

## Management report to Council

Agenda item 6.3

### CEO Employment and Remuneration Policy

Council

Presenter: Michael Tonta, Director Governance

14 December 2021

#### Purpose and background

1. The purpose of this report is to seek endorsement of the CEO Employment and Remuneration Policy (Policy) (refer Attachment 2).
2. The Policy is a requirement of the *Local Government Act 2020* (2020 Act) and outlines Council's approach to managing the recruitment and appointment of its CEO.

#### Key issues

3. The 2020 Act makes provision for a Council to develop, adopt and keep in force a CEO Employment and Remuneration Policy (the Policy) (refer Attachment 3).
4. The Policy must be adopted within 6 months after the relevant section of the 2020 Act comes into effect, The relevant provisions of the 2020 Act came into effect on 1 July and Council has until 31 December 2021 to endorse the Policy.
5. The Policy has been drafted using a Maddock Lawyers template and updated to reflect City of Melbourne's practices. It is supported by the CEO Employment Matters Advisory Committee (Committee) Terms of Reference which was adopted in August 2020 and outlines the duties and functions of the Committee (refer Attachment 4).
6. In preparing the Policy, management also considered the recommendations of the Local Government Inspectorate's detailed in the report on '*Managing the employment cycle of a Council CEO*', to ensure that the Policy reflected better practice.
7. The Committee has reviewed the draft Policy and have provided input and feedback which is reflected in the version proposed for adoption.
8. As Council has already engaged an Independent Member to Chair and provide advice to the Committee, it is proposed for this position to be formally known as the Independent Professional Adviser, in line with the 2020 Act.
9. Once endorsed, this Policy would take effect from 1 January 2022 and will enable Council to continue with its current practice.

#### Recommendation from management

10. That Council
  - 10.1. adopts the CEO Employment and Remuneration Policy, which will take effect from 1 January 2022;
  - 10.2. makes a minor editorial change to the Terms of Reference for the CEO Employment Matters Committee (Attachment 4), by replacing the words "the Chair of the Finance and Governance Portfolio of the Future Melbourne Committee" with "Lead of the Finance, Governance and Risk Portfolio of the Future Melbourne Committee" under the header 'Composition'.

#### Attachments:

1. Supporting Attachment (Page 2 of 17)
2. CEO Employment and Remuneration Policy (Page 3 of 17)
3. Extract of relevant sections in Local Government Act 2020 (Page 12 of 17)
4. CEO Employment Matters Advisory Committee Terms of Reference (Page 15 of 17)

## Supporting Attachment

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### Legal

1. Section 45 of the 2020 Act requires:
  - 1.1. Council to *develop, adopt and keep in force* the Policy
  - 1.2. In respect to the CEO, the Policy to provide for:
    - 1.2.1. the Council to obtain independent professional advice in relation to the matters dealt with in the Policy
    - 1.2.2. the recruitment and appointment process
    - 1.2.3. provisions to be included in the contract of employment
    - 1.2.4. performance monitoring
    - 1.2.5. an annual review
    - 1.2.6. any other matters prescribed by the regulations.
  - 1.3. In developing the Policy, the Council must have regard to:
    - 1.3.1. any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent)
    - 1.3.2. any Determination that is currently in effect under section 21 of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 in relation to remuneration bands for executives employed in public service bodies..
2. The Policy must be adopted by 31 December 2021.

### Finance

3. There are no direct financial implications arising from the recommendation in this report.

### Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

### Health and Safety

5. No Occupational Health and Safety issues or opportunities have been identified.

### Stakeholder consultation

6. The Committee, Councillors and the CEO have been engaged in the discussions about the Policy.

### Relation to Council policy

7. The Policy will support the Committee's Terms of Reference.

### Environmental sustainability

8. This report has no significant impact on environmental sustainability.



# CEO Employment and Remuneration Policy

Adopted by Council on 14 December 2021

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## 1. Purpose of Policy

- 1.1 This is the Chief Executive Officer Employment and Remuneration Policy (Policy) of the City of Melbourne (Council), made in accordance with section 45 of the Local Government Act 2020 (the Act).
- 1.2 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 process and appointment of the Chief Executive Officer ensuring that:
    - (i) the recruitment decision is based on merit;
    - (ii) the recruitment processes support transparency in the recruitment process and 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;
  - 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.

## 2. Date of Commencement and Review

- 2.1. This Policy commences operation on 1 January 2022.

