

## CITY OF COCKBURN

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## CITY OF COCKBURN

### MINUTES OF SPECIAL COUNCIL MEETING HELD ON TUESDAY, 23 MAY 2000 AT 7:30 P.M.

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#### PRESENT:

##### COUNCIL MEMBERS

Mr J F Donaldson - Chairperson of Joint Commissioners  
Mr M A Jorgensen - Joint Commissioner

##### IN ATTENDANCE

Mr R W Brown - Chief Executive Officer  
Mr D M Green - Director Community Services  
Mr A T Crothers - Director, Finance & Corporate Services  
Mr S M Hiller - Director, Planning & Development  
Mr B K Greay - Director, Engineering & Works  
Mrs S Ellis - Secretary to Chief Executive Officer  
Mrs C Button - Customer Services Manager  
Ms R Edwards - Public Affairs Officer

#### 550. (AG Item 1) DECLARATION OF OPENING

The Presiding Member declared the meeting open at 7:30pm.

#### 551. (AG Item 2) APPOINTMENT OF PRESIDING MEMBER (IF REQUIRED)

Nil



**552. (AG Item 3) DISCLAIMER (Read aloud by Presiding Member)**

Members of the public who attend Council Meetings, should not act immediately on anything they hear at the Meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

**553. (AG Item 4.1) (SCM1\_5\_2000) - ACKNOWLEDGEMENT OF RECEIPT OF WRITTEN DECLARATIONS OF FINANCIAL INTERESTS (by Presiding Member)**

Cmr Donaldson advised that he had received written advice from Mr Brown of a conflict of interest in Agenda Item 8.2 which will be read at the appropriate time.

**554. (AG Item 5.1) (SCM1\_5\_2000) - APOLOGIES AND LEAVE OF ABSENCE**

Cmr J. Smithson Leave of Absence

**555. (AG Item 6.1) (SCM1\_5\_2000) - PUBLIC QUESTION TIME**

**Mr Colin Crook**, ratepayer of Spearwood, tabled a letter regarding Council's accountability to the public of Cockburn and asked if the Commissioners, in their response to the Report, would be stressing the need for more acceptance by Council of community input and accountability.

Mr Crook referred to Inquiry Report Recommendation 11 and the Code of Conduct. He also wished to state that he understood the meeting was only to look at the Douglas Report but it was the community's only opportunity to have any input.

**Cmr Donaldson** advised that Mr Crook's letter would be responded to in full.

**Mr Laurie Humphreys**, ratepayer and suspended Councillor raised the following matters:



1. Queried the reasoning behind the recommendation on page 6 (2) of the Agenda which he felt, was suggesting the Ombudsman be given a legal right to hand down a power of legal enforcement which could create a situation for a right of appeal.

**Cmr Donaldson** responded that it is important that in a situation where the Ombudsman makes a finding, there is intimation of some enforcement of that finding. The recommendation provides that an Ombudsman's recommendation has some standing and it is not found that an Ombudsman's Report is put aside and then at a later stage, adhered to as has been the case.

**Cmr Jorgensen** added that for most matters, it would be expeditious if the Ombudsman had some legal power.

2. Disagreed with the statement on Pg 8 (1) of the Agenda that "the matters raised in parts (a) (i) and (ii) and (b)" have been included in Council's Standing Orders Local Law as his understanding of the new Standing Orders was that they have not been put into effect.

**Director, Community Services** responded that Clause 21 of Council's Standing Orders mentions 'financial interests' and people refraining from decision making. The only way they could be involved in any discussion, was to answer queries etc but would not be able to participate in the vote.

**Cmr Donaldson** felt that the officer's recommendation actually improved on the recommendation of the Inquirer.

**Cmr Jorgensen** added that Mr Humphreys' point was that the officer's recommendation was different to the Inquirer's findings which was correct. The recommendation mentions that Council's Standing Orders have now been drafted to tighten up the areas of concern relating to conflicts of interests.

3. Disagreed with R12 comment on page 18. He felt that Council was suggesting the Minister consider the fact that Council is considering changing its Wards and the Minister take that into account when determining the date of the next election of Council and which, would then delay the election process.

**Cmr Jorgensen** responded that it did not have to effect the date of the election which is determined by the Minister. However, It was his view that if possible, to reform the electoral process in the community, it would be highly desirable to run them together. But if that meant an undue influence on the lengthening of time,



that would be unfortunate, because it is the Commissioners' intent to have democratically elected representatives as soon as possible.

4. Mr Humphreys felt it would be proper for Council to comment on the unfairness of a system that allows for the dismissal of Councillors with no adverse findings. He felt it was unfair that the CEO was able to defend himself through his Report but exonerated Councillors were unable to have their say. He suggested that, as representatives of the area, Council should recommend to the Minister, that an amendment be made in the Act to correct an unjust situation and asked for the Commissioners' opinion on the issue.
5. He also wished to endorse the character of the CEO as he believed Mr Brown has always been an ambassador of the City in no uncertain terms and a credit to the Council.

**Cmr Donaldson** thanked Mr Humphreys for the sentiment regarding the CEO. He then explained that the issue of elected members not found at fault but still dismissed, is beyond the Commissioners' ambit. He acknowledged the position of Mr Humphreys and the other exonerated Councillors, but felt the issue would require a far reaching overhaul in the manner that local government works. However, in terms of the Council's response to the dismissal of exonerated Councillors, it was beyond the ambit of their power.

**Mrs June Barton**, resident of Bicton wished to speak to the issue of the City's response to the Ombudsman. As the former Mayor of the City of Melville, she believed that the same process Cockburn has been criticised for when responding to Ombudsman enquiries, was also used at Melville and is in line with other councils. She did not feel it was reasonable to make a finding against the CEO for a practice that is also used in other local authorities.

**Cmr Donaldson** agreed with the comments, hence the recommendation that should this continue, the Minister review the way Ombudsman's correspondence was directed to Council as he felt all correspondence should be directed to the CEO and not the Mayor.

**Mr Don Miguel**, resident of Safety Bay explained that as a former Mayor of Cockburn for many years, the system used in dealing with the Ombudsman, was that he would pass correspondence to the City Manager and if it was of a minor nature, he would pass it on to an officer to deal with. If however, he received another letter from the Ombudsman on the same subject, he took it on board to prepare a



response. Mr Miguel felt that system worked well for many years and still believe that correspondence should go to the Mayor.

Mr Miguel also wished to make comment on the CEO's report. Over the many years he was on Council, he experienced good cooperation with staff and Councillors. There was a period of time at Council when things were difficult and sometimes disruptive and when staff are subjected to that type of pressure for a long period, it would be very wearing. However, in the case of Mr Brown, Mr Miguel said "I would put my life on his honesty and integrity".

He also wished to add that being a Councillor is not only taking part in something, but that it can sometimes be a much bigger sin to just be silent on an issue and it saddened him to see Cockburn and local government where it is at the moment. He felt that people need to be more selective of who they vote for and make sure that they are honest and have integrity.

**Mr Paul Lloyd**, ratepayer of Spearwood, referred to recommendation R4 and queried whether that recommendation would also relate to private developers or if it was only for Urban Focus.

**Cmr Donaldson** clarified that the Inquirer was focussing on the issue of how money had gone to the City to be held in trust, or whether it should have been passed to Urban Focus for distribution. The recommendation aims at getting legal advice to clarify whether those monies at that time were distributed lawfully.

Mr Lloyd added that some of those lots have been developed by private people and the funds put aside, should be used to compensate the people that have developed now. He clarified that with the private owners arrangement, the money which is in trust where the arrangements could be made to Urban Focus rather than the City, the funds were to be kept in trust by any developers. But since then, there have been other private developers who he felt should have access to those funds.

