



# AGENDA

D2024/26777

## Legal Committee

17 October 2024

### Notice of Meeting

Dear Councillors

The next Legal Committee meeting will be held before the Ordinary Meeting of Council on Thursday, 17 October 2024.

The Legal Committee Meeting will commence at 6:00pm.

The meeting is scheduled to be held in person at the EMRC Administration Centre, 1st Floor, 226 Great Eastern Highway, Ascot WA 6104



Marcus Geisler | Chief Executive Officer

11 October 2024

This Meeting of the Legal Committee will be held to address a confidential matter for which the meeting will be closed to the public in accordance with s.5.23(2) of the *Local Government Act 1995*.



## Legal Committee Members

Cr Paul Poliwka	Committee Member	Town of Bassendean
Cr Michelle Sutherland	Committee Member	City of Bayswater
Cr Luke Ellery	Committee Member	Shire of Mundaring
Cr Jennifer Catalano	Committee Member	City of Swan

## Legal Committee Deputies

Cr Tallan Ames	Deputy Committee Member	Town of Bassendean
Cr Filomena Piffaretti	Deputy Committee Member	City of Bayswater
Cr Doug Jeans	Deputy Committee Member	Shire of Mundaring
Cr Aaron Bowman	Deputy Committee Member	City of Swan

## Legal Committee Second Deputies

Cr Kathryn Hamilton	Committee Second Deputy Member	Town of Bassendean
Cr Giorgia Johnson	Committee Second Deputy Member	City of Bayswater
Cr John Daw	Committee Second Deputy Member	Shire of Mundaring
Cr Ian Johnson	Committee Second Deputy Member	City of Swan

## **Legal Committee Meeting**

**17 October 2024**

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**1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS**

**1.1 ACKNOWLEDGEMENT OF COUNTRY**

We wish to acknowledge the traditional custodians of the land on which we meet today and to pay our respects to elders past, present and future.

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

**3 DISCLOSURE OF INTEREST**

**4 ANNOUNCEMENTS BY THE CHAIRPERSON OR PRESIDING MEMBER**

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

5.1 ELECTION OF A CHAIRPERSON OF THE LEGAL COMMITTEE (LC) (D2024/26897)

5.2 ELECTION OF A DEPUTY CHAIRPERSON OF THE LEGAL COMMITTEE (LC) (D2024/26898)



## 5.1 ELECTION OF A CHAIRPERSON OF THE LEGAL COMMITTEE (LC)

D2024/26897

### PURPOSE OF REPORT

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

### KEY POINT(S)

- It is a statutory requirement that the Committee elect a Chairperson 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 Chairperson.

### SOURCE OF REPORT

Chief Financial Officer

### BACKGROUND

- 1 At the Special Meeting of Council held on Thursday 9 November 2023, the EMRC Chairperson and Deputy Chairperson were elected and members to the EMRC Committees were appointed, including the LC.

#### LC Members 2023 - 2025

Participant Local Government	Committee Member	Deputy Member	Second Deputy Member
Bassendean	Cr Paul Poliwka	Cr Tallan Ames	Cr Kathryn Hamilton
Bayswater	Cr Michelle Sutherland	Cr Filomena Piffaretti	Cr Giorgia Johnson
Mundaring	Cr Luke Ellery	Cr Doug Jeans	Cr John Daw
Swan	Cr Jennifer Catalano	Cr Aaron Bowman	Cr Ian Johnson

- 2 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.
- 3 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.



## REPORT

- 4 The CEO will preside at the meeting until the Office of Chairperson of the LC is filled.
- 5 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 Chairperson of the LC:
  - 1. Legal Committee Terms of Reference;
  - 2. A blank Nomination Form for the Office of Chairperson of the Legal Committee, Nominate Oneself
  - 3. A blank Nomination Form for the Office of Chairperson of the Legal Committee, Nominate Another
  - 4. A blank Ballot Paper for Election of Chairperson of the Legal Committee
  - 5. Declaration by Elected Legal Committee Chairperson
- 6 Ballot papers will be made available prior to voting.
- 7 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

- 8 Reporting on EMRC Strategic Policy implications align with the revised Strategic Plan 2017-2027 and the Sustainability Strategy.

