



# **Policy and Legislation Committee Agenda**

***28 July 2021***

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

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**CITY OF BUSSELTON**

**MEETING NOTICE AND AGENDA – 28 JULY 2021**

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**TO: THE MAYOR AND COUNCILLORS**

**NOTICE** is given that a meeting of the Policy and Legislation Committee will be held in the Committee Room, Administration Building, Southern Drive, Busselton on Wednesday, 28 July 2021, commencing at 10.00am.

The attendance of Committee Members is respectfully requested.

**DISCLAIMER**

Statements or decisions made at Committee meetings should not be relied on (or acted upon) by an applicant or any other person or entity until subsequent written notification has been given by or received from the City of Busselton. Without derogating from the generality of the above, approval of planning applications and building permits and acceptance of tenders and quotations will only become effective once written notice to that effect has been given to relevant parties. The City of Busselton expressly disclaims any liability for any loss arising from any person or body relying on any statement or decision made during a Committee meeting.



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**MIKE ARCHER**

**CHIEF EXECUTIVE OFFICER**

22 July 2021

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 28 JULY 2021

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1. **DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS**

2. **ATTENDANCE**

Apologies

3. **PUBLIC QUESTION TIME**

4. **DISCLOSURE OF INTERESTS**

5. **CONFIRMATION AND RECEIPT OF MINUTES**

5.1 Minutes of the Policy and Legislation Committee Meeting held 26 May 2021

**RECOMMENDATION**

**That the Minutes of the Policy and Legislation Committee Meeting held 26 May 2021 be confirmed as a true and correct record.**

## 6. REPORTS

### 6.1 FINALISATION OF POLICY RECOMMENDATIONS IN THE GOVERNANCE SYSTEMS (GSR) REVIEW

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>SUBJECT INDEX</b>	Policies
<b>BUSINESS UNIT</b>	Governance Services
<b>REPORTING OFFICER</b>	Governance Coordinator - Emma Heys
<b>AUTHORISING OFFICER</b>	Director Finance and Corporate Services - Tony Nottle
<b>NATURE OF DECISION</b>	Noting: The item is simply for information purposes and noting
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Nil

#### OFFICER RECOMMENDATION

That the Council notes the finalisation of the following recommendations of the Governance Systems Review, subject to the review of one remaining Council Policy – Verges and Public Open Space Improvement Subdivision – being undertaken by the end of 2021:

- Review all Council policies to meet new objectives.
- Delete inappropriate Council policies.
- Review three existing Council protocols.

#### **EXECUTIVE SUMMARY**

This report presents an update in finalisation of the recommendations related to Council policies made in the Governance Services Review (GSR) undertaken in August 2017 by Mr John Woodhouse LLB B.Juris. The implementation of the recommendations has been substantially achieved, with this report seeking support for finalisation of the GSR review process.

#### **BACKGROUND**

In August 2017, the CEO commissioned a high level independent review of the City's governance systems and processes, undertaken over a 3 month period by Mr John Woodhouse LLB B.Juris. As a result of the GSR, Mr Woodhouse identified nine broad topics or areas with opportunities for improvement. The GSR and resulting recommendations for improvement were presented to Council at a briefing in October 2017, where it was agreed that staff would, subject to resourcing, commence implementation of the recommendations.

The GSR recommended improvements in the areas of:

- Council;
- Policies and procedures;
- Procurement and tendering;
- Supporting local business;
- Contracts;
- Misconduct prevention;
- Codes of conduct; gifts;
- Local laws; and
- Internal reporting.

A total of 66 recommendations were made across these nine areas. Six of these were in relation to Policies and Procedures, and relevantly included the development of a new Council policy that sets out the framework for Council policies, OPP's and other procedures, and a thorough review of all Council policies.

### **OFFICER COMMENT**

All three of the recommendations related directly to Council policies have been now completed:

#### ***Review all Council policies to meet new objectives***

All but one Council policy has been reviewed. In total 90 policies have been reviewed. The review process has included an update of the policy layout, and the content of policies to ensure they are relevant, fit for purpose and in line with the City's Policy Framework. The City's Policy Framework has been endorsed by this Committee and Council (as an operational document). The framework sets out the purpose of a Council policy as compared to operational practices and other operational documents.

