



Item No: 19.2

Date: 21 August 2023

Attachment: A, B, C, D, E, F

Meeting: Council

Title: Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package – deferred by **CNC07/23-24**

Responsible Manager: Acting Chief Executive Officer, Scott Reardon

Author: Acting Chief Executive Officer, Scott Reardon

Key Pillar: **Strategic Framework – Key Pillar 7 – Leadership – A responsible and influential local government organisation**

Key Focus Area: **Financial Guiding Principle 1- Finances managed responsibly**

Type of Report: **Decision Required**

Pursuant to Section 83(5) of the *Local Government Act 1999* (the **Act**), 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 Act on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(a)&(h) of the Act being both information the disclosure of which would involve the disclosure of information concerning the personal affairs of a person (living or dead), and based on legal advice.

Recommendation (Public)

Pursuant to s90(3)(a)&(h)

Pursuant to section 90(2) of the Act the Council orders that all members of the public, except the Acting Chief Executive Officer Scott Reardon, Group Manager Assets & Infrastructure James Kelly, Group Manager Corporate Services Vikki Purtle, Group Manager Public Relations & Community Services Sarah Spencer, and Council Secretariat Danielle Edwards be excluded from attendance at the meeting for Agenda Item 19.2 Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package.

The Council is satisfied that, pursuant to section 90(3)(a)&(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person (living or dead), that person being the incoming Chief Executive Officer of the Corporation of the Town of Walkerville, and that the legal advice presented is subject to professional privilege.

Recommendation (Confidential)

1. That Council rescind **CNC318/22-23 point 2** (only), which reads:

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 (comprised of cash and superannuation);

and in lieu thereof replaces it with:

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 \$299,520 (comprised of cash and superannuation) in accordance with the South Australian Remuneration Tribunal's Determination of 16 June 2023.

2. That in order to give effect to resolution 1 above, Council delegate to the Mayor the authority to execute the 'Employment Agreement – Addendum No.1' appearing as Attachment C to this report.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 19.2 Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package in confidence under section 90(2)&(3)(a)&(h) of the Act, Council, pursuant to section 91(7) of that Act orders that with the exception of Attachment D and E, the report, all other Attachments and the minutes relevant to this Agenda Item be retained in confidence for a period of 12 months excepting that Council authorises the release of the minutes to substantive party/parties to enable enactment of the resolution and that pursuant to Section 91(9)(c) of the Act the Council delegates to the Chief Executive Officer the review and power to revoke this Order

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* Council and re-admit the public.

Summary

At their Ordinary Meeting of 17 July 2023 Council received the *Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package* report which:

- outlined the recent Remuneration Tribunal of South Australia (the **Tribunal**) Determination of 16 June 2023 that set rates for the minimum and maximum remuneration ranges for CEOs;
- advised that the Town of Walkerville had been placed in Band 5 applying a minimum and maximum range of between \$299,520 and \$317,200; and
- included legal advice advising that based on:
 - the commencement of the Tribunal's Determination on 1 July 2023; and
 - Mr MacDonald's commencement date of 28 August 2023;

Council were obligated to amend the existing Employment Contract to pass on the remuneration increase as determined by the Tribunal.

That report, legal advice and draft Employment Agreement Addendum submitted to Council on 17 July 2023 appear as Attachments A, B & C to this report respectively.

At that meeting, **Cr James Nenke** raised a question without notice seeking clarification as to "*how the remuneration tribunal banding is decided, how is it reviewed, and whether there was an opportunity to appeal the decision*"?

This question led to two motions without notice which resulted in both the deferment of the agenda item (**CNC07/22-23**) and a direction for Administration to obtain further advice and feedback (**CNC08/22-23**).

