

CITY OF JOONDALUP

MINUTES OF SPECIAL MEETING OF COUNCIL MEETING HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP, ON MONDAY, 14 NOVEMBER 2005

OPEN AND WELCOME

The Chairman declared the meeting open at 1730 hrs.

ATTENDANCES

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

Officers:

Chief Executive Officer	G HUNT
Director, Planning and Community Development:	C HIGHAM
Director, Corporate Services:	P SCHNEIDER
A/Director, Infrastructure Services:	P PIKOR
Manager, Marketing Communications & Council Support:	M SMITH
Media Advisor:	L BRENNAN
Committee Clerk:	J HARRISON
Minute Clerk:	L TAYLOR

There were 12 members of the Public and 1 member of the Press in attendance.

PUBLIC QUESTION TIME

The following questions were submitted verbally at the meeting; a summary of each question and the response given is shown below:

Mr D Carlos, Ocean Reef:

Q1 *In December 2003, I presented Cmr Paterson with 200 pages of evidence, which covered Mr Smith's career in local government, and evidence that Mr Smith did not hold any qualifications. I asked that these papers be given to Commissioners. With the exception of Cmr Clough, did the other Commissioners receive a copy of these documents?*

A1 *Response by Cmr Paterson:* The documents in question were passed on to Fiocco's Lawyers.

Q2 *In the light of that, Mr McIntyre in his finding in the Inquiry found that there was sufficient evidence to sack Mr Smith. How did the Commissioners come to the conclusion to pay Mr Smith \$500,000 when they also had the same evidence that I had given to Cmr Paterson in December 2003?*

A2 *Response by Cmr Paterson:* Over a period of three months, Commissioners received legal advice from three senior Counsels and Commissioners still believe they came to the right conclusion.

Mr M Sideris, Mullaloo:

Q1 *In relation to the calling of this evening's meeting, why was the meeting not advertised in the local community newspaper, bearing in mind the administration would have known that the report was prepared and ready to be submitted to Council for consideration?*

A1 This question was taken on notice.

Q2 *Can you please advise why the web page does not reflect the fact that this report before Council this evening also has an attachment?*

A2 The attachment was provided in the same way as for all other agenda attachments.

Dr V Cusack, Kingsley:

Re: Recommendation 3 – The Role of Council should be to set policy and as a watchdog against unresponsiveness, incompetence and corruption and away from the administration of service provision.

Q1 *Considering the recommendation is not supported by the Administration, is the Administration of the view that it is not the responsibility of the elected Council to act as a watchdog again unresponsiveness, incompetence and corruption?*

A1 *Response by Cmr Paterson:* Commissioners have not as yet accepted all recommendations. These will be worked through individually over the course of this evening's meeting.

Response by Chief Executive Officer: The Local Government Act 1995 adequately provides for the roles and responsibilities of elected Councils. Whether Councils perform those roles and responsibilities is another matter.

Q2 *Why does the report under consideration this evening not include a summary of the reasons behind Mr McIntyre's recommendations in order for Commissioners to make an informed decision?*

A2 The letter from the Minister relates to providing comment on the recommendations. The conclusions to the documentation were circulated to Commissioners as soon as the report became available to the City approximately 35 days ago. The decision was made that as the Council is responding to the recommendations, that is the matter of the focus. The point is made within the report that there will be a second phase to this exercise looking at the conclusions that have been raised and the implications for the operations of the City.

Mr S Magyar, Heathridge:

Re: Recommendation 13 – Establishment of Committee of City of Joondalup to take responsibility to supervise and quality control the responses at public question time. Page 4-43, paragraph 116 relates to a suggestion I made to Mr McIntyre which he found favour with.

Q1 *Was any consideration given by the Administration to contact myself to see how I envisaged this Committee working and how it would improve the accountability of this local government to its local community?*

A1 *Response by Chief Executive Officer: No contact was made with any external parties in relation to this report as it was deemed it would be inappropriate to do so. Subject to the completion of the Council's submission, the City is open to all manner of review of conclusions and other matters.*

PUBLIC STATEMENT TIME

The following statements were submitted verbally at the meeting; a summary of each statement is shown below:

Mrs M Macdonald, Mullaloo:

Mrs Macdonald raised concerns in relation to credit card processing, the Local Government Act 1995 with respect to the Warrant of Payments and basic human resource principles.

Mr D Carlos, Ocean Reef:

Mr Carlos referred to the appointment of Mr Denis Smith as Chief Executive Officer and to large volumes of documentation he had provided to the Chairman of Commissioners with the request that it be made available to all Commissioners. Reference was also made to legal advice that had been received from Freehills, Solicitors.

