

**ADELAIDE HILLS COUNCIL
CEO PERFORMANCE REVIEW PANEL MEETING
Monday 19 October 2016
AGENDA BUSINESS ITEM**

Item: 6.1

Originating Officer: Megan Sutherland, Executive Manager Organisational Development

Subject: CEO Request for Further Employment Agreement

For: Decision

1. CEO Request for Further Employment Agreement – Exclusion of the Public

That the CEO Performance Review Panel (the Panel) resolves that:

Pursuant to section 90(2) of the *Local Government Act 1999* the CEO Performance Review Panel (the Panel) orders that all members of the public, except:

- Executive Manager Governance and Risk, Lachlan Miller**
- Executive Manager Organisational Development, Megan Sutherland**
- Minute Secretary, Pam Williams**

be excluded from attendance at the meeting for Agenda Item 6.1: CEO Request for Further Employment Agreement in confidence.

The the Panel is satisfied that, pursuant to Section 90(3)(a) of the Act, that information to be received, discussed and considered in relation to the Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), being the personal affairs of the Chief Executive Officer, in that details of his performance review will be discussed.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

The Panel is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of information could unreasonably reveal personal information regarding the CEO's employment status, contract and arrangements and may prematurely be disclosed before the details of the reviews have been discussed with the Chief Executive Officer.

2. CEO Request for Further Employment Agreement – Confidential Item

SUMMARY

The Employment Agreement between Council and the Chief Executive Officer (CEO) provides for consideration to be given to a further agreement for the CEO.

Clause 5 (detailed below) of the CEO's Employment Contract provides the arrangements and timeframes in which the review, decision and notification of employment arrangements are to be made between Council and the CEO.

A recommendation by the Panel to the Council regarding the CEO's employment contract is required to enable advice to be provided to the CEO and appropriate action to be taken based on that decision.

RECOMMENDATION

That the Panel:

1. **Receives and notes the report**
2. **Recommends to Council that negotiations commence on a Further Employment Agreement**
3. **Having considered at Agenda Item 6.1 the matter of CEO Request for Further Employment Agreement in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of the CEO Performance Review Panel and the discussion of the subject matter be retained in confidence until the negotiation process has been completed through a decision with Council and by the exchange of correspondence with the Chief Executive Officer.**
4. **Pursuant to section 91(9)(a) of the *Local Government Act 1999*, that the Panel delegates the duty to conduct an annual review of the confidentiality order to the Chief Executive Officer, or his sub-delegate.**
5. **Pursuant to section 91(9)(c) of the *Local Government Act 1999*, that the Panel delegates the power to revoke the confidentiality order to the Chief Executive Officer, or his sub-delegate.**

3. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 4 A Recognised Leading Performer

Key Issue 4.1 Leadership

Key Action 4.1.4 Meet legislative, regulatory and good governance responsibilities and obligations

➤ **Legal Implications**

The CEO Performance Review Panel is a Section 41 of Committee of Council under the *Local Government Act 1999*.

Under the terms of the CEO's current Employment Contract there are stipulated timeframes that must be met regarding decisions on completion of or offering a further employment agreement.

It is a requirement under the Local Government Act Section 96 for Council to appoint a CEO.

*96—Council to have a chief executive officer
(1) Each council must have a chief executive officer.
(2) The title of the office under subsection (1) is at the discretion of the council.*

➤ **Risk Management Implications**

Ensuring that the CEO is appointed and is working competently is an important control mitigating the risk of:

Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Medium (3D)	Medium (3D)

Note that there are many other controls that are in place to mitigate this risk.

➤ **Financial and Resource Implications**

Not applicable

➤ **Customer Service and Community/Cultural Implications**

There is a community expectation that the organisation will have a CEO who can competently manage and lead the organisation to achieve agreed outcomes for the community.

➤ **Environmental Implications**

Not applicable.

➤ **Engagement/Consultation with Committee, Regional Subsidiary, Advisory Group and Community**

No consultation has taken place outside of the Panel.

4. BACKGROUND

CEO Performance Review Panel (the Panel)

The Panel was established in May 2013 with the following role:

The CEO Performance Review Panel (the Panel) will provide advice to Council on matters related to the Chief Executive Officer and his performance by;

- *Reviewing the CEO's performance over the preceding twelve months, in particular the performance against the Key Performance Indicators (KPIs).*
- *Undertake a review of the CEO's KPIs to ensure they remain relevant and aligned to Council's strategic objectives.*
- *Receive and review six monthly updates of the CEO's performance against the KPIs.*
- *Determining the CEO's remuneration for the following twelve months.*
- *Consider any other related matters that may arise from the review.*

CEO Employment Agreement

On 8 August 2012, Council resolved (Res 191) to appoint Andrew Aitken as the Chief Executive Officer (CEO) of the Adelaide Hills Council subject to finalisation and mutual acceptance of the contract and package.

The Employment Agreement (the Agreement) was executed on 17 August 2012 with the CEO commencing on 1 October 2012.

Clause 5 (Further Agreement) of the Agreement provides the process for the application, consideration, decision and advice to the CEO on the employment agreement with the following key features:

- 5.1 *At least six months prior to the Expiry Date, the CEO may make a written application to the Council for a new employment agreement. Alternatively, the Council may make an offer of further employment to the CEO no less than six months before the Expiry Date, or as agreed.*
- 5.2 *Following consideration of the CEO's application in Clause 5.1, the Council must notify the CEO at least four months prior to the Expiry Date whether or not a new employment agreement is to be offered to the CEO.*
- 5.3 *Following consideration of the Council's offer under Clause 5.1, the CEO must notify the Council at least three months prior to the Expiry Date whether or not he accepts the Council's offer.*
- 5.4 *If the CEO accepts the Council's offer of a new employment agreement, the terms and conditions of that employment shall be set out in a further written agreement. If the terms of a new employment agreement cannot be agreed by the parties by the Expiry Date, the CEO's employment will conclude on the Expiry Date.*

- 5.5 *If a new employment agreement is entered into by the parties under this Clause prior to the Expiry Date, the CEO will be deemed to have continuity of service with the Council for the purpose of determining the CEO's accrued benefits under the new employment agreement.*

Any decisions on further employment agreements must be decided and advised within the parameters of this clause.

5. ANALYSIS

As per the terms of the contract, the CEO has provided a letter (dated 7/10/16) to the Mayor seeking a further employment agreement (contract) for a period of 4 years.

If the Council agrees to a further employment agreement, the CEO is seeking to negotiate and agree new terms and conditions. This request meets Clause 5.4 (above).

It is seen as being appropriate to address the matter of a further contract for the CEO now, providing ample time to make a decision, discuss the outcome with the CEO and take any required action, meeting the timeframes of Clause 5.1, 5.2 and 5.3.

6. OPTIONS

The Panel has the following options:

1. To recommend to Council to commence negotiations for a further employment agreement.
2. To recommend to Council not to support the request from the CEO for a further employment agreement.

7. APPENDIX

Nil