



SECTION 15

Unconfirmed Minutes of Committees

For the Ordinary Meeting of Council

25 February 2021

Item 15.1 – Legal Committee Minutes – 10 February 2021



UNCONFIRMED MINUTES

Legal Committee

10 FEBRUARY 2021

LEGAL COMMITTEE

MINUTES

(REF: D2021/01849)

A Legal Committee meeting was held electronically on **Wednesday 10 February 2021**. The meeting commenced at 11:02 am

TABLE OF CONTENTS

1	DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS	4
2	ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	4
3	DISCLOSURE OF INTERESTS	4
4	ANNOUNCEMENTS BY THE CHAIRMAN OR PRESIDING MEMBER WITHOUT DISCUSSION	4
5	ELECTION OF A CHAIRMAN AND DEPUTY CHAIRMAN OF THE LEGAL COMMITTEE (LC)	5
	5.1 <i>ELECTION OF A CHAIRMAN OF THE LEGAL COMMITTEE (LC) (Ref: D2021/01851)</i>	5
	5.2 <i>ELECTION OF A DEPUTY CHAIRMAN OF THE LEGAL COMMITTEE (LC) (Ref: D2021/01853)</i>	11
6	PETITIONS, DEPUTATIONS AND PRESENTATIONS	17
7	QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN	17
8	QUESTIONS BY MEMBERS WITHOUT NOTICE	17
9	ANNOUNCEMENT OF CONFIDENTIAL MATTERS FOR WHICH MEETINGS MAY BE CLOSED TO THE PUBLIC	17
10	REPORTS OF EMPLOYEES	17
11	REPORTS OF DELEGATES	17
12	NEW BUSINESS OF AN URGENT NATURE APPROVED BY THE CHAIRMAN OR PRESIDING MEMBER OR BY DECISION OF MEETING	17
13	CONFIDENTIAL MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC	18
	13.1 <i>SEEKING INSTRUCTIONS REGARDING LEGAL MATTER [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)]</i>	
14	FUTURE MEETINGS OF THE LEGAL COMMITTEE	18
15	DECLARATION OF CLOSURE OF MEETING	18



1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The CEO advised that as this is the first Legal Committee meeting, he would preside over the meeting until the Committee elects a Chairman.

The CEO declared the meeting open at 11:02 am and welcomed everyone to the meeting held electronically.

1.1 ACKNOWLEDGEMENT OF COUNTRY

The CEO acknowledged the traditional custodians of the land on which we meet today and paid respects to elders past, present and future.

2 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Legal Committee Member Attendance

Cr Jai Wilson	EMRC Member	Town of Bassendean
Cr Dylan O'Connor (Departed 11:26 am)	EMRC Member	City of Kalamunda
Cr Doug Jeans	EMRC Member	Shire of Mundaring
Cr Lorna Clarke (Departed 11:28 am)	EMRC Member	City of Bayswater
Cr Mel Congerton	EMRC Member	City of Swan

EMRC Officers

Mr Marcus Geisler	Chief Executive Officer
Mr Hua Jer Liew	Chief Financial Officer
Ms Izabella Krzysko	Manager Procurement and Governance
Mrs Lee Loughnan	Personal Assistant to Chief Financial Officer (Minutes)
Mr Greg Cowan	Senior IT Officer

Visitor(s)

Mr Dan Dragovic	Partner	Herbert Smith Freehills
Mr Stewart McWilliam	Senior Associate	Herbert Smith Freehills

3 DISCLOSURE OF INTERESTS

Nil

4 ANNOUNCEMENTS BY THE CHAIRMAN OR PERSON PRESIDING WITHOUT DISCUSSION

Nil



5 ELECTION OF A CHAIRMAN AND DEPUTY CHAIRMAN OF THE LEGAL COMMITTEE (LC)

5.1 ELECTION OF A CHAIRMAN OF THE LEGAL COMMITTEE (LC)

REFERENCE: D2021/01851

PURPOSE OF REPORT

The purpose of this report is to provide for an election to be conducted for the Office of Chairman of the Legal Committee (LC).

