

**Victorian Local Government
Contract of Employment – Four Year Term**

Chief Executive Officer

Mornington Peninsula Shire Council

and

John Baker



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Contract of Employment

Dated 7 October 2022

Parties

Name	Mornington Peninsula Shire Council
Address	90 Besgrove Street Rosebud VIC 3939
Short name	Council

Name	John Baker
Address	[REDACTED]
Email	[REDACTED]
Short name	[REDACTED]

Background

- A. Council wishes to appoint and employ the Officer as its Chief Executive Officer for a four year term in accordance with the Act.
- B. The Officer wishes to accept this appointment and employment for that term, in accordance with this Agreement.
- C. The parties acknowledge that the appointment is made in accordance with the Act and the parties acknowledge and agree that the Officer has been appointed on the basis of merit.
- D. The parties intend this Agreement to take effect as a contract of employment for the purposes of the Act.

The Parties Agree

1. Definitions

The definitions at Schedule 4 apply.

2. Term

This Agreement commences on 7th November 2022 and by entering into this Agreement the parties have agreed that the Officer's employment relationship with Council, as well as this Agreement, expires on 6th November 2026 unless terminated earlier in accordance with its terms.

3. Place of Work

- 3.1 Subject to any State government pandemic-related orders, the Officer's role as Chief Executive Officer is based, and the Duties will be primarily performed, at Council's offices at Rosebud. The Officer may be permitted to work from other locations from time to time in accordance with any applicable flexible work arrangements.
- 3.2 The Officer may be required to be based in a different location within the municipality.
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4. Agreement

Council must employ the Officer and the Officer must serve Council as its Chief Executive Officer subject to the terms of this Agreement.

5. Reappointment

The parties expressly acknowledge that:

- 5.1 if the Officer is re-appointed, the process for doing so must be in accordance with the Chief Executive Officer Employment and Remuneration Policy and the terms and conditions of that appointment must be agreed upon before the Expiry Date, failing which the Officer's appointment and employment will terminate on the Expiry Date;
- 5.2 the terms of this Agreement do not contain or create an option for renewal exercisable by either party.
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6. Requirements of position

6.1 Officer's responsibilities

The Officer must:

- 6.1.1 carry out and perform the Duties lawfully and to the best of the Officer's ability and judgment and to the satisfaction of Council;

- 6.1.2 devote the Officer's whole time and attention to the Duties during the hours reasonably required to properly perform the Duties;
- 6.1.3 discharge the responsibilities and perform the functions required of the Officer under the Act;
- 6.1.4 be accountable to Council;
- 6.1.5 carry out all lawful instructions and directions of Council;
- 6.1.6 promote the aims and objectives of Council;
- 6.1.7 subject to any relevant law, immediately disclose to Council any matter that is likely to affect the reputation of Council, including any actual or potential serious misconduct by any senior employees of Council, upon that matter becoming known to the Officer;
- 6.1.8 disclose to Council any facts, information or circumstances which may give rise to a conflict between the Officer's interests and the interests of Council;
- 6.1.9 at all times comply with the provisions of the Act and any other legislation applying to matters within the scope of the Officer's employment;
- 6.1.10 attend all meetings of Council (and Council committees as may be necessary or as directed by Council) other than when on approved leave. When attending Council meetings, the Officer must ensure that there is minimum disruption to the Officer's duties and responsibilities, and to those employees whom the Officer manages;
- 6.1.11 comply with Council's Code of Conduct and Governance Rules;
- 6.1.12 not use Council's IT Systems:
 - (a) for excessive or unreasonable personal use;
 - (b) to view or distribute unlawful material, or material which may be regarded as offensive or inappropriate; or
 - (c) to copy, disclose or use material in breach of this Agreement;
- 6.1.13 become familiar with and comply with all policies of Council in place or as varied or replaced that are intended to apply to the Officer and have been provided or made available to the Officer.

6.2 Conflict of interests

The Officer must not engage in any additional business, personal relationships, employment or activity which conflicts with the interests of Council, the requirements of the position of Chief Executive Officer of Council or the Officer's ability to perform the Duties. If there is any risk of such a conflict occurring, the Officer must immediately notify Council and obtain Council's written consent to engage or continue to engage in that additional business, relationship, employment or activity.

6.3 Qualifications held

The Officer confirms that all qualifications that were represented by the Officer to Council as held by the Officer, are held by the Officer.

6.4 Variation to Duties

The Officer acknowledges that the Duties may be varied from time to time by Council in accordance with the needs of Council. Such variation does not constitute a termination of this Agreement or of the Officer's employment or a redundancy of the Officer's position.

6.5 Working hours

The Officer's ordinary hours of work are 38 hours per week together with reasonable additional hours which may be necessary for the performance of the Duties.

7. Powers and resources of Officer

7.1 Statutory duties not limited

Clause 6 will not be construed as limiting the exercise by the Officer of the Officer's statutory duties, functions or powers as Chief Executive Officer under the Act or any other relevant legislation.

7.2 Subject to legislation

This Agreement will be read subject to any legislation affecting Council so as not to exceed the power of Council. Where any clause of this Agreement would, but for this sub-clause, have been construed as exceeding Council's powers, both the Agreement and the clause are valid to the extent to which they are not in excess of that power.

7.3 Support staff

Council must provide such support staff and office facilities as are reasonably necessary for the Officer to perform the Duties.

8. Remuneration Package and other benefits

8.1 Remuneration Package

8.1.1 The Officer is entitled to a Salary of [REDACTED] per annum (less applicable taxation), which must be paid in fortnightly equal instalments or otherwise as agreed.

8.1.2 In addition to the Salary, Council makes contributions from time to time to a complying superannuation fund in order to avoid a charge. The rate of contributions is set at the superannuation guarantee percentage rate mandated under the Superannuation Guarantee Legislation.

8.1.3 Details of the Remuneration Package are set out in Schedule 3.

8.2 What the Remuneration Package includes

The Officer's Remuneration Package as set out in Schedule 3 includes:

8.2.1 payment for ordinary hours of work under the FW Act;

8.2.2 payment for all other hours worked or attendances at meetings or functions outside Council's usual office hours, being the reasonable additional hours required and agreed to by the Officer;

- 8.2.3 the amount Council is required to contribute from time to time to a complying superannuation fund in order to avoid a charge under the Superannuation Guarantee Legislation;
- 8.2.4 all entitlements to overtime, loadings, allowances, penalty rates and any other like payments to which the Officer may otherwise be entitled under any Industrial Instrument; and
- 8.2.5 the cost to Council of all fringe benefits taxes levied on any part of the Remuneration Package, or on any other benefit provided to the Officer under this Agreement.

8.3 Salary packaging

The Officer may salary package any part of the Remuneration Package, provided it does not increase the cost to Council of the Remuneration Package. At all times, Council's contribution to superannuation will be calculated on the Officer's ordinary time earnings (as that term is defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth)). Details of any salary package arrangements are set out in Schedule 3.

8.4 Telephone and computer

Council will provide the Officer with:

- 8.4.1 a mobile telephone with call and internet usage; and
- 8.4.2 a laptop and other portable devices as required, including the provision of a home computer and internet if required.

