

The Good CE guide: Recruiting and managing Council CEs

He aratohu mō te Tumu
Whakarae Pai: Te taritari
me te whakahaere i ngā
Tumu Whakarae o ngā
Kaunihera



Preface

As local democracy's vision and voice, LGNZ offers a broad suite of services including policy and advocacy, learning and support, events and networking and more. We offer:

» **Tailored professional development**

We run induction and courses designed specifically for elected members and the unique local government landscape. Whether you're newly elected or very experienced, you'll learn from our workshops and resources, which are tailored to your career journey.

» **Meaningful connections across local government**

Our networks sector and zone gatherings and must-attend conference connect you with peers who can offer advice and support – as well as advancing collective policy and advocacy work.

» **Policy expertise on tap**

We decode policy so that councils can quickly understand what it means for you. We share draft submissions and policy so you don't have to start from scratch.

» **Collective policy feed into central government**

We broker working groups that bring together elected members with the right expertise to feed into central government policy as it's developed.

» **Direct line to central government**

LGNZ builds relationships with Ministers and officials that supports councils' own engagement at a political level. We're resolutely nonpartisan.

» **Looking at the big picture**

Our thought leadership pieces pull together expertise from all of local government to tackle the real issues. And we develop real solutions, including ideas like the Local Government Risk Agency (to pool resources to reduce risks and costs of disasters) or the Ratepayer Financing scheme (to support financially distressed ratepayers).

» **Scale benefits for councils**

Members receive benefits from initiatives we develop. For example, our Street Lighting Profiles initiative, which means councils can be billed less for electricity if they are dimming their LED street lights. Or the Moata carbon portal, which allows embedded carbon to be measured and monitored across any capital works programme.

» **Templates and guides you can use**

We develop documents that you can adopt or adapt: from standing orders to code of conduct templates.

» **Campaigns that support local government**

From Vote22 to mobilise votes for the local government elections last year, to localism and more, our national campaigns speak out on our behalf.

» **An impartial listening ear**

Elected members call us when it gets tough and there's no one you can talk to internally. We're a confidential, listening ear – we've heard it all before and can help you find a way forward.

» **Free counselling for elected members**

All elected members can access free counselling and digital wellbeing resources through our confidential Clearhead portal.

» **Supporting diversity and inclusion**

Networks like the Young Elected Members and Te Maruata (for Māori in local government) provide much-needed support and help people develop in their roles.

» **The local government glue**

We bring everyone in local government together, whether you're a regional, unitary, metro, provincial or rural council – and whether you're an elected member or council staff.

» **Government policy as it's developed.**

In addition, this Guide, on employing and managing relationships with chief executives, is one of a suite of public good guides and guidance prepared by LGNZ to assist elected members meet their communities' expectations for good and effective governance.

More information on the services that LGNZ provides for councils and their elected members can be found through the LGNZ website at

www.lgnz.co.nz

LGNZ

April 2023



Contents

Ihirangi

- p/8 Introduction**
Whakataki
- p/10 Part 1 – The Local Government Act 2002**
Wāhanga 1 – The Local Government Act 2002
- p/12 Part 2 – The role of the chief executive**
Wāhanga 2 – Te mahi a te tumu whakarae
- p/13 Responsibilities**
Ngā haepapa
- p/14 Competencies**
Ngā pūkenga
- p/16 Part 3 – Recruitment of a chief executive**
Wāhanga 3 – Te taritari i te tumu whakarae
- p/17 Step one: Start by reviewing your current strategy and position**
Hātepe tuatahi: Me tīmata mā te arotake i tō rautaki me tō tūnga onāiane
- p/17 Step two: Appoint an advisor**
Hātepe tuarua: Kōpoua tētahi kaitohutohu
- p/18 Step three: Design the recruitment process**
Hātepe tuatoru: Hoahoatia te tukanga taritari
- p/18 Step four: Delegate responsibilities**
Hātepe tuawhā: Tukua ngā haepapa
- p/18 Step five: Identify requirements and key competencies**
Hātepe tuarima: Tautohua ngā herenga me ngā pūkenga matua
- p/19 Step six: Advertise the position**
Hātepe tuaono: Whakatairangatia te tūranga
- p/19 Step seven: Longlist and shortlist candidates**
Hātepe tuawhitu: Whakarārangitia whānuitia, whāititia hoki ngā kaitono
- p/19 Step eight: Interview candidates and check references**
Hātepe tuawaru: Uiuia ngā kaitono me te tiro tiro i ngā kaitautoko
- p/19 Step nine: Decision-making**
Hātepe tuaiwa: Tukanga whakatau
- p/20 Step ten: Negotiate the employment and performance contract**
Hātepe tekau: Whiriwhiria te kirimana whiwhi mahi me ngā tutukinga
- p/21 Step eleven: Announcement**
Hātepe tekau mā tahi: Pānuitanga
- p/22 Questions and answers**
Ngā Pātai me ngā whakautu
- p/24 Part 4 – Structures for managing chief executive performance**
Wāhanga 4 – Ngā hanganga whakahaere i ngā tutukinga a te tumu whakarae

p/28 Part 5 – Performance management

Wāhanga 5 – Whakahaere tutukinga

p/30 Outcomes from performance management

Ngā putanga o te whakahaere tutukinga

p/30 Designing a performance management system

Te hoahoa pūnaha whakahaere tutukinga

p/30 The performance agreement

Te whakaaetanga tutukinga

p/32 The performance appraisal and review

Te tātaritanga me te arotake tutukinga

p/35 Questions and answers

Ngā pātai me nga whakautu

p/36 Part 6 – Managing performance issues

Wāhanga 6 – Te whakahaere take tutukinga

p/37 Legal framework

Anga ture

p/37 Managing poor performance

Te whakahaere tutukinga ngoikore

p/37 Where to start?

Me tīmata ki hea?

p/38 Informal approach

Huarahi ōpaki

p/38 Formal process

Tukanga ōkawa

p/41 Managing allegations of misconduct and disciplinary action

Te whakahaere hāmene mō te mahi kino me te tuku whakawhiu

p/46 Appendix A: Chief executive statutory performance review

Arotake tutukinga ā-ture mō te tumu whakarae

p/50 Appendix B: Employment agreement template

Anga whakaaetanga mahi

p/67 Schedule 1: Remuneration

Kapu Āpiti 1: Te utu

p/69 Schedule 2: Annual bonus (if applicable)

Kapu Āpiti 2: Moni tāpiri ā-tau (mēnā e hāngai ana)

p/70 Schedule 3: Specific job requirements

Kapu Āpiti 3: Ngā herenga motuhake mō te tūranga

p/72 Schedule 4: The Holidays Act 2003

Kapu Āpiti 4: The Holidays Act 2003



Introduction

// Whakataki

The chief executive of a council/kaunihera is the one and only employee of the governing body. They are also the most senior and influential member of your team.

The relationship between elected members and their chief executive is the most critical of all the relationships a local authority must build. When things are working well, the performance of the entire organisation is lifted. When the relationship breaks down, it is extremely difficult to continue to function effectively as a council/kaunihera.

So, it's critical that you get this one bang on!

This guide seeks to provide both an explanation of the law and a 'good practice' outline for the recruitment and performance management of the chief executive. It steps through the structures and processes that support effective recruitment and performance management of your chief executive.

When reading this guide and applying its advice, it is useful to keep the following principles in mind:

- » No single approach will suit all local authorities
- » The key to any successful relationship is clarity of process and of expectations
- » Everyone must demonstrate commitment to procedural fairness at all times
- » Confidentiality is paramount as you are dealing with the personal and professional lives of individuals
- » Performance management is ongoing and not just a 'once a year' thing
- » All council/kaunihera activities, including the process of recruitment and performance management, are subject to the Local Government Official Information and Meetings Act 1987.

Given its importance and complexity, it should come as no surprise that executive recruitment and management is a specialist field. Councils/kaunihera are strongly advised to seek expert advice in these matters. Unfortunately, when things do go wrong, lawyers get involved which can become a very costly exercise. Investing in getting the process and approach right is usually an exercise in savings.

This Guide, which is a revision of previous guidance, has been prepared by LGNZ with the active involvement of our legal advisors, Simpson Grierson.

LGNZ EQUIP

There are many different providers who can support you with CE recruitment, remuneration advice, employment law and executive performance management.

Local Government New Zealand provides CE recruitment expertise through its consultancy service EQUIP. EQUIP delivers tailored services, best practice guidance, and governance and management support, to strengthen the local government sector. It also provides a recruitment service for councils in the process of employing a chief executive.

When looking for a recruitment adviser, EQUIP brings substantial experience, having recruited chief executives for small and large councils for many years. With its relationship to LGNZ, EQUIP also has the advantage of knowing the local government sector and the issues that councils face, something that is increasingly important given the changing political environment in which councils now operate.

To learn more about EQUIP's CE recruitment service or to provide feedback on this Guide for hiring and managing relationships with CEs, please contact LGNZ at 04 9241204 or info@lgnz.co.nz.





1

**Wāhanga
one >>**

The Local Government Act 2002



The guiding legislation for all things local government is the Local Government Act (the Act) 2002.

While there are several relevant sections and clauses, Schedule 7, Part 1, clause 36 outlines the requirements of the local authority to be a good employer:

36 Local authority to be a 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 Māori; and
 - ii.** the employment requirements of Māori; and
 - iii.** the need for greater involvement of Māori 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 must;

- a.** when making an appointment, give preference to the person who is best suited to the position; and
- b.** ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.



2

**Wāhanga
two >>**

The role of the chief executive

Te mahi a te tumu
whakarae

One of the key principles to ensuring a successful working relationship between you and your chief executive is clarity of expectations. Councils/kaunihera and chief executives need to be on exactly the same page in terms of roles, responsibilities and expected outcomes.

The following is a summary of the responsibilities of the chief executive and competencies a council/kaunihera should seek.

Responsibilities

The chief executive is responsible for:

- » providing advice,
- » implementing the decisions of the council/kaunihera,
- » managing the activities of the local authority effectively and efficiently,
- » maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
- » employing and leading the staff/kaimahi of the local authority,
- » facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001, and
- » ensuring that all responsibilities, duties and powers delegated to the chief executive or to any person employed by the chief executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised.



The governing body of the local authority is responsible for employing a chief executive.

When doing so, they must consider the ability of that person to:

- » discharge the specific responsibilities placed on them,
- » imbue the 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 the employees,
- » ensure that the local authority is a good employer, and
- » promote equal employment opportunities.



Competencies

Appropriate competencies for a local government chief executive might include some, or all of, the following.

Leadership

- » demonstrates passion and enthusiasm for an organisation's vision, and motivates, leads and empowers others to achieve organisational goals
- » works to create high performance, results-focused teams through a positive and a collaborative approach
- » experienced at leading a full range of technical and investment activities in a company or business, or has relevant policy and operations experience with a local authority
- » takes accountability for their actions and the actions of the organisation.

Strategy formulation

- » able to formulate strategies and policies, and create new approaches in uncertain environments, or in the face of adverse political events
- » takes a broad-based view of issues, events and activities and is able to perceive the longer-term impact or wider implications
- » able to incorporate 'big picture thinking' and strategies into business and strategic plans.

Political skills

- » understands the challenges of working in a political environment
- » has finely developed antennae for issues that may be sensitive
- » has a spirit of public service.

Commercial awareness

- » understands and applies commercial and financial principles in ways appropriate to a local government context
- » identifies issues in terms of costs, profits and ways to add value to an organisation
- » demonstrates concern for efficient, productive and profitable use of resources in an entrepreneurial way
- » able to identify and manage organisational risks.