KEY POINTS AND RECOMMENDATION(S)

- It is a statutory requirement that the Committee elect a Chairman at the first meeting of the Legal Committee.

Recommendation(s)

That the members of the Legal Committee elect a Chairman.

SOURCE OF REPORT

Chief Financial Officer

BACKGROUND

At the Special Meeting of Council held on Monday 8 February 2021, Council established the Legal Committee to undertake actions to address any such legal matters arising out of the Establishment Agreement and be disbanded at the next Local Government elections in October 2021 (Ref: D2021/01716).

Council by absolute majority in accordance with s5.16 of the *Local Government Act 1995* delegated to the Legal Committee the power to undertake actions in response to the legal matter as outlined within the Confidential Report presented to the meeting on 8 February 2021.

LC MEMBERS 2021

The following members were appointed to the LC at the Special Meeting of Council held on 8 February 2021:

Cr Jai Wilson	Town of Bassendean
Cr Lorna Clarke	City of Bayswater
Cr Dylan O'Connor	City of Kalamunda
Cr Doug Jeans	Shire of Mundaring
Cr Mel Congerton	City of Swan

In accordance with section 5.12(1) of the *Local Government Act 1995*, (the Act) the members of a committee are to elect a presiding member from amongst themselves in accordance with Schedule 2.3, Division 1.

It is a requirement of Schedule 2.3 of the Act that the election is conducted by the Chief Executive Officer (CEO) and the nominations for the Office are to be given to the CEO in writing before the meeting or during the meeting before the close of nominations. Furthermore, if a member is nominated by another member the CEO is not to accept the nomination unless the nominee has advised the CEO, orally or in writing, that he or she is willing to be nominated for the Office. Members are to vote on the matter by secret ballot.

The procedure outlined in Schedule 2.3 of the Act will be followed if there is an equality of votes.



Item 5.1 continued

REPORT

The CEO will preside at the meeting until the Office of Chairman of the LC is filled.

The following material accompanies the agenda for this meeting as a means of assisting members of the Committee to nominate themselves or another member for the Office of Chairman of the LC:

1. A blank nomination form for the Office of Chairman of the LC, nominate oneself; and
2. A blank nomination form for the Office of Chairman of the LC, nominate another; and
3. A blank ballot paper for Election of Chairman of the LC.

Ballot papers will be made available prior to voting.

The completed nomination forms are to be given to the CEO before the meeting or when the CEO calls for them when dealing with this item at the meeting.

STRATEGIC/POLICY IMPLICATIONS

Key Result Area 3 – Good Governance

- 3.3 To provide responsible and accountable governance and management of the EMRC

FINANCIAL IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

MEMBER COUNCIL IMPLICATIONS

Member Council	Implication Details
Town of Bassendean	} Nil direct implications
City of Bayswater	
City of Belmont	
City of Kalamunda	
Shire of Mundaring	
City of Swan	

ATTACHMENT(S)

1. A blank nomination form for the Office of Chairman of the LC, nominate oneself (Ref: D2021/01858)
2. A blank nomination form for the Office of Chairman of the LC, nominate another (Ref: D2021/01858)
3. Ballot Paper – Election of LC Chairman (Ref D2021/01855)



Item 5.1 continued

VOTING REQUIREMENT

Secret Ballot

RECOMMENDATION(S)

That the members of the Legal Committee elect a Chairman.

The CEO advised that he had received one nomination from Cr Wilson for the Office of Chairman of the Legal Committee prior to the meeting.

The CEO called for further nominations. No further nominations were received.

ANNOUNCEMENT: OF THE OFFICE OF CHAIRMAN

There being no further nominations, the CEO declared Cr Wilson, Chairman of the Legal Committee unopposed for the term commencing 10 February 2021.

The CEO congratulated Cr Wilson and vacated the Chair at 11:05am.

At 11.05am, Cr Wilson took the Chair.



