



City of Rockingham

MINUTES

Corporate and Community Development Committee

Held on Tuesday 16 April 2024 at 5:00pm
City of Rockingham Council Chamber



City of Rockingham
Corporate and Community Development
Committee Minutes
5:00pm Tuesday 16 April 2024



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City of Rockingham
Corporate and Community Development
Committee Meeting Minutes
Tuesday 16 April 2024 - Council Chamber



1. Declaration of Opening

The Chairperson declared the Corporate and Community Development Committee meeting open at **6:00pm** and welcomed all present.

Acknowledgement of Country

The Chairperson noted that the City of Rockingham acknowledges the Traditional Owners and Custodians of this land, the Binjareb and Whadjuk Nyoongar peoples and their continuing connection to the land, waters and community. We pay our respects to all members of Aboriginal communities and their cultures; and to Elders past and present.

Recording and Live Streaming of proceedings

In accordance with Council Policy this meeting is being live streamed on the City's website, with the exception of confidential items and periods of adjournment or as determined by the Presiding Member.

By being present at this meeting, members of the public consent to the possibility that their image and voice may be live streamed to the public. Recordings are also made available on the City's website following the meeting.

Please note that clause 8.5 of the City's *Standing Orders Local Law 2001* provides that "no person is to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council".

If anyone breaches this Standing Order they will be asked to leave the Council Chamber.

2. Record of Attendance/Apologies/Approved Leave of Absence

2.1 Council Members

Cr Craig Buchanan, JP	Chairperson
Cr Mike Crichton	
Cr Caroline Hume	
Cr Leigh Liley	
Cr Kelly Middlecoat	
Cr Robert Schmidt	
Cr Dawn Jecks	Observer
Cr Lorna Buchan, Deputy Mayor	Observer

2.2 Executive

Mr Michael Parker	Chief Executive Officer
Mr John Pearson	Director Corporate Services
Mr Michael Holland	Director Community Development
Mr Peter Doherty	Director Legal Services and General Counsel
Ms Louise Pleasance	A/Manager Governance and Councillor Support
Mr Michael Yakas	Manager Customer and Corporate Support

	<p>Mr Allan Moles Mr Alvin Santiago Ms Nollaig Baker Mr Nick Brown Mr Gary Rogers Mr Matt Lewis Ms Alison Oliver Ms Melissa James Ms Marta Makuch Ms Katie MacLachlan Ms Lauren Shaw Ms Jen Weinman</p>	<p>Manager Waste Services Manager Financial Services Manager Strategy and Corporate Communications Manager Community and Leisure Facilities Manager Community Infrastructure Planning A/Manager Community Safety and Support Services Manager Library and Information Services Manager Economic Development and Tourism Coordinator Recreation and Wellbeing Financial Controller Governance Officer – Councillor Support and FOI Governance Assistant</p>
2.3	Members of the Gallery:	1
2.4	Apologies:	
	Ms Mary-Jane Rigby	Manager Community Safety and Support Services
	Mr Paul Hayward	Manager, Community Capacity Building
2.5	Approved Leave of Absence:	Nil
3.	Responses to Previous Public Questions Taken on Notice	
	Nil	
4.	Public Question Time	
	<p>5:03pm The Chairperson opened Public Question Time and invited members of the Public Gallery to ask questions. The Chairperson noted that questions should relate to the business of the Committee and this is the only opportunity in the meeting for the public to ask questions.</p> <p>There were none.</p>	
5.	Confirmation of Minutes of the Previous Meeting	
	<p>Moved Cr Hume, seconded Cr Crichton:</p> <p>That Committee CONFIRMS the Minutes of the Corporate and Community Development Committee Meeting held on 19 March 2024, as a true and accurate record.</p> <p style="text-align: right;">Committee Voting (Carried) – 6/0</p>	
6.	Matters Arising from the Previous Minutes	
	Nil	
7.	Announcement by the Presiding Person without Discussion	
	<p>5:04pm The Chairperson announced to all present that decisions made at Committees of Council are recommendations only and may be adopted in full, amended or deferred when presented for consideration at the next Council meeting.</p>	
8.	Declarations of Members and Officers Interests	
	<p>5:04pm The Chairperson asked if there were any interests to declare.</p> <p>There were none.</p>	

9.	Petitions/Deputations/Presentations/Submissions
	Nil
10.	Matters for which the Meeting may be Closed
	Nil
11.	Bulletin Items
	<p>Corporate and General Management Services Information Bulletin – April 2024</p> <p>Corporate Services</p> <ol style="list-style-type: none"> 1. Corporate Services Team Overview 2. Project Status Reports <ol style="list-style-type: none"> 2.1 Online Rostering 2.2 Microsoft 365 2.3 Food Organic Garden Organic (FOGO) Waste Collection and Processing Service 3. Information Items <ol style="list-style-type: none"> 3.1 List of Payments March 2024 3.2 Monthly Financial Management Report February 2024 3.3 Amendment to Rate Record – Non-Rateable Land 3.4 Awarding of Tenders by CEO - Delegated Authority 3.5 Lease Tenure Matters 3.6 Leased Property Maintenance Grants 3.7 Delegated Authority to Dispose of Property by way of Lease 3.8 Development Contribution Scheme <p>General Management Services Directorate</p> <ol style="list-style-type: none"> 1. General Management Services Team Overview 2. Project Status Reports 3. Information Items <ol style="list-style-type: none"> 3.1 Meetings and Events 3.2 Use of the Common Seal <p>Governance and Councillor Support</p> <ol style="list-style-type: none"> 1. Governance and Councillor Support Team Overview 2. Project Status Reports 3. Information Items <ol style="list-style-type: none"> 3.1 Freedom of Information (FOI) Requests 3.2 Council Member Requests 3.3 Citizenships 3.4 Australian Coastal Councils Association Inc. Newsletter 3.5 Coming Events 3.6 Notice of Motion – Status Report <p>Human Resources</p> <ol style="list-style-type: none"> 1. Human Resources Team Overview 2. Project Status Reports 3. Information Items <ol style="list-style-type: none"> 3.1 Recruitment 3.2 Workplace Health and Safety Statistics <p>Strategy, Marketing and Communications</p> <ol style="list-style-type: none"> 1. Strategy, Marketing and Communications Team Overview 2. Project Status Reports

	<ul style="list-style-type: none">2.1 Resident Perception Survey 2023
3.	Information Items <ul style="list-style-type: none">3.1 Team Plan3.2 Community Engagement – Share your thoughts3.3 Social Media3.4 Media Tracking
	Legal Services & General Counsel
1.	Legal Services & General Counsel Team Overview
2.	Project Status Reports
3.	Information Items <ul style="list-style-type: none">Provision of Legal Advice<ul style="list-style-type: none">3.1 Legal Advice – Local Government Operational Matters
3.2	Litigation

Committee Recommendation

Moved Cr Middlecoat, seconded Cr Hume:

That Council Members acknowledge having read the Corporate and General Management Services Information Bulletin – April 2024 and the content be accepted.

