

TERMS OF REFERENCE: CHIEF EXECUTIVE PERFORMANCE COMMITTEE

1.1 The purpose of the Chief Executive Performance committee is to:

“...review the performance of the Chief Executive (CE) and undertake the legislative requirements in relation to the CE’s performance.”

The legislative basis for this committee is Schedule 7 clause 30 (1) (a), Local Government Act 2002. In this clause it is stated that the Council has the power to appoint the Performance Review Committee:

<i>Subordinate decision-making structures</i>	
30	Power to appoint committees, subcommittees, other subordinate decision-making bodies, and joint committees
(1)	A local authority may appoint—
(a)	the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate; and

Source: Schedule 7, clause 30 (1) (a) of the Local Government Act 2002, page 385

The ‘Terms of Reference’ for this committee must also comply with Schedule 7, clause 35 of the Local Government Act 2002 which states:

Schedule 7	Local Government Act 2002	Version as at 15 December 2022
35	Performance review at end of first term of appointment	
(1)	A local authority must, not less than 6 months before the date on which the chief executive’s contract of employment for the first term expires, conduct and complete a review of the employment of the chief executive.	
(2)	The review must assess—	
(a)	the performance of the chief executive; and	
(b)	the mix of skills and attributes possessed by the chief executive, and the degree to which they are consistent with the skills and attributes that the local authority considers necessary for the future; and	
(c)	any other factors that the local authority considers relevant.	
(3)	To avoid doubt, responsibility for determining the degree to which any factors in subclause (2)(a) and (b) apply to a review, and the relevance of any additional factors under subclause (2)(c), rests solely with the local authority.	
(4)	Subclause (1) does not apply if the incumbent chief executive declares in writing to the local authority that he or she does not wish to be considered for appointment to a second term.	

Source: Schedule 7 clause 35, Local Government Act 2002, page 392

In addition to the legislation, and in line with good practice, the Committee will undertake regular reviews of the Chief Executive’s performance as set out in this Terms of Reference.

The previous ‘Terms of Reference’ stated that the committee’s role was to undertake this performance review in the following time frames:

- *May annually – review performance against targets & in conjunction with the CE and set the targets for the coming year (AKA annual review).*

- *December annually – undertake a mid-year review & in conjunction with the CE make agreed adjustments for the balance of the year (AKA mid-year review).*
- *August annually – in consultation with the CE review the terms, conditions and terms of employment agreement (AKA engagement review).*

While these objectives are correct, the timeframes set fall outside of the normal Council business reporting dates and therefore create some inefficiencies in this process. On this basis I propose that we reset these timeframes so that they align with the normal reporting of Council business. The numerical data provided from these standard reporting metrics presents an accurate record of how the Council has performed over the review period in question, which has been led by the CE. The revised dates for these reviews are based on the council's Year End date being 30th June. So:

- August annual review – Timing: this can be completed from July – August at the latest. It provides sufficient time for the annual accounts to be produced, so that these results can be compared in line with the agreed quantitative KPI's agreed upon.

The purpose of this annual review is to:

- Review the performance of the Chief Executive against the performance targets of the preceding year.
- In conjunction with the Chief Executive Officer, set and confirm the performance targets for the upcoming year.

As a good employer, any amendments or alterations to the terms and conditions will be made in mutual agreement of the Committee and Chief Executive Office, in good faith, providing fair and proper treatment in all aspects of employment.

The Committee is committed to applying fair and equitable remuneration and reward practices, taking into account internal and external relativities, Local Government practices and the ability to achieve the Mackenzie District Council strategic objectives.

As part of the Remuneration considerations, individual performance as well as internal and external relativities will be taken into account regarding any Chief Executive Officer remuneration-based decisions, balances by the organisational context, performance and affordability.

- October engagement review – Timing: this can be completed from September – October and aligns with the operating time of each triennium of council. Thus, it can be undertaken before each local body term election so that the task is completed for the incumbent council, and not carried on to a new council group who may not be fully informed to be in a position to complete this review.

The purpose of this annual review is to:

- Undertake a mid-year performance review; and
 - In conjunction with the Chief Executive Office, set or amend, where appropriate, the key performance years.
- March mid-year review – Timing: this can be completed from February – March. It will have the 6 month reported figures to hand to help benchmark performance to date and reset KPI's if needs be. Having the mid-year review completed at this time will also provide the

foundation of information needed to assist with the CE review mandated by Schedule 7, clause 35 (1) of the Local Government Act 2002 to be completed prior to 6 months before the term of the CE’s current contract of employment for the first term expires (see details below).

1.2 The scope of this committee includes:

Considering matters relating to the performance of the CE, including the annual performance review. The committee shall have delegated authority to make decisions for and on behalf of the Council.

Membership	The Chief Executive Performance Committee will be a standing committee of all Councillors and the Mayor. The Committee may appoint an additional person to the committee where it considers that person has skills, attributes, or knowledge that will assist with the work of the committee
Quorum	The quorum shall be five members
Chair	The Chair will be appointed by the Mayor
Meetings	The Committee will meet at least twice a year, on the agreed dates in Section 1.1, to review performance and once per annum to review employment arrangements, and six months before the date of the Chief Executive’s contract of employment.

The maximum term for a CE employment contract is 5 years, and there is a set procedure to follow post this initial contract reaching its expiry term as outlined in Schedule 7, clause 34 of the Local Government Act 2002 (see below):

<p>34 Terms of employment of chief executive</p> <p>(1) A chief executive appointed under section 42 may not be appointed for a term of more than 5 years.</p> <p>(2) The local authority and the chief executive must enter into a performance agreement.</p> <p>(3) When the term of appointment expires, a vacancy exists in the office of the chief executive, and that vacancy must be advertised.</p> <p>(4) Despite subclause (3), if the local authority has completed a review under clause 35, that local authority may, without advertising the vacancy, appoint the incumbent chief executive for a second term not exceeding 2 years on the expiry of the first term of appointment.</p> <p>(5) After completing a review under clause 35, but before the date on which the chief executive’s contract of employment for the first term expires, the local authority must resolve whether or not to—</p> <p>(a) appoint the chief executive for a second term under subclause (4); or</p> <p>(b) advertise the vacancy.</p> <p>(6) If a vacancy is advertised,—</p> <p>(a) the incumbent chief executive may apply for the position; and</p> <p>(b) the local authority must give due consideration to any application for the position by the incumbent chief executive.</p> <p>(7) Despite the provisions of any other enactment or rule of law, a chief executive has no right or expectation of renewed employment at the end of any term.</p>
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Source: Schedule 7, clause 34, Local Government Act 2002, page 391

On the basis of the above it is proposed that in conjunction with the listed annual performance review steps (i.e., annual review, mid-year review and engagement review), the CE Performance committee conducts each year’s review as follows:

Year One	Conduct review in house
Year Two	Conduct review in house but also with the engagement of an HR consultant firm to assist with completing a fuller review including a 360-degree performance review on the CE role, to support the committee in completing this process (thus bringing an element of independence to the proceedings).
Year Three	Conduct review in house (and to be completed as soon as practicable and before the local body elections).
Year Four	Same procedure as Year Two.
Year Five	Final review conducted in house and at least 6 months before the expiry of the first term of the contract (as per Schedule 7, clause 35 LGA, and bearing in mind the contract may be extended for a further two-year term as per the process outlined in Schedule 7, clause 35 (4) of the Local Government Act 2002.

Advanced notice of engaging a third-party consultant allows for these costs to be included in that years budgets and helps provide a degree of independence to the process, as evident in the Audit & Risk Committee, and in accordance with the CouncilMark parameters.