



City of Nedlands

# MINUTES

## Special Council Meeting

Friday 17 May 2024



## Information

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## Public Question Time

Public question time at a Special Council Meeting is available for members of the public to ask a question about items on the agenda. Questions asked by members of the public are not to be accompanied by any statement reflecting adversely upon any Council Member or Employee.

Questions should be submitted as early as possible via the online form available on the City's website: [Public question time | City of Nedlands](#)

Questions may be taken on notice to allow adequate time to prepare a response and all answers will be published in the minutes of the meeting.

## Addresses by Members of the Public

Members of the public wishing to address Council in relation to an item on the agenda must complete the online registration form available on the City's website: [Public Address Registration Form | City of Nedlands](#)

The Presiding Member will determine the order of speakers to address the Council and the number of speakers is to be limited to 2 in support and 2 against any item on a Special Council Meeting Agenda. The Public address session will be restricted to 15 minutes unless the Council, by resolution decides otherwise.

## Disclaimer

Members of the public who attend Council Meetings Agenda Forum should not act immediately on anything they hear at the meetings, without first seeking clarification of Council's position. For example, by reference to the confirmed Minutes of Council meeting. Members of the public are also advised to wait for written advice from the Council prior to acting on any matter that they may have before Council.

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### 1. Declaration of Opening

The Presiding Member declared the meeting open at 6.00pm and acknowledged the Whadjuk Nyoongar people, Traditional Custodians of the land on which we meet, and pay respect to Elders past, present and emerging. The Presiding Member drew attention to the disclaimer on page 2 and advised that the meeting was being livestreamed and recorded.

### 2. Present and Apologies and Leave of Absence (Previously Approved)

<b>Councillors</b>	Mayor F Argyle (online)	
	Deputy Mayor K A Smyth (Presiding Member)	Coastal Ward
	Councillor B Brackenridge (online)	Melvista Ward
	Councillor R A Coghlan	Melvista Ward
	Councillor H Amiry	Coastal Ward
	Councillor N Youngman	Dalkeith Ward
	Councillor F J O Bennett	Dalkeith Ward
	Councillor L McManus (in attendance)	Hollywood Ward
	Councillor B Hodsdon	Hollywood Ward

<b>Staff</b>	Ms K Shannon	Chief Executive Officer
	Mr M R Cole	Director Corporate Services
	Mr M K MacPherson	Director Technical Services
	Ms E Bock	PA to Director Corporate Services
	Ms L J Kania	Coordinator Governance & Risk
	Ms S Cole	Governance Officer
	Ms N Robson	Administration Officer Planning and Development

<b>Leave of Absence (Previously Approved)</b>	Councillor L McManus	Hollywood Ward
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<b>Apologies</b>	Mr T Free	Director Planning & Development
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### 3. Public Question Time

Public questions submitted were read at this point.

Nil

### 4. Address by Members of the Public

Addresses by members of the public who have completed Public Address Registration Forms were made at this point.



## **5. Disclosures of Financial Interest**

There were no disclosures of financial interest.

## **6. Disclosures of Interest Affecting Impartiality**

There were no disclosures affecting impartiality.

## **7. Declaration by Members That They Have Not Given Due Consideration to Papers**

Members who have not read the business papers to make declarations at this point.

No declarations



**8. Divisional Reports**

**8.1. CEO17.05.24 Consideration to change resolution Notice of Motion 21.6 Audit and Risk Committee disbandment and appointment**

<b>Meeting &amp; Date</b>	Special Council Meeting – 17 May 2024
<b>Applicant</b>	City of Nedlands
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	Nil.
<b>Report Author</b>	Libby Kania – Coordinator Governance and Risk
<b>CEO</b>	Keri Shannon – Chief Executive Officer
<b>Attachments</b>	Nil.

Moved – Councillor Amiry

Seconded – Councillor Coghlan

The meeting adjourned at 6.32pm for the purposes of a refreshment break and reconvened at 6.39 pm with the following people in attendance:

**Councillors** Mayor F Argyle (online)  
 Deputy Mayor K A Smyth (Presiding Member) Coastal Ward  
 Councillor B Brackenridge (online) Melvista Ward  
 Councillor R A Coghlan Melvista Ward  
 Councillor H Amiry Coastal Ward  
 Councillor N Youngman Dalkeith Ward  
 Councillor F J O Bennett Dalkeith Ward  
 Councillor L McManus Hollywood Ward  
 Councillor B Hodsdon Hollywood Ward

