

**ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 20 September 2022
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 8.1

Responsible Officer: Lachlan Miller
Executive Manager Governance & Performance
Office of the Chief Executive

Subject: Appointment of the Acting Chief Executive Officer

For: Decision

1. Appointment of the Acting Chief Executive Officer – Exclusion of the Public

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

- Chief Executive Officer, Andrew Aitken
- Executive Manager Governance & Performance, Lachlan Miller
- Executive Manager Organisational Development, Megan Sutherland
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 8.1: (Appointment of the Acting Chief Executive Officer) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

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), being the personal affairs of the candidates for the Acting Chief Executive Officer role, in that details of their applications, interviews and referee comments will be discussed.

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. Appointment of the Acting Chief Executive Officer – Confidential Item

SUMMARY

Council's current Chief Executive Officer (the 'CEO'), Andrew Aitken has resigned from the role and Council have resolved that his termination (separation) date will be 4.00pm on Friday 30 September 2022.

As Council is currently in caretaker mode it is not legally permitted to substantively appoint a CEO but can appoint an Acting CEO. As such Council resolved its approach to the recruitment of the Acting CEO and these actions have been undertaken to the point where the Selection panel has made a recommendation for the Acting CEO appointment for Council's consideration and resolution.

The purpose of this report is to summarise the Acting CEO recruitment process and to provide the Selection Panel's recommendation to Council.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted**
- 2. To appoint David Waters to the position of Acting Chief Executive Officer of the Adelaide Hills Council for a period commencing 4.01pm Friday 30 September 2022 and concluding upon the commencement of the successful candidate in the (substantive) Chief Executive Officer Recruitment process.**
- 3. To authorise the Mayor to negotiate the final terms and conditions of the Chief Executive Officer's Employment Agreement being materially similar to the draft Employment Agreement in Appendix 1 and with a Total Remuneration Package value of no greater than \$XXX,XXX.**

1. BACKGROUND

CEO Resignation

On 26 July 2022, the current CEO, Andrew Aitken provided the Principal Member, Mayor Jan-Claire Wisdom, with a notice of resignation. A termination (settlement) date was to be negotiated and resolved by the Council under the provisions of the Employment Agreement.

At its 23 August 2022 meeting, Council resolved (226/22) in relation to the current CEO's termination (separation date):

- 2. To determine that, as a result of negotiation in accordance with clause 14.3.2 of the Employment Agreement, the termination (separation) date for Chief Executive Officer, Andrew Aitken, will be 4.00pm, Friday, the 30th day of September 2022.**

Given the pending resignation and in accordance with the provisions of s98 of the *Local Government Act 1999* (the 'Act'), the Council needed to consider the process to undertake the acting and substantive CEO recruitment. A complicating factor is that the 'election period' for the 2022 Local Government Election was to commence on 6 September and expire at the conclusion of the general election. As such, Council was to be in its caretaker period prior to any actions being finalised to recruit and appoint a substantive CEO.

Section 91A(8) of the *Local Government (Elections) Act 1999* prevents councils from making a 'designated decision' during the caretaker period including:

- (a) relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or

Given these restrictions, Council needed to consider its preferred approach to the recruitment an Acting CEO. At its 23 August 2022 meeting, Council resolved (226/22):

3. That in relation to the Acting CEO Recruitment:

- a. **To manage the recruitment process without the engagement of a Recruitment Consultant.**
- b. **To adopt an Internal Recruitment Candidate identification strategy.**
- c. **To adopt a Bespoke Selection Panel model for the Acting CEO Selection Panel.**
- d. **To establish the Acting CEO Selection Panel, for the purposes of s98(4) of the *Local Government Act 1999*, which will commence on 23 August 2022 and remain in effect until Council appoints the Acting CEO.**
- e. **That the Acting CEO Selection Panel will have the following functions:**
 - i. **To develop and implement an Expression of Interest process consistent with the resolved Candidate Identification Strategy;**
 - ii. **To shortlist applications and conduct interviews with a view to identifying a preferred candidate(s);**
 - iii. **To report back and make a recommendation to Council with regard to a preferred candidate(s) and terms & conditions of appointment.**
- f. **To note that the Acting CEO Selection Panel may request advice from an external recruitment consultant as required and that will be procured within existing delegations and budgets.**
- g. **That the Acting CEO Selection Panel will consist of five (5) members as follows: Mayor; Deputy Mayor; Presiding Member of the CEO Performance Review Panel; and two (2) Ordinary Members. The Presiding and Deputy Presiding Member of the Acting CEO Selection Panel will be the Mayor and Deputy Mayor respectively.**

- h. That a Total Remuneration Package of \$260,000 will be able to be communicated to potential applicants for the role and will form the basis for negotiations with the preferred candidate.**
- i. That the method of selecting the Acting CEO Selection Panel Ordinary Members will be by an indicative vote to determine the preferred persons for the two (2) positions utilising the Appointments to Positions Process contained in Clause 4.7 Council's Code of Practice for Council Meeting Procedures.**
- j. To adjourn the Council meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote to determine the preferred persons for the Acting CEO Selection Panel Ordinary Member roles and for the meeting to resume once the results of the indicative vote have been declared.**

Carried unanimously

Acting CEO Expression of Interest Process

On the basis of the above resolution, the Acting CEO Selection Panel (the 'Selection Panel') was convened electronically and finalised an Expression of Interest (EOI) process on 29 August 2022.

