

CITY OF JOONDALUP

**MINUTES OF SPECIAL COUNCIL MEETING HELD IN COUNCIL CHAMBER,
JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON FRIDAY 10
SEPTEMBER 2004**

OPEN AND WELCOME

The Chairman declared the meeting open at 1400 hrs.

ATTENDANCES

In Attendance:

CMR J PATERSON - Chairman
CMR P CLOUGH – Deputy Chairman
CMR M ANDERSON
CMR A FOX
CMR S SMITH

Officers:

Acting Chief Executive Officer:	C HIGHAM	<i>to 1415 hrs</i>
Manager Audit and Executive Services:	K ROBINSON	<i>to 1415 hrs</i>
Acting Manager Marketing Communications and Council Support	P DUNN	
Assistant to Inquiry into Council:	E KANIA	
Media Advisor:	L BRENNAN	
Committee Clerk:	J HARRISON	

In Attendance:

Mr D McLeod, McLeod's Solicitors
Mr John Staude, Counsel Assisting the Panel Inquiry
Mr Brendan Peyton, Executive Officer for the Panel Inquiry

There were 16 members of the Public and 2 members of the Press in attendance.

PUBLIC QUESTION TIME

(Please Note: Section 7(4)(b) of the Local Government (Administration) Regulations 1996 states that a Council at a special meeting is not required to answer a question that does not relate to the purpose of the meeting. It is requested that only questions that relate to items on the agenda be asked).

Ms Sue Hart, Greenwood:

Q1 Could the writer of this report please define the term 'the City'?

A1 The definition is that given in the Local Government Act 1995 and means the local government of the City of Joondalup.

Q2 Was the letter from McLeod's Lawyers to the Inquiry, as shown on Attachment 2, presented to the Commissioners before it was sent?

A2 No.

Mr M O'Brien, Warwick:

Q1 What is the estimated cost of legal representation by McLeod's Barristers and Solicitors if the Commissioners decide to instruct McLeod's to appear on their behalf during the sessions of the McIntyre Inquiry?

A1 In establishing a budget for the Inquiry an amount of \$500,000 was set aside. There was no individual allocation for legal fees, this was the total cost. It is estimated at this point in time based on best estimates.

Q2 Have the Commissioners required a cost benefit analysis to be undertaken regarding any such estimated expenditure from the municipality's funds prior to considering any approval or non-approval of McLeod's representation?

A2 No.

Ms A Walker, Padbury:

Q1 In Mr McLeod's letter he states that the views of the City need to be taken into account. The views of which part of the City does this refer to, as ratepayers are part of the City of Joondalup and this does not seem to be taking our views into account?

A1 The administration is not able to add to the document. There may be an opportunity later for Mr McLeod to expand on this if requested to by Commissioners.

Q2 In order to establish the views of the City, should a submission on behalf of the City be the subject of a report to Council prior to the submission being presented and also a period of community consultation to gauge the views of the City?

A2 It is the purpose of this meeting to decide on the issues of the City's representation before the Inquiry.

Mrs M Macdonald, Mullaloo:

Q1 I understand that \$500,000 has been allocated within the budget for the purpose of the Inquiry and the document indicates there has been a suggestion that \$700,000 could be the cost of the Inquiry which could be something that the City might have to fund. Wouldn't it be better not to be represented at the Inquiry and to allocate the \$500,000 to any possible cost of the Inquiry?

A1 Response by Cmr Paterson: The Minister has now guaranteed that the City will not have to pay the cost of the Inquiry, even in the event of adverse findings against it.

Q2 What is the point of appointing McLeod's to give the City's opinion if there will be no financial cost to the City in the event of adverse findings?

A2 Response by Cmr Paterson: This meeting has been called for that purpose.

Mr D Davies, Connolly:

Q1 Why has a Special Council meeting been called on a Friday afternoon at 2.00 pm with the full knowledge that the majority of people are working and thereby ensuring a limited turnout on a major issue?

A1 Response by Cmr Paterson: The time of the meeting was not selected with any thought to eliminating the attendance, but to speed up the process and this was the most convenient time available.

