

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 28 JULY 2021

TABLE OF CONTENTS

ITEM NO.	SUBJECT	PAGE NO.
1.	DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS.....	2
2.	ATTENDANCE	2
3.	PUBLIC QUESTION TIME.....	2
4.	DISCLOSURE OF INTERESTS	2
5.	CONFIRMATION AND RECEIPT OF MINUTES	3
	5.1 Minutes of the Policy and Legislation Committee Meeting held 26 May 2021	3
6.	REPORTS	4
	6.1 FINALISATION OF POLICY RECOMMENDATIONS IN THE GOVERNANCE SYSTEMS (GSR) REVIEW.....	4
	6.2 PROPOSED COUNCIL POLICY: CHIEF EXECUTIVE OFFICER PERFORMANCE REVIEW	7
7.	GENERAL DISCUSSION ITEMS	16
8.	NEXT MEETING DATE	16
9.	CLOSURE	16

MINUTES

**MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM,
ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 28 JULY 2021 AT 10.00AM.**

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

The Presiding Member opened the meeting at 10.04am.

The Presiding Member noted this meeting is held on the lands of the Wadandi people and acknowledged them as Traditional Owners, paying respect to their Elders, past and present, and Aboriginal Elders of other communities who may be present.

2. ATTENDANCE

Presiding Member:

Cr Ross Paine

Members:

Cr Grant Henley

Cr Kate Cox

Cr Paul Carter (*Deputy Member*)

Cr Phill Cronin (*Deputy Member*)

Officers:

Mr Tony Nottle, Director, Finance and Corporate Services

Ms Sarah Pierson, Manager, Governance and Corporate Services

Ms Melissa Egan, Governance Officer

Apologies:

Cr Kelly Hick

Cr Lyndon Miles

3. PUBLIC QUESTION TIME

Nil

4. DISCLOSURE OF INTERESTS

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES**5.1 Minutes of the Policy and Legislation Committee Meeting held 26 May 2021****COMMITTEE DECISION****PL2107/407** Moved Councillor G Henley, seconded Councillor K Cox**That the Minutes of the Policy and Legislation Committee Meeting held 26 May 2021 be confirmed as a true and correct record.****CARRIED 5/0**

6. REPORTS

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

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

COMMITTEE RECOMMENDATION

PL2107/408 Moved Councillor G Henley, seconded Councillor P Carter

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.

CARRIED 5/0

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 recommendation 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 bar 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

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

COMMITTEE RECOMMENDATION**PL2107/409**

Moved Councillor G Henley, seconded Councillor P Cronin

That the Council:

1. **Adopts the proposed Council policy 'Chief Executive Officer Performance Review', (the Policy) as per Attachment A and inclusive of Committee amendments as per Attachment B.**
2. **Appoints the Mayor Cr Grant Henley and the following two Councillors to form the CEO Performance Review Panel for the purposes of undertaking the 2021 performance review process, noting that a new CEO Performance Review Panel will be appointed post the 2021 local government elections.**
 - a) _____
 - b) _____

CARRIED 5/0

Reasons: Amendments to the Policy were identified by officers and the Committee to improve its practical application and to ensure the two way nature of the process is explicit. Additionally the Committee was asked to recommend the appointment of a Performance Review Panel for the purposes of carrying out the CEO's 2021 performance review process.

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 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

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	

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>
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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;

- 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~~ which would impact on their ability to carry out their functions in a fair and impartial manner.

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~~ as early as practicable in each financial year. The Panel will give the CEO ~~at least one month's~~ 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
- 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 performance review process is recognised as a two way communication between the Council and the CEO. As such the CEO will be provided with an opportunity during the process to provide feedback in relation to the Council's performance, and to raise any matters which may be impacting on the performance of his duties.

5.17-5.18. The CEO may nominate a representative to assist them in performance review meetings.

Performance Review Outcomes

5.18-5.19. 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.

5.19-5.20. 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.

5.20-5.21. 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

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	

7. GENERAL DISCUSSION ITEMS

Nil

8. NEXT MEETING DATE

Tuesday, 24 August 2021

9. CLOSURE

The meeting closed at 11.03am.

THESE MINUTES CONSISTING OF PAGES 1 TO 16 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON TUESDAY, 24 AUGUST 2021.

DATE: 24/8/2021

PRESIDING MEMBER: Paine