Mr M Sideris, Mullaloo:

Mr Sideris raised concerns in relation to insufficient advertising of this evening's Special Council meeting. Reference was made to the fact that the City was given a timeframe of 35 days to prepare a response to the recommendations, but those recommendations have not been put out for public comment as part of a consultative process.

Dr V Cusack, Kingsley:

Dr Cusack referred to Mr Denis Smith, the former CEO of the City of Joondalup and decisions of support, votes of confidence by the previous Council. He also commented on the way in which public questions were raised before Council and the way in which those questions were responded to.

Mr S Magyar, Heathridge:

Mr Magyar made reference to the provision of legal advice and felt it should be acknowledged that the CEO has progressed this issue, making sure such advice is made available to elected representatives.

Concerns were raised in relation to both procedures for public question time and the responding to questions; as well as the formation of committees.

APOLOGIES AND LEAVE OF ABSENCE

Nil.

DECLARATIONS OF FINANCIAL INTEREST/INTEREST THAT MAY AFFECT IMPARTIALITY**Disclosure of Financial Interests**

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

Name/Position	Mr Clayton Higham – Director, Planning and Community Development
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Mr Higham has an involvement due to his being a witness at the Panel Inquiry.

Name/Position	Mr Mike Smith - Manager, Marketing Communications and Council Support
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Mr Smith is an affected party relating to the Inquiry.

Disclosure of interest affecting impartiality

Commissioners and staff are required under the Code of Conduct, in addition to declaring any financial interest, to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Commissioner/employee is also encouraged to disclose the nature of the interest.

Name/Position	Cmr S Smith
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Commissioners are mentioned in the recommendations. Cmr Smith stated that Commissioners have received legal advice that they do not make a financial disclosure at this meeting.

Name/Position	Mr Garry Hunt - Chief Executive Officer
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Employed as Chief Executive Officer and author of the Report. Responsible for Oversight of Inquiry response since 31 January 2005.

Name/Position	Mr Peter Schneider - Director, Corporate Services
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Mr Schneider was a witness at the Panel Inquiry.

Name/Position	Mr Laurie Brennan – Media Advisor
Item No/Subject	JSC5-11/05 - Response to the Minister Concerning the Report of the Inquiry into the City of Joondalup
Nature and extent of interest	Mr Brennan was a witness at the Panel Inquiry.

JSC5-11/05 RESPONSE TO THE MINISTER CONCERNING THE REPORT OF THE INQUIRY INTO THE CITY OF JOONDALUP – [72559]

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Office of CEO

PURPOSE

For Council to consider the City's response to the Minister in regard to the Report of the Inquiry into the City of Joondalup.

EXECUTIVE SUMMARY

The City's response has been divided into matters that are deemed appropriate for the Chief Executive Officer to comment on that include matters relating to the performance of the Administration, governance issues, and general recommendations. It is deemed inappropriate for the Chief Executive Officer to make any submission with regard to the actions of the Elected Members and the recommendation that the Council be dismissed. That is considered to be a matter for the Minister to decide on the basis of submissions received from elected members. The City will not enter into the debate mindful of the fact that comments in regard to this recommendation have the potential to be politically divisive in the community. The City is interested in moving forward in relation to providing efficient service delivery to the community and in building strong and accountable local government.

To this end, the City has started this process with the review of the Standing Orders Local Law, the implementation of the governance framework, the review of the Policy Manual, and the finalisation of this submission to the Minister.

It should be noted, that in preparing the submission it has been difficult to avoid opinion in relation to comments made in response to the recommendations contained in the Report. Given the extensive experience in local government that the Chief Executive Officer has, in preparing the submission it is likely that this knowledge may have influenced the responses made reflecting the practical realities of local government. Furthermore, every attempt at impartiality has been made in relation to recommendations that pertain to Administration and conclusions made in relation to staff members. Any perceived bias is unintentional.

As to the cost of the Inquiry to the City, the total cost will not be able to be quantified until the submission phase has been completed. Officers have been contacted to determine the cost in terms of officer time of the Inquiry to the City, as well as any legal costs. As well, advice has been sought from the City's solicitors with regard to the ability of the City to reclaim monies from suspended elected members, former officers and current officers under Policy 2.2.8 should it be determined that an individual acted in contravention to the Policy. To date, no determination has been made in relation to this matter. A report will be made to Council in the near future to address these matters.

BACKGROUND

On 26 May 2004, under the terms of section 8.16 of the *Local Government Act 1995* the Minister for Local Government and Regional Development announced the appointment of the Panel to inquire into and report on the operations and affairs of the City of Joondalup. Mr Greg McIntyre was the single member Panel appointed. The formal hearings commenced in July 2004 and continued until June 2005.

