



Item No: 4.1

Date: 31 January 2023

Attachment: A, B

Meeting:	CEO Performance Review Committee
Title:	CEO Recruitment Process
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

Recommendation (Public)

Pursuant to section 90(3)(b),(h)&(k)

Pursuant to section 90(2) of the *Local Government Act 1999* (the **Act**) the CEO Performance Review Committee orders that all members of the public, except the Acting Chief Executive Officer Scott Reardon and Council Secretariat Danielle Edwards be excluded from attendance at the meeting for Agenda Item 4.1 CEO Recruitment Process.

The CEO Performance Review Committee is satisfied that pursuant to sections 90(3)(b),(h)&(k) of the Act, the information to be received, discussed and considered in relation to this Agenda Item is information relating to the personal affairs of living person, is based on legal advice, and is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person or company with whom Council is proposing to conduct business.

Recommendation (Confidential)

1. That Members of the CEO Performance Review Committee be advised that the initial three (3) proposals from Hender Consulting, McArthur Consulting and Perks People Solutions as obtained by Her Worship the Mayor Melissa Jones and distributed to said Members on 16 January 2023 are unable to be received and considered, and should be disregarded as they were obtained through unauthorised means.
2. That the CEO Performance Review Committee in their capacity as the CEO Recruitment and Selection Panel recommend to Council at their Ordinary Meeting of 20 February 2023 that the recruitment process for the Chief Executive Officer now commence and be undertaken in accordance with both the prescribed 'appointment procedures' as outlined under section 98 of the *Local Government Act 1999* and the legal advice obtained, appearing as Attachment B to this report, and in doing so Council:
 - a. appoints a suitably qualified recruitment company through an open request for quotes tender process conducted via Vendor Panel to assist with the CEO recruitment process, and that subject to Council's endorsement this open request for quotes tender process be undertaken for the 21 day period between Monday 27 February 2023 and Sunday 19 March 2023; and

- b. engages an independent legal adviser to provide advice and probity on issues relating to the CEO recruitment process, and that a request for quotes process be undertaken for the 21 day period between Monday 27 February 2023 and Sunday 19 March 2023.
3. That the CEO Performance Review Committee recommend to Council that the Acting Chief Executive Officer be authorised to write to those three (3) companies, namely Hender Consulting, McArthur Consulting and Perks People Solutions, to advise that Council will undertake an open tender process to appoint a suitably qualified recruitment company, and as part of which the respective companies may submit a proposal.
4. That the CEO Performance Review Committee request that Administration draft the requisite tender documentation relating to recommendations 1 a. and 1 b. above, and that this draft documentation be submitted to Council for reference and noting at their Ordinary Meeting of 20 February 2023.
5. That following completion of recommendations 1, 2 and 3 above, the CEO Performance Committee convene a Special Meeting at which [REDACTED] be invited to assist and provide guidance to Council on any/all tender submissions received, so that the Committee can subsequently make recommendations to Council on the appointment of both a suitably qualified recruitment company and independent legal adviser.

Recommendation (Public)

Pursuant to section 91(7)

That having considered Agenda Item 4.1 CEO Recruitment Process in confidence under section 90(2), 90(3)(b),(h)&(k) of the Act, the CEO Performance Review Committee, pursuant to section 91(7) of that Act orders that the report, Attachment B, and minutes relevant to this Agenda Item be retained in confidence for a period of 12 months or until the conclusion of the recruitment process, and that pursuant to section 91(9)(c) of the Act the CEO Performance Review Committee delegates to the Acting Chief Executive Officer the review and power to revoke this Order;

and

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

Summary

Following the resignation of the Chief Executive Officer in October 2022 and the conclusion of the Local Government General Elections in November 2022, Council finalised the membership of the CEO Performance Review Committee (the **Committee**) on Monday 16 January 2023. In accordance with clause 2.7 of the Committee's Terms of Reference (**ToR**), in the event of a vacancy in the position of Chief Executive Officer, the Committee is responsible for:

- acting as the CEO Recruitment and Selection Panel;
- developing and recommending to Council by way of Committee Resolution the necessary steps to fill the vacancy within the requirements of the Act, of which Council is required to subsequently formally endorse; and
- making recommendations to Council on an appointment to the position of Chief Executive Officer.

