

# AGENDA

D2021/23050

## Legal Committee

25 November 2021

### Notice of Meeting

Dear Councillors

The next Legal Committee meeting will be held following the Ordinary Meeting of Council on Thursday, 25 November 2021. The Ordinary Meeting of Council will commence at 6:00pm.



Marcus Geisler | Chief Executive Officer

19 November 2021

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*.

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## Legal Committee Members

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

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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 INTERESTS**

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

**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)**

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**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**

<b>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</b>		
<b>Consequence</b>	<b>Likelihood</b>	<b>Rating</b>
Moderate	Unlikely	Moderate
<b>Action/Strategy</b>		
➤ Elect a Chairman of the Legal Committee		

**MEMBER COUNCIL IMPLICATIONS**

<b>Member Council</b>	<b>Implication Details</b>
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.



# 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**

<b>Adopted   Reviewed by Council</b>	25 March 2021 23 September 2021
<b>Next Review</b>	Following the Local Government Ordinary Elections in 2023
<b>Responsible Business Unit</b>	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

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## **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**

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

**MEMBER COUNCIL IMPLICATIONS**

<b>Member Council</b>	<b>Implication Details</b>
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.



# 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 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



**6 PETITIONS, DEPUTATIONS AND PRESENTATIONS**

**7 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**7.1 MINUTES OF THE LEGAL COMMITTEE MEETING HELD ON 29 SEPTEMBER 2021**

That the minutes of the Legal Committee Meeting held on 29 September 2021 which have been distributed, be confirmed.

**8 QUESTIONS BY MEMBERS FOR WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**9 QUESTIONS BY MEMBERS WITHOUT NOTICE**

**10 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 or Committee 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 15 of this agenda.

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

**11 BUSINESS NOT DEALT WITH FROM A PREVIOUS MEETING**

Nil

**12 REPORTS OF EMPLOYEES**

Nil

**13 REPORTS OF DELEGATES**

Nil

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

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