The Terms of Reference of the Inquiry Panel was as follows :

The Inquiry Panel is to - Inquire into all matters considered relevant to the activities of the Council and its Chief Executive Officer (CEO) during the period 13 March 2001 to 4 December 2003, including events predating this period that are relevant, to determine whether there has been a failure to provide good government at the City of Joondalup.

- (i) *Without limiting the generality of the inquiry, inquire into-*
 - (a) *the processes associated with the selection and appointment of Mr Smith as CEO;*
 - (b) *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;*
 - (c) *advice provided by any parties in relation to the selection, appointment and retention of Mr Smith as CEO;*
 - (d) *the terms of the contract of the CEO and in particular the performance assessment provisions and their application;*
 - (e) *adherence to the provisions of the contract of employment by the CEO and the Council; and*
 - (f) *the provision, cost and use of legal advice associated with all aspects of the appointment and on-going employment of the CEO; and*
- (ii) *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*

- (iii) *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 City received a copy of the Report on 11 October 2005 at or about 2.00pm in accordance with section 8.23 of the *Local Government Act 1995*. The City has in accordance with s. 8.23(4) 35 days after receiving the report or such longer period as the Minister allows, to give the Minister written advice setting out –

- (a) the things that it has done or proposes to do to give effect to the recommendations in the report; or
- (b) if the report recommends that the council be dismissed, its comments on that recommendation.

It is with the City's submission that one is concerned with for the purpose of this report.

DETAILS

Issues and options considered:

The Minister tabled the Report in Parliament on 11 October 2005. The Panel made twenty-five (25) recommendations. These have been divided into recommendations that deal with Elected Members, matters that pertain to Administration, and matters that relate to departmental policy.

Matters that relate to Elected Members

1. It is recommended that the Council be dismissed.

Comment

The City will not comment on this recommendation as it deals with matters relating to the suspended elected body. It is deemed appropriate that the Minister deal with this recommendation on the basis of submissions received from suspended elected members. The City's concern is that if in the event the Minister decides to dismiss the Council, elections should be held at a suitable time to allow for a smooth transition from Commissioners to an elected Council.

2. An assessment is made of the arguments for and against the continuation of elected councils as opposed to appointed boards of commissioners for local government.

Comment

That the elected government sphere of local government has been in place for many decades and is an integral part of community at a grassroots level. There is nothing in the Report that has identified the requirement for such a bold and significant change.

3. The role of Councils should be to set policy and as a watchdog against unresponsiveness, incompetence and corruption and away from the administration of service provision.

Comment

The Local Government Act 1995 provides adequately for the roles and responsibilities of elected Councils.

4. If recommendation 3 is not followed, then Councils should be fashioned and procedures adopted more akin to those of a cabinet style of government, including principles of cabinet secrecy and solidarity.

Comment

Please note response to Recommendation 2 above. This is not the style of local government throughout Australia and it would see a significant change in local government procedure if implemented.

5. If neither of recommendations 3 or 4 is regarded as desirable, then serious consideration should be given to the appropriate role, responsibilities and procedures of elected Councils.

Comment

Any consideration of the roles and responsibilities and procedures of elected councils would need to be in consultation with local governments throughout Western Australia and bodies such as LGMA and WALGA.

6. Consideration should be given to whether it remains appropriate for the local government Council and electors of a local district to decide that a Mayor is to be elected by the electors of a district. The recommendation of this Inquiry is that the Mayor should continue to be popularly elected by the electors of this district.

Comment

The election of the Mayor is adequately dealt with in the current provisions of the LGA 1995. Any change to the popular election of the Mayor is also dealt with under the Act.

Matters that pertain to Administration

7. A CEO of a local government performs statutory functions under the LGA and so, like other public sector CEO should be appointed by the Governor, or the Local Government Commission proposed by this report, to perform those functions and the LGA should be amended to so provide.

Comment

A more appropriate recommendation would be the development of standard procedures for the appointment of a Chief Executive Officer and model contract so that the local government would be able to work within the confines of these standard procedures and make appropriate amendments that they deemed necessary. The appointment of a CEO by a third party would not necessarily take into consideration factors such as 'regional fit' or appropriateness for the position and may lead to entrenched ideas of local government by the appointment of long-term local government officers from a small pool of individuals at the detriment to innovative practices from individuals sourced from all sectors of industry.