The EOI was advertised internally for the period 29 August – 4 September 2022. Two EOIs were received and these were considered on 6 September 2022 by the Selection Panel to determine the shortlisting for interview. Both candidates were shortlisted for interview.

Interviews for the two candidates were held on 8 September 2022 with the full Selection Panel and referee reports obtained shortly thereafter.

2. ANALYSIS

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Caretaker (Election) Period

Section 91A(1) and (2) of the *Local Government (Elections) Act 1999* require councils to have a caretaker policy. The caretaker policy must (relevant to this report) prohibit the making of a designated decision during the election period.

Subsection (8) defines the election period, also known as the caretaker period, as the period commencement on the close of nominations and expiring at the conclusion of the election. Further subsection (8) identifies a designated decision as including a decision:

- (a) relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or**

Council's *Caretaker Policy* contains the above provision.

Council Chief Executive Officers

Section 96(1) of the *Local Government Act 1999* (the 'Act') requires that a council must have a chief executive officer.

Section 97(2) states that a chief executive officer's appointment is terminated if (relevant to this report) the chief executive officer resigns by notice in writing to the principal member of the council.

Section 98(1) of the Act provides that if a vacancy occurs or is about to occur in the office of chief executive, the council must take steps to fill the vacancy (or pending vacancy). Further subsection (2) provides that the council must appoint a person to act in the position of chief executive officer until the vacancy is filled.

Subsections (3) – (7) of s98 contain additional requirements relating to the substantive filling of the CEO vacancy and, as such, are not applicable to the Acting CEO recruitment.

➤ **Risk Management Implications**

The implementation of the robust and structured recruitment process as resolved by Council will assist in mitigating the risk of:

Poor or deficient CEO recruitment practices and/or outcome leading to poor performance and loss of stakeholder confidence.

Inherent Risk	Residual Risk	Target Risk
Extreme (4B)	Medium (4D)	Medium (4D)

➤ **Financial and Resource Implications**

There were no direct financial implications associated with the Acting CEO recruitment.

The coordination of the process was undertaken by the Executive Manager Governance & Performance with specialist assistance from the Executive Manager Organisational Development. The resource implications of the process included, but were not limited to, the deferral of planned works for the implementation of the Strategic Internal Audit Plan and the development of the Business Continuity Plan and actions associated with the Woodforde/Rostrevor boundary change proposal.

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

There is a strong community expectation that the Council's CEO will possess appropriate skills and experience to undertake the role; that they perform competently and meet expectations to achieve the required outcomes; and that they are remunerated responsibly and appropriately having regard to the role and the industry market.

➤ **Sustainability Implications**

The CEO has a pivotal role in ensuring that the sustainability priorities and strategies are implemented.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: Not Applicable

Advisory Groups: Not Applicable

External Agencies: KelledyJones Lawyers provided advice in relation to the interpretation of legislation provisions relating to CEO recruitment.

Community: Not Applicable

➤ **Additional Analysis**

The Selection Panel, having regard to the EOIs received, the performance of the candidates at interview and the comments of Andrew Aitken as referee have unanimously determined to recommend David Waters for appointment as the Acting CEO.

The Selection Panel's summary of the suitability of David Waters is as follows:

1. Is a highly motivated individual and has a strong and enduring connection to the Council area;
2. Is taking advantage of an opportunity presented to him that fits in with his long-term career vision;
3. Is calm, level-headed, fair, collaborative, self-reflective, pragmatic and strategic;
4. Is keen to 'lean into' and learn more about the incoming members and the newly elected council's agenda;
5. Is politically astute across all levels of government and has a good understanding of the culture of the Hills' various communities;
6. Is outward looking with a strong organisational perspective;
7. Understands the external and internal financial challenges that lay ahead;
8. Has served at Executive Leadership level and across a variety of council functions and workplaces with different cultures;
9. Has demonstrated the ability to step up when required, including several acting CEO opportunities;
10. Is considered to be a genuine and honest person and respected by his colleagues; and
11. No major concerns regarding the applicant were identified, but in due course some personal and professional development may be appropriate.

Preliminary discussions between the Selection Panel Chair (Mayor Wisdom) and the recommended candidate have taken place regarding the terms and conditions of the Employment Agreement and the Total Remuneration Package (TRP).

The draft Employment Agreement is attached (**Appendix 1**) however will require a number of minor amendments to address issues raised.

In relation to the TRP, discussions were ongoing at the time of agenda compilation and the Selection Panel Chair will provide a status update at the meeting for Council's consideration and determination.

A delegation to the Mayor is recommended (i.e. Recommendation 3 of this report) to finalise these matters within the parameters of the maximum TRP to be set by Council and the Employment Agreement being materially similar to the attached Agreement (**Appendix 1**).