The first meeting of the Committee was scheduled to occur Tuesday 17 January 2023 at which it was intended that Administration would provide procedural guidance to the Committee and that the necessary steps to fill the vacancy were to be discussed, determined by the Committee and recommended to Council. However the emergence of a procedural erring occurred that day prior which

resulted in the postponement of the first Committee meeting and the need to obtain legal advice regarding the matter.
Based on the legal advice received, it is recommended that the Committee recommend to Council that the recommendations of this report be endorsed so as to correct the procedural erring and to ensure that a transparent, rigorous, accountable and robust recruitment process for a Chief Executive Officer be conducted henceforth.

Background

At their Special Meeting on 5 September 2022, Council resolved in confidence:

CNC61/22-23

[Redacted]

At their Ordinary Meeting on 17 October 2022, Council resolved in confidence:

CNC115/22-23

[Redacted]

At their Ordinary Meeting on 19 December 2022, Council resolved:

CNC149/22-23

Moved: Cr Nenke
Seconded: Cr Trotter

1. *That Council resolves to appoint Councillors Jay Allanson and Steven Rypp as Members of the CEO Performance Review Committee from 9:01am Tuesday 20 December 2022 until 9:00am Tuesday 19 December 2024;*
2. *That Council resolves to amend section 5.2 of the CEO Performance Review Committee’s Terms of Reference to read:*

“Members appointed to the Committee will be appointed for a term of 24 months”.

3. *That Council further amends the Terms of Reference to approve a fifth member of Council to sit on the CEO Performance Review Committee*

At their Ordinary Meeting on 16 January 2023, Council resolved:

CNC171/22-23

Moved: Cr Williams

Seconded: Cr Allanson

That Council resolves to appoint Councillor Zeppel as the fifth member of the CEO Performance Review Committee from 9:01am Tuesday 17 January 2023 until 9:00am Tuesday 19 December 2024.

Discussion/Issues for Consideration

Retirement of the CEO and Interim CEO Arrangements

Ms Kiki Cristol was first appointed as Chief Executive Officer by Council on 15 December 2008 for an initial term of five (5) years commencing 5 January 2009. Following the completion of this initial term, in accordance with the provisions of the Act,¹ Ms Cristol was reappointed and completed two subsequent terms (five (5) and four (4) years respectively). On 15 November 2021 Ms Cristol was again reappointed by Council for a further four (4) year term commencing 5 January 2022. However, following a brief period of leave in January 2022 Ms Cristol did not return to work due to an emerging and developing health issue.

Consequently, in January 2022 Ms Cristol appointed Mr Scott Reardon to the position of Acting Chief Executive Officer under delegation to oversee operations of Council during her unexpected absence.

CEO Appointment Procedures and Mandatory Procedural Steps

Pursuant to Chapter 7, Part 1 of the Act a Council must employ a Chief Executive Officer,³ 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.⁴

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.⁵ It should be noted that while the Act is silent on a required or stipulated timeframe to fill the position, other legislative provisions require that the position should be filled as soon as is reasonably practicable.⁶

Noting that the resignation of the Chief Executive Officer occurred concurrently with the 2022 Local Government General Elections and that a Council is precluded from making a designated decisions

¹ *Local Government Act 1999* s 98(6).

² *Local Government Act 1999* s 99(2).

³ *Local Government Act 1999* s 96(1).

⁴ *Local Government Act 1999* s 99(1)(a)&(b).

⁵ *Local Government Act 1999* s 98(1).

⁶ *Legislation Interpretation Act 2021* s 44(3).

during a declared election caretaker period,⁷ verbal advice obtained in October 2022 from Norman Waterhouse Lawyers suggested that it would be prudent for the incoming Council to wait and commence the recruitment process in 2023 instead of commencing the process immediately after the election.

In accordance with 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.⁸
- 2) Ensure **either or both** of the following processes are followed as part of the recruitment:⁹
 - 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.
- 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.¹⁰
- 4) That the CEO Recruitment and Selection Panel assess any applications received for the position, and to recommend to Council either the:¹¹
 - appointment of a suitable candidate to the position of Chief Executive Officer;
 - re-advertisement of the position if all candidates are deemed to be unsuitable;
 - or any other additional steps (if necessary) the panel deems appropriate.

Unauthorised Action and Procedural Error

On 17 January 2023 it was identified that Her Worship the Mayor Melissa Jones had unilaterally obtained three (3) written quotes for professional recruitment services from Hender Consulting (dated 29 November 2022), McArthur Consulting (dated 13 January 2023) and Perks People Solutions (undated) (the **Three Quotes**).

