at the first Ordinary Council Meeting in 2022.</li> </ol>
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Risk Category	Adopted Risk Appetite	Risk Assessment Outcome
Strategic Direction	Moderate	Low
Reputation	Low	Medium
Governance	Low	Medium
Community and Stakeholder	Moderate	Low
Financial Management	Low	Low
Environmental Responsibility	Low	Low
Service Delivery	Low	Low
Organisational Health and Safety	Low	Low
<b>Conclusion</b>	Council may appoint alternate members to the CEO Recruitment Committee, however it is noted that legislation requires appointment of an independent member to the Committee. Council may wish to ensure that there is equal representation across the Wards in the composition of the Committee. In addition, this option does not grant delegated authority to the Committee in relation to the administrative aspects of the recruitment process which may cause delays. Should Council request the CEO Recruitment Committee to undertake a review of the CEO position description, this could cause delays to the commencement of the recruitment process.	

## FINANCIAL IMPLICATIONS

Nil.

## STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2021-2031, the following applies:

Theme: Leadership and Governance

Goal L4: Communicate in a clear and transparent way.

Provide the community with useful information about Council's policies, services and events and advise the community of engagement outcomes.

## CONCLUSION

Following the resignation of the CEO, Council is required to establish a CEO Recruitment Committee to recruit for a new CEO. The Committee is required to have an independent member, it is recommended that Council delegate authority to the Committee to recruit and select for the independent member to prevent any delays to the CEO recruitment process.



# **Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination**

***Local Government (Administration) Amendment  
Regulations 2021***

**February 2021**

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## Preface

The *Local Government Legislation Amendment Act 2019* includes a requirement for model standards covering the recruitment and selection, performance review and termination of employment of local government Chief Executive Officers (CEOs). These reforms are intended to ensure best practice and greater consistency in these processes between local governments.

The accompanying guidelines outline the recommended practice for local governments in undertaking these processes. These guidelines will assist local governments in meeting the model standards prescribed in the *Local Government (Administration) Amendment Regulations 2021*.

The standards and guidelines have been developed by the Department of Local Government, Sport and Cultural Industries (Department), in consultation with representatives from the Public Sector Commission, the Ombudsman, the Western Australian Local Government Association (WALGA) and Local Government Professionals WA (LGPro). The Department gratefully acknowledges the participation and contribution of these representatives.

The Department notes that the content of these guidelines does not necessarily reflect the views or policies of the organisations or individuals that have been consulted.

## Part 1 – Recruitment and Selection

One of the fundamental roles of the council is the employment of the local government's CEO. The CEO is responsible for implementing the council's strategic vision and leading the local government administration.

### Principles

A local government must select a CEO in accordance with the principles of merit, equity and transparency. A local government must not exercise nepotism, bias or patronage in exercising its powers. Additionally, a local government must not unlawfully discriminate against applicants. Section 5.40 of the *Local Government Act 1995* (Act) lists a number of general principles of employment that apply to local governments.

#### Recruitment and Selection Standard

The minimum standard for recruitment and selection will be met if:

- S1.1** The council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO within that particular local government context.
- S1.2** The council has approved, by absolute majority, the Job Description Form (JDF) which clearly outlines the qualifications, selection criteria and responsibilities of the position. The JDF is made available to all applicants.
- S1.3** The local government has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member, human resources consultant, or staff member of the local government.
- S1.4** The local government attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year). The local government must advertise a vacancy for the position of CEO in the manner prescribed.
- S1.5** The local government has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.
- S1.6** The local government has verified the recommended applicant's work history, qualifications, referees and claims made in their job application.
- S1.7** The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how their knowledge, skills and experience meet the selection criteria.



### **Recruitment and Selection Standard cont.**

- S1.8** The appointment is made impartially and free from nepotism, bias or unlawful discrimination.
- S1.9** The council has endorsed by absolute majority the final appointment.
- S1.10** The council has approved the employment contract by absolute majority.
- S1.11** The local government re-advertises the CEO position and undertakes a recruitment and selection process after each instance where a person has occupied the position for ten (10) consecutive years.

## **Guidelines**

### **Recruitment and selection process**

The council of the local government should act collectively throughout the recruitment and selection process. To uphold the integrity of the process, the council must resist any attempt to influence the outcome through canvassing or lobbying.

The local government should carefully consider the role of the CEO. This includes the CEO's legislated powers and functions and their role as the head of the administrative arm of the local government. In determining the selection criteria for the position of CEO, it will be important for a local government to consider the needs of the community and the specific skills and experience that will be required of the CEO in that particular local government. The competencies the council looks for in its CEO should reflect the council's strategic community plan.

Once the essential skills and experience which form the selection criteria for the position have been established, the local government must set out the selection criteria (essential and desirable) and the responsibilities of the position in a Job Description Form (JDF). If emphasis is placed on certain selection criteria, this should be highlighted in the JDF so that applicants are aware of this. For example, some level of project management experience will usually be an important criterion, but if the local government is undertaking a major development such as a new recreation centre, added emphasis may need to be given to this criterion.

The JDF must be approved by an absolute majority of the council.

### **Advertising**

The local government should ensure that applicants are clearly informed about the application process, such as the application requirements, the closing date for applications and how applications are to be submitted. It is essential that this process is transparent and that each step in the process is documented. Associated records must be kept in a manner consistent with the *State Records Act 2000* (WA).

It is a requirement that a local government is to give Statewide public notice if the position of CEO becomes vacant. Statewide public notice must contain:

- details of the remuneration and benefits offered;
- details of the place where applications are to be submitted;
- the date and time applications close;
- the duration of the proposed contract;
- a web address where the JDF can be accessed;
- contact details for a person who can provide further information; and
- any other relevant information.

In order to attract the best possible pool of applicants for the position of CEO, it is recommended that local governments use a diverse range of advertising methods, mediums and platforms (in addition to the advertising requirement under section 5.36(4) of the Act). For example:

- advertising on the local government's website;
- posting on online jobs boards (e.g. SEEK);
- sharing the advertisement via professional networks; and
- undertaking an executive search.

A local government must publicly advertise the CEO position if the same person has remained in the job for 10 consecutive years. This requirement does not prevent the incumbent CEO from being employed for another term, provided they are selected in accordance with the standards for recruitment and selection.

