

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 11 June 2024
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.2

Responsible Officer: Zoë Gill
Governance and Risk Coordinator
Office of the Chief Executive

Subject: CEO Review Process

For: Decision

1. CEO Review Process – Exclusion of the Public

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

- Chief Executive Officer, Greg Georgopoulos
- Director Environment & Infrastructure, David Waters
- Director Corporate Services, Gary Lewis
- A/Director Community & Development, Jess Charlton
- Governance and Risk Coordinator, Zoe Gill
- Governance and Risk Officer, Skye Ludzay
- Minute Secretary, Rebekah Lyons
- IT Support, Tom Portal

be excluded from attendance at the meeting for Agenda Item 19.2: (CEO Review Process) in confidence.

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

Section 90(3)(a) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is of a personal nature the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person.

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

2. CEO Review Process – Confidential Item

Appendix 1

Council Report of 21 March 2024

**ADELAIDE HILLS COUNCIL
CEO PERFORMANCE REVIEW PANEL MEETING
Thursday 21 March 2024
Confidential Report**

Item: 10.2

Responsible Officer: Tracy Riddle
Governance Legal Advisor
Kelledy Jones Lawyers

Subject: Chief Executive Officer's Performance Review 2024/25

For: Decision

1. Chief Executive Officer's Performance Review 2024/25 – Exclusion of the Public

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

- CEO, Greg Georgopoulos
- Collette Ordish, Perks People Solutions
- Tracy Riddle, Kelledy Jones Lawyers, Governance Support

be excluded from attendance at the meeting for Agenda Item 10.2: CEO Performance Review Process.

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

Section 90(3) (a) of the Local Government Act 1999, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

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

2. Chief Executive Officer’s Performance Review 2024/25 – Confidential Item

SUMMARY

In accordance with the resolution of the Panel, made at its meeting of Thursday 12 February 2024, this report will outline the COE Performance Review Process.

RECOMMENDATION

The CEO Performance Review Panel resolves:

1. That the Council undertake a select tendering process to engage a suitably qualified HR consultant as well as a Qualified Independent Person to assist with its CEO Performance Review Process.

2. That the Council invite:
.....;
.....;
.....;
to tender for the role of HR Consultant as part of the CEO Performance Review Process.

3. Further, that the Council invite:
.....;
.....;
.....;
to tender for the role of Qualified Independent Person as part of the CEO Performance Review Process.

4. With such tenders returnable on/...../....., for the consideration of the Panel, and recommendation to the Council.

In accordance with sections 91(7) and 91(9) of the *Local Government Act 1999* the Panel orders that the Item Chief Executive Officer's Performance Review Process, the Minutes arising, the attachments and any associated documentation, having been considered by the Panel in confidence under section 90(3)(a), be kept confidential and not available for public inspection for a until after the council has determined the same, because the matter relates to the negotiations and details of the contractual employment arrangements of an employee, the disclosure of which may breach a duty of confidence owed to the employee and result in the unreasonable disclosure of information concerning the personal affairs of the employee.

BACKGROUND

At its meeting of Thursday 12 February 2024, the Panel resolved as follows:

*Moved Mayor Wisdom
S/- Ms Godden*

The CEO Performance Review Panel resolves:

1. *That the report be received and noted.*
2. *Based on consideration and discussion of the draft KPI's by the Panel, the CEO and Ms Collette Ordish from Perks People Solutions will refine the draft KPI's, to be returned to the next CEO Performance Review Panel meeting for the consideration of the Panel, and proposed recommendation to the Council;*
3. *That a report be returned to the Panel with respect to the proposed CEO Performance Review process, for the consideration of the Panel, and proposed recommendation to the Council;*
4. *That the CEO will identify support and resources to assist in meeting the KPI's for the consideration of the Panel, and proposed recommendation to the Council.*

CARRIED UNANIMOUSLY

This Report gives effect to paragraph 3 of that decision, namely, that a report be returned to the Panel with respect to the proposed CEO Performance Review process, for the consideration of the Panel, and proposed recommendation to the Council, to enable the review process to be commenced, once the KPI's have been adopted.

PURPOSE

Amendments made to the *Local Government Act 1999* (the **Act**), as part of the broader Local Government Reform process, has seen the introduction of a new 'person' into the legislative framework, being that of the Qualified Independent Person (the **QIP**).

The CEO Performance Review Process is a crucial one for the Council, noting, of course, the CEO being considered as the only 'employee' of the governing body.

THE QIP

Under the Act, the QIP has functions and responsibilities including:

- the appointment of a CEO (section 98(4a) of the Act); and
- the (now) annual performance review of the CEO (section 102A of the Act).

In the above instances the QIP is defined as a person who is:

- not a member or employee of the Council and;
- determined by the Council to have appropriate qualification or experience in HR management.

In the now mandated annual CEO performance review, the Council **MUST** obtain and consider the advice of a QIP.

Importantly, therefore, the Council has a duty, whether it is to have regard to, or to obtain and consider, the advice of a QIP as part of an annual CEO performance review.

THE PROCESS

It is to be noted as follows with respect to the role of the HR Consultant and the QIP as part of the CEO Performance Review Process:

- a QIP is a person with experience or qualifications in HR management practices (which can include a consultant or legal adviser with appropriate expertise) that undertakes functions and responsibilities in the nature of an auditor of probity, process and/or procedure;
- the importance of the appointment and role of a QIP should not be underestimated. It is a legislative requirement in the employment space, where any failure by the Council will, likely, be adverse to the interests of the Council as an employer;
- an independent HR consultant/recruiter appointed by a Council to provide advice and guidance on a CEO performance review process cannot also be the QIP in that process;
- this is because of the very clear and irreconcilable conflict of interest/conflict of roles for the HR consultant;
- a person in such a role is not in a position to demonstrate to a responsible, impartial and informed person that they are unequivocally capable of being independent in circumstances where the QIP requirement is to provide advice both objective and at 'arm's length' on process and procedure and the probity aspects of the performance review process;
- an independent HR consultant/recruiter appointed to assist by providing advice and guidance to the Panel (and, ultimately, to the Council) on the performance review process, cannot also be the QIP, overseeing and commenting upon their advice but without the benefit of independence and impartiality in the process/procedure;
- otherwise, the result will be that they are providing advice to the Panel / Council on the probity and rigor of the process/procedure upon which they have previously proffered advice.

As an aside, from a corporate governance 'best practice' perspective, caution must also be exercised about the engagement of the same HR consultant who assisted the Council with the recruitment process, later being engaged in the performance review processes for the successful candidate.

It is 'self-evident' that the consultant will have a 'vested interest' in a positive outcome on that review for the candidate that they helped to appoint.

3. OPTIONS

The Panel has the following options:

1. To undertake a select tendering process to engage a suitably qualified HR consultant as well as a Qualified Independent Person to assist with its CEO Performance Review Process (Recommended)
2. To not complete a tender process and delay the COE Performance Review Process (Not Recommended)

4. APPENDICES

Nil

3. Chief Executive Officer's Performance Review 2024/25 – Duration of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 10.2 in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	until the appointment has been confirmed, but not longer than 21 March 2025
Related Attachments	until the appointment has been confirmed, but not longer than 21 March 2025
Minutes	until the appointment has been confirmed, but not longer than 21 March 2025
Other (presentation, documents, or similar)	until the appointment has been confirmed, but not longer than 21 March 2025

3. CEO Review Process – Duration of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 19.2 in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	11 June 2028
Related Attachments	11 June 2028
Minutes	11 June 2028
Other (presentation, documents, or similar)	11 June 2028

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, the Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.