
REPORT 3
(1215/11/IM & 1215/58/IM)

CHIEF EXECUTIVE EMPLOYMENT PROCESS

1. Purpose of report

To agree the next steps in the process of advertising, selection and appointment of the Chief Executive.

2. Executive summary

Council decided, at its meeting on 29 August 2012, to advertise the position of the Chief Executive.

This report provides background information and general advice on the chief executive recruitment process and recommends a process to Council for the appointment of a person to that position.

3. Recommendations

The Mayor recommends that Council:

- 1. Receive the information.*
- 2. Agree that the Mayor, supported by the Deputy Mayor as necessary, is delegated the authority to progress the recruitment process for the Chief Executive, as outlined in Appendix 1.*
- 3. Agree that between 3 and 5 candidates are selected for Council to interview and for Council as a whole to make a decision on its preferred candidate.*
- 4. Note that Council has obligations to act fairly and impartially should the current Chief Executive apply for the advertised role.*
- 5. Note that confidentiality of the applicants' identity, internal or external, is of paramount importance.*

4. Background

The Local Government Act 2002 outlines the requirements the Council must follow in appointing its Chief Executive. The Council is also bound by a number of other legislative and ethical matters. The legal aspects of the recruitment and appointment process are covered in Appendix 2.

The recruitment process must be conducted with a combination of efficiency and democratic input, given the significance of the role of the Chief Executive in implementing policy, giving Council advice, running a large public service organisation and leading organisational culture, to name a few of the many aspects of the role.

5. Discussion

The current Chief Executive's contract expires on the 2nd March 2013. At its meeting on 29 August 2012 the Council agreed to advertise the position for a term of up to five years. Recruiting the Chief Executive is one of the most important decisions a council makes.

The delegations for overseeing the recruitment and selection process to the Performance Review Committee were also suspended by Council. As Mayor and the Chair of Council, I have brought this paper recommending a recruitment and selection process for the Chief Executive. I have had external legal and local government process advice in preparing this report.

The current advisor to the Performance Review Committee, Jennifer McDonald, Continuum Consulting, is away overseas for some considerable time between now and Christmas and is therefore not available. The Council has therefore engaged a Recruitment Advisor, Janet Macaskill, to oversee the recruiting process in accordance with any Council preferences.

Issues to consider when deciding the recruitment and appointment process include, but are not limited to:

- being a good employer
- requirements of local government legislation
- avoiding pre-determining outcomes
- confidentiality of applicants
- ensuring elected members agree and understand the process
- a degree of speed and efficiency
- democratic decision-making
- appointing the most competent person for the job

Decisions and steps to be taken in the appointment process

Already made

- Strategic review of Chief Executive's performance
- Ten skills and attributes necessary for the future (by Performance Review Committee in consultation with all councillors)
- To advertise for up to 5 years, noting that the incumbent Chief Executive can apply for the role
- To suspend the Performance Review Committee's delegations for the recruitment process
- Appoint a Recruitment Adviser to assist in managing the process
- Council to decide process

Still to be made

1. Appoint a recruitment agency
2. Contents of Job Description
3. Desired personal qualities
4. Breadth of search
5. Process for longlisting
6. Process for shortlisting
7. Process for interviewing shortlist
8. Agreeing minimum number of candidates to be interviewed by full Council
9. Agreeing process for interviews (presentations, scenarios, questions)
10. Final recommendation of preferred candidate to Council, subject to negotiation.
11. Negotiation of term, salary, conditions
12. Appointment of Chief Executive
13. Setting kpi's for year to March 2014 – (by Performance Review Committee)

Discussion on options for decisions

In all cases, the final decision on appointment rests with the full Council. However the steps on the way have a number of options.

It is not appropriate for existing Council staff (e.g. Human Resource staff), to be involved in the process. Having the full Council involved in every step is unrealistic, for example, a Council recently had 70 applicants for its Chief Executive role.

Time is of the essence given that an offer of employment should be made by the end of the calendar year.

The combination of delegations to the Mayor, supported by the Deputy Mayor as necessary, for some aspects and full Council for others offers a combination of speed and democracy suitable for the importance of this decision.