## 3. Definitions

- 3.1. In this Policy, unless the context suggests otherwise the following words and phrases mean:

**Act** means the *Local Government Act 2020*.

**Annual Review Report** has the meaning given in paragraph 12.1.

**Chief Executive Officer** or **CEO** means the Chief Executive Officer of Council.

**Committee** means the CEO Employment Matters Advisory Committee established by Council as provided for under this Policy.

**Contract of Employment** means the contract of employment between Council and the CEO, including any schedules.

**Council** means the City of Melbourne.

**Councillors** means the individuals holding the office of a member of City of Melbourne 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.

**Lord Mayor** means the Lord 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 *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* 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.

**Terms of Reference** means the Terms of Reference of the CEO Employment Matters Advisory Committee adopted by Council.

#### 4. Overview

4.1. This Policy outlines the mechanisms which support Council in fulfilling its obligations regarding the CEO's employment.

4.2. The responsibilities of the CEO in relation to this Policy are to:

- a) work collaboratively with the Committee in determining the Performance Plan on an annual basis;
- b) actively participate in the performance appraisal process as required by the Committee;
- c) make use of constructive feedback from Councillors and Committee Members 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 Committee's attention to any situation where any variation of the Performance Plan may be required in light of the current circumstances.

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

## **5. CEO Employment Matters Advisory Committee**

- 5.1. Council will establish a CEO Employment Matters Advisory Committee (Committee).
- 5.2. The Committee will be an advisory committee to Council.
- 5.3. The purpose of the Committee will be set out in the Terms of Reference adopted and reviewed by the Council from time to time and will include supporting the Council to fulfil its obligations in implementing this policy.
- 5.4. The Committee (and Council) will ensure that it is able to obtain independent professional advice in relation to the matters dealt with in this policy.
- 5.5. The role of the independent professional advisor will, amongst other things, be to chair the Committee.
- 5.6. The method of selection of the independent professional advisor will be set out in the Terms of Reference.

## **6. Recruitment of CEO**

- 6.1. 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).
- 6.2. The Committee will determine, and make a recommendation to Council, as to:
  - a) whether there is a need to engage an Executive Search Consultant to run the recruitment process; and, if so
  - b) the Executive Search Consultant to be appointed to run the recruitment process.

6.3. 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.

6.4. When considering the recruitment of the position of CEO, the Committee must:

- a) ensure that the recruitment decision is based on merit, with appropriate skills and experience;
- 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.

6.5. The Committee must ensure that the Executive Search Consultant publicly advertises the CEO role.

## **7. Appointment of the CEO**

7.1. 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 and issue instructions to negotiate and finalise the Contract of Employment.

7.2. The Committee will provide a recommendation to Council on the provisions to be contained in the proposed Contract of Employment.

7.3. The appointment of the CEO must be made by a resolution of Council.

## **8. Reappointment of the CEO**

8.1. Between 6 and 12 months prior to the expiry of the current CEO's Contract of Employment, and following a performance review that canvasses the views of all Committee members and all Councillors, 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.

8.2. Any reappointment of the current CEO must be made by a resolution of Council.

## **9. Contract of Employment**

9.1. The Contract of Employment is to be read in conjunction with this Policy (but the terms of the Policy are not incorporated into the Contract of Employment).

9.2. 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) the conflict of interest management requirements;
- 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.

9.3. The Contract of Employment may only be varied by a resolution of Council and accepted by the CEO, recorded in a deed of variation.

## 10. Remuneration and Expenses

10.1. 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);<sup>1</sup> and
- b) any Public Sector Wages Determination.<sup>2</sup>

10.2. Remuneration will be reviewed on an annual basis, in accordance with the CEO's Performance Plan and contractual requirements.

10.3. Council will meet expenses incurred by the CEO in relation to:

- 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;
- c) coaching and professional development; and
- d) reasonable costs incurred in performance of required duties.

## 11. Performance monitoring

11.1. 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. The Committee will invite, and consider, suggestions from all Councillors, prior to developing the Performance Plan with the CEO.

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<sup>1</sup> 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>

<sup>2</sup> 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>

- 11.2. The CEO is to provide progress reports against the Performance Plan to the Committee on a quarterly basis unless agreed otherwise by the Committee.
- 11.3. The Committee may meet with the CEO following each progress report to discuss the matters contained in the progress report.
- 11.4. Following the initial 3 months of the CEO's term (or such other term as agreed by the Committee), 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.
- 11.5. Nothing in this Policy prevents the Committee and/or Council from monitoring the CEO's performance on an ongoing basis.

