

7.12 CEO Employment and Remuneration Advisory Committee - Independent Advisor

Executive Summary

Purpose

The purpose of this report is for Council to consider the appointment of an Independent Advisor for the Council's CEO Employment and Remuneration Committee (**Committee**).

Background

The *Local Government Act 2020* (**Act**) requires Councils to develop, adopt and keep in force a CEO Employment and Remuneration Policy (**Policy**). Council adopted its most recent Policy (**Attachment 1**) on 18 December 2023.

The Act states that the CEO Employment and Remuneration Policy must provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Policy.

Further, Council's Policy specifies that a key purpose of the Committee is 'to consider and make recommendations to Council with respect to the:

- selection and appointment of the Independent Advisor;
- independent advice received from time to time from the Independent Advisor.

Key Issues

In late 2023, the Committee asked officers to identify potential candidates for the role of Independent Advisor. Council officers identified six candidates and received submissions from five, with one later withdrawing. Submissions received are attached for Council's consideration (**Confidential Attachment 1**).

Council has discretion about the term of appointment of an Independent Advisor. Officers recommend a two-year term for consistency and convenience.

The Council can determine whether and/or when they use the Independent Advisor during the term, to what extent they would like to use the Advisor and for what role and purpose, provided it aligns with the requirements contained within the Policy. It is noted that the role of the Independent Advisor may vary based on need during the term. Such determination can occur at a later stage when meetings of the Committee are scheduled.

Next Steps

Following Council endorsement of the preferred candidate, the Executive Manager PCD will formally advise and engage the consultant.

Confidentiality

Confidential information is contained in **Confidential Attachment 1**, as circulated in the confidential section of the agenda attachments. The information in this attachment is deemed to be confidential in accordance with Section 66(2)(a) and the definition of 'confidential information' in Section 3(1) of the Act.

The confidential information is “personal information” which if released would result in the unreasonable disclosure of information about any person or their personal affairs. It is also private commercial information being information provided by a sole trader that relates to trade secrets or if released, would unreasonably expose the sole trader to disadvantage.

If discussion of the confidential information in the attachments to this report is required for Council, Council may resolve to discuss the matter in a confidential session or to defer the matter to the confidential section of the agenda.

Officers' recommendation

That Council resolve to:

1. Authorise the Executive Manager, People, Culture and Development to engage _____ as its Independent Advisor based on the terms set out in the engagement letter (Attachment 2) and the fees specified in their submission to Council (Confidential Attachment 1);
2. Note that Confidential Attachment 1 remains confidential in accordance with section 125 of the *Local Government Act 2020* or until Council resolves otherwise; and
3. Authorise Council officers to disclose any confidential information in relation to this item, to the extent necessary to give effect to the resolution.

Responsible director: Mary-Anne Palatsides, Executive Manager PCD

1. Purpose

The purpose of this report is for Council to consider the appointment of an Independent Advisor for the Council's CEO Employment and Remuneration Committee (**Committee**).

2. Policy implications and relevance to community plan and council plan

The Boroondara Community Plan is structured around the seven priority themes. The draft Terms of Reference for the Committee specifically relates to:

Priority Theme 7: Leadership and Governance

- Strategy 7.1 - Decision making is transparent and accountable through open governance processes with timely communication and reporting.

3. Background

The *Local Government Act 2020* (**Act**) requires Councils to develop, adopt and keep in force a CEO Employment and Remuneration Policy (**Policy**). Council initially adopted its Policy on 13 December 2021 and reviewed it in 2023. Council adopted the amended policy on 18 December 2023. The Act states that the CEO Employment and Remuneration Policy must provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Policy.

Further, Council's Policy specifies that a key purpose of the Committee is 'to consider and make recommendations to Council with respect to the:

- selection and appointment of the Independent Advisor;
- independent advice received from time to time from the Independent Advisor'.

4. Outline of key issues/options

In October 2022, Council appointed its first Independent Advisor for a one-year term. The Independent Advisor supported the Committee as requested by providing independent advice and undertaking remuneration reviews including benchmarking. Their engagement ceased in October 2023.

In late 2023, the CEO Employment and Remuneration Committee asked officers to identify potential candidates for the role of Independent Advisor for next term.

Officers consulted with the industry and approached six appropriately qualified consultants with varied experience. Five submissions were received, with one later withdrawing their application.