Legal advice has been sought and a letter from Jonathan Salter, partner at Simpson Grierson is attached as Appendix 2 which also outlines the statutory process.

An outline of previous recruitment processes undertaken in 1997, 2002 and 2007 is attached as Appendix 3.

5.1 Consultation and Engagement

Recruitment of the Chief Executive is a matter for Council to decide. Public engagement has been on strategic direction for the city (Wellington Towards 2040: Smart Capital) and its ten year budget and outcomes (Long Term Plan 2012-2022) and these priorities will guide the Council's decisions.

5.2 *Financial considerations*

Legal advice, advisor and recruitment fees will all be met from existing budgets.

5.3 *Climate change impacts and considerations*

Although the Chief Executive's role includes consideration of climate change mitigation and adaptation there are no climate change impacts and considerations that need to be taken into account

5.4 *Long-term plan considerations*

The Chief Executive's role includes the implementation of the Long Term Plan but no additional considerations are required.

6. Conclusion

As a result of the decision taken at its meeting on 29 August 2012, it is necessary for the Council to agree the process it is going to follow for the recruitment and appointment of the Chief Executive, to take effect from 3 March 2013.

Contact: *Mayor Wade-Brown*

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

The role of Chief Executive is crucial in the implementation of the strategic direction and policies set by the Council (Wellington Towards 2040: Smart Capital) and its 10 year budget and outcomes (Long Term Plan 2012-2022).

2) LTP/Annual Plan reference and long term financial impact

The Council is legally required to have regard to a number of factors when making the appointment of Chief Executive. These factors are provided in clauses 33-36 Of Schedule 7, Local Government Act 2002. It is unlikely that there will be any long term financial impact.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations.

4) Decision-making

This is not a significant decision. The report sets out a recommended process for the recruitment of the Chief Executive.

5) Consultation

The recruitment of the Chief Executive is a matter for Council to decide. Public engagement has been on strategic direction for the city (Wellington Towards 2040: Smart Capital) and its ten year budget and outcomes (Long Term Plan 2012-2022) and these priorities will guide the Council's decision making when deciding on the appointment.

6) Legal implications

Legal advice on the process has been obtained from Simpson Grierson and is attached as Appendix 2..

7) Consistency with existing policy

The Council, at its meeting on 29 August 2012, agreed to suspend the delegations held by the Performance and Review Committee for overseeing the recruitment and selection process for the Chief Executive. This report recommends a process to be followed on this occasion.

OUTLINE OF RECRUITMENT PROCESS FOR THE APPOINTMENT OF CHIEF EXECUTIVE

The Mayor and Deputy Mayor shall request up to three recruiting agencies to present to Council at a briefing session and, after considering feedback from Councillors, choose one agency to proceed with advertising the role of Chief Executive locally, nationally and overseas.

The Chief Executive Job Description and desired Personal Qualities shall be drawn up by the Recruitment Advisor, in consultation with councillors, and agreed by the Mayor and Deputy Mayor.

The recruitment agency will provide a long-list of potential candidates to the Mayor, Deputy Mayor and Recruitment Advisor.

The long-list of candidates will be available to individual councillors to view at the premises of the recruitment agency, provided they sign a confidentiality agreement.

The long-list will be winnowed to a recommended shortlist of between five and ten candidates by the recruitment agency from which the Mayor, Deputy Mayor and Recruitment Advisor will select between three and five candidates for interview by Council.

The Mayor and Deputy Mayor will agree an interview process to be followed, which may include presentations and scenario exploration.

18 September 2012

Partner Reference
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Dear Celia

Chief Executive Recruitment Process

You have asked for some general advice on the chief executive recruitment process, as background to your report to the Council meeting on 26 September 2012.

