

COUNCIL MINUTES

Special Council Meeting

Confirmed MINUTES

6:00pm, 15 November 2021

Council Chambers (Level 1), Civic Centre,
23 Dundebur Road, Wanneroo

wanneroo.wa.gov.au



CONFIRMED MINUTES OF SPECIAL COUNCIL MEETING

HELD ON MONDAY 15 NOVEMBER, 2021

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M I N U T E S

Mayor Roberts declared the meeting open at 6:00pm and read the prayer.

Good evening Councillors, staff, ladies and gentlemen, we wish to acknowledge the traditional custodians of the land we are meeting on, the Whadjuk people. We would like to pay respect to the Elders of the Nyoongar nation, past and present, who have walked and cared for the land and we acknowledge and respect their continuing culture and the contributions made to the life of this city and this region and I invite you to bow your head in prayer:

Lord, We ask for your blessing upon our City, our community and our Council. Guide us in our decision making to act fairly, without fear or favour and with compassion, integrity and honesty. May we show true leadership, be inclusive of all, and guide the City of Wanneroo to a prosperous future that all may share. We ask this in your name. Amen

Please refer to agenda for details of full reports and attachments.

Item 1 Attendance

TRACEY ROBERTS, JP

Mayor

Councillors:

CHRIS BAKER	North Ward
SONET COETZEE	North Ward
GLYNIS PARKER	North-East Ward
JACQUELINE HUNTLEY	Central-East Ward
NATALIE SANGALLI	Central-West Ward
FRANK CVITAN, JP	Central Ward
NATALIE HERRIDGE	South-West Ward
VINH NGUYEN	South-West Ward
JAMES ROWE	South Ward
BRETT TREBY	South Ward

Officers:

DANIEL SIMMS	Chief Executive Officer
NOELENE JENNINGS	Director, Corporate Strategy & Performance
MUSTAFA YILDIZ	Manager Governance & Legal
NATASHA SMART	Manager, Council & Corporate Support
YVETTE HEATH	Minute Officer

Item 2 Apologies and Leave of Absence

LINDA AITKEN, JP	North-East Ward (apology)
PAUL MILES	Central-East Ward (apology)
HELEN BERRY	Central-West Ward (apology)
JORDAN WRIGHT	Central Ward (apology)

There was one member of the public and no members of the press in attendance.

Item 3 Public Question Time

SPQ01-11/21 Mr H Nguyen - Landsdale

City's Complaint Handling Procedures and Code of Conduct

1. *In relation to one of the matters on the Agenda for this evening, it is obvious that I am one of the complainants in one of the reports. In terms of the City dealing with complaints of this nature, it is bound by the Council Member Committee Member and Candidate Code of Conduct and Complaints Policy, is this correct?*

Response by Executive Manager, Governance & Legal

Yes that is correct.

2. *Clause 5.6 of the Policy approved on 10 Aug 2021, talks about procedural fairness in subclause a), "The principles of procedural fairness and due process will apply when dealing with a complaint to the extent set out in the Policy." I emphasise the word "will" as opposed to "may". Subclause b) says "Procedural fairness is provided to the complainant and respondent as follows". It goes onto Roman numeral (i)c). "The complainant will be afforded reasonable opportunity to consider the findings of the Complaints Administrator." As a complainant, how can I be afforded a reasonable opportunity to consider the findings of the Administrator when I have not been provided a copy of the report, despite my requests?*

Response by Executive Manager, Governance & Legal

The Complaints Administrator would have provided the complainant and the respondent in this matter his findings prior to the Council meeting. The findings are what he has determined, you have been provided an opportunity to consider those findings and to provide any questions to Council or the CEO in writing prior to that and that satisfies the requirements under the Policy.

3. *If that is the case, what I have been provided is a mere four or five sentence letter to say there has been a finding of such and such. How am I to be given a reasonable opportunity to consider the findings of the Administrator based on those brief sentences as opposed to the report?*

Response by Executive Manager, Governance & Legal

The reasonable opportunity would be a reasonable time to consider what you have been provided in the correspondence in regards to the Complaint Administrator's findings. The reasonable opportunity is then to consider what you wish to do and the questions you wish to ask will be based on the information that has been provided to you.

4. *If one was to consider what is reasonable, would it be reasonable to be expected of the complainant to consider the findings based on mere assertion of a breach or no breach?*

Response by Executive Manager, Governance & Legal

As we are dealing with low-level conduct behavioural issues which are akin to grievance issues and what we would apply to any process that would deal with those types of issues. The report itself is not provided to the complainant or the respondent, so the opportunity is in regards to what was actually found and an opportunity to ask questions in relation to that.

You are here today to ask those questions and that would satisfy the requirements under 5.6b)(i)c).

