

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 26 February 2019
AGENDA BUSINESS ITEM**

Item: 19.1

Originating Officer: Lynne Griffiths, Community & Cultural Development Officer

Responsible Director: David Waters, Director Community Capacity

Subject: Reconciliation Working Group – Appointment of Council Member and Community Members

For: Decision

1. Reconciliation Working Group Appointment of Council Member and Community Members - Exclusion of the Public

Moved Cr
S/- Cr

/19

1. 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:
- Chief Executive Officer, Andrew Aitken
 - Director Development and Regulatory Services, Marc Salver
 - Director Corporate Services, Terry Crackett
 - Director Community Capacity, David Waters
 - Director Infrastructure and Operations, Peter Bice
 - Executive Manager Governance and Performance, Lachlan Miller
 - Governance & Risk Coordinator, Steven Watson
 - Minute Secretary, Pam Williams & Kylie Hopkins

in order to consider Agenda Item 19.1: Reconciliation Working Group - Appointment of Council Member and Community Members in confidence.

2. 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:
- i. Section 90(3) (a) of the *Local Government 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 any person (living or dead) the disclosure of which could reasonably be expected to provide the personal details of candidates who have expressed an interest to be on the Working Group prior to acceptance by Council.

- 3. 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.**

4. Reconciliation Working Group - Appointment of Council Member and Community Members – Confidential Item

SUMMARY

At its meeting held on 28 August 2018 Council endorsed the establishment of an Adelaide Hills Region Reconciliation Working Group in partnership with Mount Barker District Council.

At the same meeting, Cr Ian Bailey was appointed to the Reconciliation Working Group for the remainder of the current term of Council. That term is now completed and a new Council elected.

The purpose of this report is to seek the appointment of a Council member to the Reconciliation Working Group and to seek endorsement of the appointment of community members to the Group.

RECOMMENDATION

Moved Cr
S/- Cr

/19

Council resolves:

1. That the report be received and noted.
2. To determine that the method of selecting a Council Member for the Reconciliation Working Group be by an indicative vote to determine the preferred person(s) utilising the process set out in this Agenda report.
3. To adjourn the Council meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote to determine the preferred person(s) for the Reconciliation Working Group role and for the meeting to resume once the results of the indicative vote have been declared.
4. That _____ be appointed to the Reconciliation Working Group for a period of two (2) years, expiring 17 December 2021.
5. That the appointment of the following community members to the Reconciliation Working Group for a period of two (2) years be endorsed:
 - a. Parry Agius
 - b. Deanne Hanchant-Nichol
 - c. Tanya Michelle
 - d. Alucius Turner
 - e. Skye Akbar
 - f. Hayley Willis
 - g. Courtney Hebbarnam
 - h. Helga Materne

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 2 Activities and opportunities to connect
Strategy 2.1 We recognise and respect Aboriginal culture and the descendants of our first people. We will implement a Reconciliation Action Plan (RAP).

Reflect Reconciliation Action Plan 2016

Action Establish a RAP Working Group
Deliverable A RAP Working Group is formed and operational to support the development of our RAP, comprising of Aboriginal people, Council Members and local residents.

Action Identify, develop and expand partnerships with agencies supporting Aboriginal people and communities across the Hills.
Deliverable A partnership with Mount Barker District Council is established to jointly recognise shared Aboriginal culture and heritage.

➤ Legal Implications

Sections 73 and 74 of the Act set out the provisions regarding Material Conflicts of Interest. Council Member membership of the Working Group may possibly constitute a personal benefit under s73 of the Act. As there are no allowance or sitting fees payable it is unlikely that a Member would receive a pecuniary benefit under s73.

Sections 75 and 75A of the Act set out the provisions regarding Actual and Perceived Conflicts of Interest. A Council Member seeking to be appointed to the Working Group may in actuality, or could be perceived by an impartial person to, have a conflict between their personal interests and the public interest that might lead to a decision that is contrary to the public interest.

Therefore, a Council Member seeking to be appointed to the Working Group could have a Material, Actual or Perceived Conflict of Interest and would need to consider declaring the interest and leave the Chamber prior to the discussion of the matter under s74(1) or s75A(2), as appropriate.

Section 90(8) of the Act is very specific that informal gatherings cannot deal with matters that would ordinarily form part of an agenda for a council or council committee meeting in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee. Council's *Informal Council and Council Committee Gatherings and Discussions Policy* created under s90(8a) of the Act sets out the provisions for the conduct of a Designated Informal Gathering.

➤ **Risk Management Implications**

The Terms of Reference for the Reconciliation Working Group prescribe the membership of the group as follows:

The RWG shall comprise of an Elected Member from each Council, who will alternate the role of Chairperson and up to eight (8) community members.

