

1.1.12. Governance 12: Recruitment & Selection, Performance Review, Salary Review and Termination of the Chief Executive Officer

1. Purpose

The purpose of this policy is to set out the principles and criteria under which the Council will recruit, select, review the performance and salary, and terminate the position of Chief Executive Officer, in compliance with the Local Government Act 1995, Salaries and Allowances Act 1975 requirements and relevant employment laws.

2. Planning

Priority 4: Kalamunda Leads

Objective 4.1 - To provide leadership through transparent governance.

Strategy 4.1.1 - Provide good governance.

3. Policy Statement

The City of Kalamunda (City) recognises that Council holds statutory and contractual obligations for Recruitment and Selection, Performance and Salary Review and Termination of the Chief Executive Officer (CEO).

To ensure best practice and greater consistency in these processes between local governments the Local Government Legislation Amendment Act 2019 includes a requirement for standards covering the Recruitment and Selection, Performance Review and termination of employment of local government Chief Executive Officers.

4. Detail

4.1 Recruitment and Selection

In accordance with Section 5.40 of the *Local Government Act 1995* (the Act), the City must select a CEO in accordance with the principles of merit, equity and transparency and not exercise nepotism, bias, or patronage in exercising its powers. The City must not unlawfully discriminate against applicants. The minimum standard for recruitment and selection will be met when all parties agree to the following principles:-

- a) The Council has identified and agreed to the qualifications and selection criteria necessary to effectively undertake the role and duties of the CEO for the City.

- b) The Council has approved, by absolute majority, the Position Description (PD) which clearly outlines the qualifications, selection criteria and responsibilities of the position. The PD is made available to all applicants.
- c) The Council has established a selection panel to conduct the recruitment and selection process. The panel must include at least one independent person who is not a current elected member, human resources consultant, or staff member of the local government.
- d) The Council attracts applicants through a transparent, open and competitive process (this is not necessary for vacancies of less than one year). The Council must advertise a vacancy for the position of CEO in the following manner:
 - (i) State-wide public notice of the vacancy (e.g., internet job boards);
 - (ii) Details of the remuneration and benefits offered;
 - (iii) Details of the place where applications are to be submitted;
 - (iv) The date and time the applications close;
 - (v) The duration of the proposed contract;
 - (vi) A web address where the PD can be accessed;
 - (vii) Contact details for a person who can provide further information; and
 - (viii) Any other relevant information
- e) The Council has assessed the knowledge, experience, qualifications and skills of all applicants against the selection criteria.
- f) The Council has verified the recommended applicant's work history, qualifications, referees and claims made in their job application.
- g) The appointment is merit-based, with the successful applicant assessed as clearly demonstrating how their knowledge, skills and experience meet the selection criteria.
- h) The appointment is made impartially and free from nepotism, bias or unlawful discrimination.
- i) The Council has endorsed by absolute majority the final appointment.
- j) The Council has approved the employment contract by absolute majority.
- k) The Council re-advertises the CEO position and undertakes a recruitment and selection process after each instance where a person has occupied the position for ten (10) consecutive years.

4.2 Selection Panel and Independent Person

In accordance with Section 5.40 of the Act, the City is required to establish a selection panel to conduct and facilitate the recruitment and selection process. The selection panel should be made up of elected members and must include at least one

independent person. The independent person cannot be a current elected member, human resources consultant, or staff member of the local government. Examples of who the independent person could be include:-

- a) Former elected members or staff members of the Council;
- b) Former elected members or staff members of another Council;
- c) A prominent or highly regarded member of the community; or
- d) A person with experience in the recruitment of CEOs and senior executives

Panel members will participate in the selection panel for the duration of the recruitment and appointment process. A new panel should be selected for each occasion of CEO recruitment.

4.3 Selection Panel Responsibilities

The panel is required to read and assess all applications and create a shortlist of appropriately qualified and experienced candidates. The shortlisted candidates will be required to conduct a presentation to the Council and will be interviewed by the Council using an agreed set of interview questions.