Cmr Donaldson responded that Mr Lloyd's point is interesting and is why the issue needs to be cleared up, so Council can be satisfied that the payments were done so lawfully.

**Mrs Nola Waters**, ratepayer and suspended Councillor referred to comments made earlier but wished to add that as someone who has lived in Cockburn, it was very difficult to know that she had been exonerated by the Inquirer and still be sacked.



Like Mr Humphreys, she has worked for the district since it was a small authority and had the opportunity to work closely with Mr Brown. She had every faith in his integrity and hoped to be able to work with him again soon.

**Cmr Donaldson** reiterated that the Commissioners have deliberately kept very separate from the Inquiry process. However, he felt there were two avenues to take as a suspended Councillor: make a response to the Inquiry Report as robustly as possible and secondly, standing on their good record.

**Mr Stephen Lee**, ratepayer and suspended Councillor, wished to raise the following :-

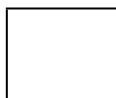
1. Referring to page 5 of the CEO's Report, paragraph 9 "an opinion from Mr McCusker", queried why another legal opinion was received in December '99 when Council had made the decision to pay Mr George Grljusich \$4000 'without prejudice' in May or June of 1999.

**Mr Brown** advised that Mr Denis McLeod had previously given Council advice that Council had acted on however, during the course of the Inquiry, some of Mr McLeod's opinions had come under scrutiny so he (Mr McLeod) then sought an opinion from Mr McCusker, QC. A copy of that opinion was then given to Council.

2. Who paid for that advice?

The CEO replied that Mr McLeod had independently sought the advice and provided a copy to Council, free of charge.

3. Referring to agenda page 6 item (3), he suggested that the sentence should read, "directed to the CEO with a copy to the Mayor and Councillors", so that Councillors are also aware of Ombudsman's issues.
4. Referring to agenda page 8 recommendation R12, he felt in his opinion, this was asking the Minister to delay the election to allow for electoral reform to proceed. He felt that the public want to return to normality and have an election sooner rather than later and this issue should be driven by the electorate.
5. He also referred to comments by Clr Humphreys that all the Councillors would be dismissed and that there was no comment made on that fact. He thought it disappointing that the agenda has not addressed that aspect as there are a number of Councillors who have been found to have acted properly and it





seems unfair that everyone should be dismissed. There should be natural justice and the agenda report is part of that.

6. Mr Lee closed by saying that he had every intention of being involved with the City in the future and he would be more than happy to work with Mr Brown in the future.

**Mr Wally Hagan**, ratepayer of Hamilton Hill wished to speak to the findings made against the CEO and was surprised at the types of issues the CEO has been required to answer to. He also wished to express his support for Mr Brown who he felt, has been a totally dedicated officer of the Council for over 30 years and a man of integrity.

**Cmr Donaldson** felt it was necessary to clarify to the gallery, that the Minister requires the Council to respond to the twelve recommendations made by the Inquirer and that was the main purpose of this meeting: to consider and respond to those recommendations.

It was the opinion of the Commissioners, that it was important for the CEO to make a response to the findings in this way so that it went on public record. They are determined that good local government be practiced in the City of Cockburn and felt it important for the community to get a response from the CEO of their local government who has the responsibility of being the chief operator of the City and from whom, all the good governance, finances and services of the City are ultimately delivered. It was important that the issues surrounding his performance were made public as well as Council's opinion on those findings.

#### **556. (AG Item 7.1) (SCM1\_5\_2000) - PURPOSE OF MEETING**

The purpose of the meeting is to:-

- (1) discuss the recommendations listed in the Report of the Inquiry Into the City of Cockburn and the Council's response to be forwarded to the Minister for Local Government; and
- (2) receive and consider the Chief Executive Officer's response to the findings which relate to him.

CMR DONALDSON EXPLAINED THAT WITH RESPECT TO ITEM 8.1, EACH RECOMMENDATION WOULD BE DEALT WITH INDIVIDUALLY AND RECORDED AS SUCH.



**557. (AG Item 8.1) (SCM1\_5\_2000M1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.1&2)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

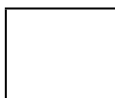
(1) In respect of Recommendations 1 and 2:

**R1.** "... that the *Royal Commissions Act* or Division 2 of Part 8 of the *Local Government Act* be amended -

- (a) to allow the issue, at any time during the course of an inquiry, of a summons for the production of documents alone (analogous to a subpoena *duces tecum*);
- (b) to delete the limitation, currently set out in section 18(1) of the *Royal Commissions Act*, applying to the search warrant power;
- (c) to ensure that a person engaged or appointed by, or for the purpose of assisting, a Commission or inquiry under Division 2 of Part 8 of the *Local Government Act* has adequate protection from personal liability;
- (d) to prohibit the improper use of information by staff engaged by a Commission or inquiry;
- (e) to enable a witness to choose between an oath and an affirmation, without the need to explain or justify the choice; and
- (f) to include, at least in defined circumstances, a right to legal representation and to make it clear that in other cases, if any, leave is required."

[Para. 1.2.66]

**R2.** "... that standard forms, policies and procedures, including those prepared and adopted by this and earlier statutory enquiries, that may usefully be used as precedents be collated, adapted as precedents and made



available for future statutory inquiries."

[Para 1.2.66]

Council has no comment.

### COUNCIL DECISION

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(1) In respect of Recommendations 1 and 2:

**R1.** "... that the *Royal Commissions Act* or Division 2 of Part 8 of the *Local Government Act* be amended -

- (a) to allow the issue, at any time during the course of an inquiry, of a summons for the production of documents alone (analogous to a subpoena *duces tecum*);
- (b) to delete the limitation, currently set out in section 18(1) of the *Royal Commissions Act*, applying to the search warrant power;
- (c) to ensure that a person engaged or appointed by, or for the purpose of assisting, a Commission or inquiry under Division 2 of Part 8 of the *Local Government Act* has adequate protection from personal liability;
- (d) to prohibit the improper use of information by staff engaged by a Commission or inquiry;
- (e) to enable a witness to choose between an oath and an affirmation, without the need to explain or justify the choice; and
- (f) to include, at least in defined circumstances, a right to legal representation and to make it clear that in other cases, if any, leave is required."

[Para. 1.2.66]

**R2.** "... that standard forms, policies and procedures, including those prepared and adopted by this and earlier statutory enquiries, that may usefully be used as

precedents be collated, adapted as precedents and made available for future statutory inquiries."

[Para 1.2.66]

Council supports these recommendations.

**CARRIED 2/0**

### **Explanation**

The Inquirer has asked for comment and it is incumbent on Council to comment. The recommendations are an attempt to improve good governance and the terms of reference for future inquiries.

### **Background**

Following the completion of the inquiry into the City of Cockburn, a copy of the Inquiry Report has been reviewed by Council. In accordance with Section 8.23(4) of the Local Government Act, 1995, Council may provide written comments to the Minister on the Report recommendations.

### **Submission**

N/A

### **Report**

The Inquiry Report contains twelve (12) specific recommendations and this Report is intended only to provide Council's response to those recommendations.

It is to be noted that there are no provisions within the Act to enable Council to provide comment on the general contents of the Report, nor is it appropriate for this Council to do so.

Therefore, any comment and information contained throughout this Report is relative only to issues which involve the recommendations themselves.