Q2 At the last Council meeting I asked questions regarding the appointment of McLeod's Solicitors which were unanswered. The only answer given was that a meeting was being called. My questions were, are all Commissioners fully aware of this decision taken by the Acting CEO to appoint McLeod's and do all Commissioners fully support the decision?

A2 Response by Cmr Paterson: The purpose of this meeting is for the Commissioners to decide that action.

Mr J Hollywood, Burns Beach:

Q1 Are McLeod's representing the City and will they be speaking on behalf of the City or will the Acting CEO be speaking on behalf of the City at this Inquiry?

A1 Response by Cmr Paterson: The purpose of this meeting is for the Commissioners to make a decision on whether the City will be legally represented at the Inquiry.

Q2 Mr McIntyre did say that if a lawyer does represent the City, that lawyer cannot cross examine any of the Councillors.

A2 Response by Cmr Paterson: We are aware of Mr McIntyre's report.

Mrs M Zakrevsky, Mullaloo:

Q1 Can monetary consideration be given to the ratepayers in the event that they may be called upon to give evidence?

A1 Such a situation is not contemplated in the Council's Policy. It is unsure whether it is open to the City under the provisions of the Local Government Act 1995 to extend such representation to members of the public however this question will be taken on notice.

Mr M Sideris, Mullaloo:

Q1 I believe Mrs Zakrevsky's question may have been that, in the event that any ratepayer is subpoenaed to appear before the Panel Inquiry, would the same level of representation to the City be extended to us as members of the City?

A1 *Response by Cmr Paterson:* Mrs Zakrevsky's question was taken on notice and a response will be provided.

APOLOGIES AND LEAVE OF ABSENCE

Nil.

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY

Acting Chief Executive Officer, Mr Clayton Higham, declared a financial interest in Item JSC32-09/04 – Legal Representation Before the Inquiry into the City of Joondalup - as Mr Higham has been advised by the Inquiry that it is likely that he will be required to give evidence and any decision concerning the City's legal representation could impact on him as an employee giving evidence before the Inquiry.

Manager, Audit and Executive Services, Mr Kevin Robinson, declared a financial interest in Item JSC32-09/04 – Legal Representation Before the Inquiry into the City of Joondalup - as Mr Robinson has been advised by the Inquiry that it is likely that he will be required to give evidence and any decision concerning the City's legal representation could impact on him as an employee giving evidence before the Inquiry.

PERSONAL EXPLANATION – CMR PETER CLOUGH

In accordance with Clause 4.5 of the City's Standing Orders Local Law, Cmr Clough made the following personal explanation:

“Certainly I, and I don't think any of the other Commissioners, are intending to declare any interest, and this has been a matter of some discussion as to whether this is the case or not. Certainly, it has always been my view that there has been no interest but in abundance of caution we have asked the City to write to the Department of Local Government and Regional Development to seek some clarification and without quoting all of it, the response has come

back that says it is the view that the Commissioners do not have a financial interest and I would ask that the letter from the Department be tabled.”

Appendix 2 refers

To access this attachment on electronic document, click here: [Attach2min100904.pdf](#)

Mr Denis McLeod declared a financial interest in Item JSC32-09/04 – Legal Representation Before the Inquiry into the City of Joondalup – as he was in attendance at this meeting in the capacity of an employee as defined in Section 5.70(1) of the Local Government Act 1995 and, as such, a determination of the principal issue before this meeting would have some financial consequence to a firm of which he is a member.

The Acting Chief Executive Officer and the Manager Audit and Executive Services left the Chamber at this point, the time being 1415 hrs.

SUSPENSION OF STANDING ORDERS

MOVED Cmr Smith SECONDED Cmr Anderson that the Joint Commissioners SUSPEND Standing Order 4.2.8 – Time limit on speaking – to allow the Commissioners a period longer than five (5) minutes in debate, if required.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

JSC32-09/04 LEGAL REPRESENTATION BEFORE THE INQUIRY INTO THE CITY OF JOONDALUP – [72559]

WARD - All

PURPOSE

The purpose of the report is for Commissioners to determine whether or not they consider that the City has an interest in the Inquiry, and if so, whether this interest requires separate representation before the Inquiry. Should the Joint Commissioners take this view, they will need to instruct McLeod’s to make a formal application to Mr McIntyre to determine the issue of leave to appear before the Inquiry.