8. A statutory body, such as the Local Government Commission proposed by this Report, should be responsible for the appointment and supervision of all CEOs for all local authorities within the State. Such a statutory body would be obliged to consult with the elected Council of each local government as to the specific requirements of the district. The statutory body should be accorded powers similar to those given to the Public Sector Standards Commissioner under the *Public Sector Management Act 1994* and should have power to set salaries and allowances similar to the powers set out under the *Salaries and Allowances Act 1975*.

Comment

This recommendation is not agreed with. It would impinge upon local government autonomy and erode key principles of the 1995 legislation. It would effectively make local government an arm of state government. Furthermore, the reporting chain for a CEO would lead to layered management with the CEO reporting to Council, the Community and the Commission.

9. A Local Government Commission should be established to appoint and supervise CEO's and assume the functions of the Minister and Executive Director under Part 8 of the *Local Government Act 1995* with power to perform the functions of a Commissioner under Part 2, Division 7 of the LGA and the functions of the Advisory Board under Part 2, Division 8 of the LGA.

Comment

It is not necessary to have a Local Government Commission to appoint and supervise CEO's if the Minister and Executive Director were given wider powers to step in and deal with supervisory matters that relate to a CEO. There are powers already under the Act that allow for the Minister and the Executive Director under Part 8 of the 1995 Act to step in and investigate matters before they require the suspension of Council. (A matter referred to in the Report at Chapter 3, Part 7.) The potential for significant interference by a third party in the Administrative affairs of a local government may be disruptive and unwarranted unless in serious circumstances. Training for CEOs and performance appraisals by Council submitted to the Minister for review may allow for the accountability of the CEO without the disruption. The autonomy of local governments to make their own decisions would also be eroded by a body that itself has limited accountability other than to the Minister.

10. There should be established a Local Government Assistance Authority to perform the present role of the Capacity Building Division of the DLGRD and co-operatively manage or assist in providing the educational and assistance roles being provided by voluntary local government industry associations to local governments.

Comment

Mandatory training of elected members would be useful. At the moment limited training is provided that does not fully prepare elected members for the rigour of local government. Mediation for dispute resolution by an Authority would also be of use. To date LGMA and WALGA provide a significant amount of educational assistance. The City is also in the process of reviewing its induction processes for elected members.

11. The proposed Local Government Commission and Local Government Assistance Authority be funded from a combination of State and Commonwealth local government funding.

Comment

That is a matter of Departmental Policy and is for the Minister to decide in consultation with these parties.

12. Local authorities should ensure that they obtain media advice and the assistance of media research when the public media is reporting on matters relevant to the local authority, to assist them in identifying publicly reported problems related to a local authority and responding appropriately.

Comment

The City currently has a media advisor and believes that this recommendation is already adequately dealt with. The City has on occasion used media research and consultants to assist with contentious issues.

13. A committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council.

Comment

This recommendation does not take into account the turnaround time for the answering of Council questions nor the fact that information with regard to answering questions will be obtained from officers regardless of a committee involvement. A committee would be time consuming and lead to delay in dealing with questions. The City has reviewed its Public Question Time procedure and new arrangements have been put in place effective November 2005.

14. A local government, when recruiting a CEO should verify the professional and academic qualifications of candidates for appointment.

Comment

This recommendation is agreed with. The City has followed this recommendation with the recruitment of the current CEO, with the request for original documentation of qualifications being produced.

15. Local governments should engage a media research officer or consultant to identify information concerning the public reputation of any candidate for the position of CEO.

Comment

It is not necessary to appoint a specific media research officer as such information may be obtained from a thorough search of media archives by an officer. Furthermore, a background check of a candidate is a standard requirement of a recruitment agency and should be undertaken.

16. Local governments should require authorities from candidates for the position of CEO to obtain information from police and other regulatory authorities as to any record of convictions or investigations and conclusions of regulatory authorities relevant to the candidate.

Comment

This recommendation is agreed with as it is a requirement of recruitment for a number of local governments that a Police Clearance Check be obtained as part of an application. However, issues of unlawful discrimination need to be addressed.

17. Local governments should not hesitate to obtain alternative legal advice or a second opinion, where elected members are divided or hesitant about any advice given.

Comment

Financial considerations may be relevant in this regard as is the ability of a local government to rely on legal advice provided. In the event that the opinions conflict does this mean that further legal opinion be sought by another firm and the question this raises is when will the amount of legal advice sought be enough? A local government should provide elected members not only with the legal advice but also the scope and instructions under which this legal advice was obtained.

18. When elected members are considering advice from legal practitioners they should be careful to follow legal advice, so as to ensure that they are not otherwise acting improperly, but Councillors, employees and legal advisors should be careful also to ensure that a distinction is drawn between advice which is legal advice and advice which is strategic advice, and be aware of the discretion which remains in elected members to make decisions inconsistent with strategic advice.

