

CITY OF CANNING

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MINUTES OF SPECIAL COUNCIL MEETING**HELD IN THE COUNCIL CHAMBERS ON****THURSDAY, 19 FEBRUARY 2009 AT 7:18PM****1. PRESENT**

Mayor G Delle Donne JP (Chairman)
Cr G Barry (Mason)
Cr L J Elliott (Mason)
Cr B A Olsen (Beeliar)
Cr S W Clarke JP (Beeliar)
Cr D F Morgan OAM (Beeliar)
Cr B E Mason (Bannister)
Cr G J Wibberley (Bannister)
Cr M T Wheaton (Nicholson)
Mr G Ponton (Executive Strategic and Regulatory Services)
Mr A Sharpe (Executive Finance and Client Services)
Mr S Atwell (Acting Executive Engineering and Technical Services)
Mrs L M Gyomorei (Minute Secretary)
Mr M Hardy (Hardy Bowen Lawyers)

2. APOLOGIES

Nil.

3. LEAVE OF ABSENCE

Cr Daly from 9 to 20 February 2009 (Ordinary Council Meeting of Tuesday, 10 February 2009).

4. DECLARATION OF MEMBERS' AND OFFICERS' INTERESTS**Declaration of Interest**

Cr Elliott **CM-039-09** - Legal Advice - Southern Metropolitan Regional Council Membership

Nature of Interest: My daughter lives in the area affected by the odour.

Cr Elliott sought a ruling on his interest in this item of business on the grounds that his daughter lives in the area affected by the odour. Cr Elliott withdrew from the Council Chambers at 7:19pm.

MOVED Cr Mason, Seconded Cr Morgan, that the interest declared by Cr Elliott in CM-039-09 - Legal Advice - Southern Metropolitan Regional Council Membership, is common to a significant number of electors or ratepayers.

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CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Clarke, Mason, Morgan, Olsen, Wheaton and Wibberley

Cr Elliott returned to his chair at 7:20pm and was informed of Council's decision.

5. QUESTION TIME

Nil.

6. DECLARATION BY MEMBERS THAT THEY HAVE GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPER PRESENTLY BEFORE THE MEETING

Adjournment

At 7:21pm Cr Clarke referred to Confidential Report CM-039-09, placed on Members tables prior to the Meeting, and requested an adjournment for fifteen minutes.

MOVED Cr Clarke, Seconded Cr Barry, that the Meeting stand adjourned for fifteen minutes to allow Members time to read Confidential Report CM-039-09.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Clarke, Elliott, Mason, Morgan, Olsen, Wheaton and Wibberley

The Meeting reconvened at 7:36pm with the same Members and Officers present in the Council Chambers.

Members then advised having given due consideration to all matters contained in the Business Paper presently before the Meeting.

7. BUSINESS BEFORE THE MEETING

Prior to proceeding with the business before the Meeting, the Mayor advised Members that Mr Michael Hardy of Hardy Bowen Lawyers, was present outside of the Council Chambers, and sought Member's advice if they wished Mr Hardy to attend in order that he may provide technical input to the Meeting.

It was then:

MOVED Cr Clarke, Seconded Cr Morgan, that Mr Michael Hardy of Hardy Bowen Lawyers, be invited to attend the Meeting.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Clarke, Elliott, Mason, Morgan, Olsen, Wheaton and Wibberley

At 7:35pm, Mr Hardy entered the Council Chambers.

The Mayor then referred to the business before the Meeting, as detailed in the Notice Paper, namely:

Pursuant to Section 5.4 of the Local Government Act, and Clause 2.4 of Standing Orders, the Mayor provided notice to the Acting Chief Executive Officer (memorandum of 19 February 2009 - *Reference cm082feb09*), for the calling of a Special Council Meeting, to be held at 7:00pm on Thursday, 19 February 2009. The purpose of the Special Meeting is to consider Confidential Report CM-039-09 - Legal Advice - Southern Metropolitan Regional Council Membership.

Section 5.4 of the Local Government Act states:

5.4 Calling Council Meetings

An ordinary or a special meeting of a council is to be held -

- (a) if called for by either -

- (i) the mayor or president; or
- (ii) at least one third of the councillors,

In a notice to the Chief Executive Officer setting out the date and purpose of the proposed meeting; or

- (b) if so decided by the Council.

City of Canning Local Law No 1 - Standing Orders (Meeting Procedure), states:

2.4 Calling of Special Meeting

- 2.4.1 The Chief Executive Officer is to convene a Special Meeting by giving each Member notice, before the meeting, of the date, time, place and purpose of the Meeting.
- 2.4.2 Notice of a Special Meeting may be given at any time prior to the time of the meeting given in the notice.
- 2.4.3 Notice of a Special Meeting should be given in writing if the time available for giving

Members were advised by telephone contact of this Special Council Meeting on Thursday, 19 February 2009.

