



**AUDIT COMMITTEE  
MINUTES**

for the meeting held on Tuesday 10 May 2011  
in the Margaret Coates Boardroom

**(File Ref: FM.MEE.1 Synergy Ref: AM1118260)**

The Chair declared the meeting open at 6.00 pm.

**1.0 ATTENDANCE:**

<b>Mayor</b>	M Evans, JP (Member)
<b>Councillors:</b>	
Cr Wellington	(Chair)
Cr Leavesley	(Member)
Cr Hammond	(Member)
Cr Matla	(Member)
Cr D Bostock	(Observer)
Cr J Bostock	(Observer)
Cr D Dufty	(Observer)
Cr C Holden	(Observer)
<b>Staff:</b>	
F James	Chief Executive Officer (CEO)
S Jamieson (Secretariat)	Executive Manager Business Governance (EMBG)
<b>Apologies/Leave of Absence:</b>	
Cr D Wolfe	(Observer)

**2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

In response to Councillor J Bostock’s request (Attachment B) to have the Declarations of Interest made by Councillor D Bostock and J Bostock removed from the unconfirmed minutes of the Audit Committee meeting held on 12 April 2011, the CEO advised that the “*Rules of Conduct Regulations*” apply to a council member whether or not acting as a committee member in accordance with the *Local Government (Rules of Conduct) Regulations 2007*.

Councillor J Bostock challenged this advice stating that the *Local Government Act 1995* (the Act) takes precedence over the Regulations and that she declared a Proximity Interest, based on the CEOs advice, which is incorrect, and that is why the request for removal of the declaration was requested, as a Proximity Interest only pertains to Land.

<b>Presiding Member</b>	
<b>EMT Member Responsible for Committee:</b>	

Item 2.0 continued.

CEO advised Cr J Bostock and the Committee that:

- sections of the Act cannot be read in isolation and that the advice to declare a Proximity Interest is correct for the purpose of Subdivision 6 of the Act (Disclosure of financial interest) concerning a land transaction; and
- as Cr J Bostock is related to the plaintiff and the matter was not land related, she believes her advice regarding a 'Proximity Interest' was appropriate.

CEO advised Councillor J Bostock that she is entitled to seek legal advice to the contrary.

CEO advised the Committee that it is up to the Committee to determine if the declarations should remain detailed in the Minutes.

**ITEM 2.0 – COMMITTEE RESOLUTION**

**MOVED: COUNCILLOR MATLA**  
**SECONDED: COUNCILLOR HAMMOND**

(i) That the Declarations of Interest made by Councillor D Bostock and J Bostock remain detailed in the Minutes of the Audit Committee meeting held on 12 April 2011.

(ii) The minutes of the Audit Committee meeting held on 12 April 2011, as previously distributed, be confirmed as a true and accurate record of proceedings (Attachment A). Subject to the following corrections:

- Committee Item 6.0 – Legal Claim Against the City  
Record of Vote: 4-1, Against: Cr Leavesley
- Committee Item 4.0 – Attendance: Add Councillor Holden as an attendee (Observer)
- Item Numbers on page 11, corrected from: (6 to 7, 7 to 8, 8 to 9).

**MOTION CARRIED 5-0**

**3.0 DISCLOSURE OF INTEREST**

Name	Item Number	Nature of Interest
Nil	Nil	Nil

**4.0 ITEMS FOR DISCUSSION**

**4.1 REPORT ON ALAC OPERATIONS**

Reporting Officer: Chief Executive Officer

**Update:**

The CEO advised the Committee that the report on the Albany Leisure & Aquatic Centre (ALAC) operations will be presented to the May Ordinary Council Meeting.

Councillor Leavesley requested the Chief Executive Officer to investigate if his Rescission Motion, being:

*“That the restrictions imposed on the Albany Leisure & Aquatic Centre (ALAC) Gymnasium Operations detailed at report item 16.1 which was moved at an ordinary meeting of council held on 16 January 2007 and later detailed in the Memorandum of Understanding (MOU) made between the City of Albany and Local Health & Fitness Centre Operators be reconsidered.”*

is still required.

**Update:** Councillor Leavesley was advised:

- There is no signed Memorandum of Understanding (MOU) or Agreement (MOA) held by the City of Albany, with all parties signatures.
- A revocation motion regarding the MOU is not required.
- Council is within its right to change its position in regards to floor space and equipment allocation (*under Councillor Leavesley’s Revocation Motion, Recommendation 2*).

EMBG advised the Committee that the Revocation Motion should be addressed prior to the Responsible Officer Recommendation.

CEO advised the Committee that herself and Ms Hill, Team Leader Community Services, have met with the staff of the ALAC to advise them of the proposed recommendations for the Ordinary Council Meeting and the Council Report Item has been finalised.

Committee queried if there are significant changes to the Responsible Officer’s Recommendation and if the Report Item would still be discussed behind closed doors.

