

minutes

Annual General Meeting of Electors

MEETING HELD ON **TUESDAY 10 DECEMBER 2019**

CITY OF JOONDALUP

MINUTES OF ANNUAL GENERAL MEETING OF ELECTORS HELD IN COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY 10 DECEMBER 2019.

OPEN AND WELCOME

The Mayor declared the meeting open at 5.30pm and introduced the Councillors, the Senior Director Financial Audit – Office of the Auditor General, Mr Vince Turco and Assistant Director - Financial Audit – Office of the Auditor General, Mr Mikey Fiorucci.

ATTENDANCES

Mayor:

HON. ALBERT JACOB, JP

Councillors:

CR KERRY HOLLYWOOD	North Ward	
CR TOM McLEAN, JP	North Ward	
CR PHILIPPA TAYLOR	North Central Ward	
CR NIGE JONES	North Central Ward	
CR RUSSELL POLIWKA	Central Ward	<i>from 5.31pm</i>
		<i>absent from 6.29pm to 6.30pm</i>
		<i>absent from 6.31pm to 6.35pm</i>
CR CHRISTINE HAMILTON-PRIME	South-West Ward	
CR JOHN RAFTIS	South-West Ward	<i>until 6.17pm</i>
CR JOHN CHESTER	South-East Ward	
CR JOHN LOGAN	South-East Ward	
CR SUZANNE THOMPSON	South Ward	

Officers:

MR GARRY HUNT	Chief Executive Officer
MR JAMIE PARRY	Director Governance and Strategy
MS DALE PAGE	Director Planning and Community Development
MR NICO CLAASSEN	Director Infrastructure Services
MR MIKE SMITH	Acting Director Corporate Services
MR RONEY OOMMEN	Manager Financial Services
MR BRAD SILLENCE	Manager Governance
MRS VIVIENNE STAMPALIJA	Governance Coordinator
MR STUART MCLEA	Media and Communications Officer
MRS DEBORAH GOUGES	Governance Officer
MRS LESLEY TAYLOR	Governance Officer

In Attendance:

MR GLENN HEAPERMAN	Manager Human Resources
MR MARK McCRORY	Manager Marketing and Communications
MR BLIGNAULT OLIVIER	Manager City Projects
MR CHRIS LEIGH	Manager Planning Services
MR MICHAEL HAMLING	Manager Operation Services
MS CHRISTINE ROBINSON	Manager Audit and Risk Services
MRS SHEREE EDMONDSON	Manager Asset Management
MS JUDE THOMAS	Manager Community Development and Library Services
MR ARNAN KARTAWIJAYA	Acting Manager Infrastructure Management Services
MR JOE HUSSEY	Acting Manager Compliance and Regulatory Services
MRS KAREN THOMPSON	Acting Manager Rangers, Park and Community Safety
MR JOSH WIXON	Acting Manager Leisure and Cultural Services
MRS REBECCA MACCARIO	Acting Manager Strategic and Organisational Development
MR ALAN ELLINGHAM	Senior Financial Analyst
MS JESSICA CRINGLE	Executive Assistant to Mayor
MRS WENDY COWLEY	Governance Officer

There were 33 members of the public in attendance and one member of the press in attendance.

Cr Poliwka entered the Chamber at 5.31pm.

ADDRESS BY THE MAYOR

The Mayor welcomed members of the public to the Annual General Meeting of Electors.

The Mayor advised that the meeting is being held in accordance with Section 5.27 of the *Local Government Act 1995*.

The Mayor advised the meeting was advertised as follows:

- *Joondalup Times* newspaper on Thursday 14 November 2019 and Thursday 21 November 2019.

A public notice of the meeting was also placed on the City's website and public notice boards and copies of the Annual Report made available.

PROCEDURES AT ELECTORS' MEETINGS

The Mayor outlined the requirements for voting and speaking at an Electors' Meeting and the definition of an Elector.

APOLOGIES AND LEAVE OF ABSENCE

Apology

Cr Christopher May.

