

**M20/5797 – LATE ITEM GOVERNANCE COMMITTEE REPRESENTATION AND PRESIDING MEMBER (REC)**

Ward	: All
Category	: Policy
Subject Index	: Elected Members Profile
Customer Index	: Elected Members
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: M19/5708 – Election of Representatives to Committees 2019-2021 21 October 2019 Council Meeting, Item 3 Election of Presiding Member – Governance Committee Meeting held 18 November 2018. Item 4 Election of Deputy Mayor 2020-2021 – 20 and 21 October 2020 Council Meeting.
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Corrine Newman Governance Coordinator

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	<b>Executive</b>	<b><i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i></b>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

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**KEY ISSUES / SUMMARY**

- At the October 2019 Council Meeting Cr Pazolli was appointed to the Governance Committee in an ex-officio capacity having been elected to the position of Deputy Mayor.
- At the Governance Committee meeting held 18 November 2019 Cr Pazolli was elected as Chairperson of the Governance Committee.
- At the October 2020 Council Meeting Cr Pazolli resigned (Council Policy CP-018 Terms of Office) as the Deputy Mayor and Cr Barton was elected as the Deputy Mayor.
- Being an ex-officio appointment Cr Pazolli is no longer a member of the Governance Committee or the Presiding Member of the Committee.
- At the Governance Committee Meeting held 23 November 2020, the Mayor appointed Cr Pazolli to remain as Presiding Member for that meeting and requested that an Officer Report be presented to the December 2020 Ordinary Meeting of Council on how Cr Pazolli can remain as a Member and Presiding Member of the Committee.

**BACKGROUND**

After each Election the Council appoints members to the two committees being the Financial Management, Audit, Risk and Compliance Committee (FMARCC) and the Governance Committee. As the City has six wards, membership to Committees is evenly distributed across the wards so that each ward receives equal representation on the Committees.

At the 21 October 2019 Council Meeting, for the Applecross – Mt Pleasant Ward Cr Kepert was appointed to the Governance Committee and Cr Pazolli to the FMARCC for a two year period. Cr Pazolli is recorded in the minutes as being a member in the ex-officio capacity being the Deputy Mayor.

<b>Member</b>	<b>Deputy</b>	<b>Ward</b>
Mayor Gear		Section 5.10(4) Mayoral Position
Cr Pazolli		Deputy Mayor
Cr Kepert	Cr Pazolli	Applecross – Mount Pleasant
Cr Barton	Cr Barber	Bicton – Attadale – Alfred Cove
Cr Robartson	Cr Woodall	Bull Creek – Leeming
Cr Sandford	Cr Mair	Central
Cr Fitzgerald	Cr Wheatland	Palmyra-Melville-Willagee
Cr Robins	Cr Macphail	Bateman- Kardinya- Murdoch

At the Governance Committee meeting held 18 November 2019 Cr Pazolli was elected as Chairperson of the Governance Committee “from October 2019 to October 2021”, with Cr Robins being elected as the Deputy Presiding Member.

In accordance with Council Policy – CP-018 Terms of Office, the position of Deputy Mayor is held only twelve (12) months to give as many Councillors as possible exposure to the experience that this role provides. Past protocol has established that Candidates after 12 months stand down from the position and allow another election to be conducted in October each year.

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As such Cr Pazolli resigned from the position of Deputy Mayor and Cr Barton was elected as the current Deputy Mayor. Cr Barton is the Bicton – Attadale – Alfred Cove Ward member on the Governance Committee, in her own right.

However, for interpretation purposes, it is considered that as Cr Pazolli is no longer a member of the Governance Committee as he no longer holds the ex-officio position of Deputy Mayor.

Tenure on a Committee is covered by Section 5.11 of the *Local Government Act 1995*

**“5.11. Committee membership, tenure of**

*(1) Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person’s membership of the committee continues until —*

*(a) the person no longer holds the office by virtue of which the person became a member,...*”

While this applies to the appointment of the Mayor or employee to a committee it would equally apply in the situation that the Deputy Mayor appointed in an ex officio capacity would cease to be a member of the Governance Committee if they no longer hold the position of Deputy Mayor.

**DETAIL**

A Notice advising of the situation of Cr Pazolli no longer being a member or the presiding member of the Governance Committee was placed in the Elected Members Bulletin on Friday 20 November 2020 and the election of a presiding member was placed as an item of business on the Governance Committee Meeting agenda for the meeting that was held on Monday 23 November 2020.

At that meeting the Mayor requested that Cr Pazolli chair the meeting and requested that an officer report be prepared for consideration by the Council at the December 2020 Council Meeting, for Cr Pazolli to remain as a member of the Committee and to remain as the presiding member.

This report has been prepared as requested and is presented for the consideration of the Council.

The following sections of the Act apply in relation to this matter and are listed in the Statutory and Legal Implications section of this report. The sections are:

- 5.8 Establishment of committees
- 5.10. Committee members, appointment of
- 5.11. Committee membership, tenure of
- 5.12. Presiding members and deputies, election of
- 5.13. Deputy presiding members, functions of
- 5.14. Who acts if no presiding member.

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Not applicable.

**II. OTHER AGENCIES / CONSULTANTS**

Not applicable.