Appointing an Elected Member to the Reconciliation Working Group will assist in mitigating the risk of:

Not meeting the Terms of Reference requirement to have a Council Member on the Reconciliation Working Group, leading to damage of the Council's reputation within the Aboriginal and broader community and relationship with Mount Barker District council.

Inherent Risk	Residual Risk	Target Risk
High (3B)	Low (2D)	Low (2D)

➤ **Financial and Resource Implications**

Not Applicable.

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

Appropriate recognition of and engagement with the Aboriginal community and other key stakeholders is essential to the success of Council's RAP.

The establishment of the Reconciliation Working Group offers the opportunity to build and strengthen relationships with Peramangk and Kaurna traditional custodians, those with Aboriginal or Torres Strait Islander heritage who live, work or have a strong connection with the Adelaide Hills and non-Aboriginal stakeholders with expertise in reconciliation.

A collaborative approach with Mount Barker District Council recognises that, culturally, the Aboriginal community relate to the Adelaide Hills as a region.

The participation of an Elected Member from each Council will strengthen the collaborative relationship and add value to this forum.

➤ **Environmental Implications**

Not Applicable.

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: Not Applicable

<i>Advisory Groups:</i>	Not Applicable
<i>Administration:</i>	Executive Manager Governance and Performance
<i>Community:</i>	Not Applicable

2. BACKGROUND

At the Council meeting of 28 August 2018, Council considered the proposed Terms of Reference and the appointment of a Council Member to the Group. Following consideration of the matter, the Council resolved as follows:

Moved Cr Linda Green
S/- Cr Nathan Daniell 199/18

Council resolves:

1. That the report be received and noted.
2. To endorse a regional approach to the establishment of a Reconciliation Action Plan Working Group in partnership with Mount Barker District Council.
3. Subject to a commitment to the same effect by the Mount Barker District Council, adopt the draft Terms of Reference as contained in *Appendix 1*.
4. To authorise the Chief Executive Officer to make any minor alterations to the Terms of Reference as may be required.
5. To appoint Cr Ian Bailey to the Reconciliation Action Plan Working Group for the remainder of the current term of Council.

Carried Unanimously

In accordance with the resolution Cr Bailey's term expired at the November 2018 Council Election. The Terms of Reference for the Reconciliation Working Group prescribe the membership of the group as follows:

The RWG shall comprise of an Elected Member from each Council, who will alternate the role of Chairperson and up to eight (8) community members.

The Terms of Reference require the appointment of community to be by recommendations of a panel, endorsed by both Adelaide Hills Council and Mt Barker District Council.

3. ANALYSIS

Council has endorsed the establishment of a Reconciliation Working Group in partnership with Mount Barker District Council. Council has also endorsed the Terms of Reference for this Group (*Appendix 1*) that includes a requirement for membership to include a Council Member for each Council.

Notwithstanding that the Working Group was not able to be formed prior to the 2018 Council Election (and as a consequence has not yet met), Cr Bailey's term expired and the position is, therefore, vacant.

It is recommended that Council's appointment to the Working Group be for a period of two (2) years. This is long enough to provide some value in continuity of membership while still allowing the Council to consider another Council Member for this opportunity within the same term of Council. This also aligns with the Terms of Reference which determine that the term of office for community members will be for two (2) years.

The Mt Barker District Council is yet to appoint a Council Member to the group, however, it is expected to do so in either February or March 2019.

Indicative Voting Process for Determining Council Appointed Positions

Due to the potential implications of the Material Conflict of Interest provisions under s73 and the Actual and Perceived Conflicts of Interest under s75 (see Legal Implications above) regarding the appointment of Council Members, it is proposed that the Council adjourn the meeting for the purposes of seeking nominations for and, if necessary, conducting an indicative vote (Indicative Voting Process) to determine the preferred person(s) for the position of Working Group member.

As the Indicative Voting Process involves discussion of a matter that is, or is intended to be, part of the agenda for a formal meeting of the Council or Council Committee, it is a Designated Informal Gathering for the purposes of s90 and the *Informal Council and Council Committee Gatherings and Discussions Policy* (the Policy). As a Designated Informal Gathering, the Chief Executive will conduct the meeting in accordance with the Policy.

The proposed Indicative Vote Process below is based on the Appointments to Positions Process contained in Clause 4.7 Council's *Code of Practice for Code of Practice for Council Meeting Procedures* with modifications to suit the legislative requirements of the conflict of interest and informal gatherings provisions.

