



# MINUTES

Special Council Meeting  
Wednesday, 15 December 2021

Date: Wednesday, 15 December 2021  
Time: 4:30pm  
Location: Civic Centre  
McGregor St  
Port Hedland  
Distribution Date: 22 December 2021

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## DISCLOSURE OF FINANCIAL/ IMPARTIALITY/ PROXIMITY INTERESTS

*Local Government Act 1995 – Section 5.65, 5.70 and 5.71  
Local Government (Model Code of Conduct) Regulations 2021*

<i>This form is provided to enable members and officers to disclose an Interest in a matter in accordance with the regulations of Section 5.65, 5.70 and 5.71 of the Local Government Act and Local Government (Model Code of Conduct) Regulations 2021</i>			
Name			
Position			
Date of Meeting			
Type of Meeting (Please circle one)	Council Meeting/ Committee Meeting/ Special Council Meeting Workshop/ Public Agenda Briefing/ Confidential Briefing		
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality
Interest Disclosed			
Item Number and Title			
Nature of Interest			
Type of Interest (please circle one)	Financial	Proximity	Impartiality

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Important Note:** Should you declare a **Financial or Proximity Interest**, in accordance with the Act and Regulations noted above, you are required to leave the room while the item is being considered.

For an **Impartiality** Interest, you must state the following prior to the consideration of the item:

*“With regard to agenda item (read item number and title), I disclose that I have an impartiality interest because (read your reason for interest). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”*

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## Item 1 Opening of Meeting

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The Presiding Member declared the meeting open at 4:30pm.

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## Item 2 Acknowledgement of Traditional Owners and Dignitaries

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The Presiding Member acknowledged the Kariyarra people as the Traditional Custodians of the land on which we met and recognised their strength and resilience and paid his respects to elders past, present and emerging.

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## Item 3 Recording of Attendance

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### *Important note:*

*This meeting is being live streamed and audio recorded to facilitate community participation and for minute-taking purposes, which may be released upon request to third parties. In accordance with Section 6.16 of the Town of Port Hedland Local Law on Standing Orders members of the public are not permitted to use any visual or vocal electronic device or instrument to record the proceedings of any meeting unless that person has been given permission by the Presiding Member to do so. Members of the public are also reminded that in accordance with section 6.17(4) of the Town of Port Hedland Standing Orders Local Law mobile telephones must be switched off and not used during the meeting.*

### 3.1 Attendance

**Scheduled Present:** Mayor Peter Carter  
Deputy Mayor Tim Turner  
Cr Flo Bennett  
Cr Ash Christensen  
Cr Renae Coles  
Cr David Eckhart  
Cr Jan Gillingham  
Cr Elmar Zielke

**Scheduled for Attendance:** Carl Askew (Chief Executive Officer)  
Karren MacClure (Director Corporate Services)  
Josephine Bianchi (Director Community Services)  
Craig Watts (Director Regulatory Services)  
Lee Furness (Director Infrastructure Services)  
Jim Olynyk (Governance Manager Interim)  
Joyce Routledge (Senior Governance Advisor)  
Rebecca Wilkinson (Governance Officer)  
Jenna Brown (Governance Support Officer)  
Naomi Murcott (Corporate Support Officer/Minute Taker)

Public: 28

Staff: 8

Media: 0

**3.2 Attendance by Telephone / Instantaneous Communications**

Nil.

**3.3 Apologies**

Cr McDonogh

**3.4 Approved Leave of Absence**

Nil.

**3.5 Disclosure of Interests**

Nil.

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**Item 4 Applications for Leave of Absence**

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Nil.

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**Item 5 Response to Previous Questions**

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Nil.

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**Item 6 Public Time**

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*Important note:*

*In accordance with section 6.7(3) of the Town of Port Hedland Local Law on Standing Orders, members of the public are required to complete a question form and place the completed form in the tray provided.*

*If the Presiding Member determines that questions and statements are out of order due to the use of an offensive or objectionable expression or are defamatory, they will not be recorded or responded to.*

**6.1 Public Question Time**

The Presiding Member declared Public Question Time open at 4:33pm.

The Mayor asked the CEO if he had received any questions.

The CEO confirmed he had not received any questions.

The Mayor invited members of the public present to ask questions.

**6.1.1 CAMILO BLANCO**

*Mr Blanco - Council, do you know that as Council members you are responsible for the financial oversight of rate payer funds and the authorisation of the budget expenditure? And because you agreed to the budget expenditure, you should have an understanding of where our money is and when it is being spent. Mayor Carter do you think the Council or yourself has that understanding?*

Mayor – Absolutely

*Mr Blanco - The questions that need to be answered by the Council is – do you know the reasons behind the collapse of MJW? And, why it went into voluntary administration owing our local businesses upwards of 4 million dollars. Can you explain that to me now Mr Mayor?*

The Mayor advised he would take the question on notice.

*Mr Blanco - Well, considering that you clearly don't know, you would have to agree then, that tonight's agenda item you would have to approve an independent probity review on the issue associated with the tender process and the expenditure of our money. Would you agree with that Mr Mayor?*

The Mayor advised he would take the question on notice.

**6.1.2 DAVE MCGOWAN**

*What has it cost the rate payers of the Town to complete or restart these projects?*

The Mayor advised he would take the question on notice.

