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Part**3.1 RECRUITMENT OF CHIEF EXECUTIVE OFFICER****Responsible officer:** Campbell Michell, Councillor

- Attachments:**
1. Chief Executive Officer recommendation report from McArthur.
  2. Lachlan Miller's application, including cover letter, resume and panel interview questions.
  3. Qualified Independent Persons report as prepared by Tracy Riddle, Kelledy Jones Lawyers.
  4. Draft Fixed Term Employment Agreement between Council and Lachlan Miller

<b>Section under the Act</b>	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 90(2) & (3) of the <i>Local Government Act 1999</i> .
<b>Sub-clause and Reason:</b>	(a) - information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

**Executive Summary**

McArthur was appointed to assist Council with the recruitment of the Chief Executive Officer. Attached as appendix one is the Chief Executive Officer recommendation report from McArthur.

The role was advertised on Friday 2 June 2023 and subsequently readvertised after changes to the CEO remuneration banding was announced and wider consideration was given to candidates that may not necessarily be able to live in the region on a full-time basis.

The recommended candidate for the Chief Executive Officer position, Lachlan Miller has been invited to attend the meeting, of which Mr Miller has accepted, to meet personally with the Council and for Council to have the opportunity to ask Mr Miller further questions, prior to the official appointment to the role of Chief Executive Officer for the Southern Mallee District Council.

Tracy Riddle, Kelledy Jones Lawyers will also be in attendance, via zoom as the qualified independent person as part of the Chief Executive Officer recruitment process.

**RECOMMENDATION**

**That the Southern Mallee District Council appoint Lachlan Miller as the Chief Executive Officer for a term of four years.**

**RECOMMENDATION**

**That the Chief Executive Officer's total remuneration package be of no greater than \$265,000.**

**RECOMMENDATION.**

**That Cr Campbell Michell be delegated with the authority to negotiate the remuneration level within the limit set by Council and the remuneration tribunal band and execute the employment agreement on behalf of the Southern Mallee District Council.**

**RECOMMENDATION.**

**That Tracy Riddle (Kelledy Jones Lawyers) be delegated with the task of preparing the employment agreement and overseeing the execution of the agreement.**

**Context**

There were 40 applications received and of these, ten applicants were under consideration.

McArthur undertook a shortlisting process and from this, recommended 3 candidates present to Council for consideration for the role.

The interview panel consisted of Steve Nolis (McArthur), Cr Campbell Michell (Southern Mallee District Council), Cr Chris Mead (Southern Mallee District Council) and Cr Luke Kennedy (Southern Mallee District Council). Tracy Riddle (Kelledy Jones Lawyers) oversaw the recruitment process and attended the panel interviews as an observer.

After interviewing the three shortlisted candidates, the interview panel was unanimous that Lachlan Miller be recommended to Council as the Chief Executive Officer. Attached as appendix two is Lachlan Miller's application, including cover letter, resume and panel interview questions.

Lachlan had a remuneration expectation of \$265,000 (total all-inclusive package) which was within the Level 7 CEO remuneration banding. The package would consist of cash, super, car, rent assistance for the Council home and FBT). Council will offer Lachlan the tenancy of the Council owned house in Pinnaroo.

Attached as appendix three is the Qualified Independent Person report as prepared by Tracy Riddle, Kelledy Jones Lawyers and appendix four is the draft fixed term employment contract between Council and Lachlan Miller.

**Issues**

Not applicable.

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## CHIEF EXECUTIVE OFFICER

McArthur was Appointed to assist Council with the recruitment of the Chief Executive Officer.

The role was advertised on Friday 2 June 2023 and subsequently readvertised after changes to the CEO remuneration banding was announced and wider consideration was given to candidates that may not necessarily be able to live in the region on a full-time basis.

There were 40 applications received and of these, ten applicants were under consideration. McArthur undertook a shortlisting process and from this, recommended 3 candidates present to Council for consideration for the role.

The interview panel consisted of Steve Nolis (McArthur), Cr Campbell Michell (Southern Mallee Council), Cr Chris Mead (Southern Mallee Council) and Cr Luke Kennedy (Southern Mallee Council). Tracy Riddell (Kelledy Jones Lawyers) oversaw the recruitment process and attended the panel interviews as an observer.

After interviewing the three shortlisted candidates, the interview panel was unanimous that Lachlan Miller be recommended to Council as the Chief Executive Officer.

Lachlan had a remuneration expectation of \$265,000 (total all-inclusive package) which was within the Level 7 CEO remuneration banding. The package would consist of cash, super, car, rent assistance for the Council home and FBT). Council will offer Lachlan the tenancy of the Council owned house in Pinnaroo.

It is recommended that Council endorse the appointment of Lachlan Miller as Chief Executive Officer with a total remuneration package of no greater than \$265,000 and that Cr Campbell Michell be delegated with the authority to execute the employment agreement on behalf of Council. It is further recommended that Tracey Riddell (Kelledy Jones Lawyers) be delegated with the task of preparing the employment agreement and overseeing the execution of the agreement.

*McArthur*

Interview 3  
Lachlan Miller

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## APPLICATION DOCUMENTS AS PRESENTED BY THE CANDIDATE – LACHLAN MILLER

### COVER LETTER

Dear Steve

**Expression of Interest – Chief Executive Officer, Southern Mallee District Council (Ref: 145688)**

Please accept this covering letter and my attached curriculum vitae as my application for the Southern Mallee District Council (SMDC) CEO role.

I would like to thank you for the comprehensive Candidate Information Pack and for the opportunity to discuss the role with you personally.

From visiting the District following my return from overseas last week, from analysing the Council's plans, strategies and meeting agendas and from broader research of the Southern Mallee region, I consider the role to be an exciting opportunity that I am keen to apply my extensive local government skills and experience with a viewing to competently and diligently serving the Southern Mallee community.

As set out in my curriculum vitae, I possess 13 years of executive local government experience in the roles of Chief Executive Officer of the District Council of Streaky Bay for 3.5 years and as the Executive Manager Governance & Performance of the Adelaide Hills Council for the last 10 years. My local government experience is supplemented by executive experience in both the financial services and consulting industries.

The advertisement for the SMDC CEO role, as contained in the Candidate Information Pack and elaborated in the Position Description, neatly summarises the key responsibilities of the CEO role and it is against these that I will endeavour to set out my skills, experience and convey my enthusiasm for the local government sector and for the SMDC role.

#### **Lead and manage the team in the delivery of Council services**

As a process review specialist (from my internal audit days) the articulation of the range and level of services provided by Streaky Bay Council was an area of particular focus. Progressively, in collaboration with the work teams, I examined each of the services with a focus on the appropriateness, effectiveness and efficiency of each service. This included both inhouse and outsourced services and, in a number of cases, services were ceased or significantly reconfigured to better meet the Council's strategic intent and the community's expectations.

At Adelaide Hills, I manage the service review function and developed the service review framework and methodologies that are applied to key services.

#### **Comply with the governance and legislated requirements of council**

From my many years as a Governance Manager within the sector, I possess a comprehensive understanding of the legislative requirements, powers and duties that apply to councils across all pieces of legislation. I have expertise in identifying these requirements and obligations and creating processes to ensure that responsible officers are aware of their obligations and that systems are in place to facilitate and monitor compliance.





In the context of SMDC, my initial research has identified that there are several significant (non-routine) governance obligations to be discharged in the near future, these include the review of the SMDC Strategic Plan by November 2024, the conduct of a representation review by April 2025, and a review by ESCOSA under the Local Government Rates Oversight Advice Scheme by November 2025. Each of these is a significant undertaking and will require the leadership of a CEO with considerable expertise in these areas. It is my strong belief that I have the skills and knowledge to guide the Council through these processes.

#### **Review and implementation of the strategic/business/asset management plans**

As the Streaky Bay CEO, I developed the Council's Strategic Management Plan 2013-2022 in extensive collaboration and consultation with the Elected Members and the District community. During my tenure, I also commissioned the development of Council's first Long Term Finance Plan (LTFP) and Asset Management Plan (AMP) to provide long term direction and financial sustainability to the Council's operations.

As CEO and then in my current role as Executive Manager Governance & Performance I am responsible for the development of Annual Business Plans (ABP) to provide tactical direction and financial capacity to the achievement of the Council's strategic intent and the community's aspirations.

