

ADELAIDE HILLS COUNCIL
CEO PERFORMANCE REVIEW PANEL MEETING
28 September 2023
AGENDA BUSINESS ITEM

Item:	7.4
Responsible Officer:	Melissa Grimes Governance Assistance Corporate Services
Subject:	Late Report - Draft CEO Performance Review Panel Terms of Reference
For:	Decision

SUMMARY

The Terms of Reference for the CEO Performance Review Panel was last reviewed in 2017. Since then there has been changes to the *Local Government Act 1999* in relation to CEO Performance Reviews and as such is recommended that they now be reviewed.

As the Panel is established by the Council, the Council must endorse the Terms of Reference. However, the Panel has the opportunity to review and provide feedback to the Council for consideration.

RECOMMENDATION

The CEO Performance Review Panel resolves:

1. That the late report be received and noted
2. That the Panel recommends for approval to Council the draft CEO Performance Review Terms of Reference as contained in Appendix 1 to this report.

OR

3. That the Panel provides feedback to Administration on the draft Terms of Reference for incorporation into the final document for Council consideration.
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1. BACKGROUND

As part of the roll out of the Local Government Reform changes, Council needs to incorporate new provisions in relation to the Section 41 Committee for CEO Performance Review Panel. These have been captured in the revised Terms of Reference (attached).

Within the new section 102A of the *Local Government Act 1999*, it imposes a requirement upon a council to obtain and consider the advice of a qualified independent person in relation to the CEO performance review process. It is also now a legislative requirement that the CEO performance review occurs at least once in each year.

102A—Chief executive officer—performance review

- (1) A council must review the performance of its chief executive officer—
 - (a) at least once in each year that the chief executive officer holds office as chief executive officer; and
 - (b) if relevant, before reappointment of the chief executive officer.
- (2) The council must obtain and consider the advice of a qualified independent person on a review under subsection (1).
- (3) In this section—

qualified independent person means a person who is—

 - (a) not a member or employee of the council; and
 - (b) determined by the council to have appropriate qualifications or experience in human resource management.

The Terms of Reference has undergone an internal review and is presented to the Panel in track changes for comment and feedback prior to going to Council for consideration.

2. ANALYSIS

➤ **Strategic Management Plan/Functional Strategy/Council Policy Alignment**

Strategic Plan 2020-24 – A brighter future

Goal	Organisation
Objective O1	We have the right people with the right knowledge and skills in the right jobs and they are supported and developed.
Priority O1.4	Continue to support all staff through training, mentoring, coaching and development to enable the achievement of organisational and community goals.
Objective O5	We are accountable, informed, and make decisions in the best interests of the whole community.
Priority O5.3	Demonstrate accountability through robust corporate planning and reporting that enhances performance, is relevant and easily accessible by the community.

➤ **Legal Implications**

The CEO Performance Review Panel is a Section 41 Committee of Council under the *Local Government Act 1999*.

The Council must establish a Terms of Reference for the Panel to be governed by.

➤ **Risk Management Implications**

Undertaking regular review of the CEO’s performance is an important control in mitigating the risk of:

Deficient CEO performance review practices resulting in a lack of accountability and loss of stakeholder confidence.

Inherent Risk	Residual Risk	Target Risk
Medium (3C)	Low (2D)	Low (2D)

➤ **Financial and Resource Implications**

The resource implications associated with the Panel’s processes are borne by the People & Culture Department.

➤ **Customer Service and Community/Cultural Implications**

There is a community expectation that the CEO Panel will act in accordance with its Terms of Reference established by the Council.

➤ **Sustainability Implications**

Not directly applicable

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

<i>Council Committees:</i>	Discussions with the CEO Performance Review Panel
<i>Council Workshops:</i>	Not Applicable
<i>Advisory Groups:</i>	Not Applicable
<i>External Agencies:</i>	Not Applicable
<i>Community:</i>	Not Applicable

3. OPTIONS

The Panel has the following options:

- I. Recommend to Council the draft Terms of Reference as attached.
- II. Receive the report for information and provide further feedback to Administration for incorporation into the final document for Council consideration.

