

Chief Executive Officer Employment Performance Policy

Local Government Act 2009



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1. Policy Statement

Section 12(4)(d) of the *Local Government Act 2009* (the Act) provides for conducting a performance appraisal of the Chief Executive Officer (CEO), at least annually, in the way that is decided by the local government.

Where there is a vacancy in the role of CEO, a suitably qualified candidate may also be appointed as an acting CEO.

This policy has been developed to facilitate requirements under the Act as they relate to CEO performance and employment matters and complies with a Townsville City Council (Council) Resolution made by Council on 28 August 2024.

This policy:

- establishes a Performance Review Committee (the Committee) and an equitable approach to the contract management and the establishment of a Performance Management Framework (the Framework) for permanent CEOs, including providing processes for managing performance;
- establishes an equitable process for managing the day-to-day performance of a permanent or acting CEO;
- outlines the Framework for Council as the basis on which performance expectations and outcomes of the CEO are set, monitored and reviewed at least annually; and,
- outlines the basis upon which a permanent CEO's employment contract will be managed, which includes establishment of the Committee.

Council is committed to promoting efficient and effective leadership within the organisation.

Efficient and effective local government requires efficient and effective local government leadership.

The Framework has consequences for performance, either recognition of above expectation performance, or performance management where performance is below expectations, and by disciplinary action if needed.

It also provides for a permanent or acting CEO's performance to be appropriately managed outside of the formal review process.

2. Principles

Performance appraisals and performance management are to be a collaborative and constructive process that contributes to enhanced performance of the permanent or acting CEO and as a consequence the organisation in line with Council's Corporate Plan, Strategic Priorities and Operational Plan.

In any feedback to the CEO about performance or a particular action or inaction, whether in day-to-day interactions or in a formal performance review, all Councillors are required to:

- (a) treat a permanent or acting CEO with courtesy, honesty and fairness.
- (b) not use abusive, obscene or threatening language (either oral or written) or behaviour towards a permanent or acting CEO.
- (c) have proper regard for a permanent or acting CEO's rights, obligations, cultural differences, safety, health and welfare.

The Code of Conduct for Councillors in Queensland sets out the standards of behaviour applying to all Councillors which relate to the Local Government Principles and values. The standards of behaviour are summarised as:

1. Responsibilities;
2. Respect; and,
3. Reputation.

3. Scope

This policy applies to all Councillors, and to a permanent or acting CEO.

This policy applies to the conduct of the appraisal of the permanent or acting CEO's performance on at least an annual basis, and as required on a day-to-day basis.

4. Responsibility

Under section 194 of the Act, it is the responsibility of Councillors to appoint and to set the conditions of employment for Council's CEO.

Under section 195 of the Act, it is the responsibility of Councillors to appoint an acting CEO where there is a vacancy in the CEO position.

Councillors appointing a CEO must ensure the CEO is qualified to be the CEO, having regard to the ability, experience, knowledge and skills that Councillors consider appropriate given the role. Councillors are also responsible for setting the standards by which the CEO's performance will be measured pursuant to section 194 of the Act.

The Mayor and any Councillors appointed to the Committee for the review of performance are to:

- conduct the performance appraisal of the CEO on an at least annual basis in line with the policy adopted by council;
- engage a qualified and experienced facilitator to assist the Committee in the conduct of the review if required;
- with support of the Committee, reach agreement with the CEO on the annual performance objectives and key performance indicators;
- with the support of the Committee, sign a performance agreement for the CEO within three months of the commencement date of the initial contract of employment and by 1 July annually in each subsequent year of the employment contract;
- provide performance feedback to the CEO;
- give the CEO a minimum of 20 working days' notice in writing that a performance review is to be conducted to enable the CEO sufficient time to prepare;
- ensure quality and reliable evidence is gathered to inform the Committee's appraisal of the CEO's performance; and
- with support of the Committee, prepare and submit a confidential report to the Committee on the appraisal, including any matters associated with possible remuneration review, with the report discussed and the result resolved at an Ordinary Council meeting.