Additionally in my current role I have established a quarterly reporting regime that provides the Elected Members and the community with a comprehensive status report of the achievements, challenges and issues in relation to the delivery of the ABP operating and capital projects, KPIs and financial performance.

In both roles I have been responsible for the development of Annual Reports and Grant Commission Returns.

#### **Asset and infrastructure management**

As identified above, I have been responsible for the development of Annual Business Plans and budgets (capital and operating) and the monitoring and reporting on the implementation of these to Council and community.

While not a qualified practitioner, I have a working knowledge of asset management principles and practices and have considerable experience in the negotiation and management of contracts for the delivery of infrastructure projects.

#### **Financial sustainability and commercial assets**

Again as identified above, in my executive roles I have developed a comprehensive understanding and skills in relation to public sector budgeting and financial sustainability. In both my roles I have driven or been part of the team that has improved the financial performance of the organisation, diversified the income base through commercial and grant sources, and reviewed and improved the cost drivers of service provision.

At Streaky Bay I was instrumental in the management of Council's commercial assets which included a caravan park, camping facilities and property rentals. This involved the attraction, negotiation and monitoring of commercial contracts.

#### **Provide sound advice and reports to the Mayor and Elected Members**

My curriculum vitae sets out my nearly 20 years of professional experience in providing governance, strategy and performance advice to Councils, Boards and Management.



In my more recent roles, one of my primary responsibilities has been to act as a knowledgeable and trusted adviser both orally and in writing to Elected Members and Committee Independent Members.

As a Governance Manager I have, unfortunately, developed considerable expertise in dealing with Elected Member conduct matters. Prevention is always better than the cure and I am alert to potential issues and I develop appropriate relationships with Members to avert problems before they manifest. However if they do, I am adept at dealing with them effectively and at minimal cost to the Council and the community.

While I am proud of all of my skill set, I believe that my governance advisory skills are of the highest calibre across the local government sector. I act with the upmost integrity and always prioritising the interests of the Council. My advice is one of the reasons why the Adelaide Hills Council has enjoyed such a positive and controversy free reputation during my tenure.

#### **Media, marketing and communications**

Councils not only need to be performing and acting in the best interests of the community, but they need to be seen to be doing so. As such, I have always prioritised the importance of community engagement and information provision.

At Streaky Bay I established and maintained excellent relations with the local print (West Coast Sentinel) and radio (FlowFM and ABC) media. This investment enabled a productive vehicle for communicating Council's intent and achievements.

During this time, I also lead a rebranding of the Council to clearly differentiate the new (post 2010 election) Council from its predecessors. Through the prudent use of inhouse resources and community input, the rebranding exercise was very costeffective, yet impactful. I note that the branding is still in place some 12 years later.

In my role with Adelaide Hills, I have earned the trust and confidence of the elected body and the CEO to be the principal spokesperson on all technical governance issues. Again, I have established good relations with the local media through being available, knowledgeable and providing content that is meaningful to their target audience.

Internal communications to the workforce is equally important and my style is to make use of internal communication channels, staff meetings, etc to keep the workforce aware of matters that impact on them and to facilitate improved service provision to customers.

#### **Community and stakeholder engagement**

As identified above, engagement with the community is a fundamental role of local government. At Streaky Bay we had a very active engagement approach and often consulted on matters over and above those required by legislation. Additionally, we ran community forums in each township on a quarterly basis to communicate the status of Council activities but equally important to hear the voices of the community. To this end I maintained an open-door policy and met with many community members and organisations to discuss matters of shared importance.

Stakeholder relationship management is something that I have placed considerable emphasis on in my executive roles and I carefully plan my engagement strategies to maximise outcomes for the Council. These stakeholders have included Federal and State Elected Members, senior public servants, business owners and operators, local government bodies, community associations and interest groups.





### **Economic development**

Economic development has increasingly become an important role for Councils to support and enhance the prosperity of their regions. In the Streaky Bay context we recognised tourism as an emerging economic driver, with agriculture and aquaculture as the main constant contributors.

In relation to tourism, Council operated a tourism information centre and established extensive networks within the sector to grow and promote tourism product within the region. Council also ran a number of events to promote tourism within the region. Further Council worked closely with property owners and developers to ensure an adequate land supply for holiday homes, accommodation and associated facilities.

In relation to agriculture, the importance of maintaining an appropriate road network and fire mitigation were the key areas of focus for the Council to support the sector.

For aquaculture, Council was actively involved in the development of the Marine Parks under the then Labor Government. Through extensive community engagement and a cooperative approach with the Environment Department and particularly Minister Caica, Streaky Bay was able to secure excellent outcomes to balance the needs of commercial fishers and oyster growers, tourists and the environment. These outcomes were the envy of many councils on the Eyre Peninsula.

Finally, a region's economic prosperity is closely linked to the range of medial and support services available. Again, through targeted stakeholder engagement, Council was able to secure grant funding to increase the local consulting rooms and therefore the capacity for visiting health professionals to consult within the community.

### **Advocacy for Council and the community**

While Councils play an important role in relation to direct service provision within their community, there are many elements that are beyond the capacity of the Council and require advocacy to other tiers of government.

As discussed above, through effective stakeholder management and engagement planning, I was able to advocate effectively for the Streaky Bay community in matters such as marine parks, health services provision, utilities, transport, communications (mobile phone coverage and digital television), feral animal management, law and order, and legislative reform.

So far my application has detailed my skill set and experience in the CEO role, it would be remiss to not talk about myself to enable the Selection Panel to get a sense of the person who will lead their Administration and to deliver outcomes on their behalf.

My current and former employers would describe me as a diligent, committed and strategic individual with the utmost integrity and honesty. I strive for the collective good and not for self-interest and I put the needs of the organisation and the community first.

I describe my leadership style as authentic, empathetic and collaborative. I have a passion to develop people and to make organisations run effectively. I am serious, yet affable, and have a high level of emotional intelligence.

I have considerable experience in providing training and presentations to Council and the community and have been complimented on my accessible and genuine style and my occasionally flashes of humour.

From my research to date, the Southern Mallee District Council has much to be proud of and

*McArthur*

I am confident that I can contribute to its ongoing success, to enable it to withstand the challenges of the future and ultimately to serve, nurture, and develop the community.

I would be delighted and honoured to serve the Elected Members, the Administration, and the regional community as the next CEO of the Southern Mallee District Council.

I look forward to discussion my application with you and the Selection Panel in more detail.

Yours sincerely

Lachlan Miller

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## RESUME

### Professional Experience

#### Leadership & Management

Executive leadership as Chief Executive and member of Executive Leadership Team of the strategy, stakeholder relations, finance, infrastructure, human resources, regulatory services, communications, development, property, procurement and contract management, WH&S, and customer service functions in local government.

#### Governance

Development, implementation and review of governance structures and frameworks including charters/constitutions, training and development, policy frameworks, internal and external reviews, delegation structures, complaints management, civic and public events, and election processes.

Secretariat for Boards and Audit, Investment, Risk Management & Remuneration Committees across the local government and financial services industries. Extensive provision of advice and support to Board and Committee members.

Knowledge of governance and financial management legislation, standards and duties. Liaison with regulatory and public integrity agencies.

#### Community and Economic Development

Attraction of state and federal grant funding for the development of community recreation and commercial facilities.

Collaboration with stakeholder groups to strengthen community governance structures, resilience, and outcomes.

#### Strategic Planning and Performance Monitoring

Development and implementation of strategic and annual business plans, strategies and policies in consultation with the Elected Members and the community.

Establishment of performance monitoring and reporting systems and service review & improvement methodologies.

#### Professional Qualifications & Affiliations

- Bachelor of Business (Human Resource Management & Public Administration)
- Graduate Certificate in Internal Audit
- Graduate Certificate in Risk Management
- Master of Commerce (Accounting & Information Systems)
- AICD Company Director's Course
- Member, Australian Institute of Company Directors
- Past Certified Internal Auditor (CIA) and Certified Practising Risk Manager (CPRM)

#### Board Membership

Independent Member, Governance Advisory Panel, Adelaide Plains Council

Previous Board Membership:

- Southern & Hills Local Government Association
- Eastern Waste Management Authority
- Adelaide Hills Region Waste Management Authority
- Gawler River Floodplain Management Authority Board
- Eyre Peninsula Local Government Association
- Streaky Bay Area School Governing Council



### Employment History

**Position Title** Executive Manager Governance & Performance  
**Organisation** Adelaide Hills Council  
**Dates** November 2013 - present  
**Job Role** Lead the governance, risk management, audit, compliance, insurance, business continuity, public integrity, election, service review, corporate planning and performance reporting functions.  
  