Governance and management support

- » experience in working with boards of directors or councillors, and providing them with professional, accurate and strategic advice
- » able to implement and deliver on the decisions and policies of boards of directors or local authorities
- » awareness of, and ability to, manage within the political aspects and regulatory frameworks of local and central government.

Problem solving and analysis

- » analyses issues and breaks them down into component parts
- » makes systematic and rational judgments based on the relevant information
- » able to synthesise complex issues, and clearly describe those issues and proposed solutions of people without the same level of technical knowledge.

Relationship management

- » able to establish and maintain positive working relationships with local authority staff, the public and other external stakeholders, including key leaders and decision-makers in the community, and other local and central government agencies
- » able to influence, convince or impress others in a way that results in acceptance, agreement or behaviour change
- » has a customer-focused perspective and looks for ways to meet the needs of the local customers of the local authority.

Interpersonal style

- » has a personal commitment to organisational excellence and an ability to work in a way that displays honesty, integrity, and a strong sense of business ethics
- » conveys credibility and success, is resilient, not easily put off, and remains calm, stable and in control of themselves
- » has an action orientation, is open and receptive to new ideas and is willing to make decisions, take the initiative, and originate action
- » has an understanding of, and commitment to, being an equal opportunities employment employer.

Personal strengths and other attributes

- » personal drive, energy and self-motivation
- » commitment to excellence of service
- » awareness of the special nature of the local government sector
- » understanding of the importance and values of Te Tiriti o Waitangi
- » well-developed political sensitivity
- » knowledge of local government legislation and responsibilities
- » a sense of humour.





3

**Wāhanga
three >>**

Recruitment of a chief executive

Te taritari i te tumu
whakarae

The appointment of a chief executive will have a significant impact on the overall success of your council/kaunihera. It warrants a significant investment of time and resources.

The following section steps through the process of recruiting a new chief executive.

Step one: Start by reviewing your current strategy and position

Before doing anything, local authorities should pause and reflect on their current strategy, performance and what they are trying to achieve. A good process will include both internal and external consultation, seeking input from staff/kaimahi, the governing body, community or local boards, iwi partners and key stakeholder organisations.

Seeking an outside facilitator to assist can be an effective way of ensuring full participation of all interested parties and that all the issues are canvassed.

Once you have clarity of your current position, you can be clear on what type of leader you are looking for in your chief executive.

Do you need a change maker? Someone who can help shift direction or pace in the council/kaunihera? Or are you very happy with progress and need a person who can maintain momentum while keeping things steady?

Maybe your stakeholder relationships need work and you need someone who can really guide the council/kaunihera in this area? Maybe staff/kaimahi morale is low and you need someone who can bring people back together?

Different circumstances need different solutions. While your chief executive will need a wide range of skills there maybe something in particular that you need right now to keep things on track.

Step two: Appoint an advisor

Recruitment is complex, detailed and time consuming. It also carries significant importance and risk. Local authorities should appoint an advisor to assist them in ensuring a positive outcome.

There are numerous organisations that provide this service and selecting the right advisor for you means balancing the following:

- » Experience: have they worked with other council/kaunihera, how many chief executive recruitment processes have they been involved in?
- » Do they have an existing relationship and knowledge of council/kaunihera?
- » Availability and timeliness
- » Their approach to quality assurance
- » References from other clients.

Once an advisor has been appointed, make sure you spend time together to ensure you are both clear on expectations and timelines for how the recruitment process will run.



Step three: Design the recruitment process

Each step of the process should be designed and approved before starting. It will save on time later and will ensure that once you get underway, things progress at your desired pace.

Decisions that should be made upfront include what specific role will the governing body play? Is a delegated committee responsible for the process or the whole governing body? If using a committee, how does the rest of the council/kaunihera get involved and at what point?

Choices depend on what the local authority is most comfortable with but all of the following should be covered.

- » How will internal candidates be managed?
- » What is the criteria for assessing the competencies, skills and attributes of candidates?
- » What is the remuneration range?
- » How many interviews will be conducted and what form will they take? Who will conduct them?
- » How many references will be sought and how will reference checking be conducted?
- » Who will conduct the contract negotiations?

Your advisor should be able to provide a range of process options.

Step four: Delegate responsibilities

Ensuring there is clarity over who has responsibility for what in the process should result in a smoother process.

Once you are clear on who is doing what, check what formal delegations are needed. This includes your advisor, so that both you and they are clear on the responsibilities and decision-making authority of each party.

Step five: Identify requirements and key competencies

A key element in recruiting a successful chief executive is clarity of expectations: what is the mix of skills, experience, knowledge and attributes that the chief executive will need to exhibit? Do you have any particular requirements, e.g. a background in local government.

Some of this you will draw from your review of the current strategy and council/kaunihera position.

Your advisor will be able to facilitate this process or recommend an expert in competency development. This process will also enable the establishment of key selection criteria – which competencies are most important and should carry more weight?

This process will also help formulate the job description and inform the performance contract.

Step six: Advertise the position

Councils/kaunihera must advertise the vacancy. Seek a strategy that will target the widest possible pool of candidates while providing value for money – your advisor should be able to guide you.

Factors to consider in your strategy include:

- » How far and wide will you advertise? Locally, nationally, internationally?
- » What media channels will you use?
- » Are there other organisations you can enlist to help share the information?
- » Are there particular types of people you want to target? If so, how will you reach them?
- » What background information about your council/kaunihera and its priorities are you giving out, and when?

Step seven: Longlist and shortlist candidates

Once applications have been received a longlist should be produced and decisions made regarding who will be interviewed. If you have appointed an advisor, they will be able to complete this task.

The advisor will then recommend a shortlist of candidates that meet the requirements for the positions for council/kaunihera to interview and assess.

Step eight: Interview candidates and check references

Decisions around how interviews are conducted and expectations on reference checking, should have been made at the design phase. Now it is time to put those decisions into practice.

If a committee interviews candidates, then the mayor or chair should be involved as leader of council/kaunihera and because of the close working relationship the two must have.

Ensure all candidates are well informed about the process and remember that interviews are a two-way process. Candidates will be weighing you up as a potential employer as much as you are weighing them up as a potential employee. You must allow candidates time to ask questions of their own and remember that the way you present as individuals and as a group, will be something your candidates are paying close attention to.

The interviewing body should agree on a series of set questions for any interview, with advice from your advisor.

It is best practice to ensure that each competency is assessed at least twice by different methods, e.g. an interview and presentation exercise to assess communication skills.

Step nine: Decision-making

At this point each candidate should be rated against the selection criteria and a decision made on who is the preferred candidate or if there are two preferred candidates.

You may need another interview to ask any questions that maybe outstanding or further testing to probe key skills in more depth.

Once a decision has been made by full council/kaunihera then an offer of employment can be made that is dependent on the outcome of a comprehensive credit, criminal offence and qualification checks. These should be completed prior to step ten.

Step ten: Negotiate the employment and performance contract

Once again, draft employment and performance agreements should be prepared early in the process to ensure there is no hold up once you reach this stage of the process. These documents are needed as soon as you make an offer of employment.

Professional advice should be sought on drafting the contract, and in particular the appropriateness of the remuneration package and other terms of appointment including the key accountabilities. Attention to detail is important as it will form the basis for resolving any future conflict over the rights of the parties. See *Appendix B: Employment agreement template*.

The contract can take many forms but will generally include these key elements:

- » the contract term (up to a maximum of five years),
- » a statement of the key accountabilities,
- » a statement of the process for reviewing chief executive performance and remuneration, including timeframes,
- » a clear process to be followed if the local authority contemplates the censure, suspension, or dismissal of the chief executive,
- » provisions dealing with remuneration (including salary) and any other component of a remuneration package (including any 'at risk' components) and processes for reviewing remuneration during the term of the contract,
- » termination provisions, and in particular what payment the chief executive might be entitled to on termination of the contract,
- » any other matters, such as leave, indemnification, confidentiality requirements, dispute resolution procedures, and
- » schedules setting out the agreed performance expectations and remuneration, an agreed term for those expectations, and processes for reviewing and amending these.

Remuneration

An important factor in discussions of remuneration is that of 'fairness': Remuneration must be fair to both parties. Getting it right is also important to ratepayers. It is therefore important to have a rational, accountable, and defensible process.

Start by understanding the market value for the job. Market value is an indicator, and the local authority can then pitch their remuneration at below, or above, market value. There are pros and cons with each option.

We recommend that local authorities retain expert advice when assessing market value and remuneration.

Contract renewal

A local authority cannot automatically reappoint a chief executive on expiry of their term of employment, but they do have the option to reappoint provided that the council/kaunihera reviews the chief executive's employment not less than six months before the end of their term of appointment. See *Appendix A: Chief executive statutory performance review*.

On completion of the review the council/kaunihera may decide to extend the incumbent's term of employment for up to two years or may decide to advertise the position. If the position is advertised then the incumbent chief executive may reapply, and the local authority must give that application due consideration.

Termination provisions

Severance payment clauses are often used to manage risks involved with the departure of an employee. Local authorities should be wary of the likely public perceptions of what will be seen as a 'golden handshake'.

Local authorities should also ensure that they have proper authority to make such a severance payment, and that the procedures for authorising the payment are consistent with the internal delegations that the council/kaunihera has in place.

A good description of the risks involved with the severance payment clauses can be found in the Office of the Auditor General's report, *Severance Payments in the Public Sector (2002)*.

Step eleven: Announcement

Once the employment contract has been signed the local authority should consider the way it will announce the appointment.

Best practice is for staff to be informed prior to public announcements although it is possible there will be a need to coordinate with the organisation the chief executive is resigning from.

The local authority should be prepared for local media interest in the decision and should prepare statements and a short biography of the successful candidate.

QUESTIONS AND ANSWERS

What happens if the chief executive asks if they can be employed as the sole employee of a company?

This is not an option. Under the Act, the chief executive must be a person, not a corporate entity.

Can a chief executive's position be "job-shared"?

The way in which the relevant provisions in the Act are drafted imply that there is one specific person who is the chief executive, rather than a job share.

Can a chief executive be shared between more than one council/kaunihera?

Yes. Each council/kaunihera would need to agree to the appointment (this could be done jointly) and agree to a performance agreement, although the agreement could have different priorities for each council/kaunihera. Theoretically a chief executive's leadership team could also be shared with another council/kaunihera.





4

Wāhanga
four >>

Structures for managing chief executive Structures for managing chief executive performance

Ngā hanganga
whakahaere i ngā
tutukinga a te tumu
whakarae

This section looks at the types of structures a local authority may put in place to undertake performance reviews and to deal with any other management issues that may arise in relation to the chief executive's employment.

Structures

If wanting to implement a formal structure, the two main options are a committee or a subcommittee. A committee reports to the local authority. A subcommittee can report to another committee or to the local authority directly.

Each local authority has a certain amount of flexibility associated with its (sub)committee structures. However, unless it resolves otherwise, following a triennial general election, all (sub)committees will be deemed to be discharged when the newly elected come into office.

It is therefore recommended that a chief executive performance (sub)committee be subject to a non-discharge resolution, meaning a direct liaison point for the chief executive is retained following the election.

Similarly, it is sensible to have a standing (sub)committee rather than appoint an ad hoc committee whenever an issue arises. A standing (sub)committee can build a more meaningful relationship with the chief executive.

Membership

It is up to each local authority to determine the size and membership of the (sub)committee although it is recommended the group remains small. The minimum number of members for a committee is three and two for a subcommittee.