4. APPENDICES

- (1) Draft CEO Performance Review Panel Terms of Reference

Appendix 1

Draft CEO Performance Review Panel Terms of Reference

ADELAIDE HILLS COUNCIL
CEO Performance Review Panel



TERMS OF REFERENCE

1. ESTABLISHMENT

- 1.1 The CEO Performance Review Panel (the Panel) of Council is established under Section 41 of the *Local Government Act 1999* (the Act).
- 1.2 ~~The Panel does not have executive powers or authority to implement actions in areas which management has responsibility and does not have any delegated financial responsibility. The Panel does not have any management functions and is therefore independent from management. The Panel has no power or authority to make delegated decisions on Council's behalf, nor does it have any financial delegations – the Panel is an advisory Panel.~~

2. ROLE

- 2.1 In accordance with section 102A of the *Local Government Act 1999*, Council must review the performance of the Chief Executive Officer at least once per year.
- 2.2 In accordance with section 102A(2) Council must obtain and consider the advice of a qualified independent person on a review, the qualified independent person must not be a member or employee of the Council and determined by the Council to have appropriate qualifications or experience in human resource management.
- 2.2 The Council is responsible for the selection, remuneration and management of the Chief Executive Officer (CEO). The ~~over~~overall role of the Panel is to facilitate and manage and report to Council on the review process in accordance with section 102A of the Act and to provide advice to Council on matters relating to the performance and development of the CEO.

3. SPECIFIC FUNCTIONS

- 3.1 The function of the Panel is to provide advice to Council on the CEO's performance and development, including the following matters:
- 3.1.1 Determining the Performance Targets for the forthcoming 12 month performance period;
- 3.1.2 Monitoring the progress on the CEO's agreed Performance Targets for the current 12 month performance period;

CEO Performance Review Panel Terms of Reference

3.1.3 Reviewing the CEO's performance over the preceding 12 month performance period, in particular the performance against the agreed Performance Targets and position description requirements;

3.1.4 Identifying development opportunities for the CEO; and

3.1.5 Reviewing the remuneration and conditions of employment of the CEO in accordance with Section 99A of the Local Government Act 1999 and Remuneration Tribunal.

3.1.6 Making any recommendations to Council on any review of the CEO Employment Agreement.

4. OTHER MATTERS

The Panel shall:

- 4.1 Have access to reasonable resources in order to carry out its duties, recognising the constraints within Council's Budget;
- 4.2 Be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 4.3 Give due consideration to laws and regulations of the Act;
- 4.4 Where the Panel is required to act jointly with or to obtain the concurrence of the CEO in the performance of its functions, the Council expects that both parties will negotiate and consult in good faith to achieve the necessary objectives; and
- 4.5 At least once in its term, review its own performance and terms of reference to ensure it is operating at maximum effectiveness and recommend changes it considers necessary to the Council for approval.

5. MEMBERSHIP

5.1 The Panel will comprise five (5) members as follows:

5.1.1 Mayor and Deputy Mayor;

5.1.2 Two (2) Council Members; and

5.1.3 One (1) Independent Member who is not an employee or the qualified independent person as engaged pursuant to section 102A of the Act.

5.2 All members of the Panel will be appointed by the Council.

5.3 The Independent Member of the Panel shall have recent and relevant skills and experience in fields related to the role and functions of the Panel, human resource management.

5.4 It is desirable for the Council Members to be appointed to the Panel to have a sound understanding of ~~the~~ role and functions of the Panel.

Commented [MG1]: Do you want both the Mayor and Deputy Mayor on the panel, should it either be one or the other?

Commented [MG2]: Increase this to 3 if it is decided to have only the Mayor or Deputy Mayor on the panel.

CEO Performance Review Panel Terms of Reference

- 5.5 In considering appointments to the Panel, Council should give consideration to the diversity of the membership.
- 5.6 Appointments to the Panel shall be for a period of up to three (3) years.
- 5.7 Members of the Committee are eligible for reappointment at the expiration of their term of office.

6. SITTING FEES

- 6.1 The applicable Remuneration Tribunal (or its successor) Determination outlines the applicable allowance for Council Members on the Panel.
- 6.2 The Independent Member is to be paid a sitting fee as determined by Council for attendance at meetings and authorised training sessions. Council may determine a higher sitting fee for the presiding member.