Following these decisions Administration approached the LGA, Kelliedy Jones, and the Tribunal. While no specific information has been received from the Tribunal regarding the matter, the following has since been confirmed, and is provided for Council's reference:

1. the Corporation of the Town of Walkerville was grouped in with certain metropolitan, near metropolitan and larger regional councils on the basis that the Tribunal noted Walkerville's characteristics were fundamentally different to all other metropolitan councils;¹
2. the Corporation of the Town of Walkerville remains one of the lowest ranked / Banded metropolitan Council in South Australia;²
3. a determination of the Tribunal **is not** subject to appeal;³
4. while in the future the Tribunal intends to commence a four-yearly cycle for this review process, as this is the inaugural review, the Tribunal:⁴
 - 4.1 is accepting submissions from Councils who wish to raise their concerns about the determination; and
 - 4.2 any such submissions received will be considered as part of a review held in July 2024; but
 - 4.3 it is expected that any Council who makes a submission as part of any future review, must identify significant arguments and provide sufficient detail and reasons to support their case.
5. Until such time that the Tribunal makes a subsequent determination about the allocated Bands, Council remains obligated to amend the remuneration package of the incoming CEO accordingly.

Based on this, to ensure Council remains compliant with section 99A of the *Local Government Act 1999*, sections 18 & 19 of the *Remunerations Act 1990*, the Tribunal's Determination of 16 June 2023, and Clause 13.3 of the Employment Agreement held between Mr Andrew MacDonald and the Corporation of the Town of Walkerville, it is recommended that Council endorse the recommendations of this report.

Background

At their Special Meeting on 8 June 2023, Council resolved in confidence:

CNC318/22-23

Moved: Cr Trotter

Seconded: Cr Rypp

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*

¹ Remuneration Tribunal of South Australia '2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers' Report No.4 of 2023 [at 73], appearing as Attachment D to this report.

² Remuneration Tribunal of South Australia Determination No.4 of 2023 (dated 16 June 2023), appearing as Attachment E to this report.

³ *Remuneration Act 1990* s 18.

⁴ Remuneration Tribunal of South Australia '2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers' Report No.4 of 2023 [at 79].

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.*
4. *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.*
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.*

At their Ordinary Meeting on 17 July 2023, Council resolved the following:

CNC07/23-24

Moved: Cr Nenke

Seconded: Cr Zeppel

That Council defers item 19.2.

CNC08/23-24

Moved: Cr Nenke

Seconded: Cr Zeppel

That Council directs Administration to seek legal advice and liaise with the remuneration tribunal regarding the potential appeal process and to obtain an understanding as to how the Town of Walkerville was allocated into band 5 in comparison to budget size, geographical size and population.

Discussion / Issues for Consideration

Remuneration Tribunal of South Australia '2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers' Report No.4 of 2023

On 16 June 2023 the Tribunal released its Determination (appearing as Attachment E to this report) and associated report (appearing as Attachment D to this report); the latter of which outlined the following background and rationales:

- For the inaugural review, the Tribunal has determined to group 67 councils into eight bands.
- While these bands have some generally common characteristics, the Tribunal recognised differences and potential anomalies existed in terms of council characteristics within and between some of these bands.
- Each Band and the allocations of Councils therein was based on the data provided by councils in relation to the total remuneration package of their chief executive officer.⁵ The Tribunal then made and applied assumptions based on various allowances as well as additional leave and entitlements.⁶

⁵ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 2.

⁶ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 3.

- A group of metropolitan, near metropolitan and larger regional councils were grouped together in Band 5; one such Council being the Town of Walkerville.
- The Tribunal placed the Town of Walkerville in this group on the basis that the characteristics of the Council were fundamentally different from all other metropolitan councils, while remaining a metropolitan Council.⁷
- The Tribunal proposes a four yearly review cycle commensurate with the timeframe for local government member allowances.⁸
- However, as this is the first review of this nature, and some data may be conflicting and inconsistent, it is acknowledged that councils may need to refer specific instances to the Tribunal for consideration.
- The Tribunal will review the minimum and maximum remuneration levels in July 2024 to take account of any feedback from councils or CEOs and wage and cost of living adjustments.⁹
- The Tribunal expects any council who makes a submission as part of any future review, must identify significant differences and to provide sufficient detail and reasons as to why this is the case.¹⁰

Legislative Provisions

Sections 99A(2)&(10) of the *Local Government Act 1999* respectively state:

“The Remuneration Tribunal will determine (from time to time) the minimum and maximum remuneration that may be paid or provided to chief executive officers of councils”.