Statutory scheme in LGA 02 for appointing a chief executive

1. The statutory responsibilities of a chief executive under section 42 of the Local Government Act 2002 (**LGA 02**) include advising elected members, implementing elected members' decisions, and ensuring the effective and efficient management of the council's activities. Given these responsibilities, the appointment of a chief executive is one of the more significant manifestations of the elected governance role of a council.
2. The LGA 02 requires the Council in appointing a chief executive, to have regard to the need to appoint a person who will:
 - discharge the specific responsibilities placed on the appointee;
 - imbue employees with a spirit of service to the community;
 - promote efficiency in the local authority;
 - be a responsible manager;
 - maintain appropriate standards of integrity and conduct among employees of the local authority;
 - ensure the local authority is a good employer; and
 - promote equal employment opportunities.(clause 33 of Schedule 7)
3. The LGA 02 sets out key process steps that a council must follow in appointing its chief executive. If an incumbent chief executive indicates he or she wishes to reapply for the chief executive position when it expires, the Council must carry out a performance review of the incumbent.¹ This must occur at least six months prior to the expiry of the chief executive's term. Having completed the performance review, a council must decide whether to appoint the incumbent for a further two years, or whether to advertise the vacancy (for a five year term).² The statutory performance review has taken place and the decision to advertise has been made.

¹ Clause 35 in Schedule 7 of the LGA 02.

² Clause 34(4) and (5) in Schedule 7 of the LGA 02.

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4. The possibility of the incumbent chief executive applying for the advertised position is explicitly contemplated in the LGA 02, and the Council is obliged to give due consideration to any application by the incumbent.³ The LGA 02 is also clear in providing that an incumbent can have no right or expectation of renewed employment.⁴
5. The common law and statutory good employer requirements apply to the Council's dealings with its incumbent chief executive. Unlike any other external candidates for the position of chief executive, the Council will owe duties of good faith to the incumbent because of his status as an existing employee. The Council has obligations, amongst other things, to be active, constructive, responsive and communicative to the incumbent.⁵
6. The LGA 02 also sets out some particular requirements, which are part of the Council's good employer obligations, that apply when appointing a chief executive. Elected members must:
 - ensure the impartial selection of a suitably qualified person for appointment;⁶
 - give preference to the person who is best suited to the position;⁷ and
 - have regard to the need to appoint a person who will meet various requirements, outlined in paragraph 2 above.
7. **Attached** as Appendix 1 are relevant extracts from the LGA 02: section 42 and clauses 33, 34 and 36 of Schedule 7.

Delegation

8. Although the chief executive appointment decision cannot be delegated, it is in order to delegate steps leading up to the final exercise of that power (refer to clause 32(2) of Schedule 7 LGA 02).
9. There are several reasons why it may be appropriate to delegate aspects of the recruitment process:
 - **To maintain confidentiality** – applicants will provide considerable amounts of personal information. The less this information has to be disseminated, the less opportunities there are (inadvertent or otherwise) for breaches of confidentiality to occur.
 - **To expedite the process** – for an appointment to be made in time for the successful candidate to take up the role at the beginning of March 2013, the process must proceed without delay. A smaller group would facilitate the process of selecting long and short lists of applicants.
 - **To promote credibility of the Council** – some strong candidates may be disinclined to apply if it appears the Council is fractured over the appointment process. Sensible delegations and use of professional advisers will tend to enhance the credibility of the process.

³ Clause 34(6) in Schedule 7 of the LGA 02.

⁴ Clause 34(7) in Schedule 7 of the LGA 02.

⁵ Section 4(1A) Employment Relations Act 2000

⁶ Clause 36(2)(c) in Schedule 7 of the LGA 02.

⁷ Clause 36(3)(a) in Schedule 7 of the LGA 02.

- **For administrative convenience** – it is to be expected that there will be a significant number of applicants generating a considerable amount of information to be considered and assessed.
 - **To ensure a professional process** – using the experience, expertise and resources of external agencies is often valuable for senior appointments and lessens the scope for councillors to face allegations of predetermination or bias.
10. It is appropriate that all councillors are engaged with the recruitment process, and this would be a consideration against delegation. However, with appropriate terms of reference, including requirements to report to the Council before milestone events, this could be achieved within a delegated structure.
11. By way of example, any person or body with delegated authority could be required to report to the full Council before finalising a shortlist. Final interviews and (necessarily) the selection itself, would be by the full Council.

Precedent situations

12. We have made enquiries of local authorities which have recently undertaken chief executive recruitment processes.

Dunedin City Council – delegation to a committee of 5 including the Mayor. The committee identified a preferred candidate who was recommended to the Council.

Queenstown-Lakes District Council – no delegation. We understand there may have been issues about maintaining confidentiality.

