



NOTICE OF MEETING

Dear Committee Members

I respectfully advise that the AUDIT AND RISK COMMITTEE MEETING will be held in Council Chambers, York Town Hall, York on Tuesday, 12 September 2023, commencing at 3.00pm.

MEETING AGENDA ATTACHED

Chris Linnell

CHRIS LINNELL
CHIEF EXECUTIVE OFFICER
Date: 7 September 2023

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<p>MISSION STATEMENT <i>"Building on our history to create our future"</i></p>

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1 OPENING

1.1 Declaration of Opening

1.2 Acknowledgement/Disclaimer

The Presiding Member advises the following:

“The York Shire Council acknowledges the Ballardong people of the Noongar Nation who are the Traditional Owners of this country and recognise their continuing connection to land, water, sky and culture. We pay our respects to all these people and their Elders past, present and emerging.

This meeting is being recorded on a digital audio and visual device to assist with minute taking purposes. The public is reminded that in accordance with Section 6.16 of the Shire of York Local Government (Council Meetings) Local Law 2016 that nobody shall use any visual or vocal recording device or instrument to record the proceedings of Council without the written permission of the presiding member.

I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.”

1.3 Attendance Via Electronic Means

Upon confirmation of meeting the requirements of Regulation 14C of the Local Government (Administration) Regulations 1996, Ms Shona Zulsdorf has requested attendance at this meeting via electronic means.

1.4 Standing Orders

1.5 Announcement of Visitors

1.6 Declarations of Interest that Might Cause a Conflict

Councillors/Staff are reminded of the requirements of s5.65 of the Local Government Act 1995, to disclose any interest during the meeting when the matter is discussed and also of the requirement to disclose an interest affecting impartiality under the Shire of York's Code of Conduct.

Name	Item No & Title	Nature of Interest (and extent, where appropriate)

1.7 Declaration of Financial Interests

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.

Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

Name	Item No & Title	Nature of Interest (and extent, where appropriate)

1.8 Disclosure of Interests that may affect Impartiality

Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member/employee is also encouraged to disclose the nature of the interest. The member/employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member/employee declares that their impartiality will not be affected then they may participate in the decision making process.

Name	Item No & Title	Nature of Interest (and extent, where appropriate)

2 ATTENDANCE

2.1 Members

2.2 Staff

2.3 Apologies

2.4 Leave of Absence Previously Approved

2.5 Number of People in the Gallery at Commencement of Meeting

3 QUESTIONS FROM PREVIOUS MEETINGS

4 PUBLIC QUESTION TIME

Public Question Time is conducted in accordance with the Act and Regulations. In addition to this the Shire's *Local Government (Council Meetings) Local Law 2016* states –

6.7 Other procedures for question time for the public

- (1) A member of the public who wishes to ask a question during question time must identify themselves and register with a Council Officer immediately prior to the meeting.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that—
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.

- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where—
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have 2 minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where any questions remain unasked at the end of public question time they may be submitted to the CEO who will reply in writing and include the questions and answers in the agenda for the next ordinary Council meeting.
- (11) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

4.1 Written Questions – Current Agenda

4.2 Public Question Time

5 APPLICATIONS FOR LEAVE OF ABSENCE

6 PRESENTATIONS

7 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Audit and Risk Committee Meeting - 18 July 2023

Confirmation

That the minutes of the Audit and Risk Committee Meeting held on 18 July 2023 be confirmed as a correct record of proceedings.

8 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

9 OFFICER'S REPORTS

9.1 APPLICATIONS FOR EXTERNAL MEMBER REPRESENTATION ON THE AUDIT AND RISK COMMITTEE

File Number:	4.0474
Author:	Vanessa Green, Council & Executive Support Officer
Authoriser:	Chris Linnell, Chief Executive Officer
Previously before Council:	23 November 2021 (331121) 20 December 2022 (141222) 18 April 2023 (020423)
Disclosure of Interest:	Nil
Appendices:	1. Applicant 1 - Confidential 2. Applicant 2 - Confidential

NATURE OF COUNCIL'S ROLE IN THE MATTER

Legislative

PURPOSE OF REPORT

For the Audit and Risk Committee to consider the appointment of up to two (2) external members.