The proposed Indicative Voting Process is:

- a) Chief Executive Officer calls for self-nominations for the Working Group position.
- b) If the number of nominees is equal to or less than the number of positions (i.e. one), no election will be required. If the number of nominees is greater, an election will be necessary.
- c) The CEO (or another Council staff member) will be appointed as the Returning Officer and may enlist other Council staff to assist with the conduct of the vote and the count.
- d) The method of voting will be by secret ballot utilising the preferential counting system.
- e) Each Council Member (including the Mayor) shall have one vote.
- f) Ballot papers will be provided to each Council Member.
- g) The nominee's names will be drawn to determine the order on the ballot paper.
- h) Each nominee will have two (2) minutes to speak to the Gathering in support of the candidacy. The speaking order will be as listed on the ballot paper.
- i) Completed ballot papers will be collected by the Returning Officer and the count will be undertaken in a separate room with an observer (another Council staff member) present.
- j) In the event of a tie, the result will be decided by the Returning Officer drawing lots, the candidate first drawn being the candidate excluded.
- k) After all votes have been counted, publicly announce the final votes cast for each candidate and formally declare the result of the election (i.e. the preferred person).
- l) The ballot papers will be shredded.

Proposed Chronology of Events for Appointing Council Member to Working Group

The mechanics are relatively complicated due to the legislative provisions regarding conflict of interest and informal gatherings.

The following chronology has been based on guidance from the LGA regarding the election of Council Members to Committee and Presiding Member positions:

- I. Council will then consider the process that it will use to choose the preferred persons for the respective Advisory Group positions. Council would give effect to this by dealing with Recommendation 2 (or a variant) at this time.
- II. Having decided the method, Council will then have to adjourn the meeting to enable the process to be undertaken. Council would give effect to this by dealing with Recommendation 3 (or a variant) at this time.
- III. Once the Indicative Voting Process has been completed the Council meeting will resume in accordance with the previous resolution.

Upon resumption, the Council Members who nominated for the Working Group role would be advised to consider their obligations to declare a Material, Actual or Perceived Conflict of Interest as appropriate.

- IV. Council can then resolve for the preferred person to be appointed as the Working Group members for an identified term. Council would give effect to this by dealing with Recommendation 4 (or a variant) at this time.

Once this matter is resolved, the Members who have declared Conflicts of Interest and left the Chamber can return to the Chamber.

Appointment of Community Members to Working Group

A panel of Community Development staff from both councils has progressed with the evaluation of expressions of interest from community members. This involved consideration of the Expressions of Interest in relation to the selection process outlined in the Terms of Reference. A high priority was given to people who:

- Are Peramangk or Kaurna as traditional custodians of the Adelaide Hills Region
- Have Aboriginal or Torres Strait Islander heritage and identify as such and live, work or have a strong connection to the Adelaide Hills Region
- Are not Aboriginal or Torres Strait Islander but have experience or expertise deemed beneficial to the role and function of the group.

A total of 18 expressions of interest were received, including seven from people identifying as Aboriginal or Torres Strait Islander. The panel recommends the following appointments be endorsed:

Name	Identifies as Aboriginal	Background
Parry Agius	Yes	Facilitator and strategic advisor with significant experience in the area of Reconciliation and the development of Reconciliation Action Plans
Deanne Hanchant-Nichol	Yes	Member of UniSA RAP Secretariat and Steering Committee and has advised many other organisations on the development of RAPs
Tanya Michelle	Yes	Aboriginal Social Worker with Stolen Generation survivors across Australia.
Alucius Turner	Yes	Many years' experience working for Aboriginal and Torres Strait Islander communities.
Skye Akbar	Yes	Research Fellow at UniSA with a solid understanding of the context of Aboriginal business and economic development.
Hayley Willis	Yes	Works with Aboriginal school workers, has been involved in organising Reconciliation events in the Adelaide Hills. Organiser of the Just Too Deadly Awards
Courtney Hebbornam	Yes	Law student. Peramangk person.
Helga Materne	No	Member of Reconciliation Action Group for Adelaide Hills Community Health Service and Mt Barker Waldorf School. Works with Aboriginal families as an Allied Health Assistant.

Mt Barker District Council will need to consider and make the same endorsement for the appointments to have effect. The above recommendation includes all those expressing interest who identified as Aboriginal or Torres Strait Islander.

4. OPTIONS

Council has the following options:

- I. That Council appoint a Council Member to the Reconciliation Working Group and endorse the appointments of community members (Recommended)
- II. That Council does not have Elected Member representation on the Reconciliation Working Group (Not Recommended) and/or makes other decisions in relation to the community members.

5. APPENDIX

- (1) Reconciliation Working Group Terms of Reference.

Appendix 1

Reconciliation Working Group Terms of Reference



MOUNT BARKER
DISTRICT COUNCIL

Adelaide Hills Region Reconciliation Working Group Terms of Reference

BACKGROUND

At its meeting held on 23 August 2016, Adelaide Hills Council (AHC) formalised its commitment to Reconciliation and adopted a Reflect Reconciliation Action Plan (RAP). Mount Barker District Council (MBDC) is currently developing a Reflect RAP. Both Councils are committed to working in collaboration with Aboriginal and Torres Strait Islander members of our community to further progress this process.