In the case of a committee, at least one member must be an elected member of the local authority. For both a committee and a subcommittee, a person who is not an elected member may be appointed but only if that person has the skills, attributes, or knowledge that will assist the work, such as in areas of executive employment or performance management issues.

The Act expressly prohibits an employee from acting as a member of a committee unless that committee is a subcommittee.

It is recommended that the (sub)committee reports to the full council/kaunihera on a regular basis.

During the performance review process input should be sought from councillors who are not members of the committee on the performance of the chief executive.

Powers

The local authority needs to consider what delegations will be made to the (sub)committee. There are two options. It can either have delegated authority to carry out activities within its terms of reference or it can have the more limited power to recommend to the local authority a particular course of action.

However, a local authority cannot delegate the actual power to appoint a chief executive.

Examples of delegations could include:

- » Approving the employment agreement and setting key performance indicators
- » Working with the chief executive on the implementation of the performance agreement
- » Conducting any performance reviews required by the performance agreement
- » Making decisions about the remuneration of the chief executive
- » Conducting any statutory performance reviews under clauses 34 and 35 of Schedule 7 of the Act
- » Deciding any other issues that may arise in relation to the employment or performance of the chief executive
- » Fulfilling the local authority's contractual obligations to the chief executive
- » Disciplinary or performance issues that may need to be addressed/investigated relating to the chief executive.

If external advisers are not members of the (sub) committee, it would be appropriate for the group to take advice from experts in the field. This should be provided for in the delegations.

A financial limit may also be appropriate so that the (sub)committee may contract for advice up to a certain amount. If the power to take advice from external advisers is omitted from the delegations, the (sub)committee will have no power to seek external assistance as and when required.

Meetings

A decision is needed over whether the (sub) committee meets on a regular basis or as-and-when required. Regular meetings provide an opportunity for the chief executive and the council/kaunihera to discuss issues at regular intervals.

A chairperson will need to be appointed and all meetings of the (sub)committee need to be conducted in accordance with the Act, the Local Government Official Information and Meetings Act 1987 (LGOIMA), and the council/kaunihera's standing orders.

A decision is needed as to whether particular meetings should be conducted with the public excluded. This would be the usual practice but the local authority will need to meet the requirements of section 48 of the LGOIMA.

A common ground for excluding members of the public would be to protect the privacy of natural persons. It is not possible to exclude members of the public on the ground of protecting the free and frank expression of opinions.

Under section 45(2) of the LGOIMA, any meeting of a committee or subcommittee, at which no resolutions or decisions are made, is not a meeting for the purposes of part 7 of the LGOIMA. This means part 7 will not apply if the (sub)committee and the chief executive get together simply for a general discussion.





5

**Wāhanga
five >>**

Performance management

Whakahaere tutukinga

The performance management process is a critical one as it provides employees (in this case, the chief executive) and employers (in this case, the council/kaunihera) with clarity around what is expected, outcomes to be achieved and how performance will be measured.

It's important that each council/kaunihera develop their own process for performance management, one that reflects the respective styles of the chief executive and council/kaunihera and the nature of their working relationship. To assist councils to establish a process that meets their needs, LGNZ has developed the following principles of good performance management:

- // 1.** It is an ongoing process:
It begins with a job description and continues throughout the chief executive's term of employment.
- // 2.** The focus is on continuous improvement toward achieving objectives:
A performance management system should align objectives and expectations for the chief executive with overall organisational strategies.
- // 3.** Achieving standards of excellence:
Professional chief executives are essential for the effectiveness of local government and councils'/kaunihera ability to meet standards of excellence.
- // 4.** Valuing employee relations:
Where a good relationship exists, the performance review allows for a discussion about the performance of the whole organisation.
- // 5.** Effective ongoing communication:
Effective performance management should be considered a process of continuous feedback rather than a once-a-year thing. Ongoing communication ensures that nothing in the performance review should come as a surprise; it should be a summary of previously held conversations.

An ongoing process – not just an annual event

The importance of regular conversations or “check-ins” throughout the year cannot be overstated. Building solid and respectful working relationships will advance everyone's interests and avoid having surprises arise over the course of the year and specifically at year-end. Regular performance conversations make it easier to link compensation to performance at the year-end performance evaluation.

Some municipalities set up quarterly reviews for a more formal approach to “checking in,” which gives the opportunity to review/change goals that are no longer achievable due to new circumstances.

CAMA – CAO Performance Assessment Guide for mayor and council.

Outcomes from performance management

Performance management is important as it can influence both a chief executive's remuneration and term of employment.

In most cases the results of a performance conversation and the written review will reinforce progress, acknowledge and reward achievement, and be a motivational factor for the chief executive.

However, sometimes the process will highlight poor performance. Ways to enable the chief executive to improve their performance might need to be discussed, followed by sanctions and dismissal if performance fails to improve.

Remuneration

There are no hard and fast rules for linking performance reviews and remuneration:

- » if performance is satisfactory, then increasing remuneration to maintain market relativity is usually appropriate
- » if performance exceeds expectations, then an increase in remuneration within the appropriate range, may be agreed, or a performance bonus paid, or both
- » performance that is below expectations may result in no change to salary, or providing there is provision within the employment contract or performance agreement, a decrease in salary. Performance at this level may lead to remedial action or disciplinary consequences.

Contract renewal

The local authority must review the employment of the chief executive not less than six months before the end of the chief executive's term of appointment.

On completion of the review the council/kaunihera may decide to extend the incumbent's term of employment for up to two years or may decide to advertise the position. *See Appendix A: Chief executive statutory performance review.*

Designing a performance management system

There are two key documents that support effective performance management conversations:

- // 1. The performance agreement:
One must be in place for the chief executive, setting out the objectives and measures the local authority expects them to achieve during their term of employment.
- // 2. The performance review:
This provides the mayor, chair and council/kaunihera with a formal record of their performance conversation and appraisals of the chief executive's achievement.

The performance agreement

The basis of a good performance management system is a good performance agreement. A significant benefit of this process is the conversation that takes place as part of it, giving everyone a better understanding of what each wants to achieve.

The agreement should set out the chief executive's required tasks and achievements for a specified period (usually a year) and the measures by which performance will be assessed. Chief executives should be held accountable for things that they can exert influence over. This will become ever more important with the shift in focus towards community outcomes.

However, it is also important to remember the agreement is part of the employment contract and will be a factor in conversations if there are ever any problems with the employment relationship.

The performance agreement should be completed at the beginning of a defined performance period, such as 1 July - 30 June. This performance period should be specified in the employment agreement.

Most performance agreements cover the following:

// 1. **Expected outcomes or Key Result Areas (KRAs)**

Key things the chief executive is expected to achieve over the life of the plan. These will usually be high-level statements and will link to the job description, e.g., providing policy advice, undertaking long-term planning, ensuring effective use of council/kaunihera resources.

// 2. **Performance objectives and measures**

Specific tasks that the chief executive is expected to perform and a way of assessing achievement. Objectives need to be SMART (Specific, Measurable, Achievable, Realistic, Timely). For example, for the outcome 'providing policy advice' some of the performance objectives might be 'prepare a draft district plan for consideration by 1 July 2024' or 'advise council/kaunihera on any implications the Regional Planning Committee Bill has for its operations by 1 March 2023'.

// 3. **Expected behaviours**

These might include things such as demonstrating 'honesty, loyalty, commitment and integrity at all times'.

// 4. **Organisational development expectations and measures**

The chief executive has a statutory responsibility for providing leadership to staff/kaimahi and for imbuing them with a spirit of community service. These might be measured by having specific objectives that relate to the organisation itself.

// 5. **Personal development objectives and measures**

Personal professional development is an ongoing process for any employee, including a chief executive. The local authority and chief executive might agree on training or other forms of personal development that will be undertaken.

// 6. **Weightings**

Some objectives may be more important to council/kaunihera than others. A system of weighting objectives can be used to reflect the relative importance of each objective.

// 7. **Rating**

An assessment of whether performance objectives have been met is carried out where there are no indicators, or some additional assessment is carried out where an indicator has been developed. This rating will either have room for an assessment by the chief executive and the council/kaunihera or some process where the two agree (and/or a process for resolving and/or recording any differences). The rating will usually take the form of some quantitative assessment.

// 8. **Reporting arrangements**

Agreement on how often the chief executive and the governing body (or committee of the governing body) will formally meet to assess the agreement, and ways of dealing with issues as they occur.

// 9. **Links to remuneration**

Clear statements that define how performance impacts remuneration.



The performance appraisal and review

Assessing performance can either crystallise issues or provide reinforcement and encouragement to excel. When a review is done well, the relationship between the council/kaunihera and the chief executive is likely to be effective.

Formal assessment procedures should be in addition to regular, open feedback. Neither party should be surprised by issues raised at the formal assessment. If the chief executive (or the local authority) is not aware of a problem or developing tension, it is less likely to be resolved.

Assessment of chief executive performance may draw on feedback from sources including:

- » the local authority
- » self-assessment
- » upward appraisals (conducted on a confidential basis)
- » key stakeholders.

Privacy is paramount

The local authority should ensure everyone involved in the process is aware of the confidential nature of assessments and the impact of the Privacy Act 1993.

The chief executive has the same rights to privacy as any other employee, except that their remuneration packages must be disclosed in the annual report. Those who give feedback also have the right to privacy.

The council/kaunihera may be sanctioned if information from the assessment is publicly disclosed.

The role of a third party as facilitator

Hiring a third party to facilitate the performance management process can certainly make things easier for elected members and can help to ensure that the process is fair and best practice is followed.

Given the significant investment councils'/kaunihera make in their chief executives, the cost of a third-party facilitator is minimal and a good evaluation process can create significant cost-savings by avoiding breakdowns in the relationship.

The third party can:

- » manage the evaluation process,
- » act as a neutral actor to gather input from others,
- » analyse the information, and
- » presents the findings to the chief executive offering meaningful and neutral feedback.

The use of a third party also separates the message from the messenger, and it thus focuses on results-oriented opportunities.

Delivering positive and constructive feedback

“When an atmosphere of trust, respect and transparency characterises the relationship between chief executive and council, the chief executive’s performance can have a direct and lasting impact on the performance of the council. Where constructive feedback is necessary, the “earlier the better” is a good rule. If the feedback has accrued throughout the performance review period, then:

- » Don’t use the delivery of the constructive feedback to vent.
- » Accentuate the positive. If there is a constructive comment, there must be a positive outcome that is being sought. What is it?
- » Ask how the problem originated—it helps to get to the root of the problem.

Solutions should involve the chief executive, mayor or chair and council.

When giving positive feedback, it is equally important to be fair and realistic. Too much positive feedback can be deceiving—a better approach is to coach the chief executive on the type of appropriate and effective behaviour that should be exercised more often.”

Chief Administrative Officer (CAO) Performance Guide, Canadian Association of Municipal Administrators

Appraisal systems

There are many formal appraisal systems, but a first step in all situations, is to determine who will carry out the assessment. This comes back to the matters discussed in Part 4. Regardless of the approach taken, all elected members as part of the governing body, should have the opportunity to have input into the process at some point.

Mid-year assessment

A mid-year assessment enables amendments to expectations to be formally recorded to reflect any changes to the priority issues and challenges faced by the council/kaunihera and the chief executive.

The assessment itself need not be especially formal but any agreed amendments to the performance agreement must be formally recorded.

End of year assessment

This is the formal opportunity for parties to gauge performance, exchange views, and develop expectations for the future.

