



# Finance Committee

3 September 2014

# MINUTES

**Town of East Fremantle**

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**MINUTES OF FINANCE COMMITTEE MEETING, HELD IN THE UPSTAIRS MEETING AREA, ON TUESDAY, 3 SEPTEMBER 2014 COMMENCING AT 6.30PM**

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**MINUTES OF A FINANCE COMMITTEE MEETING, HELD IN THE COMMITTEE MEETING ROOM, ON WEDNESDAY, 3 SEPTEMBER 2014, COMMENCING AT 6.30PM.**

**F24. OPENING OF MEETING**

The Presiding Member opened the meeting at 6:31pm.

**F24.1 Present**

Cr M McPhail	Presiding Member
Mayor O'Neill	
Cr J Amor	
Cr M Handcock	
Cr A Watkins	
Mr L Mainwaring	Executive Manager Finance & Administration

**F25. ACKNOWLEDGEMENT OF COUNTRY**

*"On behalf of the Council I would like to acknowledge the Nyoongar people as the traditional custodians of the land on which this meeting is taking place."*

**F26. WELCOME TO GALLERY**

There were no members of the public present.

**F27. APOLOGIES**

Cr S Martin

**F28. PUBLIC QUESTION TIME**

Nil.

**F29. CONFIRMATION OF MINUTES**

**F29.1 Finance Committee Meeting – 27 May 2014**

Mayor O'Neill – Cr Watkins

That the Minutes of the Finance Committee held on 27 May 2014 and adopted at the Council Meeting held on 17 June 2014 be confirmed. CARRIED

**F30. CORRESPONDENCE (LATE RELATING TO ITEMS IN AGENDA)**

Nil.

**F31. BUSINESS**

**F31.1 Review of Policy Wording for Councillors and Officers Liability Insurance**  
*By Les Mainwaring Executive Manager Finance & Administration on 28 August 2014*

**PURPOSE**

To provide policy wording for Councillors and Officers Liability Insurance.

**BACKGROUND**

At the Council Meeting on 19 August 2014, during discussion of Item 15.2 Accounts for Payment – July 2014, Cr Handcock requested a copy of the policy wording for the Councillors and Officers Liability Insurance renewal, and for this to be tabled at the next Finance Committee meeting.

**REPORT**

The taking of the insurance is intended to mitigate against such risks of claim by any written demand, any civil or arbitral proceeding, any criminal prosecution or any formal administrative or regulatory proceeding made against the Town alleging any Wrongful

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Act. This also includes defence costs of reasonable legal and other professional fees, cost and expenses incurred by the Town that are necessary to defend or appeal a claim. Wrongful Act means any actual or alleged act, breach of trust, error, omission, misstatement, misleading statement, neglect or breach of duty or any other matter claimed against the Town whilst acting in the capacity of the Town, including any violation of an act, law, rule or regulation, including employment laws.

For a premium of \$13,834 the limit of liability is in the aggregate of \$5,000,000, with various sub-limits, and an excess of \$5,000 for general claims and \$12,500 for employment related claims.

**Statutory Requirements**

Local Government Act 1995 (As amended)

**Relevant Council Policies**

Nil

**Strategic Plan Implications**

Nil

**Financial/Resource/Budget Implications**

Nil

**Conclusion**

The policy wording is provided for the information of Council.

**ATTACHMENT****Voting Requirements**

Simple Majority

**RECOMMENDATION**

That the policy wording for Councillors and Officers Liability Insurance be received.

Cr Hancock raised concerns about the relationship of cover between the Councillors and Officers Liability Insurance and the broad form Public Liability Scheme.

**F32. CONFIDENTIAL BUSINESS****Cr Hancock – Cr McPhail**

**That this part of the meeting be closed to members of the public in accordance with Section 5.23(2)(c) of the Local Government Act 1995 which involves a contract of insurance entered into which is the matter under discussion.** CARRIED

*Standing Orders were suspended at 6.42pm.*

Informal discussion on Councillors and Officers Liability insurance continued.

**F33. OPENING OF MEETING TO PUBLIC****C Hancock – Cr McPhail**

**That the meeting be reopened to the public.** CARRIED

*The meeting resumed at 6.58pm.*

**Cr McPhail – Cr Hancock**

**That the Council delegate authority for the Chair of Finance, Cr Hancock, Cr Watkins and the Manager of Finance to arrange a meeting with Local Government Insurance Service to discuss the Councillors and Officers Liability Insurance policy.** CARRIED

**F34. BUSINESS (Cont)****F34.1 Review of Delegations of the Chief Executive Officer to Finance Committee**  
*By Les Mainwaring Executive Manager Finance & Administration on 26 August 2014***PURPOSE**

To approve the delegation of designated powers and functions to the Chief Executive Officer under Section 5.42 of the Local Government Act 1995.