4.4 Independent Human Resources Consultant

The Council can seek independent advice from a Human Resources (HR) consultant, but they cannot be a member of the HR team within the City nor be associated with the City or any Council members. The consultant can be an independent HR professional, recruitment consultant or recruitment agency.

The HR consultant will provide advice to the selection panel on conducting the recruitment process, or provide support in undertaking certain aspects of the recruitment process such as:

- a) development or review of the PD;
- b) development of selection criteria;
- c) development of assessment methods in relation to the selection criteria;
- d) drafting of the advertisement;
- e) executive search;
- f) preliminary assessment of the applications;
- g) shortlisting;
- h) drafting questions for interview;

- i) coordinating interviews;
- j) preparing the selection summary assessment and recommendation;
- k) arranging for an integrity check and/or police clearance; and
- l) assisting the Council in preparing the employment contract.

The HR consultant cannot be directly involved in determining which application should be recommend for the position as their role is not one of decision maker nor can the consultant:

- a) conduct the interviews of candidates (only the selection panel can do this);
- b) make the decision about who to appoint; and
- c) negotiate the terms and conditions of employment (only provide advice on remuneration etc to the selection panel).

4.5 Selection and Appointment of CEO

Selection of an applicant should be based on the person best suited to the requirements of the position and the needs of the Council. As part of the selection process, the Council may request the preferred candidate to do a presentation to Council.

The appointment decision by the Council should be based on the assessment of all measures used including:

- a) assessment techniques used;
- b) quality of application;
- c) referee reports; and
- d) verification of formal qualifications, work history and other facts.

Once a preferred candidate has been identified, the CEO employment contract will be drawn up inclusive of the necessary provisions required under section 5.39 of the Act and adhere to associated regulations and legislations. The contract:

- a) must not exceed a five-year term;
- b) contain the expiry date of the contract.
- c) specify the performance criteria for the purpose of reviewing the CEO performance; and
- d) as prescribed under regulation 18b of the Administrations Regulations, the maximum amount of money to which the CEO is to be entitled if the contract is terminated before the expiry date. The amount is not to exceed whichever is the lesser of:

- (i) the value of one year's remuneration under the contract; or
- (ii) the value of the remuneration that the CEO would have been entitled to, had the contract not been terminated.

The Council must approve, by absolute majority, the employment contract and the person they appoint as CEO.

4.6 Appointment of Acting CEO

In accordance with Section 5.39C of the Act, if the CEO is absent from the workplace for periods of leave less than twelve months, Council is required to appoint an Acting CEO.

The process for appointment of an Acting CEO will be in accordance with Governance Policy 18 - Appointment of Acting CEO.

4.7 Performance Review

In accordance with Section 5.38 of the Act, a CEO who is employed for a term of more than one year, will have their performance reviewed formally at least one in every year of their employment.

The minimum standard for performance review will be met if:

- a) performance criteria is specific, relevant, measurable, achievable and time-based;
- b) the performance criteria and the performance process are recorded in a written document, negotiated with and agreed upon by the CEO and Council.
- c) the CEO is informed about how their performance will be assessed and managed and the results of their performance assessment.
- d) the collection of evidence regarding performance outcomes is thorough and comprehensive.
- e) assessment is made free from bias and based on the CEO's achievements against documented performance criteria, and decisions and actions are impartial and transparent; and
- f) the Council has endorsed the performance review assessment by absolute majority.

Setting the performance criteria can include:

- a) service delivery targets from the City's Strategic Community Plan.
- b) budget compliance.

- c) organisational capability.
- d) operational and project management.
- e) financial performance and asset management.
- f) timeliness and accuracy of information and advice to Councillors.
- g) implementation of Council resolutions.
- h) management of organisational risks;
- i) leadership, including conduct and behaviour, and human resource management; and
- j) stakeholder management and satisfaction.

