

## 1.10 CEO Performance Review Process Policy

<b>Policy Owner</b>	Chief Executive Officer
<b>Responsible Officer</b>	Manager Governance & Risk
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### Objective

A consistent, transparent, and accountable performance review process.

### Scope

This policy position applies to the conduct of CEO performance reviews.

### Policy Statements

#### Rationale

This process is documented and adopted by the Council to ensure a consistent approach to the City of Albany CEO performance review.

The review process must be a collaborative, constructive process that is designed to enhance performance and provide guidance for the ensuing twelve months, using the City's agreed Strategic Plan and/or Business Plan.

Councillors must be prepared to take a corporate view of the process. The performance review process should be regarded as an opportunity to build relationships and to increase the effectiveness of individuals, systems and processes which will improve the performance and the profile of the City of Albany.

Councillors participating in the review must:

- Show an ability to be fair and objective;
- Use good communication skills;
- Possess preparation and evaluation skills;
- Avoid bias;
- Be able to concentrate on outcomes;
- Provide negotiation skills.

### Briefing Session

It is essential to gain input from all Councillors into the review and appraisal process.

A briefing session will be organised to cover the performance appraisal, and the procedures followed, keeping in mind the current progress of the Strategic Plan and the skills required of the panel members; an independent person with relevant skills will be brought in to facilitate the session.

### **Contract**

The CEO contract must contain the City's dispute resolution policy for both parties.

The City's agreed CEO review procedure shall be contained within the CEO contract (as per Part 5, Division 4, Section 5.39(3)(b), Local Government Act 1995).

The review procedure contained within the CEO contract can be varied by agreement between the Council and the CEO under an amendment clause between reviews.

The contract should be reviewed by WALGA or a recognised legal practitioner to ensure legislative requirements are satisfied.

### **Review Periods**

It is a statutory requirement that the CEO's performance be reviewed annually (*Part 5, Division 4, Section 5.38, Local Government Act 1995*).

The review period is to be aligned with the City's strategic planning processes which run across each financial year (July to June).

For planning purposes, the entire review process should be completed by the end of July each year. It is recommended planning for the following year's key performance indicators (KPIs) commences in March of each year.

If the Council has concerns about the performance of the CEO, the Mayor will, at the request of the Council, request the CEO Performance Review Panel undertake an interim performance review.

The Mayor must write to the CEO if the Council has requested an interim performance review, outlining the areas of concern to allow the CEO the opportunity to prepare.

The Mayor must allow the CEO a minimum of one week's notice before the commencement of an interim performance review.

### **Composition of the Review Panel**

The CEO performance review panel will consist of:

- The Mayor; and
- Three (3) Councillors nominated by resolution of Council.

This panel is to be facilitated by an independent, external person appointed by a resolution of the Council.

All Councillors seeking appointment to the CEO review panel must undertake the relevant CEO performance review training course provided by WALGA within six months of appointment to the panel; it is important for those involved in the appraisal interview to feel comfortable with their skill level and role.

### **Interview Process**

The interview process undertaken during the formal performance meeting must be conducted in good faith for all parties.

### CEO Key Performance Indicators (KPIs)

The CEO KPIs:

- Must contain a balance of both tactical and strategic KPIs.
- Must refer to the Community Strategic Plan and/or Corporate Business Plan.
- Must be within the CEO's control or remit; specific, clear and unambiguous; resourced appropriately; include realistic milestones and reporting requirements.
- Must mirror the expectations of the Council and Community.
- Must acknowledge leadership.
- Be reviewed annually and then agreed between the CEO and the Council after each review period.
- Once agreed upon, the KPIs shall not be changed. However, KPIs may be amended during a review period by mutual agreement in the event of unforeseen or extenuating circumstances rendering a KPI no longer relevant or unachievable.

### Procedure for the Review of the CEO

Once established, the CEO performance review panel will set the review procedure and timeline requirements for each year. The review procedure must contain the following elements as a minimum:

- Review panel to assign a senior employee to assist the panel and ensure the process meets governance requirements as well as facilitate the implementation of the CEO's professional development plan.
- Timely notification of all parties by the review panel of the review procedure, timeline requirements and any other relevant information such as the independent, external facilitator.
- CEO must provide a self-assessment to all elected members. The CEO must provide the self-assessment in a written report format as a minimum but may also provide it in other formats of their choice.
- Review panel must assess performance inclusive of feedback from all Councillors.
- Review panel will agree on key focus areas and conduct an appraisal interview with the CEO.
- CEO must be provided with procedural fairness throughout the process including sufficient time to prepare responses and an opportunity to respond to the interview findings.
- Review panel will share the performance review findings with full Council in a briefing session.
- Review panel to manage follow up including remuneration, KPIs, contract variations, review outcomes and analysis of interview feedback.
- Full report must be distributed to all Elected Members and the CEO.

