



City of
Melville

MINUTES

ORDINARY MEETING OF THE COUNCIL

6.30pm Tuesday, and Wednesday 18 & 19 April 2023

Held in the Council Chambers, Melville Civic Centre
10 Almondbury Road Booragoon

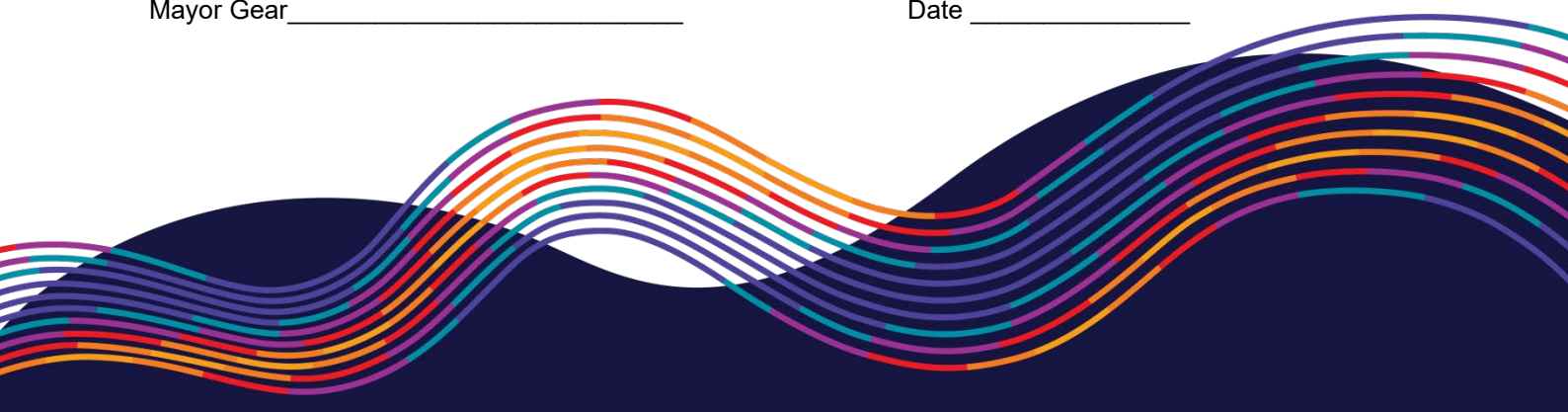
The City of Melville acknowledges the Bibbulmun people as the Traditional Owners and custodians of the lands on which the City stands today and pays its respect to the Whadjuk people, and Elders both past, present and emerging.

Minutes to be confirmed at the next Ordinary Council Meeting

These minutes are hereby confirmed as true and accurate

Mayor Gear _____

Date _____



Our Vision

Engaging with our diverse community to achieve an inclusive, vibrant and sustainable future.

Our Mission

To provide good governance and quality services for the City of Melville community.

Our Values

Excellence

Striving for the best possible outcomes

Participation

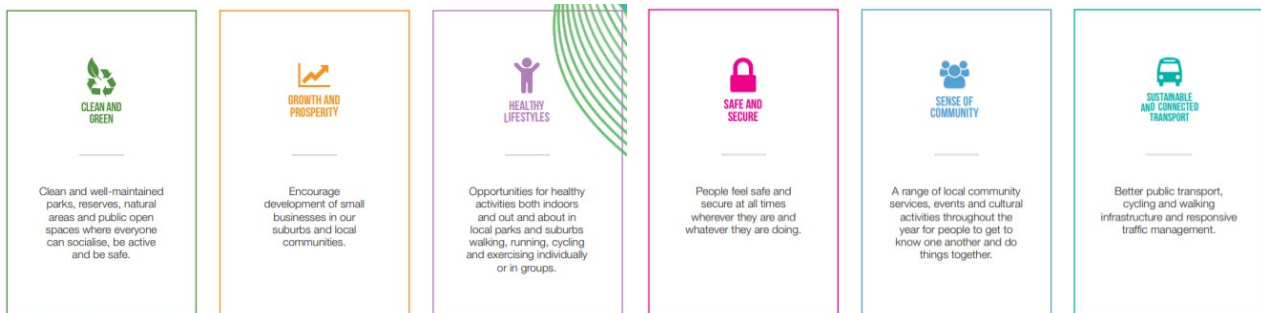
Involving, collaborating and partnering

Integrity

Acting with honesty, openness and with good intent

Caring

Demonstrating empathy, kindness and genuine concern



Making A Deputation

A deputation is a verbal presentation by one or more members of the public on a matter to be considered at the Council meeting. Deputations are made at the relevant Agenda Briefing Forum, held one week prior to the Ordinary Meeting of Council.

Information on making a deputation is available on the City's website [Request to make a Deputation](#).

Public Question Time

You can ask a question at a Council meeting during Public Question Time. Information on how to ask a question can be found on the City's website [Public Question Time](#).

Complex questions or those related to matters on the agenda and requiring a response at the meeting are "questions on notice" and should be submitted in writing, by the close of business the Tuesday prior to the meeting.

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Audio Recording/ Access to Recording

In accordance with the Council Policy CP- 088 Creation, Access and Retention of Audio Recordings of the Public Meetings this meeting is electronically recorded. All recordings are retained as part of the City's records in accordance with the State Records Act 2000 and the General Disposal Authority for Local Government Records. The Audio recording may be accessed at www.melvillecity.com.au/agendas.

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Without Previous Notice

Nil.

MATTERS FOR WHICH THE MEETING WAS CLOSED

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1 OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and officially declared the meeting open at 6:30pm and invited Cr Wheatland to read the Acknowledgement of Country and advised those present of the Purpose of the Agenda Briefing Forum, the Disclaimer, the Affirmation of Civic Duty and Responsibility and the Audio Recording Advice.

2 ATTENDANCE AND APOLOGIES

Mayor Hon. G Gear

In Attendance

Cr T Fitzgerald (Deputy Mayor)	Palmyra – Melville – Willagee
Cr K Wheatland	Palmyra – Melville – Willagee
Cr N Pazolli	Applecross – Mount Pleasant
Cr C Ross	Applecross – Mount Pleasant
Cr D Macphail	Bateman – Kardinya – Murdoch
Cr N Robins	Bateman – Kardinya – Murdoch
Cr G Barber	Bicton – Attadale – Alfred Cove (<i>electronic attendance</i>)
Cr J Edinger	Bicton – Attadale – Alfred Cove
Cr J Spanbroek	Bull Creek – Leeming
Cr M Woodall	Bull Creek – Leeming
Cr M Sandford	Central
Cr K Mair	Central

Officers

Mr M Tieleman	Chief Executive Officer
Mr M McCarthy	Director Environment and Infrastructure
Mr G Ponton	A/Director Urban Planning
Ms G Bowman	Director Community Development
Ms C Newman	Head of Governance
Ms R Davis	Governance Officer
Ms M Smith Poulton	Business Support (Administration) Officer

At the commencement of the meeting:

Public Gallery	49
Electronic	12
Press	0

Apologies

Nil.

On Approved Leave of Absence

Nil.

1) DECLARATIONS BY MEMBERS

3.1 Declarations by Members who have not read and given due consideration to all matters contained in the business papers presented before the Meeting.

- Cr Wheatland – Proposed Amendment put forward by Cr Ross - Item UP23/4025 Review of Canning Bridge Activity Centre Plan – Recommendation to WAPC.
- Cr Pazolli – Late Motions distributed on Tuesday 18 April 2023.

3.2 Declarations by Members who have received and not read the Elected Members Bulletin.

- Cr Ross – Elected Members Bulletin 14 April 2023.

4 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Approved Deputations

- Ms J Ciccarelli, Mount Pleasant
Item UP23/4025 Canning Bridge Public Open Space Analysis Report
- Mr L Rowe, Applecross and Mr D Kenny, Applecross (*Electronic Attendance*)
Item UP23/4025 Review of Canning Bridge Activity Centre Plan – Recommendation to WAPC

Approved Written Submissions

- Confidential Written Submission
Item M23/5968 Independent Review, Weir Legal and Consulting Report

5 DISCLOSURES OF INTEREST

5.1 Financial or Proximity Interests

Under sections 5.60A and/or 5.60B of the *Local Government Act 1995*

- Cr Mair – Item UP23/4025 Review of Canning Bridge Activity Centre Plan – Recommendation to WAPC – Financial Interest.
- Cr Woodall – Item 15.5 Motion with Notice - Bombard Street – Financial Interest.
- Mr M Tieleman, Chief Executive Officer - Item C23/5970 CEO Performance Review 1 July 2021 to 30 June 2022 – Financial Interest.
- Mr M Tieleman, Chief Executive Officer - Item C23/5971 Confidential Petition CEO Contract – Financial Interest.

5.2 Disclosure of Interest That May Cause a Conflict

Under 22 *Local Government (Model Code of Conduct) Regulations 2021* or a City of Melville Code of Conduct)

Nil.

6 PUBLIC QUESTION TIME

At 6:35pm the Mayor opened Public Question Time.

6.1 Questions Received with Notice

6.1.1 Mr G Keally, Western Australians Against Corruption in Local Government

WAACLG has received a copy of Mayor Gear's letter to the Editor response to Mr Murray's press article. In his letter the Mayor has made a statement that a particular resident "alone has sent more 6,500 emails to the city".

Question 1

How is it that the City arrived at this figure of 6,500 emails from a single individual?

Question 2

What software was utilised and what systems were accessed in order to determine this figure?

Response to Questions 1 and 2

The information in the article was provided by the Mayor.

6.1.2 Ms G Jones, Bull Creek

Question 1

I am now requesting that this council will authorise a registered building inspector and an independent structural engineer to inspect and report on whether the building permit requirements issued to Mr Nguyen have been complied with or not. I agree to access on my property for the Building inspector and structural engineer to confirm that the retaining wall which has been constructed complies with the building permit issued on 30 January 2019?

Response

The issues raised in this question relate to a building compliance matter that has previously been investigated by the City and responded to in March 2020. We note that the City's Building Team have recently contacted you to offer to conduct a further site visit and to discuss your building compliance concerns and any appeal options directly with you.

Question 2

Why was my original engineers report rejected? If I have another review by the City of Melville employees without an independent engineers report, I will have the same result I already have.

Response

This question has been taken on notice.

6.2 Questions Received at the Meeting

The following questions were received without notice.

6.2.1 Mr G Keally, Western Australians Against Corruption in Local Government

This Notice of Decision clearly states the FOI officer's reasons for redacting tracts of the report that included the personal information of a number of individuals who did not consent to their personal information being released. The redaction of such personal details was after consideration of the FOI Act's public interest test; more over we expect that privacy case precedents were a consideration as well.

CEO Tieleman is advising (urging?) council to release the same report but now with virtually all of the personal information of the four individuals intact which is clearly contrary to the City's FOI officer's assessment and considered decision.

Question 1

So WAACLG feels compelled to ask: Is council as a body satisfied that it has received sound legal advice as to what the ramifications are and the extent of liability that could arise for council (and elected members) in following Mr Tieleman's advice ?

Question 2

Has council consciencely reviewed the legal advice together with the brief and supporting documents that would be been provided to the City's legal counsel? Which presumably was the whole basis on which the advice was provided ?

Response to Questions 1 and 2

These questions should be raised directly with individual council members for their response.

The City has received legal advice in relation to any Elected Member defamation liability and the publication of the Weir Report, which has been provided to Elected Members. This matter is before the Council for consideration and decision tonight.

The release of the report into the public realm is not being considered in response to an FOI application.

6.2.2 Dr Peterson, City of Melville Residents and Ratepayers Association (Inc)

Reference is made to the Department of Local Government Mr Yilditz's February 28 letter expressing its concerns about the City's governance, Mayor Gear's press statements in the March 25 Fremantle Herald on March 25 and other items on the agenda.