On the basis that:

- A. procurement is strictly an operational matter of Council and delegated to the Chief Executive Officer;¹²
- B. the three quotes were obtained prior to the finalisation of establishment of the Committee (which occurred 16 January 2023);
- C. the three quotes were obtained prior to the Committee determining the 'necessary steps' to recommend to Council as to the recruitment process;¹³ and
- D. the three quotes were obtained without Committee recommendation and/or Council resolution;

these actions were considered to be unauthorised, outside the scope of the Mayor's authority, and contrary to the formal appointment procedures and the prescribed mandatory procedural steps.

⁷ *Local Government (Elections) Act 1999* s 91A(2)(a).

⁸ Town of Walkerville CEO Performance Review Committee Terms of Reference, section 2.7.

⁹ *Local Government Act 1999* s 98(4a).

¹⁰ *Local Government Act 1999* s 98(3).

¹¹ *Local Government Act 1999* s 98(4).

¹² *Local Government Act 1999* s 99(1)(b).

¹³ Town of Walkerville CEO Performance Review Committee Terms of Reference, section 2.7.

Administration has since sought legal advice regarding this matter (the **Legal Advice**) which expresses concurrence with Administrations view. The legal advice appears as Attachment B to this report for member's reference.

As this procedural erring is considered to have tainted the commencement of the recruitment process, based on the legal advice it is recommended that the recommendations of this report be endorsed by the Committee and in turn Council in order to correct the procedural erring and to ensure that a transparent, rigorous, accountable and robust recruitment process is conducted henceforth.

It should be noted that in accordance with **CNC61/22-23**

Anticipated Timeline

While noting that the recruitment process and timeline will ultimately be determined by the successful tender submission and at the final discretion of Council, it is anticipated that the following timeline will be applicable to the recruitment process.

CEO Performance Review Committee Meeting <i>Recommendations of this report endorsed.</i>	31 January 2023
Council Meeting <i>Endorsement of Committee's recommendations as outlined in this report.</i>	20 February 2023
Open Request for Quote Tender Processes	27 February – 19 March 2023
CEO Performance Review Committee Meeting <i>Consideration of submissions and further recommendations to Council regarding the appointment of a suitably qualified recruitment company and qualified independent person.</i>	28 March 2023
Special Council Meeting <i>Endorsement of Committee's recommendation regarding the appointment of a suitably qualified recruitment company and qualified independent person.</i>	3 April 2023
Notification of Service Provider Appointment	4 April 2023
CEO Performance Review Committee Meeting <i>Meeting with appointed suitably qualified recruitment company and qualified independent person to finalise the precise recruitment process and timeline.</i>	11 April 2023
Council Meeting <i>Update from the Committee regarding the recruitment process.</i>	17 April 2023
Advertisement, recruitment, interview and appointment process.	18 April – 30 June 2023

Options for Consideration

Option1

1. That Members of the CEO Performance Review Committee be advised that the initial three (3) proposals from Hender Consulting, McArthur Consulting and Perks People Solutions as obtained by Her Worship the Mayor Melissa Jones and distributed to said Members on 16 January 2023 are unable to be received and considered, and should be disregarded as they were obtained through unauthorised means.
2. That the CEO Performance Review Committee in their capacity as the CEO Recruitment and Selection Panel recommend to Council at their Ordinary Meeting of 20 February 2023 that the

recruitment process for the Chief Executive Officer now commence and be undertaken in accordance with both the prescribed 'appointment procedures' as outlined under section 98 of the *Local Government Act 1999* and the legal advice obtained, appearing as Attachment B to this report, and in doing so Council:

- a. appoints a suitably qualified recruitment company through an open request for quotes tender process conducted via Vendor Panel to assist with the CEO recruitment process, and that subject to Council's endorsement this open request for quotes tender process be undertaken for the 21 day period between Monday 27 February 2023 and Sunday 19 March 2023; and
 - b. engages an independent legal adviser to provide advice and probity on issues relating to the CEO recruitment process, and that a request for quotes process be undertaken for the 21 day period between Monday 27 February 2023 and Sunday 19 March 2023.
3. That the CEO Performance Review Committee recommend to Council that the Acting Chief Executive Officer be authorised to write to those three (3) companies, namely Hender Consulting, McArthur Consulting and Perks People Solutions, to advise that Council will undertake an open tender process to appoint a suitably qualified recruitment company, and as part of which the respective companies may submit a proposal.
 4. That the CEO Performance Review Committee request that Administration draft the requisite tender documentation relating to recommendations 1 a. and 1 b. above, and that this draft documentation be submitted to Council for reference and noting at their Ordinary Meeting of 20 February 2023.
 5. That following completion of recommendations 1, 2 and 3 above, the CEO Performance Committee convene a Special Meeting at which ██████████ be invited to assist and provide guidance to Council on any/all tender submissions received, so that the Committee can subsequently make recommendations to Council on the appointment of both a suitably qualified recruitment company and independent legal adviser.