**BACKGROUND**

At the Council Meeting of 18 June 2014 Council resolved in part that:

1. *the Delegations of Authority to the Chief Executive Officer attached to and forming part of these minutes be approved.*
3. *The other delegations raised for discussion be referred to the relevant Committee for review."*

Delegations raised in discussion that were relevant to the Finance Committee were:

D09 Disposal of Property  
D10 Negotiations of leases (other than Mooring Pen Leases)  
D12 Tenders Less than \$200,000  
D14 Ex Gratia Payments  
D15 Donations to Community Groups & Individuals  
D17 Employment of Acting CEO  
D58 Use of Council Seal

**ATTACHMENT****REPORT**

Elected members will be aware that, under the relevant provisions of the Local Government Act, it is expected that elected members focus on matters of a strategic nature and do not get involved in matters of an operational nature. Indeed there are statutory provisions which prohibit such involvement.

One of the Government's consistent arguments for amalgamations of local governments is that bigger local governments will, by necessity, be more strategically focussed. In that context, any move by the Town of East Fremantle to "turn the clock back" and terminate delegations which have operated, without problem, for years, would be considered as supporting a pro amalgamation argument.

In short, the delegations at issue were originally provided to the Chief Executive Officer consistent with the above intention of the Act in terms of the division of responsibilities and overall, in the interests of promoting customer service responsiveness.

In that regard, sufficient delegations of authority are required to support the objectives for customer service in the Strategic Plan. These include:-

**Strategic Goals**

"The Council and staff of the Town of East Fremantle will continue to undertake our day to day activities in an efficient manner."

**SPECIFIC DELEGATIONS*****D09 Disposal of Property***

In discussion with the CEO, this delegation has been amended to exclude the disposal of Council properties (ie "real property") which had never been the intention of the existing delegation.

***D10 Negotiations of leases (other than Mooring Pen Leases)***

The delegation is unchanged and covers the preliminaries of lease negotiations, however excludes the entering into or execution of leases without Council approval. It is designed to provide a practical purpose of operation in the lead up to final approval from Council.



This delegation has been in place for some years and no issues have arisen. Were this delegation to be removed, for example, the CEO could not continue with lease reviews as is currently occurring.

#### *D12 Tenders Less than \$200,000*

The tender threshold for delegation has remained unchanged since 2008 and represents about 3.1% of the total capital program and materials and contracts operating budgets. In fact many local governments have a higher threshold than \$300,000. For example the SMRC has a tender delegation of \$500,000.

#### *D14 Ex Gratia Payments*

This is designed as a fall back position, if deemed appropriate for compassionate reasons, when small claims have been denied by insurers. The circumstances in which ex gratia payments are made are very infrequent (in fact it has been many years since any such payment was made) and any payment is subject to the signing of a release form in consultation with our insurers. At one time the Ombudsman, in a report to Parliament, commended Council on the humane aspect of this provision which they compared favourably with a number of other, larger, more inflexible local governments.

The amount is limited to \$1,500. Any payment is always made in consultation with Council's insurers. A typical example would involve the out of pocket expenses of an elderly person who has tripped on a footpath and broken their glasses, or a tooth, and the insurers were denying liability. Careful checks would be made regards what any health fund had already paid etc. Often personal issues are involved (eg financial hardship) and these are not seen as matters appropriate for public Council reports and debate.

#### *D15 Donations to Community Groups & Individuals*

The current budget allows for \$6,000 in donations. Requests for donations are administered according to policy and within budget parameters. Donations fall into three policy categories:-

- (a) Charitable and Community Benefit Organisations; public appeals from organisations that provide a service to persons resident in the community of East Fremantle – \$200,
- (b) Youth Sponsorship; applications for travel costs from individuals representing the State, including intellectual and cultural representation, competing at national or international level as individuals or teams - \$150 interstate or \$300 international.
- (c) Funding for appeals arising from mayor events or catastrophes such as Lord Mayor's Appeals, or where there are circumstances that may determine contributions in excess of the limits in (a) and (b).

The current limits have been unchanged since 2008 and are quite minor in terms of the diminishing value of money. Accordingly an increased limit of \$500 is recommended, with anything above this to be dealt with by Council.

Any donations are made in consideration of Council's Policy. They are normally processed by Janine May who checks eligibility etc (eg age limits) and recommends to CEO.

There is good PR for Council and it is a minor part of Council's budget.

Were every such request to be referred to elected members, in many cases the event in question (eg a sporting contest) for which a donation to participate had been requested, would be over by the time Council had made its decision.