Question 1

1. *Please supply a summary of the 170 complaints and 200 compliments broken down into the date and basis of the complaints, the services area for which the complaint was made, and the date and a description on how the complaint was RESOLVED. Please specifically highlight those that were "Executive Complaints", as defined by the attached Customer Science Final Complaints Review report dated 10 January 2020, and any conduct complaints against City CEO and other officers?*

6.4.2 City of Melville Residents and Ratepayers Association (Inc), continued.

Question 2

2. *Since 1 June 2019 to YTD 2023 what were the City's legal and other court costs by year and by who received those payments. Please supply an indication of the basis of the need for obtaining the legal advice or pursuing Court action. This should include and such costs that were provided for the benefit of Elected Members or employees, such as what is mentioned in the City's legal representation policy (CP-0117).*

Response to Questions 1 and 2

In accordance with clause 6.10(h) of the City of Melville Meeting Procedures Local Law 2022, the Presiding Member ruled an answer to this question would not be given, as the research involved would divert a substantial and unreasonable portion of the City's resources away from its other functions.

Question 3

What is the total value of ANY severance payments or gifts, above the basic accrued employment contract provisions, made to any City employee that has separated since 1 January 2020. Under what specific authority did the CEO approve an such payments/gifts.

Response

Any severance payments to staff are made in line with approved Council policy, relevant legislation and the industrial instruments governing their employment.

No gifts have been made to terminating staff members by the City of Melville.

Question 4

At the April 11 ABF:

We asked Council "Under what specific provision(s) of the Local Government Act or other statutory authority is DLGSC's Mr Mustafa Yildiz in his February 28 letter directing the City to release the Weir Report in its entirety; that is, does the DLGSC have the statutory authority to make such directions to Council; to which Mr Tieleman appears to be heavily relying on in his recommendation?". Mr Tieleman initially stated that this question should be directed to the Department of Local Government, but when questioned by a Councillor he gave an unclear rambling response that was not recorded in the ABF notes; what is the answer?

Response

As stated in the answer at the ABF the answer to this question should be sought from the Department. The answer to the Councillors question is available in the audio which is on the City's website.

6.2.2 City of Melville Residents and Ratepayers Association (Inc), continued.

Question 5

- a. *Cr Barber asked, in response to the City's assertions that boundary retaining wall issues were not for the City to deal with, rather should be dealt with under the Dividing Fences Act or other legal processes, the CEO to confirm if retaining walls were dividing fences that fell under the Dividing Fences Act and what 'other' legal processes the City was in fact referring to. The answer to this question is not in the ABF notes; what is the answer?*

Response

This information has been provided to Councillors on the City's elected members portal.

Retaining walls are not mentioned within *the Dividing Fences Act 1961*. The *Dividing Fences Act 1961* is related to the construction and repair of dividing fences between properties. The definition of a dividing fence, "means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary".

Retaining walls are addressed within the Building Regulations 2012 (when a permit is required for a retaining wall) and the *Building Act 2011* (how a building permit is assessed/issued) and refers to powers of enforcement for building compliance purposes.

Question 6

5. *Why have City officers advised ratepayers:*
- a. *that structures built by neighbours did not encroach on to their land when in fact they did, and why have they told those residents that the encroachments are not building matters for the City will (sic) resolve?*
 - b. *to go to the Magistrates' Court for things that the City is the prescribed statutory authority for, such as illegal encroachments and other building matters?*

Response to Question 6

Western Australian local governments have discretion when it comes to building compliance enforcement action.

Local governments do not rely solely on the enforcement functions available in the *Building Act 2011*, as they may not be available, of benefit or achieve the outcomes sought by the relevant party. An example is where rectification works are sought but the relevant property owner has not given consent for anyone to enter their property. An order in this circumstance would not achieve the desired outcome.

Pursuing building compliance concerns through the Magistrate Court is an alternative option available to property owners. In certain circumstances, the Magistrate Court has exclusive jurisdiction, and their enforcement powers exceed those of local governments, as they can award costs and compensation.

The City responds to all allegations of building compliance, and action taken and advice given is given is determined on a case-by-case basis, depending on the particular facts of the case, including the outcome sought by the relevant party.

**6.3 Questions Taken on Notice at Previous Meeting
Ordinary Meeting of Council held 21 March 2023**

6.3.1 Dr Peterson, Bateman

Further to my deputation last month and responses to previous questions from me to the City:

Question 1

Why was the City's response, to a question I submitted last year, that the calls from an officer after hours and during work hours happened in 2010, when the warning letter was sent in March 2014 and the Police investigated calls up to the end of 2017?

Response

The following response provided in the Minutes of the 15 March 2022 Ordinary Meeting of Council:

"This relates to a matter dating back to circa 2010 that was a telecommunications and police matter that was considered by the Magistrates Court and the City will not be commenting on this matter further."

As such, the City will not comment further on this matter.

Question 2

Further to an email from the City dated 5 June 2020 in relation to an illegal and unsafe lattice structure that was encroaching over my property boundary, the email stated "the structure is located wholly within the property boundary." This information is incorrect and can the City advise why this incorrect information was provided?

Response

The information provided in the 5 June 2020 letter was correct at the time. The correspondence indicates that the structure was located within the neighbouring property boundary, however it had been tethered to Dr Peterson's brick wall by the State Emergency Services during late May 2020.

At 6:52pm the Mayor closed Public Question Time.

7 AWARDS AND PRESENTATIONS

Nil.

8 APPLICATIONS FOR NEW LEAVES OF ABSENCE

COUNCIL RESOLUTION

At 6:53pm Cr Robins moved, seconded Cr Mair –

That applications of new leaves of absence submitted by Cr Ross, Cr Barber, Cr Wheatland, and Cr Macphail on 18 April 2023 be received.

At 6:53pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

9 CONFIRMATION OF MINUTES

9.1 Ordinary Meeting of Council – 21 March 2023 [OMC Minutes – 21 March 2023](#)

COUNCIL RESOLUTION

At 6:53pm Cr Fitzgerald moved, seconded Cr Edinger –

That the Minutes of the Ordinary Meeting of Council held on Tuesday, 21 March 2023 be confirmed as a true and accurate record.

At 6:53pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

9.2 Governance Committee – 30 March 2023

COUNCIL RESOLUTION

At 6:53pm Cr Wheatland moved, seconded Cr Sandford –

That the Minutes of the Governance Committee Meeting held on Thursday, 30 March 2023 be noted.

At 6:53pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

9.3 Special Meeting of Council – 3 April 2023
[SMC Minutes 3 April 2023](#)

COUNCIL RESOLUTION

At 6:54pm Cr Wheatland moved, seconded Cr Ross—

That the Minutes of the Special Meeting of Council held on Monday, 3 April 2023 be confirmed as a true and accurate record.

At 6:54pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

9.4 Notes of the Agenda Briefing Forum – 11 April 2023
[ABF Notes 11 April 2023](#)

COUNCIL RESOLUTION

At 6:54pm Cr Woodall moved, seconded Cr Sandford –

That the Notes of the Agenda Briefing Forum held on Tuesday, 11 April 2023 be confirmed as a true and accurate record.

At 6:54pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

10 NEW BUSINESS OF AN URGENT NATURE

Nil.

11 IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

That the meeting may be closed to members of the public, if required, to allow for items below deemed confidential in accordance with Sections 5.23 (2)(a) and (b) of the *Local Government Act 1995* to be discussed behind closed doors.

- Item M23/5968 Independent Review – Weir Legal and Consulting Report
- Item C23/5970 CEO Performance Review 1 July 2021 to 30 June 2022
- Item C23/5971 Confidential Petition CEO Contract

12 PETITIONS

Nil.

13 ADOPTION OF RECOMMENDATIONS EN BLOC

COUNCIL RESOLUTION

At 6:55pm Cr Mair moved, seconded Cr Pazolli –

That the recommendations for:

- 1. Item C23/6000 – Investment Statements for January 2023**
- 2. Item C23/6001 – Schedule of Accounts Paid for January 2023**

be carried En Bloc.

At 6:55pm the Mayor declared the motion

CARRIED UNANIMOUSLY EN BLOC (13/0)

1. 14 REPORTS

2. 14.1 Reports from Committees

Item C23/5970 CEO Performance Review 1 July 2021 to 30 June 2022, is a matter referred from the Governance Committee. This item was dealt with behind closed doors at the end of the meeting.

14.2 REPORTS OF THE CHIEF EXECUTIVE OFFICER

At 6:57pm the Mayor Brought Forward Item UP23/4033 – Canning Bridge Public Open Space Option Analysis for the convenience of those making deputations on the matter.

At 6:57pm Ms Ciccorelli, gave a deputation that concluded at 7:07pm. Mr D West responded to questions from Elected Members. At 7:19pm, Ms Ciccorelli and Mr West returned to the gallery.
[Presentation – Ms Ciccorelli](#)

At 7:19pm Cr Wheatland left the meeting.

At 7:19pm the Mayor brought forward the deputation from Mr Rowe and Mr Kenny, noting the deputation was on:

- Item UP23/4025 – Review of Canning Bridge Activity Centre Plan – Recommendation to Western Australian Planning Commission, and
- Item UP23/4033 – Canning Bridge Public Open Space Option Analysis.

The meeting noted that Cr Mair had declared an interest in Item UP23/4025 – Review of Canning Bridge Activity Centre Plan – Recommendation to Western Australian Planning Commission and consented to her remaining in the Chamber for the deputation by Mr Rowe and Mr Kenny.

At 7:20pm Mr Kenny (electronic attendance) and Mr Rowe presented a deputation that concluded at 7:34pm. At 7:41pm Mr Rowe returned to the Public Gallery. [Presentation – Mr L Rowe & Mr D Kenny](#)

At 7:22pm Cr Wheatland returned to the meeting.

At 7:43pm Cr Barber left the meeting and returned at 7:43pm.

UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)

Ward	: Applecross – Mount Pleasant
Category	: Strategic
Application Number	: Not Applicable
Property	: Not Applicable
Proposal	: Response to Council Resolution
Applicant	: Not Applicable
Owner	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item P20/3867 – Submissions Report – Ground Lease Redevelopment Proposal 13 The Esplanade and 64 Kishorn Road, Mt Pleasant – Ordinary Meeting of Council held on 29 September 2020 Item M22/5890 – Ground Lease Redevelopment Agreement 13 The Esplanade and 64 Kishorn Road, Mt Pleasant – Ordinary Meeting of Council held 15 February 2022. Item M22/5895 – Motions Carried at the General Meeting of Electors Held 2 February 2022 – Ordinary Meeting of Council held 15 March 2022 Item 16.1 Motion with Notice Mount Pleasant Senior Citizens Site Being Public Open Green Space – Ordinary Meeting of Council held 15 March 2022 Item 18.1 Confidential Item M22/5890 Ground Lease Redevelopment Agreement 13 The Esplanade and 64 Kishorn Road, Mt Pleasant – Alternate Motion - Ordinary Meeting of Council held on 19 April 2022 Item 12.1 - Petition – Rezone 13 The Esplanade/ 67 Kishorn Road, Mount Pleasant to Public Open Space – Ordinary Meeting of Council held 21 June 2022 Item UP22/3933 – 13 The Esplanade /64 Kishorn Road, Mount Pleasant Future Options Report – Ordinary Meeting of Council held 19 July 2022. (Deferred) Item UP22/3993 – 13 The Esplanade /64 Kishorn Road, Mount Pleasant Future Options Report – Ordinary Meeting of Council held 18 October 2022. Item UP23/4021 Holding Item for Noting at the Ordinary Meeting of Council held March 2023.
Responsible Officer	: Gavin Ponton Acting Director Urban Planning

**UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)**

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"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 (e.g. 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>

KEY ISSUES / SUMMARY

- The Council at its Ordinary Meeting of the Council held on 15 March 2022 resolved to direct the CEO to prepare a report on 13 The Esplanade/64 Kishorn Road, Mount Pleasant in response to the notion of using the site for Public Open Space (POS).
- The resolution requested a number of options be considered and reported back to July 2022 Ordinary Meeting of Council.
- At the July meeting the item was deferred until the 18 October 2022 Council Meeting.
- The October 2022 report considered future options for the site including returning the former Canning Bridge Senior Citizens site to community use, including POS; sale of the site; identification of appropriate locations for POS in the wider Canning Bridge area; possible future uses for the site including commercial uses; and how and when public consultation for uses or selling of the site is appropriate.
- The October 2022 report highlighted the potential for the site to generate substantial revenue either through sale or leasing options. The limitations for the use of the site for POS were also highlighted. The report noted the need to hold off on decisions regarding the future of the site until the completion of the Canning Bridge Activity Centre (CBACP) review process.
- At the October 2022 meeting the Council resolved to note the key principles in the Officers report and to direct the Chief Executive Officer to undertake further investigations into open space options and opportunities at Canning Bridge. Investigations were to extend to the City landholding at Moreau Mews.

**UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)**

- Additional POS opportunities and investigations have now been undertaken. Additional investigations focused on POS needs in the precinct, mechanisms to deliver additional open space and a case study of options for the City's Moreau Mews site. Findings of these investigations were presented to Council via an Elected Member Engagement Session on 4 April 2023.
- Key findings with respect to the additional investigations on open space are:
 - Immediate open space needs can be met with a program of streetscape and public space enhancements.
 - Longer term needs can be met through provision of additional open space through funding mechanisms including contributions from developers, rate revenue and revenue from Council owned land.
 - Revenue from Council owned land has a key role in contributing to ongoing funding mechanisms aimed at acquiring additional open space.
 - Council owned land may present an opportunity to satisfy both an initial response to POS needs and ongoing revenue generation to fund new acquisitions through partial development of sites for open space.
 - Revenue from Council owned sites is an integral part of funding mechanisms to improve overall POS outcomes in the precinct.
- Council is requested to note the results of the additional investigations and to have regard to the findings when considering its recommendations on the review of the Canning Bridge Activity Centre Plan (CBACP).
- The additional investigations and previous examination of POS at the Canning Bridge Activity Centre (CBAC) now inform the following Officer recommendations:
 - The Moreau Mews site be acknowledged as having potential to provide both a POS and revenue generation function.
 - The Esplanade site not be designated for POS, noting its poor suitability for that purpose and potential role to fund more suitable POS options.
 - Petitioners seeking conversion of The Esplanade site to POS be advised of the above conclusions.

BACKGROUND

Previous items relating to the provision of open space in the Canning Bridge Activity Centre Plan (CBACP) area are listed above. The site at 13 The Esplanade/64 Kishorn Road has also been subject to Council resolutions with respect to its designation as a strategic land asset and progression for consideration for revenue generation via a long-term ground lease proposal.

More recently the focus of The Esplanade site and other City owned landholdings in the CBACP has moved towards exploring their use for public open space (POS). Key Council resolutions in this regard are repeated below:

**UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)**

March 2022

Council at its meeting of 15 March 2022 resolved as follows:

That:

- 1. The mover be thanked for their interest in the provision of public open space in the Canning Bridge Precinct and that Motion 3 carried at the General Meeting of Electors held 2 February 2022, relating to the rezoning of the City's landholdings in Moreau Mews and Kishorn Road Applecross, is noted however, any decisions with respect to the setting aside of the City's land the subject of the motion will be deferred until such time as the Canning Bridge Activity Centre Plan review and public open space needs of the Canning Bridge Precinct has been completed.**
- 2. The Council**
 - A. Note that the upcoming advertising of the revised draft Canning Bridge Activity Centre Plan presents the preferred opportunity to receive community feedback on the future of the Kishorn Road/Moreau Mews land.**
 - B. Direct the CEO to prepare additional content and detail to be available in conjunction with the advertising of the Canning Bridge Activity Centre Plan with respect to:**
 - i. Concepts for a town square/urban park in the vicinity of the Kishorn Road/Moreau Mews land.**
 - ii. Details of mechanisms to achieve the acquisition of additional open space in Canning Bridge including enhancement of community benefit provisions and developer contribution schemes.**

October 2022

At the Ordinary Meeting of Council held 18 October 2022, the Council considered a comprehensive report on options for the land at 13 The Esplanade/64 Kishorn Road. Information in the October 2022 report should be considered in conjunction with this item and accordingly the October 2022 report is attached:

[Attachment 1 – Item UP22/3933 October 2022](#)

In response to the report Council resolved as follows:

- 1. Notes the Officer's Report has responded to the instructions stemming from Council Resolution Item 16.1 Motion with Notice – Mount Pleasant Senior Citizens Site Being Public Open Space - at the Ordinary Meeting of Council held 15 March 2022.**
- 2. Notes and carefully considers the options analysis for the site detailed in the Report, including the future long term financial implications for the City and its ratepayers in relation to each option for the site; and**
- 3. Notes that the Officer's advice is that Council should only consider implementing a change of use for the site to Public Open Space (POS) or Community use, after the CBACP Review has been completed and the recommendations from that Review have been adopted by the Council.**

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(ATTACHMENT)**

4. Notes that in accordance with point 3 above, a response to the petitions received regarding the future of the former Mount Pleasant Senior Citizens site be held over to the March 2023 Ordinary Meeting of Council.
5. Acknowledges its commitment to provide additional public open space in the CBACP following the conclusion of the CBACP review process.
6. That identified sites are subject to environmental assessment.
7. Directs the Chief Executive Officer to continue investigations into appropriate locations for public open space in the CBACP, with the findings of such investigations to be presented to Elected Members before the end of March 2023.

The multi signature letter that the City received (relating to point 4 of the above resolution) related to the future use of this property stated and requested that:

The Canning Bridge precinct is devoid of green space and with its proximity to high traffic volume (Freeway and Canning Hwy), causes an increase in air pollution. The population in this area is rapidly increasing and there will be a greater need for people to have somewhere to socialise nearby. The closest park is on the corner of Clive/Ogilvie Streets (800 metres away) and Deep Water Point (1.4 kms).

The Petitioners therefore request that 13 The Esplanade/64 Kishon Rd Mount Pleasant be turned into green space incorporating tree planting.

This report responds to parts 3, 4 and 7 of the above resolution with respect to the land at 13 The Esplanade/64 Kishon Rd Mount Pleasant (The Esplanade site). The further information also responds to the March 2022 Council resolution regarding the Kishorn Road/Moreau Mews land (the Moreau Mews site). It is noted that due to time constraints the matter is presented to Council in April, rather than March 2023. (Item UP23/4021 refers).

DETAILS/COMMENT

Additional investigations sought by Council resolution with respect to POS in the CBAC have been undertaken. This work includes studies by an external consultancy examining:

- POS needs in the CBAC precinct.
- Mechanisms and options with respect to meeting POS needs; and
- Case study of options for the City's land at Moreau Mews.

Results of this work were presented to Council at an Elected Members Engagement Session on Tuesday, 4 April 2023 and are attached:

[Attachment 2 – Strategic Analysis of Public Open Space at Canning Bridge Activity Centre](#)

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(ATTACHMENT)**

These findings are to be considered in conjunction with the conclusions of the Options Report presented to Council in October 2022. Together the findings are intended to inform a Council position on:

- the future use of the Moreau Mews site and The Esplanade site
- response to the petition referred to in the 18 October 2022 item to Council
- designation of these sites under the review of the CBACP.

The results of these investigations undertaken by the external consultant are summarised below:

Phase 1: Public Open Space Analysis

Investigations indicate availability of a range of open space options in the CBACP. Existing foreshore parks and open space outside of the precinct provided POS access for residents and visitors. With growth in the precinct analysis highlighted need for additional open space. Based on “green field” standards the precinct demands *one neighbourhood public open space (1-5ha) and five local public open space (0.4-1ha) by approximately 2051. Having regard to existing open space outside of the CBACP (but within 800 metres) the demand reduces to one local POS (0.4-1ha).*

Investigations also examined the opportunity presented by the City owned landholdings to respond to POS needs and catchments. Whilst the Moreau Mews land is well located in terms of catchment needs, The Esplanade site provides a lesser role given that POS needs in that location are already met by existing open space.

In summary, the needs analysis concluded that immediate POS requirements are able to be predominantly met through general public realm enhancement and streetscape upgrades. Need for additional open space, potentially north of Canning Highway was noted in response to forecast growth in the precinct.

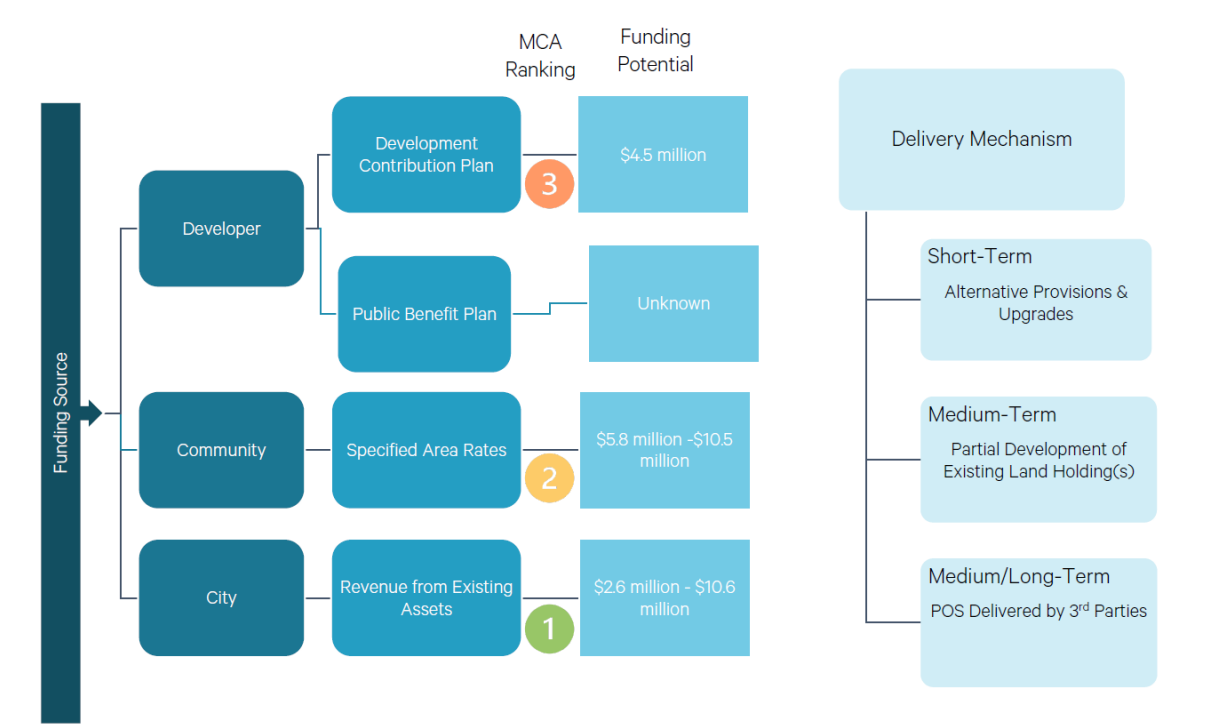
Phase 2: Public Open Space –Funding Mechanisms

This work highlights that there are a range of options to provide for additional open space within the CBACP area. These options include rate revenue, revenue from City land holdings and various mechanisms involving developer contributions:

- Developer Contribution Plan (DCP).
- Voluntary Contributions (Community Benefit Plan - CBP).
- Specified Area Rates (SAR); and
- revenue from Existing City Assets.

