

**ADELAIDE HILLS COUNCIL  
ORDINARY COUNCIL MEETING  
TUESDAY 22 NOVEMBER 2016  
CONFIDENTIAL AGENDA BUSINESS ITEM**

**Item:** 19.1

**Originating Officer:** Megan Sutherland, Executive Manager Organisational Development

**Subject:** Request from CEO for Further Employment Agreement

**For:** Decision

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

a) That under the provisions of section 90(2) of the *Local Government Act 1999* an order is made that the public be excluded from the meeting, with the exception of:

- Director Corporate Services, Terry Crackett
- Director Engineering & Assets, Peter Bice
- Director Community & Customer Service, David Waters
- Director Strategy & Development, Marc Salver
- Executive Manager Governance & Risk, Lachlan Miller
- Executive Manager Organisational Development, Megan Sutherland
- Minute Secretary, Pam Williams

in order to consider Agenda Item 19.1: (Request from CEO for Further Employment Agreement) in confidence.

- b) The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified in (a) above, be excluded to enable Council to consider the report at the meeting on the following grounds:
- c) Section 90(3) (a) of the *Local Government Act 1999*, 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 any person (living or dead)'*; the disclosure of which could unreasonably reveal personal information regarding the CEO's personal matters, employment status and contract arrangements and may prematurely be disclosed before the details of the report have been discussed with the Chief Executive Officer,
- d) Accordingly, on this basis 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 and discussion confidential.

## 2. Request from CEO 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.

The Chief Executive Officer Performance Review Panel (Panel) has provided a recommendation to the Council regarding a further employment contract for the CEO.

### RECOMMENDATION

Council resolves:

1. That the report be received and noted
2. To notify the Chief Executive Officer that a new Employment Agreement will be offered.
3. If CEO accepts the Council's offer of a new employment agreement, to commence negotiations on a Further Employment Agreement with the CEO with a view to commencing the Employment Agreement on 1 July 2017.
4. To delegate to the Mayor and the Presiding Member of the Chief Executive Officer Performance Review Panel to conduct negotiations on behalf of Council to the stage of a draft Employment Agreement for the consideration of the Chief Executive Officer Performance Review Panel.

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## 1. GOVERNANCE

### ➤ Strategic Management Plan/Council Policy

Goal: Organisational Sustainability  
Strategy: Governance

### ➤ 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**

Consultation has occurred with the CEO Performance Review Panel.

## 2. 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.

### **CEO Performance Outcomes**

The CEO personal evaluation system (the rating scale used in reviewing the CEO's performance) is defined under the definitions section of the Agreement and provides the following ratings:

- 1 CEO's performance did not meet expectation
- 2 CEO's performance was below expectation
- 3 CEO's performance met expectation
- 4 CEO's performance was above expectation
- 5 CEO's performance exceeded expectation

Competent Performance in the Agreement is defined as *'the achievement by the CEO of a performance equal to or better than Rating 3 as defined in the Personal Evaluation System'*.

The CEO's performance has been assessed in each year of the Agreement with the following ratings adopted by Council:

2012/13	competent performance
2013/14	competent performance
2014/15	competent performance
2015/16	above expected performance

### **3. 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 (above).

The Panel met on Wednesday 19 October 2016 to discuss and consider the CEO's request and unanimously decided to support the request, providing the recommendation in this report for Council decision.

It is proposed that, should Council determine to offer the CEO a new Agreement, that representatives (nominally the Mayor and Presiding Member of the Panel) be delegated authority to negotiate the terms and conditions of the new Agreement with a view to bringing the draft Agreement to the Panel for consideration and recommendation to Council.

### **3. OPTIONS**

The Council has the following options:

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

### **4. APPENDIX**

Nil

**5. Request from CEO for Further Employment Agreement – Period of Confidentiality**

**Council resolves that, subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing the Council's decision(s) in this matter in the performance of the duties and responsibilities of office, having considered Agenda Item 19.1 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 Council and the discussion and considerations of the subject matter be retained in confidence until the negotiation process has been completed through a decision by Council and by the exchange of correspondence with the Chief Executive Officer.**

**Pursuant to section 91(9)(c) of the *Local Government Act 1999*, that the Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.**