Leave of Absence previously approved

Cr Russ Fishwick, JP 4 November to 19 December 2019 inclusive.

VIDEO PRESENTATION

A video presentation was given outlining the events, activities and achievements of the City of Joondalup for the 2018-19 financial year.

CONTENTS OF THE 2018-19 ANNUAL REPORT

The Mayor advised that the purpose of the Annual General Meeting of Electors was to discuss the contents of the [Annual Report](#) and raise any general business that Electors may have. In accordance with the *Local Government Act 1995*, Council adopted the Annual Report at its meeting held on 19 November 2019 (CJ149-11/19 refers).

The following questions in respect of the 2018-19 Annual Report were asked at the meeting:

Mr M Dickie, Duncraig:

Re: Statements regarding Greenhouse Gas Emissions listed on page 173 of the 2018-19 Annual Report.

Q1 Does this reporting conform to the 2006 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories as required by the City membership of the Global Covenant of Mayors for Climate and Energy and has that conformance been reported to the secretariat?

A1 The Director Governance and Strategy advised that the City's reporting does comply with the requirements but that he was unaware whether that reporting has been made through to the secretariat.

GENERAL BUSINESS

The Mayor commented that any questions of a general nature raised at the Annual General Meeting of Electors would be responded to and questions requiring a more detailed response would be taken on notice.

Mayor Jacob advised that motions raised at this evening's Annual General Meeting of Electors would be considered by Council at its meeting to be held on Tuesday 18 February 2020.

Mr M Dickie, Duncraig:

MOVED Mr M Dickie, SECONDED Ms A Leitch that the Electors of the City of Joondalup request that when it is reviewed, the City's revised *Climate Change Strategy* shall include a commitment to minimise the quantum of surplus cash invested with institutions that fund fossil fuel industries, as well as much more ambitious mitigation strategies than those in the current *2014-2019 Climate Change Strategy*.

The Motion was Put and

CARRIED

Ms M O'Byrne, Kinross:

MOVED Ms M O'Byrne, SECONDED Mr A Murphy that the Electors of the City of Joondalup request that Council makes the audio recording for all Briefing Session meetings available to the public.

The Motion was Put and

CARRIED

Mr T Campbell, Duncraig:

MOVED Mr T Campbell, SECONDED Ms B Hewitt that the Electors of the City of Joondalup request that Council reconsider and rescind their decision to spend \$2.15 million on a Chinese garden for Jinan to be located in Central Park and instead, redeploy the funds for community gardens across the City of Joondalup for the benefit of all residents and ratepayers. It could be called Gardens for Jinan or similar in honour of our Sister City relationship.

The Motion was Put and

CARRIED

Mrs Z Murphy, Edgewater:

MOVED Mrs Z Murphy, SECONDED Ms B Hewitt that the Electors of the City of Joondalup request that in light of the burden placed on local governments across Australia to respond to the needs and challenges of people living in poverty and homelessness, that Council publicly advocate in writing to the relevant Federal Government Ministers that the Newstart Allowance be increased to the level of the Henderson Poverty Line.

The Motion was Put and

CARRIED

Mr A Murphy, Edgewater:

MOVED Mr A Murphy, SECONDED Ms M O’Byrne that the Electors of the City of Joondalup request that Council roll back the *Local Government and Public Property Local Law 2014* and disallow election signage on road verges or Council or public property for any government elections in the future.