The Committee is to:

- assist the Mayor in the conduct of the CEO's performance appraisal each financial year, and to provide any day-to-day feedback that may be required;
- provide formal performance feedback to the CEO, if required, to address performance issues (including alleged failures to meet required standards or goals) as necessary to seek to remedy those issues;
- participate in on boarding and briefing processes to ensure the members are equipped to undertake a robust and fair performance appraisal;
- agree on the annual performance objectives and key performance indicators for the CEO's performance;
- conduct the performance appraisal including an end of financial year review in July (with the assistance of a qualified and experienced facilitator if one is engaged);
- consider quality and reliable evidence of the CEO's performance including performance feedback from key stakeholders; and,
- agree on the appraisal of the CEO's performance, including any matters associated with possible remuneration review, with any exceptions documented.

A permanent CEO is to:

- contribute to the development of a performance agreement for the financial year using the agreed annual performance objectives and key performance indicators;
- agree and sign the performance agreement, with any exceptions documented within three months of the commencement date of the initial contract of employment and by 1 July annually in each subsequent year of the employment contract;
- meet with the Committee to discuss their performance against the agreement;
- complete a self-assessment of their performance, for consideration by the Committee for the end of financial year, including quality and reliable evidence of performance; and,
- engage in any necessary development or action to attain the expected level of performance.

An acting CEO is to meet the Committee to discuss feedback, where the Committee has decided to provide feedback about performance.

The Office of the Mayor is to:

- support the Mayor and the Committee in the conduct and documentation of the CEO review and appraisal process, as required.

5. Definitions

CEO - means the Chief Executive Officer of the Townsville City Council (whether permanent or acting).

Councillor - means all elected representatives including the Mayor.

Performance Agreement - means an agreement negotiated between Council and the CEO detailing performance criteria and expectations.

Performance Review Committee - means a Committee appointed by Council for the purpose of overseeing the Framework in accordance with the CEO Performance Guidelines.

6. Policy

Section 12 (4) (d) of the Act provides the Mayor with the responsibility of:

conducting a performance appraisal of the Chief Executive Officer, at least annually, in the way that is decided by the local government (including as a member of a committee).

Council has considered the human rights protected under the *Human Rights Act 2019 (Qld)* when adopting and/or amending this policy. When applying this policy, Council will act and make decisions in a way that is compatible with human rights and give proper consideration to a human right relevant to the decision in accordance with this Act.

Council has also considered its obligations pursuant to the *Work Health and Safety Act 2011* to provide a safe workplace for CEOs and acting CEOs. When applying this policy, Council will act and make decisions in a way compatible with maintaining a safe workplace.

Performance appraisals, and performance management, are to be a collaborative and constructive process that contributes to enhanced performance of the permanent or acting CEO and as a consequence the organisation in line with Council's Corporate Plan, Strategic Priorities and Operational Plan.

6.1. Membership of the Committee

The Committee will comprise the 11 elected Councillors or such other composition of elected members as determined by Council to reflect the overall interests of the Council (the composition of the Committee must include the Mayor).

Membership may also be extended by the Committee to an external person experienced in performance management and/or the role of a local government CEO to help bring both expertise and independence to the review.

An external facilitator experienced in executive performance management in local government, may be used to advise and support the Committee in undertaking the annual CEO performance review, and in the setting of the Performance Agreement for the following year. This brings both experience and independence to the process. The facilitator is not a voting member of the Committee.

6.2. Information for Members of the Committee

All members of the Committee and the CEO will be provided information and advice in processes associated with this policy and in effective performance management principles and practices, which will include fairness, equity, perspective, merit and natural justice.

6.3. The Structure of the Framework

6.3.1 The Performance Agreement

The key to this framework is in the setting and agreeing of performance expectations between the parties at the start of the financial year. The key documents underpinning this process include:

- Council’s current Corporate Plan and, in particular the annual Operational Plan that delivers on the Corporate Plan;
- annual organisational priorities set by the CEO/Executive Leadership Team (ELT);
- the Code of Conduct for Staff;
- Council Value statements;
- the role statement or position description for the position of CEO;
- core competencies for the CEO position; and,
- a suite of relevant Corporate Key Performance Indicators.