3. OPTIONS

Council has the following options:

- I. To resolve to appoint David Waters as the Acting CEO on the terms and conditions as resolved as recommended in this report (Recommended)
- II. To resolve to appoint David Waters as the Acting CEO on alternative terms and conditions (Not Recommended)
- III. To determine a different process for the appointment of the Acting CEO (Not Recommended)

4. APPENDICES

(1) Draft Acting CEO Employment Agreement

Appendix 1

Draft Acting CEO Employment Agreement



EMPLOYMENT AGREEMENT

BETWEEN

ADELAIDE HILLS COUNCIL

'the Council'

- and -

[Employee name]

'the Acting Chief Executive Officer'

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ADELAIDE HILLS COUNCIL of 28 Onkaparinga Valley Road Woodside 5244 in the State of South Australia
(the Council)

and

[name surname] of [address. p/code] in the State of South Australia (the Acting CEO)

INTRODUCTION

- A. The Council is a body corporate constituted by proclamation pursuant to the *Local Government Act 1999* (SA).
- B. The Acting CEO currently performs the substantive role of [Director insert] with the Council.
- C. The Council wishes to employ the Acting CEO in accordance with Section 102(b) of the *Local Government Act 1999* (SA) and the Acting CEO has agreed to accept that employment on the terms and conditions set out herein.
- D. [insert employee name] will be known as the Acting Chief Executive Officer (the Acting CEO).

1. DEFINITIONS

In this Agreement, unless expressed or implied to the contrary:

Act means the *Fair Work Act 1994* (SA);

Agreement means this employment agreement;

Award means the South Australian Municipal Salaried Officers Award, as amended from time to time, or a successor award;

Council means the elected body of the Adelaide Hills Council;

Commencement Date means [date];

Competent Performance means the achievement by the Acting CEO of a performance rating at least equal to the mid point of the rating scale (ie Acting CEO's performance met expectation).

Confidential Information means:

- (a) information relating to the business affairs and employees of the Council;
- (b) matters of a technical nature, future directives and policies, technical data pertaining to the general affairs of the Council, internal procedures and information, financial information, information pertaining to other employees, salaries, strategic and business plans and like information relating to the Council;

- (c) other information which the Council tells the Acting CEO is confidential or which if disclosed, the Acting CEO knows or ought reasonably to know would be detrimental to the Council;
- (d) all other information which is imparted to the Acting CEO in circumstances which the Acting CEO knows or should reasonably know that the information is confidential to the Council or any other persons with whom the Council is concerned; and
- (e) excludes any information that is public knowledge otherwise than as a consequence of a breach by the Acting CEO of obligations under this Agreement or breach by some other person of a duty of confidence to the Council.

Duties means the Position Description and Capability Statement responsibilities, duties and functions of the Acting CEO person specifications in this Agreement and in Schedule 1;

Expiry Date means the date upon which this Agreement expires, being the day prior to the commencement date of the new Chief Executive Officer substantively appointed by the Council pursuant to section 96 of the *Local Government Act 1999* (SA).

Performance Criteria means the criteria against which the Acting CEO's performance is to be assessed under the Personal Evaluation System;

Personal Evaluation System means the rating system by which the Acting CEO's performance is assessed;

Substantive Role means the role the Acting CEO is substantively engaged to perform with the Council, being [Director **insert substantive role**].

TEC Package means the monetary and non-monetary entitlements detailed at Clause 9;

Term means the period of employment specified in Clause 3.1.

2. APPLICATION OF OTHER INDUSTRIAL INSTRUMENTS AND GLOBAL REMUNERATION

- 2.1 This Agreement shall be read in conjunction with the Act.
- 2.2 No award as defined by the Act applies to this position.
- 2.3 No industrial agreement applying to employees of the Council will apply to the Acting CEO.
- 2.4 The Acting CEO will work an average of 38 hours per week, plus reasonable additional hours necessary to complete the Duties. No additional remuneration or penalties will be paid in respect of the reasonable additional hours performed (including but not limited to intrastate, interstate, overseas and overnight travel) as this has been incorporated into the Acting CEO's remuneration. The TEC Package in this contract of employment is applied to, and absorbs, any currently existing or newly introduced payments or benefits to which the Acting CEO has or may become legally entitled to, including but not limited to payments under the Act or any relevant award or enterprise agreement, including annual leave loading, overtime, allowances and penalty rates, unless the Council otherwise specifies.

3. TERM OF EMPLOYMENT

- 3.1 The Employment commences on the Commencement Date and will continue under this Agreement, concluding on the Expiry Date.
- 3.2 The parties agree and acknowledge that the Expiry Date is specifically linked to the Council appointing a substantive Chief Executive Officer pursuant to section 96 of the *Local Government Act 1999 (SA)*, with no set timeframe allocated to that appointment.
- 3.3 The day following the Expiry Date, the Acting CEO will return to their Substantive Role, unless the Acting CEO is appointed to the substantive Chief Executive Officer role.
- 3.4 The parties agree that the Acting CEO's appointment and employment will terminate on the Expiry Date unless:
 - 3.4.1 this Agreement is terminated prior to the Expiry Date pursuant to Clause 13 of this Agreement, in which case the Acting CEO's employment will terminate at that time.
- 3.5 The parties agree that, in consideration of the terms and conditions of this Agreement, the employment of the Acting CEO will not be ongoing but will continue only for the Term.

4. REQUIREMENTS OF POSITION

- 4.1 The Acting CEO must perform the Duties and responsibilities set out in Clause 5 and Schedule 1 to this Agreement, and those statutory duties provided in any applicable legislation, including the *Local Government Act 1999 (SA)*. Key performance indicators may be agreed by the parties and appended to this Agreement within three months of the Commencement Date.
- 4.2 The Council may change any of the Duties set out in Schedule 1, in consultation with the Acting CEO.