 Provide advice and internal consultancy services to Council, Committees, board members, management and staff on portfolio matters.  
  
 Represent Council on governance matters with state and local government agencies, integrity bodies, community and media.

#### Acting arrangements:

- Chief Executive Officer (short-term leave coverage)
- Director Strategy and Development (9 months)
- Director Corporate Services (3 months)

**Position Title** Chief Executive Officer  
**Organisation** District Council of Streaky Bay  
**Dates** June 2010 – November 2013  
**Job Role** Accountable to the Elected Members and Community for the leadership and management of Council's operations and the achievement of plans, strategies, financial performance, and governance obligations.

#### Key responsibility areas:

- Advice to and Relationship with Council Members
- Leadership and Management of Employees and Volunteers
- Community and Stakeholder Engagement and Advocacy
- Financial and Asset Management Plans
- Growth and Economic Development
- Strategic Planning and Performance Management
- Governance and Legislative Compliance
- Service Planning, Delivery and Evaluation

**Position Title** Head of Risk & Compliance/Governance  
**Organisation** Territory Insurance Office (TIO), Darwin  
**Dates** September 2006 – May 2010  
**Job Role** Managed the strategic planning and reporting processes and the government and regulatory relations functions. Coordinated the secretariat function for the TIO Board and the Audit, Risk Management, Investment & Remuneration Committees.

Managed TIO's risk management, assurance and compliance, business continuity, complaints handling, and corporate insurance programs.

**Position Title** Account Manager  
**Organisation** Enterprise Risk Services, Deloitte, Adelaide  
**Dates** June 2004 – September 2006  
**Job Role** Managed consultancy teams for the provision of corporate governance, performance management, risk management, compliance, business continuity, fraud prevention, probity and internal audit services to a portfolio of private and public sector clients.

*McArthur*

**Immunisation Status**

COVID -19 – fully vaccinated including 5th dose.

Influenza – fully vaccinated including 2023 dose.

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### Panel Interview Questions

Southern Mallee District Council - Chief Executive Officer Recruitment

Applicant name: **Lachlan Miller**

Selection Criteria	Notes
<b>1- Previous Work History &amp; Motivation in applying for this role</b>	
<ul style="list-style-type: none"><li>- Tell us about your prior work history. What is your motivation in applying for this role?</li>          <li>- What do you know about the Southern Mallee District Council?</li></ul>	<p style="text-align: center; opacity: 0.3; font-size: 48px; transform: rotate(-30deg);">CONFIDENTIAL</p>

*McArthur*

Selection Criteria	Notes	Scoring
<b>2 – Leadership/Management</b>		
<ul style="list-style-type: none"><li>- What are your core principles in leading and managing people – please provide examples that demonstrate this.</li></ul>		

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*McArthur*

Selection Criteria	Notes	Scoring
<b>3 - Community</b>		
<ul style="list-style-type: none"><li>- How do you intend to connect with the local Community</li></ul>		

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*McArthur*

Selection Criteria	Notes	Scoring
<b>6- Relationship with Mayor and Elected Members</b>		
<ul style="list-style-type: none"><li>- Tell me about past experiences in reporting up to a Mayor / Elected Members or a Chair / Board?</li>          <li>- What do you see as your main responsibility in this relationship?</li></ul>		

*McArthur*

Selection Criteria	Notes	Scoring
<b>7- External Stakeholders and Networks</b>		
<ul style="list-style-type: none"> <li>- Who do you see as the key Internal and external stakeholders for the Southern Mallee District Council and why?</li>   <li>- How networked are you within State and Federal Government?</li>   <li>- How would you best manage your relationship with the media?</li> </ul>		

*McArthur*

Selection Criteria	Notes	Scoring
<b>8 – Problem Solving/Adaptability</b>		
<ul style="list-style-type: none"><li>- Can you give us an example of your problem-solving skills and your ability to adapt to an unforeseen situation?</li></ul>		

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*McArthur*

Selection Criteria	Notes	Scoring
9 – Culture		
	<ul style="list-style-type: none"><li>- Describe your experience in creating and sustaining a productive and positive workplace culture</li></ul>	

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*McArthur*

Selection Criteria	Notes	Scoring
<b>10 – Corporate Governance, Compliance and Risk Management</b>		
<ul style="list-style-type: none"><li>- How do you go about ensuring sound Corporate Governance, Compliance and Risk Management in an organization?</li></ul>		

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*McArthur*

Closing Questions	Notes
<b>Expected Longevity</b>	
<ul style="list-style-type: none"> <li>- How long do you see yourself in this role?</li>   <li>- What is your salary expectation?</li>   <li>- What notice period would you have to give your current employer?</li> </ul>	
<b>Candidate Questions</b>	



**FIXED TERM EMPLOYMENT AGREEMENT**  
**(Four Years)**

BETWEEN

**Southern Mallee District Council**

**(ABN: 26 208 717 728)**

**(the Council)**

and

**Lachlan Miller**

**(the Chief Executive Officer)**

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**EMPLOYMENT AGREEMENT****BETWEEN**

The Southern Mallee District Council (ABN 26 208 717 728) of Day St PINNAROO South Australia, 5304 in the State of South Australia (the **Council**)

**AND**

**Lachlan Miller** of 7 Hoffman Court STRATHALBYN SA 5255 in the State of South Australia (the **Chief Executive Officer**).

**INTRODUCTION**

- A. The Council is a body corporate constituted by proclamation pursuant to the *Local Government Act 1999* (the **Act**).
- B. The Council has agreed to employ Lachlan Miller as its Chief Executive Officer for the fixed term as specified in this Agreement, to perform the duties of that position in accordance with the Act and as agreed and directed by the Council.
- C. The Council resolved on [DATE] to appoint Lachlan Miller as its Chief Executive Officer pursuant to section 96 of the Act, and that a formal employment contract (this **Agreement**) setting out the terms of engagement be entered into between the Chief Executive Officer and the Council.
- D. The Parties agree that this Agreement encompasses all terms and conditions of the employment to the exclusion of any and all other agreements or understandings.

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Words importing the singular include the plural and vice-versa and words importing any gender include all genders.
- 1.2 Any reference to a Statute, ordinance, code or other law, includes all Regulations and other instruments and all consolidations, amendments, re-enactments or replacements.
- 1.3 In this Agreement, unless expressed or implied to the contrary:

**Act** means the *Local Government Act 1999*;

**Agreement** means this Employment Agreement;

**Award** means the South Australian Municipal Salaried Officers Award;

**Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Council under this Agreement;

**Commencement Date** means the date upon which this Agreement commences in accordance with clause 5.1 of this Agreement;

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

**Council** means the body corporate which is the Southern Mallee District Council, as constituted under the Act;

**Duties** means the responsibilities, duties and functions of the Chief Executive Officer specified in this Agreement and in **Schedule 1** to this Agreement and such other duties as may be agreed between the Council and the Chief Executive Officer from time to time;

**Expiry Date** means the date upon which this Agreement expires in accordance with clause 5.1 hereof;

**Immediate family or household member** means the Chief Executive Officer's spouse or domestic partner, child, parent, grandchild, grandparent or sibling, or the child, parent, grandchild, grandparent or sibling of the Chief Executive Officer's spouse or domestic partner;

**Parties** means the Council and the Chief Executive Officer;

**Performance Criteria** means the criteria against which the Chief Executive Officer's performance is to be assessed (under the relevant Performance Review Process) as set out in clause 11 of this Agreement and as agreed between the Parties in accordance with the process set out in **Schedule 3** to this Agreement;

**Performance Review Process** means the system by which the Chief Executive Officer's performance is assessed in accordance with this Agreement;

**Total Employment Cost Package** means the monetary and non-monetary entitlements of the Chief Executive Officer specified in **Schedule 2** to this Agreement;

**Term** means the fixed term period of employment specified in clause 5.1.

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## 2. INTRODUCTION AND SCHEDULES

The Introduction and Schedules 1-3 are correct and form part of this Agreement.

