



Date: 23 August 2012

Your Ref:

Enquiries: Jamie Parry

Our Ref: 03082

Mr Ray Foster
Secretary
Business Development Association Inc.
PO Box 24
JOONDALUP WA 6919

Dear Mr Foster

GENERAL MEETING 22 AUGUST & SPECIAL MEETING 24 AUGUST 2012

I refer to your email dated 8 August 2012 whereby you gave notice to BDA members of a General Meeting convened by you as Secretary under clause 15(5) of the BDA Constitution. By the same email you also gave notice of a Special General Meeting convened at the request of five members under clause 15(1)(c) of the Constitution.

Your notice included an agenda for each meeting.

Representatives of the City attended the General Meeting of the BDA on 22 August 2012.

A summary of what occurred from the City's perspective is as follows.

- The meeting opened with Russell Poliwka, as vice chairperson, taking the chair, as the office of chairperson was vacant.
- When the status of the meeting was raised by members attending Mr Poliwka refused to acknowledge that the meeting was a general meeting and proceeded to preside at the meeting as if it was a committee meeting saying that there was no difference between them – this is not consistent with the Constitution.
- Mr Poliwka set the published agenda aside, over the objections of members attending, and without lawful authority to do so.
- The authority of the office of Chairperson is limited to presiding at meetings – a decision to set the agenda aside or to move to a new matter not on the agenda can only be made by a resolution of the members attending the meeting.

- Mr Poliwka moved to a matter not on the agenda, and over the objections of members attending, proceeded to have the meeting consider an application for membership (of the Association, not the committee) which was not in accordance with the provisions of the Constitution concerning the appointment of new members.
- When a motion was put on a membership application, Mr Poliwka refused to accept the votes of the ECU members on the basis that ECU had a conflict of interest with respect to all matters concerning the BDA.
- The actions of the vice chairperson were taken without lawful authority and are of no legal effect – the Chairperson does not have the authority to make a ruling about conflict of interest (even assuming a conflict existed, when clearly it did not).
- Under the *Associations Incorporation Act* the obligation to disclose a conflict of interest is a matter for the individual, not the presiding member or the meeting.
- Once it became clear that the meeting was not capable of making lawful decisions, the representatives of the City, ECU and Mr Chris Baker withdrew.
- Upon this withdrawal, the meeting was without a quorum and unable to lawfully continue.

The net result of these events is that nothing was achieved by the meeting.

No lawful decisions were made and no useful business was conducted.

This is an unsustainable situation for the BDA and the City urges you as Secretary, and the other office holder Mr David Curry, to take some measure of responsibility for the actions of the vice chairperson.

The City is extremely concerned about the actions of Mr Poliwka and his unlawful and unauthorised actions.

Notwithstanding the dysfunctional conduct of this meeting, the City intends to attend the Special General Meeting tomorrow.

However it wishes to place the following matters on the public record –

- The current membership of the BDA consists of the City, ECU and the JBA (Foundation Members) together with three ordinary members Mr Chris Baker, Mr David Curry and Ms Marisa Powell.
- The Committee of the Association consists of two representatives from the City, two representatives from ECU, two representatives from JBA and three ordinary members.

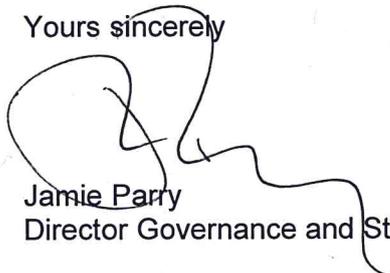
- Currently filled offices on the committee include vice chairperson, treasurer and secretary.
- The office of Chairperson is vacant.
- The attempt to recruit a new member at the General Meeting on 22 August is a nullity and of no effect.
- Each of the actions of the vice chairperson at the General Meeting in setting aside the published agenda, placing a membership application before the meeting, and refusing to accept the votes of a member, was unlawful, and not authorised by a resolution of the Association, the Constitution or the Act.
- Each member of the Association present in person or by proxy is entitled to vote at a general meeting – clause 18(1).

When the City attends the Special General meeting tomorrow it does so with the expectation that the purpose of the meeting will be genuinely considered with all members present acting lawfully, in good faith and in the best interests of the Association. All members will be exercising their right to vote on matters and take personal responsibility for declaring any relevant interests they consider necessary to declare, in accordance with the *Associations Incorporation Act*.

It does not expect to see any further attempted manipulation of the Constitution and it does not expect to see any further attempts to deprive members of their right to vote.

This letter will be copied to all Association members.

Yours sincerely



Jamie Parry
Director Governance and Strategy