Committee Voting (Carried) – 6/0

	Community Development Information Bulletin – April 2024
	Community Safety and Support Services
1.	Community Safety and Support Services Team Overview
2.	Project Status Reports <ul style="list-style-type: none">2.1 Alcohol Management Plan2.2 Community Services Mapping2.3 CCTV Plan2.4 Assertive Outreach2.5 Social Connection and Support Pilot Project2.6 Crisis/Supported Accommodation
3.	Information Items <ul style="list-style-type: none">3.1 Community Support Services3.2 Rockingham Connect Community Transport Project3.3 Community Safety
	Library Services
1.	Library Services Team Overview
2.	Project Status Reports
3.	Information Items <ul style="list-style-type: none">3.1 February 2024 Library Services Statistics3.2 Mary Davies Library and Community Centre3.3 Baldivis South Community Centre3.4 Rockingham Library3.5 Safety Bay Library3.6 Warnbro Community Library3.7 February 2024 Library Facebook Statistics3.8 Warnbro Community Library STEAM Lab
	Community Infrastructure Planning
1.	Community Infrastructure Planning Team Overview
2.	Project Status Reports

3. Information Items
 - 3.1 Aqua Jetty Stage 2
 - 3.2 Baldivis District Sporting Complex
 - 3.3 Safety Bay Foreshore Community Facility Development
 - 3.4 Stan Twight Reserve Clubroom Redevelopment
 - 3.5 Anniversary Park Clubroom Redevelopment
 - 3.6 Community Infrastructure Functionality Audit Report
 - 3.7 Baldivis Recreation Reserve Master Plan
 - 3.8 Lark Hill Sportsplex Northern Expansion

Community Capacity Building

1. Community Capacity Building Team Overview
2. Project Status Reports
 - 2.1 Seniors
 - 2.2 Health and Wellbeing Strategy
 - 2.3 Cultural Development and the Arts Strategy
 - 2.4 Strategy for Early Years, Children and Young People
3. Information Items
 - 3.1 Grants
 - 3.2 Disability Access and Inclusion
 - 3.3 Reconciliation Action Plan
 - 3.4 Seniors
 - 3.5 City Volunteer Program
 - 3.6 Rockingham Volunteer Centre
 - 3.7 Early Years, Children and Families
 - 3.8 Sport and Recreation
 - 3.9 Health and Wellbeing
 - 3.10 Youth Development
 - 3.11 Cultural Development and the Arts
 - 3.12 Rockingham Arts Centre

Community and Leisure Facilities

1. Community and Leisure Facilities Team Overview
2. Project Status Reports
 - 2.1 Rockingham Lotteries House Relocation and Community Hub Development
3. Information Items
 - 3.1 Aqua Jetty
 - 3.2 Warnbro Community Recreation Centre
 - 3.3 Mike Barnett Sports Complex
 - 3.4 Rockingham Aquatic Centre
 - 3.5 Mike Barnett Sports Complex – Needs Assessment and Feasibility Study
 - 3.6 Safety Bay Tennis Club
 - 3.7 Gary Holland Community Centre
 - 3.8 Autumn Centre
 - 3.9 Baldivis Indoor Sports Complex

Economic Development and Tourism

1. Economic Development and Tourism Team Overview
2. Project Status Reports
 - 2.1 Local Business Development
 - 2.2 Iconic Economic Development / Tourism Events
 - 2.3 Destination Marketing
 - 2.4 Visitor Servicing Fee for Service

	2.5	Tourism Strategy
	2.6	Mobile Visitor Service Unit
	3.	Information Items
	3.1	Stakeholder Engagement - Economic Development and Tourism

Committee Recommendation

Moved Cr Schmidt, seconded Cr Liley:

That Council Members acknowledge having read the Community Development Information Bulletin – April 2024 and the content be accepted.

Committee Voting (Carried) – 6/0

12. Agenda Items

Corporate Services

Corporate Services Financial Services		
Report number / title:	CS-009/24	Rates Write-Off for Properties Changed from Unimproved Value to Gross Rental Value
File number:	FLM/198	
Proponent/s:		
Author:	Mr Alvin Santiago, Manager Financial Services	
Other Contributor/s:		
Date of Committee meeting:	16 April 2024	
Previously before Council:		
Disclosure of Interest:		
Nature of Council's role:	Executive	
Attachments:		
Maps/Diagrams:		
Site:		
Lot Area:		

Purpose of Report

To seek Council approval to write off the resulting 2023-24 rates totalling \$100,170.62 from properties that have changed the valuation method from Unimproved Value (**UV**) to Gross Rental Value (**GRV**), such that the change's impact only takes effect in the new financial year 2024-25.

Background

At the March and April 2023 Ordinary Council Meeting, the valuation method on 58 properties was approved to be changed from UV to GRV effective 1 July 2023, subject to publication in the Government Gazette.

The change in valuation method was published in the Government Gazette only in October 2023. It was, therefore, unable to be implemented from 1 July 2023. The City, however, intended that any increases in the rates levied due to this change only take effect in the new financial year (i.e. 2024 – 25), consistent with the information provided to the property owners during the consultation period.

28 of 58 properties were published by the Minister for Local Government (**Minister**) in the Government Gazette to be changed from UV to GRV from 1 July 2024. However, the remaining 30 were published to be changed effective immediately from 17 October 2023. Consequently, the City of Rockingham (**City**) had to levy the resulting additional rates in the rate book from 17 October 2023.

In order to achieve the objective of valuation changes coming into effect from 1 July 2024 and keep consistency with all impacted properties, the rates levied on the 30 properties explained above are required to be written off so that the impacted properties all experience valuation rate changes in the same timeframe.

Details

The rates recommended for write-off are summarised as follows:

Assessment No	Amount
363023	\$46,454.63
360790	\$12,150.70
363336	\$11,825.50
239390	\$5,504.10
239730	\$3,454.87
244450	\$1,824.08
243490	\$1,698.85
240320	\$1,480.45
364062	\$1,420.50
240403	\$1,080.98
242410	\$935.27
245270	\$882.08
240140	\$869.59
242630	\$847.85
240120	\$842.40
245520	\$804.14
246310	\$775.17
346653	\$731.38
241160	\$727.36
240181	\$665.55
240531	\$658.43
246910	\$643.86
242650	\$622.95
245510	\$615.28
242010	\$537.72
230860	\$468.39
358431	\$468.39
358434	\$468.39
363339	\$468.39
246710	\$243.37
Total	\$100,170.62

Implications to Consider

a. **Consultation with the Community**

Direct written consultation with affected ratepayers occurred between 19 January 2022 and 1 March 2022

b. Consultation with Government Agencies

Consultation with the Department of Local Government, Sporting and Cultural Industries on required evidence and documentation for the Minister to make a determination was provided.

c. Strategic

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration 5: *Leadership – Transparent and accountable leadership and governance*

Strategic Objective: *Ensure accountable and transparent governance*

d. Policy

Nil

e. Financial

It was proposed the change in valuation method to take effect in the new financial year following its publication in the Government Gazette (i.e., 2024-2025). This only occurred for some properties. Given the changes required to be made to the rate book, and therefore additional rates being levied, if Council adopts the officer recommendation, net rates revenue will decrease by \$100,170.62 for the current financial year. Rates levied based on UV remains for the current financial year.

f. Legal and Statutory

Section 6.12(1)(c) of the *Local Government Act 1995* enables a Local Government to write off an amount of money owing to the local government.

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Nil

Comments

Writing off the rates levied on the 30 properties listed in the 'Details' section of the report will achieve the City's intention that any rate changes only take effect in the new financial year following the publication of the Minister's determination in the Government Gazette. This outcome would also be consistent with the City's consultation with the ratepayers for the entire duration of the valuation methodology review.