## 12. Annual review

- 12.1. 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.
- 12.2. The Committee will submit the Annual Review Report to Council only after meeting with the CEO to discuss the Committee's proposed recommendations.
- 12.3. Council shall, after receipt of the Annual Review Report, review the recommendations in the Annual Review Report, resolve upon the matters described in paragraph 12.1 and advise the CEO of the terms or effect of the resolution.

## 13. Acting CEO

- 13.1. Subject to 13.2, 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.
- 13.2. 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.
- 13.3. The Committee may advise Council on the selection and appointment of an Acting CEO.

#### **14. Administrative Support**

14.1 Council acknowledges that, in implementing this Policy, it, the Committee and/or the independent member will from time to time require the assistance of members of staff, including assistance in relation to governance and human resources matters.

14.2 Council, the Committee and/or the independent member may from time to time request a member of staff to provide assistance in implementing this Policy, recognising that the position of the member of staff is made difficult because he or she is accountable to the CEO (or a person acting as CEO) and therefore acknowledging that requests for assistance need to be limited to no more than those which are reasonably necessary.

#### **15. Interaction with Act and Regulations**

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

#### **16. Confidentiality**

16.1 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.

#### **17. Delegations**

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

17.2 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).

#### **18. Review of Policy**

18.2 This Policy will be reviewed at least every four years by the Committee and within 12 months of each Council election, and the Committee will make a recommendation to Council with respect to any suggested changes.

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- (2) Without limiting the generality of subsection (1), a Council must—
- (a) consider the support that may be required by a Mayor, Deputy Mayor or Councillor because of a disability; and
  - (b) have particular regard to the support that may be required by a Councillor who is a carer in a care relationship within the meaning of section 4 of the **Carers Recognition Act 2012**.

### 43 Indemnity provision

A Council must indemnify and keep indemnified each Councillor, member of a delegated committee and member of a Community Asset Committee against all actions or claims whether arising during or after their term of office in respect of anything necessarily done or reasonably done or omitted to be done in good faith—

- (a) in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act; or
- (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act.

## **Division 7—Chief Executive Officer and members of Council staff**

### 44 The Chief Executive Officer

- (1) Subject to this section, a Council must appoint a natural person to be its Chief Executive Officer in accordance with its Chief Executive Officer

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Employment and Remuneration Policy under section 45.

- (2) A Chief Executive Officer must be appointed under a contract of employment with the Council that does not exceed 5 years.
- (3) A Chief Executive Officer is eligible to be re-appointed under a new contract of employment under subsection (2).
- (4) If there is a vacancy in the office of Chief Executive Officer or the Chief Executive Officer is unable to perform the duties of the office of Chief Executive Officer, the Council must appoint a person to be the Acting Chief Executive Officer.
- (5) The Chief Executive Officer or an Acting Chief Executive Officer is a member of Council staff.
- (6) A Council must comply with any requirements prescribed by the regulations in relation to the employment of a Chief Executive Officer.

**45 Chief Executive Officer Employment and Remuneration Policy**

- (1) A Council must develop, adopt and keep in force a Chief Executive Officer Employment and Remuneration Policy.
- (2) A Chief Executive Officer Employment and Remuneration Policy must—
  - (a) provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Chief Executive Officer Employment and Remuneration Policy; and
  - (b) provide for the following—
    - (i) the recruitment and appointment process;

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- (ii) provisions to be included in the contract of employment;
  - (iii) performance monitoring;
  - (iv) an annual review; and
  - (c) include any other matters prescribed by the regulations.
- (3) A Council must have regard to—
- (a) any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent); and
  - (b) any Determination that is currently in effect under section 21 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** in relation to remuneration bands for executives employed in public service bodies—
- in developing the Chief Executive Officer Employment and Remuneration Policy.
- (4) A Council must adopt the first Chief Executive Officer Employment and Remuneration Policy under this section within 6 months of the commencement of this section.

#### **46 Functions of the Chief Executive Officer**

- (1) A Chief Executive Officer is responsible for—
- (a) supporting the Mayor and the Councillors in the performance of their roles; and
  - (b) ensuring the effective and efficient management of the day to day operations of the Council.