*Mr McGowan - Who as Council Officers are responsible for this mess? And were they qualified for the tasks?*

The CEO noted this question was an accusation of officers and would not be answered.

*Mr McGowan - Have the responsible persons been identified? And what actions taken to remedy performance?*

The Mayor advised he would take the question on notice.

The Presiding Member declared Public Question Time closed at 4:38pm

## 6.2 Public Statement Time

The Presiding Member declared Public Statement Time open at 4:38pm

### 6.2.1 CAMILO BLANCO

*The decision today is not a discussion about the detailed information associated with the tender process, or the collapse of MJW, that left multiple local businesses owed upwards of 4 million dollars.*

*This agenda item is for Council to consider approving a forensic probity review into the tender process, and the oversight issues that were clearly absent and led to the main contractor of our town collapsing. An investigation like this is done so you actually know what's happened. This is done so you can find the gaps, and you can fix the issues. Now I'm speaking very slowly, because I normally speak fast, just to make sure you understand. An investigation like this is done so we don't have these problems again. So, why should you approve a forensic audit? Because it's clear that the administrators have forgotten the mistakes of the past, or maybe it was just incompetence. We've been here before with the Wankugarra Stadium build, we had big issues with the South Hedland Water Park development. We had years of problems with the South Hedland Swimming Pool rebuild. Landorp took the South Hedland CBD re-development off the Hedland Council because they couldn't get it right. The Langdon Report commissioned by the State Government in 2017 slapped the Town for the incompetence in these developments and the project planning and management – and yet, here we are again.*

*The Council is not informed of the financial issues MJW were experiencing. Local businesses owners did know, because we were asking to be paid, on time, but the timeframes kept getting longer and longer. Currently, I see serious non-compliance issues arising due to the amount of tenders issued to MJW, and the delegated authority being used by the CEO to reissue those contracts without Council approval. Effectively, breaking up the total amount in order to come under the delegated authority, now that's called tender avoidance. Something that is a no no.*

*The Town has received advice from a company called 2T Sustainability, specifically related to the risk around having so many of the Town's tender awarded to one company. So, the administration should have known and been well aware of the catastrophic business disruption and reputational damage associated with the situation that eventually happened with MJW. Now you, Councillors, I'm assuming, did not get that report. And were any actions taken to reduce the risk to local businesses that were being contracted? I'm, unclear.*

*In the Council Meetings following this one, you'll be requested to award tenders for the two-story building on the Turf Club precinct and the tender for the Skate Park construction. Two major projects, worth tens of millions of dollars. Do you have the confidence in the Towns management ability, without conducting the requested review? That's a simple question for you. You either have or you haven't. And if you haven't, you should know what your answer is.*

*It's in the best interest of Hedland's people and rate payers to do this detailed investigation. You've all been thrust into the limelight in recent days because of the Mayor's questionable business dealings. I believe there is a serious bias in these decisions, and I don't believe you should take part in the vote. But, that's my opinion. I don't believe he should influence, anyone, in objecting to this probity review. So do the right thing for Hedland, and support the motion put forward by Councillor Gillingham, Councillor Christensen, and Councillor Coles. That's the right thing to do.*

*And, one last point, I definitely do not believe that this should be a confidential meeting. Because you are not talking about anything confidential. What you are doing, is deciding whether or not you are going to do a review. That's it. There's nothing confidential about that, okay, so the meeting should stay open.*

### **6.2.2 MORAG LOWE**

*I'm just going to ask Councillors tonight that they become the Council that we probably actually deserve in this Town, because I'm acutely aware that people like me have been disengaged for the last couple of years, and what happens in this room on behalf of ratepayers.*

*And, I've just had a real wake-up call, especially when, over the last year common sense told me that much of the budgeting and the scope of works that were being undertaken by the Town of Port Hedland without the capacity and skill set to actually deliver. I know the complexity of bringing projects to fruition in this Town. Over the years, I have been part of consortium that built thirty-three houses in South Hedland in 18-months. I've personally been involved in the delivery of thirty million dollars' worth of projects in Port Hedland. I don't underestimate the difficulty of succeeding in this Town, especially in this climate. So, I'm actually putting Council on notice there are many of us in Town who have actually been disengaged because we actually in reality get the Council that is reflective of the opinions and the involvement of the people of this town. And tonight, as the last speaker said, it is in our best interest and your best interest not ending up with the CCC walking in the doors of this building to do their own forensic analysis of exactly what has happened, and what could possibly happen as we go forward. And as the last speaker said, we actual got motions up at the next meeting where multitudes of millions of dollars are being spent on behalf of the ratepayers, without anyone actually properly understanding what happened and what went wrong over the last couple of years. So why on earth would Council not vote to actually do a forensic analysis so that we are in a stronger position and we can avoid the same mistakes going forward. It's an expensive exercise if well done, but trust me, when I look at the monies being spent, it is very very little for a good outcome.*

*Councillors, I don't know why as the last speaker said, this is going to be a confidential report tonight, we are just making a decision on whether or not to go ahead. The impression that members of the public may have is that is there something to be hidden. What on earth would be in this report to councillors that we can't as ratepayers of this town, sit in the audience and hear. Thank you.*