Voting Requirements

Simple Majority

Officer Recommendation

That Council **WRITES-OFF** the following rates levied:

Assessment No	Amount
363023	\$46,454.63
360790	\$12,150.70
363336	\$11,825.50
239390	\$5,504.10
239730	\$3,454.87

Assessment No (cont...)	Amount
244450	\$1,824.08
243490	\$1,698.85
240320	\$1,480.45
364062	\$1,420.50
240403	\$1,080.98
242410	\$935.27
245270	\$882.08
240140	\$869.59
242630	\$847.85
240120	\$842.40
245520	\$804.14
246310	\$775.17
346653	\$731.38
241160	\$727.36
240181	\$665.55
240531	\$658.43
246910	\$643.86
242650	\$622.95
245510	\$615.28
242010	\$537.72
230860	\$468.39
358431	\$468.39
358434	\$468.39
363339	\$468.39
246710	\$243.37

Committee Recommendation

Moved Cr Schmidt, seconded Cr Hume:

That Council **WRITES-OFF** the following rates levied:

Assessment No	Amount
363023	\$46,454.63
360790	\$12,150.70
363336	\$11,825.50
239390	\$5,504.10
239730	\$3,454.87
244450	\$1,824.08
243490	\$1,698.85
240320	\$1,480.45
364062	\$1,420.50
240403	\$1,080.98
242410	\$935.27
245270	\$882.08
240140	\$869.59
242630	\$847.85

Assessment No (cont...)	Amount
240120	\$842.40
245520	\$804.14
246310	\$775.17
346653	\$731.38
241160	\$727.36
240181	\$665.55
240531	\$658.43
246910	\$643.86
242650	\$622.95
245510	\$615.28
242010	\$537.72
230860	\$468.39
358431	\$468.39
358434	\$468.39
363339	\$468.39
246710	\$243.37

Committee Voting (Carried) – 6/0

The Committee's Reason for Varying the Officer's Recommendation

Not Applicable

Implications of the Changes to the Officer's Recommendation

Not Applicable

Corporate Services Customer and Corporate Support



Report number / title:	CS-010/24	Annual Electors' Meeting, 8 February 2024 Resolution: Millar Road Facility Hazardous Waste
File number:	WSM/14-5	
Proponent/s:		
Author:	Mr John Pearson, Director Corporate Services	
Other Contributor/s:		
Date of Committee meeting:	16 April 2024	
Previously before Council:	26 March 2024	
Disclosure of Interest:		
Nature of Council's role:	Executive	
Attachments:		
Maps/Diagrams:		
Site:		
Lot Area:		

This item was deferred at the March Ordinary Council Meeting (CS-006/24). Since that time the Council has received a briefing from the Department of Water and Environmental Regulation, the regulator of the Millar Road Landfill.

Purpose of Report

To consider the following resolution of the Annual Electors' Meeting held on 8 February 2024:

"That Council order an independent investigation into the City's Work Health and Safety compliance to the Regulations for the handling of Hazardous Waste at the Millar Road facility."

Background

The *Local Government Act 1995*, section 5.33, requires Council to consider any decisions arising from the Annual Electors' Meeting, and in making a decision in response, to also provide the reason for its decision.

Details

The following resolution was passed at the Annual Electors' Meeting held on 8 February 2024:

Motion: Millar Road Facility Hazardous Waste

Moved Mr Tom Mannion, seconded Ms Diane Park

That Council order an independent investigation into the City's Work Health and Safety compliance to the Regulations for the handling of Hazardous Waste at the Millar Road facility

Carried – 34/13

Reasons provided by the mover of the Motion

Confirmed at a Corporate and Community
Development Committee meeting held on
Tuesday 21 May 2024


Presiding Member

This has been an ongoing discussion of mine through the Council for the past 12 months. In that time I have collected quite a bit of information from government departments, responses from the City and from employees that work at the facility. We are now in a situation where the employees are in discussions with Worksafe. Their legal team is in discussions with the same legal team that handled the Bullsbrook claims for residents, so there is enough facts and information that has been filtered through. It is time for the Councillors to step up and put the health employees and others at the forefront and get to understand what is or isn't in place to protect the workers."

Mr Parker at the meeting advised:

The City acts in accordance with all its regulatory and licensing requirements at this site. Since Mr Mannion has raised concerns regarding safety of employees at the Millar Road Landfill the regulatory bodies, the Department of Mines, Industry Regulation and Safety (**DMIRS**) WorkSafe and the Department of Water and Environmental Regulation (**DWER**) have both attended the site and investigated. No action has been required by the City and no adverse findings have been made. The City has safe operating procedures in place for staff when handling hazardous waste and staff are trained to handle that waste. The City has three work, health and safety representatives appointed, trained and engaged in dealing with any safety concerns on the site.

City Considerations

Millar Road Landfill is a Class III landfill which has been in operation since 1994. It has stringent licencing conditions that are regulated by DWER. The City of Rockingham (City), as the owner and operator of Millar Road Landfill Facility, must adhere to all licencing conditions and other laws.

Implications to Consider

a. Consultation with the Community

Nil

b. Consultation with Government Agencies

Officers from both of the independent regulation agencies, DWER and DMIRS - Worksafe, have either attended or spoken directly to the relevant staff at Millar Road Landfill on matters related to the complaints regarding operations and safety compliance. No adverse findings have been made against the City from either DWER or DMIRS Worksafe on these matters.

Outside of this, DWER monitors the City's compliance of its licence conditions via its submission of annual compliance reports. These reports include a summary of any non-compliance with licence conditions, as well as through unannounced site compliance inspections.

c. Strategic

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration: **5. Leadership Aspiration - Transparent and accountable leadership and governance**

Outcome/Objective: *Quality Leadership - Ensure accountable and transparent governance*

d. Policy

Council Policy - Workplace Health and Safety provides for the purpose of assisting the Chief Executive Officer in meeting obligations under the *Work health and Safety Act 2020*.

e. Financial

No budget allocation currently exists for an independent investigation to occur.

f. Legal and Statutory

Nil

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Nil

Comments

Any person may report any specific pollution and/or compliance issues related to the Millar Road Landfill by contacting DWER's Pollution Watch on 1300 784 782 so the matter can be duly investigated.

Worker health and safety, beyond the City of Rockingham's internal policies, procedures and controls, are regulated through the DMIRS - Worksafe. Any person may report a specific worker safety incident or issue by contacting DMIRS - Worksafe on 1300 307 877 so the matter can be duly investigated.

Both DWER and DMIRS - Worksafe are independent of the City and will investigate any complaints based on the information provided to them. The City is, and continues to be, inspected by these regulators through unannounced site inspections.

Given the independent role of both DWER and DMIRS, and their statutory functions as independent regulators of both landfill licencing conditions and workplace health and safety respectively, the motion is not supported.

As stated above, any person may report a pollution and/or safety compliance issue/concern to the regulators about Millar Road Landfill Facility's functions and operations at any time and the independent regulators will investigate based on the information provided. This is their role.

Further to this, the City employs dedicated Health and Safety officers whose role directly relates to ensuring a safe workplace is provided and that the City is meeting its statutory obligations.

Voting Requirements

Simple Majority

Officer Recommendation

That Council **NOT SUPPORT** the Annual Electors' Meeting resolution to "order an independent investigation into the City's Work Health and Safety compliance to the Regulations for the handling of Hazardous Waste at the Millar Road facility."

Alternate Motion

Cr Schmidt proposes the following Alternate Motion:

That Council

1. Pursuant to Section 5.45 (2)(a) of the *Local Government Act 1995*, WA **AUTHORISES** the appointment of Independent Consultants to:
 - a) Undertake a review of Millar Road Landfill with a particular focus on:
 - i. Health and Safety,
 - ii. The City's Compliance with the *Work Health & Safety Act 2020* (WA) and relevant regulations,
 - iii. The handling of hazardous materials (Asbestos, PFAS and all other hazardous materials); and
 - iv. The contamination of the site and surrounding area.
 - b) Prepares a report and provides it to the designated oversight committee of Council within six months recommending the required actions to remediate any potential issues at Millar Road Landfill, including the preparation of an implementation plan for the required actions and the required staffing to resolve any identified issues.