### **Recommendations 1 and 2**

R1. "... that the *Royal Commissions Act* or Division 2 of Part 8 of the *Local Government Act* be amended -

- (a) to allow the issue, at any time during the course of an inquiry, of a summons for the production of documents alone (analogous to a subpoena *duces tecum*);



- (b) to delete the limitation, currently set out in section 18(1) of the *Royal Commissions Act*, applying to the search warrant power;
- (c) to ensure that a person engaged or appointed by, or for the purpose of assisting, a Commission or inquiry under Division 2 of Part 8 of the *Local Government Act* has adequate protection from personal liability;
- (d) to prohibit the improper use of information by staff engaged by a Commission or inquiry;
- (e) to enable a witness to choose between an oath and an affirmation, without the need to explain or justify the choice; and
- (f) to include, at least in defined circumstances, a right to legal representation and to make it clear that in other cases, if any, leave is required."  
[Para. 1.2.66]

R2. "... that standard forms, policies and procedures, including those prepared and adopted by this and earlier statutory enquiries, that may usefully be used as precedents be collated, adapted as precedents and made available for future statutory inquiries."  
[Para 1.2.66]

### *Comment*

These two recommendations relate only to procedural matters which impacted on the Inquiry process, about which Council had no involvement. Therefore, any obvious concerns expressed by the Inquirer in relation to that process are best made direct to the authorities which are able to address any systemic anomalies which could improve the proceedings of any future inquiry.

Therefore, it is not appropriate for Council to offer any comment to these recommendations.

### *Recommendation 3*

R3. "... that:-

- (a) the City, in conjunction with the Department of Local Government, review the training needs of elected members to ensure that they are adequately informed of their proper roles and responsibilities relating to the tender process,



particularly the requirements, and rationale for the requirements, that -

- (i) the tender process is fair and transparent;
- (ii) tenders are assessed and decisions made on the basis - and only on the basis - of the advertised criteria; and
- (iii) the overriding objective is to determine which of the tenders is most advantageous to the City."

[Para 2.6.48]

### *Comment*

Tendering in local government has been a concern for a long time. The Department of Local Government has been monitoring tender processes in the industry and has endeavoured to address problem areas through legislative means. While this has led to some improvements, there are still many aspects of the tendering processes throughout local government which remain difficult to deal with. The City of Cockburn has partially addressed this situation by adopting a comprehensive Tender Assessment Policy. This has provided the basis by which both staff and elected members can deal with tenders in a transparent and accountable manner.

Therefore, it is considered appropriate for elected members to be made aware of the important aspects of tendering and the need for absolute accountability to be demonstrated by Council when handling tenders. It is proposed to conduct an extensive briefing session for the newly appointed Council, and it is appropriate to include a module on tender procedures for that time.

### Recommendations 4, 5 and 6

R4. "... that the City -

- (a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and
- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]



R5. "... that -

- (a) the City obtain further legal advice on the questions of whether -
  - (i) the payment of \$63,700 made by Urban Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and
  - (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and
- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

R6. "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and
- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

### *Comment*

The Council sought and received legal and professional advice on the matters contained in Recommendations R4, R5 and R6 by the Inquiry before taking any action to address them.

- In respect of the matter subject of R4, the City sought and received legal and professional advice from McLeod & Co, Watts and Woodhouse and the Ministry for Planning.
- In respect of the matter subject of R5, the City sought and received legal and professional advice from McLeod & Co and the Department of Local Government.
- In respect of the matter subject of R6, the City sought and received legal and professional advice from McLeod & Co and the Department of Local Government.

In addition to the above advice, comprehensive examinations were undertaken by experts appointed by the Department of Local



Government to report on the various issues relating to the Packham Urban Development Area, namely:-

- The Department of Local Government , Analysis Report on the Payment of Monies by Council in Relation to the Packham Urban Development Area by Mr Peter Webster in May 1998.
- The Report of the Inquiry into the City of Cockburn under Section 8.13 of the Local Government Act by Martin and Vicary in March 1999.
- Investigation Report into the Packham Urban Development Area for the Department of Local Government by Mr David Gray in May 1999.

The Council relied on this expert advice in relation to the various matters raised by the Inquirer, and believes that it is unnecessary to seek further advice.

Given that the most influential advice was received from the Department of Local Government, it would be prudent therefore, for the Department to seek advice from Crown Law, rather than the Council pursuing further advice itself.

It is important to point out that as a result of the situation surrounding Section 20C of the Act, the proposed planning legislation, namely the "Consolidation of the Planning Legislation" proposes to include the following provision to clarify the position in relation to the interest accrued on 20C monies:-

*"6.5.5.3. Further changes are being considered to Section 20C of the Town Planning and Development Act to:-*

- a) clarify that interest on a Public Open Space Trust Account should be returned to the Trust Account;*
- b) enable cash-in-lieu funds to be used to reimburse owners who have ceded excess land for public open space under a joint subdivision agreement by private landowners."*

In respect of a), the Western Australian Planning Commission has effectively acknowledged that there is no clear legal restraint on the use of interest monies accruing from the Section 20C account. The Commission has initiated the necessary steps to clarify any uncertainty via an amendment to the legislation.

This tends to confirm that under the current laws relating to the use of the interest accrued on the 20C account, the Council has no lawful restraints.





In relation to Recommendation R4 (b) there is no apparent basis for the Council to refrain from issuing clearances on subdivisions in response to the Inquirer's request. Despite this, however, it is suggested that where there is a footnote relating to cash-in-lieu, Council request the WAPC to issue the clearance on all POS conditions that apply to subdivisions within the Packham Urban Development Area.

This approach will be consistent with the clearance of POS conditions on a subdivision in any event because such conditions are usually cleared by the WAPC not the Council, and the Council clearance is only an advice to the WAPC.

Alternatively, the Council could issue conditional clearances based on a legal opinion from Watts and Woodhouse, which was that Council should where appropriate issue "conditional" or "qualified" clearance advices to the WAPC where the Council's satisfaction is based on the advice of another party. This could be applied to cash-in-lieu payments collected by Urban Focus under the Packham Owners Agreement.

In the circumstances, however, it would be best that the WAPC issue the clearance for POS conditions in Packham.

### Recommendation 7

R7. "... that -

- (a) the City develop, establish and implement procedures to ensure that its responses to -
  - (i) requests for information from the Ombudsman; and
  - (ii) findings and recommendations of the Ombudsman, are consistent with the standards of accountability expected of a public sector agency; and
- (b) the City develop, establish and implement similar procedures to govern its responses to other reviews, particularly external reviews."

[Para 5.7.76]

### *Comment*

The Inquiry Report was very critical of Council in the manner in which it dealt with enquiries from the Ombudsman, even though this criticism was contained to specific matters.

Despite this, an accountable process needs to be evident within the City of Cockburn in respect of these enquiries.



Therefore, it is proposed to develop a Policy, together with associated administrative procedures, which address this shortcoming in Council's current system. Such processes will ensure that Ombudsman enquiries are dealt with in an expeditious and thorough manner, in order to pay due respect to the Office of Ombudsman.

However, there is one aspect of the Inquiry recommendations which is cause for some concern. It has been the experience of this Council on one occasion, to be at odds with a particular conclusion of the Ombudsman and as a consequence, has not agreed with his recommendation. Subsequently, Council found itself in a situation that it could not support the Ombudsman's recommendations on the particular matter. In adopting this stance, which had the backing of a number of legal opinions, it became embroiled in a conflict with the Ombudsman which resulted in harsh criticism being levelled against Council. It is considered that this criticism was unfair because Council's position was based on a strong legal opinion and was not dismissive of the Ombudsman's recommendation for any other reason.

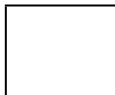
It is of some concern then, that in such circumstances, there is no power for the Ombudsman to exert any authority. This is somewhat strange, given that other legislation which contains review provisions (e.g. Freedom of Information) provides for an ultimate decision making power to be administered by the reviewing authority.