EXECUTIVE SUMMARY

The Report examines the issue of ‘interest’ and representation before the Inquiry on behalf of the City. It follows the position taken by Administration from the date the terms of reference were announced, through the issue of conflict of interest and Panel Firms, to the position taken by McLeod’s at recent meetings with the Commissioners. The report also canvasses the response from the Inquiry Panel at the Procedural Hearing to the most recent opinion of Mr Staude, Counsel Assisting the Inquiry.

The Acting Chief Executive Officer and the Manager Audit and Executive Services have declared an interest in this matter due to the possibility of being called to give evidence before the Inquiry.

BACKGROUND

The Commissioners were briefed on 24 August and 31 August 2004 by Mr Denis McLeod who has been engaged pursuant to s. 5.41 of the *Local Government Act 1995* and with the full knowledge of the Commissioners to act on behalf of the City in relation to the Inquiry. As a result of these meetings, a Special Meeting has been called for 10 September 2004 at 2.00pm.

DETAILS

1. Terms of Reference and Background to the Issue

On 26 May 2004 the Minister for Local Government and Regional Development appointed the Inquiry Panel and set out the terms of reference for the Inquiry. The terms of reference were as follows –

The Inquiry Panel is to inquire into all matters considered relevant to the activities of the Council and its CEO during the period 13 March 2001 to 4 December 2003, including events predating this period that would be relevant to the Inquiry, to determine whether there had been a failure to provide good government at the City of Joondalup.

The Inquiry may inquire into –

- *The processes associated with the selection and appointment of Mr Smith as CEO;*
- *Decisions made by the Council, or purported to have been made by the Council, in relation to the selection, employment and retention of Mr Smith as CEO;*
- *Advice provided by any parties in relation to the selection, appointment and retention of Mr Smith as CEO;*
- *The terms of the contract of the CEO and in particular the performance assessment provisions and their application;*
- *Adherence to the provisions of the contract of employment by the CEO and the Council; and*
- *The provision, cost and use of legal advice associated with all aspects of the appointment and on-going employment of the CEO; and*
- *With specific reference to the period 5 May 2003 to 4 December 2003, address the effect on the government provided by the Council of the conduct of Mr Smith, the Mayor and Councillors, and the operations of the Council; and*
- *Inquire into any other matters coming to the Panel's attention during the course of the Inquiry but only to the extent to which the Panel regards it necessary for the purpose of reporting on whether there has been failure to provide good government in the City of Joondalup.*

The Inquiry Panel pursuant to section 8.22(1) and (2) of the LGA 1995, is to inquire, report and make any recommendations that it considers appropriate, including that the Council be dismissed or reinstated.

On 30 April 2004, shortly after the announcement and release of the terms of reference, the Acting CEO wrote to the Inquiry introducing himself and advising the Inquiry that he would provide every possible assistance to the Inquiry to ensure that the investigation could be conducted as expeditiously as possible. It was suggested that a meeting take place with the Inquiry to discuss the issues. On 5 May 2004, Mr Staude contacted the Acting CEO agreeing to meet when details of the Inquiry's office address and contact details would be known.

On 2 June 2004, Mr Peyton contacted the Chairman of Commissioners advising him that a subpoena to produce documents would be served on the Acting CEO to produce documents. The Chairman was advised that the Inquiry would investigate the instructions given to, and the legal advice received from, solicitors on behalf of the City in relation to various issues arising out of Mr Smith's appointment, including, but not limited to, his contract of employment, the submission made on behalf of the City to the Public Administration and Finance Committee of the Legislative Council in 2003, and the termination of his contract. Mr Peyton requested the Commissioners of the City to formally waive legal privilege in respect of the legal instructions and advice and to disclose the information. The City subsequently undertook this in regard to all legal advice.

On 3 June 2004, Administration Staff, Mr Neil Douglas, and representatives from Fiocco's Lawyers attended a meeting with members of the Inquiry.