8.5 Additional expenses payable by Council

- 8.5.1 Council must meet the following expenses:
 - (a) reimbursement or payment of membership fees and subscriptions payable by the Officer to professional associations or bodies nominated and approved by Council, the membership of which is in the opinion of Council reasonably necessary or desirable for the Officer to perform the Duties;
 - (b) reimbursement or payment of the reasonable costs of the Officer attending conferences, seminars, in-service training courses and study as approved by Council as reasonably necessary to enable the Officer to perform the Duties; and
 - (c) reimbursement or payment of the reasonable costs necessarily incurred by the Officer as a result of the Officer's performance of the Duties, to the limit determined by Council from time to time.
- 8.5.2 Council may require reasonable documentary evidence of expenses before meeting the expenses in clause 8.5.1.

8.6 Credit or charge card

If Council issues a credit or charge card to the Officer, then the card may only be used for expenses incurred in the performance of the Duties. If the card is lost or stolen, the Officer must immediately inform the card provider and Council. The Officer must return the card to Council on request.

8.7 Review of Remuneration Package

Council may review the Remuneration Package periodically having regard to the matters set out in the Chief Executive Officer Employment and Remuneration Policy.

9. Leave entitlements

9.1 Details of entitlements

The Officer is entitled to:

- 9.1.1 four (4) weeks' paid annual leave for each twelve (12) months' continuous service under this Contract, accruing on a pro-rata basis.
 - 9.1.2 four (4) days' paid compassionate leave, on each occasion when a member of the Officer's immediate family (the Officer's spouse, partner, father, mother, child, brother, sister or parents in-law) or a member of the Officer's household:
 - (a) contracts or develops a personal illness that poses a serious threat to their life; or
 - (b) sustains a personal injury that poses a serious threat to their life; or
 - (c) after a member of the Officer's immediate family or a member of the Officer's household dies; or
 - (d) in such other special circumstances as are shown to exist to the satisfaction of Council.
 - 9.1.3 eighteen (18) days' paid personal leave/carer's leave per year:
 - (a) in respect of any absence due to a personal illness or injury other than for which WorkCover benefits are payable; or
 - (b) to provide care or support for a member of the Officer's immediate family or a member of the Officer's household who requires care or support because of:
 - (i) a personal illness or injury of the member; or
 - (ii) an unexpected emergency affecting the member.
 - 9.1.4 unpaid carer's leave of up to two (2) days per occasion, (or such other period as authorised by Council) to provide care or support for a member of the Officer's immediate family or a member of the Officer's household who requires care or support because of:
 - (a) a personal illness or injury of the member; or
 - (b) an unexpected emergency affecting the member.
- If the Officer's entitlement to paid carer's leave, has been exhausted.
- 9.1.5 public holidays as gazetted for the State of Victoria.
 - 9.1.6 long service leave in accordance with the *Local Government (Long Service Leave) Regulations 2021* (Vic).

- 9.1.7 community service leave and parental leave in accordance with the Award and FW Act.

9.2 Transfer of entitlements from previous employment

The Officer retains continuity of service and all accrued but untaken leave entitlements including annual leave, long service leave and personal/carer's leave from the Officer's previous employment with Council immediately prior to the commencement of this Agreement.

10. Medical examination

- 10.1 Council may, at any time during the Officer's employment, require the Officer to undergo a medical examination by a medical practitioner selected and paid for by Council.
- 10.2 The Officer authorises the medical practitioner to provide a written report of the examination to Council or its authorised representatives, and to discuss the contents of the report with Council or its authorised representatives.

11. Vaccination and Public Health requirements

11.1 Mandatory vaccination

Before commencing employment with Council and at all times during the employment, the Officer must be fully vaccinated with a vaccine approved or recognised by the Australian Government against COVID-19 and any other communicable disease or illness as determined by Council, or as required by applicable laws, public health orders or similar requirements.

11.2 Proof of vaccination

Before commencing employment and at any other time during the employment, the Officer must, as required by Council, provide all proof of vaccination (including any additional primary or booster doses) required under paragraph 11.1.

11.3 Lawful and reasonable direction

The Officer agrees that:

- 11.3.1 any directions made by Council under this paragraph are lawful and reasonable directions; and
- 11.3.2 the Officer's failure to comply with Council's directions may result in disciplinary action including immediate termination of the Officer's employment.

12. Confidential Information

12.1 Duty not to disclose or misuse Confidential Information

The Officer must:

- 12.1.1 not disclose Confidential Information, except as required by law, in the performance of the Duties or as permitted or required by Council;

- 12.1.2 not misuse Confidential Information; and
- 12.1.3 take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information.

12.2 Continuing obligations

The Officer's obligations under clause 12.1 survive the termination or expiry of this Agreement and the termination of the Officer's employment.

13. Intellectual property and Moral Rights

13.1 Intellectual property

- 13.1.1 The Officer acknowledges that this Agreement is a 'contract of service' for the purposes of s 35(6) of the Copyright Act.
- 13.1.2 The Officer acknowledges that Council owns all right, title and interest in or derived from the Intellectual Property Rights created by the Officer in the course of the Officer's employment with Council in connection with or related to the performance of the Duties as varied from time to time (whether or not in writing), and whether or not:
 - (a) created during normal business hours;
 - (b) using Council's premises or equipment;
 - (c) under the control of a manager; or
 - (d) as the subject of a specific direction.
- 13.1.3 To the extent that Council is not the owner of the Intellectual Property Rights described in clause 13.1.2, the Officer hereby assigns those rights to Council.
- 13.1.4 The Officer undertakes to execute any and all documents and do all acts and things necessary to give effect to the ownership or assignment of Intellectual Property Rights in clauses 13.1.2 and 13.1.3 to Council, including after the termination of the Officer's employment.
- 13.1.5 During the course of the Officer's employment with Council or at any time afterwards, the Officer is not permitted to make use of any Intellectual Property Rights for the Officer's own personal benefit or for the benefit of other persons.
- 13.1.6 The Officer must not use any material which the Officer knows, or should have known, would infringe the Intellectual Property Rights of a third person during the Officer's employment with Council.

13.2 Moral Rights

- 13.2.1 The Officer acknowledges that under Part IX of the Copyright Act the Officer has moral rights in any original Works of which the Officer is the author and in which copyright subsists and which are:
 - (a) the right to attribution of authorship of the Works;
 - (b) the right not to have authorship of the Works falsely attributed; and

- (c) the right to integrity of authorship, that is, not to have the Works subjected to derogatory treatment,

(together, **Moral Rights**).

13.2.2 The Officer consents, for the purposes of the Copyright Act, to Council doing any act or thing, or omitting to do any act or thing (whether occurring before or after the date of this Agreement), which may otherwise infringe a Moral Right of the Officer. This consent is given in relation to all Works made or to be made by the Officer in the course of the Officer's employment.

13.2.3 The Officer acknowledges that:

- (a) the Officer understands the legal significance and effect of giving this consent;
- (b) this consent has been freely and genuinely given; and
- (c) the Officer has not been subjected to any duress in connection with the giving of this consent.

14. Performance Review and termination for unsatisfactory performance

14.1 Performance Review

The Officer's performance must be reviewed in accordance with the Chief Executive Officer Employment and Remuneration Policy.

14.2 Review of Position Description and Performance Criteria

The Position Description and the Performance Criteria may be reviewed and amended by Council, in consultation with the Officer, from time to time.