Nomination for Chairman of the Legal Committee

To the Chief Executive Officer

I hereby nominate myself, _____ for the position of Chairman of the Eastern Metropolitan Regional Council Legal Committee for the term of Office commencing on the date of the election and continuing until the next ordinary elections day and/or other circumstances occur in accordance with section 5.11 of the *Local Government Act 1995*.

Signed: _____

Date: _____



Nomination for Chairman of the Legal Committee

To the Chief Executive Officer

I hereby nominate _____ for the position of Chairman of the Eastern Metropolitan Regional Council Legal Committee for the term of Office commencing on the date of the election and continuing until the next ordinary elections day and/or other circumstances occur in accordance with section 5.11 of the *Local Government Act 1995*.

Signed: _____ Date: _____

*I _____ hereby certify that I accept the above nomination to the position of Chairman of the Eastern Metropolitan Regional Council Legal Committee .

Signed: _____ Date: _____

*This certificate is to be completed when a Representative is nominated by another Representative.



Eastern Metropolitan Regional Council

Legal Committee

Wednesday 10 February 2021

ELECTRONIC BALLOT PAPER FOR THE

ELECTION OF THE LEGAL COMMITTEE CHAIRMAN

HOW TO VOTE ELECTRONICALLY

Select the button next to the candidate you want to elect.

Poll Questions:

1. Select Candidate

- A. Firstname, Lastname**
- B. Firstname, Lastname**
- C. Firstname, Lastname**



5.2 ELECTION OF A DEPUTY CHAIRMAN OF THE LEGAL COMMITTEE (LC)

REFERENCE: D2021/01853

PURPOSE OF REPORT

The purpose of this report is to provide for an election to be conducted for the Office of Deputy Chairman of the Legal Committee (LC).

KEY POINTS AND RECOMMENDATION(S)

- In accordance with section 5.12(2) of the *Local Government Act 1995*, the members of a committee may elect a deputy presiding member from amongst themselves.

Recommendation(s)

That the members of the Legal Committee elect a Deputy Chairman.

SOURCE OF REPORT

Chief Financial Officer

BACKGROUND

At the Special Meeting of Council held on Monday 8 February 2021, Council established the Legal Committee to undertake actions to address any such legal matters arising out of the Establishment Agreement and be disbanded at the next Local Government elections in October 2021 (Ref: D2021/01716).

Council by absolute majority in accordance with s5.16 of the *Local Government Act 1995* delegated to the Legal Committee the power to undertake actions in response to the legal matter as outlined within the Confidential Report presented to the meeting on 8 February 2021.

LC MEMBERS 2021

The following members were appointed to the LC at the Special Meeting of Council held on 8 February 2021:

Cr Jai Wilson	Town of Bassendean
Cr Lorna Clarke	City of Bayswater
Cr Dylan O'Connor	City of Kalamunda
Cr Doug Jeans	Shire of Mundaring
Cr Mel Congerton	City of Swan

In accordance with section 5.12(2) of the *Local Government Act 1995*, (the Act) the members of a committee may elect a deputy presiding member from amongst themselves.

It is a requirement of Schedule 2.3 of the Act that the election of the Deputy Chairman is conducted by the Chairman and the nominations for the Office are to be given to the Chief Executive Officer (CEO) in writing before the meeting or the Chairman during the meeting before the close of nominations. Furthermore, if a member is nominated by another member, the Chairman is not to accept the nomination unless the nominee has advised the Chairman, orally or in writing, that he or she is willing to be nominated for the Office. Members are to vote on the matter by secret ballot.

The procedure outlined in Schedule 2.3 of the Act will be followed if there is an equality of votes.



Item 5.2 continued

REPORT

The following material accompanies the agenda for this meeting as a means of assisting members of the Committee to nominate themselves or another member for the office of Deputy Chairman of the LC:

1. A blank nomination form for the Office of Deputy Chairman of the LC, nominate oneself;
2. A blank nomination form for the Office of Deputy Chairman of the LC, nominate another; and
3. A blank ballot paper for Election of Deputy Chairman of the LC.