“A council must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal for the purposes of this section”.

Sections 18 & 19 of the *Remuneration Act 1990* respectively state:

“A determination of the Tribunal is not subject to appeal”.

“A determination of the Tribunal is binding”.

Employment Agreement

On 9 June 2023 the Employment Agreement (the **Agreement**) held between the Town of Walkerville and Mr Andrew MacDonald was fully executed.

Clause 13.3 of the Agreement reads:

“The parties acknowledge that, in accordance with Section 99A(10) of the Local Government Act 1999 (SA), the TEC package may be reviewed and adjusted, by mutual agreement, to ensure compliance with applicable rates as determined by the Remuneration Tribunal of South Australia (RTSA)”.

⁷ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 73.

⁸ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 79.

⁹ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 79.

¹⁰ Remuneration Tribunal of South Australia, 2023 Inaugural Review of Minimum and Maximum Remuneration for Local Government Chief Executive Officers, at 79.

Clause 30 of the Agreement requires:

“This Agreement shall only be varied by further agreement of the parties in writing”.

Legal Advice - June 2023

Following the public release of the Determination, Administration sought legal advice (the **Advice**) (appearing as Attachment B to this report) to ascertain whether the Determination impacted or applied to the Employment Agreement for the incoming Chief Executive Officer. This Advice, appearing as Attachment C to this report, concluded that:

- section 99A(10) of the Act (which came into effect on 20 September 2021), requires that a Council “**must** ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration Band determined by the Remuneration Tribunal ...”;
- the Tribunal’s Determination (which came into effect 1 July 2023) places the Town of Walkerville in Band 5 applying a minimum and maximum range of between \$299,520 and \$317,200;
- Mr MacDonald entered into his contract with the Council after 20 September 2021, and has a commencement date of 28 August 2023 - which is after the commencement of the Determination (viz 1 July 2023);
- the Determination **does apply** to the Employment Agreement and Mr MacDonald is entitled to a total remuneration amount in line with the relevant Determination Band, that being between \$299,520 and \$317,200; and
- Council must now resolve to execute an Addendum to the Employment Agreement, in accordance with clause 30 therein, to increase the TEC Package to an annual base salary (gross) of **\$269,838** (from \$229,730) with an employer superannuation contribution of **\$29,682** (from \$25,270) for a TEC Package of **\$299,520 (as a minimum)**.

LGA Advice

Following Council’s decision of 17 July 2023 to defer the execution of the Agreement Addendum, on Tuesday 1 August 2023 Administration liaised with the LGA regarding the matter, with their feedback being:

“Noting your council has raised concerns, the [2022] Guideline for submissions may assist you in going back to the Tribunal to seek an alternative Determination as it sets out various factors you could point to as a basis for seeking the review. I’m aware there are a number of councils with concerns about band placement that are considering an approach to the Tribunal. As the process is untested at this stage, I can’t provide much guidance on what is required”.

Subsequent Legal Advice & Confirmation – August 2023

In accordance with **CNC08/22-23** Administration sought further advice and confirmation on the matter. This advice has reaffirmed the report of 17 July 2023 and its attached advice, the feedback from the LGA, as well as the process outlined in the aforementioned Determination report.

*“until such time as the Tribunal may review the bandings, the minimum and maximum ‘range’ **will apply** to Andrew’s Contract of Employment with the Council”.*

“the onus lies on the Council to make a further submission to the Tribunal on its review in July 2024 if it takes issue with the minimum/maximums set”.

“However until such time as these [bands] may be amended, it ‘must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal ...’ in accordance with section 99A(10) of the Act”.

Options for Consideration

Option 1

1. That Council rescind **CNC318/22-23 point 2** (only), which reads:

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 (comprised of cash and superannuation);

and in lieu thereof replaces it with:

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 \$299,520 (comprised of cash and superannuation) in accordance with the South Australian Remuneration Tribunal’s Determination of 16 June 2023.