**6.2.3 ROGER HIGGINS**

*You came into Council having aligned a lot of people in order to get the seats, and therefore the support you wanted. I'm now saying to those people who have been elected, vote the way you should – remember it's the ratepayers that are paying your way. And if this goes down the way that this secret meeting is designed to see it go, there is going to be a lot of angst in this town and a lot of anger. And you people, the Councillors, are the ones who are actually going to bear the brunt of that anger. The meeting of the people who are here tonight, we haven't come here for no reason. We've come here because it's about time some reason and some responsibility was shown on the part of the Council and on the part of the administration. So, if the administration and the way the Council is lead are going down this pathway of keep it all secret don't let anyone know, we're going to get nowhere. I've been in this town for almost 10 years, when I came here, I came here with a feeling of concern. I came here as a professional person and I have just seen people that are just trying to get advantage for themselves, and not really sitting in those chairs over there in the way and for the reasons they should. So, I appeal to you to support this independent assessment of what is going on. Thank you.*

The Presiding Member declared Public Statement Time closed at 4:53pm

**6.3 Petitions/Deputations/Presentations/Submissions**

Nil.

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**Item 7 Questions from Members without Notice**

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**7.1 CR GILLINGHAM**

*Thank you everybody for coming today, it's pleasing.*

*I'd like to move a motion through the Chair that this special meeting is made **not** confidential. The reason for this is that three Councillors had submitted a motion that you haven't been able to view because of the confidentiality. But there's nothing in this motion that is confidential. The start of this motion says for Council to consider the appointment of a special investigator forensic accountant to conduct an independent probity review into the Town of Port Hedland's tender review and award processes from 15 July 2019 to 1 November 2021. That is the actual title*

*Cr Eckhart – Requested a point of order*

*Cr Gillingham – I would like to move a motion*

The Mayor advised this is not the time to move a motion, and there will be an opportunity later in the meeting.

*Cr Gillingham – My other question, it has taken so long for our motion to come to the table - three weeks - and when you call an SCM it actually should be within 72 working hours according to the Department of Local Government. I had a reply in question, but would like to ask through the Mayor, why did it take so long? And, why did you not contact any of the Councillors regarding this special meeting?*

CEO – On behalf of the Administration, the 72 hours is an incorrect statement. 72 hours is the notice period that a council meeting will be happening. In terms of the three weeks for the motion, as you were aware this came as two motions, one motion cannot be considered tonight. My advice and my request to you was to separate those motions. As soon as you did, this meeting was called, and that is why we are meeting tonight.

*Cr Gillingham – Thank you to the CEO. My third question is, why did it take over two weeks for us to actually come to you CEO and actually ask questions about why we haven't been contacted about needing to split the two motions that were put forward, as that would have made things a lot quicker for this meeting to come to fruition.*

CEO – Taken on notice as a criticism.

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**Item 8 Announcements by Presiding Member without Discussion**

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Nil.

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**Item 9 Declarations of All Members to Have Given Due Consideration to All Matters Contained in the Business Paper before the Meeting**

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The following Elected Members declared that they had given due consideration to all matters contained in the agenda:

Mayor Peter Carter  
Deputy Mayor Tim Turner  
Councillor Flo Bennett  
Councillor Ash Christensen  
Councillor Renae Coles  
Councillor David Eckhart  
Councillor Jan Gillingham  
Councillor Elmar Zielke

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**Item 10 Confirmation of Minutes of Previous Meeting**

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Not applicable.

**OCM202122/088 COUNCILLOR MOTION****MOVER: CR GILLINGHAM****SECONDER:CR CHRISTENSEN**

That Council make the meeting open to the public, with attachments to remain confidential.

**CARRIED BY SIMPLE MAJORITY 8/0**

In Favour: Mayor Carter, Cr Coles, Cr Zielke, Cr Turner, Cr Gillingham, Cr Christensen, Cr Bennett, Cr Eckhart

Against: Nil

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**Item 11 Reports of Officers**

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**11.1 Corporate Services**

Nil

**11.2 Community Services**

Nil

**11.3 Regulatory Services**

Nil

**11.4 Infrastructure Services****11.4.1 TENDERS, CONTRACT MANAGEMENT AND ADMINISTRATION OF MJW BUILDING PTY LTD CONTRACTS WITH THE TOWN OF PORT HEDLAND**

**Author:** Senior Project Officer – Business

**Authorising Officer:** Director Infrastructure Services

**Disclosure of Interest:** The Author and Authorising Officer declare that they do not have any conflicts of interest in relation to this item.

**OCM202122/089 COUNCILLOR RECOMMENDATION****MOVER: CR CHRISTENSEN****SECONDER: CR GILLINGHAM**

1. For Council to consider the appointment of a special investigator (Forensic Accountants) to conduct an independent probity review into the Town of Port Hedland's tender award process from 15 July 2019 to 1 November 2021.
  - a) Investigate all aspects of the personal and professional relationships between staff, Council members and MJW Building Pty Ltd.
  - b) Investigate all aspects of the personal relationships between staff, Council members and all other tenders issued above a contract value of \$200,000.
  - c) Report on possible creditor payments made outside the tender contract terms.
  - d) Report on primary contractor's payments to subcontractors and the Town's communications with all contracting parties and involvement in ensuring payments are made when invoiced.
  - e) Report on documented evidence supporting the contractor's financial ability to complete the tender.
  - f) Report on the Town of Port Hedland's liability responsibility to unpaid local contractors because of any detrimental decision or mismanagement of the approved tenderer.
  - g) Report on any breaches of the LGA 1995, Federal and State Corporations Acts and other pertinent laws.
  - h) Review any documentation between the Town's executive staff the tender review panel staff members and MJW Building P/L representatives to determine if and when the Town's administration came to understand that MJW Building P/L were experiencing or had the potential to experience financial hardship.