On 16 June 2004, Inquiry Staff met with the Joint Commissioners. (A copy of the Agenda is attached to this report and marked Attachment 1.) The issue of the City's interest and representation before the Inquiry was first raised by Mr Staude at this meeting. Mr Staude was of the view that the City did not require separate representation before the Inquiry.

It was at this stage, that the City realised that there might be a problem in engaging Minter Ellison Lawyers to provide continuing legal support before the Inquiry. The City of Joondalup in exercising its requirements of due diligence to its employees and residents had made enquiries early on in determining the possibility of the City obtaining legal representation to protect the interests of the City in relation to the Inquiry.

Indeed, the City had initially looked to Mr Neil Douglas from Minter Ellison Lawyers to provide on-going support to the City during the Inquiry, and because of his familiarity with the details of the case, to represent the City's interest at the Inquiry Hearing. Mr Douglas was willing to act in this capacity and was of the view that the City did have an interest. It became apparent from the Opinion of Mr Harry Dixon SC that there would be a conflict of interest with regard to the City of Joondalup being represented by Minter Ellison Lawyers.

As a result discussions with the Commissioners and pursuant to s. 5.41 of the Act the services of McLeod's Solicitors were engaged to provide on-going legal support in the Inquiry and to make submissions on its behalf for leave to appear before the Inquiry.

2. Letter by McLeod's to Inquiry CEO requesting leave to appear for the City at Inquiry Hearings and identifying the City's interest

Mr McLeod was requested on behalf of the City to write to the Inquiry requesting leave for legal representation at the Inquiry Hearings and explaining the interest that would be represented. Foremost of the arguments put forth in the letter, was the City having an interest in the Inquiry due to the operation of s. 8.27 of the Act which relates to local governments possibly having to meet the costs of the Inquiry. (A copy of this submission is attached to this report and marked Attachment 2.)

At the Procedures Hearing dated 22 July 2004, Mr McIntyre considered Mr McLeod's submission. Mr McIntyre drew attention to certain matters contained in the submission. He raised a number of questions in relation to the submission, and required Mr McLeod to provide further evidence in relation to each of these.

Rather than summarise the opinion of Mr McIntyre, a copy of the transcript of proceedings has been attached to this report and marked Attachment 3.

At the hearing, Mr McIntyre granted leave to McLeod's Solicitors to provide further submissions in relation to their application for leave to represent the City. No deadline for submissions was provided. An initial draft response has been prepared and sent to the Inquiry Office. The City has advised Mr Staude that no determination will be made on this issue until after the meeting on 10 September 2004. The document is an initial draft only and may be expanded to incorporate other points touched upon in the letter to the Inquiry and commented on by Mr McIntyre.

3. *Interview 23 August 2004*

On 23 August 2004, Mr McLeod attended at the Inquiry offices for a proposed interview with a City employee. At the interview, Mr McLeod made it clear that he attended as the City's legal representative and was present at the interview in this capacity. Counsel assisting the Inquiry expressed the opinion that officers of the City had individual interests that were not capable of being jointly represented. The issue of the City's representation was a separate issue that was briefly touched upon. The interview did not proceed.

4. *Briefing to Commissioners August 2004*

As a result of the issues discussed between Mr McLeod and Mr Staude at the interview, Administration asked Mr McLeod to brief the Commissioners. Mr McLeod addressed the Commissioners firstly on matters that had been raised in the discussion with Mr Staude, and outlined what in his view was the City's position and interest in relation to the Inquiry.

On 25 August 2004, concerns were expressed by some of the Commissioners.

Mr McLeod addressing the Commissioners on 31 August 2004 responded to these concerns. (A copy of his submission is attached to this report and marked Attachment 4.)

Mr McLeod dealt with the following matters –

(a) Circumvention of the Policy. What has been done to date.

Mr McLeod stated that all had been done to date was that the solicitors had examined the events that had occurred and the performance by the employees in their functions as officers of the City. It was his view that there was no apparent basis at the time to separate the City from its Administration.

(b) Role of the Council, Mayor, Councillors and Administration Employees in Connection with Legal Representation

Mr McLeod discussed the various roles of each of these identities in some depth in his submission.