Comment

Agree. A clarification as to what constitutes legal advice and strategic advice is required to ensure that local governments are familiar with the distinction. Elected members should be provided with the instructions provided to legal advisors and relevant background information so that they may make informed decisions.

19. The meeting procedures for local authorities should preclude the provision of written legal advice without adequate time to read and understand it before it is acted upon.

Comment

It is agreed that ideally this should be the case and that local governments should aim for this to occur, however, it is not always possible given the requirement of expediency for Council decisions when there are third party timeframes imposed on Council. For example, where a planning decision has been made and an injunction is sought to prevent a third party from undertaking an action, or there is the requirement of an emergency response.

20. Contracts of employment of senior employees of a local authority are generally legal documents of a degree of complexity, which should preclude their execution without legal advice as to the content of the contract and the process leading to execution.

Comment

Legal advice is usually sought in relation to the drafting of contracts of senior employees. The process for the current CEO has been to obtain legal advice in drafting the contract and ensuring that the contract is properly executed.

21. Local authorities and the DLGRD should co-operate to keep a central register of legal advices which may be of general assistance to local governments, in so far as that may occur without impacting on the need to preserve legal professional privilege.

Comment

This recommendation is not agreed with. A legal register would require the instructions and the circumstances as to why the legal advice was obtained. In isolation, any advice contained on the register would be of little precedent value to other local governments. It would be more appropriate for WALGA to provide a legal service (similar to its Tax Service) for local governments whereby legal questions affecting local governments could be researched and answered by appropriate legal advisors.

22. A policy should be established by the Council of the City of Joondalup that facilitates full access to legal advice by elected members.

Comment

A policy would need to be within the confines of legal professional privilege and would also need to take into consideration issues of privacy and the function of the CEO under Part 5 of the Act to deal with administrative matters relating to employees. Issues such as CCC matters for which legal advice may have been obtained would not necessarily as of right be appropriately circulated to elected members.

Generic advice should be sent to elected members with the condition that it will be subject to s. 5.93 of the Act and legal professional privilege. An individual elected member may not waive privilege.

There needs to be a clear understanding of the implications for an elected member for failure to follow such a process.

23. The City of Joondalup should consider establishing Council Committees to conduct some aspects of the business of the Council, as a means of establishing co-operative working relationships between elected members.

Comment

This recommendation is not agreed with. The Council does have committees that relate to policy and strategic direction. The primary committees are the Policy Committee and the Strategic and Financial Management Committee. The three-week meeting cycle currently utilised is the most inclusive process for involvement of all elected members. Committees generally have a membership of only part of the elected body and can result in a minority having greater knowledge of an issue than the entire elected Council. Local government in general has a history of developing alternative meeting structures such as committees or liaison groups to facilitate co-operative working relationships to suit its needs. The Report suggests establishing Council committees but it does not provide any analysis on the kinds of committees to develop or the quantifiable aims of such committees.

24. The Code of Conduct of the City of Joondalup should be reviewed and a process of adjudication of alleged breaches by an independent referee added, and elected members should be trained in its content.

Comment

Under the Governance Review the Code of Conduct is to be reviewed at the time that a new Council is elected. Notwithstanding, the Code of Conduct has little enforceability with regard to elected members. The Department should progress the proposed Code of Conduct Regulations to provide appropriate legislative standards of behaviour at Council.

Matters of Departmental Policy

25. Section 8.2(1) of the LGA should be amended to permit the Executive Director to require any person in a local government to provide any relevant information in that person's possession.

Comment

This is a matter for the Minister in consultation with all local governments to determine.

Miscellaneous Issues

Three matters have been raised in addition to the recommendations that require comment. Firstly, in relation to the credit card procedures. At paragraph 102 on page 3-434 it states that 'The departure from the formal process was not identified until 17 months later during the Deloitte's audit, which commenced in December 2003.' This statement is factually incorrect and in evidence, the City's Director Corporate Services stated it was he who discovered the departures during his internal investigation that commenced on 10 November 2003 (transcript 8815). This evidence was supported by Mr Langridge under cross examination by Mr McLeod (transcript 10473).

Secondly, in relation to FBT and GST. Conclusion F on page 3-366 of the Report is inconsistent with paragraph 146 on page 3-339. The fact that it remains included in the report appears to have been an oversight on the part of the Inquiry Panel.

Related to this is the third comment with regard to GST and the findings of the Inquiry Panel at paragraph 147 on page 3-339. It is the opinion that the findings are incorrect as the Inquiry has not taken into account section 111.5 of A New Tax System (Goods and Services) Act 1999, which specifically covers 'Expense Payment Benefits' on behalf of an employee and Taxation Ruling GSTR 20001/3.