5. DUTIES AND RESPONSIBILITIES

5.1 The Acting CEO must:

- 5.1.1 observe and comply with statutory responsibilities arising from the *Local Government Act 1999* (SA) and all other applicable legislation;
- 5.1.2 observe and comply with all lawful directions and instructions of the Council;
- 5.1.3 perform the Duties with such a degree of skill, care and diligence, which is appropriate to the Duties;
- 5.1.4 be just and faithful to the Council and shall promptly give to the Council full information and truthful explanations of all matters relating to their Duties and responsibilities under this Agreement;
- 5.1.5 act in the best interest of the Council at all times;
- 5.1.6 account to the Council for any remuneration or other benefit received from a third party in the Acting CEO's capacity as Acting CEO in any business conducted or promoted by the Council or any related corporation;
- 5.1.7 be informed and up to date on issues and developments that affect all areas of responsibility;
- 5.1.8 attend meetings of the Council and other bodies as required;
- 5.1.9 exercise responsibilities and Duties where the Council has delegated authority;
- 5.1.10 observe the requirements of the Council's policies and procedures;
- 5.1.11 observe the requirements of any Employee Code of Conduct guidelines or human resource policies that have been adopted by the Council;
- 5.1.12 promote the aims and objectives of the Council;
- 5.1.13 maintain a current, unimpeded South Australian driver's licence throughout the Term; and
- 5.1.14 at all times comply with any legislation applying to matters within the scope of the Acting CEO's employment.
- 5.1.15 perform the Duties:
 - 5.1.15.1 lawfully;
 - 5.1.15.2 with proper decorum;
 - 5.1.15.3 to the best of the Acting CEO's ability and judgment; and
 - 5.1.15.4 to the satisfaction of the Council;

5.2 The Acting CEO accepts that the Council may require the Acting CEO to perform any and all duties which are within skills usually attributed to this level of employment in South Australia.

6. ACCOUNTABILITY

6.1 The Acting CEO is accountable to the Council and is required to satisfactorily carry out the responsibilities, Duties and functions set out in the position description in Schedule 1, which forms part of this Agreement.

6.2 The Acting CEO will be subject to the direction and control of the Council at all times.

6.3 The Acting CEO will devote their whole time and attention during the hours reasonably required to properly perform the Duties.

7. DISCLOSURE OF INTERESTS

The Acting CEO will disclose to the Council any interests (whether direct or indirect) which may give rise to a conflict with the performance of the Duties and responsibilities pursuant to this Agreement.

8. OUTSIDE INTERESTS

8.1 The Acting CEO must not be directly or indirectly engaged, concerned or interested in any employment, trade, business, profession or occupation requiring the provision of services or advice by the Acting CEO (other than the employment provided by this Agreement), except with the prior written consent of the Council, which will not be unreasonably withheld.

8.2 If the Council provides its consent to the Acting CEO pursuant to Clause 8.1, the Acting CEO agrees that they will give priority to the employment obligations under this Agreement over and above any other business or employment in which they are authorised by the Council to engage.

9. TOTAL EMPLOYMENT COST PACKAGE (TEC PACKAGE)

9.1 In consideration of performing the Duties, the Acting CEO is entitled to the TEC Package outlined in this Clause and Schedule 2.

9.2 The parties may agree to enter into any lawful salary packaging arrangement by mutual agreement between them, which will be recorded in writing and annexed to and thereby amend Schedule 3 of this Agreement. The Acting CEO will bear the cost of Fringe Benefits Tax (if any) associated with any salary packaging arrangements reached with the Acting CEO.

9.1 The Parties acknowledge that, in accordance with s99A(10) of the *Local Government Act 1999* (SA), the TEC Package must fall between the minimum and maximum bands as determined by the Remuneration Tribunal of South Australia (RTSA), and that, as at the time this Agreement is entered into, RTSA has yet to set the minimum and maximum bands.

9.2 The Parties agree that should the remuneration TEC Package fall outside of the

minimum or maximum bands, the TEC Package will be reviewed and adjusted, through consultation, to ensure the TEC Package lawfully complies with s99A(10) of the *Local Government Act 1999* (SA).

- 9.3 No additional remuneration is paid for overtime worked by the Acting CEO.
- 9.4 Payment in respect of any annual leave loading has been incorporated into the annual base salary.
- 9.5 The cash component of the TEC Package will be paid in arrears in equal fortnightly instalments, or as otherwise provided by the Council, by direct deposit to an account nominated by the Acting CEO.

9.6 **Superannuation**

- 9.6.1 The Council must make superannuation contributions in accordance with its obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth), and as necessary to ensure that the Council is not subject to the charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 9.6.2 Any statutory increase to the superannuation contribution will be borne by the Council as an addition to the TEC Package, as it applies at the time of the statutory increase.
- 9.6.3 The TEC Package will be increased by the amount of the statutory increase to the superannuation contribution.

9.7 **Deductions**

- 9.7.1 The Council must:
 - 9.7.1.1 deduct from the cash component of the TEC Package and remit to the Australian Taxation Office instalments of income tax in compliance with its obligations under the *Income Tax Assessment Act 1936* (Cth); and
 - 9.7.1.2 make any other deduction which the Council is lawfully authorised or obliged to make.

9.8 **Vehicle**

- 9.8.1 The Council requires the Acting CEO to have a vehicle and current, unimpeded driver's licence so as to fulfil the Duties in this Agreement. The Council will provide the Acting CEO with a fully maintained vehicle for business and private use.
- 9.8.2 If the Acting CEO accepts the fully maintained vehicle, the Acting CEO will have unrestricted personal use of the vehicle, provided that the vehicle shall not be used for any commercial or income producing activity or pursuits.