CEO advised Committee only small changes have been made to the Responsible Officer’s Recommendation. However the detail in the report has been significantly increased to ensure that as much information as possible is disclosed to the public and that it is Responsible Officer’s intent to discuss the report in public.

The Committee queried the status of the motion that was resolved in July 2010 in regards to the ALAC Café.

EMBG advised Committee: Council resolved to continue to operate the ALAC Café with City of Albany staff as a community service for a further 12 months and that a report be prepared for Council review over a twelve month period from 1 July 2010 to 30 June 2011.

**Action: Confirm that a copy of resolution that restricts the Operation of the ALAC Gymnasium is detailed in Revocation Motion presented to May Ordinary meeting of Council.**

Item 4.1 continued.

**Action: Copy of the Resolution of Council (OCM 20 July 2010) in regards to the ALAC Cafe be distributed to all Councillors.**

**4.2 BUDGET - STATUS OF THE EBA AGREEMENT NEGOTIATIONS**

- Reporting Officer: CEO.

**Update:** CEO advised Committee that a management proposal was presented to all affected staff over a week ago and that a follow up meeting will be conducted on the 11 May 2010. Negotiations are close to finalisation.

**4.3 9001 SURVEILLANCE INTERNAL AUDIT**

- Reporting Officers: EM Business Governance

**ISO 9001 Surveillance Internal Audit**

**Update:** The Committee was advised at the last Committee meeting that the Surveillance Report was still being finalised at the time of producing that agenda.

A copy of the report was distributed to all Councillors in attendance at the meeting and placed in the Councillors' Workstation.

**Action:** Any questions pertaining to the ISO9001 Audit Report to be emailed to the EM Business Governance and report back at the next meeting.

**4.4 FINANCIAL INVESTMENT OF SURPLUS FUNDS**

- Reporting Officers: EM Business Governance

**Update:** Audit Committee Recommendations adopted at 19 April 2011 Ordinary Council Meeting.

CEO advised the Committee that the revised *Investment of Surplus Funds Policy* will be presented to the Finance Strategy Committee when it next meets, prior to a recommendation being presented to Council.

Committee queried the Terms of Reference for the Finance Committee.

**Action:** Draft Finance Strategy Advisory Committee Terms of Reference to be prepared for Finance Committee Review when it next meets.

**4.5 DECLARATIONS OF INTEREST**

- Reporting Officer: Chief Executive Officer.

Update: CEO provided the Committee with the following advice:

CEO advised that this is a follow on from the issues raised by Councillor J Bostock which highlighted that there are a number of resources available to Councillors on how they could determine an appropriate declaration of interest.

CEO advised the Committee that pieces of legislation, guidelines, and/or sections of the Act should not be interpreted in isolation, for example: "Proximity Interest", under Division 6 of the Local Government Act.

This particular section in the Act deals with a Proximity Interest in relation to land transactions, but there can be other interpretations of a Proximity Interest, for example the following scenarios were presented:

**Scenario 1:**

You have a cousin "Mr Smith", you have never seen for 30 years, you wouldn't know him if you passed him on the street.

Mr Smith has a development application before Council or is a tender applicant.

You have determined that you:

- have no financial interest in this matter; and
- are totally impartial in the matter,

But for probity reasons you have decided you will declare a Proximity Interest, based on Relationship, which some may consider "Proximate" (by blood).

Cr Leavesley queried the use of "Proximity Interest" declaration based on his Western Australian Local Government (WALGA) training and handouts he received in support of that training.

The CEO advised the Committee that a declaration of interest is a personal decision of the member and is it not for another person to judge (unless directed by legislation, such as section 5.106 of the Local Government Act).

Where advice is ought from the CEO on declaring interests, the member can chose to take or dismiss the advice, base their decision on another interpretation (i.e. WALGA's, the Western Australian Crime and Corruption Commission (CCC); and/or general law).

Ultimately, it is the individual members' responsibility to make a decision, whether to declare, or how to declare.

Item 4.5 continued.

**Scenario 2.**

You own 100 acres, the person next door to you owns 4 acres, and next door to them is a Motocross Track.

The person who owns the 4 acres immediately next to the Motocross track brings a noise complaint to Council.

You are impartial because on your 100 acres you do not hear the noise, you are not friends with your neighbour and you have no financial interest in the matter.

But for probity (for the sake of public transparency) the Councillor could make a Proximity Disclosure based on the relationship (neighbourhood).

It should be noted that in scenario 2 the owner of the 100 acres would not be covered by Proximity Interest, under the Act.

The CEO clarified that a Proximity Interest in the Act only applies to adjoining land owners.

The Act does not cover every scenario; however the State has made it a statutory requirement, through the Act, to declare a Proximity Interest in relation to land, for adjoining land owners.