Ballot papers will be made available prior to voting.

The completed nomination forms are to be given to the CEO before the meeting or when called for by the Chairman when dealing with this item at the meeting.

STRATEGIC/POLICY IMPLICATIONS

Key Result Area 3 – Good Governance

- 3.3 To provide responsible and accountable Governance and Management of the EMRC

FINANCIAL IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

MEMBER COUNCIL IMPLICATIONS

Member Council	Implication Details
Town of Bassendean	} Nil
City of Bayswater	
City of Belmont	
City of Kalamunda	
Shire of Mundaring	
City of Swan	

ATTACHMENT(S)

1. A blank nomination form for the Office of Deputy Chairman of the LC, nominate oneself (Ref: D2019/16649)
2. A blank nomination form for the Office of Deputy Chairman of the LC, nominate another (Ref: D2019/16649)
3. Ballot Paper – Election of LC Deputy Chairman (Ref: D2021/01857)



Item 5.2 continued

VOTING REQUIREMENT

Secret Ballot

RECOMMENDATION(S)

That the members of the Legal Committee elect a Deputy Chairman.

The CEO advised that he had received one nomination from Cr Congerton for the Office of Deputy Chairman of the Legal Committee prior to the meeting.

The Chairman called for further nominations. No further nominations were received.

ANNOUNCEMENT: OF THE OFFICE OF DEPUTY CHAIRMAN

There being no further nominations, the Chairman declared Cr Congerton, Deputy Chairman of the Legal Committee unopposed for the term commencing 10 February 2021.

The Chairman congratulated Cr Congerton.



Nomination for Deputy Chairman of the Legal Committee

To the Chief Executive Officer

I hereby nominate myself, _____ for the position of Deputy Chairman of the Eastern Metropolitan Regional Council Legal Committee for the term of Office commencing on the date of the election and continuing until the next ordinary elections day and/or other circumstances occur in accordance with section 5.11 of the *Local Government Act 1995*.

Signed: _____

Date: _____



Nomination for Deputy Chairman of the Legal Committee

To the Chief Executive Officer

I hereby nominate _____ for the position of Deputy Chairman of the Eastern Metropolitan Regional Council Legal Committee for the term of Office commencing on the date of the election and continuing until the next ordinary elections day and/or other circumstances occur in accordance with section 5.11 of the *Local Government Act 1995*.

Signed: _____ Date: _____

*I _____ hereby certify that I accept the above nomination to the position of Deputy Chairman of the Eastern Metropolitan Regional Council Legal Committee.

Signed: _____ Date: _____

*This certificate is to be completed when a Representative is nominated by another Representative.



Eastern Metropolitan Regional Council

**Legal Committee Wednesday
10 February 2021**

**ELECTRONIC BALLOT PAPER FOR THE
ELECTION OF THE LEGAL COMMITTEE
DEPUTY CHAIRMAN**

HOW TO VOTE ELECTRONICALLY

**Select the button next to the candidate you want
to elect.**

Poll Questions:

1. Select Candidate

- A. Firstname, Lastname**
- B. Firstname, Lastname**
- C. Firstname, Lastname**



6 PETITIONS, DEPUTATIONS AND PRESENTATIONS

Nil

7 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

Nil

8 QUESTIONS BY MEMBERS WITHOUT NOTICE

Cr Jeans commented that he hadn't seen a copy of the final Council recommendation. The second recommendation states that the report and attachments are to be certified by the Chairman – the Committee now has five members – how does that impact on that process?

The Chairman said it is up to the Legal Committee to make suggestions or recommendations. He proposed to Chair the Legal Committee informally, to deal with courses of action as they arise, with a purpose of giving direction to the Chief Executive Officer.

9 ANNOUNCEMENT OF CONFIDENTIAL MATTERS FOR WHICH MEETINGS MAY BE CLOSED TO THE PUBLIC

NOTE: Section 5.23(2) of the *Local Government Act 1995*, details a number of matters upon which Council may discuss and make decisions without members of the public being present. These matters include: matters affecting employees; personal affairs of any person; contractual matters; legal advice; commercial-in-confidence matters; security matters; among others.