**Staff** Ms K Shannon Chief Executive Officer  
 Mr M R Cole Director Corporate Services  
 Mr M K MacPherson Director Technical Services  
 Ms E Bock PA to Director Corporate Services  
 Ms L J Kania Coordinator Governance & Risk  
 Ms S Cole Governance Officer  
 Ms N Robson Administration Officer Planning and Development

**Leave of Absence (Previously Approved)** Councillor L McManus Hollywood Ward

**Apologies** Mr T Free Director Planning & Development



Put Motion

Moved - Councillor Hodsdon

No Secunder

**That the Motion be put, no seconder so the motion was not put.**

Put Motion

Moved - Councillor Mayor Argyle

Seconded - Councillor Coghlan

**That the Motion be put.**

**CARRIED 5/4**

**(Against: Crs. Bennett, Hodsdon, McManus, Youngman)**

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 5/4**

**(Against: Crs. Bennett, Hodsdon, McManus, Youngman)**

**Recommendation**

**That Council – 1. In accordance with section 5.25(1)(e) of the Local Government Act 1995 and Local Government (Administration) Regulations 1996 CHANGES clause 1 of its decision dated 23 April 2024 (NoM 21.6 Audit and Risk Committee Disbandment and Appointment) being**

**“That Council:**

**1. Disbands REMOVES all persons from the office of committee members for the Audit and Risk Committee under LG Act s.5.11(2)(c)(b) and revokes the Council resolutions 1, 2 and 3 of Item 9.6. CEO26.10.23 Establishment and Appointment of Members to the Audit & Risk Committee made at the 31 October 2023 Special Council Meeting appointing Elected Members, community members and deputy members to the Audit and Risk committee.**



## Purpose

The purpose of this report is for Council to consider rescission of its decision dated 23 April 2024, Notice of Motion 21.6 Audit and Risk Committee Disbandment and Appointment. Council may then amend the terms of reference and membership of the Audit and Risk Committee in accordance with the *Local Government Act 1995* (Act).

## Voting Requirement

Absolute Majority.

## Background

Council at its meeting dated 31 October 2023 considered the terms of reference and membership to the Audit and Risk Committee. Council resolved to –

That Council:

1. appoints the Mayor and Councillors Coghlan, McManus, Bennett and Amiry (four - one from each Ward) to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2025;
2. appoints the Deputy Mayor and Councillors Brackenridge, Hodsdon, Youngman and Smyth (four - one from each Ward) as Deputy Members to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2025;
3. appoints as community members of the Audit & Risk Committee Mr Kim Laurence and Mr Graham Baws as recommended by the Audit & Risk Committee at its meeting of 21 August 2023; and
4. adopts the Terms of Reference of the Audit & Risk Committee as per below.

At the first meeting of the Audit and Risk Committee held on 20 November 2023, Cr McManus was elected the Chair of the committee. Cr McManus subsequently resigned from the committee in early 2024. Consequently, on 8 April 2024 Cr Bennett was appointed the new chair of the committee.

On 23 April 2024, Council considered an urgent notice of motion and resolved the following;

That Council:





1. Disbands the Audit and Risk Committee under LG Act s.5.11(2)(c) and revokes the Council resolutions 1, 2 and 3 of Item 9.6. CEO26.10.23 Establishment and Appointment of Members to the Audit & Risk Committee made at the 31 October 2023 Special Council Meeting appointing Elected Members, community members and deputy members to the Audit and Risk Committee.
2. Appoints all Elected Members of the City of Nedlands to a whole of Council Audit and Risk Committee, subject to any Elected Member indicating they do not wish to be appointed to the Audit and Risk Committee.
3. Appoints the CEO as an independent observer for any secret ballots for the Audit and Risk Committee Chair and Deputy Chair.
4. Requires the nominees for Presiding Member of the Audit and Risk Committee to have completed tertiary education and a minimum of 3 years finance related work experience.
5. Directs the Audit and Risk Committee to review the Audit and Risk Committee Terms of Reference adopted at the 31 October 2023 Special Council Meeting at Item 9.6 resolution 4 and advise Council of any recommended changes to the Terms of Reference.
6. Formally thanks Mr G Baws and Mr JK Laurence for their service to the City of Nedlands.

On 23 April 2024, advice was received from the Department of Local Government, Sport and Cultural Industries, that advised that the notice of motion considered and adopted by Council did not appear to be consistent with the Act. Specifically, that s. 5.11 (2)(c) about disbanding a committee is unlikely to apply to the Audit Committee, as the Audit Committee is required under s. 7.1A of the Act.