The City believes that these matters need to be noted by the Minister as they cast factual doubt upon these sections of the Report.

Link to Strategic Plan:

The recommendations will affect the City's strategic outcome and impact on the City's reputation as an accountable organisation.

Legislation – Statutory Provisions:

Part 8 of the *Local Government Act 1995*.

Risk Management considerations:

The recommendations contained in the Report of the Inquiry into the City of Joondalup may negatively impact on the City's reputation.

Financial/Budget Implications:

Not Applicable.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

The Council has been presented with a copy of the City's proposed submission to the Minister in response to the recommendations made in the Report of the Inquiry into the City of Joondalup.

ATTACHMENTS

- Attachment 1 Extract - Executive Summary – *Report of the Inquiry into the City of Joondalup*.
Attachment 2 Response by the City to the Report of the Inquiry into the City of Joondalup.

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION: That Council:

- 1 ADOPTS the submission to the Minister in response to the Report of the Inquiry into the City of Joondalup forming Attachment 2 to Report JSC5-11/05;
- 2 AUTHORISES the Chief Executive Officer to send the response to the Minister.

The Chief Executive Officer stated that this report had been prepared in alignment with the request of the Minister and was not the final review of the Inquiry Report. No detailed advice has been taken from any of the persons named in the Inquiry Report, however some legal advice had been sought in relation to the issue of financial interest of Commissioners.

The Chief Executive Officer drew the attention of the Council to the information under the heading Miscellaneous Issues within the report and attachment and sought to withdraw this information as it is not relevant to the twenty-five (25) recommendations made by the Panel. The Council was advised that this information will be reflected in the phase 2 report that will give consideration to individual comments.

MOVED Cmr Fox, SECONDED Cmr Clough that all reference is withdrawn to miscellaneous issues within Item JSC5-11/05 and Attachment 2 to that Report.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

MOVED Cmr Smith, SECONDED Cmr Anderson that Council:

- 1 ADVISES the Minister that the City takes the Report and the recommendations contained therein very seriously and has taken care, time and effort in its response:**
 - (a) The lessons learnt from the Inquiry will be used to inform the City's future strategies and direction;**
 - (b) It is noted the report reflects unfavourably on the operations of the Council as a body for the period covered by the Inquiry;**
 - (c) The Council views the Report as an opportunity to implement improvements to a number of processes and practices;**
 - (d) The Council has and will continue to institute a number of measures to restore good governance as a result of the findings of the Inquiry and will receive a further report in relation to that matter;**
 - (e) The Council is committed to high standards of governance and accountability and will continue to implement measures, in a systematic and structured manner, to ensure that the spirit and intent and purpose of the Local Government Act 1995 is achieved.**

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 2 MOVED Cmr Smith, SECONDED Cmr Clough that Council AGREES to the City's response to Recommendation 1 as outlined in Attachment 2 to Report JSC5-11/05.**

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 3** **MOVED** Cmr Smith, **SECONDED** Cmr Anderson that the City's response in relation to Inquiry Recommendation 2 be as follows:

Delete the last sentence "There is nothing in the Report that has identified the requirement for such a bold and significant change" and replace it with "If the State Government contemplates pursuing this recommendation, an extensive program of community consultation and public debate should be undertaken before any decision is made".

Cmr Smith spoke to the Motion.

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 4** **MOVED** Cmr Smith, **SECONDED** Cmr Anderson that the City's response in relation to Inquiry Recommendation 3 be as follows:

Delete the comment as listed and replace it with "This recommendation is supported. The Council has adopted a Governance Framework within which the policy and strategy role of the Council is emphasised and the relationship between the Council, elected members and the administration has been set within appropriate boundaries".

Discussion ensued.

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 5** **MOVED** Cmr Smith, **SECONDED** Cmr Fox that the City's response in relation to Inquiry Recommendations 4 and 5 be as follows:

Delete the comments as listed and replace with "N/A – See response to Recommendation 3".

Cmr Smith spoke to the Motion.

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 6** **MOVED** Cmr Clough, **SECONDED** Cmr Anderson that Council **AGREES** to the City's response to Recommendation 6 as outlined in Attachment 2 to Report JSC5-11/05.

Cmr Clough spoke to the Motion.

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 7** **MOVED** Cmr Smith, **SECONDED** Cmr Anderson that the City's response in relation to Inquiry Recommendation 7 be as follows:

Delete the words "A more appropriate recommendation would be the development of" and insert the words "would be of benefit to the local government industry and would alleviate the need for third party intervention in actual appointments" after the words "deemed necessary".