BACKGROUND

The Shire's Audit and Risk Committee has had external member representation since November 2021 with the appointment of Mr Peter Carden (331121) and Ms Shona Zulsdorf in December 2022 (141222).

Having external representation on audit committees has been a long-established practice in other states, and local governments in Western Australia have been increasingly moving in that direction in recent times. External representation can not only assist with the monitoring the Shire's governance environment, but also help to identify and drive improvement initiatives which will deliver gains to Council, staff and the wider community.

External members are appointed for a period of two (2) years, in line with the normal terms of office for Council. It is essential that applicants can commit to the term of office and attend the meetings (preferably in-person) during that period.

Most recently, the Audit and Risk Committee considered the requirement to advertise for external member nominations, with Council considering the Committee's recommendation at its April 2023 meeting and resolving (020423):

"That, with regard to the Audit and Risk Committee - Request for Reimbursement and Requirement to Advertise for External Member Nominations, Council:

- 1. Approves the request to reimburse external members of the Audit and Risk Committee for applicable expenses incurred by attending Committee meetings, with the amount to be reimbursed set in accordance with Part 8 of the Salaries and Allowances Tribunal Determinations.***
- 2. Requests the Chief Executive Officer to conduct an advertising process in August 2023 of not less than fourteen (14) days calling for expressions of interest from suitably qualified and skilled persons to be appointed as external representatives to the Shire of York's Audit and Risk Committee, with the nominations received to be presented to the***

Audit and Risk Committee at its September 2023 Meeting to enable the appointments to be effective from the local government ordinary elections in October 2023.”

In accordance with point 2 of the above resolution Local Public Notice calling for expressions of interest (EOIs) was published from 1 August 2023 with the closing date for applications being 12pm WST Friday 1 September 2023. The advertising consisted of a notice in the York & District Community Matters, on the Shire’s website, noticeboards and via social media.

COMMENTS AND DETAILS

At the close of nominations, two (2) applications were received and are presented in confidential Appendices 1 and 2.

The Committee may wish to close the meeting to the public in accordance with Section 5.23(2)(b) of the *Local Government Act 1995* to discuss the applications in detail.

The Committee’s Terms of Reference states that “up to two (2) external members be appointed”.

Both applications have completed the nomination form and provided a detailed resume outlining their skills, knowledge and/or experience in local government and audit functions, with one (1) of the applicants being a current external member of the Committee.

It is noted that one (1) applicant has indicated their ability to commit to the meeting requirements of the Committee. However, Officers are aware there are known conflicts between the current date and time of the Committee’s meetings and the member’s availability to attend meetings in person, although this is not mentioned in the application. Council will be considering its meeting dates and times at its October 2023 Ordinary Meeting. The Committee should consider whether, or not, it wishes to amend the current meeting date and time to inform that agenda report if it chooses to recommend Council accept the applicant’s nomination.

OPTIONS

The Committee has the following options:

- Option 1:** The Committee could recommend that Council endorses both Applicant 1 and 2 as the external members to the Audit & Risk Committee, with the terms expiring at the 2025 local government ordinary elections.
- Option 2:** The Committee could recommend that Council endorses one (1) and rejects the other applicant as an external member to the Audit & Risk Committee and requests the Chief Executive Officer to notify both applicants of the outcome.
- Option 3:** The Committee could recommend that Council rejects both applicants as external members of the Audit & Risk Committee and requests the Chief Executive Officer to notify both applicants of the outcome.

Option 1 is the recommended option.

IMPLICATIONS TO CONSIDER

Consultative

Community advertising from 1 August 2023 to 1 September 2023

Strategic

Strategic Community Plan 2020-2030

Goal 5: Strong Leadership and Governance

To have effective and responsive leadership and governance, where a sense of collective purpose and shared direction combine to work together.

Policy Related

E1 Code of Conduct – Council Members – Committee Members – Candidates

Financial

At its April 2023 Ordinary Meeting, Council approved reimbursing external members of the Audit and Risk Committee for applicable expenses incurred by attending Committee meetings, with the amount to be reimbursed set in accordance with Part 8 of the Salaries and Allowances Tribunal Determinations (020423).