On 6 May 2024, the Audit and Risk Committee met. Prior to the meeting, concern was raised as to whether the Audit and Risk Committee could be disbanded and Council's decision of 23 April 2024 was questioned. As the first item of business would be the appointment of the chair, and there was doubt as to whether the original membership of the committee was formally dissolved, a decision was made to defer the items on the agenda to the scheduled Audit and Risk Committee meeting to be held on 20 May 2024. The decision was made to allow the City to obtain further information to ensure that the decision of Council and its intent could be implemented without doubt and question.

Under s. 5.41, the CEO is to (a) advise the council in relation to the functions of a local government under this Act and other written laws; and (b) ensure that advice and information is available to the council so that informed decisions can be made. As there was doubt raised, the CEO was required to ensure that information was made available to Councillors so that informed decisions could be made. A decision to defer was made.

On 7 May 2024, the Acting CEO advised the Council under cover of an email, the reason for the deferral, reiterating the statement made at the Audit and Risk Committee meeting, and provided a suggested method to clarify the issue.



## Discussion

It was raised with Administration whether Council's decision of 23 April 2024 was fully compliant with the Act.

The establishment of the Audit Committee is dealt with under Part 7 of the Act. The Act states;

### 7.1A. Audit committee

- (1) A local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it.
- (2) The members of the audit committee of a local government are to be appointed\* by the local government and at least 3 of the members, and the majority of the members, are to be council members.

\* Absolute majority required.

The Audit Committee is the most significant committee of Council. It is a statutory committee of Council, established under s. 7.1A. Its members are appointed under s. 7.1A(2).

The notice of motion referred to the disbanding of the Audit and Risk Committee under s. 5.11(2)(c). The use of section 5.11(2)(c) has unfortunately brought into question the Council decision of 23 April 2024. The argument is that the statutory committee cannot be disbanded, but its membership can be amended. This has also led to the possible argument that the Audit and Risk Committee as constituted on 31 October 2023 remains active. While interpretation of the original resolution could be legally provided at a cost, it would be more efficient to achieve the same intended outcome through another provision in the act which is less open to interpretation.

In order to deal with the anomaly and to prevent any question over the legitimacy of the constitution of the committee, it is advised that paragraph 1 of the Council resolution be rescinded, and that the membership be removed in accordance with s. 5.11(2)(b). The Committee is therefore still established as an entity, only its full membership has been amended. This is a similar circumstance as would occur after an Ordinary Local Government Election, whereby all positions are vacated. It then allows Council to proceed with the amendment to the terms of reference to points such as the structure of membership to ensure consistency with its decision of 23 April 2024. Council may then appoint members to the vacant positions as required.

## Consultation

Councillors were advised under cover of an email dated 7 May 2024 of the proposed suggestion to overcome the potential compliance issue with the reforming of the Audit and Risk Committee.



## Strategic Implications

This item is strategically aligned to the City of Nedlands Council Plan 2023-33 vision and desired outcomes as follows:

**Vision**            **Sustainable and responsible for a bright future**

**Pillar**            Performance

**Outcome**        11. Effective leadership and governance.

## Budget/Financial Implications

Nil.

## Legislative and Policy Implications

[Local Government Act 1995](#)

## Decision Implications

If the Council does not revoke paragraph 1 of the decision of 23 April 2024, there is the potential that the perceived compliance issue will not be resolved. This may put into question the legitimacy of the committee membership and the appointment of the chair.

As the Audit and Risk Committee is the oversight committee of Council its constitution should not be placed into doubt. If Council resolves to rescind paragraph 1 of its decision of 23 April 2024 and remove the members, this will rectify any perceived anomaly so that the Committee's membership does not come into question and that the Committee may undertake its function in accordance with the Act.

## Conclusion

It is considered that the process identified will remove any question over the constitution of the Audit and Risk Committee going forward.

## Further Information

Nil.



**8.2. CEO18.05.24 Review of Term of Reference for Audit and Risk Committee 2024**

<b>Meeting &amp; Date</b>	Special Council Meeting – 17 May 2024
<b>Applicant</b>	City of Nedlands
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	Nil.
<b>Report Author</b>	Libby Kania – Coordinator Governance and Risk
<b>CEO</b>	Keri Shannon - Chief Executive Officer
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Draft Terms of Reference Audit Committee</li> <li>2. Audit Committee Terms of Reference (Marked up Councilor Correspondence)</li> <li>3. Current terms of reference of the Audit and Risk Committee.</li> </ol>

