

SECTION 15

D2022/02576 [LC D2021/24376]

Reports of Committees
Ordinary Meeting of Council
24 February 2022

Item 15.1
Legal Committee Minutes – 25 November 2021

UNCONFIRMED MINUTES

D2021/24376

Legal Committee

25 November 2021

Legal Committee Minutes

A meeting of the Legal Committee was held at the EMRC Administration Office, 1st Floor, 226 Great Eastern Highway, ASCOT WA 6104 on **Thursday, 25 November 2021**. The meeting commenced at **6.42pm**.

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1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Chief Executive Officer (CEO) declared the meeting open at 6:42pm.

1.1 ACKNOWLEDGEMENT OF COUNTRY

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

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

Councillor Attendance

Cr Kathryn Hamilton	Committee Member	Town of Bassendean
Cr Dylan O'Connor	Committee Member	City of Kalamunda
Cr Steven Ostaszewskyj <i>(deputising for Cr Sutherland)</i>	Deputy Committee Member	City of Bayswater
Cr Doug Jeans	Committee Member	Shire of Mundaring
Cr Mel Congerton	Committee Member	City of Swan

Apologies

Cr Michelle Sutherland	Committee Member	City of Bayswater
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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)

Observer(s)

Cr John Daw	Deputy Committee Member	Shire of Mundaring
Cr Charlie Zannino	Deputy Committee Member	City of Swan

3 DISCLOSURE OF INTERESTS

Nil

4 ANNOUNCEMENTS BY THE CHAIRMAN OR PRESIDING MEMBER 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 (D2021/23057)

5.2 ELECTION OF A DEPUTY CHAIRMAN OF THE LEGAL COMMITTEE (D2021/23060)

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

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

D2021/23057

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 POINT(S)

- It is a statutory requirement that the Committee elect a Chairman at the first meeting of the Legal Committee after an ordinary Council elections day.

RECOMMENDATION(S)

That the members of the Legal Committee elect a Chairman.

SOURCE OF REPORT

Chief Financial Officer

BACKGROUND

- 1 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).
- 2 Council by absolute majority in accordance with s.5.16 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.
- 3 At the 23 September 2021 Ordinary Meeting of Council, Council extended the tenure of the Legal Committee by resolving (D2021/19197):

THAT COUNCIL:

1. *EXTENDS THE TENURE OF THE LEGAL COMMITTEE FOLLOWING THE LOCAL GOVERNMENT ELECTIONS IN OCTOBER 2021 UNTIL SUCH TIME THAT THE CURRENT LEGAL MATTER IS RESOLVED.*
2. *ADOPT AN AMENDED LEGAL COMMITTEE TERMS OF REFERENCE FORMING ATTACHMENT NO. 2 TO THIS NOTICE.*

CARRIED UNANIMOUSLY

LC Members 2021

4 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

5 At the Special Meeting of Council held on 4 November 2021 the following members were appointed to the LC.

Cr Kathryn Hamilton	Town of Bassendean
Cr Michelle Sutherland	City of Bayswater
Cr Dylan O'Connor	City of Kalamunda
Cr Doug Jeans	Shire of Mundaring
Cr Mel Congerton	City of Swan

6 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.

7 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.

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

REPORT

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

10 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. LC Terms of Reference;
2. A blank Nomination Form for the Office of Chairman of the LC, nominate oneself;
3. A blank Nomination Form for the Office of Chairman of the LC, nominate another; and
4. A blank Ballot Paper for Election of Chairman of the LC.

11 Ballot papers will be made available prior to voting.

12 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

- 13 Council Policy 2.1 Committees of Council provides for the establishment of the Legal Committee.
Key Result Area 3 – Good Governance
3.3 To provide responsible and accountable Governance and Management of the EMRC

FINANCIAL IMPLICATIONS

- 14 Nil

SUSTAINABILITY IMPLICATIONS

- 15 Nil

RISK MANAGEMENT

Risk – Failure to elect and appoint a presiding member will a breach of s.5.12 of the Local Government Act 1995 and impact on the discharging role duties of the presiding member		
Consequence	Likelihood	Rating
Moderate	Unlikely	Moderate
Action/Strategy		
➤ Elect a Chairman of the Legal Committee		

MEMBER COUNCIL IMPLICATIONS

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

ATTACHMENT(S)

1. LC Terms of Reference (D2021/23101)
2. A blank Nomination Form for the Office of Chairman of the LC, nominate oneself (D2021/23058)
3. A blank Nomination Form for the Office of Chairman of the LC, nominate another (D2021/23058)
4. Ballot Paper – Election of LC Chairman (D2021/23059)

VOTING REQUIREMENT

Secret Ballot

RECOMMENDATION(S)

That the members of the Legal Committee elect a Chairman.