The chief executive (and possibly the assessment committee) should provide a written report on progress for the previous year against the expectations and measures agreed to in the performance plan.

The parties share their views on progress and any other relevant information, and the assessment committee reaches conclusions regarding the performance.

Reaching a conclusion

There is no one-size-fits-all approach to reaching a conclusion. Some may opt for a systematic approach, allocating points to levels of performance while others may be comfortable with a subjective judgment.

The decision on the nature of the process will reflect the style and size of each local authority.

On concluding the formal assessment, the local authority should provide a written statement of record to the chief executive setting out all findings, both positive and negative, and conclusions regarding overall performance.

The parties can also use the process to finalise the performance plan for the next performance period. When below average performance has been identified, the performance plan should be clear about how this is to be addressed.

All parties should:

- » sign off on the formal document that records the outcomes of the review, and
- » identify and agree on changes for future performance plans.

QUESTIONS AND ANSWERS

What happens if media or public ask who voted for/against a pay rise of the chief executive?

A council/kaunihera can only refuse to release this information if it meets the grounds in the local Government Official Information and Meetings Act 1986 (LGOIMA) that justify the decision to refuse public access.

What happens if the chief executive seeks a copy of each councillor's assessment of their performance?

If faced with this question, staff/kaimahi need to look at the degree of public interest in release of this information as well as the grounds that exist under LGOIMA to justify withholding the information. Legal advice may be helpful.

Can the council/kaunihera release discussions on chief executive remuneration to the media?

The process for setting a chief executive's remuneration, as well as changing remuneration levels following a performance review, must be confidential, as any information shared publicly may be grounds for a constructive dismissal claim by the chief executive.



**Wāhanga
six >>**

Managing performance issues

Te whakahaere take
tutukinga

Addressing under performance or matters of misconduct, can be extremely difficult. It is critical that a fair and proper process is followed, and confidentiality is maintained as failure to do so can result in a significant financial cost to the local authority.

External advice should be sought to ensure due process and to protect the local authority from risk, as far as is possible.

This section discusses poor performance and misconduct separately although the legal framework applies to both and the process for dealing with each is similar.

Legal framework

Under the Local Government Act 2002, councils/kaunihera have an obligation to be a “good employer” outlined in Part 1 of this document.

In addition, the Employment Relations Act 2000 requires parties to an employment relationship to act in good faith (see section 4). When difficulties arise, parties to an employment relationship must deal with them in a constructive manner.

As the employer of the chief executive, a council/kaunihera has a duty to act considerately and fairly to its employee, the chief executive. A council/kaunihera also has a duty not to act in a manner that destroys, or could be said to seriously damage, the good faith and trust and confidence that is essential in employment relationships.

If a council/kaunihera, or elected member criticises, negatively comments on or questions the ability of the chief executive publicly, either directly or indirectly, or in some other forum, this could give rise to a claim by the chief executive that their trust and confidence in the council/kaunihera as an employer is being undermined and has caused damage to the chief executive's reputation.

Managing poor performance

Where to start?

It is important that specific performance issues are raised and resolved as they arise. A chief executive is entitled to expect that any questions relating to their performance will be raised directly with them in a timely way and they will be given a fair opportunity to respond.

The first step in managing poor performance is to review each parties' expectations of the employment relationship. Without this clarity, it is possible that perceived poor performance may in fact be a communication problem or unclear expectations.

A second step is to look at the skill mix that the chief executive has and whether a programme of skill development in specific areas may address any performance issues.

Sanction and dismissal procedures should be seen as the last resort and used only if the issues are such that the local authority determines they will not be solved by better communication, clarity of expectations and skill development. Both parties should retain expert advice before beginning the process to protect their interests.

Informal approach

As a start, the council/kaunihera should gather specific examples of the performance that is causing concern in as much detail as possible. They should then arrange to meet with the chief executive on an informal basis, as soon as possible, to raise concerns and invite the chief executive to respond.

The council/kaunihera must consider those responses carefully. If they are not satisfactory, the council/kaunihera must explain that it considers improvement is necessary and why. The problems should be explained and discussed with the chief executive along with the standards expected.

If necessary, assess whether any training or assistance should be provided and organise a further meeting to review the chief executive's progress.

These discussions should be recorded, and all matters agreed set out in a letter to the chief executive.

Formal process

If concerns continue despite informal discussions, or concerns are considered sufficiently serious, the council/kaunihera should take a more formal approach.

While the approach is similar to that followed in an informal process, there is a greater degree of formality and documentation, and the potential outcome of the process must be clearly explained from the outset.

It is recommended that a council/kaunihera seeks advice from an employment law adviser if a formal process is being considered.

Step one: Outline and document concerns

The council/kaunihera should prepare an outline of its key areas of concern, providing specific, recent examples. It can only rely on recent performance concerns and not refer to past concerns that were not raised at the time.

This is particularly important in terms of matters that the council/kaunihera may want to rely on in the statutory performance review near the end of the first term (see *Appendix A: Chief executive statutory performance review*). If there are performance issues that the council/kaunihera relies on, or is influenced by, when deciding not to appoint a chief executive to a second term, they should have been raised with the chief executive previously, affording them a fair opportunity to respond and improve.

Step two: Write to arrange a meeting

Once this outline is prepared, the council/kaunihera should arrange to meet with the chief executive, giving them reasonable notice of the timing of the meeting.

This arrangement must be given in writing, along with the following:

- » an explanation that the purpose of the meeting is to discuss issues relating to their performance,
- » clarification that disciplinary action may result, and
- » confirmation they are entitled to bring a representative or support person.

The chief executive should also be provided with an outline of the issues to be discussed in advance.

Advise who will be attending the meeting on behalf of the council/kaunihera, including the name of any person who may be there to take notes of the meeting.

Step three: Holding the meeting and clarifying potential outcomes

A record of what is said at the meeting should be made and kept on file.

At the outset of the meeting, the council/kaunihera should state the purpose of the meeting, and that if performance does not improve within a specified period, the possible consequences could be disciplinary action of a warning, a final warning or dismissal.

Failure to make the consequences clear is generally where most successful personal grievance claims arise.

Following this, the council/kaunihera should describe its concerns and provide examples.

The chief executive must be given a full opportunity to respond to each example of poor performance and to offer any final comments before the meeting closes.

Step four: Consideration of responses

The local authority must take the chief executive's comments into account and ensure that they give themselves a reasonable period of time to consider them. They may have to investigate issues that the chief executive has raised.

Failure to do complete this step is a common reason for successful personal grievance claims.

Step five: Findings and decision

The council/kaunihera's findings must be communicated to the chief executive, and they must be given an opportunity to comment on them before a final decision is made.

Following the chief executive's comments, the council/kaunihera should then form a preliminary view as to what action is to be taken (if any).

The local authority needs to give the chief executive a genuine chance to improve, which may involve taking appropriate steps to deal with any perceived skill deficiencies. A specified time should be stated within which the local authority expects improvement to be apparent.

If this is the approach, move to step seven.

If the council/kaunihera decides that a warning would be appropriate, the council/kaunihera should re-convene a meeting and give the chief executive an opportunity to bring a representative or support person.

Step six: Giving a warning

The council/kaunihera's proposal to give a warning should be advised to the chief executive in person.

At the meeting the council/kaunihera should explain why it believes a warning is justified and provide appropriately detailed reasons before seeking the chief executive's response.

Following a further adjournment of the meeting, after considering the chief executive's comments (if any), they must then be provided with a letter confirming the outcome in writing.

This letter should not be prepared before the meeting, as this may indicate predetermination. If the outcome remains a warning, then the letter should outline the following:

- // 1. that a written warning is being given;
- // 2. the specific reasons for the warning;
- // 3. what improvement is necessary, and in what specific areas;
- // 4. the time frame within which performance must improve (this must be a reasonable period, such as four to six weeks);
- // 5. that if performance does not improve, a further warning may be given, and that if performance still does not improve, employment may be ultimately terminated;
- // 6. details of any training or assistance which will be given (if necessary);
- // 7. advice that regular meetings to review and monitor performance will be set up; and
- // 8. the date on which performance will next be reviewed.

Step seven: Review performance

Once the specified timeframe for improvement has passed, the council/kaunihera should have a further meeting with the chief executive on the review date to discuss performance.

If performance has still not improved and the council/kaunihera has sufficient evidence of this, it may then issue the chief executive with a further written warning as per step six.

Having then worked through a repeat of step six, if there is no improvement, the council/kaunihera may have to consider terminating the chief executive's employment.

Step eight: Termination for poor performance

Termination prior to the expiry of the fixed term must be given very serious consideration and must be based on firm evidence of continued under performance.

If this decision is taken, the reasons for it must be explained fully. The chief executive must be given an opportunity to comment on the proposal to dismiss and the council/kaunihera must consider any such feedback before reaching a final decision.

Following consideration of the chief executive's feedback, if the decision is still to dismiss, this should be confirmed in writing. The chief executive must be given the appropriate notice, or pay in lieu of notice (if the agreement provides for that), as specified in their employment agreement. In addition, any outstanding annual leave entitlements must be paid.

Managing allegations of misconduct and disciplinary action

If the council/kaunihera is aware of an allegation of misconduct against the chief executive, they must follow a fair procedure before concluding that disciplinary action is required.

If the chief executive receives an unjustified warning, they may successfully claim that they have a personal grievance for unjustified disadvantage or that the warning provides sufficient grounds to justify a constructive dismissal. If successful they may be entitled to an award of compensation.

Advice from an employment law at the beginning of the process is strongly recommended.

The key principles to be followed in a disciplinary matter are:

- » Gather and assess all relevant information before taking action;
- » Follow a procedurally fair process;
- » Ensure there are substantive reasons for taking any disciplinary action; and
- » Conduct the process in a confidential manner.

More detail of the process is set out next.

Cause to dismiss or issue a warning

The process to follow will be influenced by whether it involves *general* or *serious* misconduct.

General misconduct is behaviour inconsistent with an employee's duty to the employer and includes things like failure to follow instructions, lateness and absenteeism or disorderly conduct of a minor or one-off nature.

In these cases, it is important that the council/kaunihera has warned the chief executive that their conduct must improve before dismissal can be considered.

Serious misconduct is behaviour by an employee that destroys or deeply impairs the trust in the employee and includes matters such as fraud, theft, sexual harassment or acts of violence.

In a case of established serious misconduct, the council/kaunihera may dismiss the chief executive without the need to issue warnings and without giving notice, provided a fair process has been followed.



Step one: Disciplinary process/ investigation into misconduct

It is important to undertake a thorough process and investigation into alleged misconduct before any decision is made. Care must be taken to maintain the confidentiality of the process at all stages.

Any process should include the following steps:

- // 1. Ensure all relevant facts are obtained by questioning all relevant parties. Do not rely on hearsay.
- // 2. Assess the credibility of any witnesses. For example, consider any personal relationships between witnesses and the chief executive.
- // 3. Check whether the chief executive has any previous warnings and if so, whether those warnings have expired.
- // 4. Consider what obligations the chief executive owes to the council/kaunihera that may have been contravened by the alleged misconduct.
 - » Obligations may be contained in the job description, the employment agreement, as agreed in the performance agreement or be part of the chief executive's implied obligation of trust and confidence.

Step two: Write to arrange a meeting

Once the council/kaunihera is satisfied it has enough information, it should arrange to meet with the chief executive. This arrangement should occur in writing and provide reasonable notice to the chief executive.

The chief executive should be advised in writing that:

- // 1. the purpose of the meeting is to discuss issues relating to their performance,
- // 2. disciplinary action may result and
- // 3. they are entitled to bring a representative or support person.