While it is not anticipated that such powers would often be necessary, as it would rightfully be expected that most issues involving an Ombudsman enquiry would be amicably settled, it would assist in circumstances where agreement between the Ombudsman and the party being investigated cannot be reached. It would give the situation some form of conclusion and add to the notion that the Ombudsman, as an independent assessor, should have the final word, where it is considered necessary.

Therefore, while accepting that Council's procedures in dealing with Ombudsman inquiries in the past require improvement, it is also considered that the Ombudsman's role should provide for an ultimate decision making capacity in certain irreconcilable situations.

It is considered that the legislation which governs the Ombudsman's operations, should require that all enquiries be directed to the Chief Executive Officer (CEO) in the first instance, with a copy to the Mayor or President of the Council.

This will have the effect of ensuring that the responsibility of dealing with the enquiry rests, ultimately, with the CEO, who is able to direct the necessary resources into ensuring the issue is dealt with in an expedient and appropriate manner. This is not necessarily the case under current



arrangements, where all enquiries involving local governments are forwarded to the Mayor or President, who in most cases, would be unaware of the matter under investigation and in any case, must rely on Council staff to investigate and respond to the issue.

Recommendation 8

R8. "... that -

- (a) section 5.62 of the *Local Government Act 1995* be amended to include, as a specific category of "closely associated" persons, a person for whom legal services are being provided by an elected member; and
- (b) consideration be given to expanding the application of this new category to include -
  - (i) a temporal claw-back provision; and
  - (ii) the provision of other services."

[Para 8.14.12]

*Comment*

It is considered reasonable that the financial interest provisions of the Local Government Act, 1995, be extended to include professional services which are supplied from one elected member of Council to another, or an employee. However, consideration should be given to including more widespread professional services than only those involving legal representation.

Recommendation 9

R9. "... that Section 5.60A of the *Local Government Act 1995* be amended so that, in determining whether an elected member (or an employee) has a financial interest in a matter before a council or committee, it would be necessary to consider whether there was a reasonable expectation of a financial gain or loss resulting from either-

- (a) the way that the matter might be dealt with by the council or the committee; and
- (b) the way that the matter might be dealt with by the elected member (or employee)."

[Para 8.4.17]



*Comment*

Again, this recommendation concerns the extension of the financial interest provisions of the Act. The recommendation suggests that consideration of such interests should go beyond the mere association of one person to another and capture the process involved in considering the outcome of an issue before Council. It is considered that any such tightening of these provisions which would enhance the propriety of Council elected members and staff, should be encouraged.

*Recommendation 10*

R10. "... that the matters dealt with in this Chapter be referred to the Department of Local Government - which, under the Minister for Local Government, has the responsibility for the administration of the *Local Government Act 1995* - to determine whether Cr Wheatley should be prosecuted for breaches of the financial interest provisions of that Act."

[Para 8.4.77]

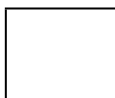
*Comment*

As this is a matter external to this Council's jurisdiction, it is not considered appropriate for Council to comment.

*Recommendation 11*

R11. "... that -

- (a) elected members who have a non-financial interest in a matter before a local government be encouraged, through appropriate training and guidelines from the Department of Local Government, to refrain from -
  - (i) participating in the decision making procedures relating to the matter;
  - (ii) voting on the matter; and
  - (iii) having anything to do with the matter in their roles as elected members;
- (b) at a council or committee meeting the elected members be given the power to decide whether a fellow member, who has declared a non-financial interest in a matter, should be entitled to participate in the discussion, or to vote, on that matter;



- (c) elected members who have dealings with their local government, or who have an interest, whether financial or not, in a matter before the local government should, in relation to that matter -
  - (i) be restricted in their access to the local government's employees and elected members; and
  - (ii) have no greater right than a member of the public to obtain access to documents, or to use the resources of the local government; and
- (d) appropriate aspects of codes of conduct be enforceable either through the *Local Government Act* or through an appropriate local law, such as a local government's Standing Orders."

[Para 8.5.80]

*Comment*

This recommendation covers a number of issues in the area of interests, particularly of a non-financial nature. The Inquiry Report findings were scathing in criticising Council for the manner in which it dealt with such matters.

This situation was realised by Council in recent times and, therefore, non-financial interest provisions have been reinstated in Council's Standing Orders Local Law to ensure the probity of Council's elected members and staff into the future. Council's Codes of Conduct should also be reviewed in the short term to include "undue influence" provisions. In addition, it is intended to include this area of great importance in the briefing session to be conducted following the reappointment of an elected Council.

However, the recommendation raises a number of issues which are currently not covered in legislation and which would add to the security of the interest provisions if included in the Act.

Therefore, it is considered that a combination of legislation and education is the most effective manner in dealing with conflict of interest issues.

*Recommendation 12*

R12. "... that the Council be dismissed."

[Para 11.5.23]



*Comment*

While this is a process which is external to Council influence, it is considered appropriate to inform the Minister of the review process currently in place in respect of Council Wards and representation, for consideration in determining a date for the next Council elections, in the event that Council is dismissed.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**Note:** The Details contained in this item relative to the Official Report in the Agenda Item, have not been repeated for the other Council decisions taken at this meeting.

**558. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.3)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(2) In respect of Recommendation 3:

**R3.** "... that:-

- (a) the City, in conjunction with the Department of Local Government, review the training needs of elected members to ensure that they are adequately informed of their proper roles and responsibilities relating to the tender process, particularly the requirements, and rationale for the requirements, that -



- (i) the tender process is fair and transparent;
- (ii) tenders are assessed and decisions made on the basis - and only on the basis - of the advertised criteria; and
- (iii) the overriding objective is to determine which of the tenders is most advantageous to the City."

[Para 2.6.48]

Council will include a training module dedicated to tender processes in an elected member development programme to be provided by the City, following the election of a Council, to be facilitated in conjunction with the Department of Local Government.

#### **COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(2) In respect of Recommendation 3:

**R3.** "... that:-

- (a) the City, in conjunction with the Department of Local Government, review the training needs of elected members to ensure that they are adequately informed of their proper roles and responsibilities relating to the tender process, particularly the requirements, and rationale for the requirements, that -
  - (i) the tender process is fair and transparent;
  - (ii) tenders are assessed and decisions made on the basis - and only on the basis - of the advertised criteria; and
  - (iii) the overriding objective is to determine which of the tenders is most advantageous to the City."

[Para 2.6.48]

- (a) Council will include a training module dedicated to tender processes in an elected member development programme to be provided by the City, following the election of a Council, to be facilitated in conjunction with the Department of Local Government; and
- (b) that if possible, this training module be made mandatory and undertaken within a 3 month period after the election of Council.

**CARRIED 2/0**

**Explanation**

Training modules have been offered to elected members year in and year out but many elected members do not take that opportunity and anyone who is going to take on a position needs to be well versed on their responsibilities. Council therefore considered attendance should be mandatory.

**Background**

Refer to Item 8.1.

**Submission**

N/A

**Report**

Refer to Item 8.1.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil





**559. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.4)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendations 4, 5 and 6:

**R4.** "... that the City -

- (a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and
- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

**R5.** "... that -

- (a) the City obtain further legal advice on the questions of whether -
  - (i) the payment of \$63,700 made by Urban Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and
  - (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and
- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

**R6.** "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and
- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

Council:

- (1) is of the opinion that there is sufficient legal and expert advice for it to be confident that its actions to address the issues raised by the Inquirer in Recommendations R4, R5 and R6 have been appropriate and lawful;
- (2) in the light of the Inquirer's Recommendations R4(a), R5(a) and R6(a), request the Department of Local Government to seek a legal opinion on the respective recommendations, given that the Council relied on the advice of the Department as the basis for addressing the issues raised; and
- (3) advise the Western Australian Planning Commission (WAPC) that the Council, based on Recommendation R4(b) of the Inquiry Into the City of Cockburn, is not prepared to issue clearance advices to the WAPC on conditions of subdivision relating to POS for land within the Packham Urban Development Area, and that such conditions be cleared by the Commission.

