

1.0 AUTHORITY

Section 45 of the *Local Government Act 2020*

2.0 INTENT

2.1 This Policy provides for the following matters which Council is responsible for under the Act or as a requirement of this Policy:

- (a) the recruitment and appointment of the Chief Executive Officer ensuring that:
 - (i) the recruitment decision is based on merit;
 - (ii) the recruitment processes support transparency and, subject to Council's discretion to offer reappointment in accordance with section 44 of the Act, the public advertising of the position; and
 - (iii) regard is had to gender equity, diversity and inclusiveness;
- (b) approving the Contract of Employment entered into between Council and the Chief Executive Officer;
- (c) the appointment of an Acting Chief Executive Officer (for more than 28 days);
- (d) the provision of independent professional advice in relation to the matters dealt with in the Policy;
- (e) the monitoring of the Chief Executive Officer's performance;
- (f) an annual review of the Chief Executive Officer's performance; and
- (g) determining the Chief Executive Officer's remuneration.

3.0 SCOPE

3.1 This Policy outlines the mechanisms which support Council in fulfilling its obligations regarding the CEO's employment and under the Act.

The aims of the CEO in relation to this Policy are to:

- (a) work collaboratively with the Council in determining the Performance Plan on an annual basis;
- (b) actively participate in the performance appraisal process as required by the Council;
- (c) make use of constructive feedback from Councillors in relation to performance appraisals;
- (d) undertake professional development on an as needed basis, or as part of the Performance Plan; and
- (e) promptly draw the Council's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances.

The aims of Council in relation to this Policy are to:

- (a) provide processes for the recruitment of a natural person, and their appointment, to the position of CEO;
- (b) draft and approve the Contract of Employment entered into between Council and the CEO;
- (c) seek and be guided by independent professional advice in relation to the matters dealt with in this Policy;
- (d) provide processes for determining and reviewing the CEO's Remuneration Package;
- (e) provide processes for the monitoring of the CEO's performance including setting the Performance Plan and conducting an annual review;
- (f) determine, as required, whether any variations to the Remuneration Package and terms and conditions of employment of the CEO; and
- (g) provide processes for the appointment of an Acting Chief Executive Officer for longer than 28 days.

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- (a) Council decisions are to be made and actions taken in accordance with the relevant law;
- (b) the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 Council will establish a CEO Employment and Remuneration Committee (**Committee**).

5.2 The Committee will be an advisory committee to Council.

5.3 The purposes of the Committee are to consider, and make recommendations to Council with respect to, the:

- a) selection and appointment of the Independent Advisor;
- b) independent advice received from time to time from the Independent Advisor;
- c) performance monitoring of the CEO, including with respect to achievement of the KPIs;
- d) annual review of the CEO's performance, including against the KPIs;
- e) CEO's remuneration;
- f) recruitment and appointment of a CEO, if required;
- g) provisions to be included in the Contract of Employment from time to time;

- h) appointment of an Acting CEO for a period exceeding 28 days; and
- i) implementation of this Policy.

5.4 The Committee will include all Councillors and the Independent Advisor.

5.6 The Committee is to be chaired by:

- a) the Mayor; or
- b) if the Mayor is absent, a Councillor who is present at the Committee meeting and is appointed by the members of the Committee who are also present.

5.7 The Committee is to hold meetings as often as is necessary to:

- (a) prepare documentation relevant to the CEO's employment and remuneration, including Council reports and contractual documents, for the approval of Council;
- (b) conduct and maintain appropriate records regarding performance reviews of the CEO; and
- (c) review the Remuneration Package and conditions of employment of the CEO,

provided that the Committee meets at least twice in each year.

5.8 Where a Council decision is required, the Committee will provide a report to Council following each meeting describing its activities and making recommendations about any action to be taken by Council.