14.3 Unsatisfactory performance

If Council considers that areas of the Officer's performance have not been satisfactory, Council may take disciplinary action against the Officer (which may include dismissal upon the minimum amount of notice required by the FW Act or any Industrial Instrument, (whichever is the greater) or payment in lieu of such notice).

14.4 Monitor performance

Without necessarily conducting the Performance Review, Council may monitor the Officer's performance on an ongoing basis.

15. Immediate termination

15.1 Grounds for immediate termination

The Officer's employment may be immediately terminated before the end of the Term by Council if the Officer:

- 15.1.1 is declared bankrupt or fails to immediately notify Council in the event that the Officer is declared bankrupt;

- 15.1.2 fails to immediately notify Council in the event that the Officer is charged with or found guilty of any criminal offence;
- 15.1.3 is charged with or found guilty of any criminal offence which in the reasonable opinion of Council brings Council into disrepute or affects the Officer's ability to carry out the Duties properly;
- 15.1.4 is negligent in carrying out the Duties;
- 15.1.5 fails or refuses to obey any reasonable and lawful instruction regarding the performance of the Duties;
- 15.1.6 commits an act of serious misconduct;
- 15.1.7 commits an act of improper conduct, as defined in the *Public Interest Disclosures Act 2012*;
- 15.1.8 seriously or persistently breaches a term of this Agreement;
- 15.1.9 is precluded from working in Australia for any reason;
- 15.1.10 breaches Council's policies applicable to the Officer from time to time in relation to matters including occupational health and safety, privacy, anti-discrimination or use of Council's IT systems; or
- 15.1.11 engages in conduct that causes or may cause imminent and serious risk to the health and safety of a person.

15.2 Suspension of Officer

If Council considers that the Officer may have committed any act or omission which may warrant immediate termination pursuant to clause 15.1, Council may suspend the Officer, with pay, pending an investigation into the matter.

15.3 No compensation

If the Officer's employment is terminated immediately in accordance with clause 15.1, the Officer will not be entitled to notice or payment in lieu of notice. The Officer will only be entitled to remuneration to the time of termination of employment and accrued entitlements to annual leave and long service leave (if any), but to no other compensation as a result of termination in these circumstances.

16. Termination by Council

- 16.1 Notwithstanding any other clause in this Agreement, but in addition to and without derogating from them, Council may terminate this Agreement and the Officer's appointment and employment immediately for any reason provided that Council pays the Officer the lesser of:
 - 16.1.1 three months Remuneration Package in lieu of notice; or
 - 16.1.2 the remaining value of the Remuneration Package which would have been paid had the Officer continued in employment until the end of the Term.
- 16.2 Any such payment is inclusive of, and not in addition to, any other payment in lieu of notice that may otherwise be due under or pursuant to this Agreement, the FW Act or any Industrial Instrument.
- 16.3 This clause does not apply in cases of redundancy, when clause 19 will apply.

17. Termination by agreement

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

18. Resignation by Officer

The Officer may terminate this Agreement by giving three months' notice to Council at any time during the Term, in which case the Officer is entitled to be paid the Officer's accrued entitlements (if any) only in relation to long service leave and annual leave upon termination.

19. Redundancy during Term

19.1 Council may terminate employment

Council may terminate the employment of the Officer during the Term on the ground of redundancy where Council no longer requires the Officer's job to be performed by anyone.

19.2 Officer's entitlements on redundancy

19.2.1 If a redundancy occurs during the Term in accordance with clause 19.1, the Officer's entitlements will be in accordance with and subject to the requirements of:

- (a) any Industrial Instrument; or
- (b) the FW Act,

whichever provides the greater entitlement.

19.2.2 For the avoidance of doubt, this Agreement does not create any entitlement to redundancy benefits where none exists under any Industrial Instrument or the FW Act.

19.3 Variation does not constitute redundancy

The Officer acknowledges that a variation to the Duties, in accordance with the terms of this Agreement, does not constitute a redundancy or entitle the Officer to any benefits under this clause.

20. Termination of employment on Expiry Date

20.1 The Officer acknowledges that the Officer's appointment, and the employment relationship between the Officer and Council, will terminate on the Expiry Date unless the Officer has been reappointed under a new contract under clause 5.

20.2 Under no circumstances will the Officer's employment or appointment be continued beyond the Expiry Date unless Council offers and the Officer accepts a new contract.

20.3 Upon expiry of this Agreement on the Expiry Date, under no circumstances will Council be liable to pay (whether under clause 19.2 or otherwise) severance monies as if the position were redundant.

21. Dispute Resolution

If there is a dispute about any matter under this Agreement and both parties agree, the parties may jointly refer the dispute to a mediator agreed upon by the parties or, in default of agreement, appointed by the Executive Director, Local Government Victoria.

22. Understanding

The Officer understands and agrees that:

- 22.1 by signing this Agreement, the Officer voluntarily agrees to the termination of the Officer's appointment, and the termination of the employment relationship between the Officer and Council, on the Expiry Date; and
- 22.2 the Officer's agreement to the termination and expiry provisions has not been produced by duress or coercion on the part of Council or its agents.

23. Employment during the notice period

- 23.1 If notice is given to terminate the Officer's employment, then Council may:
 - 23.1.1 direct the Officer not to perform any duties, or to perform specified duties;
 - 23.1.2 direct the Officer to remain away from Council's premises;
 - 23.1.3 direct the Officer to have no contact with any employee, client, customer, contractor, volunteer or supplier of Council, including via social networking websites;
 - 23.1.4 appoint another person to perform some or all of the Officer's duties; and
 - 23.1.5 change the title of the Officer.
- 23.2 If the Officer is directed not to perform duties under clause 23.1.1, the Officer will remain bound by all the terms of this Agreement.

24. Requirements following termination of employment

24.1 Return of Council Property

Upon termination or expiry of this Agreement, unless the Officer has entered into a new contract of employment with Council, the Officer must return to Council in good condition (subject to fair wear and tear) any Council Property which is in the Officer's possession or under the Officer's control.

24.2 Officer's assistance with legal proceedings

The Officer agrees that, after the employment terminates, the Officer will assist Council in any threatened or actual legal or other proceedings in which Council is involved, for which the Officer will be reimbursed all reasonable costs approved in advance by Council.

25. General

25.1 Changes to law

If Council's obligations under any applicable law (including the Act or any regulations made pursuant to the Act) change after the Commencement Date, then Council may in its discretion vary the corresponding provisions of this Agreement or add a new provision.

25.2 Chief Executive Officer Employment and Remuneration Policy

If Council's obligations under the Chief Executive Officer Employment and Remuneration Policy require Council to vary the corresponding provisions of this Agreement or add a new provision, then this Agreement is varied to the extent required to comply with the Chief Executive Officer Employment and Remuneration Policy.

25.3 Amendment

Subject to clauses 6.4 and 25.1, and 25.2, this Agreement may only be varied or replaced by a document duly executed by the parties.

25.4 Entire understanding

25.4.1 This Agreement:

- (a) constitutes the entire agreement between Council and the Officer; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by Council or the Officer (or an agent of either of them) prior to entering into this Agreement.

25.4.2 The Officer has not been subjected to any duress in connection with entering into, and has genuinely agreed to, this Agreement.