## 3. APPLICATION OF OTHER INDUSTRIAL INSTRUMENTS

3.1 This Agreement shall be read in conjunction with the Act and the *Fair Work Act 1994* (SA).

3.2 This Agreement shall not be read in conjunction with the Award, or any other industrial agreement, such as an Enterprise Agreement. This Agreement is intended to stand alone in terms of the terms and conditions agreed between the Parties.

## 4. PROBATIONARY PERIOD

4.1 The Parties agree that the Chief Executive Officer's employment is subject to a probationary period of six (6) months from the Commencement Date.

4.2 The Council must review the Chief Executive Officer's performance in the position prior to the end of the probationary period and record its assessment in writing. A copy of that written assessment is to be provided to the Chief Executive Officer.

4.3 If the Council determines in its written assessment that the Chief Executive Officer's performance has not met expectations and requires improvement, the Council may determine to extend the probationary period for a period of up to three (3) months.

4.4 At any time during the probationary period (including any extended period as determined pursuant to clause 4.3), either Party may terminate the employment by giving no less than two (2) weeks' notice to the other Party.

4.5 If the Council terminates the employment of the Chief Executive Officer during the probationary period in accordance with clause 4.4, it may elect to pay the monetary equivalent to the Chief Executive Officer in lieu of the notice period.

4.6 The Parties agree that the probationary period (including any extended period as determined pursuant to clause 4.3) and the provisions of this clause are fair and reasonable.

## 5. TERM OF EMPLOYMENT

5.1 The Agreement commences on [DATE TBC] and will continue for a fixed term of four (4) years concluding, subject to clause 5.2 of this Agreement, at 11:59 PM on [EXPIRY].

5.2 The Parties agree that the appointment and employment of the Chief Executive Officer will terminate on the Expiry Date unless:

5.2.1 this Agreement is terminated prior to the Expiry Date pursuant to clause 16 of this Agreement, in which case the Chief Executive Officer's appointment and employment will terminate at that time, or

5.2.2 the Chief Executive Officer is offered and accepts a further contract of employment pursuant to clause 6 of this Agreement.

- 5.3 The Parties agree that, in consideration of the terms and conditions of this Agreement, the further employment of the Chief Executive Officer will not be ongoing but will continue only for the Term or as extended (if at all) in accordance with clause 6 of this Agreement.

## 6. FURTHER EMPLOYMENT AGREEMENT

- 6.1 The Chief Executive Officer will notify the Council in writing at least six (6) months before the Expiry Date of the Chief Executive Officer's intention whether to seek a further term of employment.
- 6.2 If the Council determines to grant a further term of employment (at its absolute discretion and with regard to the Chief Executive Officer achieving the Performance Criteria throughout the Term of this Agreement), a new contract of employment will be offered for the length of time and on terms and conditions then determined by the Council.
- 6.3 The Parties acknowledge and agree that the terms of this Agreement do not contain or create an option or expectation for extension (or renewal) of the employment, or an offer of a further employment agreement.
- 6.4 The Council will notify the Chief Executive Officer in writing at least six (6) months before the Expiry Date whether or not it is proposing to offer a further employment agreement to the Chief Executive Officer.
- 6.5 Where a further employment agreement is entered into between the Parties, the Chief Executive Officer will be deemed to have continuity of service with the Council for the purpose of determining accrued benefits under the further Agreement.

## 7. REQUIREMENTS OF POSITION

- 7.1 The Chief Executive Officer must perform the Duties as:
- 7.1.1 set out in the Position Description at **Schedule 1** to this Agreement and as varied from time to time by agreement between the Parties;
  - 7.1.2 set out in the policies of the Council as adopted by the Council from time to time during the term of the employment;
  - 7.1.3 imposed by the Act or in any other statute and/or enabling regulations relevant to the position of the Chief Executive Officer; and
  - 7.1.4 contained in clause 8 of this Agreement.
- 7.2 The Chief Executive Officer is accountable to the Council and is subject to the direction and control of the Council at all times.

## 8. DUTIES AND RESPONSIBILITIES

- 8.1 The Chief Executive Officer must:

- 8.1.1 work such reasonable hours as are necessary to carry out the Duties, ordinarily at least between 8:30 AM and 5:30 PM Monday to Friday, with Monday – Thursday to be worked between the Pinnaroo and Lameroo Office as required, and Friday from home and devote the Chief Executive Officer's whole time and attention during the hours reasonably required to carry out the Duties;
- 8.1.2 observe and carry out all lawful directions from the Council in relation to the performance of the Duties;
- 8.1.3 observe and comply with statutory responsibilities arising from the Act and all other applicable legislation;
- 8.1.4 act in the best interest of the Council at all times;
- 8.1.5 promote the aims and objectives of the Council;
- 8.1.6 disclose any financial or other interest relating to the business of the Council in accordance with the Act or which conflicts or may conflict or may be perceived to conflict with the discharge of the responsibilities of the office of Chief Executive Officer and then comply with any reasonable direction given by the Council in respect of that interest;
- 8.1.7 account to the Council for any remuneration or other benefit received from a third Party in the Chief Executive Officer's capacity as an employee in any business conducted or promoted by the Council or any related corporation;
- 8.1.8 devote all professional effort to the employment and not hold any position or take on any activities which may in any way be seen to conflict with the office of the Chief Executive Officer, unless the prior approval of the Council has been obtained;
- 8.1.9 perform the Duties with the degree of skill, care and diligence, as is required of a Chief Executive Officer;
- 8.1.10 be just and faithful to the Council and promptly give to the Council full information and truthful explanations of all matters relating to the performance of the Duties under this Agreement and the responsibilities of the office generally;
- 8.1.11 be informed and up-to-date on issues and developments that affect all areas of responsibility of the office of the Chief Executive Officer;
- 8.1.12 attend meetings of the Council and other bodies as required;
- 8.1.13 exercise the Duties and other responsibilities where the Council has delegated the necessary functions and powers to the Chief Executive Officer;
- 8.1.14 take reasonable care for both personal health, safety and welfare and that of any employees or any other persons who may be affected while performing the Duties and undertaking the responsibilities of office;

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- 8.1.15 take reasonable care for protection of the environment in performing the Duties and responsibilities;
- 8.1.16 as an employee, personally observe the requirements of the Council's policies and procedures in force from time to time;
- 8.1.17 observe the requirements of any Employee Code of Conduct that has been adopted by the Council or imposed by law;
- 8.1.18 maintain a current South Australian driver's licence throughout the Term; and
- 8.1.19 carry out and perform the Duties:
  - (a) lawfully;
  - (b) with proper decorum;
  - (c) to the best of the Chief Executive Officer's ability and judgment; and
  - (d) to the satisfaction of the Council.

## 9. OUTSIDE INTERESTS

- 9.1 The Chief Executive Officer may accept Board positions where the Board is part of a statutory or not for profit authority, provided there is no conflict of interest apparent to the Chief Executive Officer in accepting the appointment, with the approval of the Council.
- 9.2 The Chief Executive Officer 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 Chief Executive Officer (other than the employment provided by this Agreement) except with the prior consent in writing of the Council.
- 9.3 If the Council provides its consent to the Chief Executive Officer pursuant to clause 9.2, which consent will not be unreasonably held, the Chief Executive Officer agrees they will give priority to the Duties under this Agreement over and above any other business or employment in which they are authorised by the Council to engage.