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Funding options and potential POS delivery mechanisms stemming from the consultant's report are summarized below:



Investigations noted that given land costs in the CBAC, a range of funding sources would be required to ensure pooling of sufficient funds to acquire additional POS. Revenue from Council owned sites in the form of sale or ground lease (of all or part of the site) would be an integral part of any funding mechanism. Conversion of these site to POS, whilst providing a short-term POS benefit, would diminish the ability to fund further acquisitions in the medium to long term. Revenue from the Council land (all or part of the sites) would also be available to fund goods and services across the City on an ongoing basis.

Phase 3: Opportunities for Moreau Mews Applecross

Investigations included a case study of the role and opportunities of the City's Moreau Mews landholding with regard to POS. The land is purposed under the City's Land Strategy as an investment property with significant potential to deliver an ongoing revenue stream to reduce reliance on rates and to fund goods and services for ratepayers across the City.

In the first instance, investigations noted the size of this landholding (4,057sqm) and the ability for a substantial urban park to be provided on portion the site. Several comparisons including Central Park, William Street Perth, and the Northbridge Piazza on James Steet (being 2,500sqm and 1,700sqm respectively) highlighted the ability to use part of the site to effectively respond to POS needs whilst retaining the reminder for community purposes and revenue potential. It was further noted that the option of partial conversion of the site to POS also provided opportunity to better activate the space involving designs with cafés or community use spilling out into the public park.

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Analysis included review of revenue potential under the scenario of either selling or ground leasing portion of the site. The table below demonstrates estimated revenue for ground leasing of different proportions of the site. (Potential revenue is based on conservative “book value” of the land as opposed to market value, accordingly revenue potential may be underestimated.)

Key observations are that the Moreau Mews site has the potential to satisfy both a short term public open space needs and an ongoing revenue stream for the City. The case study demonstrates that retention of portion of the Council land for revenue generation whilst developing a sizeable urban park on the remainder can achieve both:

- An immediate addition of functional public open space and community uses into the precinct; and
- Significant revenue streams which can support ratepayers and facilitate a longer-term program to fund additional open space acquisition in the precinct.

Importantly, it is noted that the revenue generated from the portion of the Moreau Mews site will be integral to wider suite of mechanisms to fund the acquisition of additional open space in the medium to longer term. Whilst in this example, conversion of all the Moreau Mews site to a park may provide a short-term POS benefit, in the longer term, the loss of the ongoing revenue opportunity is likely to result in a less desirable open space outcome for the wider precinct.

Revenue potential for various development options for the site are summarised below:

	Development Area	Potential Revenue per sqm <i>(based on land value of \$3500 psqm & a ground lease rate of 5.5%)</i>	Approximate Income over 49 Year period (2023 dollars, no inflationary discount)
Option 1 25% POS 75% Development	3,042.75m ²	\$585,729	\$28.7M
Option 2 33% POS 67% Development	2,718.19m ²	\$523,251	\$25.6M
Option 3 50% POS 50% Development	2,028.50m ²	\$390,486	\$19.1M
Option 4 67% POS 33% Development	1,338.81m ²	\$257,720	\$12.6M
Option 5 75% POS 25% Development	1,014.25m ²	\$195,243	\$9.6M

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Key observations from the POS investigations are summarized below:

- Indication that the precinct has reasonable access to POS noting foreshore parks, pocket parks and POS outside of the CBAC.
- Ongoing growth in the precinct will trigger demand for additional open space.
- A range of options exist to achieve additional open space ranging from public realm enhancements through to creation/acquisition of new parks. The review of the CBACP has provided for further application and implementation of these funding options.
- Options to fund additional POS include the rates system, contributions from developers, revenue from City land or conversion of City land.
- Given land values in the precinct, acquisition programs are likely to need to rely on multiple funding options. Revenue from City owned sites is important part of the funding mechanisms and would assist in achieving improved open space outcomes.

Specific conclusions for the Moreau Mews site and The Esplanade are summarized below:

The Esplanade Site:

- Conversion of the site to parkland would provide amenity to the locality, although the size, shape orientation and limited street frontage are not well suited to open space.
- Demand analysis indicates that given its proximity to existing open space, the conversion of the site to POS would not significantly enhance access to POS within the CBAC (a future alternative site further west would better respond to POS needs).
- Use of the site for revenue generation would provide substantial income to the City which could be used for various purposes including provision of goods and services across the City, acquisition of additional open space and/or reduction in rates.
- A number of hybrid options exist to use portion of the site for open space and portion for development. These options provide a range of revenue scenarios (see 18 October 2022 Council report) which could offset/exceed costs associated with park development and maintenance. Hybrid options also present some potential to enhance interface constraints with the property, by controlling the ability to design built form and activity on portion of the site.
- From a POS viewpoint, it is concluded that the value of The Esplanade site is in its ability to contribute revenue which could be purposed towards better POS outcomes across the CBAC and funding of services and facilities (including open space enhancements) across the City.

Moreau Mews Site:

- Well located within the CBAC to respond to POS needs and contribute to a focal point within the precinct. Orientation of the site and extensive shared boundaries limit its suitability for POS.
- Use of the site for revenue generation would provide substantial income to the City which could be used for various purposes including provision of goods and services across the City, acquisition of additional open space and/or reduction in rates.
- The size and shape of the site is well suited to hybrid options to use portion of the site for open space with portion for development/community use. These options provide a range of revenue scenarios (see table above). A park in the order of 1,500sqm to 2,000sqm is demonstrated to satisfy a range of POS functions (playground, town square, grassed areas etc.) and enables remainder of the site to generate substantial revenue. As above the hybrid options also enables enhanced interface between the park and built form by controlling the design process.

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- The site also presents design opportunities to increase the area of available open space (without need to use additional freehold land) by relocating or redesigning the Kishorn Road and/or Moreau Mews carriageways. Creative use of this road reserve space may add a further 1,000sqm to land available for POS.
- Retention of public parking on the Moreau Mews site may be desirable. It is noted that the hybrid options lend themselves to provision of public parking. Development on portion of the site may incorporate one or more levels of public parking, with revenue generating uses and/or community uses on other levels. Leasing terms may be provided to ensure public access, require cost of construction to be met by the lessee and to establish management terms to the City's satisfaction.

Revenue potential of the subject sites is substantial. Conversion of the sites to POS would remove that revenue opportunity. An example of the revenue potential of these sites under a ground lease scenario and the ability of the hybrid options to contribute to ongoing POS acquisition in the precinct (as well as funding of products and services across the City) is highlighted in the table below. It is further noted that under a ground lease arrangement, the City retains the ownership of the asset.

Option	Revenue Per Year	49 Year ground lease (raw income)
The Esplanade 100% lease	\$500,000 (plus rates)	\$24.5M (plus rates)
The Esplanade 50% lease; 50% park	\$250,000 (plus rates)	\$12.2M (plus rates)
Moreau Mews 100% lease	\$780,972 (plus rates)	\$38.2M (plus rates)
Moreau Mews 50% lease; 50% park	\$390,486 (plus rates)	\$19.1M (plus rates)

STAKEHOLDER ENGAGEMENT

Not Applicable. It is noted that the Council owned sites in Canning Bridge are not currently designated as open space. Should it be proposed to designate these sites as open space under the review of the CBACP then this may trigger need for further public advertising.

I. COMMUNITY

Not applicable

II. OTHER AGENCIES / CONSULTANTS

As above, other agencies have not been engaged with respect to any proposal to designate the Council owned land as POS. Should it be proposed to designate these sites as open space under the review of the CBACP then this may trigger need for consultation.

STATUTORY AND LEGAL IMPLICATIONS

Not Applicable.

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FINANCIAL IMPLICATIONS

Investigations highlight the potential significant revenue generation from Council owned land in the CBACP. This revenue is recognised in the City's long term financial planning. Identified revenue is anticipated to benefit ratepayers across the City and offset reliance on traditional funding sources such as rates. Conversion of sites to open space would impact revenue generation and require forecast income to be found from other sources or consideration of a corresponding reduction of City products and services. Hybrid options to maintain some of the forecast revenue from these sites are presented for Council consideration. Investigations also have provided an overview of construction and ongoing maintenance costs associated with creation of POS.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The report examines future use of strategic land assets of the City as well as options to acquire additional open space. The reports explore a range of financial and procedural implications.

Risk Statement & Consequence	Level of Risk	Risk Treatment
Quarantining of revenue potential of strategic land assets through conversion to POS reduces City's revenue raising capacity, placing additional reliance on ratepayer funding, resulting in higher-than-normal increases in annual rates.	Major consequences which are possible, resulting in a High level of risk	Decision makers understand the financial implications and acknowledge alternative POS provision models which achieve desired levels of open space whilst preserving the City's revenue generation opportunities.
Alternative POS mechanisms fail to deliver additional POS within the precinct.	Major consequences which are unlikely, resulting in a Medium level of risk	Alternative funding and delivery mechanisms for POS are identified. Funding mechanisms such as developer contributions, community benefits and rates can be secured through relevant legislation. Multiple funding mechanisms are recommended to maximise acquisition options. Land assembly opportunities continue to exist in the CBAC to facilitate acquisitions.

POLICY IMPLICATIONS

There are no policy implications associated with this proposal.

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(ATTACHMENT)**

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The report provides information on the range of options to respond to POS demands in the CBAC. The recommendations relate to acknowledgement that enhanced POS outcomes in the precinct will be dependent on deployment of a range of funding and acquisition mechanisms. The Council owned land is noted as having potential to assist in both provision of POS and the funding of acquisition of additional open spaces.

An alternative option is for Council to convert existing City land to POS and forgo the revenue potential of these strategic assets. The report demonstrates that this approach is likely to result in an overall less optimal POS outcome for the precinct and significantly reduced revenue streams for the City. Financial implications may require increased reliance on rate revenue and/or a need to reduce expenditure on products and services.

CONCLUSION:

As a growing precinct there is opportunity and need for additional open space within the CBAC. Additional open space can be achieved in a range of different ways including:

Public Realm Enhancements:	Making better use of existing public space through measures such as streetscape enhancements, pocket parks in road reserves and general public realm improvements.
Acquisition of Additional Sites:	Purchase or acquisition of additional land through options such as developer contributions, rate revenue, community benefits and revenue from strategic property.
Use of Existing City Land:	Conversion of sites such as The Esplanade and Moreau Mews to public open space.

Investigations have shown that “public realm enhancements” can suitably respond to much of the immediate open space needs in the precinct. This approach is supported by the findings of the CBACP review and can be achieved with a comparatively minimal level of expenditure. In the medium to longer term increasing POS demands will need to be supplemented through the creation of additional open space. This report has focused on mechanisms and options to provide this additional open space. Importantly, the investigations highlight the ability of a range of mechanisms to fund and/or provide additional open space in the precinct. Most of these options involve the developers responsible for the additional demand for POS being required to contribute to additional public space.

The identification of Council land for open space, whilst potentially a simple response to the issues, does not acknowledge the wider potential and purpose of this land to fund a range of products and services to benefit ratepayers across the City. These services to ratepayers may include the acquisition of additional POS. As previously highlighted the City owned sites themselves are not well suited to POS. The Esplanade is a long narrow site with limited street frontage and its location does not respond well to identified POS catchment needs.

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Similarly, Moreau Mews, whilst better located in terms of POS catchment needs, is located to the south of development sites (overshadowing), and shares common boundaries with private property. The concept of converting these sites to POS may also jeopardise the success of wider programs aimed at achieving further POS acquisition in the precinct. Acquisition of additional open space at Canning Bridge in the longer term will be reliant upon multiple funding mechanisms, including revenue from Council land, to realise the necessary land acquisition. Conversion of the Council land to POS in its entirety, whilst providing a short-term benefit, will in the long run be likely to detract from the potential ultimate POS provision in the precinct. A key finding of these investigations is that that retention of portion of the Council land for revenue generation whilst developing sizeable urban parks on the remainder can achieve both:

- An immediate addition of functional public open space and community uses into the precinct; and
- significant revenue streams which can support ratepayers and facilitate a longer-term program to fund additional open space acquisition in the precinct.