(c) Role of the Lawyers

McLeod's advised the Commissioners that the role of the lawyer was to act within the scope of their instructions and on the facts provided to them to consider how the representation can best be provided in the interest of the client. The lawyers have an overriding duty to act properly in the interest of their client and in the interest of justice and due process of the law. Lawyers would be obliged to stop acting for a client if their instructions seem to them either to inhibit their proper role or to compromise their overriding duty to their client, and to the interest of justice.

(d) Allowing others to Circumvent the Policy

All facts or information should be obtained. Information being clearly an area which is open to a finding of improper conduct, would be declined to be dealt with. A basic policy of McLeod's representation of a local government, is that McLeod's will not continue a contact with any past or present member or employee without confirmation through the CEO that they should do so, and provided even then that they do not consider that contact would compromise their duty to their client. McLeod's would not seek such a contact, nor continue if it were made with them, without instruction to do so. Former and suspended members not having a current role with the City, would not in Mr McLeod's opinion have any entitlement to legal advice without express authorisation being given.

(e) Instructions to Denis McLeod may not reflect the Council's position

Mr McLeod did not believe that any instructions had been given which were inconsistent with the position of the Commissioners as explained by them on 24 August 2004. Mr McLeod suggested that if taking a neutral position meant that no attempt was to be made to present a position as favourable as the facts allow in the interest of the City, then this did not accord with what he thought he should be doing to represent the interest of the City. Mr McLeod discussed the position of neutrality in some depth in his submission. If taking a neutral position meant simply facilitating the collation of all facts and materials for presentation to the Inquiry then this was not necessarily consistent with representing the City in the City's best interest.

(f) Instructions from the council are essential

Mr McLeod was adamant that the Commissioners would need to agree to the role that McLeod's should take before they could properly continue in that role. If the role should be different to that expressed, then they should explain what they require and the lawyers must consider their position against that requirement.

As a result of the meeting, it was decided to deal with the matter of representation at a Special Meeting on 10 September 2004 at 2.00pm. Administration was requested to compile a report on the issue of representation before the Inquiry to be considered by the Joint Commissioners at this meeting.

5. Letter to McLeod's Solicitors from Inquiry Panel dated 30 August 2004

On 30 August 2004, Mr Staude wrote to McLeod's Solicitors identifying the main issues relating to representation. (A copy of this letter is attached to this report and marked Attachment 5.) The first was the issue of whether, and if so, on what terms, the City should have leave to be represented by counsel at the public hearings of the Inquiry. The other was whether Mr McLeod as a solicitor appointed by the City, may properly advise and represent the City's employees specifically those likely to give evidence before the Inquiry.

Mr Staude reiterated his view that the City had no corporate interest in the findings and recommendations of the Inquiry which are capable of being represented by legal counsel. The basis for this, is that the City is constituted by the ratepayers and residents, its interest coincides with the public interest which is the duty of counsel assisting the inquiry to represent. The public interest lying in the proper administration of the *Local Government Act 1995*, which in s. 1.3(1)(d) provides for a framework for the administration and financial management of local government and for the scrutiny of their affairs. The Act is intended to result in greater accountability of local governments to their communities.

The Commissioners were considered to have no interest as the terms of reference do not extend beyond the date of their appointment. It was commented that they are only concerned to discharge their statutory role under the Act, a role that does not require them to take any position in respect of the matters, which are the subject of the inquiry, or to engage legal representation of the City. Section 8.27 of the act it was submitted, did not give rise to any duty on the part of the Commissioners to resist any adverse findings which the Inquiry might make. If it was correct, the Inquiry would become an adversarial contest and its statutory function would be obstructed.

Mr Staude was also of the view that the officers of the City have individual interests, not capable of being jointly represented. Mr Staude informed McLeod's Solicitors that he would not be agreeable to Mr McLeod attending any further interviews with potential witnesses. While Mr Staude had no objection to McLeod's Solicitors advising the City's administration with respect to their obligations to comply with any summons or request for information, he did not see any basis at that stage, upon which leave should be granted to Mr McLeod to represent the City at the public hearings.