These documents will be used to develop the CEO Performance Agreement.

The Framework philosophy is that the Performance Agreement will be used as the basis of encouraging relevant and rigorous conversations about performance at review time, with final assessments being evidence-based.

6.3.2 Competent Performance

The basis of the Framework is to ensure that the CEO is achieving required levels of performance and meeting Council’s expectations as outlined in the Performance Agreement. Of course, there is an expectation that a high performing CEO would achieve some higher ratings.

6.3.3 Ratings

Performance objectives for the CEO will be evaluated objectively utilising relevant organisational data and inputs. An overarching five-point scale will be used to define descriptors of performance, and is summarised below:

Rating	General Descriptor
Above Competent Performance	<p><u>Generally defined as</u> - outcomes consistently above the level of competence that would be acceptable in the role - consistently exceeds reasonable expectations. Excellent role model for others - what other workers should aspire to.</p> <p><u>For projects</u> - completed as required but with significant additional/better outcomes (E.g. major cost saving, winning major awards or significant positive community recognition).</p>
Competent Performance With Some Highlights	<p><u>Generally defined as</u> - competent performance with some above competent outcomes / components (E.g. communicates competently but did an outstanding job facilitating the community forum).</p> <p><u>For Projects</u> - completed as required with some value-add (E.g. on time but under budget).</p>
Competent Performance	<p><u>Generally defined as</u> - what is expected of a person competently performing duties and undertaking responsibilities at the required level - outcomes meet objectives at the standard envisaged.</p> <p><u>For projects</u> - completed as required / expected.</p>

Rating	General Descriptor
Competent Performance With Some Exceptions	<p><u>Generally defined as</u> - outcomes generally at competent level, but with some below competent outcomes (E.g. personal management generally competent but regularly arrives late to meetings).</p> <p><u>For projects</u> - generally acceptable completion of project with some minor exceptions (E.g. delivered slightly over time or slightly over budget).</p>
Unacceptable Performance	<p><u>Generally defined as</u> - outcomes consistently below competent performance requiring significant remedial action. Potential negative impact on Councils reputation.</p> <p><u>For projects</u> - project not completed as required with no valid justification</p>
Not Applicable	Did not proceed as originally envisaged for reasons beyond the CEO's control.

It is important to note that under this policy, a 'competent' rating means that the CEO is performing at the level of competence expected in the role.

An overall rating will be agreed for each objective in the Performance Agreement and rigorous conversation about performance will be undertaken to ensure objectivity through the review process. Comments and supporting documentation will be captured throughout the performance review cycle to clearly establish criteria for performance and resulting review ratings.

Performance-based remuneration, as detailed in the CEO's contract of employment, is aligned to the rating system used in the Framework and the delivery of agreed annual key projects / priorities.

6.3.4 Performance Agreement Format

Within three months after the commencement date, the CEO and Council will sign a Performance Agreement setting out agreed performance criteria and expectations. This provides time for the CEO to observe the structure, culture and performance of the organisation and make a judgement on initiatives to be taken in the first Performance Agreement for consideration by the Committee.

The Performance Agreement is subsequently negotiated between the Council and the CEO at the start of each financial year, with the Committee having the delegation from the Council to conduct the review process.

The Performance Agreement has six key components:

Component	Description
Significant Annual Projects and Priorities	Achievement of a small number of significant projects and priorities agreed with the Council
Roles and Responsibilities	Achievement of roles and responsibilities as contained in the role statement/position description for the position
Core Competencies	Performance against generic responsibilities and core competencies for the CEO

Behavioural Expectations	Consistent with Council’s Values and the Code of Conduct for Staff
Personal Development	An improvement plan for personal leadership development
Key Corporate Performance Indicators	Key operational measures that underpin organisational performance

The key components of the CEO Performance Agreement will be aligned to key projects and priorities identified from the Corporate Plan, annual Operational Plan and the organisation priorities, as well as the specific projects and priorities as determined by Council.