### Completion of Review

The Mayor, as head of the review panel, must provide City of Albany Councillors and the CEO with a formal report that summarises the finding of the review including recommendations of the review panel to Council.

The CEO is to be invited to provide comment.

Council is to consider each review on the performance of the CEO carried out under Part 5, Division 4, Section 5.38, *Local Government Act 1995* and is to accept the review, with or without modification, or to reject the review.

The KPIs for the following review period must be completed and signed off within 28 days of the CEO review process having been completed.

### Completion of Process

The performance review panel must deliver a report to Council that outlines:

- What worked in the process;
- The new KPIs for the next 12 months;
- Recommended changes to this process over the next 12 months

Following a review of the performance of the CEO, the Council must consider the review, which will only be endorsed by an absolute majority resolution of Council.

After the Council has endorsed a review of the performance of the CEO the Council must inform the CEO in writing of:

- The results of the review; and
- If the review identifies any issues about the performance of the CEO — how the Council propose to address and manage those issues.

### Record Keeping

The Mayor is to hold the record of the performance review.

All documents relating to the review process must be registered on the City of Albany's records management system.

### Legislative and Strategic Context

Relevant Federal or State legislation, directives, guidelines, Acts or Regulations and/or the strategic context (Community Strategic Plan) that provide the broad framework within which the policy operates and/or with which it needs to comply.

- Local Government Act 1995, s. 5.39A(1)
- Local Government (Administration) Regulations 1996:
  - *Regulation 18FA (Model standards for CEO recruitment, performance, and termination)*
  - *Schedule 2 Model standards for CEO recruitment, performance, and termination.*
    - *Clause 18. Endorsement of performance review by local government.*
    - *Clause 19. CEO to be notified of results of performance review.*

### **Review Position and Date**

This policy is to be reviewed annually by the Policy Owner.

### **Associated Documents**

Other documents that have a bearing on this policy and that may be useful reference material for users of this policy, follow:

- CEO Employment Contract.
- Schedule 2 of the Regulations sets out model standards for local governments in relation to the following:
  - the recruitment of CEOs;
  - the review of the performance of CEOs; and
  - the termination of the employment of CEOs.

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**Attachment A: Model standards for CEO recruitment, performance, and termination** **[r. 19FA]**

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## Division 1 — Preliminary provisions

### 1. Citation

These are the City of Albany Standards for CEO Recruitment, Performance and Termination.

### 2. Terms used

(1) In these standards:

- **Act** means the *Local Government Act 1995*;
- **Additional performance criteria** means performance criteria agreed by the local government and the CEO under clause 16(1)(b);
- **Applicant** means a person who submits an application to the local government for the position of CEO;
- **Contract of employment** means the written contract, as referred to in section 5.39 of the Act, that governs the employment of the CEO;
- **Contractual performance criteria** means the performance criteria specified in the CEO's contract of employment as referred to in section 5.39(3)(b) of the Act;
- **Job description form** means the job description form for the position of CEO approved by the local government under clause 5(2);
- **Local Government** means the [City of Albany];
- **Selection criteria** means the selection criteria for the position of CEO determined by the local government under clause 5(1) and set out in the job description form;
- **Selection panel** means the selection panel established by the local government under clause 8 for the employment of a person in the position of CEO.

(2) Other terms used in these standards that are also used in the Act have the same meaning as they have in the Act unless the contrary intention appears.

## Division 2 — Standards for recruitment of CEOs

### 3. Overview of Division

This Division sets out standards to be observed by the local government in relation to the recruitment of CEOs.

### 4. Application of Division

- (1) Except as provided in subclause (2), this Division applies to any recruitment and selection process carried out by the local government for the employment of a person in the position of CEO.
- (2) This Division does not apply —
  - (a) if it is proposed that the position of CEO be filled by a person in a class prescribed for the purposes of section 5.36(5A) of the Act; or
  - (b) in relation to a renewal of the CEO's contract of employment, except in the circumstances referred to in clause 13(2).