4.8 Performance Review Panel (Chief Executive Officer Review Committee)

The Performance Review panel will consist of:

- a) The Mayor (Chairperson)
- b) all councillors, and
- c) an independent Observer.

4.9 Performance Review Facilitator

An Independent Consultant, experienced in performance reviews in a local government setting, can be appointed to assist the Performance Review Panel with the overall review process, including: -

- a) setting performance criteria.
- b) preparing the performance agreement.
- c) collecting performance evidence.
- d) writing the performance appraisal report.
- e) facilitating meetings between the performance review panel.
- f) assisting with the provision of feedback to the CEO;
- g) formulating plans to support improvement (if necessary); and
- h) providing an objective view regarding any performance management-related matters between the concerned parties.

It is a requirement of the regulations that the process by which the CEO's performance is documented and agreed by both parties. Council and the CEO must agree on any performance criteria that is in addition to what is specified in the CEO's contract of employment.

The CEO performance is measured in an objective manner against the performance criteria set for that year and are impartial. Assessment of the performance can include:

- a) achievement of key business outcomes.
- b) interactions with the Council and progress that has been made towards implementing the Council's strategic vision.
- c) Audit and Risk committee reports.
- d) workforce metrics
- e) incident reports.
- f) organisational survey results.
- g) relationships with relevant stakeholder groups; and
- h) insights from key stakeholders.

4.10 Addressing Performance Issues

Once the CEO's performance has been assessed, any areas requiring attention or improvement that have been identified must be formally discussed with the CEO and a written plan agreed and implemented to address the performance shortfalls. The plan must include:

- a) actions to be taken.
- b) who is responsible for the actions;
- c) a constructive approach towards improving competency;
- d) an agreed timeframe to improve the performance gaps identified.
- e) options for professional development, training, counselling, mediation, mentoring or developing new work routines; and
- f) regular feedback discussions to ensure the improvements are being made and maintained.

If potential wrongdoing (misconduct) is identified, the Council should be referring the matter to the Public Sector Commission or Corruption and Crime Commission. This provides an independent process to follow and ensures probity, natural justice and oversight of allegations.

The Council must ensure that accurate and comprehensive records of the performance management process are created, and any information produced must be kept strictly confidential.

4.11 Salary Review

The CEO's employment contract requires that the review of salary and other benefits must occur annually and must have regard to:

- a) the CEO's performance, as determined in the performance review.
- b) any changes to the work value or responsibilities of the CEO's position.
- c) the hours of work, including hours worked outside normal working hours.
- d) the condition of the market and economy generally.
- e) the relevant determination from time to time made under the Salaries and Allowances Act 1975; and
- f) the capacity of the City to pay an increase.

The Council is not obliged to increase the amount of salary or benefits but must not, other than with the CEO's consent, reduce the amount of the total salary and benefits package (also called 'Remuneration Package').

4.12 Termination

The standards for the termination of the CEO's employment (other than for reasons such as voluntary resignation or retirement) are based on the principles of fairness and transparency. Procedural fairness is a principle of common law regarding the proper and fair procedure that should apply when a decision is made that may adversely impact upon a person's rights or interests.

The minimum standards for the termination of a CEO's contract will be met if:

- a) decisions are based on assessment of the CEO's performance as measured against the documented performance criteria in the CEO's contract.
- b) performance issues have been identified as part a performance review (conducted within the preceding 12 months) and the CEO has been informed of the issues. The Council has given the CEO a reasonable opportunity to improve and implement a plan to remedy the performance issues, but the CEO has not subsequently remedied these issues to the satisfaction of the Council.
- c) the principle of procedural fairness is applied. The CEO is informed of their rights, entitlements and responsibilities in the termination process. This includes the CEO being provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting them, and their response is genuinely considered.
- d) decisions are impartial and transparent
- e) the Council has endorsed the termination by absolute majority; and

- f) the required notice of termination (which outlines the reasons for termination) is provided in writing.