Significant Annual Projects and Priorities

Significant annual projects and priorities may include:

- generic projects and priorities; and
- CEO-specific projects and priorities.

Significant annual projects and priorities would normally stem from:

- key projects / identified by Council from the annual Operational Plan;
- specific projects / priorities for the CEO as determined by Council; and / or
- remedial / carry-forward action identified as part of the previous year’s review.

6.3.5 Position-Specific Roles and Responsibilities

Position-specific roles and responsibilities are contained in the position description / role statement for the CEO role and are to be extracted into the Performance Agreement.

In particular, the following fundamental responsibilities of the CEO are highlighted:

- articulate a vision and sense of purpose for the workers of the Council based on the Council’s Corporate and Strategic plans;
- motivate and inspire the workers of the Council to achieve the aims and objectives contained within the Corporate and Strategic plans;
- demonstrate excellence in leadership and management to ensure the efficient and effective operations of the Council organisation are aimed at providing high levels of value for money service delivery and continuing to build a higher performing organisation;
- work respectfully with, provide high quality advice to and be accountable to the Council to assist Council in its decision making and to efficiently and effectively implement Council decisions; and,
- provide an important link between Council, the community, other key stakeholders and Council workers.

The primary role of Councillors is to focus on policy development and strategic delivery of services in the public interest. Local government decisions are made to direct the operational work and realise the planned goals that are set out in the local government’s Corporate Plan.

Councillors are responsible for:

- planning and developing corporate plans and strategies to deliver outcomes to the community; and

- providing strategic vision and leadership.

The internal day-to-day work of the local government is carried out by local government employees under the direction of the CEO.

6.3.6 Responsibilities and Core Competencies

Responsibilities and core competencies are divided into the following key areas (additional areas can be included as agreed from time to time), with additional description and detail to ensure clarity of expectations and thorough assessment of performance is delivered:

1. Safety focus;
2. Strategic focus and alignment;
3. Commitment to Excellence;
4. Leadership and Culture;
5. Commitment to High Performing Teams;
6. Working in the local government context;
7. Financial Management; and,
8. Personal Management.

An overall rating will be agreed for each competency area in the Performance Agreement and rigorous conversation about performance will be undertaken to ensure rigour and objectivity through the review process. Comments and supporting documentation will be captured throughout the performance review cycle to clearly establish criteria for performance and resulting review ratings.

6.3.7 Values and Behaviours

The CEO is expected to behave in accordance with the Code of Conduct for Staff and to exhibit Council's agreed values. It is through the 'walking the talk' leadership of the CEO that movement towards the required values-based culture will be achieved.

Behavioural objectives aligned to Council's values will be established and reviewed as part of the CEO Performance Agreement.

6.3.8 Corporate Key Performance Indicators

A series of key performance indicators will form part of the Performance Agreement for the CEO. These will be developed by the Council through the Committee.

The selected corporate key performance indicators will provide a broad overview of how the organisation is performing.

6.3.9 Personal and Professional Development Plan

It is essential that a CEO keeps skills and knowledge contemporary at all times. Accordingly, there is a mutual obligation on the Council and the CEO to make a strong commitment to the ongoing personal and professional development of the CEO.

Council and the CEO will work together to ensure the CEO skills and knowledge are at the required competency standard and that the CEO is keeping appropriately abreast of contemporary issues and trends. The Performance Agreement for the CEO will therefore include a personal development plan which could include such aspects as participating in executive coaching, provision of a mentor, undertaking a course of study, visiting best practice organisations to bring back ideas for implementation, attending conferences or seminars, and membership of professional or leadership organisations relevant to the role.

There is an obligation on Council to support the CEO in the acquisition of competencies and contemporary skills and knowledge.

6.3.10 Changes to Performance Agreements

Any changes to the CEO Performance Agreement will be negotiated, agreed and documented when they occur. In particular, this is an important function of the mid-year performance review.

6.4. Management of the CEO Contract of Employment

6.4.1 The Contract of Employment

The contract forms the basis of employment of the CEO by Council and once signed by both parties it can only be varied by mutual consent, unless specifically stated in the contract.

