



## **SECTION 15**

# **Reports of Committees**

For the Ordinary Meeting of Council

24 June 2021

**Item 15.2 – Legal Committee Minutes – 3 June 2021**



# **UNCONFIRMED MINUTES**

Legal Committee

**3 June 2021**

## LEGAL COMMITTEE

### MINUTES

3 June 2021

(REF: D2021/09457)

A Legal Committee meeting was held at the EMRC Administration Office, 1<sup>st</sup> Floor, 226 Great Eastern Highway, ASCOT WA 6104 and electronically, immediately following the completion of the Audit Committee Meeting on **Thursday 3 June 2021**. The meeting commenced at **6:45 pm**.

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## 1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Chairman declared the meeting open at 6:45pm and welcomed everyone to the meeting.

### 1.1 ACKNOWLEDGEMENT OF COUNTRY

The Chairman acknowledged the traditional custodians of the land on which the meeting is held and paid respects to the elders, past present and future.

*Kaya Maaman, Kaya Yorga, Kaya Bridia  
Ngalak kaartitj windji ngalak nynininy  
Nagalak kaartitj nidja boodja baal Whadjuk Noongar Boodja ngalak nyininy  
Koorah, Nitja yeyi, Boordahwan*

#### Translation

Greetings everyone  
We all understand where we are meeting.  
We know that we meet on the lands of the Whadjuk Noongar people  
Always was, always will be.

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

The Chairman did a role call of Councillors who individually declared that they were located in a secure room, as this was also an online meeting with a confidential item on the agenda.

### Legal Committee Member Attendance

Cr Jai Wilson ( <i>electronically</i> )	EMRC Member	Town of Bassendean
Cr Dylan O'Connor ( <i>electronically</i> )	EMRC Member	City of Kalamunda
Cr Doug Jeans	EMRC Member	Shire of Mundaring
Cr Lorna Clarke	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
Mr David Schmidt	Manager Information Services
Mrs Lee Loughnan	Personal Assistant to Chief Financial Officer (Minutes)

## 3 DISCLOSURE OF INTERESTS

Nil

## 4 ANNOUNCEMENTS BY THE CHAIRMAN OR PRESIDING MEMBER WITHOUT DISCUSSION

Nil

## 5 PETITIONS, DEPUTATIONS AND PRESENTATIONS

Nil



## **6 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **6.1 MINUTES OF LEGAL COMMITTEE MEETING HELD ON 27 MAY 2021**

That the Minutes of the Legal Committee meeting held on 27 May 2021 which have been distributed, be confirmed.

#### **LEGAL COMMITTEE RESOLUTION**

MOVED CR CONGERTON                      SECONDED CR O'CONNOR

THAT THE MINUTES OF THE LEGAL COMMITTEE MEETING HELD ON 27 MAY 2021 WHICH HAVE BEEN DISTRIBUTED, BE CONFIRMED.

**CARRIED UNANIMOUSLY**

## **7 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

## **8 QUESTIONS BY MEMBERS WITHOUT NOTICE**

Nil

## **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 14 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 BUSINESS NOT DEALT WITH FROM A PREVIOUS MEETING**

Nil

## **11 REPORTS OF EMPLOYEES**

Nil

## **12 REPORTS OF DELEGATES**

Nil



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

Nil

**14 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)(c) of the *Local Government Act 1995* for the purpose of dealing with matters of a confidential nature.

**LEGAL COMMITTEE RESOLUTION**

MOVED CR O'CONNOR

SECONDED CR CLARKE

THAT WITH THE EXCEPTION OF THE CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, MANAGER PROCUREMENT AND GOVERNANCE, MANAGER INFORMATION SERVICES AND PERSONAL ASSISTANT TO THE CHIEF FINANCIAL OFFICER THE MEETING BE CLOSED TO MEMBERS OF THE PUBLIC IN ACCORDANCE WITH SECTION 5.23(2)(c) 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 6:48pm.

The Chief Executive Officer, Chief Financial Officer, Manager Procurement and Governance, Manager Information Services and Personal Assistant to the Chief Financial Officer remained in the Boardroom.

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

**REFERENCE: D2021/09456**

This item is recommended to be confidential because it contains matters of a legal advice nature and is subject to legal professional privilege.

The Legal Committee considered the Confidential Item circulated with the Agenda under Separate Cover.

**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 CLARKE

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**



*Item 14.1 continued*

The doors were reopened at 7:24pm.

Recording of the resolutions passed behind closed doors namely:

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

**REFERENCE: D2021/09456**

**LEGAL COMMITTEE RESOLUTION(S)**

MOVED CR O'CONNOR

SECONDED CR CLARKE

THAT:

1. THE LEGAL COMMITTEE NOMINATES THE ARBITRATOR CANDIDATE NO. 2 AS ITS PREFERRED ARBITRATOR AND INSTRUCTS THE CHIEF EXECUTIVE OFFICER TO APPOINT THE ARBITRATOR IN RESPONSE TO THE LEGAL MATTER AS OUTLINED WITHIN THE CONFIDENTIAL REPORT.
2. THE LEGAL COMMITTEE NOMINATES KEY OPTION NO. 2 AS THE APPROACH REGARDING ENGAGING AN EXPERT AND INSTRUCTS THE CHIEF EXECUTIVE OFFICE TO IDENTIFY SUITABLE CANDIDATES FOR ITS REVIEW IN RESPONSE TO THE LEGAL MATTER AS OUTLINED WITHIN THE CONFIDENTIAL REPORT.
3. THE REPORT REMAINS CONFIDENTIAL AND BE CERTIFIED BY THE CHAIRMAN AND THE CEO.

**CARRIED UNANIMOUSLY**

**COUNCIL RESOLUTION(S)**

MOVED CR CONGERTON

SECONDED CR JEANS

THAT COUNCIL NOTES THE LEGAL COMMITTEE RESOLUTIONS OF THE ITEM 14.1 OF THE LEGAL COMMITTEE MEETING HELD 3 JUNE 2021 – SEEKING INSTRUCTIONS REGARDING LEGAL MATTER [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)].

**CARRIED UNANIMOUSLY**

Cr Marks and Cr Powell were absent for the vote, having declared an interest in the item.  
Cr Daw was absent for the vote.

**15 FUTURE MEETINGS OF THE LEGAL COMMITTEE**

Meetings of the Legal Committee are held as required.

**16 DECLARATION OF CLOSURE OF MEETING**

There being no further business the meeting was closed at 7:24pm.