Where appropriate, documents and written statements that are to be relied on at the meeting and by the decision-maker should be provided ahead of the meeting.

Advise the chief executive who will be attending on behalf of the council/kaunihera, including the name of any person who may be there to take notes of the meeting.

Alternatively arrange for the meeting to be recorded and transcribed.

Step three: Holding the meeting

At the meeting ensure the following steps are followed:

- // 1. Explain the purpose of the meeting.
- // 2. Explain the possible consequences of the process could be disciplinary action up to or including a warning/final warning/dismissal, as appropriate.
- // 3. Set out the allegations in detail, provide supporting evidence and set out the chief executive's obligations that the council/kaunihera believes their misconduct contravened.
- // 4. If relying on evidence from other witnesses, ensure that the chief executive is fully informed of their accounts of events. If there is a conflict between accounts, it may be sensible to adjourn the meeting so that the relevant witness can be re-questioned.
- // 5. Invite the chief executive to respond. If the chief executive raises new issues or evidence that is not currently available, the council/kaunihera must allow them the opportunity to present that evidence (this may mean the meeting must be adjourned to a later time).
- // 6. At the end of the meeting tell the chief executive the matter will be considered and if possible, set a time for a second meeting.

If at any time during the meeting the chief executive offers to resign, ensure the chief executive puts their resignation in writing.

Step four: Consideration of responses and making a decision

Following the meeting, the council/kaunihera should consider the chief executive's explanation and carry out any further investigations that may be necessary as a result of new information or evidence coming to light.

The council/kaunihera should give the chief executive an opportunity to comment on its findings before it makes a decision.

The council/kaunihera can then make a preliminary decision as to the disciplinary action required. It is critical that the decision makers have considered all relevant matters and any supporting documentation, including materials relied on by the chief executive.

Step five: Informing the chief executive and taking feedback

The council/kaunihera needs to put its preliminary decision to the chief executive and invite feedback on it. The council/kaunihera must consider the chief executive's feedback on its proposal prior to confirming its decision.

Step six: Reaching a conclusion

The appropriate action will depend on the facts in each particular case. As a general guide:

- » Where it can be shown that the chief executive has been involved in serious misconduct, immediate termination of employment may be justifiable.
- » Where the misconduct is less serious, it may warrant a warning or final warning. Subsequent examples of misconduct previously disciplined may justify a further warning or, in the case of repeated misconduct, dismissal.

However, a decision to dismiss must:

- // 1. be one that a fair and reasonable employer could make in all the circumstances (section 103A of the Employment Relations Act 2000).
- // 2. have been made following a fair procedure (see also section 103A of the ERA).
- // 3. be in compliance with the chief executive's terms of employment and relevant policies.



Appendix

Āpitihangā

A.

**Chief executive
statutory
performance
review >>**



**Arotake tutukinga
ā-Ture mō te tumu
whakarae >>**

Clause 35 of Schedule 7 of the Local Government Act 2002 Act (the Act) requires a local authority to undertake a performance review of the chief executive not less than six months before the date on which the chief executive's employment agreement for the first term expires.

Statutory requirements: Appointment of a chief executive

Appointment of a chief executive must be in accordance with clauses 33 and 34 of Schedule 7 of the Act (section 42(1)). The core qualities of the chief executive are set out in clause 33 of Schedule 7 of the Act as follows.

A person who will:

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

The minimum responsibilities that must be met by the chief executive are set out in section 42 of the Act. These are:

- » implementing the decisions of the council
- » providing advice to the council and community boards
- » ensuring that all responsibilities, duties and powers delegated to the chief executive or to any person employed by the chief executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- » managing the activities of the local authority effectively and efficiently
- » maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- » leading the staff of the local authority
- » employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority)
- » facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001.

Statutory requirements: Performance agreements and reviews

Under clause 34(2) of Schedule 7 of the Act, the local authority and the chief executive must enter into a performance agreement with the local authority, their employer. Matters of note are:

- » A chief executive may not be appointed for a term of more than five years
- » When the term of appointment expires, a vacancy exists in the office of the chief executive
- » The vacancy must be advertised.

There is an exception to the mandatory requirement to notify the vacancy. If the local authority has completed a review under clause 35 of Schedule 7 of the Act, they may appoint the incumbent chief executive for a second term not exceeding two years on the expiry of the first term of appointment, without advertising the vacancy.

The performance review does not need to be undertaken if the incumbent chief executive declares in writing that they do not wish to be considered for appointment to a second.

Clause 35(2) of Schedule 7 of the Act states that the performance review must assess the following:

- // 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.

Please note that it is the local authority's prerogative to decide what weight to give to the matters it uses to assess performance, skills and attributes and their fit with future needs.

Natural justice and good faith

In reviewing the chief executive's performance, the local authority must apply, principles of natural justice. It is important that performance issues are addressed in a timely manner as they arise, including prior to this review.

Assessing performance

In assessing the performance of the chief executive, the review must take into account the following:

- // 1. the performance standards set out in the performance agreement entered into between the local authority and the chief executive under clause 34(2) of Schedule 7 of the Act;
- // 2. the chief executive's performance of the duties set out in their employment agreement and job description; and
- // 3. any other procedures and expectations that the local authority may have in place.

Assessing skills and attributes

The review must assess the mix of skills and attributes possessed by the chief executive, and the degree to which they are consistent with those that the local authority considers necessary for the future.

This requires consideration as to whether any change is anticipated which would be relevant to the skills and attributes required of the chief executive. For example; major legislative changes affecting the activities of the local authority, major initiatives affecting the local authority's relationships with the community or other stakeholders, or the political stability of the council/kaunihera itself.

Outcome of the review

Clause 35(5) of Schedule 7 of the Act provides that after completing the review, but before the date on which the chief executive's employment agreement 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.

It is important to give the chief executive reasonable notice if a decision is made not to reappoint the chief executive. The reasons for that decision should also be given to them. Notice should be at least as much as is provided for in the chief executive's employment agreement. Therefore, a local authority will need to appropriately record the outcome of a review.

The following wording is a suggestion:

The council/kaunihera notes:

That it has completed a review of the chief executive's employment under clause 35 of Schedule 7 of the Local Government Act 2002 and in doing so has assessed the matters in clause 35(2).

Resolves:

*To appoint the incumbent chief executive, **[insert name]** for a second term of **[insert length of term – maximum of 2 years permitted]** from the date of expiry of the first term being **[insert date of expiry of first term]**.*

Or

*To advertise the vacancy in the office of chief executive which begins on **[insert date vacancy begins]**.*



Appendix

Āpitihanga

B.

**Employment
agreement
template >>**



**Anga
whakaaetanga
mahi >>**

Notes to agreement

Please note that some of the clauses in the template, while not directly applicable to council/kaunihera and chief executives, are legally required to be included in employment agreements under the Employment Relations Act 2000 and the Holidays Act 2003.

In particular, we refer you to:

Clause 13 Employee Protection Provision: this is required under section 69OJ of the Employment Relations Act 2000 to be included in every employment agreement, regardless of the nature of the employer's business;

Clause 23 Resolving Employment Relationship Problems: this is required under section 65(2)(a)(vi) of the Employment Relations Act 2000 to be included in every employment agreement, regardless of the employee's seniority or role;

Schedule 4 The Holidays Act 2003: this is included to comply with section 73(2) of the Holidays Act 2003, which requires employers to inform employees at the time of entering into an agreement of their entitlements under this Act and where they can obtain further information from about their entitlements, regardless of their seniority or role.



[COUNCIL/KAUNIHERA LETTERHEAD]

INDIVIDUAL EMPLOYMENT AGREEMENT FOR POSITION OF CHIEF EXECUTIVE

THIS AGREEMENT dated the _____ day of _____ [insert year]

BETWEEN [INSERT COUNCIL/KAUNIHERA NAME] (Council/kaunihera)

AND [INSERT NAME]

Dear [insert name]

The council/kaunihera is pleased to offer you employment as chief executive on the terms and conditions set out below in this individual employment agreement (**Agreement**).

[Optional (and can either be a general background check or just criminal):

This Agreement is entirely conditional upon a satisfactory [criminal] background check being returned and the Council/kaunihera having no issue with any disclosures you make [about criminal charges or convictions]. Although the Council/kaunihera endeavours to complete all checks prior to the commencement of employment, in some instances this may not be possible.

Should the Council/kaunihera, in its sole discretion, not be entirely satisfied with the result of the [criminal] background check, this offer may be withdrawn. If you have already commenced employment with the Council/kaunihera at the time that the Council/kaunihera determines the results of the [criminal] background check are not satisfactory, this Agreement may be summarily terminated.]

In accordance with the Employment Relations Act 2000, you are entitled to a reasonable opportunity to seek independent advice about these terms of employment, and we encourage you to do so. Please note, we require a signed agreement before you commence work.

It is agreed as follows:

The position

The council/kaunihera, as a body corporate under section 12 of the Local Government Act 2002, agrees to employ you in the position of chief executive, and you agree to accept such employment on the terms and conditions set out in this Agreement.

You will work from the council/kaunihera's administrative offices in [insert location]. You will be expected to undertake travel in the course of your duties as required by the council/kaunihera.

Due to the demands of the position, you will work such hours as are reasonably necessary to fulfil the duties and responsibilities under this Agreement. Your remuneration includes reasonable compensation for making yourself available to work additional hours if required and payment for all of those hours worked.

The position of chief executive has been identified by the council/kaunihera as one which requires performance of the highest standard.

You are responsible to the council/kaunihera and will report to the **[Insert relevant Committee or Subcommittee/Mayor]**.

Fixed Term

In accordance with clauses 33 and 34 of Schedule 7 of the Local Government Act 2002 (Act) this Agreement is for a fixed term commencing on **[insert date]** (Commencement Date) and expiring on **[insert date no more than five years later]** (Expiry Date).

In accordance with clauses 34(3) and (4) of Schedule 7 of the Act, the council/kaunihera may, at its sole discretion and after completion of a performance review pursuant to clause 35 of Schedule 7 of the Act, appoint you, the incumbent chief executive, for a second term, not exceeding two years from the Expiry Date, without advertising the vacancy.

You acknowledge that you have no legitimate expectation to be employed by the council/kaunihera after the Expiry Date. There is no express or implied right or obligation on either party to renew the Agreement at, or prior to, the Expiry Date.

This Agreement will terminate at the Expiry Date in accordance with Schedule 7 of the Act, or at the end of the second term if you are appointed for a second term under clause 2.2 of this Agreement.

In the event the council/kaunihera decides to renew the Agreement for a second term, that second term will be governed by the terms of this Agreement but subject to such modifications as the council/kaunihera deems necessary to reflect the new two year term.

Nature of the Relationship

You are employed by the council/kaunihera in the position of chief executive and are appointed as the principal administrative officer of the council/kaunihera within the meaning of section 42(4) of the Act. As such, you are a direct employee of the elected council/kaunihera and are responsible for the overall management of the business of the council/kaunihera and the employment and management of its staff.

Despite the above, during the term of the Agreement, you will fully consult with the council/kaunihera, or its appropriate Subcommittee, in the appointment and/or termination of any staff who will make up the council/kaunihera's **[insert appropriate level, for example "second tier senior executives"]**.