The Chief Executive Officer advised that no nominations had been received for the Office of Chairman of the Legal Committee.

Cr Dylan O'Connor nominated himself for the Office of Chairman of the Legal Committee.

No further nominations were received and the Chief Executive Officer closed nominations.

ANNOUNCEMENT: OF THE OFFICE OF CHAIRMAN

The Chief Executive Officer declared, unopposed, Cr Dylan O'Connor as Chairman of the Legal Committee of the EMRC for the term commencing 25 November 2021 until 2023.

The Chief Executive Officer congratulated Cr Dylan O'Connor and vacated the Chair at 6.44pm.

At 6.44pm, Cr Dylan O'Connor took the Chair.



Terms of Reference

Legal Committee

1 Objectives of Committee

The Legal Committee is a formally appointed committee of Council and is responsible to that body. It was established at a Special Council Meeting on 8 February 2021 to deal with matters arising out of the EMRC's Establishment Agreement and is to be disbanded after the legal dispute arising out of the EMRC's Establishment Agreement and related matters are resolved.

1.1 The Legal Committee's role is to:

- (a) Report to Council and provide appropriate advice and recommendations on matters relevant to its terms of reference in order to facilitate decision-making by Council in relation to the discharge of its responsibilities.
- (b) Carry out its functions and fulfil its responsibilities as required by the *Local Government Act 1995* and associated regulations, guidelines and protocols of the Council which are relevant to the Committee.
- (c) The Legal Committee will only have those executive powers as specifically delegated to it.

2 Responsibilities

2.1 The Legal Committee shall have the following functions:

- (a) To participate and consult with the Chief Executive Officer, Chairman and Council to address legal matters arising out of the EMRC's Establishment Agreement and related matters as delegated to the Legal Committee;
- (b) To provide feedback and recommendations on the legal matters described in 2.1(a) above to Council; and
- (c) To be disbanded after the legal dispute arising out of the EMRC's Establishment Agreement and related matters are resolved.

3 Membership

3.1 The Legal Committee will comprise of Council members and Deputy members as appointed by Council.

3.2 Members will be appointed to the inaugural Legal Committee for such term until the legal dispute arising out of the EMRC's Establishment Agreement and related matters are resolved.

4 Meetings

- 4.1 The Legal Committee shall meet as required, in person or electronically, convened at the discretion of the Chairman.

5 Operating Procedures

- 5.1 All meetings of the Legal Committee are to be conducted in accordance with the *Local Government Act 1995*, associated Regulations and the *EMRC Standing Orders Local Law 2013*.
- 5.2 A quorum for a meeting of the Legal Committee shall be at least 50% of the number of offices (whether vacant or not) of members of the Legal Committee.
- 5.3 Voting
- (a) All decisions of the Legal Committee shall be made on the basis of a simple majority decision of the members present or, if another kind of majority has been prescribed by regulations for the particular kind of decision, by that kind of majority.
 - (b) If the decision results in a tied vote, the person presiding is to cast a second vote.
 - (c) Persons other than Legal Committee members are not entitled to cast a vote.
 - (d) Each member shall have one (1) vote. Legal Committee members who will not be present for a meeting must notify the Chairman.
 - (e) All other aspects related to voting procedure shall be consistent with relevant sections of the *EMRC Standing Orders Local Law 2013*.
- 5.4 Other EMRC staff may attend meetings, at the discretion of the Chief Executive Officer to provide advice and information when required.
- 5.5 Other persons may attend meetings, at the discretion of the Chief Executive Officer and/or Chairman, to provide advice and information as required.

6 Reporting

- 6.1 The Legal Committee shall after every meeting forward the minutes of that meeting to the next Ordinary Meeting of Council, including a report explaining any specific recommendations and key outcomes.

7 Delegated Power

- 7.1 The Legal Committee has only those delegated powers and duties of Council delegated to the Legal Committee associated with dealing with legal matters arising out of the EMRC's Establishment Agreement.