#### *D17 Employment of Acting CEO*

This delegation is limited to periods of up to 8 weeks for the purpose of filling the CEO's role for short periods during leave. The delegation has been used in consultation with Council in the past, without any apparent controversy, allowing the flexibility to either back fill or source external resources as required.

*D58 Use of Council Seal*

Generally this involves operational issues.

As an example the CEO is regularly required to apply the Council seal to social security documents involving the overseas pensions of local residents.

Another example involves mooring pen leases, which are frequently changing.

Another example involves grant applications.

Section 9.49A of the Local Government Act specifically provides for the Council to grant delegated authority to the CEO to apply the Council seal.

A restriction has however been included in respect of a deed of conveyance for real property, meaning the CEO (consistent with Delegation D09) would not have a delegated authority in relation to selling land.

**Statutory Requirements**

Local Government Act 1995 (As amended)

**5.42. Delegation of some powers and duties to CEO**

- (1) *A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under —*
- (a) this Act other than those referred to in section 5.43; or*
  - (b) the Planning and Development Act 2005 section 214(2), (3) or (5).*

*\* Absolute majority required.*

**5.43. Limits on delegations to CEO**

*A local government cannot delegate to a CEO any of the following powers or duties —*

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) appointing an auditor;*
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) borrowing money on behalf of the local government;*
- (g) hearing or determining an objection of a kind referred to in section 9.5;*
- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;*
- (h) any power or duty that requires the approval of the Minister or the Governor;*
- (i) such other powers or duties as may be prescribed.*

**Relevant Council Policies**

F2.5 Donations

**Strategic Plan Implications**

Nil

**Financial/Resource/Budget Implications**

Nil

**Conclusion**

Delegations have been reviewed and amended, where relevant, in order to provide more clarity of intent for the use of the delegation or to consider the level of Councils strategic involvement in operations.

**ATTACHMENT**

**Voting Requirements**

Absolute Majority

**RECOMMENDATION**

That the following Delegations of Authority to the Chief Executive Officer:

- D09 Disposal of Property
- D15 Donations to Community Groups and Individuals
- D58 Use of Council Seal

be amended as per the delegation schedule attached to and forming part of these minutes. **Absolute Majority Resolution Required**

Discussion ensued on amending the schedule for the following items:

- D09 Disposal of Property – that a condition be included to keep a register of all disposals over \$10,000. Also as a separate task, to seek information from other Council's on disposal of property policies.
- D10 Negotiations of leases (Other than Mooring Pen Leases) – remove the words "and finalise" from point (ii) of the delegation
- D12 Tenders Less Than \$200,000 – that a condition be included to report all materials and contract expenditure over \$50,000 with a schedule of purchase price, related disposal, unsuccessful bids and suppliers.
- D14 Ex Gratia Payments – revoke delegation, claims to be dealt with in confidence to the Finance Committee.
- D15 Donations to Community Groups & Individuals – revoke delegation, to increase the connection between Council and the recipients.
- D17 Employment of Acting CEO – reduce period from eight weeks to four weeks. Add condition "In consultation with the Mayor".
- D58 Use of Council Seal – add "Subject to all other delegations" in the delegation wording.

**Cr Watkins – Cr Handcock**

It is recommended that:

1. the following Delegations of Authority to the Chief Executive Officer:
  - D09 Disposal of Property
  - D10 Negotiations of leases (other than Mooring Pen Leases)
  - D12 Tenders Less Than \$200,000
  - D17 Employment of Acting CEO
  - D58 Use of Council Seal
 be amended as per the delegation schedule attached to and forming part of these minutes, with the addition of the amendments listed above.
2. the following Delegations of Authority to the Chief Executive Officer be revoked:
  - D14 Ex Gratia Payments
  - D15 Donations to Community Groups & Individuals
3. Council seek information of disposal of property policies from other councils.
4. to alleviate timing issues for donations, the Mayor is delegated authority to decide on applications, in consultation with the Chair of Finance, and report to the next Council meeting. CARRIED UNANIMOUSLY

**F35. NOTICE OF MOTION FOR CONSIDERATION AT THE FOLLOWING MEETING**

Nil.

**F36. URGENT BUSINESS WITHOUT NOTICE BY PERMISSION OF THE MEETING**

Mayor O'Neill asked a question regarding insurance matters with the EF Bowling Club and discussion ensued with the Executive Manager Finance & Administration on the operational issues surrounding the matter, including that the Town's interests were fully covered.



**F37. CLOSURE OF MEETING**

There being no further business, the meeting closed at 8.17pm.

*I hereby certify that the Minutes of the meeting of the **Finance Committee** of the Town of East Fremantle, held on **3 September 2014**, Minute Book reference **F24. to F37.** were confirmed at the meeting of the Committee on*

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**Presiding Member**