Obligations of the chief executive

The basic objectives of the position are to:

- // 1. maintain an employment relationship based on mutual trust and confidence;
- // 2. provide leadership that motivates employees and ensure the delivery of high quality services;
- // 3. promote the interests, goodwill and reputation of the council/kaunihera;
- // 4. implement the decisions of the council/kaunihera, provide advice and ensure effective and efficient management of the council/kaunihera;
- // 5. provide strategic direction and management of the council/kaunihera's business in accordance with the council/kaunihera's policy and objectives;
- // 6. develop any policies and plans for the council/kaunihera and strategies for leadership and the delivery of services by the council/kaunihera;
- // 7. provide advice and services to the council/kaunihera, to ensure that the council/kaunihera's statutory and political functions are effectively administered;
- // 8. provide for the efficient and effective delivery of the council/kaunihera's services to the community of the **[Insert City/District]** through an appropriately resourced organisation and structure;
- // 9. assist the mayor of the council/kaunihera to establish and maintain an appropriately staffed mayoral office;
- // 10. provide advice to ensure the financial sustainability of the council/kaunihera through sound financial planning and reporting, including on the council/kaunihera's ability to meet its Long Term Plan undertakings;
- // 11. maintain effective and positive relationships with senior managers and elected leaders of regional and national local government bodies and state sector organisations;
- // 12. meet the obligations generally expected of council/kaunihera employees as set out in its Code of Conduct or policies for employees;
- // 13. perform the specific statutory obligations and functions of the position, including those set out in Schedule 3 of this Agreement and Schedule 7 clause 33(a-g) of the Local Government Act 2002; and
- // 14. perform all other duties which are reasonably incidental to the chief executive's position, as directed by the council/kaunihera from time to time.
- // 15. **[Insert any additional key objectives of the position, in line with council/kaunihera objectives]**

A detailed job description outlining your specific responsibilities is attached at Schedule 3. The council/kaunihera may, after consultation with you, amend your job description and the duties associated with that position but not so as to change substantially the nature or responsibilities of the position (except in the case of a restructuring). In addition, you will be required to perform all other duties which are reasonably incidental to your position, as directed by the council/kaunihera from time to time.

You agree that during the term of this Agreement you will not:

- // 1. intentionally or recklessly do anything to adversely affect the good will and reputation of the council/kaunihera; and/or
- // 2. enter into any commitment or incur any obligation on behalf of the council/kaunihera in excess of such authority as may from time to time be granted to you by the council/kaunihera.

As a custodian of ratepayer resources, your performance as chief executive, and that of the council/kaunihera, are open to intense political and public scrutiny. To meet the expectations of this local government role, you are expected to demonstrate a personal as well as managerial level of commitment to the values and behaviour appropriate to public administration. You must be, and be seen to be, scrupulous in your use of public assets, facilities, and funds.

You must strive to avoid any situation that might give rise to a perception of conflict of interest, including in relation to the development and management of business relationships, including the letting of contracts and receipt of corporate hospitality. The need for absolute impartiality applies to the management of all such relationships, including those with community, iwi and sectorial groups.

As a senior local government employee, you must ensure that any privileged or industry-specific knowledge acquired in the course of your work is not used improperly, whether to personal advantage or to the advantage of any subsequent employer.

In addition to the objectives, responsibilities and obligations set out previously and in **Schedule 3**, the council/kaunihera may, in consultation with you, set certain specific tasks, projects and duties for you as well as establishing certain key performance indicators. You will be expected to fulfil these tasks, projects and duties and to achieve the previous objectives, responsibilities, and obligations and agreed key performance indicators whenever reasonably possible to do so.

Remuneration and other benefits

You will be paid the **[annual remuneration OR total remuneration package]** set out in Schedule 1. Your remuneration and benefits will be reviewed annually and as soon as practicable after **[30 June]**. The council/kaunihera is not obliged to increase your level of remuneration.

You agree that deductions may be made from your remuneration for time lost through sickness, accident, unauthorised absence, non-return of the council's/kaunihera property, holidays taken in advance, or for overpayment of salary or outstanding debts or money owed to the council/kaunihera by you. You agree that deductions made for these purposes are reasonable. The council/kaunihera will consult with you before making any specific deductions from pay.

[optional] An annual bonus of up to (but not more than) **[insert amount]**% of your annual base salary set out at Schedule 1 may be payable to you, following the completion of each annual review of your performance on the basis described in Schedule 2, attached. The bonus is totally discretionary and no amount is guaranteed in any year regardless of performance. The bonus is limited to a maximum of \$**[insert amount]** gross for the **[insert year]** year.

[Only use for total remuneration option] The total remuneration package set out at Schedule 1 is inclusive of any compulsory employer contributions the council/kaunihera is required to pay under the KiwiSaver Act 2006 (KiwiSaver Act), to your KiwiSaver scheme.

[Only use for total remuneration option] Any contributions made by the council/kaunihera are made for the purposes of the KiwiSaver Act 2006 only and are subject to any amendment or repeal of the KiwiSaver Act or related legislation.

Expenses

The council/kaunihera will reimburse you for all reasonable expenses actually incurred by you in the course of your employment, in accordance with council/kaunihera policy. You will be required to produce reasonably complete documentary evidence of these expenses including, where appropriate, a properly completed GST tax invoice.

Performance agreement and review

In accordance with clause 34(2) of Schedule 7 of the Act the council/kaunihera and you must enter into a performance agreement, which will be completed as soon as practicable on the adoption of the annual plan for that year.

The position in which you have been engaged under this Agreement has been identified by the council/kaunihera as one in which performance of the highest standard is considered as vital to the successful operation of the council/kaunihera. For that reason, the council/kaunihera will carry out a performance review with you on at least an annual basis. However, the council/kaunihera reserves the right to carry out such reviews on a more regular basis, if the council/kaunihera considers this necessary.

The performance review will evaluate all aspects of your performance and conduct, with reference to agreed objectives for the performance of the duties and obligations of the chief executive.

You are not guaranteed an increase in remuneration or benefits as a result of any performance review.

[Optional] Your annual performance review will also determine what level of bonus (if any) as referred to in **Schedule 2**, is paid to you.

Performance review at end of first term of appointment

Not less than six months before the Expiry Date of your first **[five year]** term, the council/kaunihera will conduct and complete a review of your employment in accordance with clause 35 of Schedule 7 of the Act (or its amendments).

This review will not occur if you advise in writing that you do not want to be considered for appointment to a second term.

Following completion of this review, but before the Expiry Date, the council/kaunihera will resolve whether or not to appoint you for a second term not exceeding two years or to advertise the vacancy.

Under clause 34(6) of Schedule 7 of the Act if the position is advertised, you may apply for the position and the council/kaunihera will give that application due consideration.

Leave

A guide to the minimum statutory entitlements under the Holidays Act 2003 is attached as **Schedule 4**. Your specific entitlements are as follows:

Annual leave

You are entitled to **[four]** weeks' annual leave with pay, calculated in accordance with the Holidays Act 2003. This annual leave should be taken in the year in which it falls due. **[OPTIONAL (APPOINTEE DEPENDENT): For the purposes of annual leave entitlements, you will be regarded as a continuous employee from your commencement date of [insert date].]**

You agree to be paid holiday pay in the pay cycle that relates to the period during which any leave is taken.

If you and the council/kaunihera are unable to reach agreement as to when you will take your annual leave, the council/kaunihera may require you to take leave on 14 days' notice.

In the event that the council/kaunihera allows you to take leave in advance of you accruing it, you agree that the council/kaunihera may deduct any amount still owing at the time of termination from your final pay.

Sick and bereavement leave

You will be entitled, in each ensuing period of twelve months to:

- » **[ten]** days' sick leave which may be taken when you, your partner or dependent is sick or injured. Up to ten days' sick leave may be carried over from one year to the next to a maximum of 20 days current entitlement in total; and
- » three days' bereavement leave on the death of your partner, parent, child (including the unplanned end of a pregnancy due to miscarriage or stillbirth), brother, sister, grandchild, grandparent, and spouse's parent; and
- » one day's bereavement leave on the death of any other person if, after considering relevant factors, the council/kaunihera accepts you have suffered a bereavement.

[OPTIONAL (APPOINTEE DEPENDENT): For the purposes of sick, bereavement and family violence leave entitlements, you will be regarded as a continuous employee from your commencement date of [insert date].]

A medical certificate may be required in accordance with the Holidays Act 2003; and:

- » at any time after you have used up your statutory entitlement to sick leave; or
- » if the council/kaunihera has reasonable grounds to suspect that sick leave is not genuine (in which case the council/kaunihera will meet your reasonable expenses in obtaining a medical certificate).

Family violence leave

In accordance with the Holidays Act 2003, if you are a “person affected by family violence”, you are entitled to a maximum of 10 days’ paid leave each year after six months’ continuous service (**Family Violence Leave**). You are entitled to take Family Violence Leave regardless of how long ago the family violence occurred and even if the family violence occurred before you were employed by the council/kaunihera. You must notify the council/kaunihera as early as possible before you are due to start work of the intention to take Family Violence Leave or, if that is not practicable, as soon as possible after that time.

In accordance with the Employment Relations Act 2000, if you qualify for Family Violence Leave under this clause, you may also request in writing a short-term (up to two months) variation of your working arrangements for the purpose of assisting you to deal with the effects of being affected by family violence (**Flexible Working Arrangements**). The council/kaunihera will respond to a request no later than 10 days after receiving it.

The council/kaunihera may require proof that you are affected by family violence before paying for Family Violence Leave or making a decision on an application for a Flexible Working Arrangement. Proof should be in the form of a document or report from the Police, a government department, a health professional, lawyer or a family violence support service.

Unused Family Violence Leave may not be accumulated and is not paid out on termination of employment.

Public holidays

You are entitled to public holidays in accordance with the Holidays Act 2003. You agree that you may be required to work on a public holiday that you would otherwise be entitled to.

For the purposes of the Holidays Act 2003 only, where you are required by the Council/kaunihera to work on a public holiday you would otherwise be entitled to, you will be paid your usual salary plus an additional .5 loading for all hours worked.

If you are required to work on a public holiday which would otherwise be a normal working day for you, you will also be entitled to a whole alternative holiday, which will be paid at not less than your relevant daily pay or average daily pay (as defined in section 9 of the Holidays Act 2003). This day should be taken at a time to be agreed between you and the Council/kaunihera. If you and the Council/kaunihera cannot agree on when you will take your alternative holiday, the alternative holiday will be taken on a date set by the Council/kaunihera, on 14 days’ notice to you.

For the avoidance of doubt, you acknowledge that ad hoc telephone calls taken or made by you, emails sent or received by you, or work performed at your discretion on a public holiday, does not constitute your being required to work on public holiday pursuant to the Holidays Act 2003.

Policies

You will operate a personnel policy that complies with clauses 36(1) and (2) of Schedule 7 of the Act (see **Schedule 3**).

The council/kaunihera has standard policies on many employment related matters for council/kaunihera employees. You must ensure that you know the policies on these matters and observe them at all times.

The council/kaunihera reserves the right to implement additional policies, including that apply only to the chief executive, or amend all or any of the policies from time to time at its discretion on reasonable notice to you.

Termination of agreement

Despite clause 2 of this Agreement, this Agreement may be terminated at any time in accordance with the following provisions:

[OPTIONAL] Either party may terminate this Agreement by giving the other three months' written notice. In the event that the balance of the fixed term of the Agreement is less than three months at the time of giving notice, the parties must give notice for the whole of the balance of the Agreement.

The council/kaunihera may:

- // 1. pay you base salary instead of notice; or
- // 2. require you to not perform your duties or to undertake reduced or alternative duties consistent with your abilities or require that you do not attend the workplace during the notice period. In that event, you will continue to receive your full remuneration, you will remain an employee of the council/kaunihera and will continue to be bound by your duties of confidentiality and fidelity for the rest of the notice period.