The received submissions are in Confidential Attachment 1 for Council's consideration. Factors for assessment may include the following criteria:

- Understanding and experience of the Local Government sector, including understanding the role of Council and CEO, and the relationship between them;

- Qualifications;
- Experience as an Independent Advisor, or as a Board member or Advisory Group member; and
- Cost.

Under the Policy, Council has discretion regarding the appointment term for an Independent Advisor. Noting the previous Independent Advisor was appointed for one year, Officers recommend a two-year term for this appointment for convenience and consistency.

The Council also has discretion as to whether and/or when they use the Independent Advisor during the term, to what extent they would like to use the Advisor and for what role and purpose, provided it aligns with the requirements contained within the Policy. It is noted that the role of the Independent Advisor may vary based on need during the term and it is for the Committee to decide when it meets as to whether they will invite the Advisor to upcoming meeting/s and the role they would like the Independent Advisor to play at these meetings should this be the case. Such determination can occur at a later stage when meetings of the Committee are scheduled.

5. Consultation/communication

The Governance team were consulted on this report.

6. Financial and resource implications

The appointment of an Independent Advisor will attract remuneration. This will need to be accommodated within Council's operating budget.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Conclusion

As a public entity it is also important that Council has processes for managing employment matters relating to the CEO in a way that is transparent, fair, and consistent, and aligns with the requirements of the Act and Policy.

It is recommended that Council endorse their preferred candidate for the role of Independent Advisor for a two-year term.

**Manager &
report officer:**

Mary-Anne Palatsides, Executive Manager PCD



CEO Employment & Remuneration Policy

18 December 2023



Responsible Directorate: People Culture & Development
Authorised By: Council
Date of Adoption: 18 December 2023
Review Date: as per clause 18



Acknowledgement of Traditional Owners

The City of Boroondara acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners and original custodians of this land, and we pay our respects to their Elders past and present.



CEO EMPLOYMENT AND REMUNERATION POLICY

1. Purpose of Policy

This is the Chief Executive Officer Employment and Remuneration Policy (**Policy**) of **City of Boroondara (Council)**, made in accordance with section 45 of the *Local Government Act 2020*.

This Policy provides for the following matters which Council is responsible for under the Act or as a requirement of this Policy:

- (a) the recruitment and appointment of the Chief Executive Officer ensuring that:
 - (i) the recruitment decision is based on merit;
 - (ii) the recruitment processes support transparency in the recruitment process and the public advertising of the position; and
 - (iii) regard is had to gender equity, diversity and inclusiveness;
- (b) approving the Contract of Employment entered into between Council and the Chief Executive Officer;
- (c) the provision of independent professional advice in relation to the matters dealt with in the Policy;
- (d) the monitoring of the Chief Executive Officer's performance;
- (e) an annual review of the Chief Executive Officer's performance; and
- (f) determining the Chief Executive Officer's remuneration.

2. Date of Commencement and Review

- 2.1 This Policy commenced operation on 14 December 2021 and was reviewed, updated and endorsed on 18 December 2023.

3. Definitions

- 3.1 In this Policy, unless the context suggests otherwise the following words and phrases mean:

Act means the *Local Government Act 2020*.

Annual Review Report has the meaning given in paragraph 11.3

Chief Executive Officer or **CEO** means the Chief Executive Officer of Council.

Committee means the CEO Employment and Remuneration Advisory Committee established under this Policy.

Contract of Employment means the contract of employment between Council and the CEO, including any schedules.

Council means **City of Boroondara**

Councillors means the individuals holding the office of a member of Council **City of Boroondara**.

Council meeting has the same meaning as in the Act.



Executive Search Consultant means a consultant with specialist expertise in sourcing and evaluating candidates for senior executive roles.

Independent Advisor means the consultant appointed by Council from time to time to provide independent advice in accordance with section 45(2)(a) of the Act.

KPIs means Key Performance Indicators or performance criteria however described.

Mayor means the Mayor of Council.

Performance Plan means the annual performance plan setting out KPIs for the CEO.

Policy means this CEO Employment and Remuneration Policy adopted in accordance with section 45 of the Act.

Public Sector Wages Determination means any Determination that is currently in effect under section 21 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* in relation to remuneration bands for executives employed in public service bodies.

Recruitment Policy means the recruitment policy adopted by the CEO under section 48(2) of the Act.

Regulations means the Regulations made under Division 7 of Part 2 of the Act.

Remuneration Package means the total gross remuneration package paid to the CEO pursuant to the Contract of Employment.