## 10. PERFORMANCE CRITERIA

- 10.1 The following key performance criteria apply to this Agreement, together with those set out in the Position Description in **Schedule 1** and the Performance Criteria set and agreed in accordance with the process set out in **Schedule 3** to this Agreement:
  - 10.1.1 the provision of accurate and timely advice to the Council;
  - 10.1.2 working collaboratively with the Council;
  - 10.1.3 the provision of innovative and visionary leadership;
  - 10.1.4 the establishment of effective networks;

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- 10.1.5 the maintenance of a work environment that facilitates the development of people and encourages them to perform at a high level;
  - 10.1.6 the effective and accountable application of financial and physical resources;
  - 10.1.7 the development and maintenance of management strategies to continually enhance service delivery; and
  - 10.1.8 the initiation, development, implementation and review of effective policies.
- 10.2 The Parties acknowledge that these performance criteria may be varied and any other criterion may be included by agreement between the Parties at any time during the Term.
- 10.3 Performance Criteria pursuant to Schedule 3 to this Agreement will be set and agreed between the Parties within three (3) months of commencement of this Agreement and will otherwise be reviewed and agreed in accordance with the process and timing set out in Schedule 3 to this Agreement.**

## 11. PERFORMANCE REVIEW

- 11.1 The Parties agree that a review of the Chief Executive Officer's performance will be conducted at least once during each year of this Agreement in accordance with section 102A of the Act.
- 11.2 For each year of this Agreement, the Committee will have regard to a Rating Scale as determined by the independent Human Resources specialist in determining the expectations of the Chief Executive Officer to achieve an acceptable performance rating as part of the Performance Review and, subsequently, the setting of annual Performance Criteria.
- 11.3 A minimum of fourteen (14) working days' notice in writing that a performance review is to be conducted will be provided to the Chief Executive Officer to provide reasonable time to prepare for the review.
- 11.4 As part of the Performance Review, the Chief Executive Officer will prepare and submit an assessment of his performance during the review period prior to the assessment.
- 11.5 Using an appropriate survey tool, the performance of the Chief Executive Officer will be assessed against the Performance Criteria by input from all Elected Members and the Chief Executive Officer's direct reports.
- 11.6 A written report shall be compiled with respect to the performance review and a copy provided to the Chief Executive Officer within one (1) month of the completion of the review.
- 11.7 The report will confirm if the Chief Executive Officer's performance is deemed to be acceptable.
- 11.8 Alternatively, the report shall set out any aspects of the Chief Executive Officer's performance that require improvement, together with time frames during which those areas of performance are to be improved to a specified standard.

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- 11.9 The Council must provide whatever counselling, advice, assistance and support that is reasonably necessary to enable the Chief Executive Officer to improve performance during any specified timeframes referred to in clause 11.8 of this Agreement.
- 11.10 If, at the conclusion of the timeframes referred to in clause 11.9 of this Agreement, the Chief Executive Officer's performance has not improved to the specified standards or requirements, the Council may:
- 11.10.1 extend the timeframe for specified improvement for a further specified period; or
  - 11.10.2 provide further written notice, providing a final warning that, unless the Chief Executive Officer's performance improves in the stipulated areas, once again within a specified time frame, the Council will terminate the appointment and employment of the Chief Executive Officer in accordance with this Agreement; or
  - 11.10.3 terminate the appointment and employment of the Chief Executive Officer in accordance with this Agreement.

## 12. TOTAL EMPLOYMENT COST (TEC) PACKAGE

- 12.1 In consideration of performing the Duties and undertaking the responsibilities of office, the Chief Executive Officer is entitled to the TEC Package as outlined in this clause and **Schedule 2** to this Agreement.
- 12.2 The Chief Executive Officer is not entitled to any additional remuneration and the remuneration is set in accordance with the Determination of the Remuneration Tribunal.
- 12.3 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 Chief Executive Officer.
- 12.4 The Chief Executive Officer agrees that the TEC Package is provided as full compensation for all work performed, which takes into account:
- 12.4.1 any entitlement to leave loading, overtime loading, weekend or public holiday loading or any other form of salary loading;
  - 12.4.2 any service by way of overtime, rostered days off or for attendance at meetings or functions outside the Council's usual office hours;
  - 12.4.3 any entitlement to formal rostered days off; and
  - 12.4.4 an acknowledgement that the position is measured on performance and not on the number of hours worked.
- 12.5 The statutory superannuation contribution required to be made by Council to the Chief Executive Officer pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) is included in the TEC Package and will be paid into a fund nominated by the Chief Executive Officer that complies with the relevant legislation.



- 12.6 The Chief Executive Officer may, with the consent of the Council, elect to have a portion of 'before tax' salary paid by way of salary sacrifice into the nominated fund (or which the Council has nominated as the default fund) (the **Sacrificed Amount**). The fund must be capable of accepting the Sacrificed Amount.
- 12.7 The Sacrificed Amount nominated in this clause must not exceed that permitted by relevant tax or superannuation legislation and shall be agreed in writing. The Chief Executive Officer may apply to vary the Sacrificed Amount or terminate this arrangement on no more than one (1) occasion in every 12-month period.
- 12.8 The Chief Executive Officer shall continue to receive the following entitlements and payments calculated by reference to the salary before the Sacrificed Amount is deducted:
- 12.8.1 paid leave,
  - 12.8.2 any entitlement derived from the salary,
  - 12.8.3 employer superannuation guarantee contributions,
  - 12.8.4 termination benefits including notice, and
  - 12.8.5 allowances.
- 12.9 If the Council and the Chief Executive Officer agree to structure the TEC Package in a way that Fringe Benefit Tax (FBT) is payable on all or any part of the TEC Package, the FBT shall be paid by the Chief Executive Officer from the TEC Package, unless otherwise agreed with the Council or specified in this Agreement.
- 12.10 Subject to clause 12.11, the Council shall pay any liability with respect to Fringe Benefit Tax incurred as a result of the ordinary carrying out of Local Government business by the Chief Executive Officer by way of functions or travelling.
- 12.11 The Council shall make available to the Chief Executive Officer an appropriate and fully maintained motor vehicle.
- 12.12 Exclusive private use is included in the TEC Package at the rate applicable for the standard of vehicle. The vehicle is provided on the understanding that:
- 12.12.1 the notional value of the vehicle for the purposes of the TEC Package is set out at **Schedule 2** and will be reviewed annually;
  - 12.12.2 the vehicle is not to be used for any commercial or income producing activity or pursuits by the Chief Executive Officer or any immediate family or household member of the Chief Executive Officer;
  - 12.12.3 the Council is responsible for all costs associated with the vehicle including, but not limited to, registration, insurance, fuel, maintenance and Fringe Benefit Tax;
  - 12.12.4 the Chief Executive Officer is responsible for the maintenance, servicing and cleaning of the vehicle in an appropriate manner; and



- 12.12.5 at the election of the Chief Executive Officer not to accept use of a vehicle, the notional value as set out at **Schedule 2** may be converted to a cash component of the TEC Package, but in that instance, the amount will not be taken into account as ordinary time earnings for the purposes of superannuation.
- 12.13 The Council shall make available to the Chief Executive Officer appropriate and fully maintained accommodation in the **Pinnaroo or Lameroo townships** for the Chief Executive Officer and his family for the duration of the Agreement.
- 12.14 The accommodation is provided on the understanding that:
- 12.14.1 the notional value of the accommodation for the purposes of the TEC Package is set out at **Schedule 2** and will be reviewed annually;
  - 12.14.2 the Council will ensure the accommodation is fitted with an appropriate internet connection;
  - 12.14.3 the Council will be responsible for Fringe Benefits Tax associated with the accommodation (if any);
  - 12.14.4 the Council will be responsible for all service and utility costs and charges associated with the accommodation;
  - 12.14.5 the Chief Executive Officer is responsible for maintaining the accommodation in a neat and tidy state;
  - 12.14.6 the Chief Executive Officer shall vacate the accommodation by no later than the Expiry Date, or otherwise on a date agreed by the parties;
  - 12.14.7 if the Chief Executive Officer's employment is terminated during the term of the Agreement pursuant to clause 16, the Chief Executive Officer is required to vacate the accommodation within four (4) weeks of the date of termination.

### 13. TEC PACKAGE REVIEW

- 13.1 The TEC Package specified in **Schedule 2** to this Agreement will be reviewed annually, as part of the Performance Review set out in clause 11, which review shall not result in an overall decrease in the TEC Package, however must remain within the range set by the Remuneration Tribunal for the purposes of section 99A of the Act.
- 13.2 The review of the TEC Package will take into account the following:
- 13.2.1 the agreed criteria upon which the Chief Executive Officer's performance is assessed in accordance with the Performance Review Process;
  - 13.2.2 the results of the performance review process under clause 11 of this Agreement;
  - 13.2.3 movements in CPI (All Groups Adelaide) and the increase and movement in executive salaries within Local Government;

13.2.4 any Determination made by the Remuneration Tribunal in accordance with section 99A of the Act; and

13.2.5 any other factors that the Council considers relevant.