### **Selection panel and independent person**

Local governments are required to establish a selection panel to conduct and facilitate the recruitment and selection process. The selection panel should be made up of elected members (the number of which is determined by the council) and must include at least one independent person. The independent person cannot be a current elected member, human resources consultant, or staff member of the local government. Examples of who the independent person could be include:

- former elected members or staff members of the local government;
- former elected members (such as a Mayor or Shire President) or staff members of *another* local government;
- a prominent or highly regarded member of the community; or
- a person with experience in the recruitment of CEOs and senior executives.

The panel are responsible for assessing applicants and making a recommendation to council regarding the most suitable applicant or applicants. The essence of the role of an independent panel member is to bring an impartial perspective to the process and reduce any perception of bias or nepotism.

It is essential that prior to a person's appointment to a selection panel they are informed of the duties and responsibilities of their role and that of the panel. It is recommended that local governments develop a policy or terms of reference to facilitate this process that incorporate the standards for recruitment at Division 2 of the *Local Government (Administration) Amendment Regulations (No.2) 2020*. A policy should include important information that outlines:

- The primary functions of the panel;
- Roles and responsibilities of panel members;
- Composition of the panel;
- Duration of term;
- Desirable criteria for appointment to the panel;
- A requirement that panel members sign a confidentially agreement and agree to the duties and responsibilities of their role; and
- Any other information the local government deems necessary for the panel to effectively carry out their role.

#### **Independent human resources consultant**

A local government should seek independent advice from a human resources consultant where the council lacks the capacity or expertise to facilitate the recruitment and selection process (or any aspect of it). A member of the human resources team within a local government should not be involved in the recruitment of a new CEO.

The consultant should not be associated with the local government or any of its council members. The consultant can be an independent human resources professional, recruitment consultant, or recruitment agency.

An independent human resources consultant can provide advice to the selection panel on how to conduct the recruitment process, or a local government may engage a consultant to support it in undertaking certain aspects of the recruitment process, such as one or more of the following:

- development or review of the JDF;
- development of selection criteria;
- development of assessment methods in relation to the selection criteria;
- drafting of the advertisement;
- executive search;
- preliminary assessment of the applications;
- shortlisting;
- drafting questions for interview;
- coordinating interviews;
- preparing the selection summary assessment and recommendation;

- arranging for an integrity check and/or police clearance; and
- assisting the council in preparing the employment contract.

The consultant is not to be directly involved in determining which applicant should be recommended for the position, their role is not one of decision-maker.

It is recommended that rigorous checks be conducted on any independent consultants before they are engaged to ensure they have the necessary skills and experience to effectively assist the council. Local government recruitment experience may be beneficial but is not a requirement.

The independent human resources consultant must be able to validate their experience in senior executive recruitment and appointments. It is important to note that if the local government uses a consultant or agency to assist in finding applicants, they will require an employment agent licence under the *Employment Agents Act 1976* (WA).

A good independent human resources consultant will bring expertise, an objective perspective and additional human resources to what is a complex and time-consuming process. Given the time and effort involved in finding a competent CEO, and the cost of recruiting an unsuitable CEO, there can be a good business case for spending money on a human resources consultant.

If a decision is made to engage an independent human resources consultant, it is imperative that the council maintains a high level of involvement in the process and enters into a formal agreement (contract) with them. In order to manage the contract efficiently, and ensure an effective outcome, regular contact with the consultant is required during the recruitment process. As with any contractor engagement, the local government must ensure their procurement and tender processes comply with the Act and the procurement policy of the local government.

### **Council's responsibilities**

A human resources consultant cannot undertake the tasks for which the council is solely responsible. An independent consultant cannot and should not be asked to:

- Conduct interviews: This should be done by the selection panel. However, council may decide to interview applicants recommended by the selection panel. A consultant can provide support with interviews, providing advice on the recruitment and selection process and writing up recommendations. The consultant may also arrange referee reports and checks of applicants.
- Make the decision about who to appoint to the position of CEO: Only the council can make this decision, drawing upon advice from the selection panel.
- Negotiate the terms and conditions of employment: Noting that the consultant should be able to provide advice on remuneration constraints and other terms and conditions.

### **Creating Diversity**

In order to ensure all applicants are given an equal opportunity for success, selection methods need to be consistent and objective. In a structured interview, each applicant should have the opportunity to answer the same primary questions with follow-up questions used to illicit further detail or clarification. Behavioural-based interview

questions are objective and gauge the applicants' suitability, reducing biases in assessment (see examples below).

Basing a selection decision on the results of a number of selection methods can help to reduce procedural shortcomings and ensure the best applicant is chosen. Psychometric, ability and aptitude testing are considered to be valid, reliable and objective. While applicants with extensive experience and reputable education may appear to be more qualified, an objective assessment of each person's ability and personal traits can help to provide a clearer picture of the applicant.

Where possible, it is recommended that local governments ensure diversity on the selection panel. This may be achieved by ensuring gender, ethnicity, age and experiential diversity is represented on the panel. Diversity is also a consideration when selecting an independent person for the selection panel, particularly where there is a lack of diversity on the council. A diverse selection panel will assist in making quality decisions regarding suitable applicants.

Individuals are often unaware of biases they may have. For this reason, it is helpful for the selection panel to undertake training about unconscious biases. Awareness of unconscious biases assists individuals in preventing those biases from interfering in their decision making. For example, if there are considerable discrepancies in the assessment scores between two panel members, discussion will be required to ensure bias has not influenced these scores. Allowing team members to acknowledge and recognise prejudices is essential to managing those biases. The following biases should be addressed:

- "Similar-to-me" effect - if interviewers share the same characteristics with the applicants or view those characteristics positively, they are more likely to score them highly;
- "Halo" effect – interviewers may let one quality (such as race, gender, looks, accent, experience, etc.) positively or negatively affect the assessment of the applicant's other characteristics.

### **Due Diligence**

It is essential that the local government ensures that the necessary due diligence is undertaken to verify an applicant's qualifications, experience and demonstrated performance. This includes:

- verifying an applicant's qualifications such as university degrees and training certificates;
- verifying the applicant's claims (in relation to the applicant's character, details of work experience, skills and performance) by contacting the applicant's referees. Referee reports should be in writing in the form of a written report, or recorded and verified by the referee;
- requesting that an applicant obtains a national police clearance as part of the application process; and
- ensuring no conflicts of interests arise by looking to outside interests such as board membership and secondary employment.