#### **COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

- (3) In respect of Recommendation 4:

**R4.** "... that the City -

- (a) obtain further legal advice on the question



whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and

- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

Council will brief solicitors to receive the legal advice recommended by the Inquiry.

**CARRIED 2/0**

### **Explanation**

It is considered that there has been a level of expertise examining this issue and Council should invest in the legal opinion, consider the opinion and take the necessary action.

### **Background**

Refer to Item 8.1.

### **Submission**

N/A

### **Report**

Refer to Item 8.1.

### **Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

### **Budget/Financial Implications**

N/A

### **Implications of Section 3.18(3) Local Government Act, 1995**

Nil



**560. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.5)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendations 4, 5 and 6:

**R4.** "... that the City -

- (a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and
- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

**R5.** "... that -

- (a) the City obtain further legal advice on the questions of whether -
  - (i) the payment of \$63,700 made by Urban Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and
  - (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and



- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

**R6.** "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and
- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

Council:

- (1) is of the opinion that there is sufficient legal and expert advice for it to be confident that its actions to address the issues raised by the Inquirer in Recommendations R4, R5 and R6 have been appropriate and lawful;
- (2) in the light of the Inquirer's Recommendations R4(a), R5(a) and R6(a), request the Department of Local Government to seek a legal opinion on the respective recommendations, given that the Council relied on the advice of the Department as the basis for addressing the issues raised; and
- (3) advise the Western Australian Planning Commission (WAPC) that the Council, based on Recommendation R4(b) of the Inquiry Into the City of Cockburn, is not prepared to issue clearance advices to the WAPC on conditions of subdivision relating to POS for land within the Packham Urban Development Area, and that such conditions be cleared by the Commission.

### **COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendation 5:

**R5.** "... that -

- (a) the City obtain further legal advice on the questions of whether -
  - (i) the payment of \$63,700 made by Urban Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and
  - (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and
- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

Council will brief solicitors to provide the legal advice recommended by the Inquiry. Once this advice is to hand, Council will be in a position to determine whether it is appropriate to recover the money (referred to in R5(b)) from Urban Focus.

**CARRIED 2/0**

### **Explanation**

Once Council has a legal advice as recommended by the Inquirer, it can then consider if it is appropriate to recover the money.

### **Background**

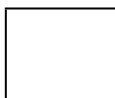
Refer to Item 8.1.

### **Submission**

N/A

### **Report**

Refer to Item 8.1.



**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**561. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.6)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendations 4, 5 and 6:

**R4.** "... that the City -

- (a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and
- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

**R5.** "... that -

- (a) the City obtain further legal advice on the questions of whether -
  - (i) the payment of \$63,700 made by Urban

Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and

- (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and
- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

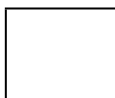
**R6.** "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and
- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

Council:

- (1) is of the opinion that there is sufficient legal and expert advice for it to be confident that its actions to address the issues raised by the Inquirer in Recommendations R4, R5 and R6 have been appropriate and lawful;
- (2) in the light of the Inquirer's Recommendations R4(a), R5(a) and R6(a), request the Department of Local Government to seek a legal opinion on the respective recommendations, given that the Council relied on the advice of the Department as the basis for addressing the issues raised; and
- (3) advise the Western Australian Planning Commission (WAPC) that the Council, based on Recommendation R4(b) of the Inquiry Into the City of Cockburn, is not prepared to issue clearance advices to the WAPC on conditions of subdivision relating to POS for land within the Packham Urban Development Area, and that such conditions be cleared by the Commission.





**COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendation 6:

**R6.** "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and
- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

Prior to Council briefing solicitors to provide the legal advice recommended by the Inquirer, Council will approach the Department of Local Government to share the costs of receiving that legal advice as Council used advice by the Department to address the issues raised.

Irrespective of the outcome to funding of the advice, Council will pursue a solution to the problem (referred to in R6(b) ) that is lawful and proper.

**CARRIED 2/0**

**Explanation**

Council thought it appropriate to seek some cost sharing and also ensure that the Council acts lawfully and properly on that advice.

**Background**

Refer to Item 8.1.



**Submission**

N/A

**Report**

Refer to Item 8.1.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**562. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.7)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(4) In respect of Recommendation 7:

**R7.** "... that -

(a) the City develop, establish and implement procedures to ensure that its responses to -

(i) requests for information from the Ombudsman; and

(ii) findings and recommendations of the Ombudsman,

are consistent with the standards of accountability expected of a public sector agency; and

(b) the City develop, establish and implement similar



procedures to govern its responses to other reviews, particularly external reviews."

[Para 5.7.76]

Council:

- (1) will develop a policy and associated administrative procedures to ensure that the handling of matters raised with Council through the Ombudsman and all other reviews, are treated in a consistent, thorough and equitable manner and will, wherever possible, endeavour to reconcile the findings and recommendations of the Ombudsman and other reviews with Council's own outcome to these matters to bring about a positive resolution, and
- (2) suggests that amendments should be made to the legislation under which the Ombudsman operates to give recommendations made by the Ombudsman the power of legal enforcement.
- (3) suggests that legislation under which the Ombudsman operates be amended to require Ombudsman enquiries to be directed in the case of local government authorities, to the Chief Executive Officer, with a copy to the Mayor or President.

#### **COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

- (4) In respect of Recommendation 7:

**R7.** "... that -

- (a) the City develop, establish and implement procedures to ensure that its responses to -
  - (i) requests for information from the Ombudsman; and
  - (ii) findings and recommendations of the Ombudsman,

are consistent with the standards of accountability expected of a public sector agency; and

- (b) the City develop, establish and implement similar procedures to govern its responses to other reviews, particularly external reviews."

[Para 5.7.76]

Council:

- (1) will develop a policy and associated administrative procedures to ensure that the handling of matters raised with Council through the Ombudsman and all other reviews, are treated in a consistent, thorough and equitable manner and will, wherever possible, endeavour to reconcile the findings and recommendations of the Ombudsman and other reviews with Council's own outcome to these matters to bring about a positive resolution, and
- (2) suggests that amendments should be made to the legislation under which the Ombudsman operates to give recommendations made by the Ombudsman the power of legal enforcement.
- (3) suggests that legislation under which the Ombudsman operates be amended to require Ombudsman enquiries to be directed in the case of local government authorities, to the Chief Executive Officer, with a copy to the Mayor or President.

**CARRIED 2/0**

## **Background**

Refer to Item 8.1.

## **Submission**

N/A

## **Report**

Refer to Item 8.1.



**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**563. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.8)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(5) In respect of Recommendation 8:

**R8.** "... that -

- (a) section 5.62 of the *Local Government Act 1995* be amended to include, as a specific category of "closely associated" persons, a person for whom legal services are being provided by an elected member; and
- (b) consideration be given to expanding the application of this new category to include -
  - (i) a temporal claw-back provision; and
  - (ii) the provision of other services."

[Para 8.14.12]

Council agrees with the suggestion to extend the category of "closely associated" persons to include legal services, however, is of the opinion that this category should also include a wider number of professional services.



**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(5) In respect of Recommendation 8:

**R8.** "... that -

- (a) section 5.62 of the *Local Government Act 1995* be amended to include, as a specific category of "closely associated" persons, a person for whom legal services are being provided by an elected member; and
- (b) consideration be given to expanding the application of this new category to include -
  - (i) a temporal claw-back provision; and
  - (ii) the provision of other services."