2. **INSTRUCTS** the Chief Executive Officer to assist the Independent Consultants by providing any required information, policies, procedures, documentation, and access to City's accounting records, WHS systems and Information Systems.
3. **ESTABLISHES** a committee of Council named the Millar Road Landfill Oversight Committee. The terms of reference will be:
 - a) to appoint a consultant through a open and transparent process,
 - b) to oversee the independent consultants' review of Millar Road Landfill,
 - c) to receive the report from the independent consultant at the conclusion of the review,
 - d) provide that report to Council and Chief Executive Officer no later than two months following the conclusion of the review.
4. **APPOINTS** three elected members, one from each ward of the City of Rockingham to the Millar Road Landfill Oversight Committee at the May 2024 Ordinary Council Meeting.

Reason for Alternate Motion

Pursuant to Part 1, Division 2, Section 3.1(a) & Part 2, Division 2, Section 19.1(b) of the *Work Health & Safety Act 2020* WA, this motion moves to ensure the health, well-being & safety of the Chief Executive Officer of the City of Rockingham, who is employed by this council under the *Local Government Act 1995* WA and the contract of employment endorsed by the council of the City of Rockingham, additionally this motion moves to ensure the health, wellbeing & safety of the general public and City employees at Millar Road Landfill.

This motion **assumes** nothing and doesn't make any assumptions against any individuals employed by the City of Rockingham or the City of Rockingham itself; its clear objective is to ensure that we, as a council who employs a single individual and are the guardians of the City of Rockingham reputation and legacy, are reassured that we are abiding by the *Work Health & Safety Act 2020* WA with regards to Millar Road Landfill and the Chief Executive Officer.

Since 2023, multiple complaints have been made to the regulator the Department of Water & Environmental Regulations, Worksafe WA, this Council through Public Question Time and the unions of the City of Rockingham's employees around possible issues affecting Millar Road Landfill. It is, therefore, necessary that the council of the day puts a line in the sand and has a clear picture to move forward with. That being multiple reports from the regulator, Worksafe WA and soon an Independent Council Report that will hopefully indicate the same picture. This review hopefully will find nothing wrong, and will therefore, allow a clear footing for this Council and the Chief Executive Officer we have employed; it aligns clearly with the City of Rockingham Strategic Community Plan Aspiration 5 – Quality Leadership.

Implications to Consider

a. **Consultation with the Community**

Nil

b. **Consultation with Government Agencies**

Officers from both of the independent regulation agencies, Department of Water and Environmental Regulation (**DWER**) and Department of Mines, Industry Regulation and Safety (**DMIRS**) - Worksafe, have attended and spoken directly to the relevant staff at Millar Road Landfill on matters related to the complaints regarding operations and safety compliance. No adverse findings have been made against the City of Rockingham (**City**) by either DWER or DMIRS - Worksafe on these matters.

Outside of this, DWER monitors the City's compliance of its licence conditions via its submission of annual compliance reports. These reports include a summary of any non-compliance with licence conditions, as well as through unannounced site compliance inspections.

DWER (the independent regulator) has met with Councillors to provide advice of their role and answer any other questions Councillor's may have.

c. Strategic

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration: **5. Leadership Aspiration - Transparent and accountable leadership and governance**

Outcome/Objective: *Quality Leadership - Ensure accountable and transparent governance*

d. Policy

The stated purpose of the Council Policy - Workplace Health and Safety is to assist the Chief Executive Officer (**CEO**) to meet his or her obligations under the *Work Health and Safety Act 2020*.

e. Financial

No budget allocation currently exists for an independent investigation to occur.

f. Legal and Statutory

Section 5.8 of the *Local Government Act 1995 (Act)* provides for the establishment of committees of three or more persons to assist the Council and to exercise the powers and discharge the duties of the local government that can be delegated to committees. The establishment of a committee is an absolute majority decision, as is the appointment of members to that committee.

The notice of motion makes reference to section 5.45(2)(a) of the Act which provides that nothing prevents the "local government" from performing its functions by acting through a person other than the CEO. "Local government" in this context means the body corporate, not the council [ss. 1.4 and 2.5(2)].

Section 2.7 of the Act states the role of Council is to govern the local government's affairs and is responsible for the performance of local government's functions. Without limiting this, the Council is to oversee the allocation of local government's finances and resources and determine the local government's policies.

Section 5.41 of the Act states the CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under the *Local Government Act 1995* and other written laws;
- (b) ensure that advice and information is available to the council so that informed decisions can be made;
- (c) cause council decisions to be implemented;
- (d) manage the day to day operations of the local government;
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- (f) speak on behalf of the local government if the mayor or president agrees;
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law;
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

It is the CEO's role to advise the Council in relation to the functions of the Act or other written laws (section 5.41(a)). It is the CEO's role to manage the day to day operations of the local government (section 5.41(d)) - this includes the preparation of reports and commissioning reports for submission to Committee and Council.

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Nil

It is noted that risks exist in owning and running all facilities in the City. Risks are managed to ensure they are maintained at acceptable levels.

Officer Comment on Alternate Motion

Officers are aware that numerous complaints have been received by DWER and DMIRS - Worksafe from one complainant. To the Officer's knowledge these have always been investigated by them. No adverse findings have been made against the City based on these complaints.

The position of Officers on the alternate motion is articulated in the original officer report. Specifically any complaint may be made to the appropriate authority for their independent investigation and response.

The CEO is the statutory head of workplace safety in the City of Rockingham. It is his responsibility to ensure a safe workplace for all working within the City. The Council has a supportive role in ensuring his role is supported in achieving a safe workplace. The review which is the subject of the notice of motion has not been requested by the CEO

For clarity purposes the Persons Conducting a Business Undertaking (PCBU) as referenced in the *Work Health and Safety Act (WA) 2020* are officers. A person is an officer of a body corporate if that person is an officer within the meaning of the *Corporations Act 2001* (Commonwealth). In a general sense, an officer is a person who makes, or has participated in making, decisions that affect the whole or a substantial part of the business or undertaking. In a local government context this includes the chief executive officer and directors (or equivalent) – this does not include elected members, who are excluded from being an officer [s 4A(1)(b)(iii)] and from being a PCBU [s 5(5)].

The PCBU responsibilities include providing a safe place of work, providing for safe systems of work; provide information, instruction, training and supervision on how to deal with hazards; monitoring the health and safety of workers; and provide for the safe use of plant, substances and structures.

The City runs a complex worksite at Millar Road Landfill and meets its statutory obligations, including providing a safe workplace.

Based upon the matters set out above, and in particular with the Officer's dealings with DMIRS and DWER, the officers do not consider that the costs of the proposed review (in terms of financial outlay and officer time) is warranted.

For reasons contained above, and the prior officer report, Cr Schmidt's alternative motion is not supported.

Voting Requirements

Simple Majority

Officer Recommendation

That the Alternate Motion by Councillor Schmidt is not supported.