A council may wish to contact a person who is not listed as an applicant's referee,

such as a previous employer. This may be useful in obtaining further information regarding an applicant's character and work experience, and verifying related claims. The applicant should be advised of this and be able to provide written comments to the council.

A search of social media and whether an applicant has an online presence may also assist in identifying potential issues. For example, an applicant may have expressed views which are in conflict with the local government's values. This should be made clear in the application information. To ensure the integrity of the recruitment process, a council must act collectively when performing due diligence.

### **Selection**

Once the application period closes, the selection panel, or consultant on behalf of the selection panel, must assess applications and identify a shortlist of applicants to be interviewed.

In shortlisting applicants for the interview phase, the selection panel should consider the transferable skills of applicants and how these would be of value in the role of CEO. The selection panel should not overlook applicants who do not have experience working in the local government sector.

It is important that the assessment process is consistent for all applicants. For example, each applicant is asked the same interview questions which are related to the selection criteria and each are provided with the same information and undertake the same assessments.

Elected members should declare any previous association with an applicant or any potential conflict of interest at the time of shortlisting if they are part of the selection panel. Similarly, if the interviews involve the full council, the elected member should make an appropriate declaration before the interviews commence. If the potential conflict of interest is significant or a member's relationship with an applicant may result in claims of nepotism, patronage or bias, the council may need to consider whether to exclude the elected member from the process. The decision should be documented and recorded for future reference.

Selecting an applicant should be based on merit; that is, choosing an applicant that is best suited to the requirements of the position and the needs of the local government. This involves the consideration and assessment of applicants' skills, knowledge, qualifications and experience against the selection criteria required for the role. As part of the selection process, a council may consider it appropriate for each of the preferred candidates to do a presentation to council.

The appointment decision by the council should be based on the assessment of all measures used, including:

- assessment technique(s) used (e.g. interview performance);
- quality of application;
- referee reports;
- verification and sighting of formal qualifications and other claims provided by the applicant; and
- other vetting assessments used (e.g. police checks, integrity checks, etc.).

### **Employment contract**

In preparing the CEO's employment contract, the council must ensure the contract includes the necessary provisions required under section 5.39 of the Act and associated regulations.

Section 5.39 of the Act provides that a CEO's employment contract must not be for a term exceeding five years. The term of a contract for an acting or temporary position cannot exceed one year.

Further, the employment contract is of no effect unless it contains:

- the expiry date of the contract;
- the performance review criteria; and
- as prescribed under regulation 18B of the Administration Regulations, the maximum amount of money (or a method of calculating such an amount) to which the CEO is to be entitled if the contract is terminated before the expiry date. The amount is not to exceed whichever is the lesser of:
  - the value of one year's remuneration under the contract; or
  - the value of the remuneration that the CEO would have been entitled to, had the contract not been terminated.

It is recommended that the council seeks independent legal advice to ensure that the contract is lawful and able to be enforced. In particular, advice should be sought if there is any doubt as to the meaning of the provisions of the contract.

Councils should be aware that CEO remuneration is determined by the Salaries and Allowances Tribunal and the remuneration package may not fall outside the band applicable to the particular local government.

The CEO's employment contract should clearly outline grounds for termination and the termination process in accordance with the standards in regulations.

The council of the local government must approve, by absolute majority, the employment contract and the person they appoint as CEO.

### **Appointment**

A decision to make an offer of employment to a preferred applicant must be made by an absolute majority of council. If the preferred applicant accepts the offer and the proposed terms of the contract without negotiation, there is no further requirement for council to endorse the applicant and the contract. However, if there is a process of negotiation to finalise the terms and conditions of the contract, council is required to endorse the appointment and approve the CEO's employment contract by absolute majority. In both instances, the employment contract must be signed by all parties.

The council should notify both the successful individual and the remaining unsuccessful applicants as soon as possible before publicly announcing the CEO appointment.

The successful applicant should not commence duties with the local government as CEO until the employment contract has been signed.

The unsuccessful applicants (including those not interviewed) should be notified of the outcome of their application. It is recommended that the local government creates a template letter for unsuccessful applicants that can be easily personalised with the applicants' details and sent out quickly.

The council should keep a record of their assessment of the unsuccessful applicant(s) and provide the unsuccessful applicant(s) with the opportunity to receive feedback on their application, or interview performance if they were granted an interview. Should an unsuccessful applicant request feedback, it is recommended that a member of the selection panel provides this. If a recruitment consultant is used, they may undertake this task.

### **Confidentiality**

The local government should ensure that all information produced or obtained during the recruitment and selection process is kept confidential. This includes applicants' personal details, assessment details, the selection report and outcome of the process. This ensures privacy requirements are met and maintains the integrity of the process. It is recommended that selection panel members and councillors sign a confidentiality agreement to ensure that they are aware of their obligations.

### **CEO induction**

Local governments should ensure that they provide the CEO with all of the necessary information on the local government's processes, policies, procedures and systems at the commencement of the CEO's employment.

New CEOs are eligible to participate in the Local Government CEO Support Program which is a joint initiative of the Department and LG Pro to provide mentoring and general support to those appointed to the position of CEO in a local government for the first time. The program runs for six to nine months from the time a CEO is appointed and involves the CEO being matched with a mentor that best meets their needs.

The program provides the CEO with an opportunity (through meetings and on-going correspondence) to discuss a wide range of issues with their appointed mentor in the strictest confidence. The program is aimed at addressing the individual needs of the CEO. Examples of issues that may be covered include the following:

- Role of the CEO
- Governance
- Strategic and long-term planning
- Legislative framework
- Relationships and dealing with council members
- Risk management
- Resource management
- Managing the business of Council
- Family considerations



## Part 2 – Performance Review

### Principles

The standards regarding CEO performance review are based on the principles of fairness, integrity and impartiality.

#### Performance Review Standards

The minimum standard for performance review will be met if:

- S2.1** Performance criteria is specific, relevant, measurable, achievable and time-based.
- S2.2** The performance criteria and the performance process are recorded in a written document, negotiated with and agreed upon by the CEO and council.
- S2.3** The CEO is informed about how their performance will be assessed and managed and the results of their performance assessment.
- S2.4** The collection of evidence regarding performance outcomes is thorough and comprehensive.
- S2.5** Assessment is made free from bias and based on the CEO's achievements against documented performance criteria, and decisions and actions are impartial and transparent.
- S2.6** The council has endorsed the performance review assessment by absolute majority.