[Para 8.14.12]

Council agrees with the suggestion to extend the category of "closely associated" persons to include legal services, however, is of the opinion that this category should also include a wider number of professional services.

**CARRIED 2/0**

**Background**

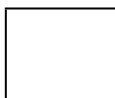
Refer to Item 8.1.

**Submission**

N/A

**Report**

Refer to Item 8.1.



**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**564. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.9)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(6) In respect of Recommendation 9:

**R9.** "... that Section 5.60A of the *Local Government Act 1995* be amended so that, in determining whether an elected member (or an employee) has a financial interest in a matter before a council or committee, it would be necessary to consider whether there was a reasonable expectation of a financial gain or loss resulting from either-

- (a) the way that the matter might be dealt with by the council or the committee; and
- (b) the way that the matter might be dealt with by the elected member (or employee)."

[Para 8.4.17]

Council agrees that the financial interest provisions of the Local Government Act, 1995, should be amended to reflect the intent of these recommendations.

**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in

response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(6) In respect of Recommendation 9:

**R9.** "... that Section 5.60A of the *Local Government Act 1995* be amended so that, in determining whether an elected member (or an employee) has a financial interest in a matter before a council or committee, it would be necessary to consider whether there was a reasonable expectation of a financial gain or loss resulting from either-

(a) the way that the matter might be dealt with by the council or the committee; and

(b) the way that the matter might be dealt with by the elected member (or employee)."

[Para 8.4.17]

Council agrees that the financial interest provisions of the Local Government Act, 1995, should be amended to reflect the intent of these recommendations.

**CARRIED 2/0**

## **Background**

Refer to Item 8.1.

## **Submission**

N/A

## **Report**

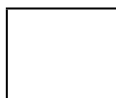
Refer to Item 8.1.

## **Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

## **Budget/Financial Implications**

N/A





## Implications of Section 3.18(3) Local Government Act, 1995

Nil

### 565. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.10)

#### RECOMMENDATION

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(7) In respect of Recommendation 10:

**R10.** "... that the matters dealt with in this Chapter be referred to the Department of Local Government - which, under the Minister for Local Government, has the responsibility for the administration of the *Local Government Act 1995* - to determine whether Cr Wheatley should be prosecuted for breaches of the financial interest provisions of that Act."

[Para 8.4.77]

Council has no comment.

#### COUNCIL DECISION

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(7) In respect of Recommendation 10:

**R10.** "... that the matters dealt with in this Chapter be referred to the Department of Local Government - which, under the Minister for Local Government, has the responsibility for the administration of the *Local Government Act 1995* - to determine whether Cr Wheatley should be prosecuted for breaches of the financial interest provisions of that Act."

[Para 8.4.77]

Council supports the recommendation.

**CARRIED 2/0**

**Explanation**

The intent is to have the Department determine whether Clr Wheatley should be prosecuted. In supporting the recommendation, Council is not saying that Clr Wheatley should be prosecuted; only that it is a matter that has been raised and the issue should be examined and a decision made as to whether legal action is appropriate.

**Background**

Refer to Item 8.1.

**Submission**

N/A

**Report**

Refer to Item 8.1.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

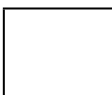
**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

- 566. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.11)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local



Government as follows:-

(8) In respect of Recommendation 11:

**R11.** "... that -

- (a) elected members who have a non-financial interest in a matter before a local government be encouraged, through appropriate training and guidelines from the Department of Local Government, to refrain from -
  - (i) participating in the decision making procedures relating to the matter;
  - (ii) voting on the matter; and
  - (iii) having anything to do with the matter in their roles as elected members;
- (b) at a council or committee meeting the elected members be given the power to decide whether a fellow member, who has declared a non-financial interest in a matter, should be entitled to participate in the discussion, or to vote, on that matter;
- (c) elected members who have dealings with their local government, or who have an interest, whether financial or not, in a matter before the local government should, in relation to that matter -
  - (i) be restricted in their access to the local government's employees and elected members; and
  - (ii) have no greater right than a member of the public to obtain access to documents, or to use the resources of the local government; and
- (d) appropriate aspects of codes of conduct be enforceable either through the *Local Government Act* or through an appropriate local law, such as a local government's Standing Orders."

[Para 8.5.80]

Council:



- (1) in respect of parts (a) and (b), agrees with the intent of this recommendation and that it has included the matters raised in parts (a) (i) and (ii) and (b) in its Standing Orders Local Law, adopted by Council in July 1999, to the effect that elected members, having declared a conflict of interest (non-financial) do not participate or vote on such matters;
- (2) will include a training module dedicated to these issues in the elected member development programme referred to in sub recommendation (2) above;
- (3) agrees that the Codes of Conduct adopted by local governments and the issues mentioned in part (c) should be enforceable through provisions of the Local Government Act; and
- (4) will reinstate the "undue influence" provisions in the City's Codes of Conduct in the short term.

#### **COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

- (8) In respect of Recommendation 11:

**R11.** "... that -

- (a) elected members who have a non-financial interest in a matter before a local government be encouraged, through appropriate training and guidelines from the Department of Local Government, to refrain from -
  - (i) participating in the decision making procedures relating to the matter;
  - (ii) voting on the matter; and
  - (iii) having anything to do with the matter in their roles as elected members;
- (b) at a council or committee meeting the elected members be given the power to decide whether a



fellow member, who has declared a non-financial interest in a matter, should be entitled to participate in the discussion, or to vote, on that matter;

- (c) elected members who have dealings with their local government, or who have an interest, whether financial or not, in a matter before the local government should, in relation to that matter -
  - (i) be restricted in their access to the local government's employees and elected members; and
  - (ii) have no greater right than a member of the public to obtain access to documents, or to use the resources of the local government; and
- (d) appropriate aspects of codes of conduct be enforceable either through the *Local Government Act* or through an appropriate local law, such as a local government's Standing Orders."

[Para 8.5.80]

Council:

- (1) in respect of parts (a) and (b), agrees with the intent of this recommendation and that it has included the matters raised in parts (a) (i) and (ii) and (b) in its Standing Orders Local Law, adopted by Council in July 1999, to the effect that elected members, having declared a conflict of interest (non-financial) do not participate or vote on such matters;
- (2) will include a training module dedicated to these issues in the elected member development programme referred to in sub recommendation (2) above;
- (3) agrees that the Codes of Conduct adopted by local governments and the issues mentioned in part (c) should be enforceable through provisions of the Local Government Act; and
- (4) will reinstate the "undue influence" provisions in the City's Codes of Conduct in the short term.

**CARRIED 2/0**

**Explanation**

The Commissioners asked the administration to ensure that correspondence to the Minister on this issue, draw attention to the action taken in 1999 to include conflict of interest provisions in its Standing Orders and that this is considered to be an increased provision on the accountability trail which is not contradictory to the Inquirer's recommendation.

**Background**

Refer to Item 8.1.

**Submission**

N/A

**Report**

Refer to Item 8.1.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**567. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.12)**

**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(9) In respect of Recommendation 12:



**R12.** "... that the Council be dismissed."

[Para 11.5.23]

that, in the event that it is recommended by the Minister that Council be dismissed, Council considers the Minister should give adequate allowance to ensuring a sufficient time frame is in place to accommodate probable amendments to Council's Ward Representation and Councillor numbers, including election of the Mayor by popular vote, as a result of the current review process taking place relative to this matter, prior to the setting of a date for the election of a new Council.