- 9.8.3 The type of vehicle and any other vehicle-related matters shall be in accordance with the Council's policies subject to this Agreement.
- 9.8.4 The Council will be responsible for the payment of the Fringe Benefits Tax associated with the vehicle (if any).
- 9.8.5 The parties agree that the vehicle will be managed in accordance with Council's Vehicle Policy/Procedure (as amended from time to time).

9.9 Personal Income Protection Cover

- 9.9.1 The Council will provide Income Protection Cover for the term of the contract.

10. WORK-RELATED EXPENSES

The Council agrees to provide the Acting CEO with reasonable work-related tools and development to undertake duties as Acting CEO in the course of their employment, including professional development (with prior approval), work related phone calls and reasonable personal phone calls, a laptop computer (or similar device), a smart phone and tablet, if not already provided to the Acting CEO in the course of their Substantive Role.

11. PERFORMANCE REVIEW

- 11.1 The parties agree that the Acting CEO will undergo performance reviews with the Council for the Term of this Agreement. The Acting CEO must participate in any performance review required by the Council.

12. TEC PACKAGE REVIEW

- 12.1 Given the short-term nature of this Agreement, the TEC Package may be reviewed at the absolute discretion of the Council.
- 12.2 Should the Council choose to undertake a TEC Package review, the review may be conducted in conjunction with the performance review set out in Clause 11 (if reasonably practicable), and any change to the TEC Package shall take effect from the date determined by the Council.
- 12.3 The review of the TEC Package (should one be undertaken) will take into account the following:
 - 12.3.1 The agreed key performance indicators;
 - 12.3.2 The Acting CEO's Position Description;
 - 12.3.3 Movements in the Consumer Price Index (all groups) Adelaide as issued by the Australian Bureau of Statistics for the year ending in the quarter immediately preceding the review;
 - 12.3.4 Remuneration paid to CEO's of councils in South Australia; and
 - 12.3.5 Any other factors the Council considers relevant.

12.4 Notwithstanding Clause 12.3, the parties acknowledge that, in undertaking any review of the TEC Package, the Acting CEO is not, as a right, entitled to any annual increase of the TEC Package.

13. TERMINATION OF AGREEMENT

13.1 Summary Termination

13.1.1 This Agreement may be terminated by the Council without notice and without the payment of compensation in lieu of notice in the event that the Acting CEO:

13.1.1.1 commits any serious or persistent breach of any of the terms of this Agreement;

13.1.1.2 engages in serious and wilful misconduct;

13.1.1.3 is guilty of serious neglect of duty in the discharge of the Duties;

13.1.1.4 knowingly acts in breach of the Council's policies in force from time to time;

13.1.1.5 is found by the Independent Commissioner Against Corruption or the Ombudsman to have engaged in misconduct, corruption and/or maladministration;

13.1.1.6 makes improper use of the Council's property;

13.1.1.7 engages in any action or omission which brings the Council into public disrepute, contempt, ridicule or which reflects unfavourably on the Council;

13.1.1.1 becomes of unsound mind or be placed under an administration order pursuant to any law relating to mental health;

13.1.1.2 fails to display and exercise the Acting CEO's duty of fidelity or good faith towards the Council which the Council might reasonably expect of the Acting CEO; or

13.1.1.3 is convicted of any criminal offence which prescribes a term of imprisonment.

13.2 Termination due to illness or incapacity

This Agreement may be terminated by the Council without notice and without the payment of compensation in lieu of notice in the event that the Acting CEO is incapacitated from performing the Duties pursuant to this Agreement due to ill health of any type for a period of greater than three months and where all leave entitlements have been exhausted, except where such illness constitutes a compensable disability pursuant to the provisions of the *Return to Work Act 2014 (SA)*.

13.3 Termination by the Provision of Notice

13.3.1 The Council may terminate this Agreement with one (1) weeks' notice on the basis that the Council appoints a new Chief Executive Officer of Council. The Council may, at its absolute discretion, make a payment in lieu of notice (or part thereof).

13.3.2 This Agreement may be terminated by the Council for any reason and without cause, by giving one (1) weeks' notice. The Council may, at its absolute discretion, make a payment in lieu of notice (or part thereof).

13.3.3 This Agreement may be terminated by the Acting CEO giving the Council a period of one (1) weeks' notice in writing.

13.3.4 In addition to any right of termination, and without derogating from any right available in this Agreement, the Acting CEO's employment may at any time be terminated by the mutual agreement of the parties on whatever notice and terms upon which the parties may then agree.

14. LEAVE

14.1 Annual Leave

14.1.1 The Acting CEO is entitled to 20 working days annual leave per completed year of service, which may be taken at any time approved by the Mayor. The Acting CEO is not entitled to any leave loading payment, it having been included in the Acting CEO's annual base salary.

14.1.2 The Council may direct the Acting CEO upon no less than two weeks' notice to take annual leave to ensure the Acting CEO's annual leave credit does not exceed 6 weeks.

14.1.3 If applicable, any entitlement to annual leave standing to the credit of the Acting CEO at the time of cessation of employment shall be discharged by the Council by payment based on the Acting CEO's TEC Package.

14.2 Sick/Carer's Leave

14.2.1 The Acting CEO is entitled to 10 working days sick/carer's leave for each year of service.

14.2.2 There shall be no entitlement to payment in lieu of accrued sick/carer's leave entitlements upon termination of the Acting CEO's employment.