It is also noted that, as part of the Local Government Reform Package, following 1 January 2024 payments for independent Council Committee Members will be required, following the 2024 Salaries and Allowances Tribunal Determination. An allocation has been included in the 2023/24 budget to allow for this.

Legal and Statutory

Sections 5.10, 5.11 and 5.100 of the *Local Government Act 1995* are applicable and state:

“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.*
- (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.*

5.100. Payments for certain committee members

(1) *A person who is a committee member but who is not a council member or an employee is not to be paid a fee for attending any committee meeting.*

(2) *Where —*

(a) *a local government decides that any person who is a committee member but who is not a council member or an employee is to be reimbursed by the local government for an expense incurred by the person in relation to a matter affecting the local government; and*

(b) *a maximum amount for reimbursement of expenses has been determined for the purposes of section 5.98(3)(b),*

the local government must ensure that the amount reimbursed to that person does not exceed that maximum."

Section 7.1A of the *Local Government Act 1995* is also applicable and 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.*

(3) *A CEO is not to be a member of an audit committee and may not nominate a person to be a member of an audit committee or have a person to represent the CEO as a member of an audit committee.*

(4) *An employee is not to be a member of an audit committee."*

Regulation 16 and 17 of the *Local Government (Audit) Regulations 1996* are applicable to the functions of an audit committee and state:

"16. Functions of audit committee

An audit committee has the following functions —

(a) *to guide and assist the local government in carrying out —*

(i) *its functions under Part 6 of the Act; and*

(ii) *its functions relating to other audits and other matters related to financial management;*

- (b) *to guide and assist the local government in carrying out the local government's functions in relation to audits conducted under Part 7 of the Act;*
- (c) *to review a report given to it by the CEO under regulation 17(3) (the **CEO's report**) and is to —*
 - (i) *report to the council the results of that review; and*
 - (ii) *give a copy of the CEO's report to the council;*
- (d) *to monitor and advise the CEO when the CEO is carrying out functions in relation to a review under —*
 - (i) *regulation 17(1); and*
 - (ii) *the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);*
- (e) *to support the auditor of the local government to conduct an audit and carry out the auditor's other duties under the Act in respect of the local government;*
- (f) *to oversee the implementation of any action that the local government —*
 - (i) *is required to take by section 7.12A(3); and*
 - (ii) *has stated it has taken or intends to take in a report prepared under section 7.12A(4)(a); and*
 - (iii) *has accepted should be taken following receipt of a report of a review conducted under regulation 17(1); and*
 - (iv) *has accepted should be taken following receipt of a report of a review conducted under the Local Government (Financial Management) Regulations 1996 regulation 5(2)(c);*
- (g) *to perform any other function conferred on the audit committee by these regulations or another written law.*

17. CEO to review certain systems and procedures

- (1) *The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to —*
 - (a) *risk management; and*
 - (b) *internal control; and*
 - (c) *legislative compliance.*
- (2) *The review may relate to any or all of the matters referred to in subregulation (1)(a), (b) and (c), but each of those matters is to be the subject of a review not less than once in every 3 financial years.*
- (3) *The CEO is to report to the audit committee the results of that review."*

Risk Related

The level of risk is reduced due to the provision of independent transparency and oversight with the appointment of two (2) external representatives to the Committee.

The Committee and Council will need to be satisfied that the external representatives are suitably skilled and qualified.

Workforce

The time to administer the Committee is managed within existing resources.

VOTING REQUIREMENTS

Absolute Majority: Yes

RECOMMENDATION

That, with regard to the Applications for External Member Representation on the Audit and Risk Committee, the Audit and Risk Committee recommend to Council that it:

- 1. Endorses both Applicants 1 and 2, as presented in confidential Appendices 1 and 2, as the external members to the Audit and Risk Committee, with the terms expiring at the 2025 local government ordinary elections.**

10 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

11 QUESTIONS FROM MEMBERS WITHOUT NOTICE

12 BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

13 CLOSURE