Option 2

That the CEO Performance Review Committee recommend that Council undertake the following alternate action(s):

- _____

Financial Implications

At this present time it is unknown what the financial cost of both the recruitment agency and independent legal adviser will total. A more informed understanding of the costs will be evident once the respective tender processes have been undertaken.

Governance Implications

Option 1 provides an outcome that ensures that Council is aligned with statutory requirements and procedural compliance.

Preferred Option & Reasoning

Option 1 is the preferred option as it will correct the procedural erring and ensure that a transparent, rigorous, accountable and robust recruitment process for a new Chief Executive Officer for the Town of Walkerville is undertaken

Attachment A	CEO Performance Review Committee Terms of Reference
Attachment B	Legal Advice

CEO Performance Review Committee

Terms of Reference

Approval Date	19/12/2022
Classification	Terms of Reference
Responsible Officer	Group Manager Corporate Services
Relevant Legislation	<i>Local Government Act 1999</i>
Document Number	TOR202255605
Last Reviewed 31/05/2019	Next Review 30/06/2023

1. Establishment

Pursuant to Section 41 of the Local Government Act 1999 ('the Act') the Council has established a committee to be known as the Chief Executive Officer's Performance Review Committee, referred to in these Terms of Reference as 'the Committee'.

2. Objectives

The objectives of the Committee are to:

- 2.1 Engage with the Chief Executive Officer in the undertaking of the annual performance review within the parameters of the Employment Agreement, and report the findings to Council.
- 2.2 On an annual basis, and in conjunction with the Chief Executive Officer, establish the Key Performance Indicators (KPIs) against which the performance review is to be conducted (July of each year)
- 2.3 At least once in every six month period review with the Chief Executive Officer the Key Performance Indicators, and the Key Result Areas included in the position description against which feedback will be sought during the annual performance review
- 2.4 On an annual basis make recommendations to Council regarding the remuneration and conditions of employment of the Chief Executive Officer, consistent with the requirements of the Employment Agreement.
- 2.5 Make recommendation to Council for the appointment of an independent consultant to assist with the Chief Executive Officer's performance review process.
- 2.6 Make recommendations to Council as to any proposed changes in remuneration or conditions of employment of the Chief Executive Officer.

Terms of Reference

- 2.7 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. The Committee will act as the selection panel and make recommendations to Council on an appointment to the position of Chief Executive Officer.

3. Authority

The role of the Committee will include:

- 3.1 The Council has not delegated any powers to the Committee. Accordingly all decisions of the Committee will constitute recommendations to Council unless Council has resolved to delegate the decision on the agenda to the Committee.
- 3.2 The Committee is authorised by Council to undertake work to effectively and efficiently meet the objectives described of its role.

4. Meetings

- 4.1 The Committee will ensure it meets in appropriate time frames to complete the CEO performance review to meet the timing specified in the CEO Employment Agreement.
- 4.2 The Committee will meet on an as needs basis, with a minimum of two meetings per year.
- 4.3 The Committee will meet in July and November each year in order for the CEO to provide feedback on performance against the agreed KPI's for the year.
- 4.4 The CEO will be invited to attend Committee Meetings at the following points in the performance review process:
- At the commencement of the annual performance review process to agree the process, steps and timing for the review, and those to be asked to provide feedback
 - During the performance review process to formally present to the Committee views as to the achievement of the agreed KPI's for the year.
 - Having received the performance review report, meet with the Committee to provide feedback regarding the findings of the report.
 - To meet with the Committee to discuss and finalise the KPI's for the next performance review period.
- 4.5 An agenda will be prepared and distributed to all Committee Members four clear days prior to the meeting.
- 4.6 Minutes of meetings (in accordance with legislative requirements) will be kept and provided to all Committee Members within three working days of the meeting.

