

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 26 November 2019
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.1

Originating Officer: Lachlan Miller, Executive Manager Governance and Performance

Responsible Director: Andrew Aitken, Chief Executive Officer

Subject: Audit Committee Independent Member Appointments

For: Decision

1. CEO Performance Review Panel and Audit Committee Independent Member Appointments – 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, Andrew Aitken
- Director Engineering & Assets, Peter Bice
- Director Strategy & Development, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community & Customer Service, David Waters
- 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 19.1: (Audit Committee Independent Member Appointments) 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 Audit Committee.

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. Audit Committee Independent Member Appointments – Confidential Item

SUMMARY

Council utilises its Council Committees to provide advice to Council which collectively contribute to the achievement of Council's goals and strategies and discharge of its legislative obligations. Council has established three Council Committees being the Strategic Planning & Development Policy Committee (SPDPC), the Audit Committee and the Chief Executive Officer Performance Review Panel (CEOPRP).

The Audit Committee Terms of Reference (TOR) provides that the Committee will consist of five members comprising three independent members and two Council Members (see **Appendix 1**). Further the TOR provides for the structuring of the Independent Member terms to ensure the orderly rotation and continuity of membership despite changes to the composition of the Council.

Council resolved on 27 August 2019 to commence a recruitment process for two of the Independent Member positions which were due to expire on 30 November 2019.

The recruitment process has now concluded.

The purpose of this report is to present the Selection Panel recommendations with a view to Council making appointments to the Independent Member roles.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted**
- 2. That in relation to the Audit Committee Independent Membership:**
 - a. To appoint Peter Brass to the position of Audit Committee Independent Member for a term to commence from 1 December 2019 until 30 November 2021 (inclusive).**
 - b. To appoint David Moffatt to the position of Audit Committee Independent Member for a term to commence from 1 December 2019 until 30 November 2021 (inclusive).**

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal	Organisational Sustainability
Strategy	Financial sustainability / Governance

As an organisation we strive for accountable and strategic decision making. We seek to consistently meet our financial sustainability targets. 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.

Audit Committee

Section 128 of the Act prescribes that a council must have an audit committee to fulfil the functions set out in that section. Regulation 17(1)(b) of the *Local Government (Financial Management) Regulations 2011* requires that the audit committee must include at least one person who is not a member of the council and who is determined by the council to have financial experience relevant to the functions of an audit committee (i.e. an independent member).

Regulation 17 of the Local Government (Financial Management) Regulations 2011 provides that the audit committee of a council:

- a) must have between 3 and 5 members (inclusive); and
- b) must include 1 person who is not a member of the council and who is determined by the council to have financial experience relevant to the functions of an audit committee; and
- c) must not include, as a member, the council’s auditor under Section 128 of the Act.

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 2017 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.

The resource implications are predominately in relation to the conduct of the Independent Member selection process and subsequently the induction of new Members.

The sitting fees for Independent Members of the Audit Committee were considered by Council at the 23 April 2019 Ordinary Council Meeting and were resolved as follows:

2. **That in relation to the Audit Committee:**

a. **To determine the sitting fees for Members, effective immediately, as follows:**

- i. **Independent Presiding Member - \$550 (excl GST) per attended meeting.**
- ii. **Independent Ordinary Member - \$400 (excl GST) per attended meeting.**
- iii. **Authorised Training -\$75 (excl GST) per hour of training attended excluding travel time but with a travel allowance being paid at the standard Council rate.**

b. **That in the event that an Independent Ordinary Member is required to preside at a meeting in the absence of the Presiding Member, then that Member receives the \$550 (excl GST) sitting fee for that meeting.**

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

There is a high expectation that Council has appropriate governance and accountability mechanisms in place in relation to its meeting structures and that Council Committee members are competent and understand the role and functions of the committee and their individual obligations with regard to conduct.

➤ **Environmental Implications**

Not applicable.

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Council Committees: Not Applicable.

Council Workshops: Not Applicable

Advisory Groups: Not Applicable

Administration: Director Corporate Services
Governance & Risk Coordinator
Manager Financial Services

Community: Not Applicable

There is no requirement for community consultation in relation to the appointment of Independent Members to Council Committees.

2. BACKGROUND

Clause 5.8 of the Audit Committee TOR (**Appendix 1**) provides for:

- 5.8 The terms of appointment of the Independent Members should be arranged to ensure the orderly rotation and continuity of membership despite changes to the composition of the Council.