Otago Regional Council – no delegation. A concern was expressed by the officer we spoke to about delays arising from the full Council consideration of all matters.

Hamilton City Council – recruitment consultant liaised with the Mayor in the preparation of a shortlist. The full Council became involved with second and third interviews with shortlisted candidates.

Christchurch City Council – subcommittee worked with recruitment consultant to the point of recommendation to the full Council of preferred candidate from a shortlist of 3.

Confidentiality

13. It will be important to the integrity of the recruitment process that appropriate confidentiality is maintained. This arises out of good employer obligations and obligations under the Privacy Act 1993, and is also recognised in several grounds for withholding information under the Local Government Official Information and Meetings Act 1987. These grounds include:
- protecting the privacy of natural persons;
 - protecting information which is subject to an obligation of confidence;
 - enabling the Council to carry on negotiations without prejudice or disadvantage.

Predetermination

14. The recent High Court decision in *Howe v Keown*⁸ (High Court 2 September 2011 Fogarty J) illustrates the risk to a recruitment process arising from statements made by elected members during that process. This case involved a legal challenge by a third party seeking to disqualify a Christchurch City councillor from participation in the chief executive recruitment process based on comments the councillor had made supporting the incumbent chief executive. In all the circumstances, the particular comments were held to be not such as would disqualify the councillor from decision-making on the appointment, but the judgment does illustrate the fine line between appropriate statements in support of an incumbent employee and appearing to predetermine the outcome of the recruitment process.
15. All councillors should exercise extreme caution in making any statements (whether positive or negative) about applicants for the chief executive position.
16. *Howe v Keown* highlights the unnecessary public exposure and cost of inappropriate actions by decision-makers in relation to an important statutory process. The recruitment process was delayed pending resolution of the legal proceedings.

Yours sincerely



Jonathan Salter
Partner
SIMPSON GRIERSON

⁸ <http://www.courtsofnz.govt.nz/cases/howe-v-keown/?searchterm=None>

Appendix 1**Local Government Act 2002****42 Chief executive**

- (1) A local authority must, in accordance with clauses 33 and 34 of Schedule 7, appoint a chief executive.
- (2) A chief executive appointed under subsection (1) is responsible to his or her local authority for—
 - (a) implementing the decisions of the local authority; and
 - (b) providing advice to members of the local authority and to its community boards, if any; and
 - (c) ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed or exercised; and
 - (d) ensuring the effective and efficient management of the activities of the local authority; and
 - (e) maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority; and
 - (f) providing leadership for the staff of the local authority; and
 - (g) employing, on behalf of the local authority, the staff of the local authority; and
 - (h) negotiating the terms of employment of the staff of the local authority.
- (3) A chief executive appointed under subsection (1) is responsible to his or her local authority for ensuring, so far as is practicable, that the management structure of the local authority—
 - (a) reflects and reinforces the separation of regulatory responsibilities and decision-making processes from other responsibilities and decision-making processes; and
 - (b) is capable of delivering adequate advice to the local authority to facilitate the explicit resolution of conflicting objectives.
- (4) For the purposes of any other Act, a chief executive appointed under this section is the principal administrative officer of the local authority.

Schedule 7**33 Appointment of chief executive**

The local authority must, in making an appointment under section 42, have regard to the need to appoint a person who will—

- (a) discharge the specific responsibilities placed on the appointee; and
- (b) imbue the employees of the local authority with a spirit of service to the community; and
- (c) promote efficiency in the local authority; and
- (d) be a responsible manager; and
- (e) maintain appropriate standards of integrity and conduct among the employees of the local authority; and
- (f) ensure that the local authority is a good employer; and
- (g) promote equal employment opportunities.

34 Terms of employment of chief executive

- (1) A chief executive appointed under section 42 may not be appointed for a term of more than 5 years.
- (2) The local authority and the chief executive must enter into a performance agreement.
- (3) When the term of appointment expires, a vacancy exists in the office of the chief executive, and that vacancy must be advertised.
- (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.
- (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—
 - (a) appoint the chief executive for a second term under subclause (4); or
 - (b) advertise the vacancy.
- (6) If a vacancy is advertised,—
 - (a) the incumbent chief executive may apply for the position; and
 - (b) the local authority must give due consideration to any application for the position by the incumbent chief executive.
- (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.