5. *Is that something that is written somewhere in the policy or procedure or is that something that has been made up as we go along?*

Response by Executive Manager, Governance & Legal

The City does not make up processes as we go along, we do formulate the best process at the time and we consider improvements as we move through the process. I would note that it is not specifically spelt out nor would normal process spell out every single step. It is quite clear what a reasonable opportunity is to consider findings of the Complaints Administrator and that would have been in the correspondence you have already received.

6. *How can there be a reasonable opportunity to consider a finding when the complainant is not provided with a copy of the report?*

Response by Executive Manager, Governance & Legal

What is required in the policy is a reasonable opportunity to consider. It is not a reasonable opportunity to consider the report or the detail in the report, it is to consider the findings of the Complaints Administrator.

7. *I was told I needed to make a request to the complaints officer for a copy of the report, and I have made a request, why has this report not been provided?*

Response by Executive Manager, Governance & Legal

You have been advised that it is a Council decision on whether to provide you access to the report, it is not for the Complaints Administrator to make that decision, he is not authorised to do that. As the matter is to be considered behind closed doors at Council it is considered to be confidential, the policy is clear on that and you have been afforded the opportunity to understand what the level of confidentiality that is extended to you as the complainant as well as to the respondent. I will check with the City's Complaints Officer if an official request for a copy of the report has been received?

Response by Director Corporate Strategy & Performance

A request has not been received unless it has come in recently.

8. *A request was made over the weekend and copied into the CEO and a further email was sent to the Complaints Officer to seek assistance in that regard. Where does it say that a formal request for a report has got to be made to the Complaints Officer?*

Response by Executive Manager, Governance & Legal

The City's Complaints Officer is the City's appointed officer to administer the process. Any requests for Council or of the City must go through the Complaints Officer. It is not for the Complaints Administrator who is an independent contractor engaged to administer the complaint, to have the authority to provide a copy of the report. That is for the City to determine and the process is to make the request to the Complaints Officer to facilitate that request to Council.

9. *Given that I have made the request, will the City be providing me with a copy of the report and provide me with a reasonable opportunity to consider that report?*

Response by Executive Manager, Governance & Legal

As stated previously, it is a Council decision in respect of whether or not Council will provide you access to the report and noting that the Complaints Officer has confirmed that no request has been received in writing or requested of the Complaints Officer and in my correspondence to you earlier today which was quite specific on who you needed to make that request to, it will be a Council decision to determine that request during the Confidential Session.

10. *Where does it say that Council makes the decision of the release of such a report to the complainant?*

Response by Executive Manager, Governance & Legal

In accordance with Section 5.25 of the Local Government Act that Council goes behind closed doors for certain reasons. Access to documentation that is provided to Council behind closed doors, Council needs to be the entity that resolves whether or not access is provided or any of those documents can be made public. That is a decision of Council because the report is presented to Council in a closed session.

11. *In relation to question of procedural fairness, under Clause 5.6, b) iii) says Council must be objective and impartial and determine the complaint without any bias or perceived bias. In terms of the meeting going behind closed doors, how is it proposed that the complainant and the respondent are given a reasonable opportunity to ensure that no bias or perceived bias is being exercised by any party that is making the decision in this matter if the respondent and complainant are not permitted to attend such a meeting behind closed doors?*

Response by Executive Manager, Governance & Legal

The requirements for Council Members to act without any actual or perceived bias is a statutory requirement. It is not a requirement that is afforded specifically to the complainant or the respondent and is irrespective of whether either of those parties are present at the meeting. Those statutory obligations exist and continue throughout a Council Member's term of office.

Response by Mayor Roberts

Public question time is normally three minutes and you have had eleven minutes. You may ask two more questions and then public question time will be closed.

12. *It has taken approximately 6 months after the event for the complaint to be resolved and the matter to come to Council when the complainant and the respondent are no longer Council Members. Is that a timely resolution of complaints of this nature?*

Response by Executive Manager, Governance & Legal

It is acknowledged that it has taken longer than expected, noting that these are only the second round of complaints that the City has gone through the process to administer. The Policy and process has been developed during this time. There is a report on the Council Agenda tomorrow night that if carried, will help to streamline the process and help to resolve similar matters in a timely manner.

13. *Does the City find it acceptable for such a complaint to have taken this long to be resolved?*

Response by Executive Manager, Governance & Legal

In my opinion we are learning the process as we go along and improvements have been suggested and will go through a Council Forum process.

14. *The delay has resulted in the situation where the respondent and complainant are no longer Council Members. How does the City propose to enforce any penalty on the respondent if a breach was found?*

Response by Executive Manager, Governance & Legal

There is an election cycle that determines who will be on Council every two years and a complaint can be received on the day before election against a Council Member whose office will be vacant and there is no guarantee that Council Member will be elected to Council. The legislation and process is not perfect and in some situations Council will have no jurisdiction over a person who is no longer a Council Member. The opportunities for Council to be able to implement, or even to request certain actions are quite limited as set out in the policy. This situation can always arise.