- i) Document the process that will need to be implement by the Town of Port Hedland executive so as to avert any future financial detriment to the Town and it's contractors.
- j) Report on the Administration's response to adverse financial findings and reporting to the elected council.
- k) Instruct the CEO to ensure full and fair access to all communications and documentation held by the Town of Port Hedland is granted to the investigators for the purpose of this forensic investigation report.
- l) To apply a budget of \$100,000 to ensure a comprehensive review into all aspects of activities detailed within this agenda items.

*MOTION LOST 5/4 ON THE MAYORAL CASTING VOTE*

in Favour: Cr Christensen, Cr Coles, Cr Bennett and Cr Gillingham.  
Against: Cr Eckhart, Cr Turner, Cr Zielke and Mayor Carter.

## OFFICER'S REPORT

**Amendment: Council decision wording changed for clarity.**

### PURPOSE

On Friday 26 November 2021, Councillors Gillingham, Christensen and Coles requested a Special Council Meeting (SCM) be held for Council to consider undertaking an independent forensic investigation of the Town's tender award processes for contracts awarded between 15 July 2019 and 1 November 2021.

A copy of the requested notice and proposed Council motion is tabled as attachment 7.

Given the outcome of MJW Building Pty Ltd going into voluntary administration, Councillors Gillingham, Christensen and Coles have requested an investigation into the Town's current internal processes regarding tenders be reviewed by an independent financial institution to ensure the Town is operating as efficiently and effectively as possible, and ensure Town employee and Elected Member relationships are within Council policy guidelines.

### BACKGROUND

MJW Building Pty Ltd (MJW) were a local building company, founded in 2012 and operated in Port Hedland, focussing on the construction of residential and commercial projects.

MJW entered into voluntary administration in October 2021. At the time of the appointment of the Administrator, the Town had four active contracts with MJW. Please refer to **attachment1** for a full summary of these contracts.

- JD Hardie Multi User Courts, awarded 16 December 2020.
- Depot Administration Building, awarded 23 September 2020.
- Sutherland Street Staff Housing, awarded 25 March 2020.

- South Hedland Skate Park, awarded 24 February 2021.

In addition to the contracts with the Town, MJW also had various contracts with other agencies, including Coates Hire, Pilbara Ports Authority, Volunteer Marine Rescue and the Department of Communities.

### Administration Report

MJW entered into voluntary administration on 6 October 2021, with Cor Cordis appointed as the Administrators.

Cor Cordis released an 'Administrators Report to Creditors' on 2 November 2021, identifying the following matters as substantially contributing to MJW's difficulties:

- Poor strategic management of the business
- Combination of both cost overruns and insufficient profit margins
- Lack of working capital and inability to meet its operational and financial liabilities
- Inability to collect outstanding loans from related parties
- Increasing finance costs

The report identified that MJW were trading insolvent from 31 May 2021, however the Town was not made aware of this situation until after the report was received in November 2021.

As confirmed in the Administrator's report, the Town was not responsible for MJW's Administration and suffered as a result of MJW's poor management of contracts and the cashflow required to fund them. Please see **Attachment 2** for this report.