13.3 Any variation to the TEC Package must be approved by the Council.

#### 14. WORK RELATED EXPENSES

14.1 Council will, in accordance with its Uniform Policy, annually reimburse the Chief Executive Officer the costs for a Corporate Uniform to the value of \$450.00.

14.2 The Council will provide to the Chief Executive Officer use of a fully maintained laptop and mobile phone for the purpose of conducting the Duties during the term of the Agreement.

14.3 The laptop and mobile phone provided to the Chief Executive Officer pursuant to clause 14.2 shall remain at all times the property of the Council and must be returned to the Council by the Chief Executive Officer at the Expiry Date, or another date as agreed.

14.4 In the event the employment of the Chief Executive Officer is terminated for any reason pursuant to clause 16, the laptop and mobile phone must be returned to the Council by no later than the date of termination, or another date as agreed.

14.5 In addition to the TEC Package the Council shall meet the following expenses or reimburse the Chief Executive Officer upon production of invoices in line with Council policy for reimbursements::

14.5.1 entertainment, executive and other sundry expenses reasonably and necessarily incurred by the Chief Executive Officer in the performance of the Duties and responsibilities of Office; and

14.5.2 the cost and provision of a mobile telephone service; and

14.5.3 the reasonable costs of the Chief Executive Officer attending conferences, seminars, training and development courses and study relevant to the performance of the Duties and responsibilities of office; and

14.5.4 membership fees and subscriptions payable by the Chief Executive Officer to professional associations, the membership of which is reasonably necessary or desirable for the Chief Executive Officer to hold in the performance of the Duties and responsibilities of office and as resolved by the Council prior.

#### 15. RELOCATION EXPENSES

15.1 Upon production of invoices in line with Council policy for reimbursements , the Council shall reimburse the reasonable costs of relocation to the Chief Executive Officer to the value of no more than \$5,000 in the following manner:

15.1.1 50% to be reimbursed upon relocation; and

15.1.2 the remaining 50% upon successful completion of the probationary period pursuant to clause 4.

- 15.2 If the Chief Executive Officer resigns his employment, or is terminated for any reason pursuant to clause 16, within 12 months of the Commencement Date, the Chief Executive Officer shall refund the Council 50% of any relocation costs reimbursed.

## 16. TERMINATION OF AGREEMENT

### 16.1 Summary Termination

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 Chief Executive Officer:

- 16.1.1 commits any serious or persistent breach of any of the terms of this Agreement;
- 16.1.2 engages in serious and wilful misconduct;
- 16.1.3 is guilty of serious or wilful neglect of in the discharge of the Duties and/or responsibilities of office;
- 16.1.4 becomes bankrupt or makes any arrangement or composition with creditors (and the Chief Executive Officer is required to notify the Council within seven (7) days of such an occurrence);
- 16.1.5 becomes of unsound mind or comes under the control of any third Party pursuant to any mental health legislation;
- 16.1.6 acts in breach of Council's policies in force from time to time;
- 16.1.7 makes improper use of Council property;
- 16.1.8 is convicted of any criminal offence which prescribes a term of imprisonment, or which involves dishonesty, or where the offence, in the reasonable opinion of the Council, affects the Chief Executive Officer's capacity to perform the inherent requirements of the position;
- 16.1.9 causes any legal impediment to arise which prevents or inhibits the Chief Executive Officer from undertaking the Duties or the responsibilities of office whether under this Agreement and/or the Act and/or other legislation;
- 16.1.10 fails to display and exercise the duty of fidelity or good faith toward the Council, which the Council might reasonably expect of the Chief Executive Officer in performing the Duties and responsibilities of office; or
- 16.1.11 engages in any action or omission which brings the Council into public disrepute, contempt or ridicule or which otherwise reflects unfavourably on the Council.

### 16.2 Termination by the Provision of Notice

- 16.2.1 In the event the Council determines, through the Performance Review process, that the Chief Executive Officer has failed to reasonably meet the performance expected, the Council may terminate this Agreement by the provision to the Chief Executive Officer of three (3) months' written notice.

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- 16.2.2 This Agreement may be terminated by the Council in writing with a minimum of three (3) months' notice in the event that the Chief Executive Officer is incapacitated from performing the Duties and/or responsibilities of office due to ill health of any type for a period of greater than six (6) 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).
- 16.2.3 This Agreement may be terminated by the Council by giving three (3) months written notice to the Chief Executive Officer and making a payment of up to the value of six (6) months remuneration (where there is six (6) months or more to the Expiry Date) or, a payment not exceeding the value of remuneration the Chief Executive Officer would have received if the Agreement had been completed (where there is less than six (6) months to the Expiry Date).
- 16.2.4 This Agreement may be terminated by the Chief Executive Officer by giving the Council a period of three (3) months' notice in writing, unless otherwise agreed with the Council.
- 16.2.5 In addition to any right of termination and without derogating from any right available in this Agreement, the Chief Executive Officer's employment may at any time be terminated by the mutual agreement of the Parties on whatever notice and terms the Parties may then agree.
- 16.2.6 Any notice required to be given by the Council may, instead, be paid as an equivalent payment of the TEC package in lieu of notice.
- 16.2.7 The Chief Executive Officer agrees that where this Agreement is ended, either by the Chief Executive Officer or the Council, the Chief Executive Officer will immediately resign from any *ex officio* or other positions related to his employment as Chief Executive Officer and if they fail to do so the Council may, by operation of this clause, provide such notice of resignation.
- 16.2.8 The Council may, by resolution and at its sole discretion, suspend the Chief Executive Officer (with pay) or allocate other duties and responsibilities for any period during the Term. Such alternate duties may be carried out at another designated location.
- 16.3 Redundancy during Term of Agreement
- 16.3.1 The Council may terminate the employment of the Chief Executive Officer on the grounds of redundancy during the Term only where:
- (a) the position of Chief Executive Officer no longer exists or will no longer exist; or
  - (b) the Council has declared or intends to declare the Chief Executive Officer's position redundant due to amalgamation.
- 16.3.2 If the Agreement is terminated in accordance with clause 16.3.1, the Council will pay to the Chief Executive Officer the balance of the Agreement paid out at the total TEC Package value.

## 17. LEAVE

### 17.1 Annual Leave

17.1.1 The Chief Executive Officer is entitled to twenty (20) days paid annual leave each completed year of service, to be taken during agreed periods as approved by the Council.

17.1.2 The Chief Executive Officer is not entitled to any leave loading payment.

17.1.3 There should not be more than forty (40) days annual leave outstanding to the credit of the Chief Executive Officer at the end of any one (1) year of service.

17.1.4 Where there is an excess of annual leave over that provided for in clause 17.1.3, the Council, may direct the Chief Executive Officer to take leave, considering organisational needs, to reduce the outstanding annual leave balance.

17.1.5 Any entitlement to annual leave standing to the credit of the Chief Executive Officer at the time of cessation of employment will be discharged by the payment based on the TEC Package.

### 17.2 Personal/Carer's Leave

17.2.1 The Chief Executive Officer is entitled to ten (10) paid days of personal/carer's leave per year when:

- (a) they are suffering from a personal illness or injury (**personal leave**); and/or
- (b) to provide care and support to an immediate family or household member who is suffering from a personal illness or injury (**carer's leave**).

17.2.2 Personal/carer's leave not taken shall accumulate without limit.

17.2.3 There is no entitlement to payment in lieu of accrued personal/carer's leave entitlements.

### 17.3 Long Service Leave

Long Service Leave entitlements accrue in accordance with the provisions of the *Long Service Leave Act 1987* (SA) and the Act.

### 17.4 Compassionate Leave

The Chief Executive Officer is entitled to two (2) days paid compassionate leave for bereavement upon the serious illness, death or funeral of an immediate family or household member.

### 17.5 Parental Leave

The Chief Executive Officer is entitled to parental leave in accordance with the provisions of the *Fair Work Act 1994* (SA).

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**18. PROFESSIONAL DEVELOPMENT**

The Council agrees to provide the Chief Executive Officer with professional development opportunities to meet the performance measurement requirements, throughout the term of this Agreement as mutually agreed.

**19. CONFIDENTIALITY OF AGREEMENT**

Subject to any applicable law and the written consent to disclosure by both Parties, the terms of this Agreement will be kept confidential.