Related Documentation

Policy 2.1 Committees of Council
EMRC Standing Orders Local Law 2013
EMRC Code of Conduct

Administration

Adopted | Reviewed by Council

25 March 2021
23 September 2021

Next Review

Following the Local Government Ordinary Elections in 2023

Responsible Business Unit

Business Support



EASTERN METROPOLITAN REGIONAL COUNCIL

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



EASTERN METROPOLITAN REGIONAL COUNCIL

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
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

25 November 2021

Ballot Paper for the Election of the Legal Committee Chairman

How to Vote

Place a tick in the box next to the candidate you want to elect

Do not make any other marks on the Ballot Paper

Cr First Name, Last Name

Cr First Name, Last Name

Cr First Name, Last Name

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

D2021/23060

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 POINT(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

- 1 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).
- 2 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.
- 3 At the 23 September 2021 Ordinary Meeting of Council, Council extended the tenure of the Legal Committee by resolving (D2021/19197):

THAT COUNCIL:

1. *EXTENDS THE TENURE OF THE LEGAL COMMITTEE FOLLOWING THE LOCAL GOVERNMENT ELECTIONS IN OCTOBER 2021 UNTIL SUCH TIME THAT THE CURRENT LEGAL MATTER IS RESOLVED.*
2. *ADOPT AN AMENDED LEGAL COMMITTEE TERMS OF REFERENCE FORMING ATTACHMENT NO. 2 TO THIS NOTICE.*

CARRIED UNANIMOUSLY

LC Members 2021

4 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

5 At the Special Meeting of Council held on 4 November 2021 the following members were appointed to the LC.

Cr Kathryn Hamilton	Town of Bassendean
Cr Michelle Sutherland	City of Bayswater
Cr Dylan O'Connor	City of Kalamunda
Cr Doug Jeans	Shire of Mundaring
Cr Mel Congerton	City of Swan

6 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.

7 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.

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

REPORT

9 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 AC:

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.

10 Ballot papers will be made available prior to voting.

11 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

12 Council Policy 2.1 Committees of Council provides for the establishment of the Legal Committee.

Key Result Area 3 – Good Governance

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

FINANCIAL IMPLICATIONS

13 Nil

SUSTAINABILITY IMPLICATIONS

14 Nil

RISK MANAGEMENT

Risk – Failure to elect a Deputy Chairman will impact the fulfillment of the Chairman’s role in the event the Chairman is unavailable.		
Consequence	Likelihood	Rating
Moderate	Unlikely	Moderate
Action/Strategy		
➤ Elect and appoint a Deputy Chairman of the LEGAL Committee.		

MEMBER COUNCIL IMPLICATIONS

Member Council	Implication Details
Town of Bassendean	} Nil
City of Bayswater	
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 (D2021/23061)
2. A blank Nomination Form for the Office of Deputy Chairman of the LC, nominate another (D2021/23061)
3. Ballot Paper – Election of LC Deputy Chairman (D2021/23062)

VOTING REQUIREMENT

Secret Ballot

RECOMMENDATION(S)

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



The Chairman advised that no nominations had been received for the Office of Deputy Chairman of the Legal Committee.

Cr Mel Congerton nominated himself for the Office of Deputy Chairman of the Legal Committee.

No further nominations were received and the Chairman closed nominations.

ANNOUNCEMENT: OF THE OFFICE OF DEPUTY CHAIRMAN

The Chairman declared, unopposed, Cr Mel Congerton as Deputy Chairman of the Legal Committee of the EMRC for the term commencing 25 November 2021 until 2023.

Cr Congerton was congratulated.



EASTERN METROPOLITAN REGIONAL COUNCIL

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



EASTERN METROPOLITAN REGIONAL COUNCIL

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
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

25 November 2021

Ballot Paper for the Election of the Legal Committee Deputy Chairman

How to Vote

Place a tick in the box next to the candidate you want to elect

Do not make any other marks on the Ballot Paper

Cr First Name, Last Name

Cr First Name, Last Name

Cr First Name, Last Name

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

Nil

15 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 HAMILTON

THAT WITH THE EXCEPTION OF THE CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, MANAGER PROCUREMENT AND GOVERNANCE 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 6.45pm.

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

15.1 LEGAL MATTER UPDATE [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)] (D2021/23048)

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

See 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 HAMILTON SECONDED CR OSTASZEWSKYJ

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 6.49pm.

Recording of the resolutions passed behind closed doors, namely:

15.1 LEGAL MATTER UPDATE [CONFIDENTIAL MATTER IN ACCORDANCE WITH LOCAL GOVERNMENT ACT 1995 s.5.23(2)(d)]

LEGAL COMMITTEE RESOLUTION(S)

MOVED CR CONGERTON SECONDED CR HAMILTON

THAT:

1. THE LEGAL COMMITTEE NOTES THE CONFIDENTIAL REPORT.
2. THE REPORT AND ATTACHMENTS REMAIN CONFIDENTIAL AND BE CERTIFIED BY THE CHAIRMAN AND THE CEO.

CARRIED UNANIMOUSLY

16 FUTURE MEETINGS OF THE LEGAL COMMITTEE

Meetings of the Legal Committee are held as required.

17 DECLARATION OF CLOSURE OF MEETING

There being no further business the meeting was closed at 6.49pm.