The Motion was Put and

CARRIED

Mr M Moore, Edgewater:

MOVED Mr M Moore, SECONDED Ms B Hewitt that the Electors of the City of Joondalup request that the City:

- **implement an effective City-wide tree retention policy for trees on lots;**
- **accelerates its street planting program with priority given to areas that have low existing tree cover;**
- **acts to keep all suburbs leafy and green by including the proposed tree and landscape area requirements in its draft development in Housing Opportunity Areas *Local Planning Policy* in its residential development local planning policies for development in non Housing Opportunity Areas so that those areas also have practical measures to combat the urban heat island affect.**

The Motion was Put and

CARRIED

Dr T Green, Padbury:

MOVED Dr T Green, SECONDED Mr Moore that the Electors of the City of Joondalup request that City develops a formal plan and timeline for improving the amenity in suburbs by:

- **working with the State Government to underground all power in suburban areas, with Housing Opportunity Areas being a priority;**
- **installing shade sails, over all play equipment in the City within three years and planting trees that will grow to ensure shade cloth can be removed in the longer term;**
- **partnering with the State Government to arrange for subsidised safe removal of asbestos from fences and properties across the City.**

The Motion was Put and

CARRIED

Mr A Murphy, Edgewater:

MOVED Mr A Murphy, SECONDED Mr M Moore that the Electors of the City of Joondalup request that the City levy proportional rates on church properties where facilities are hired out for profit.

The Motion was Put and

CARRIED

Mr D Wilkins, Woodvale:

MOVED Mr D Wilkins, SECONDED Ms B Hewitt that the Electors of the City of Joondalup request that Council release the previous transport studies and reports (such as Traffic Impact Assessments for the Housing Opportunity Areas) with any necessary disclaimers regarding its use or undertake traffic impact assessments in accordance with the Western Australia Planning Commission (WAPC) guidelines and the requirement of the *Planning and Development (Local Planning Schemes) Regulations 2015* with respect to giving due regard to the amount of traffic likely to be generated by the Housing Opportunity Areas particularly in relation to the capacity and safety of the road network in the locality and probable effect on traffic flow and verge safety.

The Motion was Put and

CARRIED

Cr Raftis left the Chamber at 6.17pm.

Ms M O'Byrne, Kinross:

MOVED Ms M O'Byrne, SECONDED Mr M Dowling that the Electors of the City of Joondalup request that the City communicates to ratepayers in plain English rather than the official language of planners which causes an inadvertent disconnect between what is intended to be communicated and what is actually communicated.

The Motion was Put and

CARRIED

Mr M Dickie, Duncraig:

MOVED Mr M Dickie, SECONDED Mr M Moore that the Electors of the City of Joondalup request that Council review its *Environmentally Sustainable Design Policy* to incorporate requirements and standards that will ensure that all buildings constructed in the City including single and grouped dwellings meet relevant targets for all the matters mentioned therein.

The Motion was Put and

CARRIED

Cr Poliwka left the Chamber at 6.29pm and returned at 6.30pm.

Cr Poliwka left the Chamber at 6.31pm.

Dr T Green, Padbury:

MOVED Dr T Green, SECONDED Mr D Wilkins that the Electors of the City of Joondalup request that City draft a short plain English report detailing the feasibility of:

- a register of development plans for all new residential and commercial property developments in the City with plans available for two years after construction is complete;
- publishing the considerations underpinning any decisions to grant discretions for a development application as part of a database following up with spot audits of building compliance chosen at random by an algorithm.

The Motion was Put and

CARRIED

Ms B Hewitt, Edgewater:

MOVED Ms B Hewitt, SECONDED Mrs Z Murphy that the Electors of the City of Joondalup request that the City provide a short plain English report, no more than five pages, indicating the true cost and benefits to ratepayers of the Jinan Sister City arrangement and how future ratepayer expenditure on this program can be limited.

The Motion was Put and

CARRIED

Cr Poliwka entered the Chamber at 6.35pm.

Ms J Quan, Edgewater:

MOVED Ms J Quan, SECONDED Dr T Green that the Electors of the City of Joondalup request that the City:

- **publish the number of infill developments achieved to date each year;**
- **calculate and publish the estimation of the number of infill that would be achieved for each scheme amendment version presented to Council Western Australia Planning Commission or the State Government;**
- **make sure our scheme amendment does not overachieve state targets in regard to infill.**

The Motion was Put and

CARRIED

Mrs Z Murphy, Edgewater:

MOVED Mrs Z Murphy, SECONDED Ms B Hewitt that the Electors of the City of Joondalup request that the City write a short plain English report, no more than five pages, detailing the costs and benefits to ratepayers of infill in the Housing Opportunity Areas and how it proposes to compensate homeowners who have bought forever homes in neighbourhoods that have been or are being changed completely by infill development.