**20. CONFIDENTIALITY OF INFORMATION**

20.1 The Chief Executive Officer will not at any time during this Agreement, nor at any time thereafter:

20.1.1 otherwise than as necessary in the discharge of the Duties and the responsibilities of office or with the prior consent of the Council, divulge to any other person any information confidential to the Council which he may acquire or have acquired; and/or

20.1.2 use confidential information obtained for his own benefit or the benefit of any other person or entity or to the detriment of the Council.

20.2 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 Chief Executive Officer to the Council upon demand.

20.3 The Chief Executive Officer acknowledges that the obligations imposed upon him by this clause shall be in addition to the obligations imposed or implied at common law in respect of employees.

20.4 The Chief Executive Officer's obligations under this clause 20 survive the termination of this Agreement.

**21. INTELLECTUAL AND OTHER PROPERTY OF THE COUNCIL**

21.1 Intellectual Property

21.1.1 All materials provided to the Chief Executive Officer by the Council, including those to enable the Chief Executive Officer to perform the Duties and the responsibilities of office (and all intellectual property therein) are and remain the property of the Council.

21.1.2 All material produced by the Chief Executive Officer in performing the Duties and undertaking the responsibilities of office (in or out of normal business hours) and all intellectual property in such material is the property of the Council alone, on and from its creation, unless otherwise agreed in writing by the Council.

21.1.3 The Chief Executive Officer 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 and if the Chief Executive Officer fails to do so the Council may, by operation of this clause, take steps as are required to achieve the objectives of this clause.

21.1.4 At the Council's request, the Chief Executive Officer must return all the Council's materials (in any form) and he is not entitled to retain copies of Council materials in any form.

21.1.5 The Chief Executive Officer's obligations under this clause 21.1 survive the termination of this Agreement.

## 21.2 Other Property

21.2.1 The Chief Executive Officer must take all reasonable care in using Council property.

21.2.2 When this Agreement is terminated, the Chief Executive Officer agrees to immediately return to the Council, in good condition (subject to fair wear and tear) all tangible and intangible property belonging to, leased, or otherwise provided to him by the Council.

21.2.3 **Property** in this clause includes without any limitation any and all:

- (a) stationery, books, business cards, documents, records, disks, access cards, computer hardware or keys;
- (b) materials provided to the Chief Executive Officer by the Council, including materials provided to enable the performance of the Duties and responsibilities of office and all intellectual property of the Council;
- (c) materials produced by the Chief Executive Officer in performing the Duties or undertaking the responsibilities of office (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;
- (d) credit cards, mobile telephones and all other equipment provided to the Chief Executive Officer pursuant to this Agreement; and
- (e) the motor vehicle (and keys) provided pursuant to this Agreement.

21.2.4 The Chief Executive Officer's obligations under this clause 20.2 survive the termination of this Agreement.

## 21.3 Breach

A breach of the Chief Executive Officer's obligations under this clause 21 is a serious breach of this Agreement. In addition to the Council's other remedies, the Council may bring legal action against the Chief Executive Officer for damages sustained as a result of such a breach and in so doing seek interest and legal costs on an indemnity basis.



**22. NO WAIVER**

- 22.1 Either of the Parties may only waive a right under this Agreement by written notice.
- 22.2 A failure to exercise and/or any delay in exercising on the part of the Council any right, power or privilege under this Agreement shall not operate as a waiver nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise or the exercise of any other right, power or privilege.
- 22.3 A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 22.4 The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies otherwise provided by law.

**23. NOTICES**

Any notice, demand or other communication to be given pursuant to this Agreement shall be in writing and may be delivered by email, personally, or by prepaid registered post to the notified address or otherwise to the address set out in the 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**

The terms of this Agreement, unless otherwise specified, may only be varied in writing signed by or on behalf of both Parties and annexed to this Agreement.

**25. GOVERNING LAW**

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

**26. DISPUTE RESOLUTION**

- 26.1 In relation to any matter that may be in dispute between the Chief Executive Officer and the Council, the Parties will;
- 26.1.1 Attempt to resolve the matter at workplace level by the Chief Executive Officer and the Council, or a person or Committee authorised by the Council for that purpose, meeting and conferring on the matter.
- 26.1.2 Agree to allow either Party to refer the matter to mediation if the matter cannot be resolved at the workplace level.
- 26.1.3 Agree that if either Party refers the matter to an independent mediator, both Parties will participate in the mediation process in good faith.
- 26.1.4 Agree that any mediation will be conducted in accordance with the Resolution Institute Mediation Rules, and unless the Parties agree upon a mediator, either Party may request a nomination from the Chair of the Resolution Institute.

- 26.1.5 Acknowledge the right of either Party to appoint, in writing, another person to act on their behalf in relation to the mediation process.
- 26.1.6 The costs of mediation will be met by the Council. Where another person is used by either Party in accordance with clause 26.1.5, each Party will be responsible for meeting the costs of that person appointed to act on their behalf.
- 26.2 If the dispute is not settled within thirty (30) days of referral to mediation (unless such period is extended by agreement of the Parties), the Parties will:
- 26.2.1 Agree to submit the dispute to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules.
- 26.2.2 Agree that notwithstanding the existence of a dispute or difference each Party shall continue to perform the Agreement.
- 26.2.3 Agree that unless the Parties agree upon an arbitrator, either Party may request a nomination from the Chair of the Resolution Institute.
- 26.2.4 Agree that the decision of the arbitrator will be binding on the Parties.
- 26.2.5 Acknowledge the right of either Party to appoint, in writing, another person to act on behalf of the Party in relation to the arbitration process.
- 26.2.6 The costs of arbitration will be met by the Council. Where another person is used by either Party in accordance with clause 26.2.5, each Party will be responsible for meeting the costs of that person appointed to act on their behalf.

## **27. ENFORCEABILITY OF AGREEMENT**

- 27.1 The Council and the Chief Executive Officer consider the covenants, obligations and restrictions contained in this Agreement to be reasonable in all the circumstances of the employment.
- 27.2 If a provision of this Agreement is, for any reason, held to be illegal, invalid, void, voidable or unenforceable, that provision must be interpreted to the extent necessary to ensure that this Agreement is not void, voidable or unenforceable.
- 27.3 If it is not possible to read and interpret a provision as required under this clause, that provision will be severed without affecting the validity or enforceability of the remaining part of that provision, or the other provisions of this Agreement, which shall continue in full force and effect.

## **28. DECLARATION**

- 28.1 The Chief Executive Officer declares that he has read, understood and accepts the terms and conditions of employment contained in this Agreement.
- 28.2 The Chief Executive Officer acknowledges he has been advised by the Council to consult with a legal and/or any other adviser of his choice prior to execution of this Agreement and that he has been given a reasonable opportunity to do so.

28.3 In signing the Agreement, the Chief Executive Officer acknowledges he has relied on his own judgment and/or the advice of a legal and/or other adviser and not on any statement or representation of the Council.

28.4 The Chief Executive Officer acknowledges that he understands the terms and conditions of the Agreement, agrees to abide by it and voluntarily executes it without any reservation.

**29. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties regarding the employment of the Chief Executive Officer and supersedes his prior employment contract and all understandings and negotiations regarding the employment of the Chief Executive Officer.

**30. SIGNATORIES**

**DATED THIS DAY OF 2023**

**SIGNED** for and on behalf of )

Southern Mallee District Council )

.....  
**Councillor Campbell Michell**

In the presence of:

.....  
**Witness** (Sign and print name)

**SIGNED** by )

)

.....  
**Lachlan Millier**

In the presence of:

.....  
**Witness** (Sign and print name)

**SCHEDULE 1  
POSITION DESCRIPTION**

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**SCHEDULE 2**

**TOTAL EMPLOYMENT COST (TEC) PACKAGE**

CONFIDENTIAL

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**TOTAL EMPLOYMENT COST (TEC) PACKAGE**

Effective [DATE]

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**CHIEF EXECUTIVE OFFICER**

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1. Annualised Salary	\$210,000.00
2. Compulsory Superannuation Guarantee Levy <i>Currently 11% of Annualised Salary, paid by Council</i>	\$23,100.00
3. Value of Motor Vehicle*	\$15,000.00
4. Value of Accommodation	\$15,000.00
<b>TOTAL</b>	<b>\$263,100.00</b>

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<b>TOTAL EMPLOYMENT COST PACKAGE</b>	<b>\$ 263,100</b>
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Notes:

\*The notional value of the vehicle may change according to the choice of vehicle.