Forming a Working Group to advise on reconciliation at a regional level encompassing both Adelaide Hills Council (AHC) and Mount Barker District Council (MBDC) areas is deemed appropriate for the following reasons:

- The Adelaide Hills is recognised as a region
- This approach fosters a sharing of learnings, initiatives and resources for the region

ROLE

The role of the Reconciliation Working Group (RWG) is to:

- assist AHC and MBDC with the implementation of current RAPs
- assist AHC and MBDC with the development of next level RAPs
- advise Council staff on matters that impact the local Aboriginal and Torres Strait Islander Community

FUNCTION

The RWG functions as an advice giving body, with individuals able to provide advice freely and as requested. Advice may be sought through meetings or by other means.

The RWG has no decision making power or authority to act in its own right. For advice on specific matters a consensus will be sought, however, the views of all individual members will be taken into consideration.

The RWG will be guided by a Code of Conduct to be established by the group as a first action.

STRUCTURE

The RWG will run for a 2year (24month) period in the first instance, this may be extended to reflect the RAP process. The Group will meet a minimum of quarterly.

MEMBERSHIP

The RWG shall comprise of an Elected Member from each Council, who will alternate the role of Chairperson and up to eight (8) community members.

The RWG will be supported by the AHC Community and Cultural Development Officer, MBDC Senior Community Development Officer and other Council staff as needed.

SELECTION

Nomination for the RWG will be by Expression of Interest. Advertisements will be placed in the Weekender Herald, Courier and also the Koori Mail and Adelaide Advertiser.

Whilst appointment will be at the discretion of the Chief Executive Officers of AHC and MBDC a high priority will be given to people who:

- are Peramangk or Kurna as traditional custodians of the Adelaide Hills Region
- have Aboriginal or Torres Strait Islander heritage and identify as such and live, work or have a strong connection to the Adelaide Hills Region
- are not Aboriginal or Torres Strait Islander but have experience or expertise deemed beneficial to the role and function of the group.

The selection process for community members will be conducted by a panel comprising two representatives of each Council being staff and / or Elected Members. Recommendations for community membership of the RWG will be made to each Council and appointment will be made upon both Councils endorsing each applicant by resolution. The term of office for community members on the RWG will be two (2) years or such other time as resolved by Council at the time of appointment.

An Elected Member from each Council will be appointed to the RWG by resolution of the respective Council. The term of office for Elected Members will as resolved by the respective Council.

STATUS OF MEMBERS

Community members of the RWG have status as volunteers of the Councils and are insured in accordance with the Volunteer Insurance Policy (s) that are part of each Council's membership of the Mutual Liability Scheme.

Community members are not indemnified by the Councils against any liability arising as a result of their actions or omissions related to their involvement with the RWG or undertaken in connection with their role as a member of the RWG.

Elected Members' involvement with the RWG constitutes the exercise of official functions and duties of office of an elected member under the *Local Government Act 1999*. Elected Members are, therefore, protected from civil liability in their role as RRG members pursuant to section 39 of the *Local Government Act 1999*.

MEETINGS

The Chairperson will preside over meetings of the RWG. If the Chairperson is not present at a meeting, the other Elected Member will chair the meeting. If neither is present, the RWG will appoint one of its members as the acting presiding member.

Meeting procedure will be as determined by the Chairperson in consultation with the RWG.

Topics for the agenda should be forwarded to the designated member seven (7) days prior to the scheduled meeting date.

The Agenda will be distributed to members no later than five (5) days prior to the next meeting date.

Members of the RWG will receive minutes and agendas by email unless other arrangements are agreed.

Minutes of meetings will be circulated to members no later than 5 working days following a meeting.

REIMBURSEMENT OF EXPENSES

Community members will be paid a travel allowance for the use of their private vehicle to travel to and from RWG meetings with the said allowance being equal to the per kilometre rate prescribed for the purposes of calculating deductions for car expenses issued from time to time by the Australian Tax Office. Reimbursable journeys should be by the shortest or most practicable route from the place of residence or workplace.

Costs incurred by RWG community members for travel to and from RWG meetings on public transport will also be reimbursed. Costs incurred by RWG community members for travel to and from RWG meetings by taxi or other form of paid travel may be reimbursed subject to the travel by these means being pre-approved by AHC & DCMB staff prior to those costs being incurred.

If RWG community members incur out of pocket expenses as a result of their attendance at meetings, these costs may be reimbursed subject to these costs being pre-approved by AHC & DCMB staff prior to those costs being incurred.

Costs incurred without pre-approval by AHC & DCMB staff may not be reimbursed.

5. Reconciliation Working Group Appointment of Council Member and Community Members - Period of Confidentiality

That having considered at 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 appointments have been confirmed, but not longer than 3 months.

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