5.9 The Committee will determine its procedures at its first meeting, which will include:

- (a) the rules for its meetings, noting that meetings should be conducted with as little formality and technicality as appropriate to fulfil the Committee's purposes;
- (b) how often the Committee will meet, provided that the Committee meets at least twice in each year;
- (c) quorum, provided that the quorum is not less than six Councillors;
- (d) means of attendance at Committee meetings (e.g. in person or electronically); and
- (e) the taking of the minutes of the Committee meetings,

and will communicate the procedures to Council.

5.10 For the avoidance of doubt, nothing in this Policy requires Council to accept any or all of the Committee's recommendations.

Recruitment of CEO

5.11 The Committee will establish and manage the process to recruit the CEO, designed to ensure that Council can select the best available candidate from a short list of preferred candidates (with or without a recommendation from the Committee).

5.12 The Committee will determine, and make a recommendation to Council, as to:

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- (a) whether there is a need to engage an Executive Search Consultant to run the recruitment process; and, if so
 - (b) after the appropriate procurement process is followed, having regard to the outcome of that procurement process and within the allocated budget, the Executive Search Consultant to be appointed to run the recruitment process.
- 5.13 If an Executive Search Consultant is engaged, the Committee, the Chair of the Committee or a member of Council staff nominated by the Committee must liaise with the Executive Search Consultant in connection with the recruitment process.
- 5.14 When considering the recruitment of the position of CEO to, the Committee must:
- (a) ensure that the recruitment decision is based on merit;
 - (b) support transparency in the recruitment process and the public advertising of the position; and
 - (c) ensure that regard is had to gender equity, diversity and inclusiveness.
- 5.15 The Committee must ensure that the Executive Search Consultant publicly advertises the CEO role.
- 5.16 The Executive Search Consultant will be appointed on the terms agreed by Council, including that the Executive Search Consultant will prepare, and provide to Council, a schedule of dates for key decisions to be made by resolution of Council throughout the recruitment process.
- 5.17 The Committee must provide a report and recommendation to Council so that each key decision identified in the schedule prepared under clause 5.16 can, if necessary, be made by resolution of Council.

Appointment of the CEO

- 5.18 Council will receive a report from the Committee on the completion of its role in the recruitment process, and Council will proceed to decide on a preferred candidate with the support of the Committee to negotiate and finalise the Contract of Employment.
- 5.19 The Committee will provide a recommendation to Council on the provisions to be contained in the proposed Contract of Employment.
- 5.20 The appointment of the CEO must be made by a resolution of Council.

Reappointment of the CEO

- 5.21 Within 6 months prior to the expiry of the current CEO's Contract of Employment, the Committee will provide a recommendation to Council on:
- (a) whether the CEO should be reappointed under a new Contract of Employment; and
 - (b) if the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.
- 5.22 Any reappointment of the current CEO must be made by a resolution of Council.

Contract of Employment

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- 5.23 The Contract of Employment is to be read in conjunction with this Policy (but the terms of this Policy are not incorporated into the Contract of Employment).
- 5.24 The Contract of Employment will, at a minimum, outline the following:
- (a) the employment term, which must not exceed 5 years in accordance with section 44(2) of the Act;
 - (b) the responsibilities and duties of the position, including compliance with the Act and the Code of Conduct for Council staff;
 - (c) how conflicts of interest will be managed;
 - (d) the CEO's Remuneration Package and other entitlements;
 - (e) any legislative and contractual obligations, including those during and continuing after appointment;
 - (f) the CEO's leave entitlements;
 - (g) dispute resolution procedures;
 - (h) processes for managing unsatisfactory performance;
 - (i) processes for early termination, including notice of termination provisions [with notice of termination by Council being restricted to a maximum of six [6] months; and
 - (j) any other matters required to be contained in the Contract of Employment by the Regulations.
- 5.25 The Contract of Employment may only be varied by a resolution of Council with the CEO's acceptance, with such variation to be recorded in a deed of variation.