## FINANCIAL IMPLICATIONS

- 9 Nil

## SUSTAINABILITY IMPLICATIONS

- 10 Nil

## RISK MANAGEMENT

**Risk Failure to elect and appoint a presiding member will be 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 Chairperson of the Legal Committee		



## MEMBER COUNCIL IMPLICATIONS

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

## ATTACHMENT(S)

1. Legal Committee Terms of Reference (D2024/26899)
2. A blank Nomination Form for the Office of Chairperson of the Legal Committee, Nominate Oneself (D2024/26900)
3. A blank Nomination Form for the Office of Chairperson of the Legal Committee, Nominate Another (D2024/26900)
4. Ballot Paper – Election of Legal Committee Chairperson (D2024/26932)
5. Declaration by Elected Legal Committee Chairperson (D2024/26936)

## VOTING REQUIREMENT

Secret Ballot

## RECOMMENDATION(S)

That the members of the Legal Committee elect a Chairperson.

## COUNCIL RESOLUTION(S)

MOVED

SECONDED



# 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, Chairperson 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 Meeting Procedures Local Law 2023*.
- 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 Meeting Procedures Local Law 2023*.
- 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 Chairperson, 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 Meeting Procedures Local Law 2023*  
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 Chairperson of the Legal Committee

To the Chief Executive Officer

I hereby nominate myself, \_\_\_\_\_  
for the position of Chairperson 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 Chairperson of the Legal Committee

To the Chief Executive Officer

I hereby nominate \_\_\_\_\_  
for the position of Chairperson 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 Chairperson 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

17 October 2024

## Ballot Paper for the Election of the Legal Committee Chairperson

### How to Vote

*(If there are 2 candidates)*

Write the number 1 in the square next to the name of the candidate you want to vote for.

*(If there are 3 or more candidates)*

Write the number 1 in the square next to the name of the candidate who is your first choice.

If you want to, you may show more choices by writing consecutive numbers in the squares next to the names of other candidates in the order of your choice, starting with the number 2 up to the number of candidates listed below.

You do not need to write a number in all the squares.

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



***Local Government Act 1995***  
***Local Government (Constitution) Regulations 1998***

**Declaration by Elected Chairperson**  
**Legal Committee**

I \_\_\_\_\_ of \_\_\_\_\_  
have been elected to the Office of Chairperson of the Eastern Metropolitan Regional Council Legal Committee, declare that I take the office upon myself and will duly, faithfully, honestly and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgement and ability, and will observe the *Local Government (Model Code of Conduct) Regulations 2021*.

Declared at the EMRC Administration Office  
1<sup>st</sup> Floor  
226 Great Eastern Highway  
Ascot WA 6104

**17 October 2024**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date



## 5.2 ELECTION OF A DEPUTY CHAIRPERSON OF THE LEGAL COMMITTEE (LC)

D2024/26898

### PURPOSE OF REPORT

The purpose of this report is to provide for an election to be conducted for the Office of Deputy Chairperson 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 Chairperson.

### SOURCE OF REPORT

Chief Financial Officer

### BACKGROUND

- 1 At the Special Meeting of Council held on Thursday 9 November 2023, the EMRC Chairperson and Deputy Chairperson were elected and members to the EMRC Committees were appointed, including the LC.

#### LC Members 2023 - 2025

Participant Local Government	Committee Member	Deputy Member	Second Deputy Member
Bassendean	Cr Paul Poliwka	Cr Tallan Ames	Cr Kathryn Hamilton
Bayswater	Cr Michelle Sutherland	Cr Filomena Piffaretti	Cr Giorgia Johnson
Mundaring	Cr Luke Ellery	Cr Doug Jeans	Cr John Daw
Swan	Cr Jennifer Catalano	Cr Aaron Bowman	Cr Ian Johnson

- 2 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.
- 3 It is a requirement of Schedule 2.3 of the Act that the election of the Deputy Chairperson is conducted by the Chairperson and the nominations for the Office are to be given to the Chief Executive Officer (CEO) in writing before the meeting or the Chairperson during the meeting before the close of nominations. Furthermore, if a member is nominated by another member, the Chairperson is not to accept the nomination unless the nominee has advised the Chairperson, 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.

