

ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
Tuesday 27 October 2020  
CONFIDENTIAL AGENDA BUSINESS ITEM

Item: 18.2

Responsible Officer: Megan Sutherland  
Executive Manager Organisational Development  
Corporate Services

Subject: CEO Performance Review Panel Independent Member  
Appointment

For: Decision

---

1. CEO Performance Review Panel Independent Member Appointment – 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
- Acting Director Infrastructure & Operations, John McArthur
- Director Strategy & Development, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community & Customer Service, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Executive Manager Organisational Development, Megan Sutherland
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 19.1: (CEO Performance Review Panel Independent Member Appointment) 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 candidates who have expressed an interest to be on the CEO Performance Review Panel.

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 Appointment – Confidential Item**

### **SUMMARY**

Council utilises its Section 41 Committees (Council 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.

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**).

Council resolved on 28 January 2020 to commence the recruitment process for the Independent Members. Further, Council resolved for the respective Council Committee selection panels to comprise of two Council Members for each panel.

Expressions of interest for membership were advertised and received. The process was then delayed due to the COVID restrictions.

The process recommenced, the expressions were assessed and a selection process undertaken.

The purpose of this report is to present the respective selection panel recommendation with a view to Council making an appointment to the Independent Member role.

### **RECOMMENDATION**

**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).**
-

## 1. GOVERNANCE

### ➤ 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

As an organisation we strive for accountable and strategic decision making. Council is committed to open, participative and transparent decision making and administrative processes. We diligently adhere to legislative requirements to ensure public accountability.

### ➤ 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.

Committees operate under the same (or similar) requirements to Council in terms of conduct of meetings, management of interests, etc.

The *Status Amendment (Local Government Review) Bill 2020* (the Bill) is currently before the SA Parliament and the current iteration has a number of amendments and insertions which will be relevant to the Panel's functions, as follows:

- Proposed Section 99A will prescribe a scheme whereby the Remuneration Tribunal will determine the minimum and maximum remuneration that may be paid to the CEO of a council. Within the determined range, the Council retains the discretion to determine the CEO's remuneration.
- Proposed Section 102A requires that the council must review the performance of the CEO at least once each year and must obtain and consider the advice of a qualified independent person as part of that review. This person must not be a member or employee of the council and must be determined by the council to have appropriate qualifications or experience in human resource management.

#### CEOPRP

There are no specific legislative requirements for CEO performance review committees.

#### Register of Interests

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 selection of members and presiding 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 - \$550, Ordinary Member - \$400, Authorised Training - \$75)

➤ **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**

*Council Committees:* Not Applicable.

*Council Workshops:* Not Applicable

*Advisory Groups:* Not Applicable

*Administration:* Director Corporate Services  
Executive Manager Governance and Performance

*External Agencies:* Not Applicable

*Community:* Not Applicable

## 2. BACKGROUND

The term of the Independent Member for the CEOPRP concludes in November 2020.

Council resolved at the meeting on 28 January 2020 regarding membership and recruitment of independent members of the CEOPRP that:

### 12.9 CEO PRP Independent Membership

Moved Cr John Kemp  
S/- Cr Kirrilee Boyd

16/20

Council resolves:

1. That the report be received and noted
2. That in relation to the CEO Performance Review Panel:
  - a. To undertake a recruitment process for the selection of one Independent Ordinary Member for the CEO Performance Review Panel for a term of 24 months, indicatively commencing 1 March 2020.
  - b. To appoint Cr Mark Osterstock, Cr Kirsty Parkin and the Executive Manager Organisational Development as members of the CEO Performance Review Panel Independent Member Selection Panel.

Carried Unanimously
---------------------

Further, due to the COVID restrictions, on 28 April 2020, Council resolved:

### 12.9 CEO PRP Independent Member Deferral

Moved Cr Linda Green  
S/- Cr John Kemp

75/20

Council resolves:

1. That the report be received and noted
2. To defer the recruitment of an Independent Ordinary Member until the social distancing restrictions associated with COVID-19 are sufficiently reduced/removed.

Carried Unanimously
---------------------

On 8 September, Council resolved:

**7.4.1 CEO Performance Review Panel Membership – Council Members**

**Moved Cr Kirsty Parkin**  
**S/- Cr Ian Bailey**

**191/20**

**Council resolves to appoint Cr Mark Osterstock and Cr Chris Grant as members of the Chief Executive Officer Performance Review Panel for a 24 month term to commence from 27 November 2020 until the conclusion of this Council Term.**

<b>Carried Unanimously</b>
----------------------------

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

Expressions of interest for membership were advertised, these expressions were assessed and a selection process undertaken.

**3. ANALYSIS**

CEO Performance Review Panel Independent Member

The Selection Panel for the CEOPRP comprised of Cr Mark Osterstock, Cr Kirsty Parkin and Executive Manager Organisational Development, Megan Sutherland.

Twenty five expressions of interest were received for the one CEOPRP Independent Member role.

A selection process was conducted by the Selection Panel, including fit with roles and functions of the Panel (as stated in the Terms of Reference) and with consideration to the diversity of the members (clause 5.5). The Selection Panel unanimously decided to recommend Janet Miller for appointment as the Independent Member on the CEO Performance Review Panel.

Janet Miller brings a range of industry and leadership experience across a number of sectors including professional services, education and local government. Janet has skills in strategy development and implementation, change management, financial oversight, stakeholder engagement, and an ability to build trusted relationships. Janet has experience gained through her CEO positions in executive management and recruitment and in reporting to Boards. Janet is currently on the Bedford Group Audit and Risk Committee and Remuneration Committee, and has been on a range of committees over a period of years.

### Legislative Reform

As identified in the Legal Implications section above, the Act is currently being amended and there are new provisions regarding CEO remuneration and performance review. Should the provisions be enacted Council will need to review the Panel's TOR and operations to ensure that they are consistent with the new provisions.

## **4. OPTIONS**

Council has the following options:

- I. The Council can elect to support the recommendation for the Independent Member appointment. (Recommended)
- II. The Council can elect not to support the recommendation for the Independent Member appointment. This decision would require returning to the pool of candidates and undertaking required recruitment actions to enable recommendation of another Independent Member. (Not Recommended)

## **5. APPENDIX**

- (1) CEO Performance Review Panel Terms of Reference

---

# **Appendix 1**

*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.

#### 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.

**3. CEO Performance Review Panel and Audit Committee Independent Member Appointments – Period 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 19.1 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* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until the appointment have been confirmed with the applicants, but not longer than 2 months.**

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