Committee Recommendation

Moved Cr Schmidt, seconded Cr Middlecoat:

That Council

1. Pursuant to Section 5.45 (2)(a) of the *Local Government Act 1995*, WA **AUTHORISES** the appointment of Independent Consultants to:
 - b) Undertake a review of Millar Road Landfill with a particular focus on:
 - v. Health and Safety,
 - vi. The City's Compliance with the *Work Health & Safety Act 2020* (WA) and relevant regulations,
 - vii. The handling of hazardous materials (Asbestos, PFAS and all other hazardous materials); and
 - viii. The contamination of the site and surrounding area.
 - b) Prepares a report and provides it to the designated oversight committee of Council within six months recommending the required actions to remediate any potential issues at Millar Road Landfill, including the preparation of an implementation plan for the required actions and the required staffing to resolve any identified issues.
2. **INSTRUCTS** the Chief Executive Officer to assist the Independent Consultants by providing any required information, policies, procedures, documentation, and access to City's accounting records, WHS systems and Information Systems.
3. **ESTABLISHES** a committee of Council named the Millar Road Landfill Oversight Committee. The terms of reference will be:
 - e) to appoint a consultant through a open and transparent process,
 - f) to oversee the independent consultants' review of Millar Road Landfill,
 - g) to receive the report from the independent consultant at the conclusion of the review,
 - h) provide that report to Council and Chief Executive Officer no later than two months following the conclusion of the review.
4. **APPOINTS** three elected members, one from each ward of the City of Rockingham to the Millar Road Landfill Oversight Committee at the May 2024 Ordinary Council Meeting.

Committee Voting (Carried on the casting vote of the Presiding Member) – 4/3

Council Members voting for the motion:

Cr Middlecoat
Cr Schmidt
Cr Buchanan (x 2 votes)

Council Members voting against the motion:

Cr Crichton
Cr Liley
Cr Hume

Note: Due to an equality of votes at the Committee meeting, the Presiding Member exercised the obligation to cast a second vote to reach a decision in this matter (Section 5.21(3) of the Local Government Act 1995).

The Committee's Reason for Varying the Officer's Recommendation

To provide the Council with reassurance that the City is abiding by the *Work Health & Safety Act 2020* WA with regard to Millar Road Landfill.

Implications of the Changes to the Officer's Recommendation

Not Applicable

13.	Reports of Council Members
	Nil
14.	Addendum Agenda
	Nil

15. Motions of which Previous Notice has been given

Corporate Services

Corporate Services Director and Support	
Report number / title:	CS-011/24 Notice of Motion – Appointment of Independent Expert
File number:	GOV/7-03
Proponent/s:	Cr Lorna Buchan, Deputy Mayor
Author:	Mr John Pearson, Director Corporate Services
Other Contributor/s:	Mr Peter Doherty, Director Legal Services and General Counsel Mr Michael Parker, Chief Executive Officer
Date of Committee meeting:	16 April 2024
Previously before Council:	
Disclosure of Interest:	
Nature of Council's role:	Executive
Attachments:	
Maps/Diagrams:	
Site:	
Lot Area:	

Purpose of Report

To respond to the following Notice of Motion from Cr Buchan –

That Council

1. Pursuant to the Local Government Act 1995 (WA) (LG Act) s.2.7(2)(b) Council **DIRECTS** the CEO to develop a Council Policy – Appointment of Independent Expert, which provides as follows within quotes,

“In the event of Council requiring a timely appointment of an independent expert under Local Government Act 1995 s.5.45(2)(a) to assist Council with its LG Act s.2.7(1)(a) governing role and its LG Act s.2.7(2)(a) oversight role, Council is authorised to expend up to \$100,000 without regard to and without applying Council Policy - Purchasing Framework.

The CEO will grant the independent expert access to records and City staff.

Expert is defined for the purpose of the Independent Expert Policy to mean a person with qualifications decided suitable by Council simple majority.

Timely for the purpose of the Independent Expert Policy is defined to mean a timeframe as decided appropriate to the circumstances by Council simple majority.

Expenditure from this fund can be approved by Council retrospectively or prospectively.

Appointment of the independent expert can be approved by Council retrospectively or prospectively."

2. That Council **DIRECTS** the CEO cause this policy to be developed and brought to the Corporate Services and Community Development Committee by 21 May 2024 for the Committee's consideration.

Background

Cr Buchan provided the following reasons for the Notice of Motion:

1. Council is the governing body (COUNCIL) of the City of Rockingham (CITY): LG Act s.2.6(1).
2. Councillors' roles include to represent the interests of the electors, ratepayers and residents of the district: LG Act s2.10(a); provide leadership and guidance to the community in the district: LG Act s2.10(b) and participate in Local Government decision making: LG Act s2.10(d)
3. Council needs access to funds to support its governance role, including in circumstances when the CEO has an actual, perceived, or potential conflict of interest in a matter, or the matter is urgent.
4. The LG Act is intended to result in better decision making by Local Governments, and greater accountability of Local Governments to their communities, and in more efficient and effective Local Government: LG Act s.1.3(2).
5. When making decisions, Council is required to provide for the good government of persons in its district: LG Act s3.1.
6. This policy will foster and support in the community vision for the City for a quality lifestyle: A sustainable future: Strategic Community Plan (The Plan) City of Rockingham adopted by Council 22 August 2023 and endorsed by Mayor Hamblin and CEO Parker.
7. This policy will foster and support Council in the Community's Leadership Aspirations for Council which include ensuring accountable and transparent governance and optimising the City's resources: The Plans Aspiration Five.
8. In resourcing and implementing the City's leadership aspirations The City is committed to transparent reporting of its operations: The plan page 29.
9. Council is not bound by but may, as it decides from time to time as it decides by simple majority, apply, or not apply Council Policy – Purchasing Framework in appointing agents under LG Act s.5.45(2)(A).

Details

A Notice of Motion has been submitted by Cr Buchan as detailed above. This request accords with clause 3.9 of the City of Rockingham *Standing Orders Local Law 2001*.

Implications to Consider

a. **Consultation with the Community**

Nil

b. **Consultation with Government Agencies**

Nil

c. **Strategic**

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration: 5. Leadership Aspiration - Transparent and accountable leadership and governance

Outcome/Objective: Quality Leadership - Ensure accountable and transparent governance

d. Policy

Should Council adopt Cr Buchan's motion a policy will be prepared. It is important to note should Council adopt Cr Buchan's motion the timeframe required for the policy to be drafted and reviewed and returned to Council is not achievable.

In accordance with Council Policy – Policy Framework the following key elements in policy research and development should be considered:

- (a) Statutory compliance obligations;
- (b) Industry standards, codes of practice, guidelines;
- (c) Risk implications;
- (d) Customer / community needs and expectations;
- (f) Whether it effectively integrates in the City's operations;
- (g) External stakeholder consultation
- (h) Internal stakeholder consultation (including relevant senior staff and Councillors);
- (i) Potential resource and budget implications; and
- (j) Strategic Community Plan.

e. Financial

Nil

f. Legal and Statutory

Local Government Act 1995 (LGA), sections 1.4, 2.5, 2.6, 2.7, 2.10, 5.4, 5.41, 5.45 and 6.8

1.4. Terms used

In this Act, unless the contrary intention appears —

Local government means a local government established under this Act;

2.5 Local governments created as bodies corporate

- (1) When an area of the State becomes a district, a local government is established for the district.
- (2) The local government is a body corporate with perpetual succession and a common seal.
- (3) The local government has the legal capacity of a natural person.
- (4) The corporate name of the local government is the combination of the district's designation and name.

2.6. Local governments to be run by elected councils

- (1) Each local government is to have an elected council as its governing body.
- (2) The offices on the council of the local government of a city or town are those of the mayor, the deputy mayor and the councillors.
- (3) The offices on the council of the local government of a shire are those of the president, the deputy president and the councillors.
- (4) The Governor may, by order, appoint a person to be the commissioner of a local government until the offices of members of the council are filled for the first time and the council holds its first meeting.

2.7. Role of council

- (1) The council —
 - (a) governs the local government's affairs; and
 - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to —
 - (a) oversee the allocation of the local government's finances and resources; and
 - (b) determine the local government's policies.

2.10. Role of councillors

A councillor —

- (a) represents the interests of electors, ratepayers and residents of the district; and
- (b) provides leadership and guidance to the community in the district; and
- (c) facilitates communication between the community and the council; and
- (d) participates in the local government's decision-making processes at council and committee meetings; and
- (e) performs such other functions as are given to a councillor by this Act or any other written law.

