

LATE ITEM M20/5730 - M MCLERIE – INDEPENDENT REVIEW – BUILDING RELATED AND CONSEQUENTIAL COMPLAINTS (REC)

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 : 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.
 Item M20/5730 – Report of the Governance Committee Meeting held 5 February 2020, Ordinary Meeting of Council 18 February 2020.
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : L Hitchcock
 Executive Manager Governance and Legal Services

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 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 checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

LATE ITEM M20/5730 - M MCLERIE – INDEPENDENT REVIEW – BUILDING RELATED AND CONSEQUENTIAL COMPLAINTS (REC)**KEY ISSUES / SUMMARY**

- At the Ordinary Meeting of the Council held 18 February 2020 the Council considered a recommendation from the Governance Committee with respect to the request from Mr McLerie for an “Independent Review of Building Related and Consequential Complaints” and directed the CEO to schedule a Special Elected Members Information Session (SEMIS) so the Elected Members were fully conversant with the implications of any decision to be taken in respect to the matter.
- The Special Elected Members Information Session was held 26 February 2020, with the City’s legal Advisor in attendance.
- As requested by the attending Elected Members at the SEMIS a letter dated 5 March was emailed to Mr McLerie on 6 March 2020 under the signature of the Mayor.
- A further motion from the 18 February 2020 Council meeting was that the CEO present a report to the Council by 13 March 2020 on the facilitation of the implementation of an independent review, as recommended by the Governance Committee.
- This report provides an update to the Council on the facilitation of that review, to date.

BACKGROUND

At the Governance Committee Meeting held 5 February 2020, a Motion Without Notice was considered, with the Committee resolving:

“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.*

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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.”*

The Council considered this matter at its Ordinary Meeting of Council held 18 February 2020 and, in relation to this matter, resolved as follows:

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 by 28 February 2020, subject to availability of the City’s legal advisor, 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 13 March 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.**

As resolved by the Council, a Special Elected Members Information Session (SEMIS) was held 26 February 2020, with the City’s legal advisor in attendance, to discuss the legal advice dated 13 February 2020. This legal advice was distributed under confidential cover to the Elected Members only, in the Elected Members Bulletin of 14 February 2020 and was included as a confidential attachment to Item M20/5730 – Report of the Governance Committee Meeting held 5 February considered at the 18 February 2020 Ordinary Meeting of Council.

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The Elected Members in attendance at the SEMIS requested the Chief Executive Officer facilitated the drafting correspondence to Mr McLerie, by the City's legal advisor, requesting Mr McLerie to provide the City with a list of each of the complaints he would like investigated, and to clearly *“describe each complaint in sufficient detail to enable an assessment to be made, by each of those providing a quote to the City of what would be involved in investigating each complaint and in making findings and conclusions and any recommendations about each complaint.”*

The correspondence was forwarded to all Elected Members for review and approval before being signed by the Mayor on 5 March 2020 and forwarded to Mr McLerie by email on 6 March 2020.

The correspondence also advised that this information was required *“for the purpose of engaging an independent person or organisation, in accordance with the relevant legislative requirements and the City's Procurement Policy, it is necessary to identify the nature and scope of the work that would be involved. One of the reasons why this is necessary is to enable those who are invited to provide quotations (in accordance with the requirements of the Procurement Policy) to know what work would be involved in investigating your complaints and providing a report to the Council.”*

No time period was stated in the letter for Mr McLerie to provide a response, and the City is currently waiting on a response with the details requested.

When received, the City will be in a position to further consider the steps required to facilitate a review process and develop a scope that allow the Council to determine the most appropriate budget, and specialist or independent investigative person, agency or agencies to undertake the Independent Review.

OFFICER RECOMMENDATION (5730)**NOTING**

That the Council notes the interim report on the facilitation of the implementation of the Independent Review in relation to Mr McLerie's Building Related and Consequential Complaints and the further steps envisaged.