Mr Staude requested information as to –

- Whether Mr McLeod was instructed by the Commissioners or the Acting CEO; and
- What role, if any, had he been instructed to take with respect to the Inquiry.

6. Meeting with representatives of the Inquiry Panel, City Administration and McLeod's Solicitors dated 1 September 2004

A meeting was held with Mr John Staude regarding matters pertaining to the Inquiry. It was clarified that Mr Staude had received a copy of the notification advising that the Joint Commissioners would be holding a special meeting on Friday 10 September to discuss the issue of the City's legal representation.

Mr Staude was advised that the administration would be preparing a report for the Joint Commissioners consideration on the issue of legal representation and that the report would be available from Tuesday 7 September 2004. It was also requested that Mr McLeod's draft submission not be considered as representing the City's position until the Joint Commissioners had decided upon the issue. This was acknowledged by Mr Staude and it was agreed that no action would be taken to finalise any entitlements to representation by the City until after the Joint Commissioners decision.

Conclusion

From an examination of the events that have transpired over the past months and the documents passing between the Inquiry and the City's Solicitors, it is the maintained view that the City does have an interest in the Inquiry. The primacy of this position is based on s. 8.27 of the *Local Government Act 1995*. This section states –

s. 8.27 Local government may have to meet inquiry costs

If –

- (a) an Inquiry Panel makes findings adverse to a local government, or to its council or any member, or to any of its employees; or
- (b) an inquiry by an Inquiry Panel was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

It is important to note that s. 8.27(a) recognizes the possibility of adverse findings against the local government itself (i.e. the City), in addition to any adverse finding against the Council, any member or any employee.

This section states that a local government may be ordered to pay all or part of the costs of the Inquiry if the Inquiry Panel makes findings adverse to the City, or its Council, or any member, or to any of its employees. The Panel Inquiry and Counsel Assisting have a completely unrelated interest and cannot be expected to act in the interest of the City to avoid the possibility of such an outcome.

The burden of a costs order would fall on the ratepayers of the City indirectly and on the inhabitants generally. The costs, if this should occur, would either have to be derived from reserves or from operating budgets thereby diverting monies from City projects. The level of costs would also, in the absence of Counsel representing the interest of the City, be without mitigation should an order be made. It is realised that submissions concerning costs orders may be made to the Minister after the completion of the Inquiry, yet the interest of the City during the hearing will not be represented. The City therefore has no influence on the collation or arrangement of facts through the evidence process, and no means of mitigating the number of adverse findings or the severity of the findings against itself.

The Inquiry Panel will not be interested in acting in the interest of the City or considering actions based on the facts in a more favourable light. Counsel representing the City may be able to present the position of the City in the light most favourable to it in terms of the possible outcomes of the Inquiry.

It is the opinion of the City's Solicitors that the City as an entity has a recognisable and real interest in the Inquiry that should be represented. Should a Ministerial Order pursuant to s. 8.27 of the Act be made at the end of the Inquiry Hearing, it is the City and not the individuals against whom adverse findings have been made, who will be required to pay the costs of the Inquiry. To hold the view that no interest exists in this instance is to deny to the City and to its ratepayers the ability to participate actively and constructively in an Inquiry that directly affects them.

It should be noted that should the Commissioners be of the view that the City does have an interest in the Inquiry proceedings, and if the application for leave to appear is denied, there is recourse to the Supreme Court for the matter to be determined.

As a final note, the Commissioners need to address the matter of employees' legal representation before the Inquiry. It is the opinion of the City's Solicitors that there is presently no apparent basis to separate the City from its Administration. The Administration officers are part of the City, and representation of the City necessarily involves incidentally representation of the employees to the extent that they are acting within and have acted within the scope of their function and performance of their duties. It is only when an employee appears to have acted improperly then to that extent the employee may have acted otherwise than in performance of his/her function. If that were to occur, the City's lawyer would then be obliged not to provide legal assistance to that employee and advise them to seek separate legal representation.

It is considered an interesting position that employees who to date have not had allegations of wrongful acts made against them be required to fund their own representation before the Inquiry. In any other proceeding whether a planning matter or an appeal against a decision of the Council or pursuant to delegated authority, the City would provide support to the individual employee. The City has a fiduciary duty as an employer to its employees to ensure a safe working environment and to provide support to employees in defence of their proper discharge of their legislative functions.