Consistent with the above clause, Council at its 23 January 2018 meeting resolved appointments to the Audit Committee as follows:

19.1.1. CEO Performance Review Committee and Audit Committee Independent Members Appointments – Confidential Item

RELEASED 1 FEBRUARY 2018

Moved Cr John Kemp
S/- Cr Malcolm Herrmann

22/18

Council resolves:

1. That the report be received and noted
2. To appoint Paula Davies to the CEO Performance Review Panel for a term to commence immediately until 30 November 2020 (inclusive)
3. That in relation to the Audit Committee Independent Membership:
 - a. To appoint Peter Brass to the position of Independent Member for a term to commence immediately until 30 November 2019 (inclusive)
 - b. To appoint Geoff Purdie to the position of Independent Member for a term to commence immediately until 30 November 2019 (inclusive)
 - c. To appoint Paula Davies to the position of Independent Member for a term to commence immediately until 30 November 2020 (inclusive).



Carried Unanimously

The terms for two of the above Independent Members will conclude on 30 November 2019. In consideration of the expiring terms, Council resolved on 27 August 2019 meeting as follows:

12.9 Audit Committee Independent Membership

Moved Cr John Kemp
S/- Cr Leith Mudge

221/19

Council resolves:

1. That the report be received and noted
2. That in relation to the Audit Committee:
 - a. To undertake a recruitment process for the selection of two Independent Ordinary Members for the Audit Committee for a term of 24 months, commencing 1 December 2019.

Carried Unanimously

In consideration of a Selection Panel for the Independent Member positions, Council resolved, on 24 September 2019, as follows:

12.7 Independent Audit Committee Member Selection Panel

Moved Cr Ian Bailey
S/- Cr Kirsty Parkin

255/19

Council resolves:

1. That the report be received and noted
2. That the Audit Committee Independent Member Selection Panel consists of three members.
3. To appoint Cr Malcolm Herrmann, Cr Leith Mudge and the CEO (or delegate) as members of the Audit Committee Independent Member Selection Panel.

Carried Unanimously

Advertisements for Expressions of Interest for Audit Committee Independent Members were placed in the local media, SEEK and on Council's website in September 2019.

Council received a strong field of 19 candidates and the Selection Panel shortlisted four candidates for interview and, where appropriate, referee checking.

3. ANALYSIS

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 Peter Brass and David Moffatt for appointment as the Independent Members on the Audit Committee.

The profiles of the recommended candidates are as follows:

- Peter Brass holds professional qualifications in accounting and risk management. He has received national awards for his risk management expertise and held positions on national professional boards in the fields of risk management, internal audit and governance. Peter has extensive experience on local government audit committees in both a presiding and ordinary member capacity. In addition to general executive management experience more recently, Peter has held senior risk management and internal audit and financial management roles in the private and public sectors.

Peter has served four terms as a member of Council’s Audit Committee including a number of annual terms as the Presiding Member.

- David Moffatt holds a Bachelor of Economics (Commerce) and is a CPA. He has had considerable experience in auditing and financial management roles and, more recently, as program manager in the state health industry. David is in his second term as an Independent Member of the City of Prospect Audit Committee and has acted as Presiding Member on a number of occasions.

4. OPTIONS

Council has the following options:

- I. The Council can elect to support the recommendation for the Independent Member appointments. (Recommended)
- II. The Council can elect not to support the recommendation for the Independent Member appointments. This decision would require advertising again for a(n) Independent Member(s) and further interviews to be undertaken. (Not Recommended)

5. APPENDIX

- (1) Audit Committee Terms of Reference

Appendix 1

Audit Committee Terms of Reference

ADELAIDE HILLS COUNCIL
Audit Committee



TERMS OF REFERENCE
Effective from 1 September 2017

1. ESTABLISHMENT

- 1.1 The Audit Committee (the Committee) of Council is established under Section 41 of the *Local Government Act 1999* (the Act), for the purposes of Section 126 of the Act and in compliance with regulation 17 of the *Local Government (Financial Management) Regulations 2011*.
- 1.2 The Audit Committee 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 Audit Committee does not have any management functions and is therefore independent from management.