5.4. Calling council meetings

An ordinary or a special meeting of a council is to be held —

- (a) if called for by either — (i) the mayor or president; or (ii) at least 1 /3 of the councillors, in a notice to the CEO setting out the date and purpose of the proposed meeting; or
- (b) if so decided by the council.

5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and
- (c) cause council decisions to be implemented; and
- (d) manage the day to day operations of the local government; and
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and
- (f) speak on behalf of the local government if the mayor or president agrees; and
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO

5.45. Other matters relevant to delegations under this Division

- (1) Without limiting the application of sections 58 and 59 of the Interpretation Act 1984 —
 - (a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and
 - (b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.
- (2) Nothing in this Division is to be read as preventing —
 - (a) a local government from performing any of its functions by acting through a person other than the CEO; or
 - (b) a CEO from performing any of his or her functions by acting through another person.

6.8. Expenditure from municipal fund not included in annual budget

- (1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —

- (a) is incurred in a financial year before the adoption of the annual budget by the local government; or
 - (b) is authorised in advance by resolution*; or
 - (c) is authorised in advance by the mayor or president in an emergency.
- * Absolute majority required.
- (1a) In subsection (1) — additional purpose means a purpose for which no expenditure estimate is included in the local government's annual budget.
 - (2) Where expenditure has been incurred by a local government —
 - (a) pursuant to subsection (1)(a), it is to be included in the annual budget for that financial year; and
 - (b) pursuant to subsection (1)(c), it is to be reported to the next ordinary meeting of the council.

Local Government (Functions and General) Regulations 1996 (FGR), reg 11A

11A. Purchasing policies for local governments

- (1) A local government is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$250 000 or less or worth \$250 000 or less.
- (2) A purchasing policy is to make provision for and in respect of the policy to be followed by the local government for, and in respect of, entering into contracts referred to in subregulation (1).
- (3) A purchasing policy must make provision in respect of —
 - (a) the form of quotations acceptable; and
 - (ba) the minimum number of oral quotations and written quotations that must be obtained; and
 - (b) the recording and retention of written information, or documents, in respect of
 - (i) all quotations received; and
 - (ii) all purchases made.

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Potential risks of not following due process has been detailed in the report.

Comments

Overview

The Notice of Motion seeks to direct the CEO to develop a Council Policy – Appointment of Independent Expert (**Proposed Expert Policy**), providing guidance as to when the Council, as opposed to the City, may engage an independent expert, to assist the Council with its governing and oversight roles.

The Notice of Motion also seeks authorisation for Council to expend up to \$100,000 without regard to and without applying Council Policy - Purchasing Framework (**Purchasing Framework**).

Is Such a Policy Required?

The Council Purchasing Framework was developed and adopted pursuant to regulation 11A of the FGR and applies to the supply of goods or services where the consideration is less than \$250,000.

The Policy's stated objective is to "ensure procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable and achieve best value for the City".

It is anticipated that this objective would apply with equal force to the Proposed Expert Policy.

Should the need arise, Council may depart from the Purchasing Framework. By way of example, should Council believe a matter has arisen which requires urgent intervention, a special meeting of Council may be called on very short notice, and dealt with on its merits.

This is the appropriate method of responding to urgent matters and the Local Government Act 1995 (LGA) has contemplated how urgent matters are responded to. It is submitted that this is preferable to endeavouring to develop a Proposed Expert Policy in the abstract.

The CEO

Section 5.41 (a) and (b) of the (LGA) requires the CEO to advise the Council in relation to the functions of a local government under the LGA and other written laws and to ensure that advice and information is available to Council so that informed decisions can be made.

Section 5.41(d) also provides that it is the function of the CEO (not council) to "cause council decisions to be implemented".

The notice of motions makes reference to section 5.45(2)(a) of the LGA which provides that nothing prevents the "local government" from performing its functions by acting through a person other than the CEO. "Local government" in this context means the body corporate, not the council [ss. 1.4 and 2.5(2)].

Procurement Functions

The LGA establishes minimum compliance requirements. Beyond this, the community and local government regulators, auditors and investigators (including the Department of Local Government, Sport and Cultural Industries, the Office of the Auditor General, the Corruption and Crime Commission and the Public Sector Commission) expect that local government will use public resources responsibly, through informed decisions and processes that evidence best value outcomes and minimises risk.

As such, regardless of whether a procurement decision to engage the services of an 'independent expert' is made by Council or by the administration, such decision must, in the interests of transparency and good governance, be underpinned by minimum procurement procedures and decision points. As noted above, the Council Purchasing Framework was developed pursuant to Regulation 11A of the FGR. The Policy's stated objective is to "ensure procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable and achieve best value for the City".

Pursuant to the Procurement Framework, and broader expectations and explained above, the task or procurement involves balancing factors such as price, quality, timeliness of services, experience and other selection criteria to ensure the best value for the City. This will require:

- a defined scope of work, by which contestable quotations may be obtained.
- assessment criteria, by which quotations, qualifications, relevant experience and compliance requirements (e.g. currency and sufficiency of professional indemnity, workers compensation and public liability insurances, declarations and management of consultant conflicts of interest, etc.) may be assessed and best value selection of supplier determined.
- preparation of contracting documentation, so that legally binding agreements that protect the City and ensure that the contracted services are provided and received to the standard required.
- financial administration requirements, including the issue of purchase orders, the receipt of invoices, validation of goods or services having been received that satisfy contractual requirements, payment approvals and processing, subject to internal controls designed to minimise overcharging and fraud risks.
- contract management, giving effect to the City's contractual obligations and managing the supplier to ensure accountability against their contractual obligations, management of contractual disputes.

Process

Council may, if it considers appropriate:

- Call for a Special Council meeting
- require specific procurement decisions to be referred to Council for consideration, rather than have the decision be made pursuant to a delegation. In that event, the CEO would provide Council with a report and recommendations, as is done for public tenders having a value of more than \$500,000;
- elect not to apply the Procurement Policy.

\$100,000 Expenditure

The Notice of Motion states that "Council is authorised to expend up to \$100,000 without regard to and without applying Council Policy - Purchasing Framework".

Pursuant to section 6.8 of the LGA, the City is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure — (a) is incurred in a financial year before the adoption of the annual budget by the local government; or (b) is authorised in advance by resolution*; or (c) is authorised in advance by the mayor or president in an emergency.

As such, should the need arise, funding can be made available to implement a council resolution and the extent of that funding can be determined at that time.

CEO Conflict of Interest - Perceived

The Notice of Motion states that "Council needs access to funds to support its governance role, including in circumstances when the CEO has an actual, perceived, or potential conflict of interest in a matter, or the matter is urgent".

The CEO has various disclosure obligations under the LGA, including:

- where the CEO has an interest in any matter in respect of which the CEO is providing advice or a report directly to the council or a committee: s 5.70(2);
- where the CEO has been delegated a power or duty relating to a matter and the CEO has an interest in the matter: s 5.71
- where the CEO who has an interest relating to a gift in a matter in respect of which the CEO proposes to provide advice or a report, directly or indirectly, to the council or a committee: s 5.71A(1) and 5.71B.

There are also reporting obligations under the Code of Conduct – Employees.

In short, where the CEO has an interest it must be declared. Penalties apply - a fine of \$10,000 or 2 years imprisonment.

Further, a person is not to be employed as CEO unless the Council believes that the person is suitably qualified for the position; and is satisfied (absolute majority) with the provisions of the proposed employment contract: s 5.36(2). Whilst employed, the CEO's employment terms will be governed by his contract.

