

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 27 September 2022
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 18.1

Responsible Officer: Lachlan Miller
Executive Manager Governance & Performance
Office of the Chief Executive

Subject: CEO Performance Review Panel Independent Member

For: Decision

1. CEO Performance Review Panel Independent Member – 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, Andrew Aitken
- Director Community Capacity, David Waters
- Director Corporate Services, Terry Crackett
- Director Development & Regulatory Services, Natalie Armstrong
- Director Infrastructure & Operations, Peter Bice
- Executive Manager Governance & Performance, Lachlan Miller
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 18.1: (CEO Performance Review Panel Independent Member) 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 information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), because it would disclose the personal details of an Audit Committee Independent Member's performance.

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 Performance Review Panel Independent Member – Confidential Item

SUMMARY

The CEO Performance Review Panel (the 'CEOPRP') is a s41 committee which operates under a Terms of Reference (the 'TOR') with the role to provide advice to Council on matters relating to the performance and development of the CEO.

In accordance with the TOR, CEOPRP membership consists of five members comprising of the Mayor and Deputy Mayor, two Council Members and one Independent Member (**Appendix 1**).

The current Independent Member, Ms Janet Miller, was appointed for a two-year term which is due to conclude on 30 November 2022.

The purpose of this report is to seek Council's direction in relation to the extension of the current Independent Member's term or to commence recruitment action.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted.**
- 2. To extend the appointment term of Independent Member, Ms Janet Miller, to the CEO Performance Review Panel by one year until 20 November 2023.**

1. BACKGROUND

Council utilises its Section 41 Committees to provide advice to and exercise delegations on behalf of the Council which collectively contribute to the achievement of Council's goals and strategies and discharge of its legislative obligations.

The CEOPRP was established with the role of to providing advice to Council on matters relating to the performance and development of the CEO.

In accordance with the Terms of Reference the CEO Performance Review Panel (CEOPRP) membership consists of five members comprising of the Mayor and Deputy Mayor, two Council Members and one Independent Member (**Appendix 1**).

The current Independent Member, Ms Janet Miller, was appointed by Council at its 27 October 2020 meeting for a two-year term which is due to conclude on 30 November 2022, as follows:

18.2.1 CEO PRP Independent Member Appointment - Confidential Item

**Moved Cr Mark Osterstock
S/- Cr Pauline Gill**

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Council resolves:

- 1. That the report be received and noted**
- 2. To appoint Janet Miller to the CEO Performance Review Panel for a term to commence from 1 December 2020 until 30 November 2022 (inclusive).**

Carried Unanimously

2. ANALYSIS

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

Strategic Plan 2020-24 – A brighter future

Goal A progressive organisation

Objective 05 We are accountable, informed and make decisions in the best interests of the whole community

Priority 05.1 Enhance governance structures and systems to prudently adapt to changing circumstances and meet our legislative obligations

➤ **Legal Implications**

Section 41 of the *Local Government Act 1999* (the 'Act') sets out the processes for the establishment of council committees. These committees may be formed to assist council in the performance of its functions; to enquire into matters; to provide advice to council and to exercise delegated powers, functions and duties. While s126 of the Act requires the establishment of an Audit Committee under s41 and prescribe its key functions and composition, there is not currently a requirement for a council to have a CEOPRP (or similar).

The provisions of Chapter 7 – Council staff, Part 1 – Chief Executive Officer have been materially amended, as part of the LG Reform process, in a number of sections relating to CEO recruitment, termination, remuneration and performance review. In some of these cases, councils are required to consider the advice of a qualified independent person before taking action and while the CEOPRP Independent Member has not be appointed to fulfil these requirements, there is the potential (subject to qualifications and/or experience requirements) for this to be the case.

Chapter 5, Part 4, Division 2 of the Act sets out the provisions relating to the Register of Interests. Sections 65 and 66 set out the provisions regarding the completion of primary and ordinary returns to populate the Register of Interests (under s68). At its 26 September meeting Council resolved that the provisions of Division 2 will apply to members of committees (i.e. Independent Members) from the commencement of their term.