7.1 REPORTS BY THE ACTING CHIEF EXECUTIVE OFFICER

CM-039-09 LEGAL ADVICE - SOUTHERN METROPOLITAN REGIONAL COUNCIL MEMBERSHIP
(File: ECH/2/18) cmrpt039
From : Acting Chief Executive Officer

***** CONFIDENTIAL TO MEMBERS ONLY *****

Following Cr Mason advising that he wished to move an amendment to the Officer's recommendation, the Acting Chief Executive Officer advised that Report CM-039-09 did not contain a recommendation, as legal advice was received late this afternoon, and it was therefore open to Council to give consideration to that legal advice, and make a recommendation as the Council deemed appropriate.

It was then:

MOVED Cr Mason, Seconded Cr Olsen, that:

Following the advice and recommendation provided by Hardy Bowen Lawyers in its confidential advice of 19 February 2009, the Acting Chief Executive Officer be instructed to write to the Southern Metropolitan Regional Council (SMRC), instructing them under the provision of the Establishment Agreement, that:

- (a) The City of Canning withdraws from the SMRC.***
- (b) The City is not amenable to direction in relation to the delivery of waste, other than to the Regional Resource Recovery Centre (RRRC), and that if the RRRC is unable to accept the waste, it will be delivered by the City to a site of its choosing.***
- (c) The SMRC be advised that the City is of the view that there is a dispute in relation to the obligations of the RRRC, having regard to:***
 - (i) the economic sustainability of the facility; and***
 - (ii) the environmental hazards caused by the facility;***

which requires to be dealt with in accordance with the good faith negotiations in the Project Participants Agreement.
- (d) The City should initiate a dispute under the lease in relation to the odour emissions, with a view to determining whether there has been a breach of the lease.***
- (e) A further report be presented to Council outlining the progress of the above matters within one month.***
- (f) A further report be presented to Council outlining a media campaign to the ratepayers of the City within one month of this motion.***

Following the Mayor's request that Mr Hardy review the Motion, Cr Mason provided comment.

Foreshadowed Motion

Cr Morgan provided comment, then foreshadowed a motion that advice of withdrawal from the SMRC be delayed until April or May 2009.

Questions from Cr Clarke and Olsen followed, with the Mayor advising that parts (a), (b), (c) and (d) of Cr Mason's motion were in line with recommendations (1), (2), (3) and (4), provided by Hardy Bowen, and detailed in Attachment 7 to Report CM-039-09.

Following comment by Mr Hardy in relation to timing of withdrawal and the recommendations, with consent of the Seconder, Cr Mason agreed to include the word "immediately" at the end of Part (a) of the motion.

Comment by Cr Elliott and Wibberley followed, with a question to Mr Hardy by Cr Elliott.

Following comment by Crs Olsen and Morgan, Cr Olsen spoke in support of the motion, with additional comment and questions by Cr Barry.

Mr Hardy then provided clarification that the recommendations detailed in the legal advice were made on the assumption that the City had an alternative site for waste delivery.

The Mayor provided lengthy comment and spoke in favour of the motion.

Debate followed with questions by Crs Morgan, Elliott, Barry and Olsen, with responses provided by the Acting Chief Executive Officer and Mr Hardy, and additional questions by the Mayor.

Following lengthy comment, and speaking against the motion, the Mayor advised Cr Clarke that he had reached the limit of his speech time. Cr Clarke then sought a two minute extension.

With the consent of Council, Cr Clarke was granted a two minute extension of time.

MOVED Cr Morgan, Seconded Cr Elliott, that Cr Clarke be granted an extension of two minutes to speak in relation to this item of business.

CARRIED UNANIMOUSLY

For: The Mayor, Crs Barry, Clarke, Elliott, Mason, Morgan, Olsen, Wheaton and Wibberley

Cr Clarke continued with his comment.

Following questions by Cr Mason to the Acting Chief Executive Officer, the Mayor called for order of debate, with Cr Mason then closing debate on his motion.

At 8:20pm, the Mayor then put the motion, as amended, viz:

Following the advice and recommendation provided by Hardy Bowen Lawyers in its confidential advice of 19 February 2009, the Acting Chief Executive Officer be instructed to write to the Southern Metropolitan Regional Council (SMRC), instructing them under the provision of the Establishment Agreement, that:

- (a) The City of Canning withdraws from the SMRC immediately.***
- (b) The City is not amenable to direction in relation to the delivery of waste, other than to the Regional Resource Recovery Centre (RRRC), and that if the RRRC is unable to accept the waste, it will be delivered by the City to a site of its choosing.***
- (c) The SMRC be advised that the City is of the view that there is a dispute in relation to the obligations of the RRRC, having regard to:***
 - (i) the economic sustainability of the facility; and***
 - (ii) the environmental hazards caused by the facility;***

which requires to be dealt with in accordance with the good faith negotiations in the Project Participants Agreement.
- (d) The City should initiate a dispute under the lease in relation to the odour emissions, with a view to determining whether there has been a breach of the lease.***
- (e) A further report be presented to Council outlining the progress of the above matters within one month.***
- (f) A further report be presented to Council outlining a media campaign to the ratepayers of the City within one month of this motion.***

CARRIED

For: The Mayor, Crs Barry, Elliott, Mason, Olsen and Wheaton

Against: Crs Clarke, Morgan and Wibberley

There being no further business, the Mayor declared the Meeting closed at 8:21pm.