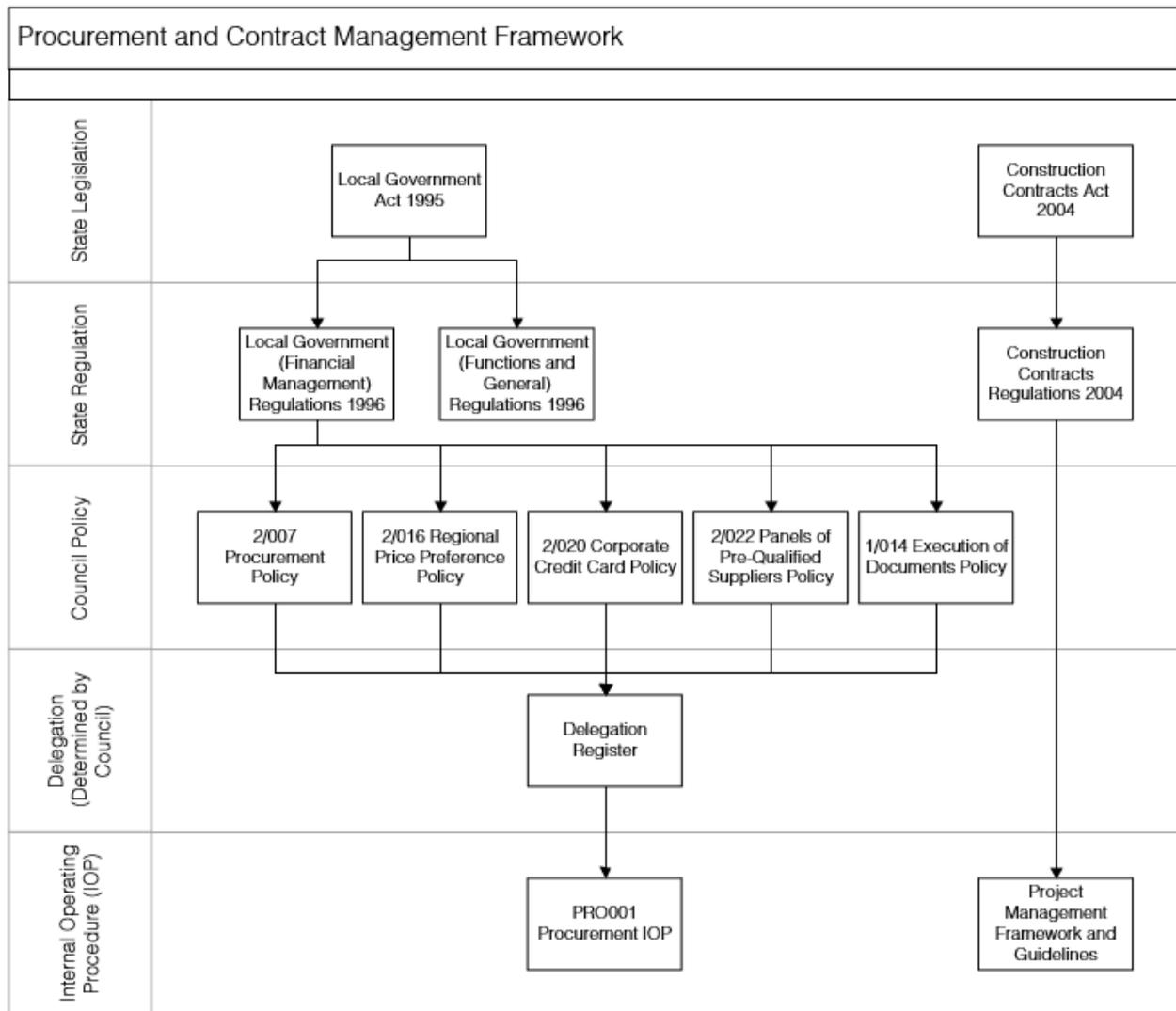
### DETAIL

The following pages of this report provides context into the Town's processes relating to the award of tenders and subsequent contract management, and identifies, where applicable, specific information relative to MJW's contracts with the Town.

#### *Procurement and Contract Management Framework*

All West Australian Local Government tender processes are governed by the provisions within the *Local Government Act 1995 (the Act)*, *Local Government (Functions and General) Regulations 1996 (the Regulations)* and their own Council adopted policies, delegations and internal operating procedures (IOPs) which sit under them.

This framework is outlined below:



As shown above, there is a robust, heavily legislated framework to guide the Town’s internal processes for procuring goods and services and managing its contracts. This framework ensures that probity and integrity is maintained throughout the entire contract lifecycle.

Refer to **attachment 3** for the Town’s internal operating procedure ‘PRO001 – Procurement IOP’.

**Procurement and Contract Management Audit**

In late 2020, the Town engaged external auditor William Buck to conduct an internal audit review of procurement and contract management at the Town. The findings report was presented to the Audit, Risk and Compliance Committee on 10 March 2021, and to Council on 24 March 2021.

A total of ten (10) medium findings were identified. A ‘medium’ finding is the lowest rated finding. There were no significant or high risk findings identified in the audit.

A summary of the findings are detailed below:

Area	Rating		
	Extreme	High	Medium
Policies and Procedures	-	-	1
Contract Management	-	-	3
Contracts Register	-	-	1
Extensions & Variations	-	-	2
Monitoring and & Exception Reporting	-	-	1
Procurement Records Management	-	-	1
Procurement Training	-	-	1
<b>Total</b>	-	-	<b>10</b>

To date, actions to all findings have either been implemented or are in the progress of being implemented.

## TENDER AWARD PROCESS

In accordance with the Act and Regulations, all tenders must be publicly advertised for a minimum of 14 days. The Town advertises all of its tenders in the local newspaper (Northwest Telegraph), the State newspaper (West Australian) and on a public marketplace called Vendorpanel, which is used by a majority of Local Governments across Australia.

Suppliers and contractors (Respondents) must be subscribed to Vendorpanel in order to view tender requests and submit a tender.

### *Request Released*

All tender requests (RFTs) are uploaded on Vendorpanel via the Town's Procurement Team, where it is available for viewing by all subscribed Respondents. All documents, addenda, clarifications, questions or queries regarding the RFT are managed independently by the Procurement Team through the Vendorpanel portal, where any responses to clarifications or questions are accessible by all Respondents.

The Town has no access to submissions prior to an RFT closing. This means that information on any tendered prices cannot be viewed, accessed or shared.