Moved – Councillor Amiry

Seconded – Councillor Coghlan

Amendment

Moved – Councillor Hodsdon

Seconded – Councillor Youngman

**That Council**

1. **Appoints two voting members of the community to the Audit and Risk committee.**
2. **The term is to match the election cycle.**
3. **No sitting fees to be paid to the community volunteers.**
4. **Invite Mr G Baws and Mr K Lawrence to return to the committee as the independent members.**

**LOST 4/5**

**Mayor Argyle, Deputy Mayor Smyth, Crs. Amiry, Coghlan, Brackenridge**



Amendment

Moved – Councillor Youngman

Seconded – Councillor Bennett

**That Council:**

**Remove item 5. in Attachment 1 (in Red) and replace it with:**

- 5. A member of the Committee nominated as the Presiding Member is required to have at least 4 years of experience serving as an Elected Member in Local Government.**

5. A member of the committee nominated as the presiding member is required to have completed tertiary qualifications and at least 3 years finance related work experience in a finance related field. A member of the committee nominated as the deputy presiding member is preferred to have completed tertiary qualifications and at least 3 years work experience in a finance related field.

**LOST 4/5**

**(Against: Mayor Argyle, Deputy Mayor Smyth, Crs. Amiry, Coghlan, Brackenridge,)**

Amendment

**That Council:**

**Amends Attachment 1 Terms of Reference – Section 7 Reporting to Council by:**

1. numbering the paragraphs, and
2. adding an additional paragraph 3. **(shown red)**

**7. Reporting to the Council**

- 1. The presiding member of the Audit Committee shall report quarterly to the Council summarising the Audit Committee's activities since the previous report, current status of matters before the Audit Committee and the forthcoming priorities.**
- 2. A schedule of the presiding member's report to Council will be developed and agreed to by the members of the Audit Committee.**
- 3. The Audit Committee will prepare a Critical Path Timeline report showing milestones and forecast targets for the forthcoming financial year, that serves to alert Council well in advance of any issues that may prevent it from achieving its Goals.**

Withdrawn by Deputy Mayor Smyth



Amendment

Moved – Councillor Bennett

Seconded – Councillor Youngman

**That Council:**

**Remove item 3.5 from the Terms of Reference as contained in attachment 1.**

**LOST 4/5**

**(Against: Crs. Amiry, Coghlan, Brackenridge, Mayor Argyle, Deputy Mayor Smyth)**

**Recommendation**

**That Council –**

- 1. AMENDS the Terms of Reference as contained in Attachment 1.**

**CARRIED 5/4**

**(Against: Crs. Youngman, Bennett, McManus, Hodsdon)**

**Purpose**

The purpose of this report is for the Audit and Risk Committee to consider the proposed amendments to its Terms of Reference and to recommend to Council adoption of those amendments.

**Voting Requirement**

Absolute Majority.

**Background**

Council adopted the Terms of Reference of the Audit and Risk Committee at its Council Meeting dated 31 October 2023. At the Ordinary Council meeting in April 2024, Council resolved to –



*That Council:*

1. *Disbands the Audit and Risk Committee under LG Act s.5.11(2)(c) and revokes the Council resolutions 1, 2 and 3 of Item 9.6. CEO26.10.23 Establishment and Appointment of Members to the Audit & Risk Committee made at the 31 October 2023 Special Council Meeting appointing Elected Members, community members and deputy members to the Audit and Risk Committee.*
2. *Appoints all Elected Members of the City of Nedlands to a whole of Council Audit and Risk Committee, subject to any Elected Member indicating they do not wish to be appointed to the Audit and Risk Committee.*
3. *Appoints the CEO as an independent observer for any secret ballots for the Audit and Risk Committee Chair and Deputy Chair.*
4. *Requires the nominees for Presiding Member of the Audit and Risk Committee to have completed tertiary education and a minimum of 3 years finance related work experience.*
5. *Directs the Audit and Risk Committee to review the Audit and Risk Committee Terms of Reference adopted at the 31 October 2023 Special Council Meeting at Item 9.6 resolution 4 and advise Council of any recommended changes to the Terms of Reference.*
6. *Formally thanks Mr G Baws and Mr JK Laurence for their service to the City of Nedlands.*

## Discussion

In accordance with paragraph 5 of the April 2024 Council resolution, the Committee is required to review its Terms of Reference.

The Committee can make recommendations to Council on the Terms of Reference, but it is for Council to determine whether or not it accepts those recommendations.

Administration has received correspondence from one Elected Member on proposed amendments to the Terms of Reference. (Attachment 2).

These proposed amendments include –

1. Change to the name of the Committee from Audit and Risk Committee to Audit Committee which aligns with the *Local Government Act 1995*.

Comment

This has been included in the draft terms of reference.

