

Establishment of the Chief Executive Officer Employment Matters Committee

Council

Presenter: Marlo Emmitt, (Acting) Manager Governance and Legal

28 August 2018

Purpose and background

1. The purpose of this report is to:
 - 1.1. commence the process to appoint a new Chief Executive Officer
 - 1.2. establish a new Chief Executive Officer Employment Matters Committee (CEOEMC), following the dissolution of the previous CEOEMC.
2. The *Local Government Act 1989 (Act)* empowers councils to establish special committees of the Council and delegate certain powers, duties and functions to the special committee. The Council may appoint members to a special committee and may at any time, remove a member from a special committee.
3. It is proposed that the new CEOEMC be established as a special committee, pursuant to section 86 of the Act.

Key issues

4. The former CEOEMC was an advisory committee and as such, did not have any decision making powers.
5. The advantage of establishing the CEOEMC as a special committee of Council is that it will enable the CEOEMC to engage an executive search firm should the position of the Chief Executive Officer (CEO) become vacant. The appointment of the CEO will at all times rest solely with the Council.

Recommendation from management

6. That Council:
 - 6.1. Establishes the Chief Executive Officer Employment Matters Committee (CEOEMC), pursuant to section 86 of the *Local Government Act 1989 (Act)*.
 - 6.2. By Instrument of Delegation pursuant to section 86 of the Act, delegates to the CEOEMC the powers, duties and functions of Council as detailed in Attachment 2 to this report, subject to the conditions and limitations identified in the Instrument of Delegation.
 - 6.3. Notes that the Lord Mayor and Chair of the Finance and Governance Portfolio (of the Future Melbourne Committee) are the standing Council members of the CEOEMC.
 - 6.4. Appoints two other Councillors to be members of the CEOEMC.
 - 6.5. Approves the independent member of the CEOEMC (to be appointed by Council for a term of up to two years), being 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.
 - 6.6. Determines that the CEOEMC may enter into executive search contracts, for an amount not exceeding \$150,000 (including GST), on each occasion.
 - 6.7. Pursuant to section 81(2A) of the Act, resolves to exempt the independent member of the CEOEMC from being required to submit a primary or an ordinary return.
 - 6.8. Notes that the recommended independent member will be the subject of a future report to the Council or Future Melbourne Committee.

Attachments:

1. Supporting Attachment (page 2 of 7)
2. Instrument of Delegation and Terms of Reference of the Chief Executive Officer Employment Matters Committee (page 3 of 7)

Supporting Attachment

Legal

1. The establishment of a CEOEMC is good governance practice and supports the requirements of the Act to assist Council in fulfilling its responsibilities in relation to CEO employment matters.

Finance

2. The independent member appointed by Council 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. The independent member will be appointed for up to a two-year term and can be reappointed subject to Council endorsement. The allowance will be met from the relevant annual budget.

Conflict of interest

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

Stakeholder consultation

4. No external consultation has been undertaken as this is a special committee formed by the Council. It is anticipated all meetings and records of the CEOEMC will be confidential pursuant to sections 77 and 89(2)(a) and (d) of the Act, given the primary purpose of the CEOEMC is to discuss personnel and contractual matters.
5. In preparing this report, the following four Victorian Councils were benchmarked:
 - 5.1. Bass Coast Shire Council
 - 5.2. Darebin City Council
 - 5.3. Greater Geelong City Council
 - 5.4. Whittlesea City Council.

Environmental sustainability

6. There is no significant sustainability impact arising from the recommendation in this report.

Melbourne City Council (Council)

Instrument of Delegation

1. By this instrument of delegation (Instrument) sealed by the Council under section 86(3) of the *Local Government Act 1989* (the Act) the Council delegates to the **Chief Executive Officer Employment Matters Committee (CEOEMC)**:
 - 1.1. the duties and functions set out in the accompanying Schedule
 - 1.2. in accordance with the Schedule, the power to enter into executive search contracts for amounts not exceeding \$150,000 (including GST), on each occasion.
2. This Instrument:
 - 2.1. has been authorised by a resolution of the Council on 28 August 2018
 - 2.2. pursuant to section 86(4) of the Act, does not delegate any of the following:
 - 2.2.1. this power of delegation
 - 2.2.2. the power to declare a rate or charge
 - 2.2.3. the power to borrow money
 - 2.2.4. the power to enter into contracts for an amount exceeding an amount previously determined by the Council
 - 2.2.5. the power to incur any expenditure exceeding an amount previously determined by the Council
 - 2.3. comes into force immediately the common seal of the Council is affixed to it
 - 2.4. remains in force according to its terms until the Council resolves to revoke it
 - 2.5. must be exercised in accordance with:
 - 2.5.1. the terms of reference for the CEOEMC
 - 2.5.2. any lawful guidelines or policies, which the Council from time to time adopts.

Date of Affixing of Common Seal _____ day of August 2018.

The **COMMON SEAL** of the **MELBOURNE**)
CITY COUNCIL was affixed hereto)
in accordance with the **Conduct of**)
Meetings Local Law 2010)

.....
Lord Mayor

.....
Chief Executive Officer

Chief Executive Officer Employment Matters Committee

Duties and Functions

The duties and functions directly relating or ancillary to the following primary responsibilities:

- To make recommendations to Council on employment matters relating to the Chief Executive Officer (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 will be vacant for a period greater than four weeks
 - any extension of the appointment of the CEO 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.
- To develop performance criteria and performance review methodology for the CEO.
- To assess the CEO's performance against set criteria at regular performance reviews.
- To perform all other functions set out in the Terms of Reference for the CEOEMC as adopted by the Council from time to time.
- To consider suitable candidates for the position of independent member of the CEOEMC and to make a recommendation to Council or the Future Melbourne Committee for the appointment of a new independent member, where the incumbent resigns from their position on the CEOEMC or is not reappointed by the Council.
- To engage an executive search firm to assist in recruiting a new CEO, where the CEO resigns, makes a decision not to continue beyond the term of his/her contract or his/her contract is otherwise terminated.

Power

- For the purposes of the above duties and functions, the power to enter into executive search contracts (if the office of the Chief Executive Officer becomes vacant), for an amount not exceeding \$150,000 (including GST), on each occasion.

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.

The CEOEMC is constituted in accordance with section 86 of the *Local Government Act 1989* and its decision-making powers are subject to an Instrument of Delegation.

Powers, duties and functions

The CEOEMC has the following powers, 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.
- To develop performance criteria and performance review methodology for the CEO.
- To assess 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.
- To engage an executive search firm to assist in recruiting a new CEO, where the CEO resigns, makes a decision not to continue beyond the term of his/her contract or that contract is otherwise terminated.

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.

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 pursuant to sections 77 and 89(2)(a) and (d) of the *Local Government Act 1989*, given the primary purpose of the CEOEMC is to discuss personnel and contractual matters.

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.

The Council must review any delegations to a special committee in force under section 86(6) of the *Local Government Act 1989*, within the period of 12 months after a general election.