2. That in order to give effect to resolution 1 above, Council delegate to the Mayor the authority to execute the ‘Employment Agreement – Addendum No.1’ appearing as Attachment C to this report.

Option 2

That Council:

- _____

Analysis of Options

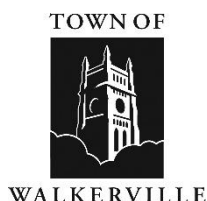
Option 1 delivers an outcome that ensures Council is compliant with the *Local Government Act 1999*, the *Remuneration Act 1990*, the Tribunal’s Determination and the terms and conditions of Mr MacDonald’s Employment Agreement.

Financial Implications

As a direct result of the Determination the financial implication to the 2023-24 staffing budget will total \$44,520 for salary and superannuation contributions. Further costs will also be incurred for Workers Compensation and Income Protection Insurance, Annual and Long Service Leave provisions.

Attachments

Attachment A	Deferred Council Report – Item 19.2 17 July 2023
Attachment B	Legal Advice Re: Employment Contract Addendum – June 2023
Attachment C	Draft Employment Contract Addendum
Attachment D	Remuneration Tribunal Determination No.4 of 2023 Report
Attachment E	Remuneration Tribunal Determination No.4 of 2023
Attachment F	Legal Advice Re: Confirmation – August 2023



Item No: 19.2

Date: 17 July 2022

Attachment: A, B, C

Meeting:	Council
Title:	Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package
Responsible Manager:	Acting Chief Executive Officer, Scott Reardon
Author:	Acting Chief Executive Officer, Scott Reardon
Key Pillar:	Strategic Framework – Key Pillar 7 – Leadership – A responsible and influential local government organisation
Key Focus Area:	Financial Guiding Principle 1- Finances managed responsibly
Type of Report:	Decision Required

Pursuant to Section 83(5) of the *Local Government Act 1999* (the **Act**), 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 Act on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(a)&(h) of the Act being both information the disclosure of which would involve the disclosure of information concerning the personal affairs of a person (living or dead), and based on legal advice.

Recommendation (Public)

Pursuant to s90(3)(a)

Pursuant to section 90(2) of the Act the Council orders that all members of the public, except the Acting Chief Executive Officer Scott Reardon, Group Manager Assets & Infrastructure James Kelly, Group Manager Corporate Services Vikki Purtle, Group Manager Public Relations & Community Services Sarah Spencer, and Group Leader Customer & Library Services Lisa Cuculowskyj be excluded from attendance at the meeting for Agenda Item 19.2 Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package.

The Council is satisfied that, pursuant to section 90(3)(a)&(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person (living or dead), that person being the incoming Chief Executive Officer of the Corporation of the Town of Walkerville, and that as Council has not yet made a decision in relation to the legal advice presented which is subject to professional privilege

Recommendation (Confidential)

1. That Council rescinds **CNC318/22-23 point 2** (only), which reads:

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 (comprised of cash and superannuation);

ATTACHMENT A

and in lieu thereof replaces it with:

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 \$299,520 (comprised of cash and superannuation) in accordance with the South Australian Remuneration Tribunal's Determination of 16 June 2023.

2. That in order to give effect to resolution 1 above, Council delegate to the Deputy Mayor, acting in the absence of the Mayor, the authority to liaise with Mr Andrew MacDonald and execute the 'Employment Agreement – Addendum No.1' appearing as Attachment C to this report.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 19.2 Remuneration Tribunal Determination and the Chief Executive Officer Remuneration Package in confidence under section 90(2)&(3)(a)&(h) of the Act, Council, pursuant to section 91(7) of that Act orders that with the exception of Attachment A, the report, all other Attachments and the minutes relevant to this Agenda Item be retained in confidence for a period of 3 years excepting that Council authorises the release of the minutes to substantive party/parties to enable enactment of the resolution and that pursuant to Section 91(9)(c) of the Act the Council delegates to the Chief Executive Officer the review and power to revoke this Order

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* Council and re-admit the public.