7. PRESIDING MEMBER

- 7.1 The Council will appoint the Presiding Member of the Panel.
- 7.2 The Council authorises the Panel to determine if there will be a Deputy Presiding Member of the Committee and, if so, authorises the Panel to make the appointment to that position for a term determined by the Panel.
- 7.3 If the Presiding Member of the Panel is absent from a meeting the Deputy Presiding Member (if such position exists) will preside at that meeting. If there is no position of Deputy Presiding Member, or both the Presiding Member and the Deputy Presiding Member of the Panel are absent from a meeting of the Panel, then a member of the Panel chosen from those present will preside at the meeting until the Presiding Member (or Deputy Presiding Member, if relevant) is present.
- 7.4 The role of the Presiding Member includes:
 - 7.4.1 overseeing and facilitating the conduct of meetings in accordance with Act and the *Local Government (Procedures at Meetings) Regulations 2013* (the Regulations); and
 - 7.4.2 Ensuring all Panel members have an opportunity to participate in discussions in an open and encouraging manner.

8. REPORTING RESPONSIBILITIES

- 8.1 For the purposes of Section 41(8) of the Act, the Panel's reporting and accountability requirements are:
 - 8.1.1 The minutes of each Panel meeting will be included in the agenda papers of the next ordinary meeting of the Council;

CEO Performance Review Panel Terms of Reference

- 8.1.2 The Presiding Member will attend a meeting of the Council at least once per annum to present a report on the activities of the Panel;
- 8.1.3 The panel shall make whatever recommendations to the Council it deems appropriate on any area within its terms of reference where in its view action or improvement is needed; and
- 8.1.4 The Presiding Member may attend a Council meeting at any time that the Presiding Member sees fit to discuss any issue or concern relating to the Panel's functions. Depending on the nature of the matter, this may be held in confidence in accordance with Section 90 of the Act and staff may be requested to withdraw from the meeting.

9. MEETING PROCEDURE

- 9.1 Meeting procedure for the Panel is as set out in the Act, Parts 1, 3 and 4 of the Regulations. Insofar as the Act, the Regulations, or these Terms of Reference do not prescribe the procedure to be observed in relation to the conduct of a meeting of the Panel, the Panel may determine its own procedure.
- 9.2 In accordance with Section 90(7a), one or more panel members may participate in the meeting by telephone or other electronic means provided that members of the public can hear the discussion between all Panel members.
- 9.3 Only members of the Panel are entitled to vote in Panel meetings. Unless otherwise required by the Act not to vote, each member must vote on every matter that is before the Panel for decision.

~~9.4 A quorum for the Panel shall constitute half the membership, ignoring any fraction from the division, plus one (1).~~

~~9.4 Council Employees may attend any meeting as observers or be responsible for preparing papers for the Panel.~~

10. SECRETARIAL RESOURCES

- 10.1 The Chief Executive Officer shall provide sufficient administrative resources to the Panel for the purposes of coordination and preparation of reports, agendas and minutes and as a point of contact for all Panel Members and external consultants. ~~f to enable it to adequately carry out its functions.~~

11. FREQUENCY OF MEETINGS

- 11.1 The Panel shall meet at appropriate times and places as determined by the Panel. A special meeting of the Committee may be called in accordance with the Act.
- 11.2 If after considering advice from the CEO or delegate, the Presiding Member of the Panel is authorised to cancel the respective Panel meeting, if it is clear that there is no business to transact for that designated meeting.

12. NOTICE OF MEETINGS

12.1 Notice of the meetings of the Panel will be given in accordance with Sections 87 and 88 of the Act. Accordingly, notice will be given:

12.1.1 To members of the Panel by email or as otherwise agreed by Panel members at least 3 clear days before the date of the meeting; and

12.1.2 To the public as soon as practicable after the time that notice of the meeting is given to members by causing a copy of the notice and agenda to be displayed at the Council's offices and on the Council's website.

12.2 PUBLIC ACCESS TO MEETINGS & DOCUMENTS

12.3 Members of the public are able to attend all meetings of the Panel, unless prohibited by resolution of the Panel under the confidentiality provisions of Section 90 of the Act.

12.4 Members of the public have access to all documents relating to the Panel unless prohibited by resolution of the Panel under the confidentiality provisions of Section 91 of the Act.

13. MINUTES OF MEETINGS

13.1 The Chief Executive Officer shall ensure that the proceedings and resolutions of all meetings of the Panel, including recording the names of those present and in attendance are minuted and that the minutes otherwise comply with the requirements of the Regulations.

13.2 Minutes of Panel meetings shall be circulated within five days after a meeting to all members of the Panel and will (in accordance with legislative requirements) be available to the public.

13.3 The minutes shall be confirmed at the next ordinary meeting of the Panel.

<u>Date Adopted</u>	<u>Revision No</u>	<u>Reason for Amendment</u>