

**5.1 APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER****Why is this matter confidential?**

Subject to an order pursuant to Section 90 (3) (a) of the Local Government Act 1999, this matter is confidential because Item 5.1 relates to information pertaining to the personal affairs of a person.

**A. COUNCIL TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in the open section

Released 28 April 2026

**B. THE BUSINESS MATTER****5.1 APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER**

Contact Person: Mayor Glenn Docherty

See Attachment No: 1. Acting Chief Executive Officer Appointment Process - Norman Waterhouse Advice

**Why is this matter before the Council or Committee?**

Matters which cannot be delegated to a Committee or Staff

**Purpose**

This report seeks Council consideration on appointment of an Acting Chief Executive Officer.

**RECOMMENDATION**

1. The Council pursuant to Section 98(2) of the Local Government Act 1999, appoints Mr Mal Hemmerling as Acting Chief Executive Officer of the Council from 12 June 2015 until the Council appoints a person to the position of Chief Executive Officer (**CEO**) or such earlier time as the Council and Mr Hemmerling may agree.
2. The other terms upon which Mr Hemmerling is appointed Acting CEO of the Council are as follows:
  - (a) Mr Hemmerling and the Council agree to vary the Professional Services Agreement between Mr Hemmerling and the Council dated 9.2.2012 (**the Agreement**) to provide that:
    - i. the services to be provided by Mr Hemmerling to the Council are to undertake the role of Acting CEO until the Council appoints a person to the position of CEO or such earlier time as the Council and Mr Hemmerling may agree;
    - ii. the fee to be paid to Mr Hemmerling by the Council is \$30,375.35 per month including superannuation and excluding GST and other expenses which are properly claimable under the Agreement.
  - (b) In the event the Council appoints a person to the role of CEO prior to 30 June 2016, the Agreement will continue on the same terms as existed prior to the variation outlined in paragraph 2 of this resolution.
3. The Mayor is authorised to execute a variation to the Agreement on behalf of the Council in accordance with this resolution.

**Relevance to Strategic Plan**

Strategy 5. Building our capabilities

Outcome 5.1 Highly performing organisation

## Relevance to Public Consultation Policy

There is no legal or policy requirement for the Council to consult the community on this issue. It is considered that the consultation would not assist the decision making process.

## Background

There will shortly be a vacancy in the office of Chief Executive Officer of the Council as Mr Tim Jackson's last day is 30 June 2015. However, Mr Jackson will be on leave from 12 June 2015.

Section 98 of the *Local Government Act 1999 (the LG Act)* requires the Council to appoint a person to act in the position of Chief Executive Officer until the vacancy is filled.

Further, as Mr Jackson will be on leave from 12 June 2015, Section 102 of the LG Act provides for a process to appoint an Acting Chief Executive Officer while the Chief Executive Officer is absent. This report is prepared to assist the Council in appointing an Acting Chief Executive Officer.

As resolved by the Council at its Special Council Meeting on Tuesday 5 May 2015, I have had discussions with Mr Mal Hemmerling regarding the possibility of Mr Hemmerling being appointed the Acting Chief Executive Officer and Mr Hemmerling has indicated a willingness to do so on certain terms and conditions.

I sought advice from the Council's lawyers, Norman Waterhouse, in relation to the process for the appointment of an Acting Chief Executive Officer and attach a copy of that advice to this report as Attachment 1.

Accordingly, this report is to provide the Council with an update regarding my discussions with Mr Hemmerling and the advice obtained from the Council's lawyers.

Attached to this report as Attachment 2, is an outline of Mr Hemmerling's skills and experience for the Council's consideration.

Notwithstanding the appointment of an Acting Chief Executive Officer, the Council must still take steps to fill the vacancy in the office of the Chief Executive Officer and the advice from Norman Waterhouse attached sets out the process for doing so. The appointment of an Acting Chief Executive Officer is a temporary measure whilst the Council takes steps to fill the vacancy permanently. Mr Hemmerling and the Mayor have agreed to bring back a report to the Council around the filling of the vacancy in accordance with the advice from Norman Waterhouse attached.

I also sought advice from the Council's lawyers in relation to appropriate wording for a motion to appoint Mr Hemmerling as the Acting Chief Executive Officer on the terms and conditions put forward by Mr Hemmerling and set that out in the recommendations.

## Options

### Option 1

1. *'The Council pursuant to Section 98(2) of the Local Government Act 1999, appoints Mr Mal Hemmerling as Acting Chief Executive Officer of the Council from 12 June 2015 until the Council appoints a person to the position of Chief Executive Officer (CEO) or such earlier time as the Council and Mr Hemmerling may agree.*
2. *The other terms upon which Mr Hemmerling is appointed Acting CEO of the Council are as follows:*
  - (a) *Mr Hemmerling and the Council agree to vary the Professional Services Agreement between Mr Hemmerling and the Council dated 9.2.2012 (the Agreement) to provide that:*
    - i. *the services to be provided by Mr Hemmerling to the Council are to undertake the role of Acting CEO until the Council appoints a person to the position of CEO or such earlier time as the Council and Mr Hemmerling may agree;*
    - ii. *the fee to be paid to Mr Hemmerling by the Council is \$30,375.35 per month including superannuation and excluding GST and other expenses which are properly claimable under the Agreement.*
  - (b) *In the event the Council appoints a person to the role of CEO prior to 30 June 2016, the Agreement will continue on the same terms as existed prior to the variation outlined in paragraph 2 of this resolution.*
3. *The Mayor is authorised to execute a variation to the Agreement on behalf of the Council in accordance with this resolution.*

### Option 2

Council elects to appoint Mr Mal Hemmerling Acting CEO for the period XXX until XXX.

### Option 3

Council elects not to appoint Mr Mal Hemmerling, thus may decide a varying course of action.

## Financial Implications

The financial implications are detailed in the Recommendation.

## Preferred Options and Justification

Option 1 is the preferred option as per the Legal Advice attached.

**C. COUNCIL TO DECIDE HOW LONG ITEM 5.1 IS TO BE KEPT IN CONFIDENCE****Purpose**

To resolve how long agenda item 5.1 is to be kept confidential.

**STAFF RECOMMENDATION**

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item 5.1 be kept confidential:

- Report for Item 5.1 until the 2016 Confidential Items Annual Review.
- Attachment(s) for Item 5.1 until the 2016 Confidential Items Annual Review.
- Discussion for Item 5.1 until the 2016 Confidential Items Annual Review.
- Decision for Item 5.1 until 13 May 2015.

**Options**Option 1

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item 5.1 be kept confidential:

- Report for Item 5.1 until the 2016 Confidential Items Annual Review.
- Attachment(s) for Item 5.1 until the 2016 Confidential Items Annual Review.
- Discussion for Item 5.1 until the 2016 Confidential Items Annual Review.
- Decision for Item 5.1 until 13 May 2015

Option 2

The Council/Committee determines a different timeframe for any "in confidence" aspects of agenda item 5.1 to remain in confidence.

**Analysis of Options**Option 1

This item is excluded from the public on the basis that it relates to Section 90 (3) (a) of the Local Government Act 1999 of the Local Government Act 1999.

Specifically, Item 5.1 relates to information pertaining to the personal affairs of a person

Option 2

The Council may determine that certain or all aspects of agenda item 5.1 remain in confidence.