2. ROLE

- 2.1 The overall role of the Audit Committee will be to assist Council to accomplish its objectives by monitoring and providing advice on the adequacy and effectiveness of the systems and processes regarding financial management and reporting, internal control and risk management, internal audit and governance functions through the following functions:

3. SPECIFIC FUNCTIONS

- 3.1 Financial Reporting and Prudential Requirements

The Committee shall:

- 3.1.1 Provide comment on the assumptions underpinning Council's Strategic Management Plans (Strategic Plan, Annual Business Plan and Budget and Long Term Financial Plan), the consistency between plans and the adequacy of Council's plans in the context of maintaining financial sustainability;
- 3.1.2 Review and provide advice to Council on the degree to which the annual financial statements present fairly the state of affairs of the Council;
- 3.1.3 Monitor the integrity of the financial statements of the Council, including its annual report, reviewing significant financial reporting issues and judgements which they contain.;
- 3.1.4 Review and challenge where necessary:
 - 3.1.4.1 The consistency of, and/or any changes to, accounting policies;
 - 3.1.4.2 The methods used to account for significant or unusual transactions where different approaches are possible;
 - 3.1.4.3 Whether the Council has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the external auditor;

3.1.4.4 The clarity of disclosure in the Council's financial reports and the context in which statements are made; and

3.1.4.5 All material information presented with the financial statements, such as the operating and financial review and the corporate governance statement (insofar as it relates to the audit and risk management);

3.1.5 Review prudential reports prepared under Section 48(1) of the Act and provide advice to Council, upon request, on other prudential matters.

3.2 Internal Controls and Risk Management Systems

The Committee shall:

3.2.1 Ensure that appropriate policies, practices and procedures of internal control (and other financial and risk management systems) are implemented, reviewed and maintained in order to assist the Council to carry out its activities in an efficient and orderly manner to achieve its objectives;

3.2.2 Review Council's risk management framework and monitor the performance of Council's risk management program;

3.2.3 Monitor the corporate risk profile and significant risk exposures for the organisation to ensure that there are appropriate management plans to manage and mitigate this business risk; and

3.2.4 Ensure an appropriate legislative compliance framework exists to identify risks and controls over compliance with applicable legislation and regulations.

3.3 Whistle blowing

The committee shall:

3.3.1 Review annually the Council's Whistleblower Protection Policy

3.3.2 Provide recommendations to Council regarding the Whistleblower Protection Policy to ensure that:

3.3.2.1 There are adequate arrangements for Council employees to raise concerns, in confidence, about possible wrongdoing in financial reporting or other matters; and

3.3.2.2 The policy allows independent investigation of such matters and appropriate follow-up action in a manner that is in accordance with the Independent Commissioner Against Corruption Act 2012 and Regulations 2013.

3.4 Internal Audit

The Committee shall:

- 3.4.1 Monitor and review the effectiveness of the Council's internal audit function in the context of the Council's overall risk management system;
- 3.4.2 Consider and make recommendation on the program of the internal audit function and the adequacy of its resources and access to information to enable it to perform its function effectively and in accordance with the relevant professional standards.
- 3.4.3 Review all reports on the Council's operations from the internal auditors;
- 3.4.4 Review and monitor management's responsiveness to the findings and recommendations of the internal auditor; and
- 3.4.5 Where appropriate, meet the "head" of internal audit (internal or outsourced) at least once a year, without management being present, to discuss any issues arising from the internal audits carried out. In addition, the head of internal audit shall be given the right of direct access to the Principal Member of the Council and to the Presiding Member of the committee.

3.5 External audit

The Committee shall:

- 3.5.1 Consider and make recommendations to the Council, in relation to the appointment, re-appointment and removal of the Council's external auditor. The Committee shall oversee the selection process for new auditors and if an auditor resigns the Committee shall investigate the issues leading to this and decide whether any action is required;
- 3.5.2 Oversee Council's relationship with the external auditor including, but not limited to:
 - 3.5.2.1 Recommending the approval of the external auditor's remuneration, whether fees for audit or non-audit services, and recommending whether the level of fees is appropriate to enable an adequate audit to be conducted;
 - 3.5.2.2 Recommending the approval of the external auditor's terms of engagement, including any engagement letter issued at the commencement of each audit and the scope of the audit;
 - 3.5.2.3 Assessing the external auditor's independence and objectivity taking into account relevant professional and regulatory requirements and the extent of Council's relationship with the auditor, including the provision of any non-audit services;
 - 3.5.2.4 Satisfying itself that there are no relationships (such as family, employment, investment, financial or business) between the external auditor and the Council (other than in the ordinary course of business);