Terms of Reference

5. Membership

- 5.1 The Committee is comprised of five Elected Members with the Mayor and the Deputy Mayor being Members. The remaining Elected Members are to be appointed to the Committee by resolution of Council.
- 5.2 All members of the Committee will hold office until the conclusion of the 2026 Local Government elections.
- 5.3 Members of the Committee may be removed by Council resolution at any time.
- 5.4 Members of the Committee may resign their position any time by giving notice of their intention, in writing, to the Chief Executive Officer.
- 5.5 If a vacancy occurs on the Committee, in accordance with clauses 5.3 or 5.4, the Council will appoint a replacement member.

6. Role of the Presiding Member

- 6.1 The Mayor will be appointed as the Presiding Member.
- 6.2 The Presiding Member's role is to:
 - oversee and facilitate the conduct of meetings in accordance with the Act and *Local Government (Procedures at Meetings) Regulations 2013* (Regulations);
 - ensure that the Guiding Principles at Regulation 5 are observed and that all Committee members have an opportunity to participate in discussions in an open and responsible manner; and
 - call the meeting to order and move the debate towards finalisation when a matter has been debated significantly and no new information is being discussed.
- 6.3 If the Presiding Member of the Committee is absent from a meeting then the Deputy Mayor will preside at the meeting.

7. Quorum

- 7.1 A quorum for a meeting of the Committee will be half of the number of members plus one.
- 7.2 No business can be transacted at a meeting unless a quorum is present.

8. Voting

- 8.1 All members of the Committee must (subject to any provisions of the Act or Regulations to the contrary) vote on all matters presented for decision at a meeting of the Committee.
 - 8.2 For the avoidance of doubt, every member of the Committee, including the Presiding Member (and / or the Deputy Mayor in the absence of the Presiding Member) has a deliberative vote i.e. no casting vote.
-

Terms of Reference

- 8.3 The Presiding Member is deemed to vote in the affirmative unless he/she clearly declares otherwise.
- 8.4 The Presiding Member will ask for members to vote and will then declare whether the motion is carried or lost.
- 8.5 Should the vote on a matter be tied the item shall be referred to Council for decision.
- 8.6 All decisions of the Committee will be made on the basis of a majority of members present.
- 8.7 The independent consultant appointed by Council to facilitate the CEO's Performance Review will attend meetings but will not have voting rights.

Scott Reardon

From: Tracy Riddle <triddle@kelledyjones.com.au>
Sent: Monday, 23 January 2023 5:29 PM
To: Scott Reardon
Subject: CEO - Advice - Possible Behavioural Matter (KJ 220537)
Attachments: Fwd: CEO Performance Committee - proposals

Caution: This is an external email. Please take care when clicking links or opening attachments.

Hi Scott

You have requested advice, on behalf of the CEO Performance Review / Recruitment Committee, with respect to its procedural requirements in commencing the CEO Recruitment process.

I understand your request arises on the basis that prior to the first meeting of the Committee, as below, the Mayor obtained three (3) proposals from recruitment firms, for consideration by the Committee, in commencing the process.

Our advice, in short, is that the Mayor's actions, however well intentioned, were premature and unauthorised. We set out below the steps for the Committee's, and Council's, subsequent consideration in ensuring a transparent, accountable and robust recruitment process.

Background

Briefly by way of background, as it serves to inform our advice, we note as follows:

- pursuant to Section 41 of the *Local Government Act 1999* (the **Act**) the Council has established a committee known as the *Chief Executive Officer's Performance Review Committee*, referred to in the Terms of Reference (**ToR**) as the Committee;
- clause 3 of the ToR confirms the Council has not delegated any authority to the Committee, rather, it performs a recommendatory role;
- clause 5.1 of the ToR confirms that the Committee is comprised of five (5) Elected Members with the Mayor and the Deputy Mayor being Members. The remaining Elected Members are to be appointed to the Committee by resolution of Council;
- that is, the ToR specifically requires the Mayor will be a Member of the Panel, with clause 6.1 specifying '*The Mayor will be appointed as the Presiding Member*';
- the membership of four (4) Members of the Committee was determined by resolution of the Council at its Meeting of Monday 19 December 2022, with a subsequent resolution of the Council, made at its meeting of Monday 16 January 2023, increasing membership of the Committee to five (5) Members;
- the first meeting of the Committee has yet to be held, with the meeting originally scheduled for Tuesday 17 January 2023 postponed, so the Committee may receive advice on the issue of the proposals obtained, absent a recommendation from the Committee, or a resolution of the Council, to advance the same;
- clause 2.7 of the ToR for the Panel provides in the event of a vacancy for the position of CEO, **the Committee** is to develop and **recommend to Council** the necessary steps to fill the vacancy within the requirements of the Act;

- that is, the Committee has yet to determine the ‘necessary steps’ to recommend to the Council as to process, let alone which recruiters to approach;
- the Mayor does identify in an email to the Committee Members that:

To be completely honest, I am not sure if I should (and am allowed to) have gone to the lengths of getting proposals, but to my mind, without a knowledge of expertise, experience and fees, I think it makes it hard to make a meaningful recommendation to the full Council.