## REPORT

- 4 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 Chairperson of the LC:
1. A blank Nomination Form for the Office of Deputy Chairperson of the Legal Committee, Nominate Oneself;
  2. A blank Nomination Form for the Office of Deputy Chairperson of the Legal Committee, Nominate Another;
  3. A blank Ballot Paper for Election of Deputy Chairperson of the Legal Committee; and
  4. Declaration by Elected Legal Committee Deputy Chairperson.
- 5 Ballot papers will be made available prior to voting.
- 6 The completed nomination forms are to be given to the CEO before the meeting or when called for by the Chairperson when dealing with this item at the meeting.

## STRATEGIC/POLICY IMPLICATIONS

- 7 Reporting on EMRC Strategic Policy implications align with the revised Strategic Plan 2017-2027 and the Sustainability Strategy.

## FINANCIAL IMPLICATIONS

- 8 Nil

## SUSTAINABILITY IMPLICATIONS

- 9 Nil

## RISK MANAGEMENT

**Risk Failure to elect a Deputy Chairperson will impact the fulfilment of the Chairperson's role in the event the Chairperson is unavailable**

Consequence	Likelihood	Rating
Moderate	Unlikely	Moderate
Action/Strategy		
➤ ▯ Elect and appoint a Deputy Chairperson of the Audit Committee		





## MEMBER COUNCIL IMPLICATIONS

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

## ATTACHMENT(S)

1. A blank Nomination Form for the Office of Deputy Chairperson of the Legal Committee, Nominate Oneself (D2024/26909)
2. A blank Nomination Form for the Office of Deputy Chairperson of the Legal Committee, Nominate Another (D2024/26909)
3. Ballot Paper – Election of Legal Committee Deputy Chairperson (D2024/26912)
4. Declaration by Elected Legal Committee Deputy Chairperson (D2024/26915)

## VOTING REQUIREMENT

Secret Ballot

## RECOMMENDATION(S)

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

## COUNCIL RESOLUTION(S)

MOVED

SECONDED



## EASTERN METROPOLITAN REGIONAL COUNCIL

### Nomination for Deputy Chairperson of the Legal Committee

To the Chief Executive Officer

I hereby nominate myself, \_\_\_\_\_  
for the position of Deputy Chairperson of the Eastern Metropolitan Regional Council for the term of Office commencing on the date of the election and continuing until a new Deputy Chairperson is elected in accordance with Clause 7.4 of the *EMRC Establishment Agreement*.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date



## EASTERN METROPOLITAN REGIONAL COUNCIL

### Nomination for Deputy Chairperson of the Legal Committee

To the Chief Executive Officer

I hereby nominate \_\_\_\_\_  
for the position of Deputy Chairperson of the Eastern Metropolitan Regional Council for the term of Office commencing on the date of the election and continuing until a new Deputy Chairperson is elected in accordance with Clause 7.4 of the *EMRC Establishment Agreement*.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\* I \_\_\_\_\_ hereby certify that I accept the above nomination to the position of Deputy Chairperson of the Eastern Metropolitan Regional Council.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

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



# EASTERN METROPOLITAN REGIONAL COUNCIL

17 October 2024

## Ballot Paper for the Election of the Legal Committee Deputy Chairperson

### How to Vote

*(If there are 2 candidates)*

Write the number 1 in the square next to the name of the candidate you want to vote for.

*(If there are 3 or more candidates)*

Write the number 1 in the square next to the name of the candidate who is your first choice.

If you want to, you may show more choices by writing consecutive numbers in the squares next to the names of other candidates in the order of your choice, starting with the number 2 up to the number of candidates listed below.

You do not need to write a number in all the squares.

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



***Local Government Act 1995***  
***Local Government (Constitution) Regulations 1998***

**Declaration by Elected Deputy Chairperson**  
**Legal Committee**

I \_\_\_\_\_ of \_\_\_\_\_  
have been elected to the Office of Deputy Chairperson of the Eastern Metropolitan Regional Council Legal Committee, declare that I take the office upon myself and will duly, faithfully, honestly and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgement and ability, and will observe the *Local Government (Model Code of Conduct) Regulations 2021*.

Declared at the EMRC Administration Office  
1<sup>st</sup> Floor  
226 Great Eastern Highway  
Ascot WA 6104

**17 October 2024**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date