Summary

As part of the recent Local Government review and reforms, on 20 September 2021 section 60 of the *Statutes Amendment (Local Government Review) Act 2021* came into operation resulting in the insertion of section 99A into the *Local Government Act 1999* (the **Act**).

This new provision conferred jurisdiction on the Remuneration Tribunal of South Australia (the **Tribunal**) to make determinations on the minimum and maximum remuneration ranges for South Australian Local Government Chief Executive Officers, and further prescribed that Councils were obligated to ensure that the remuneration of its Chief Executive Officer was within the relevant minimum and maximum Band set the Tribunal.

At their Special Meeting on 8 June 2023 Council resolved (**CNC318/22-23**) to appoint Mr Andrew MacDonald to the position of Chief Executive Officer of the Town of Walkerville. The negotiated and endorsed remuneration package for Mr MacDonald's appointment totalled \$255,000 comprising both cash and superannuation.

On 16 June 2023 the Tribunal released a Determination (the **Determination**), appearing as Attachment A to this report, that set the aforementioned rates for the minimum and maximum remuneration ranges, placing the Town of Walkerville in Band 5 applying a minimum and maximum range of between \$299,520 and \$317,200. The Determination became effective on 1 July 2023.

The result of this Determination is that any Chief Executive Officer employment agreement entered into after 20 September 2021 with a commencement date occurring after the effect of the Determination (viz 1 July 2023) must ensure that the total remuneration amount of the employment agreement is within the Band ranges set by the Tribunal.

ATTACHMENT A

Based on this, clause 13.3 of the executed employment agreement between Mr MacDonald and the Town of Walkerville, and the Legal Advice appearing as Attachment B to this report, it is recommended that Council endorse the recommendations of this report.

Background

At their Special Meeting on 8 June 2023, Council resolved in confidence:

CNC318/22-23

Moved: Cr Trotter

Seconded: Cr Rypp

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.*
4. *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.*
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.*

Discussion / Issues for Consideration

Employment Agreement

On 9 June 2023 the Employment Agreement (the **Agreement**) held between the Town of Walkerville and Mr Andrew MacDonald was fully executed.

Clause 13.3 of the Agreement reads:

The parties acknowledge that, in accordance with Section 99A(10) of the Local Government Act 1999 (SA), the TEC package may be reviewed and adjusted, by mutual agreement, to ensure compliance with applicable rates as determined by the Remuneration Tribunal of South Australia (RTSA).

Clause 30 of the Agreement requires:

This Agreement shall only be varied by further agreement of the parties in writing.

Legal Advice

Following the public release of the Determination, Administration sought legal advice (the **Advice**) to ascertain whether the Determination impacted or applied to the Employment Agreement for the incoming Chief Executive Officer. The Advice, appearing as Attachment C to this report, concludes that:

ATTACHMENT A

- section 99A(10) of the Act (which came into effect on 20 September 2021), requires that a Council “**must** ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal ...”;
- the Tribunal’s Determination (which came into effect 1 July 2023) places the Town of Walkerville in Band 5 applying a minimum and maximum range of between \$299,520 and \$317,200;
- as Mr MacDonald entered into his Contract with the Council after 20 September 2021, and has a commencement date of 28 August 2023 - which is after the commencement of the Determination (viz 1 July 2023);
- the Determination **does apply** to the Employment Agreement and Mr MacDonald is entitled to a total remuneration amount in line with the relevant Determination Band, that being between \$299,520 and \$317,200; and
- as such, Council must now resolve execute an Addendum to the Employment Agreement, in accordance with clause 30 therein, to increase the TEC Package to an annual base salary (gross) of **\$269,838** (from \$229,730) with an employer superannuation contribution of **\$29,682** (from \$25,270) for a TEC Package of **\$299,520 (as a minimum)**.