- 3.5.2.5 Monitoring the external auditor's compliance with legislative requirements on the rotation of audit partners; and
 - 3.5.2.6 Assessing the external auditor's qualifications, expertise and resources and the effectiveness of the audit process (which shall include a report from the external auditor on the audit committee's own internal quality procedures);
 - 3.5.3 Meet as needed with the external auditor. The Committee shall meet the external auditor at least once a year, without management being present; to discuss the external auditor's report and any issues arising from the audit;
 - 3.5.4 Review and make recommendations on the annual audit plan, and in particular its consistency with the scope of the external audit engagement;
 - 3.5.5 Review the findings of the audit with the external auditor. This shall include, but not be limited to, the following:
 - 3.5.5.1 a discussion of any major issues which arose during the external audit;
 - 3.5.5.2 any accounting and audit judgements; and
 - 3.5.5.3 Levels of errors identified during the external audit. The committee shall also review the effectiveness of the external audit.
 - 3.5.6 Review any representation letter(s) requested by the external auditor before they are signed by management;
 - 3.5.7 Review the management letter and management's response to the external auditor's findings and recommendations.
- 3.6 Economy and Efficiency Audits
- The Committee shall:
- 3.6.1 Propose and review the exercise of powers under Section 130A of the Act; to examine and report on any matter relating to financial management, or the efficiency and economy with which the council manages or uses its resources to achieve its objectives,
- 3.7 Service Improvement
- The Committee shall:
- 3.7.1 Monitor the benefits achieved through Council's Service Improvement Program with a focus on efficiency and effectiveness.

4. OTHER MATTERS

The Committee 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 Make recommendations on co-ordination of the internal and external auditors;
- 4.5 Oversee any investigation of activities which are within its terms of reference;
- 4.6 Oversee action to follow up on matters raised by the external and internal auditors;
- 4.7 Invite Council's external auditors and internal auditors to attend meetings of the Committee, as considered appropriate; and
- 4.8 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 Committee will comprise 5 members as follows:
 - 5.1.1 Three (3) Independent Members; and
 - 5.1.2 Two (2) Council Members
- 5.2 All members of the Committee will be appointed by the Council.
- 5.3 Independent Member(s) of the Committee shall have recent and relevant skills and experience in professions such as, but not limited to accounting, financial management, risk management, law, compliance, internal audit and governance.
- 5.4 It is desirable for the Council Members to be appointed to the Committee to have a sound understanding of financial management, risk management and governance.
- 5.5 In considering appointments to the Committee, Council should give consideration to the diversity of the membership.
- 5.6 Appointments to the Committee 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.
- 5.8 The terms of appointment of the Independent Members should be arranged to ensure the orderly rotation and continuity of membership despite changes to the composition of the Council.

6. SITTING FEES

- 6.1 The applicable Remuneration Tribunal (or its successor) Determination outlines the applicable allowance for Council Members on the Committee.
- 6.2 The Independent Members are 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 Committee.
- 7.2 The Council authorises the Committee to determine if there will be a Deputy Presiding Member of the Committee and, if so, authorises the Committee to make the appointment to that position for a term determined by the Committee.
- 7.3 If the Presiding Member of the Committee 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 Committee are absent from a meeting of the Committee, then a member of the Committee 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 Committee 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 Committee's reporting and accountability requirements are:
 - 8.1.1 The minutes of each Committee 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 Committee;
 - 8.1.3 The Committee 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 Committee'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 Committee 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 Committee, the Committee may determine its own procedure.
- 9.2 In accordance with Section 90(7a), one or more Committee members may participate in the meeting by telephone or other electronic means provided that members of the public can hear the discussion between all Committee members.
- 9.3 Only members of the Committee are entitled to vote in Committee meetings. Unless otherwise required by the Act not to vote, each member must vote on every matter that is before the Committee for decision.
- 9.4 Council Employees may attend any meeting as observers or be responsible for preparing papers for the committee.

10. SECRETARIAL RESOURCES

- 10.1 The Chief Executive Officer shall provide sufficient administrative resources to the Committee to enable it to adequately carry out its functions.

11. FREQUENCY OF MEETINGS

- 11.1 The Committee shall meet at least four times a year at appropriate times and places as determined by the Committee. 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 Committee is authorised to cancel the respective Committee 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 Committee 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 Committee by email or as otherwise agreed by Committee 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 Committee, unless prohibited by resolution of the Committee under the confidentiality provisions of Section 90 of the Act.
- 12.4 Members of the public have access to all documents relating to the Committee unless prohibited by resolution of the Committee 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 Committee, 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 Committee meetings shall be circulated within five days after a meeting to all members of the Committee and will (in accordance with legislative requirements) be available to the public.

3. 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.