### *Tender Evaluation*

Evaluation panel membership is determined by the Town within section 4.4 of the Procurement Policy. Evaluation panels may also contain external evaluators to assist with assessing tender responses which require specific technical expertise. Evaluation panel membership is outlined as follows:

Value	Evaluation panel requirement
Up to \$15,000	One evaluator
\$15,000 to \$100,000	Two evaluators
\$100,000 to \$250,000	Two evaluators Procurement Team to administer
\$250,000 to \$1,000,000	Three evaluators Procurement Team to administer
Over \$1,000,000	Three evaluators Two of which are from Executive Team Procurement Team to administer

Vendorpanel restrictions ensure that submissions to RFTs cannot be accessed by anyone until the RFT has closed.

Once an RFT has closed, the Procurement Team provide the evaluation panel with a list of respondents. Each panel member must declare and sign a conflict of interest declaration to ensure probity and transparency is maintained. Should a panel member declare an interest, they are removed from the panel to ensure there is no actual or perceived bias.

Following the completion of conflict of interest declarations, the Procurement Team release the responses for each panel member to complete an independent evaluation. Whilst the independent evaluations are taking place, the Procurement Team undertake due diligence and compliance checks on all Respondents.

After the conclusion of independent evaluations, an evaluation meeting is held with all panel members in attendance. The objective of an evaluation meeting is to discuss the independent evaluations and gain consensus on the recommendation for award. Evaluation meetings are chaired by the Procurement Team.

An evaluation report is created once a consensus is reached and presented to the appropriate delegated authority for approval. For the MJW contracts in question, this is the Council.

#### *Tender Award*

All tenders are awarded in line with the appropriate delegated authority. These authorisation limits are determined within the Town's Delegation Register, which is reviewed, amended and set annually by Council.

Delegation 1.2.18 "Tenders for Goods and Services" and 22.3 "Income and Expenditure Financial Limits" impose the following limits:

- Council            Over \$1,000,000
- CEO                \$250,000 to \$999,999
- Directors         \$150,000 to \$249,999

## CONTRACT MANAGEMENT PROCESS

The Town has recently developed and introduced a Project Management Framework (PMF), which is guided by the *Construction Contract Act 2004*, its associated regulations and the Australian Institute of Management project management principles. A series of Operational Guidelines, forms and templates have been developed under this framework to ensure a consistent approach is maintained for contract management at the Town.

The PMF was drafted and workshopped by a number of business units across the organisation to ensure that all operational impacts and processes were considered and included. The PMF was presented to the Executive Leadership Team and adopted in June 2021. Refer to **attachment 4**.

### *Contract Execution*

A robust structure provides guidance on how contracts are executed at the Town. The execution of contracts are determined by the coalition of a number of guiding documents, all of which are determined by Council, these are:

- 1/014 Execution of Documents Policy
- 2/007 Procurement Policy
- Delegation 1.2.18 “Tenders for Goods and Services”

### *Contract Management*

As mentioned earlier in this report, contracts are managed in line with the Project Management Framework and their associated guidelines, forms and templates – all of which represent adherence with relevant legislation, Australian Standards, Council policies and delegations.

The remainder of this report will outline the Town’s processes for an *AS4000 Construction Contract*, which were the contracts entered into with MJW.

The Annexure Part A of an *AS4000 Construction Contract* summarises the specific requirements to a project and varies from contract to contract. This Annexure is released with all RFTs, along with:

- General Conditions of Contract,
- amendments to the General Conditions and
- Special Conditions of Contract

Releasing the draft contract with an RFT ensures that all Respondents are aware of any proposed contract conditions prior to responding.

### *Progress Claim and Payment Process*

Progress claims are claimed progressively as a Contract is delivered. The frequency of these claims are defined within Part A of each contract. Previous to the adoption of the PMF, progress claim terms were varied, with some contracts allowing up-front payment for goods. The PMF has now determined a standard frequency of monthly payments for

all construction contracts, without allowing for the payment of any unfixed plant or materials.

Progress claims are submitted by the Contractor to the Town for review. The Town's PMF requires the Contractor to also submit a signed Statutory Declaration to accompany each progress claim, listing all subcontractors that have been paid within the claim period.

Once received by the Town, claims are assessed against the work that has been completed, usually this involves a site visit by the Principal Project Manager, Project Manager, Project Support Officer and Consultant (if applicable) to verify the claim. Should a claim require an amendment, full written records of reasoning and justification are kept to satisfy any integrity concerns.

Once a progress claim has been appropriately assessed and approved, a payment certificate is signed by the Project Manager, Principal Project Manager, Manager Infrastructure Projects and Assets and Director Infrastructure Services. The signed payment certificate is issued to the Contractor, and they respond with an invoice. Please refer to **attachment 5** for an example of the Town's payment certificates and progress claims.

Invoices for all construction contracts are only paid by the Town if accompanied by a signed Payment Certificate, indicating that the claim has been subject to justification for approval.

On occasion, the Town has received requests from Contractors to alter the progress claim frequency, for a number of various reasons. To date, this has occurred with three Contractors.

The process for increased progress claim frequency remains unchanged and are still subject to scrutiny, justification and approval by multiple officers.

The administrative burden to manage the increased claim frequency impacted the project support team greatly, however, the Town's position was to lessen the burden on its Contractors to ensure that they were not subject to financial hardship in order to deliver the projects for the Community.