14.3 Long Service Leave

Long service leave entitlements will be granted in accordance with the provisions of the *Long Service Leave Act 1987* (SA).

14.4 Bereavement Leave

14.4.1 The Acting CEO is entitled to three days' paid bereavement leave on the death of the Acting CEO's family member or in other special circumstances as are shown to exist to the satisfaction of the Mayor. The Acting CEO may be required to provide evidence to the Mayor in respect of an absence for bereavement leave.

14.4.2 Additional bereavement leave is at the discretion of the Council.

14.5 Parental Leave

The Acting CEO is entitled to parental leave in accordance with the provisions of the Act.

14.6 Leave at the direction of the Council

The Council may, at any time during the employment, direct the Acting CEO to take leave at full pay.

14.7 Flexible Time

Due to the additional hours worked, the Acting CEO may take paid time off work from time to time, up to 6 days a year, to be taken at agreed times with the Mayor.

15. CONFIDENTIALITY OF INFORMATION

15.1 The Acting CEO will not at any time during this Agreement, nor at any time thereafter:

15.1.1 otherwise than in the discharge of the Acting CEO's Duties hereunder or with the prior consent of the Council, divulge to any other person any Confidential Information which the Acting CEO may acquire or have acquired in the course of this Agreement; or

15.1.2 use Confidential Information obtained for the Acting CEO's own benefit or the benefit of any other person or entity.

- 15.2 All documents, memoranda, reports, books, manuals, papers, records, tools, computer software and hardware and electronically stored information in respect of the operations or statutory obligations of the Council shall be and remain the sole property of the Council and shall be delivered up by the Acting CEO to the Council upon demand.
- 15.3 The Acting CEO acknowledges that the obligations imposed by this Clause shall be in addition to the obligations imposed or implied at common law in respect of CEOs.
- 15.4 The Acting CEO's obligations under this Clause shall survive the termination of this Agreement.

16. INTELLECTUAL PROPERTY AND OTHER PROPERTY OF THE COUNCIL

16.1 Intellectual Property

- 16.1.1 All materials provided to the Acting CEO by the Council, including materials provided to enable performance of the Duties, and all intellectual property in those materials, are and remain the property of the Council.
- 16.1.2 All material produced by the Acting CEO in performing the Duties (in or out of working hours) and all intellectual property in that material are the property of the Council alone, on and from creation, unless otherwise agreed in writing by the Council.
- 16.1.3 The Acting CEO must do all acts and sign all documents the Council reasonably requests to secure its ownership or registration of its intellectual property, during and after the Employment.
- 16.1.4 At the Council's request, the Acting CEO must return all the Council's materials (in any form) and the Acting CEO is not entitled to retain copies of the Council's materials in any form.

16.2 Other property

- 16.2.1 The Acting CEO must take all reasonable care in using the Council's property.
- 16.2.2 On termination of the Acting CEO's Employment or upon the Council's request, the Acting CEO must return in good condition (subject to fair wear and tear) any property in the Acting CEO's possession or control belonging to the Council.

16.3 Breach

A breach of the Acting CEO's obligations under this Clause is a serious breach of this Agreement. In addition to the Council's other remedies, the Council may sue the Acting CEO for damages sustained as a result of such a breach, interest and legal costs on a solicitor and own client basis.

17. DISPUTE RESOLUTION

- 17.1 In relation to any matter that may be in dispute between the Acting CEO and the Council, the parties will:
 - 17.1.1 attempt to resolve the matter at workplace level by the Acting CEO and the Council, or a person or Committee authorised by the Council for that purpose, meeting and conferring on the matter;
 - 17.1.2 agree to allow either party to refer the matter to mediation if the matter cannot be resolved at the workplace level;
 - 17.1.3 agree that, if either party refers the matter to an independent mediator, both parties will participate in the mediation process in good faith; and
 - 17.1.4 acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to the mediation process. Such mediation shall operate in a manner as agreed by the parties.
- 17.2 The cost of the mediation service referred to in Clause 17.1.2 will be met by the Council. Where another person is used by either party in accordance with Clause 17.1.4, each party will be responsible for meeting the costs of that person appointed to act on their behalf.
- 17.3 For the purposes of this Clause, dispute does not include issues arising from the operation of Clause 13 of this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by, construed and take effect in accordance with the laws of South Australia and the parties hereto irrevocably submit to the jurisdiction of the courts of South Australia.

19. WARRANTY OF QUALIFICATIONS

The Acting CEO warrants that they hold the qualifications and has the requisite experience, to undertake the Duties. The Acting CEO will maintain professional memberships and qualifications including, but not limited to the LG Professionals and the LG Chief Officers Group, and keep up to date with sector related developments.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties regarding the employment of the Acting CEO as herein provided and supersedes all prior agreements, understandings and negotiations regarding the employment of the Acting CEO.

21. NO WAIVER

- 21.1 A party waives a right under this Agreement only by written notice to the other party that it waives that right.

21.2 A waiver is limited to the specific instance to which it relates and to the specific purpose for which it was given.

22. ENFORCEABILITY OF THIS AGREEMENT

22.1 If a provision of this Agreement is deemed to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

22.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of the provision or the other provisions of this Agreement.

22.3 This Agreement shall be read and construed so as to give the full effect there to, subject only to any contrary provision of the law.