36 Local authority to be good employer

- (1) A local authority, and any other person having responsibility for the selection and management of employees of the local authority, must operate a personnel policy that complies with the principle of being a good employer.
- (2) For the purposes of this clause, a **good employer** means an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
 - (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Maori; and
 - (ii) the employment requirements of Maori; and
 - (iii) the need for greater involvement of Maori in local government employment; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) In addition to the requirements specified in subclauses (1) and (2), a local authority,—
 - (a) when making an appointment, must give preference to the person who is best suited to the position; and
 - (b) must ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

1997 APPOINTMENT PROCESS

Date	Council/Committee	Process/Paper
17 July 1997	PRC	<ul style="list-style-type: none"> Recommend to Council that Subcommittee (Blumsky, Nicholls, Piper, Prendergast and Parkin) and Cr Ruben be responsible for the arrangements for, and selection of, a new CE and any interim arrangements.
5 August 1997	PRC	<ul style="list-style-type: none"> Reviewed shortlist of search companies (oral report). Appointed Recruitment Consultant
5 September 1997	PRC	<ul style="list-style-type: none"> Protocols and processes for permanent appointment of CE (oral report)
25 September 1997	PRC	<ul style="list-style-type: none"> Protocols and processes for permanent appointment. Initial discussion on remuneration
25 September 1997	PRC	<ul style="list-style-type: none"> Recommended to Council that only members of the PRC access candidate information (for purpose of shortlisting) Discussion on remuneration package, performance review and contract design (and independent advisor to PRC going forward)
17 November 1997	PRC	<ul style="list-style-type: none"> Committee prepared shortlist of candidates for further interview Meeting adjourned until 20 November to conduct interviews
20 November 1997	PRC	<ul style="list-style-type: none"> Committee conducted interviews of shortlisted candidates and resolved that 3 candidates be invited to make a presentation to Council. Presentation by 2 candidates (it would appear one withdrew)
4 December 1997	Council	<ul style="list-style-type: none"> Council voted on recruitment of new CE
9 February 1998	PRC	<ul style="list-style-type: none"> New CE contract (verbal report)

* Note – PRC was Performance Review Sub-Committee

2002 APPOINTMENT PROCESS

Date	Council/Committee	Process/Paper
18 March 2002	PRC	<ul style="list-style-type: none"> CE Contract Renewal (Oral report)
15 July 2002	PRC	<ul style="list-style-type: none"> Paper tabled for 'Chief Executive Reappointment Process'. Paper endorsed and accepted by Committee. <p>PRC Advisor was asked to progress next steps by:</p> <ul style="list-style-type: none"> Preparing position competency and profile Preparing advertising schedule Tabling shortlist of providers of the services in the paper.
25 July 2002	PRC	<ul style="list-style-type: none"> Two proposals considered in regard to assistance in appointment process. Recruitment provider appointed.
13 November 2002	PRC	<ul style="list-style-type: none"> Eleven applications received and reviewed. Committee offered Mr Poole continued employment as CEO for term of five years on same terms and conditions of employment as currently applied.

* Note – PRC was Performance Review Sub-Committee

2007 APPOINTMENT PROCESS

Date	Council/Committee	Process/Paper
November 2006	PRC	<ul style="list-style-type: none"> Agreed to appointment process for CE. Confirmed role description. Delegated the Mayor (with the assistance of PRC Advisor) the selection of a recruitment consultant.
22 February 2007	PRC	<ul style="list-style-type: none"> PRC Advisor briefed Committee on steps taken to date in relation to CE appointment process.
26 April 2007	PRC	<ul style="list-style-type: none"> Committee discussed report and was briefed by Recruitment Consultant and PRC Advisor. Agreed only one applicant be shortlisted. Incumbent CE was interviewed
26 April 2007	Council	<p>Council met and agreed:</p> <ul style="list-style-type: none"> Appointed Mr Poole to position for a term of five years, with effect 3 March 2008. Remuneration to be set as part of the annual CE's performance review and Key Performance Indicator setting process. PRC given delegated authority from Council to finalise CE's contract of employment, consistent with Council's decision on appointment.