It is important to note that this decision was not only made for one Contractor. Should any of the Town's Contractors request an alteration to the frequency of progress claims the Town would consider all risks and benefits and make a determination accordingly. Payment terms are generally varied to assist where the Contractor is required to pay upfront for large value items which have been delivered and installed.

#### *Contractor's Payments to Subcontractors*

The Town's PMF and standard Contract clauses require each of its construction contractors to provide a signed Statutory Declaration, declaring that all Subcontractors which are applicable to the claim period have been paid all moneys due and payable. Refer to **attachment 4**, which shows a statutory declaration attached to the relevant

progress claim. The Town's internal processes prohibit the approval of any progress claims until this has been provided by the Contractor.

To further improve this process, the Town will insert a clause into its standard construction contracts moving forward, which will allow the Town to request subcontractors claims to aid in the substantiation of claims or undertake periodic or random spot checks with subcontractors to determine if they are being paid by the Contractor, and the implications therein.

#### *Direct Procurement of Goods*

There have been instances where the Town has directly procured goods for Contractors, where it has not been identified in their Contract. This was due to the increased lead times for a number of building supplies, namely structural steel, where the steel suppliers were not releasing the goods until full payment had been received.

Since the Town's contracts assert that Contractors are not paid until materials and goods are fixed and installed, this requires Contractors to pay for expensive long lead time items up front, sometimes months before they can claim payment from the Town.

This issue was vetted by the Town's contract consultant and lawyer (Questamon), and presented to Council at the 29 September 2021 OCM, to seek approval prior to any goods being purchased. An extract of the Council Decision is as follows:

#### *OCM202122/059 COUNCIL DECISION*

##### *That Council:*

- 1. Authorise the Chief Executive Officer to approve the direct procurement of materials or goods required under any previous Council awarded tenders which may be subject to long lead times; and*
- 2. Authorise the Chief Executive Officer to vary any existing contracts to support the above.*

*CARRIED BY SIMPLE MAJORITY (9/0)*

Following this decision, the Town directly procured the structural steel for the JD Hardie Multi User Courts, Sutherland Street staff house and the South Hedland Skate Park Shade Structure.

#### *Contract Security*

The Town requires security from all Contractors for construction Contracts. The value of security is 5% of the total contract value and can either be in the form of a Bank Guarantee or retention.

The Town's preference is to obtain Bank Guarantees, which can be cashed in when required to mitigate any financial losses sustained by the Town. The Town has recently called upon all available bank guarantees for contracts with MJW, totalling \$488,700 and is withholding retentions to the value of \$302,265.

## CONFLICTS OF INTEREST, FRAUD AND CORRUPTION

In line with Council's policy 2/024 "Fraud and Corruption", all employees are accountable for and have a role to play in fraud and corruption prevention and control. The Town encourages employees to disclose actual or suspected fraudulent or corrupt activity, to the Chief Executive Officer (Complaints Officer).

For corruption to flourish, there needs to be a closed process with few numbers of personnel involved. All of the Town's processes as described in various policies and procedures, maintain openness and transparency, where many people are involved.

Employees (Defined as Relevant Persons in the Local Government Act) are also subject to provisions outlined in section 5.87 of the Act which states:

### *5.87 Discretionary Disclosures Generally*

*A relevant person may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether financial or not —*

- (a) which are not required to be disclosed by any other provision of this Subdivision; and*
- (b) which the person considers might appear to raise a conflict between the person's private interests and the person's duty as a council member or a designated employee or which he or she otherwise desires to disclose.*

To further reiterate the above legislative requirement, the Town enforces an internal operating procedure which requires all employees to disclose conflicts of interest, not only for evaluation panel members, but for any perceived, actual or potential conflict of interest which arise at any time.

These disclosures are managed, reviewed and maintained by the Town's Governance team and recorded on the Conflict of Interest Register.

The request from Councillors Gillingham, Christensen and Coles asks for an investigation of all aspects of the personal and professional relationships between staff, Council members and MJW Building Pty Ltd and all other tenders issued above a Contract value of \$200,000.

Refer to **attachment 6** for a full list of the requested information. The yellow highlighted rows relate to contracts awarded to MJW.

Respondents to RFTs are also required to declare any actual, perceived or potential conflicts of interest between their organisation and employees and the Town's employees within their tender response.

In response to the query regarding the Town of Port Hedland liability responsibility report on the Town of Port Hedland's liability responsibility to unpaid local contractors because of any detrimental decision or mismanagement of the approved tenderer.

The Town has no contractual liability to subcontractors which remain unpaid as the Town's contracts were with MJW Building Pty Ltd and the Town paid all monies due for works completed by MJW.

The Town understands the impacts that MJW's administration has had on the local subcontractors and has endeavoured to engage these companies directly to complete any work where possible to help reduce any further financial adversity. These subcontractors have been engaged through the town's existing Panels of Pre-Qualified Suppliers or through Procurement Exemptions to maintain compliance with legislation and the Town's Procurement Policy.

A number of improvements have been implemented, even prior to the Administration of MJW. The Town has strengthened its Procurement IOP in terms of requiring financial assessments of tenderers. Refer to section 5.4.7 of **attachment 2**. Refer to **attachments 9 & 10** for examples of notices issued to MJW during their contracts.