One Council policy – 'Verges and Public Open Space Improvement Subdivision' remains to be reviewed. This particular policy is applicable to services and functions provided by several City directorates, including finance, planning and engineering and works services and as such, requires a collaborative approach to its review. Completion of this policy review has been postponed due to other competing priorities in these service areas. An initial session has been scheduled to commence the review process and it is expected to be brought to the Committee for consideration by the end of the 2021 calendar year.

The City will now move into a regular policy review cycle, with policies reviewed every three years and / or as required, for instance if there are any relevant legislation amendments necessitating a review, or changes in strategic direction.

#### ***Delete inappropriate Council policies***

Council policies deemed no longer appropriate, in light of the City's Policy Framework, or relevant to Council's strategic direction have been rescinded. In some cases, the information within these rescinded policies has been captured and retained by transfer to an operational practice or guideline.

#### ***Review three protocols***

The three protocols: Councillors Access to Offices and Employees Protocol (August 2010); Offsite Meetings Protocol (June 2015); and Provision for Items for Debate Information (March 2013) were reviewed and subsequently approved by the CEO to be rescinded. The information contained within the protocols has been included in the Elected Members Guide, to provide direction to Councillors in these areas.

The remainder of the GSR recommendations are well advanced and an update will be provided to the Audit Committee.

### **Statutory Environment**

The GSR reviewed the City's performance against various governance requirements of the *Local Government Act 1995* and associated regulations and supports the general function of a local government to provide for the good government of persons in its district. Comparisons to 'best practice' local governments (generally larger metropolitan Band 1 Councils) were also made.

### **Relevant Plans and Policies**

As a result of the recommendations of the GSR, the City developed a Policy Framework. This framework has guided the review of Council policies.

**Financial Implications**

There are no financial implications associated with the officer recommendation.

**Stakeholder Consultation**

External consultation with the Department of Local Government and Cultural Industries, WALGA, and other local government's has occurred throughout the policy review process, as required.

**Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

**Options**

As an alternative to the proposed recommendation the Council could request further (non-routine) review of Council policies be undertaken, noting however that the City will now move into a regular review cycle.

**CONCLUSION**

The GSR recommendations made in relation to Council policies have now been substantially achieved, with only one Council policy: Verges and Public Open Improvement Subdivision, remaining for a comprehensive review.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

As this report is for noting purposes, there is no applicable timeline for implementation.

6.2 PROPOSED COUNCIL POLICY: CHIEF EXECUTIVE OFFICER PERFORMANCE REVIEW

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>SUBJECT INDEX</b>	Council Policies
<b>BUSINESS UNIT</b>	Corporate Services
<b>REPORTING OFFICER</b>	Manager Governance and Corporate Services - Sarah Pierson
<b>AUTHORISING OFFICER</b>	Director Finance and Corporate Services - Tony Nottle
<b>NATURE OF DECISION</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Attachment A Proposed Council Policy - Chief Executive Officer Performance Review 

**OFFICER RECOMMENDATION**

**That the Council adopts the proposed Council policy ‘Chief Executive Officer Performance Review’ (the Policy) as per Attachment A.**

**EXECUTIVE SUMMARY**

This report presents a proposed new Council policy ‘Chief Executive Officer Performance Review’ (Attachment A) (the Policy) for Council approval. The Policy has been developed to meet the requirements of the Standards for CEO Recruitment, Performance Review and Termination (the Standards) and specifically to, in a transparent manner, set out an agreed process by which the Chief Executive Officer (CEO) performance will be reviewed.

**BACKGROUND**

Section 5.38 of the *Local Government Act 1995* requires a local government to review the performance of the CEO if the CEO is employed for a term of more than one year.

The recently gazetted Model Standards for CEO recruitment, performance and terminations (Schedule 2 of the *Local Government (Administration) Regulations 1996*) (the Regulations) provides the standard for review of performance of CEO’s. These performance review standards are based on the principles of fairness, integrity and impartiality.

