

ITEM NUMBER: 11.4

CONFIDENTIAL REPORT

MOTION ON NOTICE – APPOINTMENT TO THE ALWYNDOR MANAGEMENT COMMITTEE – COUNCILLOR CLANCY

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- a. **information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of a person or persons (living or dead).**

Recommendation – Exclusion of the Public – Section 90(3)(a) Order

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 301/18 Motion on Notice – Rescission of Appointment to the Alwyndor Management Committee – Councillor Clancy in confidence.

 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 301/18 Motion on Notice – Rescission of Appointment to the Alwyndor Management Committee – Councillor Clancy on the following grounds:
 - a.** pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to Report No: 301/18 Motion on Notice – Rescission of Appointment to the Alwyndor Management Committee – Councillor Clancy is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), because it is of a sensitive nature.

 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: **11.4**

Subject: **MOTION ON NOTICE – APPOINTMENT TO THE ALWYNDOR MANAGEMENT COMMITTEE – COUNCILLOR CLANCY**

Date: 28 August 2018

PROPOSED MOTION

Councillor Clancy proposed the following motion:

That Council rescind the appointment in 2017 by Council of Trish Aukett to ensure governance compliance to the Alwyndor Committee.

BACKGROUND

It was my understanding and that of others that her appointment was linked with her appointment as a Council employee and ends at the end of her contract with Council.

Ms Aukett did not go through the selection process which was recently done for the new appointments to the committee. It would be beneficial to the committee for the chair to be independent with excellent credentials in chairing and preferably knowledge of the industry and show that proper processes have been done.

Probity was raised in the advice of Michael Kelledy and his advice should not be taken lightly. A fresh approach is needed.

Council's governance officer could attend the meetings as an observer and provide governance advice as needed.

ADMINISTRATION COMMENT

- The advice from Mr Kelledy specifically indicates that “to date, all of the steps that have been taken to both appoint the GM to the Committee and to appoint her to the position of Chairperson, have been entirely consistent with the adopted Terms of Reference. That is, the Council determined and knowingly appointed her to the Committee (it would appear, as a result of her expertise in matters of governance) as is evidenced by the minute of the relevant Council meeting at which this occurred”. He goes on to further state: “In all of these circumstances, there is no ‘error’ with or otherwise any concern

under the Terms of Reference, about either the Council appointment of the GM to the Committee or the Committee's appointment of the GM (as a member of the Committee) to be the Chairperson of the Committee."

- Mr Kelledy did raise an issue of Probity where he stated "I have probity concerns about the appointment of a Council officer to a position as a member of a Council committee because of the fiduciary duties that attach to members of the Committee and to the conflict of roles that inevitably arises when such appointments are made". It is therefore accepted that some concerns exist based on Ms Aukett's GM position however these concerns are essentially mute and will be so formally when she ceases as an employee of Council.
- The proposed motion is potentially contrary to the legal advice of Mr Kelledy where he states: "the Council may not arbitrarily remove a person it has appointed. That is, such persons are entitled to procedural fairness if the Council is considering removing them as a member of a Council committee and the Council is bound to articulate reasons for a decision which reverses its earlier decision to appoint".

In summary although Mr Kelledy has indicated some probity issues with the original appointment of Ms Aukett to the Committee in September 2017 he makes it clear that as this has been done in accordance with the relevant terms of reference, the removal of Ms Aukett without appropriate grounds could create further issues in regards to procedural fairness.

As per the last Council meeting the CEO has discussed with Ms Aukett regarding not chairing the meetings until her employment ceases, which she has acquiesced to do.

Confidential Minutes of the Ordinary Meeting of Council of the City of Holdfast Bay held in the Council Chamber, Glenelg Town Hall, Moseley Square, Glenelg, on Tuesday 28 August 2018.