A hybrid approach involving a mix of development and POS also provides for improved activation and sleeving of the public spaces and assists overcoming the interface shortcomings of the sites.

It is noted that the final draft CBACP has proposed to designate the City owned sites at Moreau Mews and The Esplanade as open space. That proposal has not fully appreciated the wider role and financial implications associated with these sites. The Officer recommendation on this aspect of the draft CBACP is that these proposed changes be modified, having regard to the role of these sites and the wider POS objectives in the precinct. This is the only Officer change recommended with respect to the draft CBACP item and highlights the significance of the issue. The recommended approach in the CBACP review is that the Activity Centre Plan be modified to recognise the POS opportunity of these sites, but to also highlight and acknowledge the need for portion of these sites to support community uses and a revenue function. The revenue function in turn would support enhancements to the precinct, POS acquisition programs and general products and services to all ratepayers.

This report aimed at providing direction on the following:

- the future use of the Moreau Mews site and The Esplanade site
- response to the petition referred to in the 18 October 2022 item to Council.
- designation of these sites under the review of the CBACP.

Conclusions regarding the preferred approach to designation of the Moreau Mews site and The Esplanade site under the CBACP review are outlined above.

In terms of the future use of the Moreau Mews site the recommendation is to acknowledge the ability for the site to respond well to both POS and revenue generation options. In this regard further planning for the future of the site is recommended to provide for a minimum of 50% of the site to be held for revenue generation purposes.

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The characteristics of The Esplanade site are not suited to POS and its location does not respond well in terms of meeting future demands of the CBACP catchment. From a POS viewpoint the value of the site is in its ability to fund alternative POS provision throughout the precinct and to generate revenue to support ratepayers and City operations. Conversion of The Esplanade site to POS is not supported. Hybrid options may be satisfactory whereby a pocket park is provided as part of a substantial revenue generating built form response.

It is further recommended that the above position be provided in response to the petition received seeking POS use of The Esplanade.

It is recommended that Council note, the findings of the further investigation relating to POS within the CBAC and the associated recommendations outlined above.

OFFICER RECOMMENDATION (4033)

APPROVAL

At 7:43pm Cr Ross moved, seconded Cr Mair –

That the Council:

1. **notes the additional information regarding open space in the Canning Bridge Activity Centre prepared in response to the Council resolution of 18 October 2022;**
2. **acknowledges that the additional information regarding open space in the Canning Bridge Activity Centre will inform Council deliberations on the review of the Canning Bridge Activity Centre Plan;**
3. **with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to:**
 - a) **not progress conversion of the site to public open space.**
 - b) **recommence measures to examine revenue generation options for the site, firstly exploring the merits of the previous ground lease arrangements.**
4. **resolves that the lead petitioners for the petition and multi-signature letter received relating to the future use of 13 The Esplanade and 64 Kishorn Road, Mt Pleasant be advised of (3) above;**
5. **with regard to City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, resolves to acknowledge the ability for the site to respond well to both open space and revenue generation options and agrees to progress further exploration of development options for open space on the site on the basis that a minimum of 50% of the site is retained for ground lease or other strategic revenue generation purpose.**

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(ATTACHMENT)**

Amendment

At 7:42pm Cr Sandford moved, seconded Cr Barber –

That the Officer recommendation be amended by:

1. Deleting point 3 and replacing with the following point 3:

“3. with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

2. Deletes point 5 and replacing with the following point 5:

“5. with regard to the City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, Applecross, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

At 7:49pm Cr Spanbroek left the meeting.

Procedural Motion

COUNCIL RESOLUTION

At 7:50pm Cr Edinger moved, seconded Cr Fitzgerald –

That an extension of five minutes be granted to Cr Sandford to speak on the matter.

At 7:50pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

At 7:51pm Cr Spanbroek returned to the meeting.

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(ATTACHMENT)**

Amendment

At 7:42pm Cr Sandford moved, seconded Cr Barber –

That the Officer recommendation be amended by:

1. Deleting point 3 and replacing with the following point 3:

“3. with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

2. Deleting point 5 and replacing with the following point 5:

“5. with regard to the City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, Applecross, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

At 7:56pm Cr Pazolli foreshadowed an amendment.

Procedural Motion

COUNCIL RESOLUTION

At 8:04pm Wheatland moved, seconded Cr Robins –

That an extension of five minutes be granted to Cr Pazolli to speak on the matter.

At 8:04pm the Mayor declared the motion

CARRIED UNANIMOUSLY (13/0)

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(ATTACHMENT)**

Amendment

At 7:42pm Cr Sandford moved, seconded Cr Barber –

That the Officer recommendation be amended by:

1. Deleting point 3 and replacing with the following point 3:

“3. with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

2. Deleting point 5 and replacing with the following point 5:

“5. with regard to the City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, Applecross, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

At 8:25pm the Mayor consented to voting on the points of the Amendment separately.

Amendment

COUNCIL RESOLUTION

At 7:42pm Cr Sandford moved, seconded Cr Barber –

That the Officer recommendation be amended by:

1. Deleting point 3 and replacing with the following point 3:

“3. with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

At 8:27pm, the Mayor declared the motion

CARRIED (7/6)

For	7	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr K Mair, Cr C Ross, Cr M Sandford
Against	6	Cr D Macphail, Cr N Robins, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall, Cr N Pazolli

**UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)**

Amendment

COUNCIL RESOLUTION

At 7:42pm Cr Sandford moved, seconded Cr Barber –

2. Deleting point 5 and replacing with the following point 5:

“5. with regard to the City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, Applecross, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children’s playground, and seating.”

At 8:28pm the Mayor declared the motion

CARRIED (10/3)

For	10	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr K Mair, Cr C Ross, Cr M Sandford, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall
Against	3	Cr D Macphail, Cr N Robins, Cr N Pazolli

Reasons for the Amendment as provided by Cr Sandford

1. There is widespread public support for the petitioner’s request for Council to re-zone 13 The Esplanade & 64 Kishorn Rd, Mount Pleasant to Public Open Space (**POS**) to provide desperately needed, 8 years overdue, green space incorporating a playground, seating and tree planting. This wide support for this is evidenced by:
 - (a) The almost unanimous resolution to the Motion moved by Mr Barry Jones of Mt Pleasant to rezone the Site to POS at the February 2022 Annual General Meeting of Electors; and another resolution passed at the same meeting for POS at the Moreau Mews site;
 - (b) The Petition before Council and multi-signature letters amounting to some 1,300 residents’ signatures collected from various locations in the CoM;
 - (c) 2 emails of strong support in 2022 to all Councilors from Melville City Climate Action Network (**MCCAN**), which represents a large cross section of CoM, some 3000 of whom successfully petitioned the City to declare a climate change emergency in 2022;
 - (d) Endorsement by the CBACP Council Reference Group (**CRG**): by email to all Councillors earlier in 2022, at presentations to Council in 2022 and 2023, and in the advertised CRG Report, which recommended that both sites be rezoned to POS.
 - (e) Of the record number of 588 submissions received during the CBACP review consultation period, 496 people or 84% specifically referenced concern about lack of green public open space and supported the CRG Report. Nobody objected to these sites being converted to POS!
 - (f) The Hatch Roberts Day (**HRD**) recommendations adopt the CRG position that the City must heavily invest in, and contribute to, the public realm in order to improve local amenity, attract quality development, and reach density targets by making the area much more appealing to buyers and businesses alike. HRD also recommend the conversion of both sites to POS in line with public consultation results, which overwhelmingly supported the CRG Report’s proposal for conversion of both sites to POS.

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2. The CBACP areas both north and south of Canning Hwy are devoid of any Local Catchment Parks, which should be no more than 5 minutes or 400 meters walking distance from residences, and risk becoming an irreversible concrete jungle and heat islands if these sites are not secured for POS: see **attachment** re: Local Parks, which the City included in its report when part of Mt Pleasant Bowling Club was recommended to be converted to POS – with no prerequisite for any minimum population requirement referenced in the Officer's report at the time.
3. The 2020 Element Report procured by CoM concluded, after public consultation, that there should be more urban piazza type POS, one north and one south of Canning Hwy. No minimum population threshold was referred to then.
4. Reliance on developers to make significant improvements or contributions to POS has failed dismally. There is no certainty as to when, where, or how an alternative location for POS south of Canning Hwy will become available, or as to the quality thereof, as delivery would be at the discretion of private landowners in the CBACP. An example of poorly designed and under-used "POS" provided by developers to date is the concrete driveway/walkway with orange metal chairs next to the Sabina building north of Canning Hwy. The City should control POS delivery. The elusive new library and cultural centre is another example of interminable delays and power imbalance in relying on developers. Rezoning of the sites to POS is the only sure, and the fastest, way to create POS on the north and south sides of the CBACP area, as it is the only land the City owns there.
5. The total present value (**PV**) benefits of 100% POS on the sites, in terms of increased social interaction, vibrancy, reduced social isolation, reduced falls, improved physical and mental health outcomes, plus the climate benefits of planting more trees to replace those levelled by development, and the mitigation of the heat island effect created by the CBACP, will far exceed the estimated income potential of these sites. Parks will service many times more users across all generations, compared with other commercial uses, such as aged care. In an area of high population density, parks (green POS) will be the most highly valued investment in the future.
6. 100% POS use of the sites would attract more and better development, including complementary hospitality, business, and retail premises surrounding the sites, which will increase rates values and create employment, as well as further activation via pop up activity (i.e. the provision of POS in the CBACP will be an investment that will promote other investment in the area).
7. The sooner we plant trees on the sites, the sooner they will become established prior to further development. The Mt Pleasant site is vacant land which can quickly be converted to POS. It has always been used for community purposes as a senior citizens centre and should be retained for community use as POS. The planting could be designed/selected to support local birdlife which has lost important food sources as a consequence of infill development removing private gardens and trees (for example; larger trees/banksias for the endangered Carnaby and other black cockatoos – there are fewer and fewer private gardens that can support larger trees or even larger shrubs).

UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)

8. Much of Apex Reserve and the areas around the rowing sheds are prone to extensive flooding every winter, are occupied by row boats and long trailers by multiple clubs, and are not used as a park due to their proximity to busy Canning Highway and the lack of any parking infrastructure. Given the flooding, extensive and increasing river foreshore erosion, and use by several rowing clubs, there is insufficient suitable, safe space to install children's play equipment, public seating or to plant more trees. It is an area sandwiched between a busy dual cycle/walk path and the river (with tidal changes reducing the accessible area at times). This path is shared by cyclists, e-skateboarders, runners and walkers. In particular, the area is a major thoroughfare for cyclists including cycling groups who travel at considerable speed which is not conducive to proximity to a park where there are young children. This shared pathway from Canning Bridge to the rowing club is a critical section of the river circuit for cyclists and is used by cyclists from multiple suburbs (i.e. it services a large catchment area of cyclists). Cycle, e-skateboard, and runner/jogger/walker use in the area will increase with population growth and the path will soon need widening to accommodate the multiple uses safely. Children running in the vicinity of a busy cycle path used by large cycling groups is a disaster in the making. The area at 13 The Esplanade would be much safer for children and for anyone with mobility issues (such as older people)..
9. Given the planners are promoting minimal car dependency and car parks in the CBAC, and a reliance on public transport, it is imperative to provide proper functioning local POS within an average 5 minute walk from dwellings, which currently there is not. People should be able to walk easily to a local park, not have to drive to one. This is particularly the case if we are promoting apartment living without a reliance on cars.
10. 8 years have elapsed since the CBACP was passed, during which the City has only recently begun to investigate POS options. The Element report of April 2023 has failed to identify any certain alternate sites. The funding mechanisms suggested, such as developer contributions, are not supported by HRD, and it would take decades to raise sufficient funds to acquire alternative land. This is not acceptable on many levels, particularly in the context of a recognised climate emergency in an area that is dominated by roads and buildings (i.e in an area that is itself a heat island in which people are being asked to live).
11. It is unacceptable to expect the community to wait indefinitely for delivery of POS, after already waiting 8 years. To do so will damage the City's reputation, leave the community with no confidence in the public consultation process, and lead to disengagement.
12. It is in the interests of orderly and proper planning to convert both sites to local parks now, to provide certainty to both developers and the public at large about their neighborhood's future amenity.
13. This Council has responded well to the public's drive to protect and provide POS by unanimously resolving to rezone 13 parks from residential back to POS, and by adopting the Attadale Alfred Cove Master Plan to protect the river foreshore. Let us not squander this opportunity to lock in priceless and long overdue POS in the most densely populated part of our City for current and future generations.

**UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)**

Substantive Motion As Amended

At 7:41pm Cr Ross moved, seconded Cr Mair –

That the Council:

1. notes the additional information regarding open space in the Canning Bridge Activity Centre prepared in response to the Council resolution of 18 October 2022;
2. acknowledges that the additional information regarding open space in the Canning Bridge Activity Centre will inform Council deliberations on the review of the Canning Bridge Activity Centre Plan;
3. with regard to the City owned land at 13 The Esplanade and 64 Kishorn Road, Mt Pleasant, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children's playground, and seating."
4. resolves that the lead petitioners for the petition and multi-signature letter received relating to the future use of 13 The Esplanade and 64 Kishorn Road, Mt Pleasant be advised of (3) above;
5. with regard to the City owned land at 50-52 Kishorn Road and 23, 29 and 31 Moreau Mews, Applecross, resolves to forthwith progress conversion of 100% of the site to public open space, to include extensive tree planting, a children's playground, and seating."

At 8:44pm the Mayor declared the motion

CARRIED (8/5)

For	8	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr K Mair, Cr C Ross, Cr M Sandford, Cr K Wheatland
Against	5	Cr D Macphail, Cr N Robins, Cr J Spanbroek, Cr M Woodall, Cr N Pazolli

At 8:45pm the Mayor brought forward Item UP23/4025 – Review of Canning Bridge Activity Centre Plan – Recommendation to Western Australian Planning Commission.

Disclosure of Interest

Member Cr Mair
Type of Interest Interest under the code / Financial Interest
Nature of Interest Candidate for the Federal election
Request Stay, Discuss, Vote
Decision Leave Stay, Discuss, Vote

At 8:46pm having declared an interest in the matter, Cr Mair left the meeting.

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
RECOMMENDATION TO WESTERN AUSTRALIAN PLANNING COMMISSION (REC)
(ATTACHMENT)**

Ward : Applecross - Mt Pleasant
Category : Activity Centre Plan
Application Number : Not Applicable
Property : Not Applicable
Proposal : Review of Canning Bridge Activity Centre Plan (CBACP)
Recommendations to Western Australian Planning
Commission
Applicant : Not Applicable
Owner : Not Applicable
Disclosure of any Interest : No Officer involved in the preparation of this report has a
declarable interest in this matter.
Previous Items : P20/3869 RFT202102 Review of Canning Bridge Activity
Centre
16.1 CBACP Review Advertising and CRG Feedback
Ordinary Council Meeting 17 May 2022
P22/3992 Review of Canning Bridge Activity Centre Plan -
Initiation of Advertising, 11 July 2022
Responsible Officer : Gavin Ponton
Acting Director Urban Planning

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 type="checkbox"/>	Executive	<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>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 (e.g. 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>

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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KEY ISSUES / SUMMARY

- Council on 18 August 2020 resolved to appoint independent consultants Hatch Roberts Day to undertake a review of the Canning Bridge Activity Centre (CBACP).
- The review process has been informed through investigations into the context and characteristics of the precinct and an extensive engagement program.
- Initial stakeholder engagement comprised Elected Member and staff briefings, community surveys, stakeholder group workshops and culminated in a three-day Place Design Forum.
- Preliminary stakeholder engagement indicated support for the existing precinct vision, however identified opportunities to improve the CBACP in areas such as certainty of outcomes, connectivity, bonus height processes, quality of public spaces, vibrancy and exemplary design.
- The initial draft CBACP was circulated to Elected Members in July 2021 for feedback with comments finalised in March 2022.
- The initial draft CBACP responded to the key issues of enhanced consistency/certainty, control of building height/bulk, design quality and reform of community benefit processes.
- Council considered the draft CBACP on 11 July 2022 and resolved to initiate its advertising to seek feedback on the content. The Council resolution also provided for advertising of a separate report prepared by a community stakeholder group known as the Council Reference Group (CRG).
- The invitation to comment on the two reports was open from 29 August 2022 to 28 October 2022 with a total of 588 submissions received. The consultants have examined the submissions received and provided responses to the issues raised. These responses have been informed through the results of a series of four workshops with a representative panel of stakeholders. A schedule of submissions has been prepared which responds to issues raised during the advertising period and identifies proposed modifications to the draft CBACP.
- Council is now required to consider the content of the submissions received and decide if further modification to the draft CBACP is required. The draft CBACP is then forwarded to the Western Australian Planning Commission (WAPC) with a recommendation on whether the plan should be approved, including any recommendations on proposed modifications. The WAPC have imposed a deadline of 28 April 2023 for Council to provide its recommendations.
- The draft CBACP has responded to key concerns raised through the engagement process, whilst also having regard to the statutory planning framework. Further modifications have also been identified in response to issues raised in the comment period and the initiatives in the CRG report.
- Whilst officers have made a number of observations on the draft CBACP, it is noted that the consultants have been engaged to provide an independent response to the review of the CBACP. In these circumstances, it is recommended that the independent findings of the consultants be forwarded to the WAPC for determination. Recommendations regarding open space are however considered premature, given significant City-wide financial implications and the opportunity for City landholdings to achieve both an immediate open space benefit as well as securing ongoing benefits both within the precinct and City-wide.
- Additional studies and longer-term actions are also identified in the consultant's Report on Consideration of Submissions. It is recommended that these be acknowledged and highlighted for re-visiting following the WAPC determination on the CBACP.

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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BACKGROUND

State Planning Policy 4.2 (SPP 4.2), originally gazetted in 2010, designates the Canning Bridge precinct as a District Centre Activity Centre.

Adopted in 2015, the CBACP established a foundation for the future of the area, in the form of a vision, planning controls and recommended public realm enhancements. The CBACP includes land in the vicinity of Canning Bridge Railway station within the City of Melville and the City of South Perth and proposes an intensive scale of development, reflective of the strategic inner suburban location of the activity centre and transport connections. The Plan includes goals for ongoing development, guidelines for style of built form and an implementation framework for improvements to infrastructure and public spaces over time.

The Council, at its meeting on 18 August 2020, resolved to initiate the review of the CBACP through the appointment of independent consultants Hatch RobertsDay (HRD). The review related only to the City of Melville side of the CBACP and the project scope was limited to a focus on building height controls, operation of bonus height provisions, impacts of increased density of development and transition between areas of different development intensity.

The review process has been informed through investigations into the context and characteristics of the precinct and an extensive engagement program. Findings of this phase of the project were outlined in the Precinct and Place Report.

4025 – Attachment 1 CBACP Precinct and Place Report

A series of draft modifications to the CBACP were prepared as a result of the stakeholder engagement and precinct investigations. The draft CBACP was circulated to Elected Members for feedback in July 2021. Further information was provided to Elected Members including officer comment on the draft, highlighting of proposed changes and justification, EMES presentations from the consultants, comparison and testing report on proposed compared to existing controls and yield/capacity modelling analysis. Elected Member feedback was finalised in March 2022 and enabled the independent consultants to compile the draft CBACP.

The draft CBACP was subsequently presented to Council on 11 July 2022 where it was resolved to initiate the statutory advertising period for the document. At this meeting Council acknowledged an earlier resolution from 17 May 2022 which provided for the draft CBACP to be advertised contemporaneously with a report and series of recommendations prepared by the community group known as the Council Reference Group (CRG).

The draft CBACP and the CRG report were subsequently advertised for public comment for 60 days from 29 August 2022 to 28 October 2022.

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DETAIL

Draft CBACP as Advertised

The version of the draft CBACP advertised for public comment included a number of changes to the current document, which were informed by the preliminary engagement phases:

- Modifications to allocation of land use and built form zones, including the introduction of two tiers in the M15 zone.
- Introduction of limits to bonus height (3 additional storeys in M10; 5 additional storeys in M15 and 10 additional storeys in designated areas of M15) as well as associated floorspace limits for bonus area.
- Introduction of plot ratio controls throughout all zones and introduction of limits to tower floor plates.
- Additional controls and setbacks to podiums.
- Modification to the bonus height provisions including introduction of a financial contribution option for community benefits and removal of current guidelines for assessing merit of community benefits.
- Additional focus on activation of street frontages in the precinct core and enhancement of public streets and spaces.
- Additional side setback and overshadowing controls where sites adjoin land outside of the CBACP.
- Recognition of need for special design response to buildings fronting Canning Highway in view of State road proposals.
- Provision for developments to contribute to POS, where not previously provided through the subdivision process.
- Additional emphasis on opportunity for cash to be provided in lieu of provision of car parking spaces.
- Clarification of definition of mezzanine and that a mezzanine constitutes an additional storey.
- Introduction of a requirement for all development to achieve a five-star rating from the Green Building Council of Australia

4025 – Attachment 2 Draft CBACP as Advertised with Edits Marked

At the Council meeting on 17 May 2022, Council acknowledged the work of the community group known as the Council Reference Group (CRG) and resolved that the CRG report on the CBACP being advertised contemporaneously with the draft prepared by HRD. The CRG report contained a number of recommendations including reduced building heights, increased setbacks and removal of bonus height provisions. The CRG report is attached below:

4025 – Attachment 3 CRG Report as Advertised

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Advertising of the draft CBACP and CRG Report:

The draft CBACP documents were advertised for public comment for 60 days from 29 August 2022 to 28 October 2022. The advertising program included the following:

- Open Day Information Session (8 September 2022) including invitations to all previous participants – presentation of Precinct and Place Report and overview of draft CBACP content.
- Working Session with the CRG (27 October 2022).
- Youth workshop for 16-25 year old's (18 October 2022)
- Statutory advertising period including mail out to all occupants/owners, Melville talks on-line content, social media, newspaper advertising.
- Formation of a representative Canning Bridge stakeholder panel (to work through ideas and opportunities from submissions).

Results of Advertising Period

The advertising period resulted in the receipt of 588 submissions. Submissions included commentary of support or otherwise for the draft CBACP and the associated report prepared by the CRG. Key issues and themes were extracted from the submissions received and these items were workshopped with the representative stakeholder panel. Analysis of the submissions and the outcomes of the stakeholder panel informed the preparation of the final draft CBACP by the independent consultants.

The results of the advertising period, details of submissions received, responses to issues raised in the submissions and recommended modifications to the advertised CBACP are outlined in the Report on Consideration of Submissions.

[4025 – Attachment 4 Report on Consideration of Submissions](#)

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Advertising of the draft CBACP has concluded. Dependent on the extent of modifications to the CBACP it may be necessary to undertake a further advertising period. The need for a further advertising period would form part of the WAPC consideration of the recommended modifications.

II. OTHER AGENCIES / CONSULTANTS

The advertising of the CBACP involved engagement with City of South Perth, state government agencies and infrastructure servicing authorities including Department of Planning, Lands and Heritage; Main Roads WA; Department of Transport, Public Transport Authority.