Despite the above clauses, the council/kaunihera may terminate your employment without notice in the case of serious misconduct, conduct that potentially or actually brings the council/kaunihera into disrepute or if you are adjudged bankrupt or compound with your creditors generally, or other cause justifying summary dismissal. For the avoidance of doubt, no notice will be given, and you will not be entitled to payment through to the Expiry Date in such circumstances.

In the event that you are not to be reappointed as chief executive at the Expiry Date, the council/kaunihera will advise you in writing of this decision not less than three months before the Expiry Date.

Any decision by the council/kaunihera to terminate your employment under this clause, or for redundancy, will be by resolution of the council/kaunihera taken in confidential council/kaunihera meeting, stating the reasons for the termination.

Medical incapacity

The council/kaunihera may terminate this Agreement by giving such notice to you as it deems appropriate in the circumstances, but in any event not less than three months' notice by the council/kaunihera, if, as a result of mental or physical illness or incapacity, in the opinion of the council/kaunihera you are rendered incapable of the proper performance of your duties under this Agreement. Before taking any action under this subclause, the council/kaunihera may, at its sole discretion, require you undergo a medical examination under the medical examination clause.

Incompatibility

Given the seniority of the role, and the need for there to be a high level of compatibility and trust between the parties, there may be circumstances where the council/kaunihera forms the view there is a serious incompatibility and/or irreconcilable differences between the parties. In these circumstances, the council/kaunihera will be entitled to terminate this Agreement either on three months' notice (or pay in lieu) or by the remainder of the equivalent of your annual fixed remuneration for the balance of the term of this Agreement (whichever is the lesser). There will be no entitlement to any further compensation.

Termination of employment for redundancy

In the event that your employment is terminated for redundancy, you will be given three months' written notice or pay in lieu of such notice and **[you will not be entitled to any compensation for redundancy OR OPTIONAL you will be entitled to redundancy compensation of either [six months'] fixed remuneration or payment of remuneration to the Expiry Date, whichever is the lesser. No other compensation will be paid.]**

In the event of a merger, amalgamation, reconstruction, reorganisation or any other restructuring (including as that term is defined in section 69OI of the Employment Relations Act 2000) of all or part of the council/kaunihera's business such that your employment is terminated, and you are:

- » offered employment with the other party on terms and conditions which are generally no less favourable than your existing terms and conditions; or
- » offered and accept employment with the other party on any other terms and conditions (including terms less favourable);

the council/kaunihera will be under no obligation to provide you with any form of notice or redundancy compensation.

Where your position is made redundant due to a reorganisation of the council/kaunihera, but you are:

- » offered a suitable alternative position with the council/kaunihera on generally no less favourable terms and conditions and at the same location or a location that is a reasonable commuting distance from your original workplace; or
- » offered and accept any other alternative position with the council/kaunihera (including on terms less favourable);

you will have no right to redundancy compensation.

The process that will apply in the event of a restructuring is set out in the Employee Protection Provision below.

Employee protection provision

This clause applies to restructuring (as defined in Section 69OI of the Employment Relations Act 2000) and will apply where the council/kaunihera enters into a contract or arrangement under which its business (or part of it) is to be undertaken by another person or entity, or where the council/kaunihera's business (or part of it) is to be sold or transferred to another person or entity.

In the event of such a restructuring affecting your position, the council/kaunihera will, as soon as is reasonably practicable, taking into account the commercial and confidentiality requirements of the business, commence negotiations with the other party involved in the restructuring (**Other Party**) concerning the impact of the restructuring on you.

In those negotiations, the council/kaunihera will, subject to any statutory, commercial confidence or privacy issues, provide the Other Party with all information about the employees who will be affected by the restructuring (including you), including all details of their terms and conditions of employment, and it will encourage the Other Party to offer all affected employees, employment on the same or generally no less favourable terms and conditions of employment than they currently enjoy with the council/kaunihera.

The general process the council/kaunihera will follow in such negotiations with the Other Party, to the extent that it relates to affected employees (including you), will include:

- » advising employees of intended timeframes for relevant meetings (if any) in the restructuring process;
- » advising employees what will generally be discussed in any such meetings; and
- » reporting back on outcomes of any such meetings with the Other Party to the extent that they relate to affected employees.

However, whether the Other Party offers you ongoing employment and on what terms and conditions, will ultimately be the decision of that Other Party.

In the event that the Other Party does offer you employment on terms and conditions which are the same or generally no less favourable than your existing terms and conditions, then you will not be entitled to notice or any redundancy compensation from the council/kaunihera, whether or not you accept that offer.

However, if you are not offered employment on terms and conditions which are generally no less favourable, or are offered, and decline, employment on terms and conditions which are generally less favourable, then the council/kaunihera will advise you of your entitlements to notice and redundancy compensation as per the redundancy clause in this Agreement.

Suspension

If the council/kaunihera considers it necessary, it may require you to undertake reduced or alternative duties consistent with your abilities or remain away from work, on pay.

If any suspension extends beyond two weeks due to matters beyond the council/kaunihera's control (such as a police investigation into your conduct, a natural disaster, workplace fire, flood, pandemic or other similar major event beyond the council/kaunihera's control) the suspension may continue without pay.

Before any suspension is implemented you will be given a reasonable opportunity to comment on the proposed suspension.

Medical examination

You agree that the council/kaunihera may, at its expense, require you to undergo a medical examination by a registered medical practitioner, or practitioners nominated by the council/kaunihera (after the council/kaunihera has considered your wishes in respect of the appointment of the registered medical practitioner). A copy of any medical report provided by that medical practitioner will be available to both parties.

You agree to provide your consent or sign any authority or waiver to facilitate the provision of your medical certificate directly to the council/kaunihera.

The council/kaunihera may exercise this right to:

- » determine whether granting you ongoing sick leave is appropriate;
- » determine whether your employment should be terminated for incapacity;
- » assess your fitness for work and/or return to work after an absence by you from work; or
- » obtain a second opinion if you have provided the council/kaunihera with a medical certificate/report; and/or
- » assess your health for insurance purposes.

Privacy

The council/kaunihera may collect and retain personal information relating to your employment directly from you or any third party.

Under the Privacy Act 2020, you have rights and obligations and in particular rights of access to, and correction of, personal information (except insofar as it relates to any exemption provided by the Act).

The council/kaunihera may, from time to time, share personal information about you (including your duties and salary details) with third parties. This is for any directly related purposes in connection with which the information was obtained. Your personal information will at all times be treated strictly confidentially and in accordance with the Privacy Act 2020.

The council/kaunihera may transfer personal information about you to a related entity to increase efficiencies in its human resources systems and/or for other operational purposes.

Indemnity

The council/kaunihera will indemnify you from and against all actions, proceedings, claims and demands made or brought against you by any third party arising out of the good faith and diligent performance of your obligations under this Agreement, other than those arising out of recklessness or wilful neglect on your part or the wilful failure by you to carry out any lawful instruction of the council/kaunihera.

In consideration for this, you agree that if the Council/kaunihera decides to do so, the Council/kaunihera will manage the defence of any such actions, proceedings, claims or demands, and the Council/kaunihera can choose and instruct the legal representatives of its choice.

Confidentiality

Subject to the provisions of the Local Government Official Information and Meetings Act 1987, the chief executive will not, either during the term of this Agreement or at any time afterwards, except so far as may be necessary for the proper performance of your duties and obligations under this Agreement, or as may be required by law:

- » disclose to any person any official or confidential information which has come to your knowledge in the course of the performance of this Agreement; or
- » use or attempt to use any such official or confidential information for your own personal benefit, or for the benefit of any other person or organisation, or in any manner whatsoever.

Council/kaunihera property

All documents, precedents, council/kaunihera software and other materials (whether relating to the business of the council/kaunihera or its clients and customers) supplied to you or otherwise acquired by you in the course of your employment with the council/kaunihera are the property of the council/kaunihera and must be returned upon termination of employment.

Conflict of interest

You will be expected to devote your full-time energy to this position and, for this reason, together with a need to protect the council/kaunihera's commercial interests, you will not be permitted to engage in any other business or outside activities without the council/kaunihera's prior written consent. This is because engaging in other employment or business activities is likely to:

- » create a risk of disclosure of the council/kaunihera's commercially sensitive information; and/or
- » put the council/kaunihera's intellectual property at risk; and or
- » reflect adversely on the council/kaunihera's commercial reputation; and/or
- » either directly or indirectly create a real conflict of interest that cannot be managed without restricting your secondary employment; and/or
- » impact on your ability to devote your energy to and safely and effectively perform your full-time role with the council/kaunihera (including the requirement to work reasonable additional hours as outlined above).

You agree that, if the council/kaunihera requires it, you will disclose any other business interests that you had prior to, or may have during your employment with the council/kaunihera.

You will not enter into any contracts, relationships, business interests and/or outside activities which may conflict in any way with the interests of the council/kaunihera and your responsibilities to it or which could reflect adversely on the council/kaunihera's business or its public perception.

You must immediately advise the council/kaunihera of any actual or perceived conflicts of interest that may arise between your duties to the council/kaunihera and your personal interests.

Health and safety

The chief executive is defined as an Officer under the Health and Safety at Work Act 2015 with all of the accountabilities this entails. Without limitation, you are expected to provide leadership with regard to health and safety, and to ensure that the Council/kaunihera complies with all of its duties and obligations under the Health and Safety at Work Act 2015.

In your capacity as an Officer, you must meet your due diligence obligations and work co-operatively with the council/kaunihera to assist the councillors to meet their due diligence obligations so that the Council/kaunihera can engage in positive health and safety outcomes. You will:

- » cultivate, promote, practice and endorse a positive safety culture at all levels of Council/kaunihera;
- » ensure council/kaunihera-wide awareness of, and compliance with, relevant legislation, regulations and industry-specific health and safety standards, regulations and Codes of Practice that may be implemented and amended from time to time;
- » ensure that the council/kaunihera has, at all times, adequate management systems in place covering effective risk management, incident investigation, and reporting, benchmarking and auditing methodologies;
- » maintain the appropriate level of health and safety related resources and processes throughout the council/kaunihera;
- » take reasonable care for your own health and safety while at work;
- » take reasonable care that no action or inaction by you while at work adversely affects the health and safety of any other person; and
- » comply with any reasonable instruction that is given to you by the council/kaunihera to allow it to comply with relevant health and safety legislation.

You are required to ensure you maintain your ability to perform your duties safely and effectively.

You must advise the council/kaunihera of any medical condition (including stress-related symptoms) which may impact on your ability to perform your duties safely or effectively.

In the event that you fail to comply with the rules and procedures, you may be subject to disciplinary action up to and including dismissal.

COVID-19

We are committed to ensuring the health and safety of our employees, contractors, customers, suppliers and members of the public. As a Person Conducting a Business or Undertaking, the council/kaunihera has a duty under the Health and Safety at Work Act 2015 to ensure, so far as is reasonably practicable, the health and safety of its workers by eliminating or minimising the risk of COVID-19 infection and transmission in the workplace.

You agree to comply (as far as you are reasonably able) with all reasonable directions from us that are necessary to manage risks associated with COVID-19 or any other pandemic or public health issue, and acknowledge that a failure to do so may result in the offer being revoked or your employment being terminated for failure to meet this condition.