2. An additional paragraph 9 under Financial Audit that states - *To address any specific requests referred to it from Council in relation to issues of financial management.*

Comment

This clause appears to replicate the paragraph on risk management in the original terms of reference. This has been included in the draft terms of reference.



3. Membership to align with the Council resolution from April 2024 and includes the appointment of a Deputy Presiding Member into the terms of reference.

Comment

This has been amended in the draft terms of reference. However, Administration notes that the words 'subject to any Elected Member indicating they do not wish to be appointed to the Audit and Risk Committee' should be removed to allow for surety of quorum for the Committee.

4. Inclusion that the Presiding Member is required to have completed tertiary qualifications and have at least 3 years finance related work experience in a finance related field. The Deputy Presiding Member is preferred to have similar qualifications.

Comment

It is noted that the proposed amendment in this section goes beyond what Council resolved at the April Council meeting. There is concern that this requirement may be problematic in its application. At present, the Act under section 2.19 - Qualifications for election to Council, does not require elected members to have specific tertiary qualifications to become an elected member.

As there is no threshold for nomination to elect to Council, there should be no barrier to contribute to all decision making of Council or make recommendation as part of its committees. The presiding member is responsible for the management of the meeting in accordance with the City's Standing Orders. The function of the presiding member does not necessitate the need for a tertiary qualification or finance related experience. Although this may be beneficial in the context of the committee, given the presiding member has no operational input, benefit may be limited if compared to the best person in the committee's opinion to govern the meeting.

Prescription of requirements for roles in committees may see a scenario arise where no Council members elected have the prerequisite requirements, or interpretation of those requirements are interpreted differently.

While it has been included in the draft terms of reference, it is advised that the Committee may wish to reconsider this clause as nothing precludes the committee from selecting a presiding member on the experience they put forth when nominating – allowing members to set their own personal expectations on the skills they are looking for.

Councillors should note that the appointment of the presiding member is an election. The nomination process is prescribed under schedule 2.3 and s. 5.12 of the Act. Policy cannot expand or constrain the prescribed process. Further, objection may be legitimately raised as to the imposition of the fetter to an elected member's right to be considered for the position of a presiding member under s. 5.12. The clause expressly states that the members of a committee are to elect a presiding member from amongst themselves. It is deemed non-compliant with the Act and unconscionable to impose narrow criteria to terms of reference that may preclude individuals based on education rather than skill or merit.





That said, while the requirement could be viewed as exclusionary it would not likely be considered discriminatory, as the Equal Opportunity Act 1984 does not prescribe education or experience as grounds for discrimination. This however is largely focused on employment selection, rather than election processes.

5. An additional requirement under the heading Reporting to the Council has been included. This states that the presiding member is to report to Council and a schedule of the report is to be developed and agreed to by members of the Committee.

**Comment**

This has been included in the attached draft terms of reference.

6. The proposed terms of reference refers to the CEO and secret ballots.

**Comment**

This inclusion is not deemed as required by Administration. The Act already provides for the CEO to preside over the election of a presiding member in accordance with Schedule 2.3 Division 1. There should not be any other secret ballots that are undertaken by the Committee that would warrant the inclusion of this clause in the terms of reference and it is advised that this not be supported. As a consequence, it has not been included in the attached draft terms of reference as it would be superfluous.

The draft terms of reference as contained in Attachment 1 includes the amendments requested by the Council at its meeting of 23 April 2024, and some of the proposed changes provided by a Councillor under cover of their email dated 3 May 2024. Whilst the Committee may recommend to Council amendments to the terms of reference of the committee, it is ultimately Council who decides the terms.

## Consultation

N/A.

## Strategic Implications

This item is strategically aligned to the City of Nedlands Council Plan 2023-33 vision and desired outcomes as follows:

**Vision**            **Sustainable and responsible for a bright future**

**Pillar**            **Performance**

**Outcome**        11. Effective leadership and governance.



## **Budget/Financial Implications**

Nil.

## **Legislative and Policy Implications**

[Local Government Act 1995 Part 2 and Part 5.](#)

## **Decision Implications**

The review of the Committee's Terms of Reference in accordance with the draft amendments will align the Terms to the Council resolution dated 23 April 2024. Should the Committee not recommend the proposed amendments there will be uncertainty as to the continued application of the 31 October 2023 Terms of Reference that are inconsistent with the April resolution of Council.

## **Conclusion**

The amendment to the Terms of Reference will align this document with the Council decision of 23 April 2024 removing any uncertainty as to the composition and duties of the Committee.

## **Further Information**

Nil.



## 9. Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed 8.15pm.