### Guidelines

Section 5.38 of the Act provides that, for a CEO who is employed for a term of more than one year, the performance of a CEO is to be reviewed formally at least once in every year of their employment.

In addition to this minimum requirement, it is recommended that the council engages in regular discussions with the CEO regarding their performance against the performance criteria, including progress and ways that the CEO can be supported. Any changes to the CEO's performance agreement such as changes to the performance criteria should also be discussed, and agreed to, between the council and the CEO, as the matter arises.

#### Employment contract and performance agreement

Section 5.39, of the Act requires the employment contract to specify the performance criteria for the purpose of reviewing the CEO's performance. This will include ongoing permanent performance criteria. A local government may wish to have a separate additional document called a "performance agreement" which includes the

performance review criteria in the employment contract, additional criteria (e.g. the performance indicators in relation to specific projects) and how the criteria will be assessed. The performance agreement should be negotiated and agreed upon by the CEO and the council. The performance agreement may also set out the CEO's professional development goals and outline a plan to achieve these goals.

### **Performance Criteria**

Setting the performance criteria is an important step. One of the CEO's key responsibilities is to oversee the implementation of council's strategic direction, and so it is important to align the CEO's performance criteria to the goals contained in the council's Strategic Community Plan and Corporate Business Plan. Accordingly, as these plans are updated, the CEO's performance criteria should be updated to reflect the changes.

In leading the administrative arm of a local government, the CEO is responsible for undertaking core tasks, the achievement of which will contribute to the effectiveness of the council. It is important that the outcomes associated with these tasks are measurable and clearly defined. These could be in relation to:

- service delivery targets from the council's Strategic Community Plan;
- budget compliance;
- organisational capability;
- operational and project management;
- financial performance and asset management;
- timeliness and accuracy of information and advice to councillors;
- implementation of council resolutions;
- management of organisational risks;
- leadership (including conduct and behaviour) and human resource management; and
- stakeholder management and satisfaction.

Performance criteria should focus on the priorities of the council and, if appropriate, can be assigned priority weighting in percentages. The council and CEO should set goals related to target outcomes for future achievement in the performance criteria. Goals should be specific, measurable, achievable, relevant and time-based.

Following the determination of the performance criteria and goals, the council will need to determine how to measure the outcomes of each criteria. It is important to relate performance indicators to the selection criteria used in selecting the CEO. For example, if the CEO has been selected due to their financial experience and ability to improve the local government's finances, indicators regarding improved revenue and reduced expenses are obvious starting points.

Considering the context within which the local government is operating is important. For example, if a significant financial event occurs, such as a downturn in the economy, financial performance indicators will likely need to be adjusted. It is important that such contextual factors are given appropriate weighting and that goals are flexible to allow regular adjustment. Adjustments may be initiated by either the CEO or the council. Councils need to be realistic in terms of their expectations of a CEO's performance and provide appropriate resources and support to facilitate the

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achievement of performance criteria.

### **Performance review panel**

It is recommended that the council delegates the CEO performance review to a panel (e.g. comprising certain council members and an independent observer). The panel has a duty to gather as much evidence as possible upon which to base their assessments. The role of the review panel includes developing the performance agreement in the first instance, conducting the performance review and reporting on the findings and recommendations of the review to council. It is also recommended that council develop a policy to guide the performance review process. A policy might include the composition of the panel, primary functions, the role and appointment of an independent consultant, and the responsibilities of review panel members.

### **Independent consultant**

If a council lacks the resources and expertise to meet the expected standard of performance review, the council should engage an external facilitator to assist with the process of performance appraisal and the development of the performance agreement. The local government should ensure that the consultant has experience in performance review and, if possible, experience in local government or dealing with the performance review of senior executives. The consultant should not have any interest in, or relationship with, the council or the CEO.

With guidance from the performance review panel, a consultant can facilitate the following tasks:

- setting performance criteria;
- preparing the performance agreement;
- collecting performance evidence;
- writing the performance appraisal report;
- facilitating meetings between the performance review panel;
- assisting with the provision of feedback to the CEO;
- formulating plans to support improvement (if necessary); and
- providing an objective view regarding any performance management-related matters between the concerned parties.

### **Assessing performance**

It is a requirement of the regulations that the process by which the CEO's performance will be reviewed is documented and agreed to by both parties. Council and the CEO must also agree on any performance criteria that is in addition to what is specified in the CEO's contract of employment. The option to include additional criteria for performance review purposes by agreement provides a degree of flexibility for both parties in response to changing circumstances and priorities.

It is essential that CEO performance is measured in an objective manner against the performance criteria alone. It is important that reviews are impartial and not skewed by personal relationships between the review panel and the CEO. Close personal relationships between the panel members and the CEO can be just as problematic as extremely poor relationships. Evidence of CEO performance may come from an array of sources, many of which the CEO themselves can and should provide to the

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council as part of regular reporting. These sources include:

- achievement of key business outcomes;
- interactions with the council and progress that has been made towards implementing the council's strategic vision;
- audit and risk committee reports;
- workforce metrics (e.g. the average time to fill vacancies, retention rate, information about why people leave the organisation and staff absence rate);
- incident reports (e.g. results of occupational health and safety assessments, the number and nature of occupational health and safety incident reports, and the number and nature of staff grievances);
- organisational survey results;
- relationships (e.g. with relevant organisations, stakeholder groups, and professional networks); and
- insights from key stakeholders (this could be done by way of a survey to obtain stakeholder input).

It is important that, in addition to looking at the achievement of key performance indicators (KPIs), the council considers the following:

- How the CEO has achieved the outcomes. In particular, whether or not their methods are acceptable and sustainable.
- The extent to which current performance is contingent upon current circumstances. Has the CEO demonstrated skills and behaviours to address and manage changes in circumstances which have affected his or her performance? (for example, the impact of COVID-19.)
- What the CEO has done to ensure the wellbeing of staff and to maintain trust in the local government.

The council should consider the attention the CEO has given to ensuring equal employment opportunity, occupational health and safety, privacy, managing potential conflicts of interest, and complying with procurement process requirements.