23. NOTICES

Any notice to be given pursuant to this Agreement shall be in writing and may be delivered personally or delivered by prepaid registered post to the address of the parties set out in this Agreement, or at the known place of abode or business of the party or such other address as the party may from time to time notify to the other party for the purposes of service of any notice.

24. VARIATION

This Agreement shall only be varied by further agreement of the parties in writing.

25. SIGNATORIES

Signed by an authorised representative of the **Adelaide Hills Council** in the presence of:

.....
Signature of witness

.....
Authorised representative

.....
Name of witness (print)

.....
Date

Signed by **[insert name]** in the presence of:

.....
Signature of witness

.....
[insert name]

.....
Name of witness (print)

.....
Date

SCHEDULE ONE

ACTING CEO POSITION DESCRIPTION AND CAPABILITY STATEMENT



Acting Chief Executive Officer

Position Description and Capability Statement

POSITION DESCRIPTION

PURPOSE

The Acting Chief Executive Officer (CEO) is responsible for the implementation of Adelaide Hills Council's (AHC) strategies, policies and decisions through effective leadership and strategic management of the organisation. The Acting CEO is primarily responsible for ensuring all Council's activities are delivered to best practice standards and that they are compliant with all legal, legislative and corporate governance requirements.

The Acting CEO is accountable for:

- ensuring appropriate fiscal and asset oversight
- positive stakeholder management and communication
- providing outstanding leadership for Council employees
- implementing and managing Council's direction and policies
- providing high-level policy advice and guidance to the Council Members
- ensuring the provision of effective and efficient customer/community focused services
- developing, implementing and monitoring the financial, strategic plan and annual reports
- ensuring the promotion and marketing of the distinctive Council brand in the local and wider communities.

REPORTING / WORKING RELATIONSHIPS

The Acting CEO reports to the Mayor and Council Members (CMs) and is responsible for communicating Council directives through the Executive Leadership Team to AHC employees, ensure their effective and timely implementation.

The Acting CEO is also responsible for developing appropriate relationships in order to represent the interests of Council to federal and state government, appropriate agencies and industry bodies and maintain clear, open and effective communication with the Adelaide Hills community and stakeholder groups.

DELEGATIONS AND AUTHORITY

The Acting Chief Executive Officer will make judgments and decisions in accordance with the Local Government Act, established AHC policy and within all legislative requirements. In particular:

1. sign certificates, contracts, agreements and cheques issued or entered into by AHC in accordance with the relevant decisions and delegations
2. ensure that employees, in carrying out their duties, act in accordance with legislative requirements and established policies, code of conduct and delegations
3. spend monies in accordance with budgets and approved delegations
4. handle industrial disputes, grievances and union issues
5. determine matters relating to the appointment, remuneration and assessment of employees.

KEY RESPONSIBILITIES

Advice to and Relationship with Council Members

1. develop and maintain an open and engaged working relationship with the Mayor and all CMs
2. ensure a high degree of satisfaction with CMs in relation to support, guidance, service quality and accuracy of information, recommendations and related matters provided by the Acting CEO and the Executive Leadership Team
3. ensure the CMs are provided with an acceptable cycle of reporting actions that indicate the status, success and effectiveness of all operations and major projects
4. ensure that the AHC's statutory and governance obligations are met in a timely and effective manner
5. ensure CMs are provided with appropriate professional development opportunities, resources and services
6. support the Mayor in upholding the mandated Council Member Code of Conduct
7. ensure that effective communication and working relationships exist between the CMs and the administration, including attending meetings and regular and effective communication processes
8. provide professional, thorough and objective advice to CMs
9. remain up to date in regard to legislative and other major developments affecting local government and advising CMs as to the ramifications.

Leadership and Management of Councils Employees

1. lead all aspects of AHC through contemporary people management styles and techniques
2. provide a positive, safe and engaging work environment which fosters a good working relationship between all employees
3. provide approachable, visible and encouraging leadership
4. ensure decision-making processes are innovative and suitable
5. communicate decisions and all other relevant information to employees through a variety of mediums
6. ensure employees are held accountable for their work
7. provide development opportunities for employees
8. promote equitable work practices
9. promote a safe and healthy workplace
10. provide an internal procedure for managing disputes and grievances
11. support and encourage an environment where CMs and employees work together to create best practice services for the community.

Stakeholder Management and Communication

1. liaise with the community and business groups to assist in the achievement of AHC's objectives
2. develop and enhance the internal and external communications strategies for the organisation
3. initiate and respond to media so that the AHC is positioned as a progressive and responsive entity
4. ensure positive relationships are established with television, radio, press and various electronic media
5. provide input to any commonwealth, state or local government initiatives affecting the council area ensure the development of the local economy
6. effectively liaising with local government authorities, the Local Government Association and other government authorities and agencies
7. ensure effective community consultation programs are developed, conducted, analysed and incorporated in the strategic planning process
8. lobby the various arms of government and other stakeholders on behalf of the community
9. liaise with community groups to ensure economic growth for the AHC district
10. represent the AHC at appropriate events to maintain, and if necessary, enhance the AHC's public profile within the community and amongst stakeholders
11. ensure Council activities and initiatives are appropriately promoted and communicated
12. address public meetings in a positive and effective manner
13. establish and maintain quality relationships with resident and business representative groups, educational institutions, community service providers, governmental agencies, regional development boards, local business leaders, individual residents and other customers
14. promptly and diligently responding to requests for service and advice from employees and community
15. act as a champion and advocate for the AHC.