Remuneration and Expenses

- 5.26 The Remuneration Package provided to the CEO will form part of the Committee's annual review, having regard to (in accordance with section 45(3) of the Act):
- (a) any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent);¹ and
 - (b) any Public Sector Wages Determination.²
- 5.27 Remuneration will be reviewed on an annual basis, in accordance with the CEO's Performance Plan and contractual requirements.
- 5.28 Council will meet expenses incurred by the CEO in relation to:

¹ Section 45(3)(a) of the Act requires Council to have regard to any statement of policy issued by Government of Victoria which is in force with respect to its wages policy (or equivalent). The current Victorian Government Wages Policy applies in the public sector until 31 December 2021. See: <https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework>

² Section 45(3)(b) of the Act requires Council to have regard to the published remuneration bands for executives employed in public service bodies. See: <https://www.vic.gov.au/tribunals-determination-vps-executive-remuneration-bands>

- (a) membership and subscription fees payable to professional associations which are reasonably necessary in order to carry out duties;
- (b) reasonable costs incurred where attending conferences, seminars or other networking functions; and
- (c) reasonable costs incurred in performance of required duties.

Performance monitoring

- 5.29 Council will adopt an annual Performance Plan for the CEO, which will include KPIs. The Performance Plan must be developed collaboratively between the CEO and the Committee and accepted by Council resolution.
- 5.30 The CEO is to provide progress reports against the Performance Plan to the Committee on a quarterly basis unless otherwise determined by Council.
- 5.31 The Committee may meet with the CEO following each progress report to discuss the matters contained in the progress report.
- 5.32 Following the initial 6 months of the CEO's term, a workshop with Councillors and the CEO should be coordinated so that:
- (a) the CEO can prepare and present an overview of their findings during the early months, and highlight any projections or forecasts of relevance to Council during their tenure;
 - (b) Councillors can provide feedback to the CEO on their perspective of the CEO's performance during the initial period; and
 - (c) Council and CEO can agree to projects and priorities for inclusion in the CEO's Performance Plan and KPIs.
- 5.33 Nothing in this Policy prevents the Committee and/or Council from monitoring the CEO's performance on an ongoing basis.

Annual review

- 5.34 In preparation for Council's review, the Committee is required to submit an annual review report (**Annual Review Report**) to Council which includes recommendations on the following:
- (a) whether, and to what extent, the CEO has met the KPIs under the Performance Plan;
 - (b) whether, and to what extent or in what respect, any KPIs or other criteria ought to be varied under the Performance Plan;
 - (c) whether, and to what extent, the Remuneration Package ought to be varied; and
 - (d) any other necessary matters.
- 5.35 The Committee will submit the Annual Review Report to Council only after meeting with the CEO to discuss the Committee's proposed recommendations.

- 5.36 Council shall, after receipt of the Annual Review Report, review the recommendations in the Annual Review Report, resolve upon the matters described in paragraph 0 and advise the CEO of the terms or effect of the resolution.

Acting CEO

- 5.37 Council must appoint an Acting CEO when there is a vacancy in the office of the CEO or the CEO is unable to perform their duties of the office of Chief Executive Officer.
- 5.38 The appointment of the Acting CEO must be made by a resolution of Council unless the Acting CEO is appointed for a period not exceeding 28 days, in which case the CEO may appoint an Acting CEO under delegation from Council pursuant to section 11(3) of the Act.
- 5.39 The Committee may advise Council on the selection and appointment of an Acting CEO where the Acting CEO is to be appointed for a period exceeding 28 days.
- 5.40 For the avoidance of doubt, this Policy does not apply to the Acting CEO, other than the appointment of an Acting CEO under clauses 5.37-5.40.

Independent Advice

- 5.41 The Independent Advisor is responsible for providing independent professional advice in relation to the matters dealt with under this Policy in accordance with section 45(2)(a) of the Act.
- 5.42 The Independent Advisor will be appointed on the recommendation of the Committee following a process (undertaken in accordance with applicable procurement processes and within allocated budgets) to seek experienced and suitably qualified persons but must not be the Executive Search Consultant appointed by Council to assist in the recruitment process.
- 5.43 Council will determine the:
- (a) term of appointment of the Independent Advisor; and
 - (b) remuneration of the Independent Advisor,
- and ensure that it is a term of the Independent Advisor's engagement that the Independent Advisor keep confidential all information which the Independent Advisor acquires by virtue of the engagement.
- 5.44 Council, can on an as needed basis, obtain additional independent professional advice in relation to the matters dealt with under this Policy.