Next Steps

We now recommend the first meeting of the Committee be convened, and Members be advised the initial proposals obtained by the Mayor are unable to be received and considered, the Mayor having no authorisation from the Council to obtain the same.

The first item of business for the Committee under clause 2.7 of the ToR will be to develop and recommend to Council the necessary steps to fill the vacancy within the requirements of the Act.

This will include a recommendation that the Council now commence a recruitment process, with the assistance of a suitably qualified recruitment company, as well as in accordance with the Act, and specifically section 98(4a) of the Act.

We note that section 98(4a) of the Act provides that the Council must ensure that either **or** both of the following applies to the process for appointing a CEO:

- (a) *the council appoints at least 1 person who is not a member or employee of the council to the selection panel;*
- (b) *before making the appointment to the office of chief executive officer, the council obtains and considers the advice of a qualified independent person on the assessment of applications and recommendations on the appointment under subsection (4) (and that advice may include recommendations to the council on the appointment).*

It is our advice the Council may wish, in addition to engaging a recruitment company to assist with the recruitment process, also engage one of its independent legal advisers as a ‘qualified independent person’ on the issue of the recruitment ‘process’, given this initial ‘false’ start to the process. Such an engagement will ensure a sufficiently rigorous, transparent and accountable recruitment process.

We also recommend the Committee recommends to the Council that the RFQ process for the Recruitment Company be by **open tender**, on Vendor Panel or similar. That is, open to any company which may wish to submit a proposal for the consideration of the Committee, in the first instance, and then by the Council.

This will address the issue of the initial three (3) companies having been approached for a proposal, absent a recommendation from the Committee, and resolution of the Council to do so.

The Committee should also recommend to the Council that you be authorised to write to those companies, advising the Council has now determined to go to an open tender process, inviting each to re-submit any proposal they may wish to have considered as part of the same.

In our view, if the Council resolves to progress the recruitment process in this manner, it will address the process and procedural errors that have been made to date.

For completeness, subject to any further representation the Mayor may have made to those recruiters (that is, as long as the Mayor did not represent to any of those recruiters they would be successful in their proposal), simply requesting proposals for the consideration of the Committee, in the first instance, has not exposed the Council to a risk of litigation at all.

Lastly, whilst section 62(4a) and 90(3)(k) of the Act provide for the confidentiality obligations of Members, in our view, these provisions have not been breached in the circumstances of this matter, the proposals not

having been distributed beyond the membership of the Committee (and senior Council employees), and not having been received and considered by the Council under section 90(2) ad 90(3) of the Act.

Please let me know if we can assist further.

Regards

Tracy

Tracy Riddle
Lawyer

The logo for Kelledy Jones, featuring the name in white serif font on a dark blue rectangular background.

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From: Melissa Jones <mjones@walkerville.sa.gov.au>
Sent: Monday, January 16, 2023 8:57:35 PM
To: Liz Trotter <ltrotter@walkerville.sa.gov.au>; Jay Allanson <jallanson@walkerville.sa.gov.au>; Steven Rypp <srypp@walkerville.sa.gov.au>; John Zeppel <jzeppel@walkerville.sa.gov.au>
Subject: CEO Performance Committee - proposals

Dear Committee members

I have taken the liberty of obtaining proposals from the top 3 recruiters in SA with local government recruitment expertise:

1. Hender
2. Perks
3. McArthur

Please find these attached for your information.

These are for discussion tomorrow at our meeting in coming to a recommendation to Council regarding the independent person to advise on the recruitment of a CEO (a statutory requirement) and to conduct the recruitment itself.

To be completely honest, I am not sure if I should (and am allowed to) have gone to the lengths of getting proposals, but to my mind, without a knowledge of expertise, experience and fees, I think it makes it hard to make a meaningful recommendation to the full Council.

See you tomorrow, happy to discuss prior if you wish.

Kind regards
Mel

Regards,

Mayor Melissa Jones

Town of Walkerville

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