Motion

Moved Cr Baker, Seconded Cr Nguyen

To add “Council Members’ Question Time” as Item 3.1 in the Order of Business on the Agenda for this Special Council Meeting.

**CARRIED
6/5**

For the motion: Mayor Roberts, Cr Baker, Cr Coetzee, Cr Herridge, Cr Nguyen and Cr Parker

Against the motion: Cr Cvitan, Cr Huntley, Cr Rowe, Cr Sangalli, Cr Treby

Item 3.1 Council Member Question Time

SCQ01-11/21 Cr Baker – Complaints Procedure

1. *Was Mr Nguyen provided with all the findings in the Complaints Administrator’s report?*

Response by Executive Manager, Governance & Legal

Mr Nguyen was provided with an outline of the findings of the report.

2. *In the Policy under Item 5.6 headed as Procedural Fairness it states “the principles of procedural fairness and due process, will apply in dealing with a complaint to the extent set out in this policy”. How can any complainant in these circumstances be given a reasonable opportunity to consider the findings of the Complaint Administrator to the total exclusion of the report proper? Should the full report have been provided to Mr Nguyen rather than the abbreviated version he received?*

Response by Executive Manager, Governance & Legal

This is not an investigation process. This is a process for Council to determine low level behavioural conduct issues. Procedural fairness is identified in the Policy which is adopted by Council and that is the level of procedural fairness that is afforded to the parties as part of this process.

3. *There are three different standards of proof - beyond reasonable doubt; civil proof on balance of probabilities and the lower level, what is more likely, the likelihood test. Do you agree that the likelihood test has been used in this case and is that an appropriate level of proof?*

Response by Executive Manager, Governance & Legal

The test that has been applied in respect of these particular types of complaints is shown in the reports that will be discussed behind closed doors, noting that the balance of probabilities doesn't change, it is then qualified by the accepted Briggenshaw v Briggenshaw test which provides for the opportunity of the lowest level type of issue to be considered with the lowest level type of evidence.

4. *In relation to the Complaints Management Procedure in clause 6.5 there is reference to the report to Council, it says that findings that allege have occurred or not occurred, must be based on the more likely premise that the breach did occur than not occur. So that is a statement in our procedure that it is the likelihood test, not the civil test referred to in the Complaints Administrator report, would you agree?*

Response by Executive Manager, Governance & Legal

It is what is set out in the reports under Confidential Session and that is the standard of proof that is applied in the consideration of the complaint.

SCQ02-11/21 Cr Nguyen – Clarification of Process

1. *Am I able to ask Mr Hugh Nguyen a question based on statements he made earlier?*

Response by Mayor Roberts

It is not procedural for a Councillor to ask a member of the gallery a question on a confidential report.

2. *In relation to the delay, has Mr Hugh Nguyen contributed to the delay?*

Response by Chief Executive Officer

These matters are dealt with by our Complaints Officer so as Chief Executive Officer I do not have involvement in the process or management of the complaint so not aware of the behaviour of the complainant.

3. *So any delay is either due to the Complaint Administrator or the respondent?*

Response by Chief Executive Officer

No, I am saying that as the Chief Executive Officer I am not aware of how the complaint is managed through the Complaints Officer as I am not the Complaints Officer.

4. *In relation to the mediation process, is that compulsory?*

Response by Executive Manager, Governance & Legal

No, an opportunity for mediation is provided to parties and it is up to them to determine whether or not they wish to participate.

5. *Who would have been the mediator for this complaint?*

Response by Executive Manager, Governance & Legal

There was no opportunity to provide mediation services for this complaint.

SCQ03-11/21 Cr Baker - Complaints Management Procedure Policy

1. *In paragraph 6.5 of the Complaints Management Procedure Policy, subclause d) it states that the Administrator must attend the Ordinary Council Meeting at which the matter is to be considered. Subclause e) says the CEO, Directors and all staff will leave Council Chambers when the matter is considered. In your view, does the word 'will' mean 'may', or does it mean will, shall and must?*

Response by Executive Manager, Governance & Legal

We are dealing with an imperfect process but noting that the procedure was drafted on the proviso that the Standing Orders would be amended in a way that Council would only deal with complaints as a procedural motion without debate, acceptance of the Complaint Administrator's report and determination of the complaint by Council resolution. Where Standing Orders do not provide for that process, there is a requirement for Administration staff to be available to assist in the operation and conduct of the meeting. Whilst that is what is dictated in the procedure, it would be practically impossible for Council to be able to operate effectively and come to a conclusion in accordance with the Standing Orders and to meet its legislative requirements without the officers from Administration being able to provide advice.

