



Item No: 4.1

Date: 8 June 2023

Attachment: A, B, C

Meeting:	Council
Title:	CEO Recruitment Process – Preferred Candidate Nomination
Responsible Manager:	Acting Chief Executive Officer, Scott Reardon
Author:	Acting Chief Executive Officer, Scott Reardon
Key Pillar:	Financial Guiding Principle 1- Finances managed responsibly
Key Focus Area:	Strategic Community Plan Focus area 3 - Transparent and accountable local tier of Government
Type of Report:	Decision Required

Pursuant to section 83(5) of the *Local Government Act 1999*, the Acting Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(a) of the Act being information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

Recommendation (Public)

Pursuant to section 90(3)(a)&(d)

Pursuant to section 90(2) of the *Local Government Act 1999* (the **Act**) Council orders that all members of the public, except the Acting Chief Executive Officer Scott Reardon be excluded from attendance at the meeting for Agenda Item 19.1 CEO Recruitment Process – Preferred Candidate Nomination, and that the Council is satisfied that pursuant to section 90(3)(a) of the Act, the information to be received, discussed and considered in relation to this Agenda Item is both information pertaining to the personal affairs of a person (living or dead).

Recommendation (Confidential)

That the CEO Performance Review Committee recommend to Council:

1. that, upon agreement as to satisfactory terms, Mr Andrew MacDonald be appointed as the Town of Walkerville's Chief Executive Officer;
2. that Mr Steve Nolis of McArthur and Her Worship Mayor Melissa Jones be authorised to offer Mr Andrew MacDonald the position of the Town of Walkerville's Chief Executive Officer for a term of 3 years with a proposed annual commencing Total Employment Package of \$255,000 (comprise of cash and superannuation);
3. that in line with the aforementioned Total Employment Package, Her Worship Mayor Melissa Jones be authorised to negotiate the other terms and conditions of Mr Andrew MacDonald's engagement.

Administration's Additional Recommendation

That the following additional points 4 and 5 be adopted as part of the resolution:

- 4.a that, upon successful completion of those negotiations, the proposed contract of employment be presented to the Council for consideration;

OR

- 4.b that, upon successful completion of those negotiations, Her Worship Mayor Melissa Jones be authorised to execute the employment contract for Mr Andrew MacDonald's engagement.

AND

5. that subject to Council's determination on this matter, prior to recommendations 2, 3 and 4 above occurring, Mr Steve Nolis of McArthur be authorised to notify the unsuccessful candidates and notify Mr Andrew MacDonald that he is the preferred candidate.

Recommendation (Public)

Pursuant to section 91(7)

That having considered Agenda Item 19.1 CEO Recruitment Process – Preferred Candidate Nomination in confidence under section 90(3)(a) of the Act, Council pursuant to section 91(7) of that Act orders that the report to this Agenda Item be retained in confidence for a period of 12 months, attachments to this Agenda Item be retained in confidence for a period of 3 years, and minutes relevant to this Agenda Item be retained in confidence until such time that the matter finalised, and that pursuant to section 91(9)(c) of the Act the Council delegates to the Acting Chief Executive Officer the review and power to revoke this Order;

and

That the Council resolves to end its confidential deliberations pursuant to section 90(2) of the Act and re-admit the public.

Summary

Following the recruitment and shortlisting process, the CEO Performance Review Committee (the **Committee**) proposes that Council endorse and seek to appoint Mr Andrew MacDonald as the Town of Walkerville's next Chief Executive Officer.

As such, it is recommended that Council determine to endorse the recommendation of this report.

Background

At their Special Meeting of 3 April 2023, and following the CEO Performance Review Committee's recommendation (**CEO22/22-23**) Council resolved:

CNC255/22-23

Moved: Cr Trotter

Seconded: Cr Rypp

1. *That Council engage McArthur (SA) Pty Ltd (ABN 97 007 895 703) as the qualified recruitment company to assist with the recruitment process for the new Chief Executive Officer.*

2. *That Council engage Norman Waterhouse Lawyers Pty Ltd (ABN 18 621 909 395) as the qualified independent legal adviser / person in accordance with s 98(4a)(b) of the Local Government Act 1999, so as to obtain their advice on matters of probity, candidate suitability and application assessment throughout the recruitment process for the new Chief Executive Officer.*
3. *That Administration close out RFQs VP349315 and VP350944, thus notifying all successful and unsuccessful Respondents accordingly.*
4. *That Administration liaise with both McArthur (SA) Pty Ltd and Norman Waterhouse Lawyers Pty Ltd to arrange their attendance at a future meeting of the CEO Performance Review Committee.*