Resolution means a resolution of Council made at a properly constituted Council meeting.

4. Overview

4.1 This Policy outlines the mechanisms which support Council in fulfilling its obligations regarding the CEO's employment and under the Act.

4.2 The aims of the CEO in relation to this Policy are to:

- 4.2.1 work collaboratively with the Committee in determining the Performance Plan on an annual basis;
- 4.2.2 actively participate in the performance appraisal process as required by the Committee;
- 4.2.3 make use of constructive feedback from Councillors and Committee Members in relation to performance appraisals;
- 4.2.4 undertake professional development on an as needed basis, or as part of the Performance Plan; and
- 4.2.5 promptly draw the Committee's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances.

4.3 The aims of Council (including via the Committee) in relation to this Policy are to:

- 4.3.1 establish the Committee;



- 4.3.2 provide processes for the recruitment of a natural person, and their appointment, to the position of CEO;
- 4.3.3 draft and approve the Contract of Employment entered into between Council and the CEO;
- 4.3.4 seek and be guided by independent professional advice in relation to the matters dealt with in this Policy;
- 4.3.5 provide processes for determining and reviewing the CEO's Remuneration Package;
- 4.3.6 provide processes for the monitoring of the CEO's performance including setting the Performance Plan and conducting an annual review;
- 4.3.7 determine, as required, any variations to the Remuneration Package and terms and conditions of employment of the CEO.

5. **CEO Employment and Remuneration Committee**

- 5.1 Council will establish a CEO Employment and Remuneration Committee (**Committee**).
- 5.2 The Committee will be an advisory committee.
- 5.3 The purposes of the Committee are to consider and make recommendations to Council with respect to, the:
 - 5.3.1 selection and appointment of the Independent Advisor;
 - 5.3.2 independent advice received from time to time from the Independent Advisor;
 - 5.3.3 performance monitoring of the CEO with respect to achievement of the KPIs;
 - 5.3.4 annual review of the CEO's performance against the KPIs;
 - 5.3.5 CEO's remuneration;
 - 5.3.6 provisions to be suggested for inclusion in the Contract of Employment from time to time;
 - 5.3.7 implementation of this Policy.
- 5.4 The Committee must include all eleven (11) Councillors, unless otherwise resolved by Council.
- 5.5 The Committee is to be chaired by:
 - 5.5.1 the Mayor; or
 - 5.5.2 if the Mayor is absent, the Deputy Mayor.
- 5.6 The Committee is to hold meetings as often as is necessary to:
 - 5.6.1 consider documentation relevant to the CEO's performance and remuneration,
 - 5.6.2 prepare documentation relevant to the CEO's employment and remuneration, including Council reports and contractual documents, for the approval of Council; and
 - 5.6.3 review the Remuneration Package and conditions of employment of the CEO.



- 5.7 The Committee will determine annually during a Mayoral term:
- 5.7.1 how often the Committee will meet, provided that the Committee meets at least twice in each year;
 - 5.7.2 means of attendance at Committee meetings (e.g. in person or electronically).
- 5.8 The Committee must comply with the conditions and limitations contained within the Terms of Reference to the CEO Employment and Remuneration Committee.
- 6. Recruitment of CEO**
- 6.1 The Committee will establish and coordinate the process to recruit the CEO, designed to ensure that Council can select the best available candidate from a short list of preferred candidates.
- 6.2 The Committee will determine, and make a recommendation to Council, as to:
- 6.2.1 whether there is a need to engage an Executive Search Consultant to run the recruitment process; and, if so
 - 6.2.2 the Executive Search Consultant to be appointed to run the recruitment process.
- 6.3 If an Executive Search Consultant is engaged, the Committee, the Chair of the Committee or a member of Council staff nominated by the Committee must liaise with the Executive Search Consultant in connection with the recruitment process.
- 6.4 When considering the recruitment of the position of CEO to, the Committee must:
- 6.4.1 ensure that the recruitment decision is based on merit;
 - 6.4.2 support transparency in the recruitment process and the public advertising of the position; and
 - 6.4.3 ensure that regard is had to gender equity, diversity and inclusiveness.
- 6.5 The Committee must ensure that the Executive Search Consultant publicly advertises the CEO role unless a decision has been taken to renew the incumbent CEO's contract.
- 6.6 The Committee must direct the Executive Search Consultant to prepare, and provide to Council, a schedule of dates for key decisions to be made by resolution of Council throughout the recruitment process.
- 6.7 The Committee must provide a report and recommendation to Council so that each key decision identified in the schedule prepared under paragraph 6.6 can, if necessary, be made by resolution of Council.
- 7. Appointment of the CEO**
- 7.1 Council will receive a report from the Committee on the completion of its role in the recruitment process, and Council will proceed to decide on a preferred candidate from the short list with the support of the Committee to negotiate and finalise the Contract of Employment.
- 7.2 The Committee will provide a recommendation to Council on the provisions to be contained in the proposed Contract of Employment.
- 7.3 The appointment of the CEO must be made by a resolution of Council.

