



Item No: 5.2

Date: 26 June 2023

Attachment: A

Meeting: Council

Title: Administrative and Legal Response to Motion without Notice **CNC325/22-23 – Legal Advice**

Responsible Manager: Acting Chief Executive Officer, Scott Reardon

Author: Acting Chief Executive Officer, Scott Reardon

Key Pillar: **Financial Guiding Principle 4 – Robust and transparent allocation and prioritisation of resources**

Key Focus Area: **Strategic Community Plan Focus area 3 - Transparent and accountable local tier of Government**

Type of Report: **Decision Required**

Pursuant to Section 83(5) of the *Local Government Act 1999* (the **Act**), the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Act on the basis that the information contained in the attachment is information of the nature specified in subsections 90(3)(h) of the Act being legal advice in relation to Item 4.1 of the Agenda

Recommendation (Public)

Pursuant to s90(3)(h)

Pursuant to section 90(2) of the Act Council orders that all members of the public except Acting Chief Executive Officer Scott Reardon, Group Manager Assets & Infrastructure James Kelly, Group Manager Public Relations & Community Services Sarah Spencer, and Group Manager Corporate Service Vikki Purtle be excluded from attendance at the meeting for Agenda Item 5.2 Administrative and Legal Response to Motion without Notice **CNC325/22-23 – Legal Advice**

The Council is satisfied that, pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is legal advice provided by Council's Lawyers in regard to the matter.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because advice is subject to professional privilege.

Recommendation (Public)

That Council receive and note the legal advice, appearing as Attachment A, in support of Agenda Item 4.1 *Administrative and Legal Response to Motion without Notice* **CNC325/22-23** report.

Recommendation (Public)Pursuant to s.91(7)

That having considered Agenda Item 5.2 Administrative and Legal Response to Motion without Notice **CNC325/22-23** – Legal Advice in confidence under section 90(2)&(3)(h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the attachments relevant to this Agenda Item be retained in confidence 12 months excepting that Council authorises the release of the minutes to substantive party/parties to enable enactment of the resolution and that pursuant to Section 91(9)(c) of the *Local Government Act 1999* the Council delegates to the Chief Executive Officer the power to review and revoke this Order.

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

Attachment

Attachment A	Legal Advice in relation to Item 4.1 of the Agenda
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Scott Reardon

From: Tracy Riddle <triddle@kelledyjones.com.au>
Sent: Monday, 26 June 2023 11:34 AM
To: Scott Reardon
Subject: Request for Advice - Motion Without Notice (KJ 220537)

Caution: This is an external email. Please take care when clicking links or opening attachments.

Hi Scott

You have advised at its meeting of Monday 19 June 2023, the Council considered a motion, the effect of which would have been that the Mayor (or the Deputy in her absence), attend at meetings of the Design Team (the **Team**) as a 'delegate' of the Council to participate in discussion and decision making.

For the reasons set out below, it is my advice that a motion to that effect would be *ultra vires* (beyond the power of the Council) and **not capable of acceptance** by the Mayor under regulation 12(7) of the *Local Government (Procedures at Meetings) Regulations 2013* (the **Meetings Regulations**). However, it would be open for the Council to resolve that the Mayor (or Deputy in her absence) attend at such meetings in the role of 'observer' only.

I advise as follows:

The Team is an informal operational working group, established by Administration and Walter Brooke Architects to oversee the general day-to-day coordination and management of the Walkerville Oval Redevelopment, and more recently, the 39 Smith Street Refurbishment Project.

It consists of a staff member from Administration and a number of contractors engaged to do works and provide professional services and advice with regard to architecture, structural and services engineering, kitchen design, sustainability, building rules consent, wayfinding, cost estimation etc.

Whilst the Team has been established administratively for the purposes of overseeing the specified projects, it **has not** been established under section 41 of the *Local Government Act 1999* (the **Act**). It is purely 'operational' in nature.

In which case, whilst it is open for the Council consider resolving the Mayor (or Deputy Mayor in her absence) attend at the meetings of the Team, such attendance **can only** be in the nature of an 'observer' of the decision making thereof (as proposed by Crs Vanstone, and Allanson and Nenke).

This is because the Council enjoys **no decision making authority** with respect to the 'workings' or decision making of the Team (it not being a section 41 Committee which such delegations in place).

Accordingly, it would be beyond the power of the Council to resolve that any Member (including the Mayor) attend at the meetings of the Team as a 'delegate' of the Council, this falling outside of the scope of the Member's (including Principal Member's) roles and responsibilities under sections 58 and 59 of the Act.

For these reasons, the motion, as currently proposed, cannot be accepted by the Mayor, as being beyond the power of the Council under regulation 12(7) of the Meetings Regulations.

However, if the Council, as governing body, would like to progress the 'intent' of proposed motion, without otherwise infringing upon its statutory roles and obligations (and those of its individual Members), noting any such attendance **must be** in the nature of an observer of the decision making, we recommend a motion to the following effect **would be** within the power of the Council and capable of acceptance by the Mayor:

That Council resolves:

Mayor Jones, or in her absence, the Deputy Mayor be invited to attend as an observer at all meetings and design discussions between the administration, the architects and the design team for the Walkerville Oval Redevelopment and 39 Smith Street Project.

Please let me know if we can assist further.

Regards

Tracy

Tracy Riddle
Lawyer

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