The response would then read:

“Standard procedures for the appointment of a Chief Executive and model contract so that the local government would be able to work within the confines of these standard procedures and make appropriate amendments that they deemed necessary would be of benefit to the City and local government industry and would alleviate the need for third party intervention in actual appointments”.

Cmr Smith spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 8 **MOVED** Cmr Smith, **SECONDED** Cmr Fox that the City’s response in relation to Inquiry Recommendation 8 be as follows:

Delete the comment as listed and replace it instead with “It is agreed that procedures for appointment and matters covered in employment contracts need to be tightened up. An alternative process to that proposed might be that Regulations could be enacted to cover matters associated with the selection and appointment of CEOs and contracts of employment. This would assist the City and the local government industry by providing a statutory framework for these matters”.

Discussion ensued.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 9 **MOVED** Cmr Anderson, **SECONDED** Cmr Clough that the City’s response in relation to Inquiry Recommendation 9 be as follows:

“There are powers already under the Act that allow for the Minister and the Executive Director under Part 8 of the Local Government Act 1995 to step in and investigate matters before they require the suspension of Council. (A matter referred to in the Report of Chapter 3, part 7). The potential for significant interference by a third party in the administrative affairs of the local government may be disruptive and unwarranted unless in serious circumstances.

Training for CEOs and performance appraisals by Councils submitted to the Minister for review may allow for the accountability of the CEO without the disruption. It is envisaged that the Minister would review the performance appraisals and highlight any issues that might need to be addressed. The Minister may then recommend to Councils the development of best practice to deal with such matters. This proposal would maintain the autonomy of local governments to make their own decisions.”

Cmr Anderson spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 10 MOVED Cmr Anderson, SECONDED Cmr Clough that Council AGREES to the City's response to Recommendations 10, 11 and 12 as outlined in Attachment 2 to Report JSC5-11/05.**

Cmr Anderson referred to Recommendation 10 and requested that wherever LGMA and WALGA are mentioned, that the priority be changed to WALGA and then LGMA respectively.

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

- 11 MOVED Cmr Smith, SECONDED Cmr Anderson that the City's response in relation to Inquiry Recommendation 13 be as follows:**

"This recommendation may be able to be dealt with via policy and guidelines from the Council rather than through a committee structure having regard to practical problems with turnaround times etc."

Discussion ensued.

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

- 12 MOVED Cmr Clough, SECONDED Cmr Smith that Council AGREES to the City's response to Recommendation 14 as outlined in Attachment 2 to Report JSC5-11/05.**

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

- 13 MOVED Cmr Clough, SECONDED Cmr Smith that the City's response in relation to Inquiry Recommendation 15 be as follows:**

"The background check of a candidate should be a standard requirement of the recruitment process and should be undertaken by an experienced recruitment practitioner."

Discussion ensued.

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

- 14 MOVED Cmr Anderson, SECONDED Cmr Clough that Council AGREES to the City's response to Recommendation 16 as outlined in Attachment 2 to Report JSC5-11/05.**

The Motion was Put and CARRIED UNANIMOUSLY (5/0)

- 15 MOVED Cmr Anderson that the City's response in relation to Inquiry Recommendation 17 be as follows:**

"A local government should provide elected members not only with the legal advice but also the scope and instructions under which this legal advice was obtained. Financial considerations may be relevant in this regard as is the ability of a local government to rely on legal advice provided."

There being no SECONDER, the Motion

LAPSED

Cmr Clough indicated he would be prepared to Second the Motion should Cmr Anderson wish to put it at this point.

- 15 **MOVED** Cmr Anderson, **SECONDED** Cmr Clough that the City's response in relation to Inquiry Recommendation 17 be as follows:

“A local government should provide elected members not only with the legal advice but also the scope and instructions under which this legal advice was obtained. Financial considerations may be relevant in this regard as is the ability of a local government to rely on legal advice provided.”

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

AMENDMENT MOVED Cmr Smith, **SECONDED** Cmr Anderson that the words *“This recommendation is supported”* be inserted at the beginning of the recommendation.

The Amendment was Put and **CARRIED (5/0)**

The Original Motion as amended, being:

That the City's response in relation to Inquiry Recommendation 17 be as follows:

“This recommendation is supported. A local government should provide elected members not only with the legal advice but also the scope and instructions under which this legal advice was obtained. Financial considerations may be relevant in this regard as is the ability of a local government to rely on legal advice provided.”

was Put and **CARRIED UNANIMOUSLY (5/0)**

- 16 **MOVED** Cmr Smith, **SECONDED** Cmr Fox that Council **AGREES** to the City's response to Recommendation 18 as outlined in Attachment 2 to Report JSC5-11/05.