## 5. Determination of selection criteria and approval of job description form

- (1) The local government must determine the selection criteria for the position of CEO, based on the local government's consideration of the knowledge, experience, qualifications and skills necessary to effectively perform the duties and responsibilities of the position of CEO of the local government.
- (2) The local government must, by resolution of an absolute majority of the council, approve a job description form for the position of CEO which sets out:
  - (a) the duties and responsibilities of the position; and
  - (b) the selection criteria for the position determined in accordance with subclause (1).

## 6. Advertising requirements

- (1) If the position of CEO is vacant, the local government must ensure it complies with section 5.36(4) of the Act and the **Local Government (Administration) Regulations 1996** regulation 18A.
- (2) If clause 13 applies, the local government must advertise the position of CEO in the manner referred to in the **Local Government (Administration) Regulations 1996** regulation 18A as if the position was vacant.

## 7. Job description form to be made available by local government

If a person requests the local government to provide to the person a copy of the job description form, the local government must:

- (a) inform the person of the website address referred to in the *Local Government (Administration) Regulations 1996* regulation 18A(2)(da); or
- (b) if the person advises the local government that the person is unable to access that website address —
  - i. email a copy of the job description form to an email address provided by the person; or
  - ii. mail a copy of the job description form to a postal address provided by the person.

## 8. Establishment of selection panel for employment of CEO

- (1) In this clause:

**Independent person** means a person other than any of the following:

- (a) a council member;
  - (b) an employee of the local government;
  - (c) a human resources consultant engaged by the local government.
- (2) The local government must establish a selection panel to conduct the recruitment and selection process for the employment of a person in the position of CEO.
  - (3) The selection panel must comprise:
    - (a) council members (the number of which must be determined by the local government); and
    - (b) at least 1 independent person.

## **9. Recommendation by selection panel**

- (1) Each applicant's knowledge, experience, qualifications and skills must be assessed against the selection criteria by or on behalf of the selection panel.
- (2) Following the assessment referred to in subclause (1), the selection panel must provide to the local government:
  - (a) a summary of the selection panel's assessment of each applicant; and
  - (b) unless subclause (3) applies, the selection panel's recommendation as to which applicant or applicants are suitable to be employed in the position of CEO.
- (3) If the selection panel considers that none of the applicants are suitable to be employed in the position of CEO, the selection panel must recommend to the local government:
  - (a) that a new recruitment and selection process for the position be carried out in accordance with these standards; and
  - (b) the changes (if any) that the selection panel considers should be made to the duties and responsibilities of the position or the selection criteria.
- (4) The selection panel must act under subclauses (1), (2) and (3):
  - (a) in an impartial and transparent manner; and
  - (b) in accordance with the principles set out in section 5.40 of the Act.
- (5) The selection panel must not recommend an applicant to the local government under subclause (2)(b) unless the selection panel has:
  - (a) assessed the applicant as having demonstrated that the applicant's knowledge, experience, qualifications and skills meet the selection criteria; and
  - (b) verified any academic, or other tertiary level, qualifications the applicant claims to hold; and
  - (c) whether by contacting referees provided by the applicant or making any other inquiries the selection panel considers appropriate, verified the applicant's character, work history, skills, performance and any other claims made by the applicant.
- (6) The local government must have regard to, but is not bound to accept, a recommendation made by the selection panel under this clause.

## **10. Application of Cl. 5 where new process carried out**

- (1) This clause applies if the local government accepts a recommendation by the selection panel under clause 9(3)(a) that a new recruitment and selection process for the position of CEO be carried out in accordance with these standards.
- (2) Unless the local government considers that changes should be made to the duties and responsibilities of the position or the selection criteria:
  - (a) clause 5 does not apply to the new recruitment and selection process; and
  - (b) the job description form previously approved by the local government under clause 5(2) is the job description form for the purposes of the new recruitment and selection process.

## **11. Offer of employment in position of CEO**

Before making an applicant an offer of employment in the position of CEO, the local government must, by resolution of an absolute majority of the council, approve:

- (a) the making of the offer of employment to the applicant; and
- (b) the proposed terms of the contract of employment to be entered into by the local government and the applicant.



## 12. Variations to proposed terms of contract of employment

- (1) This clause applies if an applicant who is made an offer of employment in the position of CEO under clause 11 negotiates with the local government a contract of employment (the negotiated contract) containing terms different to the proposed terms approved by the local government under clause 11(b).
- (2) Before entering into the negotiated contract with the applicant, the local government must, by resolution of an absolute majority of the council, approve the terms of the negotiated contract.