Based on the City's legal advice, it is strongly recommended that the Joint Commissioners resolve that the City does have an interest at the Inquiry and instruct McLeod's to make further submissions to the Inquiry on behalf of the City.

Statutory Provision:

Part 8 of the *Local Government Act 1995*.

Financial Implications:

While it is difficult to estimate the cost of the Inquiry it is likely to be significant, with some indication provided by the Minister for Local Government and Regional Development in Parliamentary Question Time in the Legislative Council on 14 April 2004 in response to Question No. 360. The Hon. Minister stated that the Government had approved a budget of \$700,000 for the Panel Inquiry.

ATTACHMENTS

- Attachment 1 Agenda for Meeting with the Joint Commissioners prepared by the Inquiry Panel dated 16 June 2004.
- Attachment 2 Letter to the Executive Officer from McLeod's Solicitors dated 13 July 2004.
- Attachment 3 Transcript of City of Joondalup Inquiry heard on the 22nd day of July 2004.
- Attachment 4 Comment by McLeod's on Issues Raised by Commissioner Smith in her Fax of 25th August Legal Assistance to Officers.
- Attachment 5 Letter from Mr Staude to McLeod's Solicitors dated 30 August 2004.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That the Joint Commissioners RESOLVE that the City does have an interest at the Inquiry capable of being represented by legal Counsel at the Inquiry Hearing and instruct McLeod's solicitors to make further submissions to the Inquiry for leave to appear on behalf of the City at the Inquiry Hearings.

MOVED Cmr Anderson **SECONDED** Cmr Fox that the Joint Commissioners **DETERMINE** that they will no longer seek legal representation for or on behalf of the City as a corporate entity at the City of Joondalup Inquiry and **STATE** that this decision has been taken after weighing carefully:

- (a) the material presented by Denis McLeod of McLeod's as the City's lawyers;
- (b) the letter to the City from the Inquiry dated 30 August 2004;
- (c) the comments made by the Presiding Member at the opening of the Inquiry on 22 July 2004;
- (d) the officer's report;
- (e) the fact that the Minister has now confirmed that the City of Joondalup will not have to bear the costs of the Inquiry;

and in the interests of the community.

Cmr Anderson spoke in support of the Motion and tabled the letter from the Minister for Local Government and Regional Development received on 8 September 2004 – Appendix 3 refers.

Appendix 3 refers

To access this attachment on electronic document, click here: [Attach3min100904.pdf](#)

AMENDMENT MOVED Cmr Smith SECONDED Cmr Clough that the Motion be amended by the inclusion of the following points:

“That the Joint Commissioners:

- 1 RECORD the fact that they respect the right of the former Council to express its views about the cause of the problems at the City in its resolution of 2 December 2003;**
- 2 NOTE that an Inquiry has now been called by the Minister into these matters which has resulted in the resolution of 2 December being overtaken by subsequent events;**
- 3 in view of this, STATE publicly that the City does not have a predetermined position or view about these matters that are the subject of the Terms of Reference and that the determination of those matters is best left to the Inquiry to decide;**
- 4 that the view expressed in Point 3 above is to be the guiding principle under which the City and its officers are to respond to the Inquiry until such time as this decision is reviewed should that ever become necessary.”**

Commissioners spoke in support of the Amendment.

The Amendment was Put and

CARRIED UNANIMOUSLY (5/0)

The Original Motion as amended, being:

That the Joint Commissioners:

- 1 DETERMINE that they will no longer seek legal representation for or on behalf of the City as a corporate entity at the City of Joondalup Inquiry and STATE that this decision has been taken after weighing carefully:**
 - (a) the material presented by Denis McLeod of McLeod’s as the City’s lawyers;**
 - (b) the letter to the City from the Inquiry dated 30 August 2004;**
 - (c) the comments made by the Presiding Member at the opening of the Inquiry on 22 July 2004;**
 - (d) the officer’s report;**
 - (e) the fact that the Minister has now confirmed that the City of Joondalup will not have to bear the costs of the Inquiry;**

and in the interests of the community;