## LEVEL OF SIGNIFICANCE

In accordance with Policy 4/009 'Significant Decision Making', this matter is considered to be of medium significance.

## CONSULTATION

### *Internal*

- Executive Leadership Team
- Manager Infrastructure Projects & Assets
- Principal Project Manager
- Senior Project Officer - Business
- Procurement Team
- Governance Team
- Legal Team

### *External Agencies*

- Questamon
- Cor Cordis
- William Buck

### *Community*

Nil

## LEGISLATION AND POLICY CONSIDERATIONS

Applicable legislation:

- *Local Government Act 1995*
- *Local Government (Functions and General) Regulations 1996*
- *Local Government (Financial Management) Regulations 1996*
- *Local Government (Administration) Regulations 1996*
- *Construction Contracts Act 2004*
- *Construction Contracts Regulations 2004*

Applicable Council Policies:

- Procurement Policy
- Panels of Pre-Qualified Suppliers Policy
- Execution of Documents Policy

Other relevant documents:

- Town of Port Hedland Delegation Register
- Procurement IOP
- Project Management Framework

All of the above listed have been factored into the Town's processes for procurement and contract management.

## FINANCIAL AND RESOURCES IMPLICATIONS

Financial impacts have been addressed throughout this report.

In relation to the allocation of \$100,000 for an independent forensic review, Council will be required to amend the budget by absolute majority vote.

## STRATEGIC AND SUSTAINABILITY IMPLICATIONS

The following section of the Town's Strategic Community Plan 2018-2028 is applicable in the consideration of this item:

- 4.b.1 Sound long-term financial planning is implemented

There are no significant identifiable environmental, social or economic impacts relating to this item.

### *Disability Access and Inclusion Plan*

There are no implications to the Town's Disability Access and Inclusion Plan.

### *Corporate Business Plan*

Item 4.b.2.1 of the Town's Corporate Business Plan applies in relation to this matter, which states "ensure the Town's finances are managed efficiently and effectively in line with legislated requirements".

## RISK MANAGEMENT CONSIDERATIONS

There is a reputational risk due to the potential negative impact this matter implies. The Town has upheld and maintained probity and integrity throughout all aspects of procurement and contract management for all of its contracts. Furthermore, there is a risk of damage to the reputation of staff who have been involved in managing these contracts, which may impact on the Town's attraction and retention of staff.

## OPTIONS

*Option 1 – Adopt the Councillor's Motion*

*Option 2 – Amend the Councillor's Motion*

*Option 3 - Do not adopt the Councillor's Motion*

*Option 4 – Adopt the Officer's Recommendation:*

*That Council note the information provided by Councillor Gillingham, Councillor Coles and Councillor Christensen in confidential attachment 7, relevant to the awarding of tenders, contract management and administration of MJW Building Pty Ltd contracts with the Town of Port Hedland.*

*Option 5 – Amend the Officer's Recommendation*

*That Council instruct the Chief Executive Officer to liaise with William Buck in order to undertake an audit of the Town of Port Hedland Tender and Contract Management process relating to MJW.*

*Option 6 – Do not adopt the Officer's Recommendation*

## CONCLUSION

*The Town upholds and maintains integrity in all aspects of procurement and contract management, as outlined in this report and the attached supporting documentation. It is the Town's contention that the contracts have been managed in a professional manner in accordance with the Town's policies and procedures. The Town has met all of its contractual and statutory obligations.*

There has been no evidence provided to substantiate any claims made, apart from rumour and innuendo.

The administration is confident that no corruption has occurred, and that there has been no detrimental decisions or mismanagement of tenders.

## ATTACHMENTS

1. Summary of Contracts - Confidential (under separate cover)
2. Administrators Report to Creditors dated 2 November 2021 - Confidential (under separate cover)
3. Procurement Internal Operating Procedure - Confidential (under separate cover)
4. Project Management Framework - Confidential (under separate cover)

5. Example of Payment Certificate, Progress Claim and Statutory Declaration - Confidential (under separate cover)
6. Conflicts of Interest on Evaluations over \$200k - Confidential (under separate cover)
7. Signed Request for Special Council Meeting 25 November 2021 - Confidential
8. Breach Notice - Confidential (under separate cover)
9. Example of Notice of Intent to Apply Liquidated Damages - Confidential (under separate cover)
10. Example of Superintendent Direction to Provide Accurate Program - Confidential (under separate cover)

**11.2 Executive Services**

Nil

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**Item 12 Reports of Committees**

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Nil

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**Item 13 Motions of which Previous Notice has been given**

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Nil

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**Item 14 New Business of an Urgent Nature (Late items)**

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Nil

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**Item 15 Matters for Which Meeting May Be Closed (Confidential Matters)**

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Nil

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**Item 16 Closure**

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**16.1 Date of Next Meeting**

Not applicable

**16.2 Closure**

There being no further business, the Presiding Member declared the meeting closed at **5:40pm**, and declared the Ordinary Council Meeting would follow after a five-minute recess.

DECLARATION OF CONFIRMATION OF MINUTES

I certify that these Minutes were confirmed by the Council at its Ordinary Council Meeting on 23 February 2022.

CONFIRMATION:



\_\_\_\_\_  
PRESIDING MEMBER

23/2/2022

\_\_\_\_\_  
DATED