25.4.3 The Officer acknowledges that in accepting employment with Council the Officer has not relied on any representations regarding the Officer's employment made by Council (or its agents or employees) other than matters expressly set out in this Agreement.

25.5 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

25.6 Waiver and exercise of rights

25.6.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

25.6.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

26. Notices

26.1 Delivery of notice

26.1.1 A notice or other communication given to a party under this Agreement must be in writing and in English, and must be delivered to the party by:

- (a) delivering it personally to the party; or
- (b) leaving it at the party's address set out in the notice details; or
- (c) posting it by prepaid post to the party at the party's address set out in the notice details; or
- (d) facsimile to the party's facsimile number set out in the notice details; or
- (e) email to the party's email address set out in the notice details.

26.1.2 If the person to be served is Council, the notice or other communication may be served at Council's registered office.

26.2 Notice details

26.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).

26.2.2 Any party may change its notice details by giving notice to the other parties.

26.3 Time of service

26.3.1 A notice or other communication is taken to be delivered:

- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
 - (i) using express post, 2 Business Days after posting; and
 - (ii) using any other prepaid post, 6 Business Days after posting;
- (c) if delivered by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile; and
- (d) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.

26.3.2 Despite clause 26.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

27. Interpretation

27.1 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

27.2 Industrial Instruments

The terms of any Industrial Instrument are not incorporated as terms of this Agreement and the parties agree that no express term of this contract is intended to give them contractual effect.

27.3 Council's policies

The terms of Council's policies are not incorporated as terms of this Agreement and are not intended to create any legally enforceable rights on the part of the Officer, but the Officer must abide by them because they are lawful and reasonable directions of Council.

27.4 This Agreement, clauses and headings

In this Agreement:

- 27.4.1 words denoting the singular include the plural and vice versa;
- 27.4.2 the word 'includes' in any form is not a word of limitation;
- 27.4.3 a reference to any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it, and any such legislation is not incorporated as a term or condition of this Agreement;
- 27.4.4 a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- 27.4.5 a reference to this Agreement is to this Agreement as amended from time to time;
- 27.4.6 a reference to '\$' is a reference to Australian dollars;
- 27.4.7 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement; and
- 27.4.8 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

27.5 Severance

- 27.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 27.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

27.6 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

27.7 Business day

If a payment or other act is required by this Agreement to be made or done on a day which is not a business day, the payment or act must be made or done on the next business day.

Schedules

Schedule 1

Position Description

Reporting Relationships

This position reports directly to the Council and this position description forms part of the CEO Contract of Employment.

Objectives

The CEO and Council Staff are required at all times within the operations of the Council, to understand and respect the primacy and accountability of the Council to the community.

As the primary adviser to the Council, the CEO will provide visionary leadership in achieving Council's corporate obligations, policy objectives and quality service delivery.

The CEO has responsibility to provide quality leadership, strategic direction and total commitment to the Mornington Peninsula Shire Council in the provision of a range of relevant community valued services which demonstrates best practice service delivery standards.

The CEO must ensure the organisation builds capacity and operates with accountability and transparency in the delivery of its services, programs and projects within the context of the sustainable long-term development of the Shire.

The CEO must ensure achievement of a high level of customer satisfaction and that the staff and community remain informed about policy and decision-making processes of the Council.

The CEO must perform the broad functions of the Chief Executive Officer (CEO) as outlined in section 46 of the Local Government Act 2020 including but not limited to:

- establishing and maintaining an appropriate organisational structure for the Council;
- ensuring that the decisions of the Council are implemented without undue delay;
- the day-to-day management of the Council's operations;
- developing, adopting and disseminating a code of conduct for Council staff;
- providing timely advice to the Council and ensuring that Council receives timely advice about its legal obligations;
- supporting the Mayor in the performance of his or her role as Mayor;
- appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff; and
- managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.

Responsibilities

Key accountabilities for this position include:

Leadership and Management

- Act as an inspirational leader by role modelling high ethical and personal standards at all times.
- Foster and demonstrate the values and principles of the mission of the Council.
- Provide relevant high-level governance and organizational support to the Mayor and Councillors to assist them to function as effective community representatives and as representatives of Council on other bodies and in other places.
- Provide Council with strategic advice, based on sound assessment of opportunities and threats, strengths and weaknesses and any limitations imposed by Federal and State legislation.
- Ensure that Council agendas, relevant briefing papers and Council meetings are coordinated and efficiently and conveniently prepared allowing Councillors adequate notice and appropriate time for consideration.
- Ensure that decisions of Council are implemented promptly and effectively.
- Ensure a 'no surprises' approach is adopted including early and frequent advice to Councillors on ward and Council wide issues.
- Establish and maintain a reporting system which ensures Councillors understanding of discharge of responsibilities in areas of risk, such as financial, legal exposures and strategic opportunities.
- Develop a comprehensive Induction Program to ensure that new Councillors and new staff members understand the structure of Local Government and their roles and responsibilities within in.
- Assume the full CEO authority, and accountability for the designated role, responsibilities and relationships described within:
 - Local Government Act 2020;
 - Position Description;
 - Contract of Employment;
 - CEO Employment and Remuneration Policy
 - Delegations assigned to the position;
 - Council Strategic Plan;
 - CEO Key Performance Objectives;
 - Staff Code of Conduct; and
 - All relevant Council policies;

Stakeholders and Communication

- Gain an understanding of the needs and aspirations of the communities of the municipality.
- Promote and demonstrate commitment to community consultation and engagement that promotes active citizenship and genuine "two way" conversations.
- Achieve a high level of customer satisfaction with Council's customer service and communication processes and the general operations of Council.
- In concert with the Mayor and Councillors, develop and maintain an effective strategy of marketing, media and public relations for the positive image of the Shire and Councillors.
- Establish effective communication with all forms of the media on behalf of the Council and generally maintain effective working relationships between Council and local and mainstream media.
- Demonstrate professional ethics which will maintain the integrity and positive 'image of the Council and the position of CEO.
- Represent Council at appropriate community functions and social/civic events.
- Maintain effective and co-operative communication with community organisations, businesses, neighbouring councils.
- Display political acumen and develop bi-partisan relationship with Federal, State and Local Government sectors and other government authorities and departments.
- Maintain a network of contacts and close relationships across the region and the Federal, State and Local Government sectors more broadly to keep up to date with policy and program developments.
- Actively pursue and cooperate in regional initiatives such as industry, development and employment generation programs and report initiatives to the Council.
- Communicate effectively with staff on the role, values and aspirations of the Council and its accountability to the community.
- Effective advocacy, as determined by Council, on behalf of the local community to other levels of government, industry and peak bodies to advance priority advocacy issues for the Shire.
- Instil a culture of effective and integrated communication between officers, departments and contractors.