**5 GENERAL BUSINESS**

**5.1 REVOCATIONS MOTION – AGENDA BRIEFING AND COUNCIL MEETING CALENDAR 2011/12**

- **Raised by:** Councillor Leavesley

CEO advised the Committee:

That she has communicated to Cr Leavesley that as CEO, that under current Standing Orders Local Law 2009 (Standing Orders), a change to the Briefing Calendar has administrative implications on the City and that a revocation motion is required under our current Standing Orders.

A recommendation was made to Council to implement a new Agenda Briefing time frame, which requested Council hold the Agenda Briefing 14 days prior to the monthly Ordinary Council Meeting.

This recommendation was endorsed by Council at the 15 February 2011 Ordinary Meeting of Council.

In accordance with the Standing Orders, a member wishing to move revocation motion at a meeting must give to the CEO notice of the revocation motion.

The CEO requested the Committee provide the City with the opportunity to trial this new process; however Council can determine otherwise.

**5.2 DRAFT AGENDA**

- **Raised by:** Councillor Leavesley

Concern was raised in regards to the implementation of a “Draft” Agenda.

The CEO advised the Committee that she has met with the Mayor and Deputy Mayor to discuss concerns raised by some member of Council in regards to the implementation of this new process.

The introduction of the draft agenda is based on the current Standing Orders, which states:

*“The purpose of the agenda briefing session is to provide an opportunity for elected members and persons in the public gallery to ask questions on the content of the proposed agenda.”*

Taken literally, the word proposed, implies the Briefing Agenda is open to change.

The Draft Briefing Agenda was introduced to give Council and members of the public greater notice of proposed recommendations being presented for resolution by Council.

The Committee discussed the pro and cons of the introduction of the new process and agreed to provide the CEO with every opportunity for this new process to be trialled over a 6 month period, but reviewed prior to the Local Government Elections to be held on the 15 October 2011.

The CEO advised the Committee that an Information Paper has been developed for Council and public information regarding the above issues.

**5.3 ALTERNATE MOTIONS/URGENT ITEMS FROM COUNCILLORS**

- Councillor J Bostock

Councillor J Bostock raised concern of the restrictions imposed on elected members of Council by the current Standing Orders in particular in moving an Alternate Motion to an Amended Responsible Officer’s Recommendation.

CEO advised the Committee:

Under the *Standing Orders*, elected members are given the opportunity to move a Motion as Urgent Business in the event that a Responsible Officer’s Recommendation changes.

Councillor Leavesley left the meeting at 6.57pm.

Item 5.3 continued.

**ITEM 5.3 – COMMITTEE RESOLUTION**

**MOVED: COUNCILLOR HAMMOND  
 SECONDED: COUNCILLOR WELLINGTON**

**That COUNCIL:**

- (i) Gives the opportunity to the Chief Executive Officer to fully implement the new process adopted by Council at the 15 February 2011 Ordinary Meeting of Council, being:**

*“Agenda Briefing session be held two weeks (14 days) prior to Ordinary meetings of Council”;*

- (ii) Reviews the new process at the 11 October 2011 Ordinary Meeting of Council.**

**MOTION CARRIED 4-0**

**5.4 EISTEDDFOD – CLARIFY ACTUAL FUNDING SUPPORT GIVEN**

- Councillor Holden

Committee requested the CEO to clarify and advise Council what funding support was given to Eisteddfod and the status of the proposed Memorandum of Agreement (MOA).

**5.5 CULL ROAD UPDATE**

CEO advised Committee of the current status of Cull Road development land sales.

**5.6 BUDGET UPDATE**

CEO advised that the Council will be presented with a balance proposed budget to be reviewed at:

- Special Budget Council Workshop;
- Special Audit Committee; and
- Committee Recommendations to be presented to Full Council at the June 2011 Ordinary Meeting of Council.

**6 ITEMS TO BE DISCUSSED AT NEXT MEETING**

**7 DATE OF NEXT MEETING:** Tuesday 14 June 2011

**8 CLOSURE OF MEETING:** The Chair declared the meeting closed 7.13pm.

**Attachment:**

- A. Confirmed Minutes of the 14 April 2011 Audit Committee
- B. Correspondence – Extract, RE: Request from Councillor J Bostock



**ACTION LIST**

<b>Item</b>	<b>Actions</b>
<b>4.1</b>	Confirm that a copy of resolution that restricts the Operation of the ALAC Gymnasium is detailed in Revocation Motion presented to May Ordinary meeting of Council.
<b>4.1</b>	Copy of the Resolution of Council (OCM 20 July 2010) in regards to the ALAC Cafe be distributed to all Councillors.
<b>4.3</b>	Any questions pertaining to the ISO9001 Audit Report to be emailed to the EM Business Governance and reported back at the next meeting.
<b>4.4</b>	Draft Finance Strategy Advisory Committee Terms of Reference to be prepared for Finance Committee Review.
<b>5.6</b>	Committee requested the CEO to clarify and advise Council what funding support was given to Eisteddfod and the status of the proposed Memorandum of Agreement (MOA)