**8. Reappointment of the CEO**

8.1 Within 6 months prior to the expiry of the current CEO's Contract of Employment, the Committee will provide a recommendation to Council on:

8.1.1 whether the CEO should be reappointed under a new Contract of Employment; and

8.1.2 if the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.

8.2 Any reappointment of the current CEO must be made by a resolution of Council.

9. Contract of Employment

9.1 The Contract of Employment is to be read in conjunction with this Policy (but the terms of the Policy are not incorporated into the Contract of Employment).

9.2 The Contract of Employment will, at a minimum, outline the following:

9.2.1 the employment term, which must not exceed 5 years in accordance with section 44(2) of the Act;

9.2.2 the responsibilities and duties of the position, including compliance with the Act and the Code of Conduct for Council staff;

9.2.3 the conflict of interest management requirements;

9.2.4 the CEO's Remuneration Package and other entitlements;

9.2.5 any legislative and contractual obligations, including those during and continuing after appointment;

9.2.6 the CEO's leave entitlements;

9.2.7 dispute resolution procedures;

9.2.8 processes for managing unsatisfactory performance;

9.2.9 processes for early termination, including notice of termination provisions with notice of termination by Council being restricted to a maximum of nine (9) months; and

9.2.10 any other matters required to be contained in the Contract of Employment by the Regulations.

9.3 The Contract of Employment may only be varied by a resolution of Council, and upon acceptance by the CEO, recorded in a deed of variation.



10. Remuneration and Expenses

10.1 The Remuneration Package provided to the CEO will form part of the Committee's annual review, having regard to (in accordance with section 45(3) of the Act):

10.1.1 any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent);¹ and

10.1.2 any Public Sector Wages Determination.²

10.1.3 A report benchmarking the CEO remuneration with similar local government CEO and public sector roles.

10.2 Remuneration will be reviewed on an annual basis, in accordance with the CEO's Performance Plan and contractual requirements.

10.3 Council will meet expenses incurred by the CEO in relation to:

10.3.1 membership and subscription fees payable to professional associations which are reasonably necessary in order to carry out duties;

10.3.2 reasonable costs incurred where attending conferences, seminars or other professional development activities; and

10.3.3 reasonable costs incurred in performance of required duties.

11. Performance Monitoring and Annual Review

11.1 Council will adopt an annual Performance Plan for the CEO, which will include KPIs. The proposed Performance Plan must be developed collaboratively between the CEO and the Committee.

11.2 The CEO is to provide a report against the Performance Plan to the Committee on an annual basis.

11.3 An annual review report (**Annual Review Report**) will be submitted to Council, based on the Committee's recommendations regarding :

11.3.1 whether, and to what extent, the CEO has met the KPIs under the Performance Plan;

11.3.2 whether, and to what extent or in what respect, any KPIs or other criteria ought to be varied under the Performance Plan;

11.3.3 whether, and to what extent, the Remuneration Package ought to be varied; and

11.3.4 any other necessary matters.

11.4 The Annual Review Report will be submitted to Council only after meeting with the CEO to discuss the Committee's proposed recommendations.

¹ Section 45(3)(a) of the Act requires Council to have regard to any statement of policy issued by Government of Victoria which is in force with respect to its wages policy (or equivalent). The current Victorian Government Wages Policy applies in the public sector until 31 December 2021. See: <https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework>

² Section 45(3)(b) of the Act requires Council to have regard to the published remuneration bands for executives employed in public service bodies. See: <https://www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands>



- 11.5 Council shall, after receipt of the Annual Review Report, review the recommendations in the Annual Review Report, resolve upon the matters described and advise the CEO of the terms or effect of the resolution.
- 11.6 Following the initial six (6) months of the CEO's term, a workshop with Councillors and the CEO should be coordinated so that:
 - 11.6.1 the CEO can prepare and present an overview of their findings during the early months, and highlight any projections or forecasts of relevance to Council during their tenure;
 - 11.6.2 Councillors can provide feedback to the CEO on their perspective of the CEO's performance during the initial period; and
 - 11.6.3 Council and CEO can agree to projects and priorities for inclusion in the CEO's Performance Plan and KPIs.