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STATUTORY AND LEGAL IMPLICATIONS

State Government Planning Regulations outline the approval process for modification to an Activity Centre Plan. Advertising of the CBACP in accordance with the Regulations has concluded. Council is now required to consider any submissions received and decide on any further modification of the document. Significant changes to the document, and/or introduction of material not supported by investigations to date, would trigger the need for a further advertising period and further consideration of any additional submissions received. Upon finalising the modifications to the CBACP the Council is required to forward the document to the WAPC with a recommendation as to whether the draft CBACP as advertised should be approved, or whether the document should be approved with identified modifications. The WAPC may then decide to approve the CBACP with the proposed modification, refuse the modifications or direct the Council to make further modifications. Further modifications may require an additional advertising period. Given that the CBACP applies to both the Cities of Melville and South Perth, the WAPC may require a comment on the proposed modifications from the South Perth Council. Any comment provided by the City of South Perth may be considered by the WAPC in its assessment process. Any comments from the City of South Perth are not binding on the WAPC determination.

The WAPC has granted the Council with a time extension to consider the submissions received and to provide its recommendations. Details of recommended modifications are to be forwarded to the WAPC by 28 April 2023. Should recommendations not be provided by this date, the WAPC has advised it may progress to making a decision on the advertised CBACP without a response from the Council.

The WAPC will have 120 days to make a decision on the reviewed CBACP, unless a further period of time is granted by the City (although the WAPC may still make a valid decision after the expiry of 120 days).

FINANCIAL IMPLICATIONS

The review of the CBACP and proposed modifications involve costs associated with staff and consultant resources. Consultancy fees for the initial review project amount to \$392,730 (including GST). A further \$344,404 (including GST) has been expended on required associated studies and project variations resulting in a total cost of \$736,774 including GST (\$669,795 excluding GST).

Implementation of specific actions within the CBACP will require budget consideration. The Report on Consideration of Submission identifies several additional studies and actions. Commencement of these actions would be subject to prioritisation and allocation of budget funds.

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STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The CBACP aligns with the City's strategic goals and responds in particular, Priority two of the Corporate Plan:

“Improve the approach for diverse and sustainable urban development and infrastructure.”

Under Priority two from the Corporate Business Plan key strategies are:

1. Implement innovative, efficient and appropriate initiatives that support community centres infrastructure with integrated transport solutions.
2. Enhance amenity and vibrancy through placemaking and creating well designed and attractive public spaces.
3. Optimise the capacity and liveability of activity centres with consideration to the expectations of our community.
4. Enhance regulatory and approval frameworks to ensure sustainable building infrastructure.

The City's Local Planning Strategy seeks to provide for greater intensity of development within activity centres and along key transport corridors and to leave suburban residential areas relatively unchanged. The conclusions of the CBACP review process respond to various issues identified through Council and during the preliminary engagement phases. The proposed modifications also have regard to the urban planning expectations and opportunities for this strategic centre. A key risk to the project relates to the ability to achieve modifications to the CBACP that suitably respond to concerns, issues and opportunities raised by stakeholders whilst also meeting the regional planning expectations and requirement of the decision maker (WAPC).

Risk Statement	Level of Risk*	Risk Mitigation Strategy
The recommended modifications to CBACP are not supported by the WAPC.	Major consequences which are possible, resulting in a High level of risk	The proposed draft CBACP has been prepared having regard to the findings of the preliminary investigations and engagement phases. The consultants have been mindful of the requirements of the State planning framework in preparing the modifications. Deviation from the consultants recommended approach will likely increase approval risk.

POLICY IMPLICATIONS

Not applicable.

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ALTERNATE OPTIONS AND THEIR IMPLICATIONS

A Council decision is required as to whether the draft CBACP as advertised should be supported, or whether further modifications are required as a result of the advertising period. The independent consultants have recommended further modifications to the plan as a result of issues raised during advertising.

Council may choose not to support the changes as presented in the advertised draft CBACP and advise the WAPC of this recommendation. Under this option (depending on the decision of the WAPC) the existing CBACP would continue to operate.

Council may choose to support the advertised draft CBACP but to make modifications to the draft that are different to those recommended. Pursuant to the Planning and Development Regulations, any modifications would need to be demonstrated to be based on appropriate planning principles. Changes that are not based on appropriate planning principles are unlikely to be supported by the WAPC. Changes that depart significantly from the content of the draft CBACP as advertised, may trigger a requirement from the WAPC for further public advertising. The Council's recommendations would be considered by the WAPC who would ultimately either:

- Approve the modified CBACP
- Direct the local government to modify the plan; or
- Refuse the modifications to the CBACP.

COMMENT

Council appointed independent planning consultants to undertake the review of the CBACP. In this regard the City's Urban Planning team has limited its involvement in directing the findings of the consultants. The consultant's recommendations regarding modifications to the advertised draft of the CBACP have been informed by the submissions received and the wider stakeholder engagement phase. The investigations have included assessment of the recommendations prepared by the CRG and these findings are documented in the Report on Consideration of Submissions.

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Key differences between the consultant's final draft and the recommendations of the CRG are summarised below:

CRG Proposal	Consultant Response	Comment
Remove all bonus height provisions	Not supported. Bonus Heights have been capped to provide certainty however removing bonuses altogether is not supported.	
Introduce compensation for adversely impacted amenity on surrounding residential to be paid for by developers	Outside of scope of an ACP. Separate study recommended to explore governance/legal issues.	Beyond the scope of planning legislation relative to compensation. Significant precedent and governance issues.
Modify clause 10.9.1 to require development to contribute 20% public open space (where not previously provided for through subdivision)	Not supported. Any requirement beyond 10% not considered to reflect a nexus between any proposal and the demand it creates.	CRG proposal perhaps doesn't distinguish on-site open space/landscaping provision with potential obligations to cede actual public open space.
Minimum lot sizes for H4 (1200m ²) and H8 (1800m ²)	Noted and not supported. H8 controls already covered by clause 2.3, other controls revised to reduce impacts of H4 and H8 development.	
Proposed plot ratio limits H4: 2.0:1; H6:3.0:1; H8: 4.0:1	Noted and not supported. Plot ratios have been subject to extensive testing.	
Introduce Developer Contributions	Noted and not supported. A Development Contribution Plan (DCP) would impose additional liabilities on existing residents and the City. Note that separate contributions proposed for public open space, parking and community benefits for bonuses.	Targeted and careful use of DCP's present opportunities to generate funds from developers for additional facilities needed as a result of growth in the precinct. DCP's may warrant further consideration given that proposed contribution mechanisms in the CBACP are unlikely to generate substantial funds. DCP may be suited to part of the package of options to achieve additional POS.
Remove reference to allowing the use "Recreation-public"	Noted and not supported. Public recreation may be a worthwhile land use in this precinct, particularly where it can support limited open space.	

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CRG Proposal	Consultant Response	Comment
Requirement for neighbour consent for balconies and open roof structures in H8 areas opposite H4 areas.	Noted and not supported. Not considered to warrant this additional requirement.	
Changes wording of clause 4.10.2 to require additional setbacks to ensure protection/retention of street trees (change “may be” to “must be”)	Noted and not supported. “May be required” confers the option to the decision maker to require additional setbacks. “Must be required” obliges the decision maker to do so.	
Amend clause 5.9.3 to provide side setbacks of 4, 4 and 6 metres. In particular remove nil setback requirement for active streets.	Noted and not supported. Nil side setbacks for active frontages provide for weather cover and a unified streetscape in the village heart (a small fraction of the ACP area). Note changes proposed to podium heights also. This control is considered appropriate.	
Require “exemplary design” standards to be met for all development.	Noted and not supported. ACP aligns with established approach to design quality as established in State Planning Policy 7.3.	
Include clause 21.4.5 (regarding mitigation of heat island effect) in Element 10.	Noted and not supported. Addressed through significant requirements for landscaping, sustainability and protection of trees.	
Align mezzanine and storey definitions with National Construction Code.	Noted and not supported. ACP clarifies mezzanines to be counted as storeys for planning purposes. NCC requirements may be administered through the building process.	

Observations:

It is noted that Officer feedback on the draft document ahead of advertising was provided to elected members for information. The officer feedback identified potential issues and opportunities for improvement regarding the structure and operation of the draft ACP.

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The following observations are made with respect to the modifications proposed through the review process:

Public Open Space:

The reviewed CBACP notes opportunities to respond to open space needs through enhancements to existing public spaces, provision of additional open spaces through community benefits/contributions from developers and identification of Council land for conversion to open space. The identification of Council land for open space, whilst popular, does not acknowledge the wider potential of this land to fund a range of products and services to benefit ratepayers across the City. The longer-term role of these sites to fund enhancements to the CBACP precinct and to form an integral part of funding programs to acquire additional open space has not been recognised. Case studies presented to Council have demonstrated that retention of portion of the Council land for revenue generation whilst developing sizeable urban parks on the remainder can achieve both:

- An immediate addition of functional public open space and community uses into the precinct; and
- Significant revenue streams which can support ratepayers and facilitate a longer-term program to fund additional open space acquisition in the precinct.

Whilst designation of the two City owned sites at Moreau Mews and The Esplanade provides a short-term POS benefit to the precinct, the loss of revenue opportunity from these sites will likely result in a less desirable long-term outlook in terms of open space in the precinct. It is recommended that the CBACP be modified to formally recognise the POS opportunity of these sites, but equally to highlight the opportunity for portion of these sites to support community uses and a revenue function.

Community Benefit for Bonus Height:

Community benefit provisions are simplified to provide an option for developers to contribute cash in lieu of providing on-site community benefits. Contributions received are able to be pooled to spend on identified community needs. The contribution rate is set at 5% of the construction cost of the bonus floorspace. Comparison with community benefits provided under the current CBACP indicate that the 5% contribution mechanism will deliver a considerably lesser value of community benefit.

Bonus Height:

The concept of height caps for bonus storeys is supported with respect to providing built form certainty and in calibrating community benefits. Noted that restrictive height caps, will limit opportunity for community benefits and reduce incentive for developers to deliver higher standard development. An approach for bonus development, that highlights design considerations and plot ratio as the primary controls on building bulk, but with more flexibility with regard to height may provide enhanced outcomes.

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Plot Ratio:

The introduction of plot ratio into the CBACP is supported as one of the key mechanisms to control building bulk for both standard and bonus development. Plot ratios proposed are noted as being disproportionately low when compared to those in the Residential Design Code Volume 2 for comparable urban centres.

Podium Height:

An observation is that the reduction in podium height from 13.5m to 8m, may detrimentally impact building function and design. Podiums provide enhanced interface with the street, design interest and provide opportunity to accommodate a range of commercial, residential or sleeved parking uses which may not be suited to the buildings tower component. The height restriction constrains these opportunities.

Southern Boundary Change:

The amendment to the southern boundary of the CBACP has previously not been supported by the WAPC or Minister. Previous concerns regarding built form transition and appropriate development potential of strategically located land remain. The boundary change also presents a risk that land no longer in the CBACP may be allocated a medium to high density R-Code. It is noted that should this change be supported by the WAPC, it may trigger a further advertising requirement.

Land Use:

The draft CBACP moves towards a more sophisticated approach to the identification of preferred land uses by introducing different preferred ground floor uses based on the function/typology of the adjacent street (as opposed to simply aligning more active uses with the more intensive height zones).

The approach however has introduced some land use anomalies where lower order street typologies (eg residential) are located within higher order intensity areas (eg M10 and M15) and inversely where higher order street typologies (active streets) are located in lower intensity land use areas (eg H4 and H8). The provisions may contribute to undesirable outcomes such as more passive ground floor land uses in areas that are more central and/or with more substantial development opportunities, whilst simultaneously promoting active uses towards the residential periphery of the centre.