Discussion ensued.

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 17 **MOVED** Cmr Smith, **SECONDED** Cmr Clough that the following amendments to Inquiry Recommendation 19 be made as follows:

Insert the words *“This recommendation is supported”* at the beginning of the Recommendation.

Delete all words up to the word *“however”*.

The response would then read:

“This recommendation is supported, however, it is not always possible given the requirement of expediency for Council decisions when there are third party timeframes imposed on Council. For example, where a planning decision has been made and an injunction is sought to prevent a third party from undertaking an action, or there is the requirement of an emergency response.”

The Motion was Put and **CARRIED UNANIMOUSLY (5/0)**

- 18 **MOVED** Cmr Fox, **SECONDED** Cmr Clough that Council **AGREES** to the City's response to Recommendation 20 as outlined in Attachment 2 to Report JSC5-11/05.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 19 **MOVED** Cmr Smith, **SECONDED** Cmr Fox that Council **AGREES** to the City's response to Recommendation 21 as outlined in Attachment 2 to Report JSC5-11/05.

Cmr Anderson queried the feasibility of providing a report on an annual basis to the Minister on the types of legal advice that has been sought.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 20 **MOVED** Cmr Smith, **SECONDED** Cmr Fox that the following words be inserted at the beginning of Recommendation 22 as follows:

“This recommendation is supported, however.....”

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 21 **MOVED** Cmr Clough, **SECONDED** Cmr Smith that the City's response in relation to Inquiry Recommendation 23 be as follows:

“The achievement of good outcomes for local government is dependant on constructive working relationships between Council members.

Council has established a number of Committees to inquire into matters and make recommendations to the Council on matters within the Council's responsibilities.

Some of the Committees are Internal Committees of Council comprising Council members only, whilst others are Advisory Committees comprising membership of Council members and stakeholder and community representatives.

The Internal Committees (Policy Committee, Strategic Financial Management Committee and Audit Committee) were established to allow Council members to concentrate their effort on:

- *Policy development*
- *Strategic planning; and*
- *Community leadership*

Such Committees provide a forum for Council members to establish effective relationships, not only with each other, but also with representatives from the community.”

Cmr Clough spoke to the Motion.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 22 **MOVED** Cmr Smith, **SECONDED** Cmr Anderson that the City's response in relation to Inquiry Recommendation 24 be as follows:

"The Council will be reviewing its Code of Conduct and will have regard to this recommendation at that time, however it is understood that the Department of Local Government and Regional Development intends to progress Code of Conduct regulations to provide appropriate legislative standards of behaviour at Council."

Cmr Smith spoke to the Motion.

- AMENDMENT MOVED** Cmr Anderson that the following words be added to Recommendation 24 after the words *"and will have regard to....."* as follows:

"the introduction of a robust clause....."

There being no **SECONDER**, the motion

LAPSED

The Motion as moved by Cmr Smith, **Seconded** Cmr Anderson was Put and
CARRIED UNANIMOUSLY (5/0)

- 23 **MOVED** Cmr Smith, **SECONDED** Cmr Clough that Council **AGREES** to the City's response to Recommendation 25 as outlined in Attachment 2 to Report JSC5-11/05.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

- 24 **MOVED** Cmr Smith, **SECONDED** Cmr Fox that Council **ADOPTS** as its submission to the Minister the report as provided by the Chief Executive Officer including the changes made by Council at the Special Council meeting held on 14 November 2005 and requests the Chief Executive Officer to amend the report administratively to reflect those responses.

AMENDMENT MOVED Cmr Clough, **SECONDED** Cmr Anderson that the words *"including the removal of the first two paragraphs on page 16 of the submission"* be added at the end of Motion 24.

Discussion ensued.

The Original Motion as amended, being:

That Council **ADOPTS** as its submission to the Minister the report as provided by the Chief Executive Officer including the changes made by Council at the Special Council meeting held on 14 November 2005 and requests the Chief Executive Officer to amend the report administratively to reflect those responses, including the removal of the first two paragraphs on page 16 of the submission.

was Put and

CARRIED UNANIMOUSLY (5/0)

- 25 **MOVED** Cmr Smith, **SECONDED** Cmr Anderson that Council **AUTHORISES** the Chief Executive Officer to send the response to the Minister.

The Motion was Put and

CARRIED UNANIMOUSLY (5/0)

Appendices 1 and 2 refer

To access this attachment on electronic document, click here: [Attach1agn141105.pdf](#)

CLOSURE

There being no further business, the Chairman declared the Meeting closed at 1843 hrs; the following Commissioners being present at that time:

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