4.13 Reasons for Termination

The early termination of a CEO's employment may end due to:

- a) poor performance.
- b) misconduct; or
- c) non-performance or repudiation of contract terms.

There is a difference between poor performance and serious misconduct. Poor performance is defined as an employee not meeting the required performance criteria or demonstrating unacceptable conduct and behaviour at work, it includes:

- a) not carrying out their work to the required standard or not doing their job at all.
- b) not following workplace policies, rules or procedures.
- c) unacceptable conduct and behaviour at work.
- d) disruptive or negative behaviour at work;
- e) not meeting the performance criteria set out in the employment contract and/or performance agreement unless these are outside the CEO's control.
- f) not complying with an agreed plan to address performance issues.
- g) failing to comply with the provisions of the Local Government Act 1995 and other relevant legislation; or
- h) failing to follow Council endorsed policies.

Serious misconduct can include when an employee:

- a) causes serious and imminent risk to the health and safety of another person or to the reputation or revenue of the local government; or
- b) behaves unlawfully or corruptly; or
- c) deliberately behaves in a way that is inconsistent with continuing their employment.

Termination on the basis of misconduct is covered by employment law. The Council should seek independent legal, employment or industrial relations advice prior to a termination. A Council should also seek independent advice during the termination process including advice on the relevant employment legislation affecting CEO employment and the application of that legislation to their specific circumstances. This will ensure that a Council complies with employment law during the entire termination process.

A confidential request to the Director, Corporate Services can be made so Council can obtain three quotes from appropriate legal firms. The three quotes can be submitted to Council for consideration and decision. The Director, Corporate Services will raise a PO and release funds so the Council can then receive independent legal advice prior to any decision to terminate.

Council is required to endorse the decision to terminate a CEO's employment by way of an absolute majority decision. The Council must certify that the termination was in accordance with the adopted standards in regulations.

4.14 Termination Report

The Council will prepare a termination report which outlines the reasons for termination, the opportunities and assistance provided to the CEO to remedy any issues, and an explanation of the CEO's failure to do so.

Council must provide prior opportunities and support to the CEO to assist them in remedying the issues which form the basis of the termination. It is a requirement of the Act that Council must provide written notice to the CEO outlining the reasons for their decision to terminate.

In addition, Council must certify that the termination of the CEO's employment was carried out in accordance with the standards set out in regulations.

4.15 Confidentiality

The Council should ensure that the termination process is kept confidential. The CEO is to be informed of their rights and entitlements. Notice of termination of employment is required to be given in writing. Where possible, the news of termination of employment should also be delivered in person. The CEO should be provided with a letter outlining the reasons for, and date of, the termination of their employment.

Before making any public announcements on the termination of the CEO, the Council should ensure that the entire termination process is complete, including that the CEO has been informed in writing of the termination.

5. Community Consultation

This Policy is guided by the Local Government Amendment Act 2021 and is not required to be the subject of community consultation.

6. Governance

Policy Register 2022

This Policy will be governed by the Council in accordance with the regulations under the Local Government amendment Act 2021.

7. Measures of Success

The success of the Policy will be measured by the Council in the ability to effectively recruit, performance manage and terminate a CEO should that be required.

8. Definitions

Nil

Status	Council and Statutory Requirement		
Related Local Law	Western Australia Industrial Relations Commission		
Related Council Policies	N/a		
Relevant Delegation	N/A		
Related Internal Procedures	N/A		
Related Budget Schedule	Municipal Budget		
Legislation	Local Government Act 1995 Local Government (Administration) Regulations 1996 Local government Amendment Act 2021 Department of Local government Guidelines for CEO Recruitment and selection, Performance Review and Termination March 2021.		
Notes and Conditions	Council and Statutory Requirement		
Authority	Western Australia Industrial Relations Commission		
Adopted	25 May 2021	Next Review Date	