Administrative Support

- 5.45 Council acknowledges that, in implementing this Policy, it and/or the Independent Advisor will from time to time require the assistance of members of staff, including assistance in relation to governance and human resources matters. Such assistance might include (but is not limited to) assistance with:
- (a) drafting the Contract of Employment (including the structure of the Remuneration Package in compliance with this Policy) and any deed of variation;
 - (b) template documents (including the Annual Review Report, the Performance Plan and other similar documents);

- (c) drafting reports and proposed resolutions of Council in relation to matters covered by this Policy;
- (d) advice on procurement processes to ensure compliance with the Act and Council's policies and procedures (including in relation to the proposed appointment of the Executive Search Consultant and the Independent Advisor); and
- (e) advice on budget allocations for various processes or procurements required or proposed under this Policy.

5.46 Accordingly, Council and/or the Independent Advisor may request any assistance that is reasonably necessary from the relevant Manager or Director as required.

Interaction with Act and Regulations

5.47 This Policy applies subject to any inconsistent obligations in the Act or the Regulations.

Confidentiality

5.48 Council is not required to disclose any personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

Delegations

5.49 Council must not delegate the power to appoint the CEO, whether on a permanent or acting basis, however, it may delegate to the CEO the power to appoint an Acting CEO for a period not exceeding 28 days (sections 11(2)(d) and 11(3) of the Act).

5.50 Council must not delegate the power to make any decision in relation to the employment, dismissal or removal of the CEO (section 11(2)(e) of the Act).

6.0 ASSOCIATED DOCUMENTS

- Procurement Policy
- Recruitment and Selection Policy

7.0 DEFINITIONS

Act	means the <i>Local Government Act 2020</i> .
Annual Review Report	has the meaning given in clause 5.34
Chief Executive Officer or CEO	means the Chief Executive Officer of the Mornington Peninsula Shire Council.
Committee	means the CEO Employment and Remuneration Committee established under this Policy.
Contract of Employment	means the contract of employment between Council and the CEO, including any schedules.
Council	means the Mornington Peninsula Shire Council.
Councillors	means the individuals holding the office of a member of the Mornington Peninsula Shire Council.
Council meeting	has the same meaning as in the Act.
Executive Search Consultant	means a consultant with specialist expertise in sourcing and evaluating candidates for senior executive roles.
Independent Advisor	means the consultant appointed by Council from time to time to provide independent advice in accordance with section 45(2)(a) of the Act.
KPIs	means Key Performance Indicators or performance criteria however described.
Mayor	means the Mayor of Council.
Performance Plan	means the annual performance plan setting out KPIs for the CEO.
Policy	means this CEO Employment and Remuneration Policy adopted in accordance with section 45 of the Act.
Public Sector Wages Determination	means any Determination that is currently in effect under section 21 of the <i>Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019</i> in relation to remuneration bands for executives employed in public service bodies.
Recruitment Policy	means the recruitment policy adopted by the CEO under section 48(2) of the Act.
Regulations	means the Regulations made under Division 7 of Part 2 of the Act.
Remuneration Package	means the total gross remuneration package paid to the CEO pursuant to the Contract of Employment.
Resolution	means a resolution of Council made at a properly constituted Council meeting.

8.0 POLICY SPONSOR

This Policy is owned by the Council. The Manager Legal and Governance is responsible for overseeing the application and review of the CEO Employment and Remuneration policy.

9.0 DOCUMENT CONTROLS

This Policy will be reviewed within 6 months of its adoption by Council. This Policy will thereafter be reviewed at least every two years by the Committee and within 6 months of each Council election, and the Committee will make a recommendation to Council with respect to any suggested changes.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by endorsement of the Council.