**TERMS OF REFERENCE****Chief Executive Officer Employment Matters Committee****Purpose**

The purpose of the Chief Executive Officer Employment Matters Committee (CEOEMC) is to assist the Council in fulfilling its responsibilities concerning Chief Executive Officer (CEO) employment matters, being:

- the recruitment and appointment of the Chief Executive Officer
- determining the Chief Executive Officer's Performance Plan (Plan)
- assessing the Chief Executive Officer's performance against set performance criteria in the Plan
- determining the remuneration of the Chief Executive Officer.

**Duties and functions**

The CEOEMC has the following duties and functions:

- To make recommendations to Council on employment matters relating to the CEO or the person appointed to act as the CEO, including the following:
  - the appointment of the CEO
  - the appointment of an acting CEO when the position is vacant for a period greater than four weeks
  - any extension of the appointment of the Chief Executive Officer under section 94(4) of the *Local Government Act 1989*
  - remuneration and conditions of appointment of the CEO
  - the outcome of annual performance reviews of the CEO.
  - performance criteria and performance review methodology developed by the CEOEMC for the CEO.
- Assessment of the CEO's performance against set criteria at regular performance reviews.
- To consider suitable candidates for the position of the independent member of the CEOEMC and to make a recommendation to Council or the Future Melbourne Committee for the appointment of the independent member, where the incumbent resigns from their position on the CEOEMC or is not reappointed by the Council.

**Composition**

The CEOEMC will comprise:

- an independent member (whose role will be to Chair the meeting)
- the Lord Mayor
- the Chair of the Finance and Governance Portfolio of the Future Melbourne Committee
- two other Councillors appointed by Council.

**Independent Member***Role of the independent member*

The role of the independent member is to:

- participate in and Chair all CEOEMC meetings
- provide advice to the CEOEMC
- give reasonable notice of meetings of the CEOEMC to members of the public

- facilitate the development of the draft performance criteria and performance review methodology (in consultation with the Chief Executive Officer)
- with appropriate secretariat support, arrange for the minutes of each meeting of the CEOEMC to be kept, and sign the confirmed minutes.

#### *Qualities and qualifications*

The independent member will have the following key competencies:

- demonstrated human resource management experience and leadership (specifically in the areas of recruitment, benchmarking, performance management and reviews and professional development of executive level staff)
- experience in senior roles in business and/or the public sector
- experience working with boards or other governance bodies.

#### *Appointment timeframe*

The independent member will be appointed for up to a two-year term and can be reappointed by resolution of Council.

#### *Appointment process*

Where there is an impending vacancy in the Independent member position, or it becomes vacant, the CEOEMC will source nominations.

The CEOEMC will consider suitable candidates and make a recommendation to Council or the Future Melbourne Committee on the appointment of the preferred candidate.

The independent member will be impartial with appropriate experience.

The independent member cannot be a Councillor or member of Council staff.

#### *Allowance*

The independent member will be paid an annual all-inclusive allowance of \$5000 for years in which there is no new recruitment activity and \$20,000 for years in which there is.

Payment will be made to the independent member upon receipt of an invoice.

#### **Quorum**

The independent member and at least two other Councillor members, constitute a quorum.

If a quorum is not present within 30 minutes after the scheduled meeting commencement time, the meeting will be rescheduled.

Where the independent member has not yet been appointed, the Councillor members of the CEOEMC may meet to consider suitable candidates for the position of the independent member and make a recommendation to the Future Melbourne Committee or Council.

#### **Voting**

Each member of the CEOEMC will have one vote.

Decision-making will be by a show of hands.

For a motion to be successful, it must be carried by the majority of members present at the meeting. Where there are an equal number of votes for and against, the Chair will have the casting vote.



### **Frequency of meetings**

The frequency of meetings will be determined by the CEOEMC.

A special meeting of the CEOEMC may be called by:

- resolution of the CEOEMC
- the independent member as Chair of the CEOEMC
- the Council, where the Chair is incapable of calling the special meeting.

### **Reporting**

The business of the CEOEMC shall be recorded in proper minutes.

It is anticipated all meetings and records of the CEOEMC will be confidential.

Consideration will be given to whether information referred by the CEOEMC to Council or the Future Melbourne Committee, can be released to the public following resolution by either.

### **Support**

Independent Chair, Lord Mayor and CEO will agree how best to provide appropriate secretariat support, including:

- giving appropriate notice of meetings
- circulation of meeting documentation
- taking the minutes for each meeting
- tracking the decisions of the CEOEMC
- keeping appropriate records of the meeting documentation, including the signed minutes.

### **Review**

These terms of reference may be reviewed at any time by the CEOEMC or Council however, any changes can only be made by Council.