As required by section 5.39B of the Act, Council has adopted the Standards. The Department of Local Government, Sport and Cultural Industries (the Department) also recommends that Council adopt a policy to set out and guide the performance review process.

**OFFICER COMMENT**

The Policy outlines the process and principles applicable to review of the CEO’s performance. The Policy provides for the composition of a review panel and outlines its primary functions and the responsibility of review panel members. It also details the appointment and role of an independent consultant, guidelines for the setting of performance criteria and broad timeframes for the review process.

The CEO's contract of employment contains provisions in relation to the CEO's performance review and the performance review procedure. These provide for an alternative procedure to be agreed between the Council and the CEO. Key provisions of the contract have however been incorporated into the Policy, for instance the ability for the CEO to nominate a representative to assist at performance review interviews / meetings.

It is a requirement of the Regulations that the process by which the CEO's performance will be reviewed is documented and agreed to by both parties. The content of the policy has been reviewed and agreed to by the CEO. While there is no requirement to have a Council policy per se in relation to the CEO performance review, just to set out the agreed process in a written document, officers feel the Policy supports transparent governance.

### **Statutory Environment**

Section 5.38 of the Act requires a local government to review the performance of the CEO annually. Section 5.39B(2), (3), (5) and (6) of the Act relate to adoption of model standards, as contained within Schedule 2 of the Regulations.

### **Relevant Plans and Policies**

Council adopted the City's Standards for CEO Recruitment, Performance Review and Termination at its Ordinary Meeting on 28 April 2021 (C2104/083).

### **Financial Implications**

There are no financial implications associated with the officer recommendation. Any independent consultant engaged to assist with the performance review process will be funded from the Members and / or CEO budget. Adequate funds exist to facilitate this.

### **Stakeholder Consultation**

No external stakeholder consultation was required or undertaken in relation to this matter, although the City did review the CEO performance review policy of the City of Bunbury.

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Decide not to adopt a Council policy for this purpose and instead set out an agreed process in a different form of document.
2. Require amendments to the content of the Policy.

### **CONCLUSION**

The Standards require the City and the CEO to agree and set out in a written document the process by which the CEO's performance will be reviewed. The Policy sets out the process in a transparent manner and provides overall guidance for the conduct of the performance review process.

### **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The Policy will be implemented and placed on the City's website within one week of adoption.

## Council Policy



**Council Policy Name:** Chief Executive Officer Performance Review  
**Responsible Directorate:** Finance and Corporate Services **Version:** DRAFT

### 1. PURPOSE

- 1.1. The CEO Standards require the City and the Chief Executive Officer (CEO) to agree and set out in a written document the process by which the CEO's performance will be reviewed.
- 1.2. The purpose of this Policy is to set out the CEO performance review process in a transparent manner, and to provide overall guidance for process.

### 2. SCOPE

- 2.1. This Policy applies to review of the CEO's performance in accordance with section 5.38 of the Act and the CEO Standards.

### 3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995</i>
Interest	An interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
Panel	CEO Performance Review Panel
Policy	this City of Busselton Council policy titled "Chief Executive Officer Performance Review"
CEO Standards	City of Busselton CEO Recruitment, Performance Review and Termination

### 4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 – Leadership of the City's Strategic Community Plan 2017 and specifically the Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.

### 5. POLICY STATEMENT

- 5.1. Following every local government election Council will appoint a CEO Performance Review Panel comprising of the Mayor and two other elected members. The Panel may also include an independent observer mutually agreed to by the CEO and the Panel.
- 5.2. The Panel is authorised to undertake the CEO performance review, including:
  - a. developing the performance agreement and performance criteria (key performance indicators);
  - b. conducting the performance review in line with this Policy;
  - c. reporting the performance review findings and recommendations to Council; and
  - d. holding regular meetings to discuss and provide feedback if performance issues are identified.
- 5.3. Panel members must:
  - a. undertake the performance review process in a fair and impartial manner;

6.2 Attachment A Proposed Council Policy - Chief Executive Officer Performance Review

- b. ensure their assessment is based on evidence of the CEO's achievements against the performance criteria;
  - c. maintain confidentiality in relation to the performance review and any information received; and
  - d. ensure accurate and comprehensive records are kept within the City's record keeping system (using the administrative support provided)
- 5.4. Administrative support for the process will be provided by the Manager responsible for the human resources function.