The following report items are covered in Section 13 of this agenda:

9.1 SEEKING INSTRUCTIONS REGARDING LEGAL MATTER [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)]

10 REPORTS OF EMPLOYEES

Nil

11 REPORTS OF DELEGATES

Nil

12 NEW BUSINESS OF AN URGENT NATURE APPROVED BY THE CHAIRMAN OR PRESIDING MEMBER OR BY DECISION OF MEETING

Nil



13 CONFIDENTIAL MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC

RECOMMENDATION (Closing meeting to the public)

That with the exception of, the meeting be closed to members of the public in accordance with Section 5.23(2) of the *Local Government Act 1995* for the purpose of dealing with matters of a confidential nature.

LEGAL COMMITTEE RESOLUTION

MOVED CR JEANS

SECONDED CR CLARKE

THAT WITH THE EXCEPTION OF THE CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, MANAGER PROCUREMENT AND GOVERNANCE, SENIOR IT OFFICER, PARTNER OF HERBERT SMITH FREEHILLS, SENIOR ASSOCIATE OF HERBERT SMITH FREEHILLS AND PERSONAL ASSISTANT TO THE CHIEF FINANCIAL OFFICER THE MEETING BE CLOSED TO MEMBERS OF THE PUBLIC IN ACCORDANCE WITH SECTION 5.23 (2) OF THE *LOCAL GOVERNMENT ACT 1995* FOR THE PURPOSE OF DEALING WITH MATTERS OF A CONFIDENTIAL NATURE.

CARRIED UNANIMOUSLY

The doors of the meeting were closed at 11:09 am.

The CEO did a roll call of Councillors and EMRC staff, who individually declared that they were located in a secure room, as this was an online meeting with a confidential item on the agenda.

The Chief Executive Officer, Chief Financial Officer, Manager Procurement and Governance, Senior Information Technology Officer, Partner of Herbert Smith Freehills, Senior Associate of Herbert Smith Freehills and Personal Assistant to the Chief Financial Officer remained online.

RECOMMENDATION [Meeting re-opened to the public]

That the meeting be re-opened, the members of the public be invited to return to the meeting and the recommendations passed behind closed doors be recorded.

LEGAL COMMITTEE RESOLUTION

MOVED CR JEANS

SECONDED CR CONGERTON

THAT THE MEETING BE RE-OPENED, THE MEMBERS OF THE PUBLIC BE INVITED TO RETURN TO THE MEETING AND THE RECOMMENDATIONS PASSED BEHIND CLOSED DOORS BE RECORDED.

CARRIED UNANIMOUSLY

The doors were reopened at 11:43 am and members of the public returned to the meeting.



Item 13.1 continued

Recording of the resolutions passed behind closed doors namely:

13.1 SEEKING INSTRUCTIONS REGARDING LEGAL MATTER [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)]

REFERENCE: D2021/01861

LEGAL COMMITTEE RESOLUTION(S)

MOVED CR CONGERTON THAT: SECONDED CR JEANS

1. THE LEGAL COMMITTEE RESOLVES TO AUTHORISE THE CEO TO ISSUE THE LETTER AS AMENDED AND A SUPPLEMENTARY LETTER IN RESPONSE TO THE LEGAL MATTER AS OUTLINED WITHIN THE CONFIDENTIAL REPORT AND THE CONFIDENTIAL DISCUSSIONS.
2. THE REPORT AND ATTACHMENTS REMAIN CONFIDENTIAL AND BE CERTIFIED BY THE CHAIRMAN AND THE CEO.

CARRIED UNANIMOUSLY

Cr Clarke and Cr O'Connor departed the meeting during the closed session prior to the vote and hence were absent for the vote.

14 FUTURE MEETINGS OF COMMITTEE

Meetings of the Legal Committee are held as required.

15 DECLARATION OF CLOSURE OF MEETING

There being no further business, the meeting closed at 11:45 am.