

**M20/5730 – REPORT OF THE GOVERNANCE COMMITTEE MEETING HELD
5 FEBRUARY 2020 (REC) (CONFIDENTIAL ATTACHMENT)**

Ward : All
 Category : Operational
 Subject Index : Governance Committee
 Customer Index : Governance Committee
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Minutes of the Governance Committee held 5 February 2020.
 Item M19/5721 – Chief Executive Officer Performance Review, Ordinary Meeting of Council – 19 November 2019
 Item M19/5726 – Chief Executive Officer Performance Review Process – Governance Committee – 2 December 2019

Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : M Tieleman
 Chief Executive Officer

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

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- A Governance Committee meeting was held 5 February 2020, as part of the adopted process to specifically deal with the Chief Executive Officer's Performance Review, the Committee made recommendations with respect to this process, that were dealt with at a Special Meeting of Council held 11 February 2020.
- At the committee meeting a Motion without Notice was presented in response to the petition referred to the Committee by the Council at the 19 November 2019 Ordinary Council Meeting.
- The Committee supported the motion and recommended the motion be presented to the Council for consideration.

BACKGROUND

At the 19 November 2019 Ordinary Meeting of Council adopted the process to deal with the Chief Executive Officer Performance Review, which included a Governance Committee meeting being held 5 February 2020.

DETAIL

At the Governance Committee meeting held 5 February 2020, the Committee considered the report M20/5728 – Chief Executive Officer Performance Review, which resulted in the following recommendations from the Committee

“That the Governance Committee recommends to the Council:

- 1. that the Chief Executive Officer Performance Criteria and Key Performance Indicators to be used in the next CEO performance review period are those detailed in the confidential attachment entitled “Chief Executive Officer Performance Criteria”.*
- 2. that the Performance Development Plan detailed in confidential attachment entitled “Chief Executive Officer Performance Development Plan 2019” is approved.*
- 3. that the base salary component for the Chief Executive Officer be reviewed as recommended by the Governance Committee and the base salary determination be provided under confidential cover to the Council as an attachment entitled “Salary Recommendation 2019” for approval, to take effect from 20 November 2019.”*

These recommendations were considered at the Special Meeting of Council held 11 February 2020.

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At that meeting, a Motion without Notice was presented, Item 8.1 – Independent Review – Mr McLerie (Building Related and Consequential Complaints), which resulted in the following recommendation to Council:

“That, in response to the petition referred by Council on 19 November 2019 to the Governance Committee for consideration and report, the Governance Committee recommends to Council that:

1. *Council establishes a sub-committee of the Governance Committee which will consist of the Chairman, two members of the Governance Committee and the CEO to undertake investigations into Mr McLerie’s building related complaints with the City of Melville that were the subject of the 19 November 2019 and the Chief Executive Officer of the City of Melville as members (Committee). [per Local Government Act 1995 s 5.8 and 5.9 and 5.10 (5)]*
2. *Council delegates all required powers that enables the Committee to:*
 - a. *Scope, select and engage all relevant resources to assist the committee to fulfil its task, including but not limited to: administrative staff, consultants, technical experts and legal advisors.*
 - b. *Directs the CEO to provide information and the manner in which that information shall be obtained and delivered to the committee or to anyone else that the committee deems appropriate (eg external consultant).*
3. *Council directs the CEO to make available appropriate funds and raise the relevant purchase orders to enable the Committee to be provided with the resources it requires to undertake this investigation.*
4. *The Committee may independently seek further advice from external State Government agencies and oversight bodies as it sees fit.*
5. *Council directs the CEO to provide the committee an itemised summary of Mr McLerie’s building related complaints including the City’s position on each of the issues raised, by no later than 28 February 2020.*
6. *The Committee minutes, documentation, reports and recommendations shall remain confidential unless released by a decision of Council.*
7. *The Committee will provide a final report and recommendations to the Ordinary Meeting of Council immediately after the conclusion of its investigations or at a later date as determined by the Committee or Council.”*

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This recommendation resulted from a petition that was considered by the Council at its Ordinary Meeting held 19 November 2020,

“13.3 Petition – Request for Independent Review

A petition was received on 3 November 2019, signed by 77 residents, as follows:

“We the undersigned, all being electors of the City of Melville, respectfully request that the Council conduct an independent review, by parties and on terms as mutually agreed between Council and Mr McLerie, on the performance and conduct of the City of Melville in respect to Mr McLerie’s various building related and consequential complaints since 2012, as mentioned in his 27 October 2019 letter to Council; in relation to various matters that have caused Mr McLerie and his family significant damage and unwarranted distress.”

This resulted in the following Council resolution:

That the Council acknowledge the petition and refer the matter to the Governance Committee for consideration and report.

The motion without notice presented to and resolved by the Governance Committee on 5 February 2020 has preceded any report/information being submitted to the Governance Committee by officers. Legal advice has been sought in relation to the Council’s ability to support the motion for the Administration to implement the motion as presented. A copy of the legal advice has been distributed as a confidential attachment to this report.

Officers propose to schedule a Special Elected Members Information Session for the purpose of discussing this matter and the associated legal advice before presenting the recommendation of the Governance Committee to the Council for deliberation.

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5 FEBRUARY 2020 (REC) (CONFIDENTIAL ATTACHMENT)****OFFICER RECOMMENDATION (5730)****NOTING****That the Council:**

1. notes the information in relation to the Minutes of the 5 February 2020 Governance Committee;
2. directs the Chief Executive Officer to
 - schedule a Special Elected Members Information Session to present the legal advice received in relation to Item 8.1 – Motion Without Notice Independent Review – Mr McLerie (Building Related and Consequential Complaints) so that Elected Members are fully conversant with the implications of any decision to be taken in respect to this matter; and
 - present a report to the Council by the end of April 2020 on the facilitation of the implementation of an independent review, as recommended by the Governance Committee;
3. directs that the confidential attachment to Item M20/5730 – Report of the Governance Committee Meeting 5 February 2020 remain confidential until conclusion of the independent review.