Retrospective Appointment

The Notice of Motion states that "Appointment of the independent expert can be retrospective or prospective."

In the absence of a prospective appointment, it is unclear who would have the authority to appoint an independent expert and on what terms. This also raises the potential for a dispute with the appointed expert if the Council does not ratify the appointment.

Such an appointment might also be made without following some or all of the Process, may create a perception of a lack of transparency and accountability and unless properly documented and managed (in terms of contract management and costs control) may create a legal exposure for the City.

Section 6.8 of the LGA in the only approved methods in which expenditure may occur which is not included in the Annual Budget

Conclusion

In brief:

- mechanisms exist whereby a matter may be presented to a special meeting of Council on an urgent basis and if an emergency exists by immediate authorisation of the Mayor;
- funding may be made available to implement a council decision at the special meeting;
- the Procurement Framework's objective is to ensure procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable and achieve best value for the City;
- the Council may depart from the Procurement Policy in any given circumstances;
- a decision on whether to depart from the Procurement Framework is best made on a case-by-case basis (as an exception to the Procurement Framework) rather than by developing a separate policy in the abstract;
- while the Council may require an independent expert to be engaged, it is the CEO's function to do all that is required to cause that decision to be implemented.

The Notice of Motion is not supported as it is not considered good governance or practice to preclude procurement processes which are transparent and open to scrutiny, and systems are already available in legislation which allows for urgent decisions to be made and for the allocation of financial resources. At any time the Council is able to "call in" a procurement process should it choose to do so however implementation of the Council decision lies with the CEO.

Voting Requirements

Simple Majority

Officer Recommendation

Cr Buchan's Notice of Motion is not supported.

Notice of Motion from Cr Buchan

That Council:

1. Pursuant to the *Local Government Act 1995* (WA) (LG Act) s.2.7(2)(b) Council **DIRECTS** the CEO to develop a Council Policy – Appointment of Independent Expert, which provides as follows within quotes,

"In the event of Council requiring a timely appointment of an independent expert under *Local Government Act 1995* s.5.45(2)(a) to assist Council with its LG Act s.2.7(1)(a) governing role and its LG Act s.2.7(2)(a) oversight role, Council is authorised to expend up to \$100,000 without regard to and without applying Council Policy - Purchasing Framework.

The CEO will grant the independent expert access to records and City staff.

Expert is defined for the purpose of the Independent Expert Policy to mean a person with qualifications decided suitable by Council simple majority.

Timely for the purpose of the Independent Expert Policy is defined to mean a timeframe as decided appropriate to the circumstances by Council simple majority.

Expenditure from this fund can be approved by Council retrospectively or prospectively.

Appointment of the independent expert can be approved by Council retrospectively or prospectively."

2. That Council **DIRECTS** the CEO cause this policy to be developed and brought to the Corporate Services and Community Development Committee by 21 May 2024 for the Committee's consideration.

Committee Recommendation

Moved Cr Middlecoat, seconded Cr Schmidt:

That Council:

1. Pursuant to the *Local Government Act 1995* (WA) (LG Act) s.2.7(2)(b) Council **DIRECTS** the CEO to develop a Council Policy – Appointment of Independent Expert, which provides as follows within quotes,

“In the event of Council requiring a timely appointment of an independent expert under *Local Government Act 1995* s.5.45(2)(a) to assist Council with its LG Act s.2.7(1)(a) governing role and its LG Act s.2.7(2)(a) oversight role, Council is authorised to expend up to \$100,000 without regard to and without applying Council Policy - Purchasing Framework.

The CEO will grant the independent expert access to records and City staff.

Expert is defined for the purpose of the Independent Expert Policy to mean a person with qualifications decided suitable by Council simple majority.

Timely for the purpose of the Independent Expert Policy is defined to mean a timeframe as decided appropriate to the circumstances by Council simple majority.

Expenditure from this fund can be approved by Council retrospectively or prospectively.

Appointment of the independent expert can be approved by Council retrospectively or prospectively.”

2. That Council **DIRECTS** the CEO cause this policy to be developed and brought to the Corporate Services and Community Development Committee by 21 May 2024 for the Committee's consideration.

Committee Voting (Carried on the casting vote of the Presiding Member) 4/3

Council Members voting for the motion:

Cr Middlecoat

Cr Schmidt

Cr Buchanan (x 2 votes)

Council Members voting against the motion:

Cr Crichton

Cr Liley

Cr Hume

Note: Due to an equality of votes at the Committee meeting, the Presiding Member exercised the obligation to cast a second vote to reach a decision in this matter (Section 5.21(3) of the Local Government Act 1995).

The Committee's Reason for Varying the Officer's Recommendation

Not Applicable

Implications of the Changes to the Officer's Recommendation

Not Applicable

Corporate Services Procurement



Report number / title:	CS-012/24	Notice of Motion – Amendment to Council Policy - Procurement Framework
File number:	GOV/7-03	
Proponent/s:	Cr Lorna Buchan, Deputy Mayor	
Author:	Mr John Pearson, Director Corporate Services	
Other Contributor/s:	Mr Peter Doherty, Director Legal Services and General Counsel Mr Michael Parker, Chief Executive Officer	
Date of Committee meeting:	16 April 2024	
Previously before Council:		
Disclosure of Interest:		
Nature of Council's role:	Executive	
Attachments:		
Maps/Diagrams:		
Site:		
Lot Area:		

Purpose of Report

To respond to the following Notice of Motion from Cr Buchan –

Council resolves as follows:

- Pursuant to the Local Government Act 1995 (WA) (LG Act) s.2.7(2)(b) Council requires **AMENDMENT** of Council Policy – Procurement Framework to include the following clause:
“When Council is exercising its POWER under the Local Government Act 1995 (WA) s.5.45(2)(a) to appoint AN AGENT, COUNCIL is exempt from the quotation requirements of Council Policy – Procurement Framework.”*
- That Council **DIRECTS** the CEO to cause this policy amendment to be brought to the Corporate Services and Community Development Committee by 21 May 2024 for the committees’ consideration.*

Background

Notice of Cr Buchan’s proposed motion was provided to the City of Rockingham (City) on 1 April 2023 and the following reason/s were given in support –

- Council is the governing body (COUNCIL) of the City of Rockingham (CITY): LG Act s.2.6(1).*
- Councillors’ roles include to represent the interests of the electors, ratepayers, and residents of the district: LG Act s2.10(a); provide leadership and guidance to the community in the district: LG Act s2.10(b) and participate in Local Government decision making: LG Act s2.10(d)*

3. *Council needs access to funds to support its governance role, including in circumstances when the CEO has an actual, perceived, or potential conflict of interest in a matter, or the matter is urgent.*
4. *The LG Act is intended to result in better decision making by Local Governments, and greater accountability of Local Governments to their communities, and in more efficient and effective Local Government: LG Act s.1.3(2).*
5. *When making decisions, Council is required to provide for the good government of persons in its district: LG Act s3.1.*
6. *This policy will foster and support in the community vision for the City for a quality lifestyle: A sustainable future: Strategic Community Plan (The Plan) City of Rockingham adopted by Council 22 August 2023 and endorsed by Mayor Hamblin and CEO Parker.*
7. *This policy will foster and support Council in the Community's Leadership Aspirations for Council which include ensuring accountable and transparent governance and optimising the City's resources: The Plans Aspiration Five.*
8. *In resourcing and implementing the City's leadership aspirations The City is committed to transparent reporting of its operations: The plan page 29.*
9. *Council is not bound by but may, as it decides from time to time as it decides by simple majority, apply, or not apply Council Policy – Purchasing Framework in appointing agents under LG Act s.5.45(2)(A).*

Details

A Notice of Motion has been submitted by Cr Buchan as detailed above. This request accords with clause 3.9 of the City of Rockingham *Standing Orders Local Law 2001*.