The Motion was Put and

CARRIED

CLOSURE

There being no further business, Mayor Jacob declared the Annual General Meeting of Electors closed at 6.52pm. The following Elected Members were present at that time:

HON, ALBERT JACOB, JP
CR KERRY HOLLYWOOD
CR TOM McLEAN, JP
CR PHILIPPA TAYLOR
CR NIGE JONES
CR RUSSELL POLIWKA
CR CHRISTINE HAMILTON-PRIME
CR JOHN CHESTER
CR JOHN LOGAN
CR SUZANNE THOMPSON



Local Government Update

Proposed recording and live streaming of local government council and committee meetings

By Denis McLeod, Partner, McLeods

The issue: proposed recording of council meetings

In Western Australia there has been a long running debate on the question of whether Council meetings should be streamed live online, with the recordings being made available to electors by uploading to the local government's website as soon as practical, and maintained online as an archive.

After more than 40 years as a lawyer acting for and against local governments, I have formed the firm view that any recording of Council and committee meetings should be used for the purpose of confirming the correctness of the Minutes of meetings, but should not be otherwise published. The Minutes should then remain available as the public record of the meetings.

The article that follows provides an explanation of that view. As a starting point, my view is premised on acceptance of the proposition that local government is a worthwhile institution that should be preserved and encouraged, and not presented with obstacles calculated to discourage the participation of well intentioned men and women of good sense. Perhaps not all Council members are in that category, but my proposition is that the significant majority who are, should not be discouraged from participating.

The Westminster System of Government

Discussion of the meeting recording and live streaming issue should start with recognition of the basic principles of the Westminster System of government, which apply to the WA State Government, and which focus principally on the three distinct branches of government, being:

- 1 **Parliament:** which makes laws to facilitate government. Under s.2(2) of the *Constitution Act 1889 (WA)* (**Constitution Act**), the Parliament in WA consists of the Monarchy, Legislative Assembly and Legislative Council.
- 2 **Executive:** which administers the government in accordance with the laws. (The Cabinet is the effective part of the Executive, which is subject to the strict conventions of Cabinet confidentiality and solidarity).
- 3 **The Courts and Tribunals:** which interpret the laws and apply them to resolve disputes. (S.54 of the Constitution Act ensures the independence of Supreme Court judges, which generalises to all the States' judicial persons and tribunals).

Not only are those three branches of government intended in principle to function separately, but they are in fact administered separately.

There has been a long running debate on the question of whether Council meetings should be streamed live online, with the recordings being made available to electors

Local Government within the Westminster System

Although Local Government operates within the Westminster System, there are critical features and differences, including the following, that go some way to explain why Council meetings should not be streamed live online, etc, as some critics propose:

- 1 The Council of a local government may perform in any given meeting the role of all three branches of government:
 - (a) Legislative function of Council:

Council makes and amends the local government's laws including:

 - local laws; and
 - planning schemes.
 - (b) Executive functions of Council:

Council performs the same function for its district as State Cabinet performs for the State.
 - (c) Judicial functions of Council:

Council makes quasi-judicial decisions, such as determining applications for planning approval. In doing that a Council is expected to act like a Court or tribunal by complying as far as possible with principles of judicial fairness. A difference here is that unlike Courts and tribunals, a Council's deliberations are required to be in public, and determined by majority vote, which requirements impose special rigors on Council members who are:

 - part-time in their Council role;
 - essentially untrained in legal and judicial process and principles; and
 - subject to popular election and re-election (unlike judges and tribunal members).
- 2 Council acting as the Executive branch of local government makes decisions on policies and strategies of government and on contract and financial issues like the Cabinet in the State Government, but in stark contrast its deliberations are required to be in public, and Councils do not have the protection of Cabinet confidentiality and solidarity.
- 3 So far as Councils' quasi-judicial functions are concerned, Council members are expected to explain, discuss and debate their opinions as they evolve, in public meetings, and their decisions are made by majority vote in open ballot. This is in stark contrast to the privacy and confidentiality of judicial and tribunal members' deliberations towards reaching a decision.
- 4 Unlike all members of the judiciary in Australia, Council members are popularly elected, and must be prepared to defend their public decisions to their electors at the four-yearly Council elections. A decision properly made consistent with planning and legal principle may nevertheless be very unpopular with the electors. Council members who act properly, but contrary to the wishes of the electors, have a burden of explanation to electors going beyond the requirement of judges and Tribunal members to give reasons for their decisions, and they don't have to be concerned about electoral consequences of their decisions.



- 5 Council members are subject to very strict laws on financial interest, and impartiality interest, which by comparison are only very loosely and weakly applied to members of Parliament. State political parties can receive very substantial and regular donations from lobby and pressure groups which would result in serious penalties in the case of local government Council members.
- 6 Council members do not enjoy the protection of absolute privilege from actions for defamation for what is said in their meetings, in stark contrast with the protection of absolute privilege enjoyed by members of Parliament for what is said in their sessions.

The above comments demonstrate that the fundamental features of the local government system necessarily expose it already to a high level of public scrutiny that makes it a very difficult process to participate in, and to function effectively.

Comparison of Council Executive functions with State Government Executive functions

The Council in its role as the Executive must discuss matters critical to good government, in open Council, where similar issues dealt with by the State Government Executive would be discussed and decided strictly behind closed doors, and the proceedings would be protected by the conventions of Cabinet confidentiality and solidarity. For a Council to have those essentially confidential discussions streamed online, etc as the critics propose, would make the process all the more onerous and complex for the Council. Consider what the reaction of the Premier and Cabinet Ministers would be if the public insisted Cabinet meetings be open to the public, much less streamed online.

The professional politicians in State Government are not required to cope with that. Yet the current debate would expose the part-time, non-professional, essentially unpaid Council members, to that rigour. That doesn't seem reasonable or fair.

Comparison of Council quasi-judicial functions with Courts and tribunals

The unreasonableness and unfairness is even clearer when it comes to Council's quasi-judicial functions, which apply whenever the Council is deciding on planning and building applications, and applications for a wide range of other licences, permits and approvals. Council members are expected then to perform their functions in a judicially correct way. Yet unlike all Courts and tribunals, Council members are required to discuss their thinking in public, which goes a long way beyond the normal requirement that judges give reasons for their decisions. Of course Councils must give reasons for their decisions, as judges must, but consider what the reaction of judges and tribunal members would be if the public insisted that judges and tribunals conduct in public their deliberations and the steps in their consideration of a case, much less produce a transcript of their confidential deliberations.

The highly trained lawyers and other professionals who serve as judges and tribunal members are not required to cope with that. Yet the current debate would expose the part-time, non-professional, essentially unpaid Council members to that rigour. That doesn't seem reasonable or fair.

Council's legislative function

There may presently be some argument for a Council's legislative function to be held in public, and perhaps, unlike Parliament, streamed online, etc. The fact that Council members are not protected from defamation action by absolute privilege is probably a strong enough argument against that, and it is certainly an adequate argument against streaming of debate online, etc.



Consider then the contrast with the position of members of Parliament. Many of them do not speak on any issue in Parliament from month to month. And when they do wish to speak on legislation, they generally have much time to prepare their speeches, and they generally have research assistants available, and can prepare speeches for weeks in advance. By comparison, Council members attend ordinary Council meetings once or twice each month, and also special meetings and committee meetings, and from time to time electors and public meetings. At any of those meetings many issues could arise calling for discussion and debate by the Council members. At an ordinary Council meeting, there may be dozens of matters before the Council which call for debate and a vote by Council members.