17. ITEMS IN CONFIDENCE

11.4 Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy (Report No: 301/18)

Motion

C280818/1272

Recommendation – Exclusion of the Public – Section 90(3)(a) Order

- 1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 301/18 Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy in confidence.**
- 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 301/18 Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy on the following grounds:**
 - a. pursuant to section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to Report No: 301/18 Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead), because it is of a sensitive nature.**
- 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.**

Moved Councillor Lonie, Seconded Councillor Yates

Carried

Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy (Report No: 301/18)

It was my understanding and that of others that her appointment was linked with her appointment as a Council employee and ends at the end of her contract with Council.

Ms Aukett did not go through the selection process which was recently done for the new appointments to the committee. It would be beneficial to the committee for the

chair to be independent with excellent credentials in chairing and preferably knowledge of the industry and show that proper processes have been done.

Probity was raised in the advice of Michael Kelledy and his advice should not be taken lightly. A fresh approach is needed.

Council's governance officer could attend the meetings as an observer and provide governance advice as needed.

ADMINISTRATION COMMENT

- The advice from Mr Kelledy specifically indicates that "to date, all of the steps that have been taken to both appoint the GM to the Committee and to appoint her to the position of Chairperson, have been entirely consistent with the adopted Terms of Reference. That is, the Council determined and knowingly appointed her to the Committee (it would appear, as a result of her expertise in matters of governance) as is evidenced by the minute of the relevant Council meeting at which this occurred". He goes on to further state: "In all of these circumstances, there is no 'error' with or otherwise any concern under the Terms of Reference, about either the Council appointment of the GM to the Committee or the Committee's appointment of the GM (as a member of the Committee) to be the Chairperson of the Committee."
- Mr Kelledy did raise an issue of Probity where he stated "I have probity concerns about the appointment of a Council officer to a position as a member of a Council committee because of the fiduciary duties that attach to members of the Committee and to the conflict of roles that inevitably arises when such appointments are made". It is therefore accepted that some concerns exist based on Ms Aukett's GM position however these concerns are essentially mute and will be so formally when she ceases as an employee of Council.
- The proposed motion is potentially contrary to the legal advice of Mr Kelledy where he states: "the Council may not arbitrarily remove a person it has appointed. That is, such persons are entitled to procedural fairness if the Council is considering removing them as a member of a Council committee and the Council is bound to articulate reasons for a decision which reverses its earlier decision to appoint".

In summary although Mr Kelledy has indicated some probity issues with the original appointment of Ms Aukett to the Committee in September 2017 he makes it clear that as this has been done in accordance with the relevant terms of reference, the removal of Ms Aukett without appropriate grounds could create further issues in regards to procedural fairness.

As per the last Council meeting the CEO has discussed with Ms Aukett regarding not chairing the meetings until her employment ceases, which she has acquiesced to do.

Motion**That:**

- 1. Council rescind the appointment in 2017 by Council of Trish Aukett to ensure governance compliance to the Alwyndor Committee.**
- 2. Ms Aukett be encouraged to apply for one of the Committee vacancies.**

Short Term Suspension of the *Local Government (Procedures at Meetings) Regulations 2013*

Her Worship the Acting Mayor, with the approval of two-thirds of the members present suspended the meeting procedures pursuant to Regulation 20(1) of the *Local Government (Procedures at Meetings) Regulations 2013* for a period of 10 minutes (or for a period sufficient to facilitate informal discussion and will resume at the end of this time (or at the discretion of Her Worship the Acting Mayor).

The meeting procedures were suspended at 8.32pm.

The meeting resumed at 8.42pm.

Moved Councillor Clancy, Seconded Councillor Bouchee

Lost

Division called

A division was called and the previous decision was set aside:

Those voting for: Councillors Bouchee, Clancy, Shewin and Yates (4)

Those voting against: Councillors Aust, Bradshaw, Charlick, Lonie, Patton, and Smedley (6)

Her Worship the Acting Mayor declared the motion

Lost

RETAIN IN CONFIDENCE - Section 91(7) Order

C280818/1273

That having considered Agenda Item 11.4 Motion on Notice – Appointment to the Alwyndor Management Committee – Councillor Clancy in confidence under section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 24 months and that this order be reviewed every 12 months.

Moved Councillor Lonie, Seconded Councillor Aust

Carried