### **Addressing performance issues**

Once the CEO's performance has been assessed, it is essential that any areas requiring attention or improvement are identified, discussed with the CEO and a plan is agreed and put in place to address these. The plan should outline the actions to be taken, who is responsible for the actions and an agreed timeframe.

The performance review panel must decide on an appropriate course of action that will address the performance issue. This may include professional development courses, training, counselling, mediation, mentoring or developing new work routines to ensure specific areas are not neglected. The performance review panel should then arrange for regular discussion and ongoing feedback on the identified performance issues, ensuring improvements are being made.

It is important to keep in mind that a local government falling short of its goals is not always attributable to the CEO. External factors may have resulted in initial performance expectations becoming unrealistic. Failure to meet performance criteria does not necessarily mean the CEO has performed poorly and, for this reason,

performance and outcome should be considered separately. Where ongoing issues have been identified, the council will need to take a constructive approach and seek to develop the CEO's competency in that area.

While there are obligations on the council to manage the CEO in regard to their performance, when it extends into potential wrongdoing (misconduct), the council should be referring the matter to the Public Sector Commission or Corruption and Crime Commission. This provides an independent process to follow and ensures probity, natural justice and oversight of allegations.

**Confidentiality**

The council must ensure that accurate and comprehensive records of the performance management process are created. Any information produced must be kept confidential.

## Part 3 – Termination

### Principles

The standards for the termination of a local government CEO's employment (other than for reasons such as voluntary resignation or retirement) are based on the principles of fairness and transparency. Procedural fairness is a principle of common law regarding the proper and fair procedure that should apply when a decision is made that may adversely impact upon a person's rights or interests.

#### Termination Standards

The minimum standards for the termination of a CEO's contract will be met if:

- S3.1** Decisions are based on assessment of the CEO's performance as measured against the documented performance criteria in the CEO's contract.
- S3.2** Performance issues have been identified as part a performance review (conducted within the preceding 12 months) and the CEO has been informed of the issues. The council has given the CEO a reasonable opportunity to improve and implement a plan to remedy the performance issues, but the CEO has not subsequently remedied these issues to the satisfaction of the local government.
- S3.3** The principle of procedural fairness is applied. The CEO is informed of their rights, entitlements and responsibilities in the termination process. This includes the CEO being provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting them, and their response is genuinely considered.
- S3.4** Decisions are impartial and transparent.
- S3.5** The council of the local government has endorsed the termination by absolute majority.
- S3.6** The required notice of termination (which outlines the reasons for termination) is provided in writing.

### Guidelines

#### Reasons for termination

The early termination of a CEO's employment may end due to:

- poor performance;
- misconduct; or
- non-performance or repudiation of contract terms.

There is a difference between poor performance and serious misconduct. Poor performance is defined as an employee not meeting the required performance criteria or demonstrating unacceptable conduct and behaviour at work, it includes:

- not carrying out their work to the required standard or not doing their job at all;
- not following workplace policies, rules or procedures;
- unacceptable conduct and behaviour at work;
- disruptive or negative behaviour at work;
- not meeting the performance criteria set out in the employment contract and/or performance agreement unless these are outside the CEO's control;
- not complying with an agreed plan to address performance issues;
- failing to comply with the provisions of the *Local Government Act 1995* and other relevant legislation;
- failing to follow council endorsed policies.

Serious misconduct can include when an employee:

- causes serious and imminent risk to the health and safety of another person or to the reputation or revenue of the local government; or
- behaves unlawfully or corruptly; or
- deliberately behaves in a way that's inconsistent with continuing their employment.

Examples of serious misconduct can include:

- matters arising under section 4(a), (b) and (c) of the *Corruption, Crime and Misconduct Act 2003*;
- theft;
- fraud;
- assault;
- falsification of records;
- being under the influence of drugs or alcohol at work; or
- refusing to carry out appropriate and lawful resolutions of council.

Misconduct is also defined in section 4 of the *Corruption, Crime and Misconduct Act 2003* (WA). Under this Act, misconduct can be either serious or minor and the obligation to notify the Public Sector Commission (PSC) or the Corruption and Crime Commission (CCC) is paramount.

Termination on the basis of misconduct is covered by employment law. A local government should seek independent legal, employment or industrial relations advice prior to a termination. A council should also seek independent advice during the termination process including advice on the relevant employment legislation affecting CEO employment and the application of that legislation to their specific circumstances. This will ensure that a council complies with employment law during the entire termination process.

A local government is required to endorse the decision to terminate a CEO's employment by way of an absolute majority decision. A local government must certify that the termination was in accordance with the adopted standards in regulations.

**Opportunity to improve and mediation**

If a CEO is deemed to have been performing poorly, the council must be transparent and inform the CEO of this. It is important that the CEO is given an opportunity to remedy the issues within a reasonable timeframe as agreed between the CEO and the council. The council should clearly outline the areas in need of improvement, and with the CEO's input, determine a plan to address any issues. If a plan for improvement is put in place and the CEO's performance remains poor, then termination may be necessary. If a local government decides to terminate the employment of the CEO it must have conducted a performance review in the previous 12 months in accordance with section 5.38 of the Act.

Where the concerns or issues relate to problematic working relationships or dysfunctional behaviour, it is recommended that a council engages an independent accredited mediator to conduct a mediation between the parties. A mediation session may be useful in assisting parties to understand and address issues before the situation escalates to a breakdown in the working relationship (which affects the ability of the CEO to effectively perform their duties) and the subsequent termination of the CEO's employment.

**Termination report**

The council should prepare a termination report which outlines the reasons for termination, the opportunities and assistance provided to the CEO to remedy any issues, and an explanation of the CEO's failure to do so. Council must provide prior opportunities and support to the CEO to assist them in remedying the issues which form the basis of the termination. It is a requirement of the regulations that council must provide written notice to the CEO outlining the reasons for their decision to terminate. In addition, council must certify that the termination of the CEO's employment was carried out in accordance with the standards set out in regulations.

**Confidentiality**

Local governments should ensure that the termination process is kept confidential. The CEO is to be informed of their rights and entitlements. Notice of termination of employment is required to be given in writing. Where possible, the news of termination of employment should also be delivered in person. The CEO should be provided with a letter outlining the reasons for, and date of, the termination of their employment.

Before making any public announcements on the termination of the CEO, a council should ensure that the entire termination process is complete, including that the CEO has been informed in writing of the termination.