At their Special Meeting of 8 May 2023, and following the CEO Performance Review Committee's recommendation (**CEO25/22-23**) Council resolved:

CNC289/22-23

Moved: Cr Vanstone

Seconded: Cr Kaur

1. *That Council receive and note the CEO Recruitment Process – Procedural Matter report.*
2. *That Council retrospectively approve the publication of the advertisement for recruitment of the Chief Executive Officer, appearing as Attachment A to this report, which appeared on seek.com.au on 28 April 2023.*
3. *That Council retrospectively approve the use of the seek.com.au website for the purpose of the recruitment process.*
4. *That Council retrospectively approve the publication of the advertisement for recruitment of the Chief Executive Officer, appearing as Attachment B to this report, which appeared in the Advertiser Newspaper on 29 April 2023.*
5. *That Council delegate to the CEO Performance Review Committee the authority to make necessary decisions as they relate specifically to the recruitment process for the Chief Executive Officer up to and including the point where a suitable and preferred candidate is identified.*
6. *That the CEO Performance Review Committee recommend to Council that at all future meetings of the Committee a member of Administration and/or the Independent Legal Adviser be present to provide advice on matters of probity, governance and the recruitment process.*

At their Special Meeting of 30 May 2023, the CEO Performance Review Committee resolved in confidence:

CEO28/22-23

Moved: Cr Trotter

Seconded: Cr Zeppel

That the following candidates be invited to attend and present to the CEO Performance Review Committee on Wednesday 7 June 2023 from 5:45pm:

- *Ms Rachel Brophy*
- *Ms Sandy Verschoor*
- *Mr Andrew MacDonald*

At their Special Meeting of 7 June 2023, the CEO Performance Review Committee resolved in confidence:

CEO33/22-23

Moved: Cr Rypp

Seconded: Cr Zeppel

That the CEO Performance Review Committee recommend to Council:

1. *that, upon agreement as to satisfactory terms, Mr Andrew MacDonald be appointed as the Town of Walkerville's Chief Executive Officer;*
2. *that Mr Steve Nolis of McArthur and Her Worship Mayor Melissa Jones be authorised to offer Mr Andrew MacDonald the position of the Town of Walkerville's Chief Executive Officer for a term of 3 years with a proposed annual commencing Total Employment Package of \$255,000 (comprise of cash and superannuation);*
3. *that in line with the aforementioned Total Employment Package, Her Worship Mayor Melissa Jones be authorised to negotiate the other terms and conditions of Mr Andrew MacDonald's engagement.*

Discussion / Issues for Consideration

Candidate Shortlisting and Referred Nomination

Following the advertised recruitment process the Committee interviewed five (5) preliminary shortlisted candidates over two days on Monday 29 May 2023 and Tuesday 30 May 2023. Following these sessions, the Committee resolved to conduct a second round of interviews with three candidates (CEO28/22-23).

The second round of interviews were conducted on Wednesday 7 June 2023, where after the Committee determined to recommend to Council that Mr Andrew MacDonald be offered the position as the Town of Walkerville's next Chief Executive Officer. (CEO33/22-23).

A copy of Mr MacDonald's resume appears as Attachment A.

CEO Appointment Procedures

Pursuant to Chapter 7, Part 1 of the Act a Council must employ a Chief Executive Officer,¹ to primarily, and among other things prescribed by the Act, oversee the day-to-day operations and affairs of the Council and to ensure that all policies and lawful decisions of Council are implemented in a timely and efficient manner.² If a vacancy occurs in the Office of the Chief Executive Officer the provisions of the Act require that a Council take reasonable steps to fill the vacancy.³

Adherence to the Prescribed Mandatory Recruitment Procedural Steps

In accordance with s 98 of the Act, for the purpose of filling said vacancy, the Council must undertake the following **mandatory steps**:

- 1) ***Appoint a selection panel to make recommendations to Council pertaining to the specified process of recruitment.***

¹ Local Government Act 1999 s 96(1).

² Local Government Act 1999 s 99(1)(a)&(b).

³ Local Government Act 1999 s 98(1).

The (the **ToR**)⁴ are clear in that in the event of a vacancy for the position of Chief Executive Officer:

- *the Committee will develop and recommend to Council the necessary steps to fill the vacancy within the requirements of the Act; and*
- *the Committee will act as the selection panel and make recommendations to Council on an appointment to the position of Chief Executive Officer”.*

At their Special Meeting of 8 May 2023, Council resolved (**CNC289/22-23**) to delegate authority to the Committee to perform all aspects of the recruitment process up to and including the point where a suitable and preferred candidate is identified.