2. *Are you also aware in the Council Members' Code of Conduct that there is a duty in that Code of Conduct or all Council Members to comply with the local laws of the City and to comply with all policies of the City, especially in circumstances where the relevant provision is a mandatory provision, using the word will or shall or must as opposed to one which reads may, would you agree that that is the case, Council Members are to comply with the Policy, a mandatory provision in the Policy?*

Response by Executive Manager, Governance & Legal

I am aware of what is included in the Code of Conduct, I will note your reference is not in relation to the Complaints Handling Policy but to a procedural document that allows and facilitates the process.

Item 4 Reports

Declarations of Interest by Council Members, including the nature and extent of the interest. Declaration of Interest forms to be completed and handed to the Chief Executive Officer.

Nil

Item 5 Confidential**Procedural Motion**

Moved Cr Treby, Seconded Cr Cvitan

That Council move into a confidential session to discuss Item SCR01-11/21 and SCR02-11/21 under the terms of the Local Government Act 1995, Section 5.23 (2).

CARRIED
10/1

For the motion: Mayor Roberts, Cr Baker, Cr Coetzee, Cr Cvitan, Cr Herridge, Cr Huntley, Cr Parker, Cr Rowe, Cr Sangalli and Cr Treby

Against the motion: Cr Nguyen

The meeting was closed to the public and all recording ceased at 6:36pm.

SCR01-11/21 Council Member, Committee Member and Candidate Code of Conduct Complaint - Complaint Administrators Report 215023

File Ref: 28975 – 21/494759
Responsible Officer: Executive Manager Governance and Legal

This report was dealt with in confidential session, under the terms of the Local Government Act 1995 Section 5.23(2), as follows:

- (b) the personal affairs of any person*
- (f)(i) a matter that if disclosed, could be reasonably expected to – impair the effectiveness of any lawful method of procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law*
- (h) such other matters as may be prescribed (consider regulations)*

Moved Cr Treby, Seconded Cr Cvitan

That Council:-

1. **ACCEPTS** the findings as set out in the Complaint Administrator's Report 215023 at Attachments 1 and 2; and
2. **DISMISSES** the complaint that alleged a breach of the Council Member, Committee Member and Candidate Code of Conduct.

CARRIED
8/3

For the motion: Mayor Roberts, Cr Cvitan, Cr Herridge, Cr Huntley, Cr Parker, Cr Rowe, Cr Sangalli and Cr Treby

Against the motion: Cr Baker, Cr Coetzee and Cr Nguyen

SCR02-11/21 Council Member, Committee Member and Candidate Code of Conduct Complaint - Complaint Administrator's Report 215024

File Ref: 28975 – 21/494771
Responsible Officer: Executive Manager Governance and Legal

This report was dealt with in confidential session, under the terms of the Local Government Act 1995 Section 5.23(2), as follows:

- (b) the personal affairs of any person*
- (f)(i) a matter that if disclosed, could be reasonably expected to – impair the effectiveness of any lawful method of procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law*
- (h) such other matters as may be prescribed (consider regulations)*

Moved Cr Treby, Seconded Cr Cvitan

That Council:-

- 1. ACCEPTS the findings as set out in the Complaint Administrator's Report 215024 at Attachments 1 and 2; and**
- 2. DISMISSES the complaint that alleged a breach of the Council Member, Committee Member and Candidate Code of Conduct.**

**CARRIED
8/3**

For the motion: Mayor Roberts, Cr Cvitan, Cr Herridge, Cr Huntley, Cr Parker, Cr Rowe, Cr Sangalli and Cr Treby

Against the motion: Cr Baker, Cr Coetzee and Cr Nguyen

Procedural Motion

Moved Cr Treby, Seconded Cr Huntley

That the meeting be reopened to the public.

CARRIED UNANIMOUSLY

The meeting was re-opened to the public and all recording recommenced at 7:58pm.

Mayor Roberts read aloud the resolutions carried on Items SCR01-11/21 and SCR02-11/21.

Item 6 Late Reports

Nil

Item 7 Date of Next Meeting

The next Ordinary Council Meeting has been scheduled for 6:00pm on Tuesday 16 November 2021, to be held at Council Chambers, Civic Centre, 23 Dundobar Road, Wanneroo.

Item 8 Closure

There being no further business, Mayor Roberts closed the meeting at **8:00pm**.

In Attendance

TRACEY ROBERTS, JP

Mayor**Councillors:**

CHRIS BAKER

North Ward

SONET COETZEE

North Ward

GLYNIS PARKER

North-East Ward

JACQUELINE HUNTLEY

Central-East Ward

NATALIE SANGALLI

Central-West Ward

FRANK CVITAN, JP

Central Ward

NATALIE HERRIDGE

South-West Ward

VINH NGUYEN

South-West Ward

JAMES ROWE

South Ward

BRETT TREBY

South Ward