Operations

- Establish and maintain an effective and high performing executive management team which focuses on unity in effort in achieving agreed goals, clarity of roles and the effective management and performance monitoring of the services and resources of the entire Council.
- Establish and maintain systems and procedures that monitor the performance of key managers
- Regularly review and benchmark the organisations structure, services and business undertakings and consider alternative service models to achieve operational efficiencies and best practice outcomes.
- Develop and maintain policies, structures, systems and processes for an efficient integrated service system.
- Keep abreast of advances in technology and, in consultation with staff, introduce new technologies aimed at improving customer service, productivity, efficiency and cost benefits.
- Ensure that the Council seizes the opportunities provided by current local government reform initiatives.
- Oversee the development and effective implementation of enterprise agreements and employee relations policies, with the objective of achieving best practice productivity.
- Ensure that equal opportunity and occupational health and safety practices are followed in all activities of the Council.
- Ensure high staff morale and retention and employer of choice status.
- Establish systematic performance indicators that demonstrate that successful customer service outcome is being achieved.
- Encourage and provide opportunities for staff to develop their skills, knowledge and attitudes.
- Develop a consultative, cross departmental multi skilled team approach in all service areas with genuine staff empowerment and a system of delegations that push decision making downwards through the organisation.
- Actively encourage and develop a culture of strategic thinking, open to new opportunities, new approaches, innovation and partnerships.
- Develop good relations and supporting attitudes from staff.
- Implement accurate and timely reporting back to Council on the findings and analysis from appropriate staff surveys.

Financial and Legal

- Implement sound financial management strategies with a particular emphasis on operational efficiencies and minimising rate increases, efficient management of loan borrowings and maximising operational efficiencies as core strategies.
- Lead the development and progressive implementation of Council's community plan, long term financial strategy and annual budgets in accordance with the intent of Council.
- Ensure that Council's services, capital works and programs are delivered on time and within budget and in full compliance with statutory and legislative requirements, with regular reports to Council.
- Ensure that sound administrative and financial systems, procedures and controls are in place and functioning in all areas of Council activity in accordance with best business practices and to fully satisfy statutory obligations.
- Actively pursue opportunities for alternative revenue generation to minimize rate dependence.
- Identify, and actively pursue economic development activities compatible with the goals and aspirations of the Council.
- Ensure that financial statements are prepared and audited in accordance with relevant accounting standards and statutory requirements.

KEY COMPETENCIES

Skills

Competencies Required

1. Capacity to provide strong leadership and a customer/citizen focus in the planning and provision of municipal services.
2. Demonstrated commitment to foster a cohesive and high performing senior management team
3. High level financial management, financial reporting and program budgeting skills.
4. Ability to delegate to and direct the Executive Management Team in the proper management of its roles and functions.
5. Ability to lead, develop and motivate employees - an inspirational and visionary leader able to make innovative, justifiable, insightful and confident decisions.
6. Proven skills in organisational development including best practice in organizational cultural change, service delivery, decision making and delegation.
7. Ability to lead significant workplace reform, to find efficiencies and to look at alternate service delivery models.
8. Demonstrated high level negotiation, liaison and networking skills across all areas of the Council's operations.

9. Exceptional communication and public relations skills, both verbal and written, and a capacity to effectively communicate with all stakeholders.
10. Well-developed negotiation and conflict resolution skills.
11. Understanding and experience in the complexities required to achieve balance between environment and development.
12. Exceptional external networking skills, having demonstrated established connections in Government, Business, Tourism and other agencies.
13. Ability to manage competing priorities and deadlines in a complex and changing environment.
14. Demonstrated capacity to carry out Council decisions in a timely and competent manner.

Knowledge/Experience

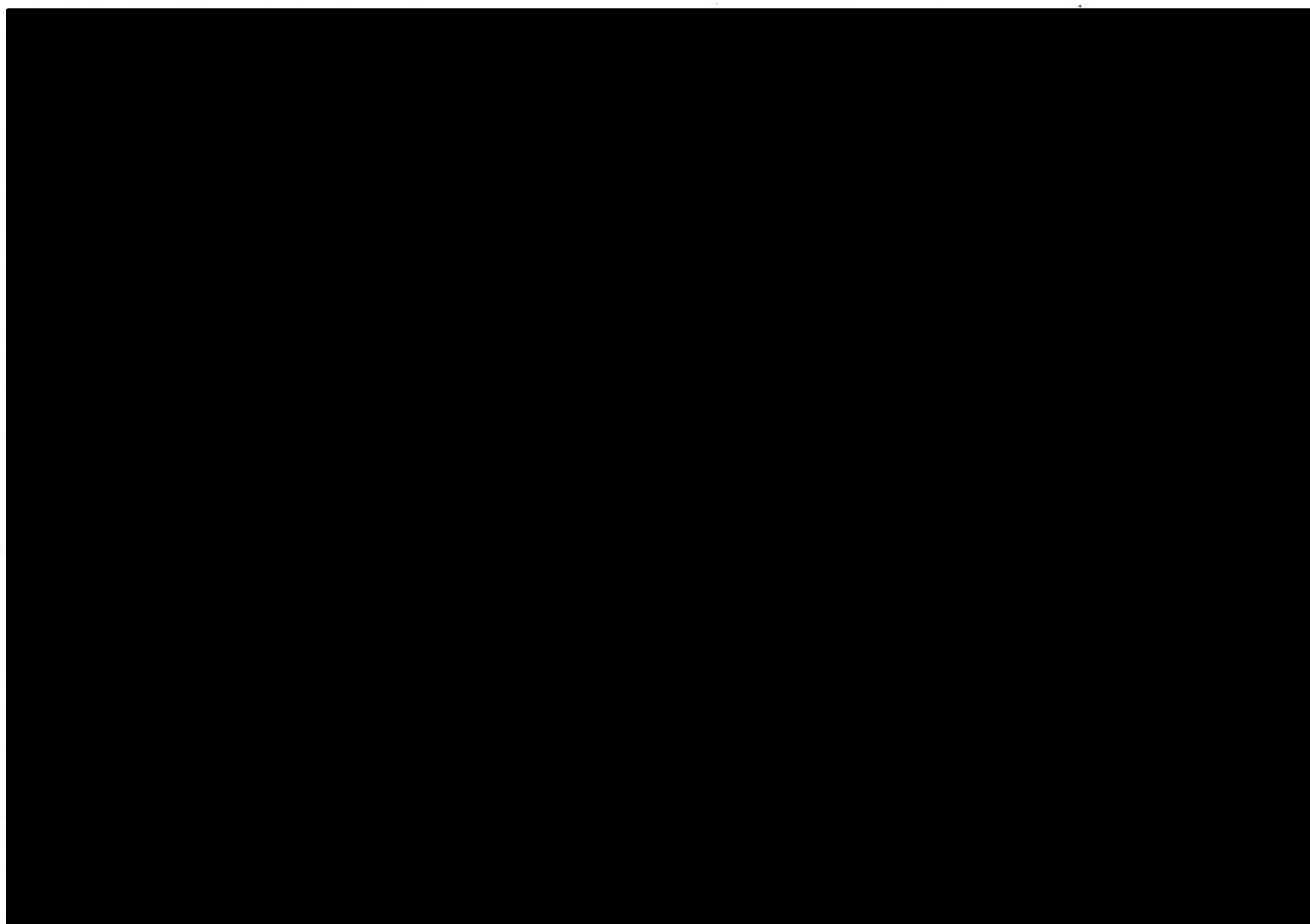
Competencies Required

1. Demonstrated experience and understanding of the importance of governance within the local government environment.
2. Demonstrated commitment to foster a cohesive and respectful relationship with the elected Councillors.
3. Sound understanding of the economic, political and social issues relating to the provision of municipal services and overall management. A corporate background and experience of government processes would be well regarded.
4. Demonstrated ability to contribute and be responsible for the strategic directions of the Council.
5. Proven ability to implement competitive business practices.
6. Extensive knowledge of commercial and business principles and a commitment to quality service and best practice.
7. Experience in the effective application of information technology in the workplace to promote improved customer service, productivity and efficiency.
8. Proven flexibility and adaptability to change and proven ability to develop high performing staff.
9. Proven track record in external relationships with key groups and sectors such as Government, Local Government, business, industry, private and public sectors, community sectors, service groups, media and public relations.
10. Proven experience in best business practice and principles of social enterprise and venture capital development.