Financial and Asset Management

1. optimise the grants and subsidies available to AHC and the broader community
2. ensure annual and long term financial plans are prepared, monitored and controlled
3. oversee the annual budgeting process in close consultation with the executive management team
4. ensure monitoring and control of budgets including variance analysis and reporting to the CMs
5. ensure CMs are provided with timely and accurate financial reports
6. ensure the financial systems and processes are sound and that technology is used effectively
7. ensure long term asset management plans (community and corporate) are in place and closely monitored
8. ensure well researched business cases / project plans are prepared to support major projects.

Work, Health and Safety

1. As an Officer ensure Council complies with all relevant Work, Health and Safety legislation.

Strategic Planning

1. work with CMs to develop, implement and review the AHC Strategic Plan

2. ensure Annual Business and other relevant strategies and plans are prepared to implement AHC's Strategic Plan
3. effectively communicating the AHC vision and strategy to all key internal and external stakeholders
4. ensure the Annual Report and Annual Business Plans are completed and communicated on time
5. ensure the preparation of long term asset management and financial management plans
6. ensure positive progress towards sustainability in all council's activities
7. ensure continuous review of the progress in attaining the objectives of strategic plans.

Human Resources Management

1. create a positive organisational culture with a strong customer service focus
2. lead, develop, motivate and manage the human resources of the organisation
3. regularly review the organisational structure to ensure it meets the functional and business requirements of the AHC Strategic Plan
4. ensure recruitment is undertaken in line with contemporary and equal opportunity principles and practices
5. ensure strategies to attract and retain appropriately skill employees are in place
6. ensure professional development and training opportunities, programs, records and policies are in place
7. ensure contemporary performance management procedures are in place and remuneration reviews are regularly conducted
8. ensure that organisational development and associated plans are in place
9. ensure a positive, innovative and productive employee culture and industrial relations environment
10. be accountable for obligations in accordance with various legislation including; EEO Act, WH&S Act, commonwealth / state industrial laws and various other statutory obligations.

Operational Management, Governance & Major Projects

1. ensure regular review of policies, procedures, authorities, controls, workplace agreements, delegations, authorities and systems
2. provide a regular overview of the various operational areas of AHC
3. report to CMs and section 41 committees on a regular and formal basis regarding the progress of the AHC's operations
4. ensure major projects are completed on time and within budget and project status is regularly monitored and communicated to CMs
5. improve performance of the Council by proactively embracing best practice and continuous improvement initiatives, eg Business Excellence Framework
6. enhance AHC's systems and technology is consistent with the Strategic Plan

CAPABILITY STATEMENT

EDUCATION

Formal tertiary qualifications are considered an essential requirement as is a demonstrated commitment to ongoing professional development.

EXPERIENCE

1. Demonstrated success in a senior management position that has a similar level of complexity, size and diversity
2. A proven track record of working in an environment that delivers best practice methodology, in the way in which it operates, is considered highly desirable
3. An in-depth understanding of local government legislation is highly desirable; however an appreciation of the workings of local government achieved through dealings in either a public or private sector organisation would be highly regarded.

KEY CAPABILITY ELEMENTS

OPERATIONAL

1. able to motivate the employees to deliver high levels of performance
2. has the capacity and willingness to create organisation efficiencies
3. has a progressive leadership style which encourages a 'can do' attitude in the organisation
4. has highly developed Emotional Intelligence skills and understanding
5. encourages an environment where feedback is constructive

POLITICAL

1. able to work with CMs, State and Federal Politicians in a constructive and positive way to deliver progressive outcomes for the community
2. able to provide well researched reports discussing all options with a firm recommendation
3. able to assist in the professional development of the CMs
4. able to champion the interests of the community and promote the Adelaide Hills

STAKEHOLDERS

1. able to listen and respond empathetically to the wants and needs of the community
2. able to develop a partnership between AHC and the community
3. able to be firm but fair with all internal and external stakeholders to create positive solutions for all parties
4. able to foster and develop strong partnerships with the community, government and other key stakeholders

PERSONAL ATTRIBUTES

1. is sociable
2. is strategic thinker
3. is enthusiastic and motivated
4. has unwavering integrity and honesty
5. has highly developed communication and interpersonal skills
6. takes an innovative approach to decision making and problem solving
7. has a strong, positive, open and engaging contemporary management style
8. is entrepreneurial, has commercial business skills and can see opportunities

SCHEDULE TWO

TOTAL ANNUAL EMPLOYMENT COST PACKAGE

Annual base salary	\$(insert)
Employer superannuation contributions equal to 10.5% of the annual base salary in accordance with Clause 9.6 of this Agreement (estimated value and as varied with changes to annual base salary)	[insert]
Full and unrestricted use of a fully maintained vehicle	\$(insert)
Total*	\$(insert)

*To be agreed annually in accordance with this Agreement

SCHEDULE THREE

PERFORMANCE TARGETS

Performance Targets will be developed and agreed by both Council and the Acting CEO each year.

3. Appointment of the Acting Chief Executive Officer – Duration of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council’s decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 8.1 in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* to retain the Items in confidence as detailed in the Duration of Confidentiality Table below:

Item	Duration of Confidentiality NB: Item to be reviewed every 12 months if not released
Report	Until an Employment Agreement has been executed between both parties
Related Attachments	Until an Employment Agreement has been executed between both parties
Minutes	Until an Employment Agreement has been executed between both parties

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