

Appointment of Audit Committee Independent Member

Report Date:	20 February 2019
Reporting Officer:	Corporate Services Manager, Kelly Westell
Responsible Manager:	Corporate Services Manager, Kelly Westell
File Number:	7.14.1.1
Previous Reference:	Council meeting 28 November 2018 Item 17.4 Audit Committee – Membership, Allowances and Terms of Reference; Council meeting 23 January 2019 Item 18.1 Appointment of Audit Committee Independent Member

Report Purpose

For Council to endorse the approach for appointing a second independent member position on the Audit Committee.

Officer Recommendation

1. That, pursuant to Section 90(2) of the *Local Government Act 1999* (“the Act”), the Council orders that all members of the public except Steven Griffiths (Acting Chief Executive Officer), Kelly Westell (Corporate Services Manager), Leon Kruger (Infrastructure Services Manager), Christopher Parish (Community and Development Services Manager), Muhammad Jawad (Accountant) and Debra Swan (Acting Executive Assistant), be excluded from attendance at the meeting for Agenda Item 18.4 – ‘Appointment of Audit Committee Independent Member’.
2. That the Council is satisfied that pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of those applying for the role of independent member of the Audit Committee.
3. That the Council is satisfied that the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.
4. That a selection panel comprising Mayor Rodney Reid, Cr Malcolm May and Cr John Wood interview the shortlisted applicants – being Michele Bennetts, Rob Adam and David Peters – as determined at the January ordinary meeting of Council and make a recommendation to the March ordinary meeting of Council in relation to the appointment of the new Audit Committee Independent Member.
5. That, having considered Agenda Item 18.4 ‘Appointment of Audit Committee Independent Member’ in confidence under Sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, the Council, pursuant to Section 91(7)(b) of the Act orders that the discussion and minutes be

retained in confidence and not available to the public – on the basis that they contain information concerning the personal affairs of applicants – until such time as the preferred candidate has accepted the position and all applicants have been informed of the Council's decision.

Discussion

At its meeting on 23 January 2019, Council endorsed the following recommendations in relation to the appointment of a second independent member to the Audit Committee:

(In confidence)

That applicants Michelle Bennetts, Rob Adam and David Peters be interviewed to hold the position of independent member of the Wakefield Regional Council Audit Committee.

(In public)

That Council authorises the Mayor, Cr May and Cr Wood to interview the shortlisted applicants to further assess their suitability and desire for the role and to make the appointment of an independent member to the Wakefield Regional Council Audit Committee for a term concluding at the 2022 Local Government elections.

Following enquiries by Cr Bowyer, legal advice was sought as to the legitimacy of the second resolution, in that it authorised three Council Members to make the appointment. Advice from our lawyers confirmed the resolution was *ultra vires* – that is, beyond Council's power and therefore unlawful. Council cannot delegate a power or function to an elected member or group of elected members (except where such a group of elected members consists of a committee).

The Corporate Services Manager has contacted the applicants for the position confirming that interviews will be delayed – with no action to taken place until after Council has considered the issue at its 27 February meeting. The next Audit Committee meeting is scheduled for 10 April.

There are a number of options now available, including (but not limited to):

A panel interviews the shortlisted candidates and a further report, including the selection panel's recommendation, be submitted for Council endorsement in March.	While this would delay the appointment by a month it is a process followed by many councils and would allow the full Council to make the appointment (i.e. exercising its powers and functions).
Council authorises the Audit Committee to undertake the interviews and then make a recommendation to the next Council meeting.	As above. However, it would require the Committee (including the current independent member) to meet.
Council establishes a Section 41 Committee for the purposes of making appointments of	This would allow for interviews to be arranged immediately and a suitable appointment to be made

Independent Member(s) to the Audit Committee.	swiftly. However, it would keep the Council at arms length from the appointment.
---	--

The recommendation is that the three Elected Members of the Audit Committee form a selection panel to undertake the interviews and make a recommendation to Council. The Corporate Services Manager would provide administrative support, including detailed summaries of the interviews and panel comments against the various role criteria.

Should Council wish to establish a Section 41 Committee instead, a draft Terms of Reference document is attached for consideration.

Statutory Responsibilities

Section 41 of the Local Government Act 1999 – Committees; Section 126 of the Local Government Act 1999 – Audit Committee; Regulation 17 of the Local Government (Financial Management) Regulations 2011 – Audit Committee Membership

Strategic Plan Reference

Pillar 4: Community Wellbeing

Other Plan or Policy References

Wakefield Regional Council Audit Committee Terms of Reference

Financial Implications (of the recommendation)

There is a minor recurrent cost implication due to paying for an additional independent member allowance (\$372 sitting cost per meeting and travel allowance).

Risk Assessment (of the recommendation)

Low risk as appointment is in accordance with statutory requirements.

Attachments

Draft Terms of Reference

[Return to agenda](#)

Audit Independent Member Appointment Committee



Terms of Reference

1. Name

The name of the Committee is the 'Audit Independent Member Appointment Committee'.

2. Establishment

- 2.1 The Audit Independent Member Appointment Committee was established at the Council meeting of 27 February 2019 - Min (*To be determined*) pursuant to Section 41 of the *Local Government Act 1999*.

3. Purpose and Functions

The Committee shall:

- 3.1 Assess the applications received for filling the vacant position of the independent member on Council's Audit Committee.
- 3.2 Interview a shortlist of applicants as determined by Council.
- 3.3 Appoint the independent member to Council's Audit Committee for the term concluding at the 2022 Local Government elections, or another date determined by Council.

4. Membership

- 4.1 The Committee shall comprise the elected representatives of the Audit Committee being Mayor Rodney Reid, Cr Malcolm May and Cr John Wood.
- 4.2 The Presiding Member shall be the Mayor.
- 4.3 Appointment to the Committee shall be for the remaining term of Council, concluding at the 2022 Local Government elections.

The Corporate Services Manager will attend meetings but does not have voting rights.

5. Quorum

The quorum required for the transaction of business at a meeting of the Committee shall be all members in attendance.

6. Voting

- 6.1 Each member of the Committee present at a meeting shall have one vote. Members present at the meeting must vote on all resolutions. Proxy votes are not permitted.
- 6.2 The Presiding Member shall have a deliberative vote but does not in the event of an equality of votes have a casting vote.

7. Meetings

- 7.1 The Committee will meet as required.
- 7.2 Meetings of the Committee will be conducted in accordance with the *Local Government Act 1999* ('the Act'), *Local Government (Procedures at Meetings) Regulations 2013* and these Terms of Reference.
- 7.3 The Presiding Member shall ensure that the proceedings of the meeting and resolutions, including recording those present, are minuted.
- 7.4 Meetings will be conducted in the Phil Barry Chamber at Council's Civic Building, Scotland Place, Balaklava.

8. Meeting Procedures

Procedures will be in accordance with the Regulations. The Committee may conduct interviews in a manner so determined by the Committee but any discussion, notes and recommendations in relation to the interviews will be considered and determined in a formal Committee meeting.

9. Reporting Responsibilities

- 9.1 The Presiding Member of the Committee shall inform the Council at its next ordinary meeting of the matters considered by the Committee.
- 9.2 Minutes are recorded and confirmed at the following Committee meeting.
- 9.3 Agendas and Minutes of the Committee will be distributed and published on Council's website in accordance with the requirements of the Act.

10. Administrative

- 10.1 The Corporate Services Manager shall provide administrative resourcing.
- 10.2 The Committee shall have access to reasonable resources to enable it to carry out of its duties, subject to budgetary implications/allocations.

[Return to Agenda](#)