## 13. Recruitment to be undertaken on expiry of certain CEO contracts

- (1) In this clause:

**Commencement day** means the day on which the *Local Government (Administration) Amendment Regulations 2021* regulation 6 comes into operation.

- (2) This clause applies if:
  - (a) upon the expiry of the contract of employment of the person (the incumbent CEO) who holds the position of CEO:
    - i. the incumbent CEO will have held the position for a period of 10 or more consecutive years, whether that period commenced before, on or after commencement day; and
    - ii. a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position was carried out, whether that process was carried out before, on or after commencement day; and
  - (b) the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.
- (3) Before the expiry of the incumbent CEO's contract of employment, the local government must carry out a recruitment and selection process in accordance with these standards to select a person to be employed in the position of CEO after the expiry of the incumbent CEO's contract of employment.
- (4) This clause does not prevent the incumbent CEO's contract of employment from being renewed upon its expiry if the incumbent CEO is selected in the recruitment and selection process referred to in subclause (3) to be employed in the position of CEO.

## 14. Confidentiality of information

The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.

## Division 3 — Standards for review of performance of CEOs

### 15. Overview of Division

This Division sets out standards to be observed by the local government in relation to the review of the performance of CEOs.

### 16. Performance review process to be agreed between local government and CEO

- (1) The local government and the CEO must agree on:
  - (a) the process by which the CEO's performance will be reviewed; and
- (2) any performance criteria to be met by the CEO that are in addition to the contractual performance criteria.
- (3) Without limiting subclause (1), the process agreed under subclause (1)(a) must be consistent with clauses 17, 18 and 19.
- (4) The matters referred to in subclause (1) must be set out in a written document.

### 17. Carrying out a performance review

- (1) A review of the performance of the CEO by the local government must be carried out in an impartial and transparent manner.
- (2) The local government must:
  - (a) collect evidence regarding the CEO's performance in respect of the contractual performance criteria and any additional performance criteria in a thorough and comprehensive manner; and
  - (b) review the CEO's performance against the contractual performance criteria and any additional performance criteria, based on that evidence.

### 18. Endorsement of performance review by local government

Following a review of the performance of the CEO, the local government must, by resolution of an absolute majority of the council, endorse the review.

### 19. CEO to be notified of results of performance review

After the local government has endorsed a review of the performance of the CEO under clause 18, the local government must inform the CEO in writing of:

- (a) the results of the review; and
- (b) if the review identifies any issues about the performance of the CEO — how the local government proposes to address and manage those issues.

## Division 4 — Standards for termination of employment of CEOs

### 20. Overview of Division

This Division sets out standards to be observed by the local government in relation to the termination of the employment of CEOs.

### 21. General principles applying to any termination

- (1) The local government must make decisions relating to the termination of the employment of a CEO in an impartial and transparent manner.
- (2) The local government must accord a CEO procedural fairness in relation to the process for the termination of the CEO's employment, including:
  - (a) informing the CEO of the CEO's rights, entitlements, and responsibilities in relation to the termination process; and
  - (b) notifying the CEO of any allegations against the CEO; and
  - (c) giving the CEO a reasonable opportunity to respond to the allegations; and
  - (d) genuinely considering any response given by the CEO in response to the allegations.

## **22. Additional principles applying to termination for performance-related reasons**

- (1) This clause applies if the local government proposes to terminate the employment of a CEO for reasons related to the CEO's performance.
- (2) The local government must not terminate the CEO's employment unless the local government has:
  - (a) in the course of carrying out the review of the CEO's performance referred to in subclause (3) or any other review of the CEO's performance, identified any issues (the performance issues) related to the performance of the CEO; and
  - (b) informed the CEO of the performance issues; and
  - (c) given the CEO a reasonable opportunity to address, and implement a plan to remedy, the performance issues; and
  - (d) determined that the CEO has not remedied the performance issues to the satisfaction of the local government.
- (3) The local government must not terminate the CEO's employment unless the local government has, within the preceding 12-month period, reviewed the performance of the CEO under section 5.38(1) of the Act.

## **23. Decision to terminate**

Any decision by the local government to terminate the employment of a CEO must be made by resolution of an absolute majority of the council.

## **24. Notice of termination of employment**

- (1) If the local government terminates the employment of a CEO, the local government must give the CEO notice in writing of the termination.
- (2) The notice must set out the local government's reasons for terminating the employment of the CEO.