**Disclaimer**

It is outside the scope of these guidelines to provide legal advice, and local governments should seek their own legal advice where necessary. Guidance as to legal requirements and compliance in relation to the termination of employment is provided by the Fair Work Commission at [www.fwc.gov.au](http://www.fwc.gov.au), the Fair Work Ombudsman at [www.fairwork.gov.au](http://www.fairwork.gov.au) and the Western Australian Industrial Relations Commission at [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au).





# Model standards for CEO recruitment, performance and termination

## Division 1 — Preliminary provisions

### 1. Citation

These are the *City of Bayswater Standards for CEO Recruitment, Performance and Termination*.

### 2. Terms used

(1) In these standards —

**Act** means the *Local Government Act 1995*;

**additional performance criteria** means performance criteria agreed by the local government and the CEO under clause 16(1)(b);

**applicant** means a person who submits an application to the local government for the position of CEO;

**contract of employment** means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;

**contractual performance criteria** means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;

**job description form** means the job description form for the position of CEO approved by the local government under clause 5(2);

**local government** means the *[insert name of local government]*;

**selection criteria** means the selection criteria for the position of CEO determined by the local government under clause 5(1) and set out in the job description form;

**selection panel** means the selection panel established by the local government under clause 8 for the employment

of a person in the position of CEO.

(2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act, unless the contrary intention appears.

## Division 2 — Standards for recruitment of CEOs

### 3. Overview of Division

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

#### 4. Application of Division

- (1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the employment of a person in the position of CEO.
- (2) This Division does not apply —
  - (a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or
  - (b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause 13(2).

#### 5. Determination of selection criteria and approval of job description form

- (1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government.
- (2) The local government must, by resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out —
  - (a) the duties and responsibilities of the position; and
  - (b) the selection criteria for the position determined in accordance with subclause (1).

#### 6. Advertising requirements

- (1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the Local Government (Administration) Regulations 1996 regulation 18A.
- (2) If clause 13 applies, the local government must advertise the position of CEO in the manner referred to in the Local Government (Administration) Regulations 1996 regulation 18A as if the position was vacant.

#### 7. Job description form to be made available by local government

If a person requests the local government to provide to the person a copy of the job description form, the local government must —

- (a) inform the person of the website address referred to in the *Local Government (Administration) Regulations 1996* regulation 18A(2)(da); or
- (b) if the person advises the local government that the person is unable to access that website address —
  - (i) email a copy of the job description form to an email address provided by the person; or

- (ii) mail a copy of the job description form to a postal address provided by the person.

## 8. Establishment of selection panel for employment of CEO

- (1) In this clause —  
*independent person* means a person other than any of the following —
  - (a) a council member;
  - (b) an employee of the local government;
  - (c) a human resources consultant engaged by the local government.
- (2) The local government must establish a selection panel to conduct the recruitment and selection process for the employment of a person in the position of CEO.
- (3) The selection panel must comprise —
  - (a) council members (the number of which must be determined by the local government); and
  - (b) at least 1 independent person.

## 9. Recommendation by selection panel

- (1) Each applicant's knowledge, experience, qualifications and skills must be assessed against the selection criteria by or on behalf of the selection panel.
- (2) Following the assessment referred to in subclause (1), the selection panel must provide to the local government —
  - (a) a summary of the selection panel's assessment of each applicant; and
  - (b) unless subclause (3) applies, the selection panel's recommendation as to which applicant or applicants are suitable to be employed in the position of CEO.
- (3) If the selection panel considers that none of the applicants are suitable to be employed in the position of CEO, the selection panel must recommend to the local government —
  - (a) that a new recruitment and selection process for the position be carried out in accordance with these standards; and
  - (b) the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.
- (4) The selection panel must act under subclauses (1), (2) and (3) —
  - (a) in an impartial and transparent manner; and
  - (b) in accordance with the principles set out in section 5.40 of the Act.
- (5) The selection panel must not recommend an applicant to the local government under subclause (2)(b) unless the selection panel has —
  - (a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications and skills meet the selection criteria; and

- (b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and
  - (c) whether by contacting referees provided by the applicant or making any other inquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance and any other claims made by the applicant.
- (6) The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel under this clause.

#### 10. Application of cl. 5 where new process carried out

- (1) This clause applies if the local government accepts a recommendation by the selection panel under clause 9(3)(a) that a new recruitment and selection process for the position of CEO be carried out in accordance with these standards.
- (2) Unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria —
  - (a) clause 5 does not apply to the new recruitment and selection process; and
  - (b) the job description form previously approved by the local government under clause 5(2) is the job description form for the purposes of the new recruitment and selection process.

#### 11. Offer of employment in position of CEO

Before making an applicant an offer of employment in the position of CEO, the local government must, by resolution of an absolute majority of the council, approve —

- (a) the making of the offer of employment to the applicant; and
- (b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.

#### 12. Variations to proposed terms of contract of employment

- (1) This clause applies if an applicant who is made an offer of employment in the position of CEO under clause 11 negotiates with the local government a contract of employment (the **negotiated contract**) containing terms different to the proposed terms approved by the local government under clause 11(b).
- (2) Before entering into the negotiated contract with the applicant, the local government must, by resolution of an absolute majority of the council, approve the terms of the negotiated contract.

#### 13. Recruitment to be undertaken on expiry of certain CEO contracts

- (1) In this clause —  
**commencement day** means the day on which the *Local Government (Administration) Amendment Regulations 2021* regulation 6 comes into operation.

- (2) This clause applies if —
  - (a) upon the expiry of the contract of employment of the person (the *incumbent CEO*) who holds the position of CEO —
    - (i) the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and
    - (ii) a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day;
  - and
  - (b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.
- (3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be employed in the position of CEO after the expiry of the incumbent CEO's contract of employment.
- (4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be employed in the position of CEO.

#### 14. Confidentiality of information

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

### Division 3 — Standards for review of performance of CEOs

#### 15. Overview of Division

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

#### 16. Performance review process to be agreed between local government and CEO

- (1) The local government and the CEO must agree on —
  - (a) the process by which the CEO's performance will be reviewed; and
  - (b) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.
- (2) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.

- (3) The matters referred to in subclause (1) must be set out in a written document.