**Independent Consultant**

- 5.5. If the Panel does not have the resources and expertise to undertake the performance review process to the expected standard, the Panel may, through the administrative support provided, engage an external consultant facilitator to assist.
- 5.6. A consultant must not have any Interest in, or relationship with, the Council or the CEO.
- 5.7. A consultant may be required to facilitate:
- a. setting performance criteria;
  - b. preparing the performance agreement;
  - c. collecting performance evidence;
  - d. writing the performance appraisal report;
  - e. facilitating meetings between the Panel;
  - f. assisting with the provision of feedback to the CEO;
  - g. formulating plans to support improvement (if required); and
  - h. providing an objective view regarding any performance management related matters.

**Performance Criteria**

- 5.8. Performance criteria, additional to criteria contained within the CEO's employment contract, may be included in a separate performance agreement, agreed to by the CEO and the Council.
- 5.9. Performance criteria must be specific, measurable, achievable, relevant (or reasonable) and timely.
- 5.10. Adjustments to the performance agreement may be initiated by either the CEO or the Council.

**Performance Review Process**

- 5.11. Performance of the CEO is to be measured in an objective manner against the performance criteria and the CEO's achievement of duties under their employment contract and section 5.41 of the Act.
- 5.12. The performance review process will generally commence in August each year. The Panel will give the CEO at least one months' notice of commencement of the performance review process.
- 5.13. Within 21 days of being given notice of commencement of the process, the CEO will prepare and submit to the panel a report assessing their own performance against the performance criteria, and their duties under the contract and the Act.
- 5.14. Evidence of performance may also include demonstration of:
- a. progress towards implementing the Council's strategic vision;
  - b. achievement of key business outcomes;
  - c. meeting of statutory requirements and Audit Committee reports;
  - d. organisational KPI results;
  - e. organisational engagement metrics;
  - f. interactions with the Council and Councillors which support a functional local government; and

6.2 Attachment A Proposed Council Policy - Chief Executive Officer Performance Review

g. relationships with relevant organisations, stakeholder groups and professional networks.

- 5.15. Consideration should be given to:
  - a. how the CEO has achieved the performance criteria and outcomes and whether their methods are acceptable and sustainable;
  - b. the extent to which performance is contingent upon current circumstances;
  - c. the manner in which the CEO has adapted to and managed changing external circumstances;
  - d. the attention the CEO has given to equal employment opportunity and work health and safety.
- 5.16. It is important that contextual factors, external or otherwise, are given appropriate weight. Failure to meet performance criteria does not necessarily mean the CEO has performed poorly; both performance effort and outcomes should be considered.
- 5.17. The CEO may nominate a representative to assist them in performance review meetings.

**Performance Review Outcomes**

- 5.18. Within one month of the conclusion of the performance review process, the performance review findings and recommendations will be presented as a confidential report to Council in accordance with section 5.23 of the Act.
- 5.19. Any areas that require attention or improvement must be identified, discussed with the CEO, and a plan agreed to address the issues. The plan should outline the actions to be taken, who is responsible for the actions and timeframes.
- 5.20. Regular discussion and ongoing feedback on the identified performance issues should be scheduled to ensure improvements are being made.

**6. RELATED DOCUMENTATION / LEGISLATION**

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Administration) Regulations 2021*
- 6.3. City of Busselton CEO Standards for Recruitment, Performance Review and Termination

**7. REVIEW DETAILS**

<b>Review Frequency</b>		<b>3 yearly</b>		
<b>Council Adoption</b>	<b>DATE</b>		<b>Resolution #</b>	

7. **GENERAL DISCUSSION ITEMS**

8. **NEXT MEETING DATE**

9. **CLOSURE**