12. Acting CEO

- 12.1 Under section 44 (5) of the Act, Council must appoint an Acting CEO when there is a vacancy in the office of the CEO which will exceed 28 consecutive days or the CEO is unable to perform the duties of the office of Chief Executive Officer.
- 12.2 The appointment of the CEO must be made by a resolution of Council unless the Acting CEO is appointed for a period not exceeding 28 days, in which case the CEO may appoint an Acting CEO under delegation from Council pursuant to section 11(3) of the Act.
- 12.3 The Committee may advise Council on the selection and appointment of an Acting CEO.

13. Independent advice

- 13.1 The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Act.
- 13.2 The Independent Advisor will be recommended by the Committee to the Council following a process to seek experienced and suitably qualified persons, but must not be the Executive Search Consultant appointed by Council to assist in the recruitment process. The Committee will be supported and provided with a shortlist of candidates by the Executive Manager People Culture and Development.
- 13.3 Council will determine and resolve the:
 - 13.3.1 term of appointment of the Independent Advisor; and
 - 13.3.2 remuneration of the Independent Advisor,
 and ensure that it is a term of the Independent Advisor's engagement that the Independent Advisor keep confidential all information which the Independent Advisor acquires by virtue of the engagement.
- 13.4 Council, or the Committee with the approval of a Resolution, can, on an as needed basis, obtain additional independent professional advice in relation to the matters dealt with under this Policy.

14. Administrative Support



14.1 Council acknowledges that, in implementing this Policy, it, the Committee and/or the Independent Advisor will from time to time require the assistance of members of staff, including assistance in relation to governance and human resources matters.

14.2 Council, the Committee and/or the Independent Advisor may from time to time request a member of staff to provide assistance in implementing this Policy, recognising that the position of the member of staff is made difficult because he or she is accountable to the CEO (or a person acting as CEO) and therefore acknowledging that requests for assistance need to be limited to no more than those which are reasonably necessary.

15. Interaction with Act and Regulations

15.1 This Policy applies subject to any inconsistent obligations in the Act or the Regulations.

16. Confidentiality

16.1 Council is not required to disclose any personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

17. Delegations

17.1 Council must not delegate the power to appoint the CEO, whether on a permanent or acting basis, however, it may delegate to the CEO the power to appoint an Acting CEO for a period not exceeding 28 days (sections 11(2)(d) and 11(3) of the Act).

17.2 Council must not delegate the power to make any decision in relation to the employment, dismissal or removal of the CEO (section 11(2)(e) of the Act).

18. Review of Policy

18.1 This Policy will be reviewed within 6 months of its adoption by Council.

18.2 This Policy will thereafter be reviewed at least every three (3) years by the Committee and within 6 months of each Council election, and the Committee will make a recommendation to Council with respect to any suggested changes.

28 February 2024

Name

Email: E: XXX



Dear Name,

Re: Appointment of Independent Advisor

Council resolved at its Council Meeting on 26 February 2024 to the appointment and the remuneration of an Independent Advisor for the CEO Employment and Remuneration Advisory Committee (Committee).

It is with pleasure that I offer you the appointment as Independent Advisor for the Committee for a XXX year term commencing 1 March 2024.

The fees endorsed by Council are payment of \$XX daily rate, \$XX per hour and a meeting rate of \$XX.

The Advisor is required to provide independent advice on matters contained within Council's CEO Employment and Remuneration Policy (attached) as required from time to time and is expected to maintain strict confidentiality on matters discussed or documents received.

Either you or Council may choose to withdraw from this engagement during the term with 4 weeks' notice.

We would appreciate your confirmation of acceptance by signing a copy of this letter and returning it at your earliest convenience.

Yours sincerely

Mary-Anne Palatsides
Executive Manager People, Culture and Development

Acknowledgement

I acknowledge appointment as the Independent Advisor for Council's CEO Employment and Remuneration Committee.

I acknowledge that I do not have a conflict of interest in relation to this engagement and will notify Council of any conflict of interest should I discover one, or if one should arise.

Signed: _____

Name

Date: _____

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