### **COUNCIL DECISION**

Moved Cmr Jorgensen seconded Cmr Donaldson, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(9) In respect of Recommendation 12:

**R12.** "... that the Council be dismissed."

[Para 11.5.23]

that, in the event that it is recommended by the Minister that Council be dismissed, Council will work closely with the Minister, the Department of Local Government and the Advisory Board, to achieve the proposed electoral reforms and the earliest possible return to a democratically elected Council.

**CARRIED 2/0**

### **Explanation**

The Commissioners have heard the intent of the community and they absolutely support the absolute earliest possible return. The only reason for including the electoral reform is that Council has progressed a long way towards the reform and do not want to waste the work done.

### **Background**

Refer to Item 8.1.



**Submission**

N/A

**Report**

Refer to Item 8.1.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

N/A

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

BEFORE MOVING TO ITEM 8.2, THE DIRECTOR PLANNING & DEVELOPMENT QUERIED WHETHER COUNCIL WISHED TO MAKE COMMENT ON R4 (b) AS HE FELT THE COUNCIL DECISION RELATING TO RECOMMENDATION 4, DID NOT INCLUDE REFERENCE TO (b).

**568. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (RWB) (1335) (Rec.4b)**

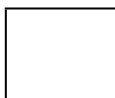
**RECOMMENDATION**

That Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

(3) In respect of Recommendations 4, 5 and 6:

**R4.** "... that the City -

(a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus





rather than to the City; and

- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

**R5.** "... that -

- (a) the City obtain further legal advice on the questions of whether -

- (i) the payment of \$63,700 made by Urban Focus to the City on 24 December 1996 was required to be made to the City in accordance with the conditions of subdivision approval applying to Stage 16; and

- (ii) the "refund" of \$63,700 by the City to Urban Focus on 17 February 1999 was lawful; and

- (b) if the refund was unlawful, the City take appropriate action to recover the money from Urban Focus."

[Para. 4.12.35]

**R6.** "... that the City, in consultation with the Department of Local Government -

- (a) seek further legal advice on the question of whether it would be lawful to treat payment of the sum of \$222,934 by the City to Urban Focus as having been made from the interest accrued in respect of the City's section 20C account; and

- (b) pursue a solution to this problem that is lawful and proper."

[Para 4.12.58]

Council:

- (1) is of the opinion that there is sufficient legal and expert advice for it to be confident that its actions to address the issues raised by the Inquirer in Recommendations R4, R5

and R6 have been appropriate and lawful;

- (2) in the light of the Inquirer's Recommendations R4(a), R5(a) and R6(a), request the Department of Local Government to seek a legal opinion on the respective recommendations, given that the Council relied on the advice of the Department as the basis for addressing the issues raised; and
- (3) advise the Western Australian Planning Commission (WAPC) that the Council, based on Recommendation R4(b) of the Inquiry Into the City of Cockburn, is not prepared to issue clearance advices to the WAPC on conditions of subdivision relating to POS for land within the Packham Urban Development Area, and that such conditions be cleared by the Commission.

#### **COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council, pursuant to Section 8.23(4) of the Local Government Act, 1995 and in response to the recommendations contained in the Report of the Inquiry into the City of Cockburn, advise the Minister for Local Government as follows:-

- (3) In respect of Recommendation 4 (b):

**R4.** "... that the City -

- (a) obtain further legal advice on the question whether, and if so how, cash-in-lieu payments made by participants in the Private Owners' Arrangement can lawfully be made to Urban Focus rather than to the City; and
- (b) refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in accordance with the subdivision conditions."

[Para 4.12.29]

That Council refrain from giving any further clearances in respect of subdivision conditions relating to cash-in-lieu payments by participants in the Private Owners' Arrangement until it is satisfied that the payments have been made lawfully in



accordance with the subdivision conditions.

**CARRIED 2/0**

### **Background**

Refer to Item 8.1.

### **Submission**

N/A

### **Report**

Refer to Item 8.1.

### **Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

### **Budget/Financial Implications**

N/A

### **Implications of Section 3.18(3) Local Government Act, 1995**

Nil

## **569. (AG Item ) (SCM1\_5\_2000) - RESPONSE TO THE REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN (MJ) (1335)**

### **COUNCIL DECISION**

Moved Cmr Jorgensen that the Minister for Local Government and the WA Municipal Association be advised that Council suggests that the Local Government Act be considered to ensure that Councillors without adverse findings against them as a result of an Inquiry, should not be disadvantaged by dismissal.

**MOTION WITHDRAWN**

### **Explanation**

Cmr Jorgensen presented the view that there may be examples of exemplary behaviour in Inquiries and therefore, the Council Members



should not be disadvantaged by being dismissed and forced to face an election when no adverse findings are made.

Cmr Donaldson considered this matter to be separate to Council's response to the Inquiry.

Cmr Jorgensen therefore withdrew his motion and gave notice of his intention to move a similar motion at the next Council Meeting. This would give officers sufficient time to gather information and include the matter on the next agenda.

### **DECLARATION OF INTEREST**

Cmr Donaldson read aloud advice that **Rod Brown**, Chief Executive Officer, declared a conflict of interest in Agenda Item 8.2. The nature being that he is the author of the report presented to Council in relation to the findings against him.

AT THIS POINT THE TIME BEING 8:48PM, ROD BROWN LEFT THE MEETING AND MR DON GREEN ASSUMED THE CEO'S ADMINISTRATIVE ROLE.

CMR DONALDSON ADVISED OF HIS INTENTION TO DEAL WITH EACH RECOMMENDATION IN THE CEO'S REPORT INDIVIDUALLY.

### **570. (AG Item 8.2) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

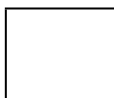
#### **RECOMMENDATION**

That Council:

- (1) receive the report from the Chief Executive Officer (CEO) in response to the findings against him in the Report of the Inquiry Into the City of Cockburn; and
- (2) further consider its position in respect of the CEO's Report.

#### **COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council receive



the report from the Chief Executive Officer (CEO) in response to the findings against him in the Report of the Inquiry Into the City of Cockburn.

**CARRIED 2/0**

## **Background**

The Report of the Inquiry into the City of Cockburn concluded a number of findings attributed to previous and currently suspended Councillors, as well as two employees, including the current CEO, Rod Brown.

Mr Brown has subsequently prepared a response to the findings relevant to him as a means of explaining the circumstances surrounding those matters.

## **Submission**

N/A

## **Report**

The response to the Inquiry findings prepared by Mr Brown, relates only to those areas of the Inquiry Report which adversely implicate him.

The purpose of his response is to clarify those matters where he believes he has been unfairly criticised and explain in greater detail, the reasons for his actions.

Much of Mr Brown's report is dedicated to clarifying issues raised in the Inquiry Report, which he believes justifies the manner in which he dealt with them and demonstrates that he did not act improperly.

His report also acknowledges that some administrative practices of the City of Cockburn, could be improved and these will be addressed in the very short term. The development of improved organisational procedures, particularly in the handling of Ombudsman enquiries, will receive high priority.

However, the main intent of the response is for Mr Brown's point of view to be clearly and publicly stated and as an explanation to those allegations which the Inquiry findings have levelled against him.

Council may also wish to utilise the opportunity to make comment on the CEO's Report, as it is responsible for the overall performance of the CEO in the discharge of his duties.



**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**571. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO THE CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

**RECOMMENDATION**

In response to findings:-

"Chapter 3 - Lot 1 Berrigan Drive

(d) City's responses to Ombudsman

F22. ....

(c) as the City's CEO, Mr Brown had the responsibility to ensure that the City's responses to the Ombudsman's inquiries concerning Lot 1 were timely and appropriate; and

(d) Mr Brown did not discharge that responsibility in that the City's responses to the Ombudsman, as outlined above, were not appropriate."