Options for Consideration

Option 1

1. That Council rescinds **CNC318/22-23 point 2** (only), which reads:

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 (comprised of cash and superannuation);

and in lieu thereof replaces it with:

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 \$299,520 (comprised of cash and superannuation) in accordance with the South Australian Remuneration Tribunal’s Determination of 16 June 2023.

2. That in order to give effect to resolution 1 above, Council delegate to the Deputy Mayor, acting in the absence of the Mayor, the authority to liaise with Mr Andrew MacDonald and execute the ‘Employment Agreement – Addendum No.1’ appearing as Attachment C to this report.

Option 2

That Council:

- _____

Analysis of Options

Option 1 delivers an outcome that ensures Council is compliant with section 99A the Act, the Tribunal’s Determination and the terms and conditions of Mr MacDonald’s Employment Agreement, namely clause 13.3.

ATTACHMENT A

Financial Implications

As a direct result of the Determination the financial implication to the 2023-24 staffing budget will total \$44,520 for salary and superannuation contributions. Further costs will also be incurred for Workers Compensation and Income Protection Insurance, Annual and Long Service Leave provisions.

Attachments

Attachment A	South Australian Remuneration Tribunal Determination
Attachment B	Legal Advice
Attachment C	Draft Employment Contract Addendum

Scott Reardon

From: Tracy Riddle [REDACTED]
Sent: Wednesday, 28 June 2023 12:11 PM
To: Scott Reardon
Cc: Michael Kelledy
Subject: Remuneration Tribunal Determination - Incoming CEO Employment Agreement (KJ 220537)
Attachments: toow0001_220537_017_Addendum No. 1 - TEC Package.docx

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

Hi Scott

You have requested advice with respect to the impact of the recently released Determination of the Remuneration Tribunal (the **Determination**), on the Contract of Employment for the new CEO of the Council, Mr Andrew MacDonald. The Contract was executed on 9 June 2023 by Mr MacDonald.

Our advice is:

- the Determination is operative from this Saturday, 1 July 2023;
- the Determination establishes minimum and maximum remuneration bands for councils in relation to the 'total remuneration package' for a CEO;
- section 147(5), a transitional provision in the *Statutes Amendment (Local Government Review) Act 2021*, provides that the remuneration of a CEO who was **holding office** on the commencement of section 99A of the *Local Government Act 1999*, will not be affected by the Determination during their term of office;
- section 99A commenced on 20 September 2021, but has not had any work to do until the Determination was made and becomes operative (on 1 July 2023);
- the effect of the above is that the Determination is relevant to any CEO employment agreement that had been entered into **after 20 September 2021, but only from the effective date of the Determination and not retrospectively to an earlier commencement date** for the Agreement;
- in which case, as Andrew has entered into his Contract with the Council after 20 September 2021, noting he will commence in the role on 11 September 2023 (or perhaps even 28 August 2023), in accordance with section 99A(10) of the LG Act, the Council '**must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal ...**';
- the Determination **applies** to Andrew's Contract of Employment with the Council and he is entitled to a Total Employment Cost package in accordance therewith;
- under the Determination the Council falls within Band 5, which equates to a TEC package for its CEO of between \$299,520 and \$317,200.
- by reference to the attached Employment Agreement, clause 13.3 provides (emphasis ours):

*The parties acknowledge that, in accordance with Section 99A(10) of the Local Government Act 1999 (SA), the TEC package **may be reviewed and adjusted, by mutual agreement, to ensure compliance with applicable rates as determined by the Remuneration Tribunal of South Australia (RTSA).***

- Annexure B to the Employment Agreement provides the TEC package for Andrew is \$255,000, constituted of an annual base salary (gross) of \$229,730 and \$25,270 by way of employer superannuation contribution (11% as at 1 July 2023);

In which case it is our advice the Council must now resolve execute an Addendum to the Agreement, in accordance with clause 30 thereof, to increase the TEC Package to an Annual base salary (gross) of **\$269,838** (from \$229,730) with an employer superannuation contribution of **\$29,682** (from \$25,270) for a TEC Package of **\$299,520 (as a minimum)**.