- 2 **RECORD** the fact that they respect the right of the former Council to express its views about the cause of the problems at the City in its resolution of 2 December 2003;
- 3 **NOTE** that an Inquiry has now been called by the Minister into these matters which has resulted in the resolution of 2 December being overtaken by subsequent events;
- 4 in view of this, **STATE** publicly that the City does not have a predetermined position or view about these matters that are the subject of the Terms of Reference and that the determination of those matters is best left to the Inquiry to decide;
- 5 that the view expressed in Point 4 above is to be the guiding principle under which the City and its officers are to respond to the Inquiry until such time as this decision is reviewed should that ever become necessary.

Discussion ensued.

Was Put and

CARRIED UNANIMOUSLY (5/0)

MOVED Cmr Smith **SECONDED** Cmr Clough that:

- 1 the Joint Commissioners **DETERMINE** that, notwithstanding Policy 2.2.8 relating to legal representation of elected members and employees in recognition of the special nature of an Inquiry and the duty that the City has to current employees, the City undertakes to provide legal assistance for current employees to the extent that they have acted within the scope of their functions and duties;
- 2 the legal assistance in 1 above is expected to be provided for all employees through the services of one law firm and extends to appearing on behalf of the City at the Inquiry to the extent necessary to assist employees with their evidence if this is necessary and if the Presiding Member of the Inquiry gives permission for this to occur;
- 3 the legal assistance in 1 above is only to be accessed after an employee has signed a declaration to the effect that:
 - (a) he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to matters that are the subject of the terms of reference of the Inquiry and;
 - (b) that he or she is aware that the legal assistance will be terminated if it becomes apparent to the Lawyer appointed by the City that he or she has acted improperly outside the scope of their proper functions and duties;
- 4 in addition to the legal assistance provided in 1 above, employees continue to have access to Policy 2.2.8;

- 5 the Human Resources Manager be advised of this determination and provided with an opportunity to withdraw (in writing) his previous application under the Policy if he wishes to do so;
- 6 the Chief Executive Officer be requested to arrange for McLeod's to undertake to provide the legal assistance in 1 above and that this is advised to Counsel Assisting the Inquiry;
- 7 the arrangements and conditions applying to legal assistance to employees is advised to Counsel Assisting the Inquiry with the request that Council Assisting reviews the decision contained in the letter at Attachment 1 to JSC32-09/04 that the officers are not capable of being jointly represented;
- 8 in addition, the co-operation of the Inquiry is sought so that staff can be advised in advance, where this is possible, if questioning is anticipated to relate to the possibility that staff have acted improperly outside the scope of their proper functions and duties so that the staff have the opportunity to make alternative arrangements.

Cmr Smith provided clarification of the points of the motion. Cmrs Clough and Fox spoke in support of the motion.

AMENDMENT MOVED Cmr Anderson SECONDED Cmr Fox that the motion be amended as follows:

- 1 the following sentence to be added at the end of Point 8: *“Those staff to whom this applies are to advise the CEO or if it is the CEO, a report is to be prepared for Council’s decision”*;
- 2 A new Point 9 to be added, to read:

“9 That the legal firm appointed to provide assistance to officers is not the same as the legal firm which may from time to time provide legal advice to the City with respect to matters related to the Inquiry”.

Cmr Anderson spoke in support of the amendment. Cmrs Smith and Clough spoke against the amendment.

The Amendment was Put and

LOST (1/4)

In favour of the Motion: Cmr Anderson **Against the Motion:** Cmrs Paterson, Fox, Clough and Smith

**The Motion Moved by Cmr Smith and Seconded by Cmr Clough was Put and
CARRIED UNANIMOUSLY (5/0)**

Appendix 1 refers

To access this attachment on electronic document, click here: [Attach1agn100904.pdf](#)

CLOSE OF MEETING

There being no further business, the Chairman declared the Meeting closed at 1502 hrs; the following Commissioners being present at that time:

CMR J PATERSON
CMR P CLOUGH
CMR M ANDERSON
CMR A FOX
CMR S SMITH