As such, Council has fulfilled the requirements of s 98(4) of the Act based on the provisions imbedded in the Committee’s Terms of Reference (the **ToR**), and the subsequent delegation bestowed upon them by Council in accordance with **CNC289/22-23**.

2) Ensure either or both of the following processes are followed as part of the recruitment:⁵

- A. appoints at least one (1) person who is not an Elected Member or employee of the Council to the selection panel;**
- B. obtain and consider the advice of a qualified independent person on the assessment of applications and recommendations on the appointment.**

At their Special Meeting of 3 April 2023, Council resolved (**CNC255/22-23**) to engage Norman Waterhouse Lawyers Pty Ltd as the qualified independent legal adviser / person in accordance with s 98(4a)(b) of the *Local Government Act 1999*, so as to obtain their advice on matters of probity, candidate suitability and application assessment throughout the recruitment process for the new Chief Executive Officer.

As such, Council has adequately fulfilled the requirements of s 98(4a) of the Act.

3) Invite applicants to apply for the position of Chief Executive Officer by advertising on a website as determined by the Council, and/or take any other appropriate action or steps.⁶

Though a procedural erring occurred in the execution of this step, Council satisfied the requirements of s 98(3) of the Act by retrospectively approving the use of the seek.com.au website for the purpose of the recruitment process, and the publication of the advertisement on seek.com.au and in the Advertiser by way of **CNC289/22-23**.

Administrative Procedural Recommendation

Prior to the Committee’s determination on 7 June 2023, due to past procedural errings in the recruitment process, Administration worked directly with Norman Waterhouse Lawyers to craft an appropriate recommendation for the Committee to recommend to Council so as to ensure both the Committee and Council made determinations about the appointment in accordance with their respective delegations and the requirements of the Act.

A copy of the recommendation and legal advice appears as Attachment B, for members reference.

At their Special Meeting of 7 June 2023 however, the Committee determined to remove recommendation 4 which stated:

“that, upon successful completion of those negotiations, the proposed contract of employment be presented to the Council for consideration;”.

⁴ Town of Walkerville CEO Performance Review Committee Terms of Reference, clause 2.7.

⁵ *Local Government Act 1999* s 98(4a).

⁶ *Local Government Act 1999* s 98(3).

On the basis that no further delegated authority has to date been empowered to either the Committee, the Mayor or other Elected Members, the removal of this recommendation and proceeding to execute the employment contract without the delegation to do so presents a risk for a further miscarriage in the process – on the basis no determination mechanism for finalising and/or executing the employment contract exists.

As such, Administration recommends that in addition to the Committee's recommendation, Council also adopt either recommendation 4.a **OR** 4.b as outlined above to ensure there is sufficient and adequate clarity around the final stages of the appointment and execution process.

Options for Consideration

Option 1

That the CEO Performance Review Committee recommend to Council:

1. that, upon agreement as to satisfactory terms, Mr Andrew MacDonald be appointed as the Town of Walkerville's Chief Executive Officer;
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Administration's Additional Recommendation

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OR

- 4.b that, upon successful completion of those negotiations, Her Worship Mayor Melissa Jones be authorised to execute the employment contract for Mr Andrew MacDonald's engagement.

AND

6. that subject to Council's determination on this matter, prior to recommendations 2, 3 and 4 above occurring, Mr Steve Nolis of McArthur be authorised to notify the unsuccessful candidates and notify Mr Andrew MacDonald that he is the preferred candidate.

Option 2

That Council direct Administration to undertake the following alternate action(s):

- _____

Analysis of Options

Option 1 delivers an outcome that appoints an experienced local government CEO to manage the day-to-day operations for the Town of Walkerville.

Financial Implications

There are no perceived financial implications associated with this decision as costs for the engagement of consultants have been comfortably absorbed in the 2022-23 budget, and the proposed Total Employment Package has been factored into the ongoing staffing budget.

Governance Implications

Overall, the recruitment process has adhered to the prescribed process outline in the Act.

Preferred Option & Reasoning

Option 1 is the preferred option for the aforementioned reasons.

Attachment

Attachment A	Cover Letter & Resume – Mr Andrew MacDonald
Attachment B	Administration Recommendation to the Committee – 7 June 2023
Attachment C	CEO Performance Review Committee Terms of Reference