### **17. Carrying out a performance review**

- (1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.
- (2) The local government must —
  - (a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and
  - (b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

### **18. Endorsement of performance review by local government**

Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

### **19. CEO to be notified of results of performance review**

After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of —

- (a) the results of the review; and
- (b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

## **Division 4 — Standards for termination of employment of CEOs**

### **20. Overview of Division**

This Division sets out standards to be observed by the local government in relation to the termination of the employment of CEOs.

### **21. General principles applying to any termination**

- (1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.
- (2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including —
  - (a) informing the CEO of the CEO's rights, entitlements and responsibilities in relation to the termination process; and
  - (b) notifying the CEO of any allegations against the CEO; and
  - (c) giving the CEO a reasonable opportunity to respond to the allegations; and
  - (d) genuinely considering any response given by the CEO in response to the allegations.

## 22. Additional principles applying to termination for performance-related reasons

- (1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.
- (2) The local government must not terminate the CEO's employment unless the local government has —
  - (a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or any other review of the CEO's performance, identified any issues (the **performance issues**) related to the performance of the CEO; and
  - (b) informed the CEO of the performance issues; and
  - (c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and
  - (d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.
- (3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12-month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

## 23. Decision to terminate

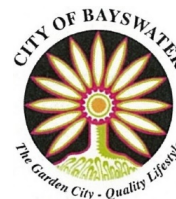
Any decision by the local government to terminate the employment of a CEO must be made by resolution of an absolute majority of the council.

## 24. Notice of termination of employment

- (1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.
- (2) The notice must set out the local government's reasons for terminating the employment of the CEO.



## POSITION DESCRIPTION



### POSITION DETAILS

<b>Position Title:</b>	Chief Executive Officer
<b>Classification:</b>	Negotiated contract
<b>Division:</b>	Executive Services
<b>Department:</b>	Executive Services
<b>Employment Status</b>	Full Time

### ORGANISATION ENVIRONMENT

Description of Department -

The Executive Services Directorate includes the following functions:

- [Councillor Support](#)
- [Marketing and Communications](#)
- [Community Engagement](#)

### POSITION OBJECTIVES

#### Objective of this Position

- To implement the strategic goals and objectives of the organisation.
- To ensure that Council receives professional and timely advice and support on all matters relating to the operation of the City of Bayswater as a local government and achievement of its goals.
- To provide overall leadership and direction for the administration of the City of Bayswater and to provide the primary link through communications and consultation between the Council and staff.

#### Within Section

- Meet corporate objectives.
- Ensure that delegations are exercised within statutory requirements, Council Policies and strategic objectives. Lead the organisation in providing a high level of service to the Community and Elected Members.



#### **Within Organisation**

- Develop a Corporate approach within the Executive Leadership Team towards Strategic Financial Management.
- Provides visionary leadership, strategic management and direction for the City of Bayswater.
- Development and implementation of the Integrated Planning Framework including informing strategies for strategic documents.
- Administer the legal, statutory and election process of the Local Government's operation and be the chief adviser to Council on these matters.
- Foster a Corporate approach to ensure effective financial controls operate within and across each functional area.
- Manage the preparation, review and enforcement of Council's statutes, policies and local laws including review of delegations of authority.
- Provide a focus for Corporate Culture and Leadership.

#### **REPORTING RELATIONSHIPS**

##### **Responsible to**

This position reports directly to:

- Council and the Mayor

##### **Supervision Responsibilities**

This position is currently responsible for supervising:

- Director of Major Projects and Commercial Activities
- Director Community and Development
- Director of Corporate and Strategy
- Director Works and Infrastructure
- Executive Assistant

##### **Key Internal / External Relationships**

This position interacts:

##### Internal -

- Councillors individually
- Council, All Committees
- Directors, Managers
- All Staff

##### External -

- Community groups and clubs
- Business and community groups
- Residents and ratepayers
- Federal & State Governments

- Other Local Governments, peak bodies and sector representatives
- Consultants and Legal advisors

#### **RESPONSIBILITIES OF ALL EMPLOYEES OF THE CITY IN RELATION TO SUPPORTING THE CORPORATE VALUES**

##### **Our Bayswater Values**

**Accountability - Do it right.** *We do what we say we will do the right way and on time. Working together we take responsibility and pride in delivering quality service in an efficient way.*

**Excellence - Do it well.** *We are a 'can do' organisation where we are responsive, efficient, professional, friendly and positive, continually striving for service excellence.*

**Innovation - Do it better.** *We challenge the status quo through embracing change and thinking outside the box to broaden our horizons.*

**Respect - Do it together.** *We respect and care, promoting a positive, safe and inclusive workplace where people contribute and feel part of team, valued, listened to and acknowledged.*

**All employees of the City are required to demonstrate a willingness to be flexible and fit into a variety of roles to meet the requirements of the organisation.**

#### **COMPETENCY REQUIREMENTS**

##### **Leadership**

- Proven leadership at the Chief Executive Officer/Director or Senior Manager level, with the demonstrated intellectual capacity to develop an understanding of all legislation impacting on Local Government.
- Significant knowledge and understanding of Integrated Planning and Reporting framework.
- Delegation skills to ensure the achievement of outcomes, accountability of senior management staff and the development of employees' abilities.
- Understanding of the application of contemporary human resource management principles, including understanding of the relevant industrial relation frameworks.
- Demonstrated proven negotiations skills.

##### **Policy Implementation**

- Good knowledge of public policy issues as they impact on Local Government.

##### **Governance and Compliance**

- The ability to administer the Local Government Act (1995) and associated Legislation involved in the field of Local Government.
- Proven delivery of professional and timely advice to support making the most informed decisions.
- Knowledge of statutory, legal and contractual obligations.

**Financial results**

- Extensive experience in the area of financial management.

**Community Relations**

- Demonstrated experience in contemporary community engagement.
- Appreciation of the culture and heritage of the City and how it integrates with planning and policy.
- A proven history of building and maintaining positive strategic relationships.

**General Management**

- Excellent interpersonal and communication skills focussing on maintaining good relationships with elected members, staff and stakeholders.
- Degree in relevant Management, Business and/or Public Sector Administration discipline or experience that is accepted as comparable is desirable.
- Managing issues relating to change management and organisational reform.