And

"Chapter 5 - The City's Refusal to Support the Rezoning of Lot 17

(g) The City's response to the Ombudsman's report

F38. ...

(c) Mr Brown failed to ensure that the City's response (on 8 November 1996) to the Ombudsman's letter of 16 October 1996 was appropriate, having regard to proper accountability principles and standards."

That a policy and administrative procedure be adopted by Council to establish how Ombudsman and other reviews are to be handled.



**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that a policy and administrative procedure be adopted by Council to establish how Ombudsman and other reviews are to be handled.

**CARRIED 2/0**

**Background**

See Item 8.2.

**Submission**

N/A

**Report**

See Item 8.2.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" refers.

**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

- 572. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO THE CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

**RECOMMENDATION**

In response to findings:-

"Chapter 5 - The City's Refusal to Support the Rezoning of Lot 17

- (g) The City's response to the Ombudsman's report

F38. ....

(f) Mr Brown's failure to provide the Council with advice or information relating to any of the substantive issues dealt with in the Ombudsman's report, findings or recommendation -

(i) was a breach of his statutory obligation to ensure that advice and information is available to the Council so that informed decisions can be made; and

(ii) constitutes, in all the circumstances, including his role in supporting the rejection of the Ombudsman's findings and recommendation, improper conduct; "

That all agenda items provide for a full analysis of the issue with a staff recommendation, regardless of the sensitivity of the issue.

**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that all agenda items provide a full analysis of the issue with a staff recommendation, regardless of the sensitivity of the issue.

**CARRIED 2/0**

**Background**

See Item 8.2.

**Submission**

N/A

**Report**

See Item 8.2.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" applies.

**Budget/Financial Implications**

Nil





## Implications of Section 3.18(3) Local Government Act, 1995

Nil

### 573. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)

#### RECOMMENDATION

In response to findings:-

"Chapter 6 - Attempts by Mayor Grljusich to Obtain Compensation from the City

(iii) Terms of the Deed

F52. ....

(c) it was inappropriate for Mr Brown to sign the Deed, which could not take effect without the Planning Commission's approval and which stated that it was "anticipated that the WAPC will consent", when Mr Brown knew that the Planning Commission would not consent;

(d) it was inappropriate for Mr Brown to sign the Deed knowing to be untrue its terms that -

(i) the Minister for Planning had responded to the Deed proposal; and

(ii) the Minister for Planning's response was consistent with the entry by the City into the Deed;"

Council note the CEO's explanation (attached agenda report Pg. 7,8,9 &10) regarding the signing of the Deed between Council and Peremate Holdings Pty Ltd, together with the finding of the Inquiry, that it was "inappropriate" for the Deed to be signed.

#### COUNCIL DECISION

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council notes the CEO's explanation (refer attached agenda report Pg. 7,8,9 & 10) regarding the signing of the Deed between Council and Peremate Holdings Pty Ltd, together with the finding of the Inquiry, that it was "inappropriate" for the Deed to be signed.

**Background**

See Item 8.2.

**Submission**

N/A

**Report**

See Item 8.2.

**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" applies.

**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**574. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

**RECOMMENDATION**

In response to findings:-

"Chapter 5 - The City's Refusal to Support the Rezoning of Lot 17

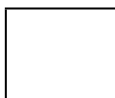
(ii) Role of the CEO and the Council

F37. ....

(b) Mr Brown failed to comply with his duties as the CEO by:-

(i) failing to follow up or address the criticisms that were readily attributable to Mr Scharf; and

(ii) failing to inform the Council that the adverse



comments and findings relating to Mr Scharf were soundly based and true."

And

"(g) the City's response to the Ombudsman's Report

F38. ....

(g) Mr Brown's failure to respond appropriately to the significant aspects of the Ombudsman's report that contained adverse findings or comments against the City's employees was a failure to exercise properly his statutory responsibility for the management and supervision of the City's employees; and"

That it be incumbent on the CEO to pursue and inform Councillors of any action taken regarding criticism of staff, which arises due to investigations undertaken by the Ombudsman or Local Government Department.

#### **COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that it be incumbent on the CEO to pursue and inform Councillors of any action taken regarding criticism of staff, which arises due to investigations undertaken by the Ombudsman or Local Government Department.

**CARRIED 2/0**

#### **Background**

See Item 8.2.

#### **Submission**

N/A

#### **Report**

See Item 8.2.

#### **Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" applies.



**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

**575. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council note the Inquiry's findings relative to the CEO and the CEO's explanation as presented in the Report attached to the agenda.

**CARRIED 2/0**

**Background**

See Item 8.2.

**Submission**

N/A

**Report**

See Item 8.2.

**Strategic Plan/Policy Implications**

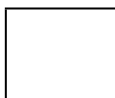
Key Result Area "Managing Your City" applies.

**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil



**576. (AG Item ) (SCM1\_5\_2000) - REPORT OF THE INQUIRY INTO THE CITY OF COCKBURN - FINDINGS RELATING TO CHIEF EXECUTIVE OFFICER - ROD BROWN (1335) (DMG)**

**COUNCIL DECISION**

Moved Cmr Donaldson seconded Cmr Jorgensen, that Council notes the findings of the Inquiry with respect to the CEO's performance and acknowledges that:

- (a) the findings against the CEO are essentially procedural and not of a serious nature;
- (b) with respect to the adverse findings, Council notes the findings and acknowledges that the CEO was working in a difficult environment and as such, believes that a reprimand is not warranted;
- (c) the CEO has initiated remedial action to ensure that procedures are now in place which will prevent any such occurrence again; and
- (d) Council declares its full support for, and confidence in, the CEO.

**CARRIED 2/0**

**Explanation**

Cmr Donaldson acknowledged the comments received from the gallery. Since their appointment, the Commissioners have had outstanding co-operation from the CEO and the complete management team who have been working closely with the Commissioners to ensure good governance for the City. The Commissioners have every confidence that when an elected Council does return, they will return to a 'ship that is sailing well'.

**Background**

See Item 8.2.

**Submission**

N/A

**Report**

See Item 8.2.



**Strategic Plan/Policy Implications**

Key Result Area "Managing Your City" applies.

**Budget/Financial Implications**

Nil

**Implications of Section 3.18(3) Local Government Act, 1995**

Nil

Cmr Donaldson made the following statement:

"There should be no question in the community of the Commissioners' support of the CEO. We will continue to deal with local government and leave this organisation in the best shape possible for the return of the Councillors.

Council has now received the Report from the Inquirer and Council has responded to the Minister supporting the recommendations made.

It is the Commissioners' view that the Cockburn community deserves strong, robust and responsive representation from its elected members. It is our sincere hope that the people who stand for election in the future, will acquaint themselves with the findings of the Inquiry and use this information as a benchmark for achieving good government for Cockburn.

No community should be deprived of its elected local government if that body is truly committed to the service for which it is elected. Being involved as an elected member begins and ends with a desire to serve the community: no more and no less.

It is our one hope that Cockburn is represented in the future by people who earnestly want to serve the community for the benefit of the community."

**577. (AG Item 9.1) (SCM1\_5\_2000) - RESOLUTION OF COMPLIANCE (Section 3.18(3), Local Government Act 1995)**

This matter was not dealt with at the meeting.



AT THIS POINT THE TIME BEING 9:00PM, MR BROWN RETURNED TO THE MEETING.

**Meeting closed at 9:01pm.**

**CONFIRMATION OF MINUTES**

I, ..... (Presiding Member) declare that these minutes have been confirmed as a true and accurate record of the meeting.

Signed: ..... Date: ...../...../.....