Implications to Consider

a. **Consultation with the Community**

Nil

b. **Consultation with Government Agencies**

Nil

c. **Strategic**

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration: **5. Leadership Aspiration - Transparent and accountable leadership and governance**

Outcome/Objective: *Quality Leadership - Ensure accountable and transparent governance*

d. **Policy**

This motion proposes to amend Council Policy – Procurement Framework to permit within policy for Council when appointing an agent of Council pursuant to section 5.42(2)(a) of the *Local Government Act 1995* to be exempt from meeting quotation requirements.

e. **Financial**

Nil

f. **Legal and Statutory**

Local Government (Functions and General) Regulations 1996 (FGR), reg 11A

11A. Purchasing policies for local governments

- (1) A local government is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$250 000 or less or worth \$250 000 or less.

- (2) A purchasing policy is to make provision for and in respect of the policy to be followed by the local government for, and in respect of, entering into contracts referred to in subregulation (1).
- (3) A purchasing policy must make provision in respect of —
 - (a) the form of quotations acceptable; and
 - (ba) the minimum number of oral quotations and written quotations that must be obtained; and
 - (b) the recording and retention of written information, or documents, in respect of —
 - (i) all quotations received; and
 - (ii) all purchases made.

g. Risk

All Council decisions are subject to risk assessment according to the City's Risk Framework.

Implications and comment will only be provided for the following assessed risks.

Customer Service / Project management / Environment : High and Extreme Risks

Finance / Personal Health and Safety : Medium, High and Extreme Risks

Potential risks of not following due process has been detailed in this report

Comments

In the interests of avoiding unnecessary duplication, this report should be read in conjunction with CS-011/24 – Notice of Motion – Appointment of Independent Expert.

Local Government Act (1995)

The Notice of Motion makes reference to section 5.45(2)(a) of the LGA which provides that nothing prevents the “local government” from performing its functions by acting through a person other than the CEO. “Local government” in this context means the body corporate, not the council [ss. 1.4 and 2.5(2)]). For present purpose, section 5.45(2)(a) has no application.

Is Such a Policy Amendment Required?

The Council Policy - Purchasing Framework was developed pursuant to Regulation 11A of the FGR and applies to the supply of goods or services where the consideration is less than \$250,000. The Policy's stated objective is to “ensure procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable and achieve best value for the City”.

Should the need arise, Council may depart from the Purchasing Framework. By way of example, should Council believe a matter has arisen which requires urgent intervention, a special meeting of Council may be called on very short notice, and dealt with on its merits.

This is the appropriate method of responding to urgent matters and the Local Government Act 1995 (LGA) has contemplated how urgent matters are responded to. It is submitted that a decision on whether to depart from the Council Policy - Procurement Framework is best made on a case-by-case basis (as an exception to the Procurement Framework) rather than by a wholesale exemption from the quotation requirements of the Policy.

Procurement Functions

The LGA establishes minimum compliance requirements. Beyond this, the community and local government regulators, auditors and investigators (including the Department of Local Government, Sport and Cultural Industries, the Office of the Auditor General, the Corruption and Crime Commission and the Public Sector Commission) expect that local government will use public resources responsibly, through informed decisions and processes that evidence best value outcomes and minimises risk.

As such, regardless of whether a procurement decision to engage the services of an 'independent expert' is made by Council or by the administration, such decision must, in the interests of transparency and good governance, be underpinned by minimum procurement procedures and decision points. As noted above, the Council Policy - Purchasing Framework was developed pursuant to Regulation 11A of the FGR. The Policy's stated objective is to "ensure procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable and achieve best value for the City".

Pursuant to the Procurement Framework, and broader expectations and explained above, the task or procurement involves balancing factors such as price, quality, timeliness of services, experience and other selection criteria to ensure the best value for the City. This will require:

- a defined scope of work, by which contestable quotations may be obtained.
- assessment criteria, by which quotations, qualifications, relevant experience and compliance requirements (e.g. currency and sufficiency of professional indemnity, workers compensation and public liability insurances, declarations and management of consultant conflicts of interest, etc.) may be assessed and best value selection of supplier determined.
- preparation of contracting documentation, so that legally binding agreements that protect the City and ensure that the contracted services are provided and received to the standard required.
- financial administration requirements, including the issue of purchase orders, the receipt of invoices, validation of goods or services having been received that satisfy contractual requirements, payment approvals and processing, subject to internal controls designed to minimise overcharging and fraud risks.
- contract management, giving effect to the City's contractual obligations and managing the supplier to ensure accountability against their contractual obligations, management of contractual disputes.

Obtaining quotes from a number of sources helps to ensure that the procurement functions in the City are statutorily compliant, provide uniform fairness and equity, are transparent and accountable, minimised the risk of unethical behaviours and misconduct and achieve best value for the City.

For these reasons, removal of an obligation to obtain quotations as a policy position is not supported.

Voting Requirements

Simple Majority

Officer Recommendation

Cr Buchan's Notice of Motion is not supported.

Notice of Motion from Cr Buchan

Council **RESOLVES** as follows:

1. Pursuant to the *Local Government Act 1995* (WA) (LG Act) s.2.7(2)(b) Council requires amendment of Council Policy – Procurement Framework to include the following clause:
"When Council is exercising its POWER under the *Local Government Act 1995* (WA) s.5.45(2)(a) to appoint AN AGENT, COUNCIL is exempt from the quotation requirements of Council Policy – Procurement Framework."
2. That Council DIRECTS the CEO to cause this policy amendment to be brought to the Corporate Services and Community Development Committee by 21 May 2024 for the Committees' consideration.

Committee Recommendation

Moved Cr Middlecoat, seconded Cr Schmidt:

Council **RESOLVES** as follows:

1. Pursuant to the *Local Government Act 1995* (WA) (LG Act) s.2.7(2)(b) Council requires amendment of Council Policy – Procurement Framework to include the following clause:
“When Council is exercising its POWER under the *Local Government Act 1995* (WA) s.5.45(2)(a) to appoint AN AGENT, COUNCIL is exempt from the quotation requirements of Council Policy – Procurement Framework.”
2. That Council DIRECTS the CEO to cause this policy amendment to be brought to the Corporate Services and Community Development Committee by 21 May 2024 for the Committees’ consideration.

Committee Voting (Carried on the casting vote of the Presiding Member) 4/3

Council Members voting for the motion:

Cr Middlecoat

Cr Schmidt

Cr Buchanan (x 2 votes)

Council Members voting against the motion:

Cr Crichton

Cr Liley

Cr Hume

Note: Due to an equality of votes at the Committee meeting, the Presiding Member exercised the obligation to cast a second vote to reach a decision in this matter (Section 5.21(3) of the Local Government Act 1995).

The Committee’s Reason for Varying the Officer’s Recommendation

Not Applicable

Implications of the Changes to the Officer’s Recommendation

Not Applicable

16.	Notices of motion for Consideration at the Following Meeting
	Nil
17.	Urgent Business Approved by the Person Presiding or by Decision of the Committee
	Nil
18.	Matters Behind Closed Doors
	Nil
19.	Date and Time of Next Meeting
	The next Corporate and Community Development Committee meeting will be held on Tuesday 21 May 2024 in the Council Boardroom, Council Administration Building, Civic Boulevard, Rockingham. The meeting will commence at 5:00pm.
20.	Closure
	There being no further business, the Chairperson thanked those persons present for attending the Corporate and Community Development Committee meeting, and declared the meeting closed at 5:42pm .