**KEY DUTIES/ RESPONSIBILITIES**

- Responsible for effective day to day operations of the City of Bayswater.
- In consultation with Council, initiate, implement, evaluate and achieve strategic and service delivery plans for the City of Bayswater.
- Co-ordinate, in conjunction with the Executive Leadership Team, an overall system of fiscal management to reflect Council's aims and objectives.
- Implement and manage the requirements of the Integrated Planning Framework.
- Promote a clear, equitable and strategic approach to people management, including proactive workforce planning, strong employee wellbeing and development programmes and outcomes. Lead and develop the Executive Leadership Team in such a manner that an environment of success and professional camaraderie is evident to all. Ensure that the Executive Leadership Team has the skills necessary to implement best practice human resource management.
- Institute a staff training program that will improve staff skills across the board, which will assist staff in focusing on service delivery to the Community.
- Administer the legal, statutory and election process of the City of Bayswater's operations and be the chief adviser to Council on these matters to ensure the City is operating within the statutes and all legal requirements of the election process are maintained.
- On behalf of the City of Bayswater, make effective representation of the issues, views, policies and needs of the City, as necessary.
- Ensure the development and maintenance of sound communications and good relationships between the City, Government Departments, Business and the Community at large.
- Ensure reports and recommendations submitted to Council are well written and

<p>based on sound judgment with appropriate recommendations.</p> <ul style="list-style-type: none"> <li>• Ensure that the Council's statutory compliance obligations are met.</li> <li>• Manage the relationships between Council and the Administration to ensure the highest levels of governance and accountability throughout the organisation and compliance with the Code of Conduct and the Local Government (Official Conduct) Amendment Act 2007.</li> <li>• Develop and maintain the status of the City of Bayswater as an effective, innovative and responsible leader in Local Government.</li> <li>• As designated Executive Officer of the Local Recovery Coordinating Group (LRCG) provide executive support by ensuring secretariat support as required.</li> </ul>
<p><i>This position description is only descriptive of the type of duties to be undertaken during the period of employment, and the employee accepts that the organisation may require the employee to carry out any duties, which are within the employee's skill and competence.</i></p>
<p><b>PERFORMANCE CRITERIA</b></p>
<p>Key Result Areas and associated strategies and actions will be varied by agreement between the employee and employer annually, during the term of the contract.</p>
<p><b>EXTENT OF AUTHORITY</b></p>
<p>All authority vested in a Chief Executive Officer under the Local Government Act and associated Regulations and Local-Laws and all other relevant Acts State and Federal Parliament.</p> <p>Delegated Authority as determined by Council to manage Councils services, functions and expenditure.</p>
<p><b>APPROVAL</b></p>
<p>I confirm that the details above are an accurate statement of the position's responsibilities and requirements.</p> <p>Approved</p> <p>Signature _____ Date _____</p> <p>Name _____</p> <p>Mayor City of Bayswater _____</p>

**13.1.3 Appointment Of External Consultant**

<b>Responsible Branch:</b>	Office of the Chief Executive Officer
<b>Responsible Directorate:</b>	Office of the Chief Executive Officer
<b>Authority/Discretion:</b>	Executive/Strategic
<b>Voting Requirement:</b>	Simple Majority Required
<b>Attachments:</b>	Nil

**SUMMARY**

Following the resignation of the CEO, it is recommended that Council consider the appointment of an external recruitment consultant to coordinate the recruitment process.

**OFFICER'S RECOMMENDATION**

**That Council:**

1. Requests the CEO undertake a request for quote process for the appointment of an external recruitment consultant in relation to the recruitment of a new CEO; and
2. Notes that the CEO Recruitment Committee has been granted delegated authority to assess and appoint an external recruitment consultant following the request for quote process.

**BACKGROUND**

As part of the CEO recruitment process, it is recommended that Council appoint an external recruitment consultant to lead the recruitment process. It is noted that, through a separate report, it is recommended that Council establish a CEO Recruitment Committee which will have delegated authority to appoint the external recruitment consultant.

**EXTERNAL CONSULTATION**

Nil.

**OFFICER'S COMMENTS**

The external recruitment consultant will liaise with the Mayor and the CEO Recruitment Committee throughout the recruitment process and with their input, undertake advertising, preliminary shortlisting and coordinate the interview process of preferred candidates.

It is proposed to seek quotes from recruitment consultants with executive recruitment experience, including but not limited to:

- Lester Blades
- Davidson
- Hays
- Beilby Teal Downing
- Mills Recruitment
- Hunter Executive Search
- Chandler McLeod
- Derwin
- Hudson
- Leading Roles

**LEGISLATIVE COMPLIANCE**

In accordance with s 5.16(1) of the Act, Council may delegated any of its power and duties to a committee, noting that an absolute majority decision of Council is required and that this is the subject of a separate report.

## RISK ASSESSMENT

In accordance with the City's Risk Management Framework, the officer's recommendation has been assessed against the City's adopted risk tolerance. Comments are provided against each of the risk categories.

<b>Officer's Recommendation</b>	<b>That Council:</b> <ol style="list-style-type: none"> <li><b>Requests the CEO undertake a request for quote process for the appointment of an external consultant in relation to the recruitment of a new CEO; and</b></li> <li><b>Notes that the CEO Recruitment Committee has been granted delegated authority to assess and appoint an external recruitment consultant following the request for quote process.</b></li> </ol>	
<b>Risk Category</b>	<b>Adopted Risk Appetite</b>	<b>Risk Assessment Outcome</b>
Strategic Direction	Moderate	Low
Reputation	Low	Low
Governance	Low	Low
Community and Stakeholder	Moderate	Low
Financial Management	Low	Low
Environmental Responsibility	Low	Low
Service Delivery	Low	Low
Organisational Health and Safety	Low	Low
<b>Conclusion</b>	This is considered low risk as it will ensure that the recruitment process can begin without delay.	

## FINANCIAL IMPLICATIONS

Funding for the recruitment process will be identified in the mid-year budget review process.

## STRATEGIC IMPLICATIONS

In accordance with the City of Bayswater Strategic Community Plan 2021-2031, the following applies:

Theme: Leadership and Governance

Goal L4: Communicate in a clear and transparent way.

Provide the community with useful information about Council's policies, services and events and advise the community of engagement outcomes.

## CONCLUSION

It is recommended that Council begin the request for quote process for the appointment of an external recruitment consultant to assist Council in the CEO recruitment process. To ensure no time delays, it is noted that it is recommended in a separate report that delegated authority be granted to the CEO Recruitment Committee to appoint the consultant.