Is it reasonable to suggest then to the Council members that every word they utter in the process of deliberations will be recorded and streamed online, and recordings made available to any member of the public who might decide to put their every word under microscopic scrutiny. Not even well prepared professionals or legal experts could reasonably be expected to withstand that kind of scrutiny, without the potential for regular embarrassment, and criticism and perhaps recrimination and Court action.

Likely consequences of recording or live streaming of Council meetings

A possible effect of introducing that kind of scrutiny would be that the detailed thinking and reasoning of Council members would go underground. Rather than giving the benefit of their deliberations to the members of the public who care to attend a meeting, they may make their decisions for their own private reasons, and not attempt to explain or discuss those reasons in the public forum. That would be dramatically bad for the system of open local government. Another consequence would be to force Councils to do all their effective work, and to carry on their real debate, in non-formal Council briefing sessions or the like, which are not required to be open to the public. That could also be quite adverse for the system of open local government. More significantly, exposure to that level of scrutiny and risk is likely to function as a significant disincentive to persons interested in election to the office of councillor, which would undermine community participation in local government.

Other considerations

There are other considerations worthy of brief mention including:

- Members of the public, at Council meetings are able to speak in question time and on deputations or representations on issues arising at Council meetings. The Council has no control over their comments, but the recording and live streaming of the proceedings could result in the local government being liable in defamation for the republication of defamatory remarks, or being otherwise responsible for insulting or malicious comments.
- On listening to a recording of a Council meeting, it is often difficult to identify the person responsible for a particular comment. That is likely to lead to confusion and complications, with the local government being required to identify speakers in order to deal with complaints.
- To expect a local government to edit the recordings of meetings to guard against defamatory or otherwise hurtful comments, and to identify speakers, would place an unreasonable burden on the local government administration. There would be a further burden of work and expense in obtaining legal advice on possible defamation.
- A Council acts as a collegiate body. The views of individual Council members are for practical purposes irrelevant. The only view that counts is that expressed in a resolution of the Council. To record and stream live



the comments of individual Council members during debate has the potential to deflect attention away from the most important statement on the topic, which is the resolution passed by the Council and any reasons it identifies for its decision.

- Even newspapers would not contemplate allowing its reporters to present their views on a topic in a direct recording of their thinking processes, without the opportunity for careful independent editing and the possibility of scrutiny by the newspaper's lawyers. That applies no matter how well the reporter may have researched the topic.
- The threat of Court action for defamation can be a very disturbing prospect for a Council member whose personal and family assets may be at risk. A wealthy/powerful or vexatious complainant may press even a bad action through lengthy and expensive litigation processes, and the fact that the action may ultimately fail is little consolation to a Council member whose life for months or years may be dominated by the presence and risks of the action.
- Any member of the public interested in an issue to be considered at a Council meeting can and generally will attend the meeting. Many of those who press for recording and live streaming of the proceedings online may be more interested in targeting Council members whose views they wish to criticise, than to inform themselves on the issues.
- Those concerned about the standard of debate at Council meetings are presumably intelligent and sensitive persons. They are the very people who should offer themselves for election to that important public service. That should improve the standard of debate far more effectively than recording and live streaming of meeting proceedings, and will be of more benefit to the public.

Conclusion

Those are some of the reasons for my view that Council meetings should not be streamed live online, with recordings made available to electors by uploading to the local government's website as soon as practical and maintained online as an archive. For the reasons I have discussed above, in my opinion the minutes of Council meetings should remain as the basic public record of meetings, without the additional processes of exposure and scrutiny which are being proposed by the local government critics.

I know that some local governments do record their meetings and then make the recordings available to the public on their website. That is a decision any Council can legitimately make, but it is another matter for Councils to have that regime imposed on them.

For further information in regard to the above, contact Denis McLeod on 9424 6201 or dmcleod@mcleods.com.au. The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.