Values/Attitudes

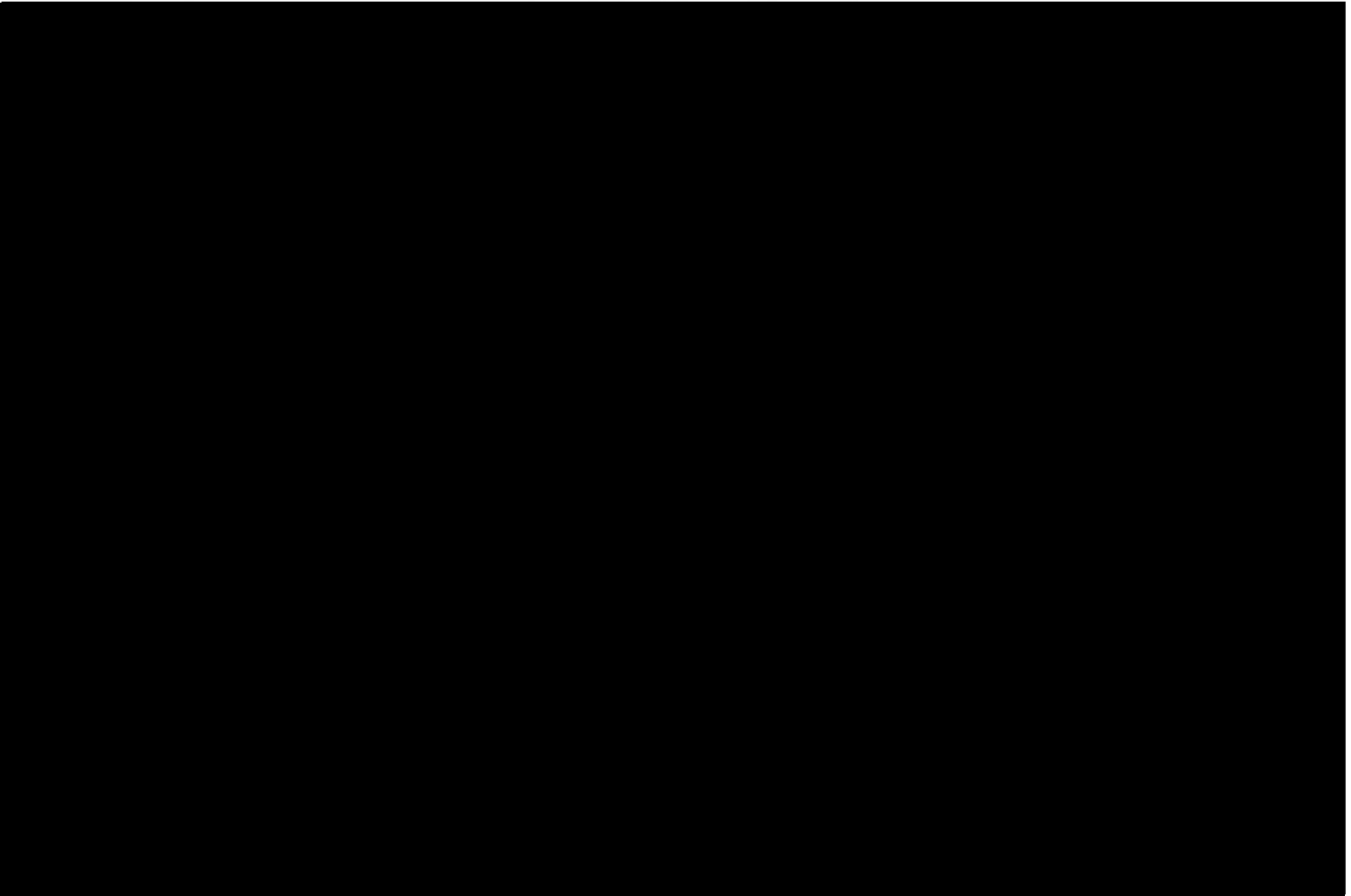
Competencies Required

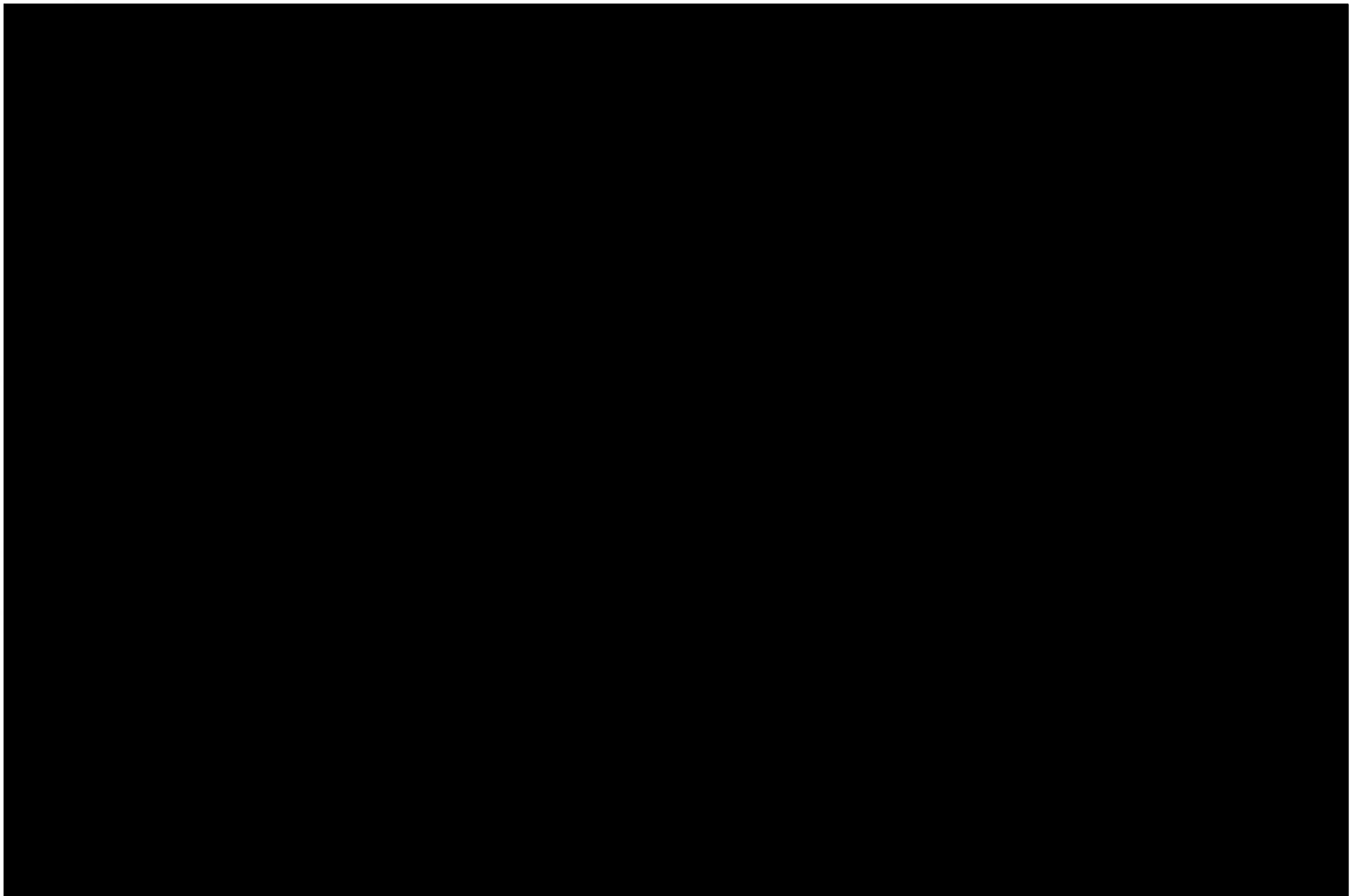
1. Open to on-going reform in Local Government;
2. Genuine respect for the role of Councillors and the Council as a whole;
3. Evidence of high ethical and personal standards;
4. Ability to communicate;
5. Ability to motivate staff;
6. Political acumen and ability to translate Government policy directions;
7. Dedication;
8. Calm but with strength of character;
9. Resilience;
10. Innovative and creative;
11. Fresh perspective;
12. Good temperament and an appropriate sense of humour; and
13. Patience and tolerance.