We strongly encourage you to be vaccinated and boosted against COVID-19 with an approved vaccine by an authorised vaccinator (in line with New Zealand public health guidance as to the number of doses and specified timeframes).

We also encourage you to voluntarily disclose your vaccination status, for the purposes of managing the health and safety risks associated with COVID-19 infection and transmission in the workplace.

Proprietary rights

All ideas, concepts, copyright, inventions, patents, trademarks or other products or processes developed or created either in whole or part by you arising from or in connection with the activities of the council/kaunihera will be the sole property of the council/kaunihera.

You irrevocably and unconditionally waive any and all moral rights in relation to any material and intellectual property produced under this Agreement.

Resolving employment relationship problems

If you have any problems in relation to any aspect of your employment with the council/kaunihera, you should raise these with the council/kaunihera.

If you and the council/kaunihera cannot resolve the matter, you are entitled to use the procedures set out in the Employment Relations Act 2000 for the resolution of employment relationship problems. These procedures provide for you to have a representative to assist you to resolve the employment relationship problem or you can contact the Ministry of Business, Innovation & Employment (contact no. 0800 20 90 20).

If the employment relationship problem is a personal grievance, you have 90 days beginning from the date on which the action alleged to amount to a personal grievance occurred or came to your attention, whichever is the later, to raise a personal grievance.

If an employment relationship problem arises, the parties may choose to attend mediation in the first instance. Where any matter comes before the Employment Relations Authority (Authority) for determination, the Authority may direct the matter to mediation in the first instance. When mediation has failed or been deemed inappropriate in the circumstances, the Authority will then have the power to investigate.

Modification or variation

This Agreement represents a full record of the Agreement entered into between you and the council/kaunihera and any changes or additions to this Agreement will need to be mutually agreed in writing.

Completeness

This Agreement replaces all previous written or oral agreements and understandings.

Please show your acceptance of employment with the council/kaunihera on the terms and conditions outlined previously by signing the form of acceptance on the next page and returning the signed Agreement to us.

Acknowledgement

I, **[name of chief executive]**, acknowledge that:

All representations, whether oral or in writing, made by me when applying for this position about my qualifications and experience **[and [criminal] background check]** are true and correct.

I have not deliberately failed to disclose any matter which may have materially influenced the council/kaunihera's decision to employ me.

I have been informed about my entitlements under the Holidays Act 2003 and my ability to obtain further information in regard to those entitlements from the Ministry of Business, Innovation & Employment.

I have been advised to seek independent advice about the terms of this offer and I have had sufficient time to do so. In accepting this offer I have not relied on the advice of the Council/kaunihera or any of its representatives about what these terms mean.

THIS Agreement has been executed by the parties on the day of **[insert year]**.

SIGNED for and on behalf of

[INSERT] COUNCIL/KAUNIHERA

by:

[Insert], Mayor

SIGNED by **[INSERT NAME OF CHIEF EXECUTIVE]**:

Schedule 1: Remuneration

You will receive annual remuneration and [OPTIONAL:] benefits as follows:

Option 1: [Council/kaunihera to insert benefits as required/applicable.] or

Option 2: [use the below two clauses [A & B] if offering a total remuneration package]:

A. You are covered by a total remuneration package. The components of your total remuneration package are as follows:

a.	Base salary	\$[]
b.	Motor vehicle	\$[]
c.	Medical insurance and health care costs (to the value of Ultra Care for chief executive and spouse will be paid to the chief executive)	\$[]
d.	Potential discretionary bonus	\$[]
e.	Compulsory employer contribution to KiwiSaver scheme (as required under the KiwiSaver Act 2006)	\$[]
Total		\$[]

B. In relation to A(e) above, we have agreed that:

We will account for the amount of the compulsory employer contribution to any KiwiSaver scheme of which you are a member as a specified part of your total remuneration package (but not in addition to your total remuneration package).

If you are a member of a KiwiSaver scheme, the compulsory employer contributions which the council/kaunihera is required to make to your KiwiSaver account under the KiwiSaver Act, are incorporated within your total remuneration package in terms of section 101B(4) of the KiwiSaver Act.

If you are not a member of a KiwiSaver scheme, or if you take a contributions holiday, the compulsory employer contribution component of your total remuneration package (identified at [A(e)] above) will be paid to you along with your base salary and any other benefits to which you may be entitled. However, you agree that, if you join a KiwiSaver scheme at any time in the future, or when your contributions holiday stops, this compulsory employer contribution component will no longer be paid to you directly and will instead be directed into your KiwiSaver account and will constitute the council/kaunihera's compulsory employer contribution to KiwiSaver on your behalf.

For the avoidance of doubt, you agree that at no time will the council/kaunihera be obliged to pay you base salary, other benefits and compulsory employer contributions that total more than your total remuneration package, as revised from time to time.

Optional benefits

This sub-section details additional benefits agreed between the local authority and chief executive.

Car

The council/kaunihera will provide a suitable motor vehicle for use by the chief executive on council/kaunihera business on the following terms:

// a. *The chief executive must:*

- » *hold and maintain a current driver's licence;*
- » *not let anyone other than the chief executive's spouse or partner drive the car;*
- » *comply with the terms of the insurance policy for the car;*
- » *pay the fuel costs of any reasonable private use of the car;*
- » *keep the car in good condition;*
- » *return it on termination of employment, or earlier if requested.*

// b. *The council/kaunihera will pay for maintenance costs (arising out of council/kaunihera related use of the car).*

Schedule 2: Annual bonus (if applicable)

SCHEDULE 3: Specific job requirements

Statutory responsibilities

Under s42(2) of the Local Government Act 2002, the chief executive is responsible to the council/kaunihera for:

- // a. implementing the decisions of the council/kaunihera; and
- // b. providing advice to members of the council/kaunihera and to its community boards, if any; and
- // c. ensuring that all responsibilities duties, and powers delegated to them or to any person employed by the council/kaunihera, 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 council/kaunihera; and
- // e. facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001; and
- // f. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the council/kaunihera; and
- // g. providing leadership for the staff of the council/kaunihera; and
- // h. employing, on behalf of the council/kaunihera, the staff of the council/kaunihera; and
- // i. negotiating the terms of employment of the staff of the council/kaunihera.

Under s42(3) of the Local Government Act 2002, the chief executive is responsible to the council/kaunihera, for ensuring, so far as is practicable, that the management structure of the council/kaunihera:

- // 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 council/kaunihera to facilitate the explicit resolution of conflicting objectives.

Leadership qualities and duties

As the chief executive of the council/kaunihera you will:

- // a. discharge the specific responsibilities directed or delegated to you and
- // b. imbue the employees of the council/kaunihera with a spirit of service to the community; and
- // c. promote efficiency in the council/kaunihera; and
- // d. be a responsible manager; and
- // e. maintain high standards of integrity and conduct among the employees of the council/kaunihera; and
- // f. ensure that the council/kaunihera is a good employer (see the following page); and
- // g. promote equal employment opportunities.

Good employer

Under clause 36(2) of Schedule 7 of the Local Government Act 2002, the chief executive must ensure that the council/kaunihera operates a personnel policy that complies with the principle of being a good employer, 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 Māori; and
 - ii. the employment requirements of Māori; and
 - iii. the need for greater involvement of Māori 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.

In addition to the requirements specified above, the chief executive:

- // i. must ensure that the council/kaunihera, when making an appointment, gives preference to the person who is best suited to the position; and
- // j. must ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest.

Career development/networking

The chief executive will undertake approved career development training and/or networking in the interests of the council/kaunihera.

SCHEDULE 4: The Holidays Act 2003

The Holidays Act 2003 sets out your minimum statutory entitlements to annual leave, public holidays, sick leave, family violence leave and bereavement leave. A summary of your key entitlements is set out below.

This summary is based on the current provisions of the Act, and your entitlements may change if the Act is amended. The provisions in your employment agreement may also improve upon the minimum entitlements set out in the Act. If you would like further information about the Holidays Act 2003 you can contact the Ministry of Business, Innovation & Employment which offers free information: 0800 20 90 20; or your union (if you are a member) or an advocate or a lawyer.

Annual leave

- » You are entitled to a minimum of four weeks' annual holidays after the first year of continuous employment.
- » Payment for your annual holidays will be made at the greater of your ordinary weekly pay at the time the holiday is taken or your average weekly earnings over the twelve-month period before the annual holiday is taken.
- » Annual leave is to be taken at agreed times. If agreement cannot be reached the employer can set the time for the leave, on 14 days' notice.

Public holidays

- » You are entitled to a paid day off on a public holiday provided that day would otherwise be a working day for you. Your public holiday will be paid at your "relevant daily pay" rate (i.e. the amount you would have received if you had worked your usual hours that day including regular productivity, commission and overtime payments).
- » If you are required by the Council/kaunihera to work on a public holiday, you are entitled to time and a half of your relevant daily rate for all hours worked on that day. If the public holiday falls on a day that would otherwise be a working day for you, you will also receive a full paid day off as an alternative holiday, which will be paid at your "relevant daily pay".
- » If it is not possible or practicable to determine your "relevant daily pay", or your daily pay varies within the pay period when the public holiday or alternative holiday falls, you will be paid for the public holiday or alternative holiday at your "average daily pay" rate.
- » Any alternative holidays that you become entitled to must be taken by agreement with the Council/kaunihera. If no agreement can be reached, the Council/kaunihera may direct you to take your alternative holiday on 14 days' notice. If your alternative holiday is not taken within 12 months, you may request to cash it up.
- » All public holidays are celebrated on the day on which they fall, except the public holidays over Christmas and the New Year, and Waitangi Day and ANZAC Day which have special arrangements, namely: if the holiday falls on the weekend and you do not normally work on the weekend, the holiday is transferred to the following Monday/Tuesday so that you still get a paid day off; or

if the holiday falls on a Saturday or Sunday and you normally work on that day then the holiday remains at the traditional day and you are entitled to that day off on pay.

Sick and bereavement leave

- » You are entitled to ten days' sick leave per annum if you have worked on average 10 plus hours per week including at least one hour every week or 40 hours per month, over the last six months.
- » Unused sick leave of up to 10 days may be carried over to the following year, providing you with up to a maximum entitlement of 20 days in any year.
- » You are not entitled to sick leave if you are on the first week of ACC or receiving weekly ACC for a work-related injury.
- » You are entitled to three days' bereavement leave for the death of an immediate family member. You may also be entitled to one day's bereavement leave on the death of other persons, depending on a range of factors including the closeness of your association.
- » Sick and bereavement leave is paid at your "relevant daily pay" rate. If it is not possible or practicable to determine your "relevant daily pay", or your daily pay varies within the pay period when the sick or bereavement leave is taken, you will be paid for the leave at your "average daily pay" rate.
- » If you have exhausted your entitlement to sick leave or bereavement leave you may take annual leave, provided you have the prior agreement of your employer.

Family violence leave

- » You are entitled to ten days' family violence leave per annum if you have worked on average 10 plus hours per week including at least one hour every week or 40 hours per month, over the last six months.
- » If you have exhausted your entitlement to family violence leave you may take annual leave, provided you have the prior agreement of your employer.
- » You may be required to provide proof that you are a person affected by family violence. Examples of proof include:
 - // a. letter or email about what is going on and how it affects you from a support organisation or government department – for example, a family violence support service or Oranga Tamariki;
 - // b. report from a doctor or nurse;
 - // c. a declaration – a letter of evidence witnessed by an authorised person like a justice of the peace;
 - // d. any court or police documents about the family violence.
- » If you do not provide proof, without a reasonable excuse, you will not be paid family violence leave until you provide proof.