6.4.2 Contract Variations

Under the terms of the CEO's contract, variations can be made to the contract where both parties agree, and any such variations should be reported to Council for endorsement.

6.4.2 Performance Management to be Referred to in Contract of Employment

The CEO's contract of employment requires the implementation of a formal performance management process with this policy being used as the basis of setting, monitoring and reviewing the CEO's performance.

Under the contract the CEO is required to perform at least at a competent standard in accordance with the Performance Agreement adopted by Council for the role. This is a fundamentally important component of the management of the CEO by Council.

6.5. Performance Review Process

6.5.1 CEO Performance Agreement

Once the Performance Agreement for the CEO has been established at the commencement of the annual performance cycle, the CEO will ensure that their performance objectives are appropriately cascaded to each of the Directors, who will in turn cascade these to the appropriate level of detail with the managers that report to them.

6.5.2 Preparation and Review Meetings

The Framework operates based on all parties being well- prepared for reviews. The CEO will prepare a written self-assessment report prior to the review being undertaken and that self-assessment distributed (along with any relevant attachments or supporting documentation) to each member of the Committee well in advance of the review meeting so each person can be well prepared for that meeting.

At the review meeting the CEO will formally present the self-assessment in summary, and also refer to actions taken on issues arising from the review meeting held 12 months ago. The CEO will then engage in discussion and answer any questions Committee members might have and then leave the meeting so that the Committee can consider the performance of the CEO in the review period. The Committee will make a judgement on CEO performance using the ratings provided in the Performance Agreement.

The CEO will then re-join the meeting to be provided with an overview of the assessment and ratings by the Review Committee.

The timing of the performance review should be considered and determined by the Council, having regard to relevant local factors. All parties to the review should be made aware of the timeline and process to be used.

6.5.3 Periodic and Annual Reviews

The monitoring of the CEO's performance will be conducted by the Committee and any feedback to the CEO about performance must be approved by the Committee before any feedback is provided to the CEO (in accordance with Council Resolution made by Council on 28 August 2024).

Periodic CEO performance reviews will be undertaken during the year, including a mid-year review. Any agreed changes to the Performance Agreement will be documented at these reviews.

The detailed annual review will be scheduled by the Committee in sufficient time to ensure both parties are well prepared for the review meeting. The outcomes of the annual review will be recorded and agreed by the Committee. The periodic review outcomes will be considered as an input at the annual review.

Outcomes of the annual review may also contribute to the setting of projects and priorities for the next year (including any remedial action required as a result of the previous year's review), as well as agreeing the personal development plan for the next year.

6.5.4 Reporting to Council

Following completion of the annual review of the CEO's performance and the setting of the new Performance Agreement, a report on the performance review, together with the new Performance Agreement, where the Committee is not comprised of all the Councillors, this should be reported to Council in a closed session by the Mayor. This report is confidential and must not be debated in open Council. Any issues raised at the Council meeting should be referred back to the Review Committee for consideration at its next meeting, or a special meeting if required.

6.6. Reviewing the Contract

6.6.1 Considerations

The timeline process for contract negotiation/renewal should be clearly set out in the contract of employment and should be followed meticulously by Council.

In considering whether or not to offer a new contract of employment to the CEO Council should consider the following:

- (a) the outcomes of performance reviews over the period of the current contract;
- (b) any change in Council priorities which may have occurred during the course of employment or any change in skills or abilities required in the role;
- (c) any relevant changes needed to the contract, which may include remuneration and/or employment conditions/benefits. Council should consider the prevailing market for CEO's and Job value of the position for a Council the size and complexity of Townsville (an external person could be engaged to provide advice on this if required);
- (d) the potential impact of losing a competently performing CEO, and the potential uncertainty of finding a better alternative;
- (e) the message that would be sent to workers and impact the culture of the organisation if the CEO was not offered a new contract - either a negative or positive message, but unlikely to be positive if the CEO has been given positive performance reviews over the period of the contract and is a popular leader;
- (f) the impact on Councils reputation as a fair and equitable employer; and,
- (g) the potential impact on the CEO's reputation.