We **attach** a draft Addendum for your consideration to include with any report to the Council in this respect.

Regards

Tracy

Tracy Riddle
Lawyer

Kelley Jones

Level 6/19 Gilles Street Adelaide SA 5000 | GPO Box 2024 SA 5001

kelleyjones.com.au

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From: Scott Reardon <SReardon@walkerville.sa.gov.au>

Sent: Tuesday, 27 June 2023 3:39 PM

To: Tracy Riddle

Subject: Remuneration Tribunal Determination - Incoming CEO Employment Agreement

Hi Tracy,

I seek some advice with regard to ss 60 & 147(5) of the *Statutes Amendment (Local Government Review) Act 2021* (the **Amending Act**), s 99A(10) of the *Local Government Act 1999* (the **LG Act**), and the recent Remuneration Tribunal's Decision (the **Tribunal Decision**) (attached).

Background

1. Following the CEO Performance Review Committee's recommendation (**CEO34/22-23**) to Council on 7 June 2023, on 8 June 2023 Council resolved (**CNC318/22-23**) to enter into an employment contract (the **Contract**) with Mr Andrew MacDonald with a total remuneration package of \$255,000.
2. The contract (as attached) was executed on and is dated 9 June 2023.

3. The agreed commencement date for the position is 11 September 2023, but Andrew may commence earlier (28 August 2023) which is yet to be confirmed.
4. On 16 June 2023 the Tribunal's Decision placed Walkerville in the new 'Minimum and Maximum' Band 5 which equates to a total remuneration package for the CEO between **\$299,520** and **\$317,200**.
5. The new 'Minimum and Maximum Remuneration' Bands have operational effect commencing 1 July 2023.
6. Section 99A(10) of the LG Act states: *"A council must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal [...]"*.
7. The transitional provision outlined in s 147(5) of the Amending Act states: *"The remuneration of a chief executive officer holding office on the commencement of section 99A of the principal Act [...] is not affected during the term of that office by a determination under section 99A."*

Question

As Andrew's actual commencement date (that date being either 28 August 2023 or 11 September 2023) occurs after the operational effect of the Tribunal's Decision, does Andrew commence *"holding office"* on the 'actual day' he commences, therefore the endorsed \$255,000 is not compliant with s 99(A)(10) of the LG Act and the Tribunal's Decision?

OR

Did Andrew commence *"holding office"* upon execution of the Contract therefore the endorsed \$255,000 is compliant?

Just trying to confirm whether we now need to increase the remuneration package amount.

Many thank in advance and regards,

Scott Reardon
Acting Chief Executive Officer



Town of Walkerville

Corporate Services | 66 Walkerville Terrace, Gilberton SA 5081
PO Box 55 | Walkerville SA 5081
T 08 8342 7135 | F +61 8 8269 7820 | M 0466 568 221
walkerville.sa.gov.au | SReardon@walkerville.sa.gov.au

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We acknowledge the Kaurna people as the traditional custodians of this land and respect their spiritual relationship with their country.



The banner features a pink and green background. On the left, the text 'ANNUAL BUSINESS PLAN 2023/24' is written in a stylized font. In the center, there is an illustration of an elderly couple walking. On the right, a dark blue section contains white text about the public consultation period, a green button with a hand icon, and the Town of Walkerville logo.

ANNUAL BUSINESS PLAN 2023/24

The **Draft Annual Business Plan 2023/24** is open for public consultation and we invite comments from the community.

All feedback must be received by **5pm on Friday, 7 July 2023.**

[Click here to read the plan](#)

TOWN OF WALKERVILLE

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ANNEXURE C

EMPLOYMENT AGREEMENT - ADDENDUM No.1

BETWEEN

THE CORPORATION OF THE TOWN OF WALKERVILLE
(the Council)

- and -

ANDREW MACDONALD
(the CEO)

This Addendum to the Employment Agreement (the **Agreement**) dated 9 June 2023 entered into between the Council and the CEO, evidences and records the following:

1. Clause 30 of the Agreement provides as follows:

This Agreement shall only be varied by further agreement of the parties in writing.