**MOTOR VEHICLE**

1. A motor vehicle will be provided by the Council as part of the Total Employment Cost Package on the following provisions:
  - (a) The Council will provide an equivalent vehicle to a [Make to be specified] standard, and approves that the type of vehicle selected will either be a sedan or an SUV and either a 4- or 6-cylinder petrol or diesel vehicle, to be replaced as necessary (and at a maximum every two (2) years), for the Chief Executive Officer's full private and business use.
  - (b) The Chief Executive Officer and the Chief Executive Officer's spouse or domestic partner are entitled to use the vehicle for private use as well as Council purposes (including commuter use, and when the Chief Executive Officer is on annual leave, parental or compassionate leave, long service leave, special leave, sick leave or personal leave).
  - (c) The Council will pay all maintenance and operating expenses (including oil, repairs, servicing, comprehensive insurance, cleaning, service club membership, registration and fuel costs) incurred in respect of the vehicle. The value of the motor vehicle is convertible to salary, subject to the Council's approval.
  - (d) The Chief Executive Officer must maintain the vehicle in good and clean order and condition. The Chief Executive Officer is responsible for ensuring the vehicle is correctly serviced, cleaned and generally maintained to the satisfaction of the Council. Smoking is prohibited in the vehicle. The vehicle is to be used in a manner which complies with the manufacturer's specifications (for example, maximum load, weight of towed vehicles, etc.).
  - (e) For private use, the vehicle shall be driven only by the Chief Executive Officer or the Chief Executive Officer's spouse or domestic partner, or a person over the age of 25 years, provided the Chief Executive Officer is a passenger in the vehicle. This shall not prohibit reasonable alternative arrangements in the event of an emergency.
  - (f) Should the Council incur any penalty other than normal insurance excess on any insurance claim as a result of any action by the Chief Executive Officer or the Chief Executive Officer's spouse or domestic partner, the cost of such penalty shall be borne by the Chief Executive Officer.
  - (g) Any speeding or other traffic violations, including parking fines, which incur a penalty shall be paid by the Chief Executive Officer.
  - (h) During a normal working day, the vehicle shall be available for use by other staff on Council business if required.
2. At the request of the Chief Executive Officer, the Council will alternatively consider the provision of a vehicle under a novated lease arrangement provided the Total Employment Cost is not exceeded.

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**Accommodation**

1. The Council will make available (residence) for occupation by the Chief Executive Officer and his family at an annual value of \$15,000.
2. The Chief Executive Officer shall be responsible for all utility and service costs, and shall maintain the premises in a neat and tidy state.
3. The Chief Executive shall advise the Council of any significant maintenance issues as they arise.
4. The residence is strictly only made available to the Chief Executive Officer and his family during the duration of the Chief Executive Officer's employment with the Council.
5. The Chief Executive Officer acknowledges and agrees that he will vacate the premises by no later than the Expiry Date of the Agreement, unless terminated prior in accordance with clause 16 in which case they must vacate the premises within four weeks of the date of termination.

## SCHEDULE 3

### PERFORMANCE REVIEW PROCESS

#### 1. Performance Criteria

The Performance Review will be based on agreed Key Performance Indicators (KPI's), that incorporate the requirements of the Position Description attached as **Schedule 1**.

These will be agreed with the Chief Executive Officer during the review period for the forthcoming year, and formally amended if required during the year by agreement between the Parties should the need arise.

During the review period, the Position Description will be reviewed and any variations agreed between the Parties in writing.

#### 2. The Process of Appraisal

The process of appraisal used shall include the following:-

1. The Council will appoint a Panel, comprising the Mayor, two (2) Elected Members and an independent Human Resource Specialist.
2. The Council will appoint a Qualified Independent Person for the purposes of section 102A of the Act to assist the Panel.
2. The Chief Executive Officer will prepare a report or presentation to the Panel in respect of the progress against each of the KPIs during the review period.
3. Using an appropriate survey tool, the performance of the Chief Executive Officer shall be appraised against each of the KPIs.
4. The appraisal shall require the Chief Executive Officer to undertake a self-appraisal.
5. The appraisal shall also include a review of the remuneration included in Schedule 2 in accordance with the Contract of Employment.
6. The Human Resource Specialist will prepare a draft report and the Panel will consider the findings and if satisfied discuss these with the Chief Executive Officer.
7. At this meeting the Panel, the Chief Executive Officer shall agree on new KPIs to be achieved during the next appraisal period.
8. At this time the Position Description shall be reviewed with the Chief Executive Officer and agreement reached in respect to any required variations.
9. The Panel shall cause to be prepared a report to the Council on the outcomes of the appraisal and provide the Chief Executive Officer with a copy of the report. The report shall also include recommendations in respect of the remuneration review.

10. Both the Chief Executive Officer and Panel shall have the opportunity to make written comment on the report prior to presentation to the Council and such comment shall be included in the report.
11. Should there be any areas of unsatisfactory performance the Council may require additional appraisals prior to the normal annual appraisal.

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### 3 CONFIDENTIAL ITEMS

#### 3.1 RECRUITMENT OF CHIEF EXECUTIVE OFFICER

MOVED COUNCILLOR LUKE KENNEDY  
SECONDED COUNCILLOR CAMPBELL MICHELL

That:

1. Pursuant to Section 90(2) & (3) of the Local Government Act 1999 the Council orders that the public, with the exception of Tracy Riddle (Kelledy Jones Lawyers), the Acting Chief Executive Officer, Coordinator Executive Services and potential candidates be excluded from attendance at the meeting held on Thursday 24 August 2023 for Agenda Item 3.1 Recruitment of Chief Executive Officer;
2. The Council is satisfied that pursuant to section 90 (3) (a) of the Local Government Act 1999, the information to be received, discussed or considered in relation to the Agenda Item 3.1 Recruitment of Chief Executive Officer is:  
  
information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
3. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to discuss this Agenda Item 3.1 in confidence.

CARRIED.

7.01 pm Mr Lachlan Miller present at meeting.

Each elected member present introduced themselves and gave a brief background on themselves.

Mr Miller thanked the panel for the invite to attend tonight's meeting and proceeded to present to Council.

Mr Miller gave a summary on his background, what attracted him to the role, the strengths and challenges he sees for the Council as well as future projections.

7.28 pm Mr Lachlan Miller left the meeting.

The Deputy Mayor with approval of two-thirds of the members present suspended the meeting procedures pursuant to regulation 20(1) of the Local Government (Procedures at Meetings) Regulations 2013, for a period of 40 minutes to facilitate informal discussion in relation to the recruitment of the Chief Executive Officer at 7.31 pm.

Meeting procedures resumed at 8.00 pm

MOVED COUNCILLOR LUKE KENNEDY  
SECONDED COUNCILLOR DAVID SMITH

That the Southern Mallee District Council appoint Lachlan Miller as the Chief Executive Officer for a term of four years.

CARRIED.

MOVED COUNCILLOR LUKE KENNEDY  
SECONDED COUNCILLOR NEVILLE PFEIFFER

That the Chief Executive Officer's total remuneration package be of no greater than \$265,000.

CARRIED.

MOVED COUNCILLOR LUKE KENNEDY  
SECONDED COUNCILLOR CAMPBELL MICHELL

That the Deputy Mayor be authorised to negotiate the remuneration level within the limit set by Council and the remuneration tribunal band and execute the employment agreement on behalf of the Southern Mallee District Council.

CARRIED.

MOVED COUNCILLOR LUKE KENNEDY  
SECONDED COUNCILLOR NEVILLE PFEIFFER

That Tracy Riddle (Kelledy Jones Lawyers) be authorised with the task of preparing the employment agreement and overseeing the execution of the agreement.

CARRIED.

MOVED COUNCILLOR CAMPBELL MICHELL  
SECONDED COUNCILLOR LUKE KENNEDY

That having considered agenda Item 3.1 in confidence under section 90 (2) and (3) (a) of the Local Government Act 1999, the Council pursuant to section 91 (7) of the Act orders that the documents considered by the Council, including the members report and all minutes be retained in confidence for the duration of the person employed with Council. This order is to be reviewed at or before the ordinary Council meeting to be held in January 2024, as to if this order is to continue in operation.

CARRIED.