6.6.2 Process

The Committee should prepare a report to Council recommending that a new contract of employment be offered to the CEO and detailing any changes to the current contract that the Council might consider. This must be undertaken this in accordance with the timelines and processes contained in the CEO's contract of employment.

The Council must formally resolve to offer a new contract of employment to the CEO and detail the terms of such contract.

6.7. Terminating the Contract

This can be either during the contract or at the end of the contract in accordance with the process and timelines outlined in the contract.

Termination provisions are to be set out in the contract and can occur by:

- (a) mutual agreement;
- (b) the CEO resigning;
- (c) summary dismissal;
- (d) incapacitation;
- (e) failure to perform;

- (f) termination without cause; or,
- (g) non-renewal of contract.

6.7.1 Process for Termination for Failure to Perform

The following process should be followed by Council where the CEO is not performing at the required level of competence and where Council may consider termination of the CEO's contract:

- Documented failure to perform at performance review meetings, or special meeting of the Committee, with supporting evidence documented and examples given of required level of performance;
- Opportunity given to the CEO to improve and appropriate support provided by Council;
- At subsequent review meeting(s) where an assessment is made by the Committee that performance has not improved to the required level, with substantiating evidence provided. If this failure is, in the Committee's view, significant, then the matter should be formally escalated to Council;
- Report provided to Council by the Committee and notice to terminate resolved by Council in accordance with the relevant clause of the CEO's contract;
- Council considers paying out the notice period (this is recommended);
- Arrangements for CEO's exiting is made, including the return of Council property etc in accordance with the contract of employment;
- Council appoints an Acting CEO; and,
- Recruitment and appointment process commenced for a new CEO in accordance with this policy and the Chief Executive Officer Recruitment and Onboarding Policy.

6.7.2 Process to Terminate Without Cause

This should only be used in extenuating circumstances as it may involve an unfair outcome for the CEO and may give rise to the potential for significant legal and other costs for the Council if an unfair dismissal action is commenced. The subsequent reputational damage for the Council may be something to avoid.

There are other options for termination that should be considered by Council to avoid the consequences of unfair dismissal. At the same time, depending on the circumstances this may be an option that the Council wishes to pursue in extenuating circumstances.

Should this action be taken a report should be provided to Council and Council should resolve to terminate the contract and pay out the notice period under the contract.

It will be important for the Councillors to receive reliable legal and industrial advice before making the decision to terminate.

Arrangements should be made for the timely exit of the CEO and return of Council property in accordance with the contract should this occur.

6.8 Managing Performance outside of Formal Review

Should performance expectations not be met or particular decisions or actions be the subject of dissatisfaction, then a process to address diminished performance and to elevate performance to an acceptable level will be followed.

Either the Mayor or two Councillors may call a meeting of the Committee to discuss feedback about either a permanent or acting CEO. Any feedback to the CEO must be approved by the Committee before feedback is provided to the CEO.

Where this occurs Council will clearly identify areas where performance is not at the required standard, supported by appropriate evidence, including clarity on the level of performance expected.

From there the Council will support the CEO to bring performance up to the required level through actions such as support for personal / professional development / assistance (which may include mentoring), regular feedback meetings with the Mayor or the Committee, or other agreed initiatives.

Should performance not improve to the required standard following the above development actions, the Council will consider other actions which, at its ultimate conclusion could see the dismissal of the CEO for failure to perform under the contract of employment.

Whenever CEO performance is an issue, the Council may engage appropriate external and experienced assistance in setting and actioning a Diminished Performance Plan. The Committee will make that engagement on Council's behalf.

7. Legal Parameters

Human Rights Act 2019

Information Privacy Act 2009

Local Government Act 2009

Local Government Regulation 2012

Work Health and Safety Act 2011

8. Associated Documents

Chief Executive Officer Recruitment and Onboarding Policy

Code of Conduct for Councillors in Queensland

Code of Conduct for Staff

Confidentiality Policy

Council Resolution made by Council on 28 August 2024