2. On 20 September 2021, section 60 of the *Statutes Amendment (Local Government Review) Act 2021* came into operation. This inserted section 99A into the *Local Government Act 1999* (the **Act**) conferring jurisdiction on the Remuneration Tribunal to determine the minimum and maximum remuneration that may be paid or provided to CEOs of councils constituted under the Act.
3. By Determination delivered by the Remuneration Tribunal on 16 June 2023, to come into operation on 1 July 2023, it was determined the Council fell within Band 5 with the minimum and maximum Total Remuneration Package for its CEO set at between \$299,520 - \$317,200.
4. In giving effect to the Council's obligations under the Determination, by way of resolution **CNCXXX/22-23** made at its Ordinary Meeting of **17 July 2023**, the Council resolved that the total TEC Package for the CEO for the purposes of clause 13 and Annexure B of the Agreement is as follows:

Annual base salary	\$269,838
Employer superannuation contribution	\$29,682
Total Remuneration Package (gross)	\$299,520

5. The Parties agree this Annexure C, Addendum 1, forms part of the Agreement and the employment relationship between the Employee and the Council.

Signed by the Chief Executive Officer of
the **Corporation of the Town Of**
Walkerville

in the presence of:

.....
Andrew MacDonald

.....
Signature and Name of witness

.....
Date

Signed by Deputy Mayor

in the presence of:

.....
Elizabeth Trotter

.....
Signature and Name of witness

.....
Date

Scott Reardon

From: Tracy Riddle [REDACTED]
To: Scott Reardon
Subject: Remuneration Tribunal Determination - Incoming CEO Employment Agreement (KJ 220537)

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

Hi Scott

I refer to your request for advice below.

Relevantly, section 99A of the *Local Government Act 1999* (the **Act**) provides as follows:

99A - Remuneration of chief executive officer

- (1) Subject to this section, the remuneration of the chief executive officer of a council will be determined by the council.*
- (2) The Remuneration Tribunal will determine (from time to time) **the minimum and maximum remuneration** that may be paid or provided to chief executive officers of councils.*

...

Whilst section 99A commenced on 20 September 2021, it had no work to do until the Determination was made, which was then operative from 1 July 2023.

The effect is that the Determination is relevant to any CEO employment agreement that had been entered into after 20 September 2021, but only from the effective date of the Determination and not retrospectively to an earlier commencement date for the Agreement.

In which case, until such time as the Tribunal may review the bandings, the minimum and maximum 'range' **will apply** to Andrew's Contract of Employment with the Council.

Noting this is the first Determination made under section 99A of the Act, and the disparate and varying matters to be taken into account in 'setting' remuneration for CEOs across the sector, in its Determination, the Tribunal determined as follows:

*The Tribunal proposes to progress toward a review of the minimum and maximum remuneration of CEOs on a four yearly basis that is commensurate with the timeframe for local government member allowances. **However, because this is the first review of this nature and it is based on data that is conflicting and inconsistent, it is acknowledged that councils may need to refer specific instances to the Tribunal for consideration. The Tribunal will review the minimum and maximum remuneration levels in July 2024 to take account of any feedback from councils or CEOs and wage and cost of living adjustments. The Tribunal expects any council who, as part of any future review, identifies significant differences in the remuneration package to provide sufficient detail and reasons as to why this is the case.***

In which case, the onus lies on the Council to make a further submission to the Tribunal on its review in July 2024 if it take issue with the minimum/maximums set.

However until such time as these may be amended, it *'must ensure that the remuneration of its chief executive officer is within the relevant minimum and maximum remuneration determined by the Remuneration Tribunal ...'* in accordance with section 99A(10) 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 "Kelledy Jones" in white, bold, sans-serif font on a dark blue rectangular background.A black rectangular redaction box covering the first line of the address.

Level 6/19 Gilles Street Adelaide SA 5000 | GPO Box 2024 SA 5001

kelledyjones.com.au

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