**STATUTORY AND LEGAL IMPLICATIONS**

The Local Government Act describes the following in relation to committees.

***Subdivision 2 — Committees and their meetings*****5.8 Establishment of committees**

*A local government may establish\* committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.*

*\* Absolute majority required.*

**5.10 Committee members, appointment of**

- (1) *A committee is to have as its members —*
- (a) *persons appointed\* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
  - (b) *persons who are appointed to be members of the committee under subsection (4) or (5).*

*\* Absolute majority required.*

- (2) *At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.*
- (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the council.*
- (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*

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- (5) *If at a meeting of the council a local government is to make an appointment to a committee that has or will have an employee as a member and the CEO informs the local government of his or her wish —*
- (a) *to be a member of the committee; or*
  - (b) *that a representative of the CEO be a member of the committee, the local government is to appoint the CEO or the CEO's representative, as the case may be, to be a member of the committee.*

**5.11. Committee membership, tenure of**

- (1) *Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) *the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or*
  - (b) *the person resigns from membership of the committee; or*
  - (c) *the committee is disbanded; or*
  - (d) *the next ordinary elections day, whichever happens first.*
- (2) *Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —*
- (a) *the term of the person's appointment as a committee member expires; or*
  - (b) *the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or*
  - (c) *the committee is disbanded; or*
  - (d) *the next ordinary elections day, whichever happens first.*

**5.12. Presiding members and deputies, election of**

- (1) *The members of a committee are to elect a presiding member from amongst themselves in accordance with Schedule 2.3, Division 1 as if the references in that Schedule —*
- (a) *to "office" were references to "office of presiding member"; and*
  - (b) *to "council" were references to "committee"; and*
  - (c) *to "councillors" were references to "committee members".*
- (2) *The members of a committee may elect a deputy presiding member from amongst themselves but any such election is to be in accordance with Schedule 2.3, Division 2 as if the references in that Schedule —*
- (a) *to "office" were references to "office of deputy presiding member"; and*
  - (b) *to "council" were references to "committee"; and*
  - (c) *to "councillors" were references to "committee members"; and*
  - (d) *to "mayor or president" were references to "presiding member".*

**5.13. Deputy presiding members, functions of**

- If, in relation to the presiding member of a committee —*
- (a) *the office of presiding member is vacant; or*
  - (b) *the presiding member is not available or is unable or unwilling to perform the functions of presiding member, then the deputy presiding member, if any, may perform the functions of presiding member.*

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*If, in relation to the presiding member of a committee —*

- (a) the office of presiding member and the office of deputy presiding member are vacant; or*
- (b) the presiding member and the deputy presiding member, if any, are not available or are unable or unwilling to perform the functions of presiding member, then the committee members present at the meeting are to choose one of themselves to preside at the meeting.*

**FINANCIAL IMPLICATIONS**

There are no financial implications that relate to this matter.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

The only risk related to this matter is that at the 23 November 2020 Governance Committee meeting, Cr Pazolli sat as a member of the committee, acted as the Presiding Member and voted, is if it was assessed that he had no capacity to do so in an ex officio capacity.

**POLICY IMPLICATIONS**

Council Policy CP-018 Terms of Office applies to the practice of Elected Members resigning from the office of Deputy Mayor after 12 months. This policy is due for review in February 2021. It is appropriate for the Council to give consideration as to whether or not this practice should continue at that time for implementation following the October 2021 elections.

In relation to membership the Governance Committee Charter states:

***Membership***

- In accordance with Section 5.8 of the Local Government Act 1995, members of the Committee will be appointed by absolute majority decision of the Council;*
- The Committee will comprise at least the Mayor, Deputy Mayor and four Councillors of the City of Melville;*
- In accordance with section 5.11 of the Local Government Act 1995 membership of the Committee will be reviewed following each Ordinary Election day i.e. once every two years, or upon the cessation of office by any member or the resignation from the Committee by a member.*

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Should Cr Pazolli remain on the Governance Committee there will be two representatives from the same ward on the committee, which is no different to what has occurred for the last 12 months. The Council would also need to resolve in relation to the appointment of the presiding member for the next 12 months.

Should Cr Pazolli not be on the committee, a Presiding Member will need to be appointed at the next meeting of the Committee and that member would undertake the functions that have been allocated to the committee presiding member that relate to the review of the building related customer service complaints. Cr Pazolli would then remain as the ward's Deputy (proxy) member on the Committee.

**CONCLUSION**

It is for the Council to decide by absolute majority decision if Cr Pazolli is to be appointed to the Governance Committee as a second representative of the Applecross – Mount Pleasant ward and if appointed, to confirm his position as Presiding Member.

**OFFICER RECOMMENDATION (5797)****ABSOLUTE MAJORITY DECISION****That the Council:**

- 1. Resolve by absolute majority decision on the matter of Cr Pazolli remaining as a member on the Governance Committee and as the Presiding Member of the Committee until October 2021.**
- 2. Notes that the practice of the Deputy Mayor holding the position for a period of 12 month period only in accordance with Council Policy CP-018 "Terms of Office" will be reviewed in February 2021 with any changes to be implemented following the October 2021 councillor elections.**