➤ **Risk Management Implications**

The appointment of appropriately skilled and experienced members for s41 committees will assist in mitigating the risk of:

Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Medium (3D)	Medium (3D)

Note that there are many other controls that are in place to mitigate this risk.

➤ **Financial and Resource Implications**

The costs specifically associated with this report relate to the payment of Independent Member sitting fees and Presiding Member allowances. The costs have been incorporated in the adopted budget. (Sitting fees excluding GST are Presiding Member - \$575, Ordinary Member - \$450, Authorised Training - \$75).

If Council resolves to undertake a recruitment process there will be additional financial implications associated with advertising the position and the resource implications associated with running the recruitment process by the Governance & performance Department, this would likely result in an impact on other priorities.

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

There is a community expectation that Council will have appropriate processes in place, including committees that can provide specialist advice in the consideration of matters to assist the Council to discharge its responsibilities.

➤ **Sustainability Implications**

Not applicable.

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

Consultation on the development of this report was as follows:

<i>Council Committees:</i>	The Presiding Member of the CEOPRP was consulted in relation to the option of extending the Independent Member's term.
<i>Council Workshops:</i>	Not Applicable
<i>Advisory Groups:</i>	Not Applicable
<i>External Agencies:</i>	Not Applicable
<i>Community:</i>	Not Applicable

➤ **Additional Analysis**

There are two key options for Council in relation to the Independent Member vacancy:

1. *To resolve to commence a recruitment process and appoint a Selection Panel to undertake the process.*

This is the standard process that Council used for filling Independent Member vacancies for Council committees and panels and this has elicited high quality candidates in the past (such as the current Independent Member).

The process involves publically advertising for Expressions of Interest (EOI) from suitably qualified individuals against the skill and experiences requirements contained in the Committee's TOR. The EOIs received are shortlisted by the Selection Panel, this process also involves assessing the skill sets of all members to ensure that all required competencies are covered collectively. The shortlisted candidates are interviewed and, where appropriate, references obtained in order to make a recommendation to Council for appointment.

The EOI process has the key benefit of testing the open market to obtain the most desirable talent available. The key costs are the resourcing associated with advertising, shortlisting and interviewing.

Regardless of which option Council determines at this point in time, eventually a recruitment (EOI) process will need to be undertaken.

2. *To extend the term of the current Independent Member for a period of time.*

This option has been utilised in the past (recently due to COVID restrictions in 2020 and the Audit Committee Independent Member extension in early 2022). In considering a term extension, the skills set and the performance of the position occupant needs to be considered.

Additional unique factors for consideration are that with the upcoming November 2022 Local Government election, there is the potential for up to three of the four Council Members (Mayor excepted as elected unopposed) to change on the CEOPRP, which will affect its continuity. Further, the new (post-election) Council will need to commence recruitment action for the substantive CEO position early in the new term. Council may resolve for the CEOPRP to play a role in relation to that recruitment process.

In the opinion of the CEOPRP Presiding Member, Ms Miller has performed her role to a high standard during her current term.

In a non-binding approach to Ms Miller by the author, she has advised that she is amenable to an extension if it is resolved by Council.

3. OPTIONS

Council has the following options:

- I. To extend the term of Independent member, Ms Janet Miller, for one year, concluding on 30 November 2023. (Recommended)
- II. To resolve to commence an Independent Member recruitment process and to appoint a Selection Panel to manage the process. (Not Recommended)

4. APPENDIX

- (1) CEOPRP Terms of Reference

Appendix 1

CEOPRP Terms of Reference

3. CEO Performance Review Panel Independent Member – 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 18.1 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	31 December 2022
Related Attachments	31 December 2022
Minutes	31 December 2022

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.

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.

2. ROLE

- 2.1 The Council is responsible for the selection, remuneration and management of the Chief Executive Officer (CEO). The overall role of the Panel is 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;
 - 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.

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.
- 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.
- 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.
- 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;

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 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 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.