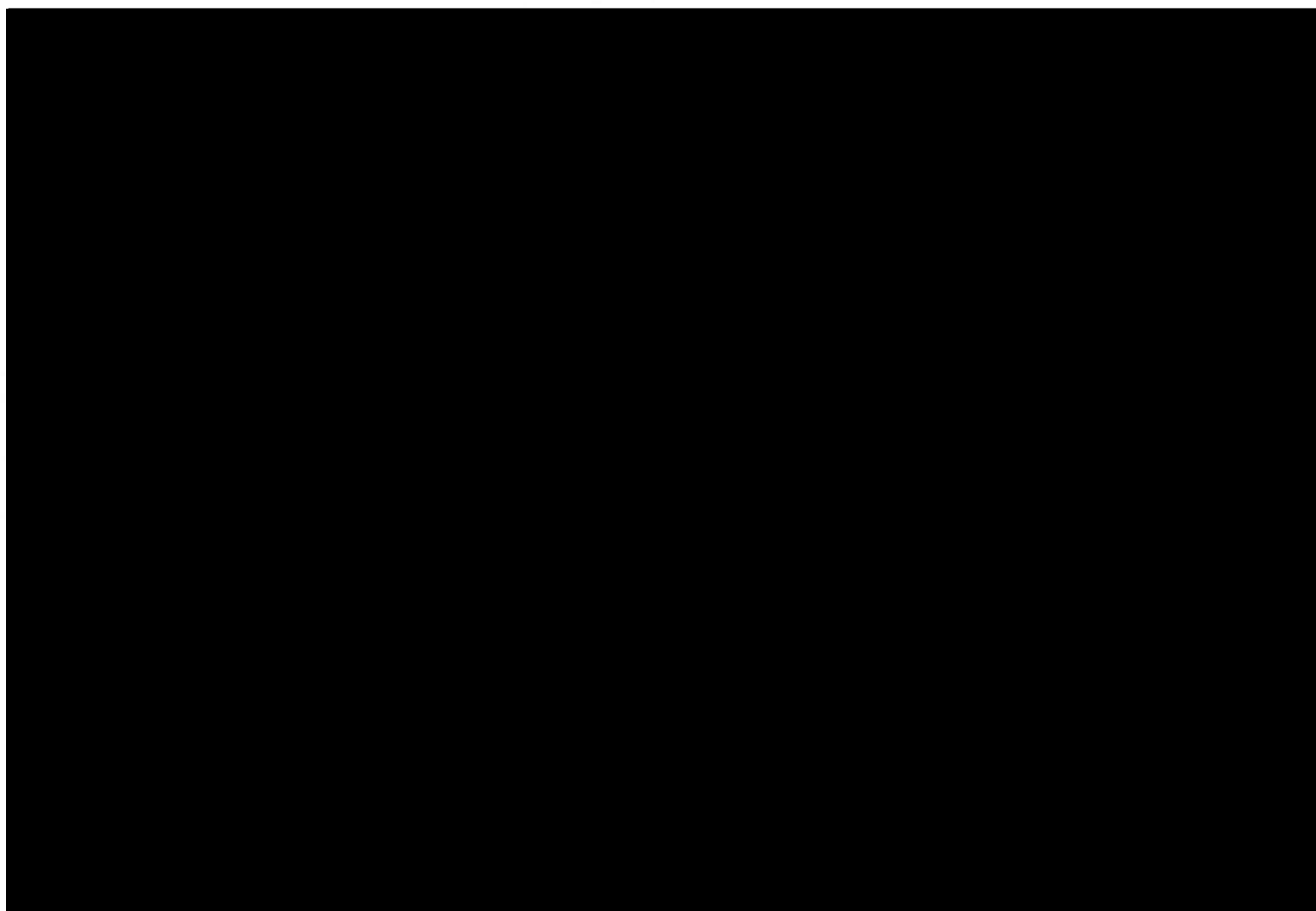


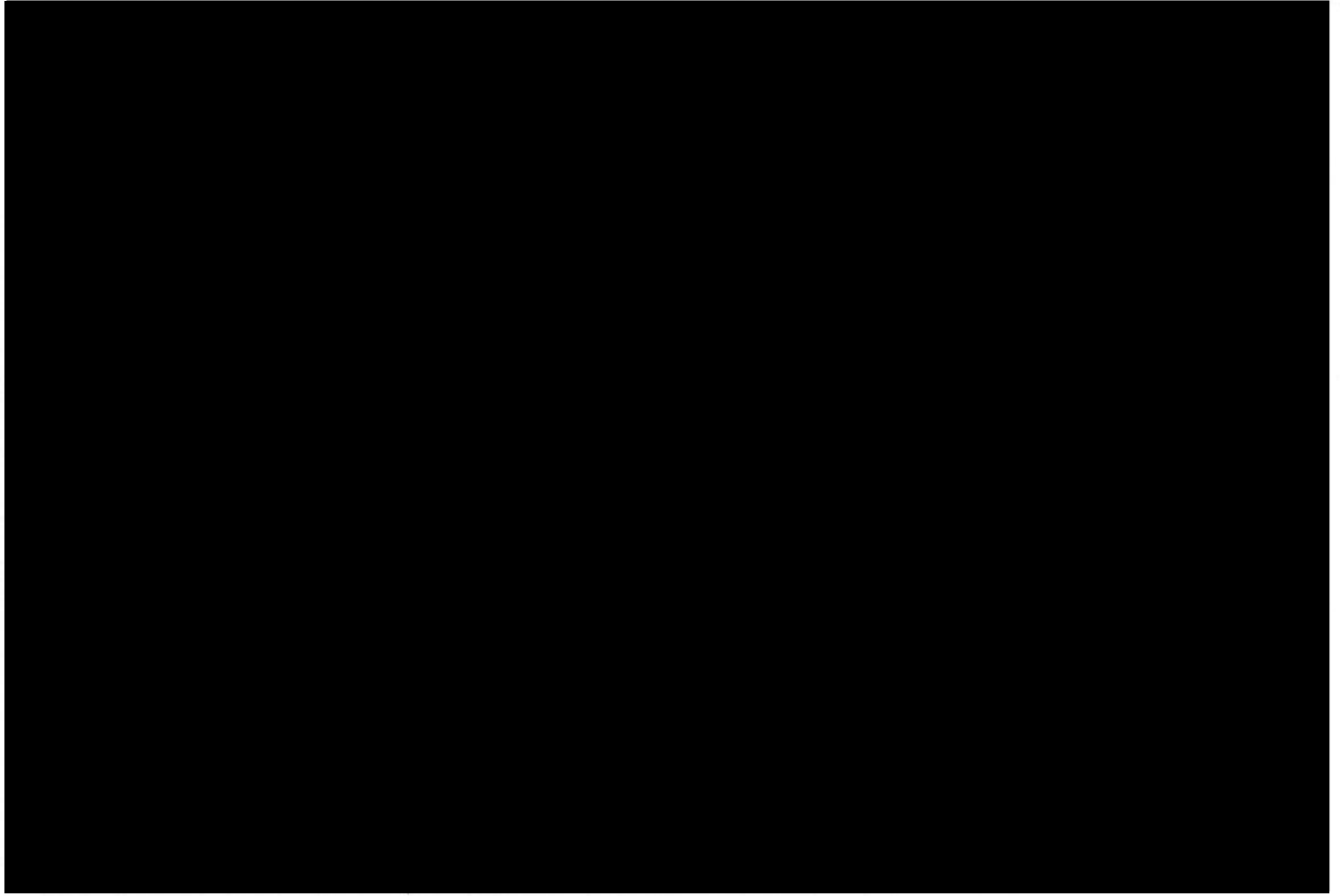












Schedule 3

Remuneration Package and salary package arrangements

Salary	
Superannuation contribution (the amount Council is required to contribute to avoid a charge under the Superannuation Guarantee Legislation)*	
Total Remuneration Package	\$425,000.00

*Council will apply the applicable superannuation guarantee percentage in accordance with the Superannuation Guarantee Legislation up to the maximum superannuation contribution base. For the period 1 July 2022 to 30 June 2023, that percentage is 10.5% and the maximum super guarantee contribution that an employer must pay is 10.5% of \$240,880 per year, or \$25,292.40. Any increase will be paid by Council in addition to and not deducted from the Salary, but will form part of the Remuneration Package.

For the avoidance of doubt, the individual components of the Remuneration Package set out above may be varied by Council due to:

- (a) any change in the cost to Council of all fringe benefits taxes levied on part of the Remuneration Package, or on any other benefit provided to the Officer under this Agreement; or
- (b) any other legislative change, with the exception of the superannuation contribution required under Superannuation Guarantee Legislation, which may increase at Council's cost,

provided the total Remuneration Package above and in clause 8.1 remains the same.

Schedule 4

Definitions

Act means the *Local Government Act 2020* (Vic), or any successor legislation.

Agreement means this contract of employment, including any schedules.

Business Day means a day other than a Saturday, Sunday or a Public Holiday in Victoria.

Chief Executive Officer Employment and Remuneration Policy means any applicable Chief Executive Officer Employment and Remuneration Policy required by the Act to be developed, adopted and kept in force by Council.

Code of Conduct means the code of conduct developed and implemented in accordance with section 49 of the Act.

Commencement Date means the date specified in clause 2 as the date on which this Agreement commences.

Confidential Information means any confidential information relating to the business of Council that comes to the knowledge of the Officer and includes without limitation:

- (a) confidential information as that term is defined at section 3 of the Act;
- (b) financial, budgetary, marketing, research and business plan information;
- (c) the position of Council or of any Councillor or Council employee on any confidential matter;
- (d) the terms of this Agreement;
- (e) the terms of any contract, agreement or business arrangement with third parties;
- (f) trade secrets, licences, know-how and related information;
- (g) third party information disclosed in confidence; and
- (h) any other information the disclosure or use of which may be detrimental to the interests of Council or of any other person who has provided it to Council on a confidential basis,

but does not include information in the public domain (unless in the public domain due to a breach of confidentiality by any person).

Copyright Act means the *Copyright Act 1968* (Cth), or any successor legislation.

Council Property means Council's physical and digital property and Intellectual Property Rights, including without limitation documents, records, Council information including Confidential Information, keys, access pass, vehicles, computers, computer systems, machinery, tools, mobile telephones, hard drives, thumb drives and other equipment and property of Council.

Council's IT Systems means all electronic data, computers, data communications, telecommunications, internet services and printing systems owned, controlled or licensed by Council.

Duties means the responsibilities, duties and functions of the Officer specified in this Agreement and in any relevant instrument of delegation from Council to the Officer pursuant to the Act.

Expiry Date means the date specified in clause 2 as the date on which this Agreement expires.

FW Act means the *Fair Work Act 2009* (Cth).

Governance Rules means the Governance Rules developed and adopted by Council in accordance with section 60 of the Act.

Industrial Instrument means an enterprise agreement or any modern award made under the FW Act which covers and applies to the Officer.

Intellectual Property Rights means all intellectual property rights (whether or not registered including all applications and the right to apply for registration) which are owned by or licensed to Council including, without limitation:

- (a) any processes, technology, systems, reports, specifications, blue-prints, patents, trade marks, service marks, trade names, domain names, designs, design rights, brands and company names, trade secrets, copyright works, URLs, drawings, discoveries, inventions, improvements, technical data, research data, formulae, computer programs, software, know-how, logos, symbols and similar industrial or intellectual property rights; and
- (b) the right to keep Confidential Information confidential.

Mayor means the person holding the position of mayor of Council from time to time.

National Employment Standards means, collectively, the minimum terms and conditions of employment set out in Part 2-2 of the FW Act.

Performance Criteria means the performance criteria set out in Schedule 2, as amended from time to time in accordance with clause 14.2.

Performance Review means the annual performance review required under clause 14.1.

Position Description means the position description set out in Schedule 1, or as amended from time to time in accordance with clause 14.2.

Public Holiday has the meaning given in s 115 of the FW Act.

Remuneration Package means the total gross remuneration package paid to or on behalf of the Officer in clause 8.1 and Schedule 3 as varied from time to time.

Salary means the salary specified in clause 8.1 and Schedule 3 as varied from time to time.

Superannuation Guarantee Legislation includes the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Term means the period of employment specified in clause 2.

Works means a literary work, a dramatic work, a musical work, an artistic work or a cinematograph film as those terms are defined in Part IX of the *Copyright Act 1968* (Cth).

Signing Page

Executed by the parties

Signed for and on behalf, and with the authority, of
Mornington Peninsula Shire Council by **Anthony
Marsh**, Mayor in accordance with the Council
resolution made on 7th October 2022 in the presence
of:

Witness

CR Lisa Dixon Dep. Mayor.

Signed by **John Baker** in the presence of:

Witness

CR Lisa Dixon Dep. Mayor.