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Street Setbacks:

The intention to create additional street setbacks to provide opportunity for additional public space and tree canopy is noted. The proposed street setbacks, particularly in active and mixed-use areas are however considered excessive for an urban centre of the scale of Canning Bridge. Changes to setback controls mid street block and considerable existing and approved development at alternative alignments may detract from the desired appearance and vibrancy of the centre. Tower setback requirements to the street are also proposed to be modified. Current provisions provide for tower elements (four storeys or above) to be setback 3 to 5 metres from the street behind a building podium element. It is noted that this requirement has been removed and will allow tower components closer to the street frontage.

Side and Rear Setbacks:

The introduction of side and rear setbacks to podium elements and the associated reduction in boundary interface issues is noted. Setbacks, particularly in the core areas are considered excessive. Proposed side and rear setbacks are also not comparable to that allowed for in similar urban situations under the R-Codes (SPP7.3 Vol. 2).

Impacts on City of South Perth Quarters:

The wording of a number of the proposed modifications will (perhaps inadvertently) impact South Perth quarters of the CBACP. Examples include:

- Pg.20 Related Documents - The proposed changes introduce Parts 3 & 4 (as well as a few select sections of Part 2) of the R-Codes Vol. 2, which previously did not apply.
- Pg.34 Side and Rear Setbacks - Changes to Cl.5.1, 5.3, 5.4, and 5.7 all appear to include changes that affect South Perth specifically.

Unless acceptable to South Perth, these items may require amendment.

Landscaping:

Proposals relating to requirement for deep soil zones are supported. Noted that the current CBACP requires an area equivalent to 75% of a site to be landscaped, which is proposed to be removed. The current provision requires applicants to provide extensive landscaped areas on podiums, roof terraces and balconies in addition to at ground level. Removal of this requirement detracts from desired open space/landscaping objectives.

Lots Subject to Multiple Zonings:

Proposed Figure 2(a) depicts single lots with multiple different zonings and therefore multiple development controls. The zoning allocation is unnecessarily complicated and doesn't achieve any significant planning benefit.

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Wording of Desired Outcomes:

The CBACP is written to make clear differentiation between 'Requirements' under each Element (the quantitative criteria against which a development will be assessed) versus the "Desired Outcomes" (the 'qualitative principles' or performance-based standards). Proposed modifications to the CBACP regularly deviate from this convention by referencing "requirements" under the desired outcomes fields. The structure detracts from the clarity, function and control of the document and provides no additional guidance to the exercise of discretion on introduced requirements.

Neighbour Consent:

Proposed modifications to the CBACP (Clause 5.8.5c) seek to require that provisions relating to overshadowing and visual privacy cannot be varied without consent of the neighbouring landowner. Whilst input from neighbours is an important part of an assessment, such a clause is not suited to a performance-based document, is likely to be given little weight by a decision maker and will unnecessarily raise community expectation. (Clause numbering in this section also contains errors.)

In addition to the proposed modifications to the CBACP, the Report on Consideration of Submissions includes recommended actions outside of the CBACP and long-term actions for the CBACP. Comment on these items is provided below:

Recommended Actions Outside of the ACP (from HRD report):

Item (Summary from Report on Submissions)	Comment/Action
<i>Funding the Precinct</i> Recognition of opportunity to re-invest a greater proportion of rates revenue generated from the precinct back into the CBAC.	Supported. The need for additional investment in infrastructure and public realm enhancements commensurate with the intensity of new development is supported. Actions to be reflected in prioritisation of public realm, infrastructure and service provision in the City's growing centres.
<i>Public Open Space:</i> Preparation of an Open Space Strategy for Ministerial endorsement, together with an implementation policy. Developer contributions would then be used to acquire additional open space and fund other public realm improvements.	Supported. Preliminary work on open space needs and strategy has been undertaken. A comprehensive program is recommended to realise enhancement of available public spaces in the precinct. The program would focus on new acquisitions to supplement existing Council owned landholdings. In view of substantial land costs in the precinct, an acquisition program will require a prudent combination of developer contributions, rate revenue and use of portion of the City's landholdings for revenue generation.

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Item (Summary from Report on Submissions)	Comment/Action
<p><i>Traffic and Parking:</i> Review the parking strategy for the precinct, advocate for use of cash-in-lieu of on-site parking, promote communal parking stations, establish a cumulative traffic model to better understand parking impact and implement local speed limits (30 or 40kph)</p>	<p>Regular review of the CBAC Parking Management Plan is supported. Cash in-lieu provisions exist in the current CBACP but are not often used given landowner preference for parking on-site. Further exploration of funding for communal parking stations is supported. Similarly enhanced understanding of cumulative traffic impacts is supported. Noted that these studies are not budgeted.</p>
<p><i>Seek a Better Outcome for Canning Highway:</i> Use CBACP review process to advocate for better outcomes than those likely to result from the State Government duck and dive concept.</p>	<p>The City has commenced an advocacy program to explore alternatives to the “duck and dive” concept with less impact on the precinct. Ability to use the CBACP review process to highlight potential improved outcomes is noted.</p>
<p><i>Improve Transport Choices:</i> Improve public realm to enhance walkability in precinct and to rail station. Advocate for appropriate public transport infrastructure.</p>	<p>Enhancements to the walkability in the CBAC is supported. The City is also actively involved in advocating for public transport improvements including the preferred option to place the new Canning Bridge bus interchange directly over the rail station.</p>
<p><i>Targeted Community Benefits:</i> Prepare comprehensive list of priority community benefits, based on needs, emerging demographic and community engagement.</p>	<p>Many studies have explored community needs at the CBAC. The desirability of a comprehensive list to prioritise and guide the provision of community benefits is supported. Intended that this work will be listed as a future project.</p>
<p><i>Local Development Plan Procedure:</i> Support the intent of the ACP with more bespoke controls and guidance through use of LDP's.</p>	<p>The City current utilises Local Development Plans to provide additional planning guidance in unique situations. The role of this planning approach in the CBAC is recognised.</p>
<p><i>Design Quality:</i> Further direction to Design Review Panel. Publication of DRP minutes. Consideration of a post construction design audit process and appointment of a City Architect.</p>	<p>The Council has reviewed the terms of reference relating to the Design Review Panel. Matters such as publication of meeting minutes is already provided. Post construction design audit is supported and currently forms part of the development application compliance process. A City Architect position has merit in ensuring City projects and development applications better respond to wider design and place objectives. The position is listed in the City's Workforce Plan but is not currently funded.</p>

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Item (Summary from Report on Submissions)	Comment/Action
<p><i>Stranded Assets and Compensation:</i> The ACP includes provisions to provide flexible development options for isolated lots. A broader study is however recommended to explore compensation mechanisms and legal/governance issues.</p>	<p>Inclusions in the ACP to provide improved development options for constrained lots are noted. Stranded assets are an occurrence in growing precincts where land assembly and development are progressing. A broader study on the topic is an option. Such a project is not funded.</p>
<p><i>Precinct and Place Report:</i> Endorsement of the Precinct and Place Report to inform an appropriately funded implementation program.</p>	<p>A key observation of the CBAC is that investment in public realm, infrastructure and services envisaged by the CBACP has not kept up with development on private land. Endorsement, priority and funding of key actions, including those identified in the Precinct and Place report is supported.</p>

Long Term Actions for ACP (from HRD report):

<p><i>Splitting the ACP at the Local Government Boundary</i></p>	<p>This change has administrative and operational benefits to the operation of the ACP and has previously been supported by City officers. The change is outside of the scope of the current review and would require a major modification to the structure of the ACP. It is recognised that the current CBACP (and current proposed modifications) effectively operates as two separate ACP's in any event as where necessary provisions are constructed to apply to either South Perth or Melville situations. In these circumstances a splitting of the ACP is supported but is not time critical. It is recommended that this change be progressed as a separate amendment exercise or as part of the next major review of the ACP.</p> <p>It is noted that the consultant report alludes to the 10 year review/renewal of the CBACP being due in 2025 and that initiatives such as splitting the ACP could be addressed through that process. A 2025 renewal of the ACP is a possibility but would effectively involve an immediate launch into a review program following the WAPC decision on the current modifications. Council may wish to consider seeking to defer the 10-year review given the</p>
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<i>Splitting the ACP at the Local Government Boundary, continued</i>	comprehensive nature of the current review and the required resources and expenditure to immediately launch into a further review. As noted above priority tasks, such as splitting the ACP to align with the different local governments (as well as the option below to incorporate key CBACP provisions into the LPS) can be progressed independently of a major review.
<i>Incorporating Elements of the ACP into Local Planning Scheme 6:</i>	There may be benefit in providing additional certainty on key provisions of the ACP through inclusion in LPS6. Once the final content of the reviewed CBACP is known, areas for potential inclusion in the Scheme could be identified and progressed as a standalone amendment to LPS6.

CONCLUSION

The draft CBACP provides a comprehensive and effective response to the key focus areas of the review being building height control, mitigation of building bulk, operation of bonus height provisions, impacts of increased density of development, maintenance of amenity in transition zones and enhancement of public spaces.

Advertising of the draft CBACP and the CRG report generated additional feedback on these key issues. Support for a range of the CRG initiatives featured in the majority of submissions received. The independent consultants have considered the results of the advertising period and suggested a range of further modifications to the draft CBACP.

In keeping with the independent status of the review, it is recommended that Council endorse the proposed modifications and forward the draft CBACP to the WAPC with a recommendation that it be approved with the identified modifications. An exception, given significant City-wide financial implications, is the consultant's conclusions regarding identification of City land for public open space. It is recommended that the POS modification be amended to highlight the sites as having opportunity for community purposes and revenue generation. The consultants schedule of modifications with this amendment is attached:

4025 – Attachment 5 Recommended Schedule of Modifications

It is further recommended that the additional studies identified in *the Report on Consideration of Submissions* be acknowledged with a view to these being revisited following the WAPC assessment process. This work will include further investigation of POS needs and commencement of mechanisms to facilitate acquisition/provision of the additional open space.

Similarly, it is recommended that identified longer term actions comprising splitting of the ACP between Cities of Melville and South Perth; and the possibility of incorporating key elements of the CBACP into the Local Planning Scheme, be acknowledged.

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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OFFICER RECOMMENDATION (4025)

APPROVAL

At 8:46pm Cr Sandford Moved, Seconded Cr Edinger –

That the Council:

1. in accordance with Schedule 2, Part 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to forward the advertised draft Canning Bridge Activity Centre Plan to the Western Australian Planning Commission with a recommendation that it be approved subject to the following modifications as outlined in Attachment 5 to this report (Recommended Schedule of Submissions).
2. endorses the document entitled “*Report on Consideration of Submissions*”, attached to this item, being forwarded to the Western Australian Planning Commission, noting the adjustments to the schedule of modifications as resolved above.
3. acknowledges the need to explore the additional studies identified in the *Report on Consideration of Submissions* with a view to these being revisited for Council direction following the WAPC determination.
4. acknowledges the longer-term actions identified in the *Report on Consideration of Submissions* with regard to splitting of the Activity Centre Plan between the Cities of South Perth and Melville and the possibility of incorporating key provisions of the Activity Centre Plan within the Local Planning Scheme, noting that these actions be initiated as separate projects following the Western Australian Planning Commission determination.

At 8:47 pm Cr Woodall left the meeting and returned at 8:49pm.

At 8:47 pm Cr Pazolli left the meeting and returned at 8:50pm.

At 8:47 pm Cr Wheatland left the meeting and returned at 8:51pm.

At 8:49pm Cr Robins left the meeting and returned at 8:51pm.

At 8:50 Cr Fitzgerald left the meeting and returned at 8:52pm.

At 8:51pm Cr Sandford left the meeting and returned at 8:52pm.

At 9:02pm Ms Davis left the meeting and returned at 9:05pm.

Amendment

At 8:46pm Cr Ross moved, seconded Cr Spanbroek –

That the following amendments to Attachment 5 of the Officer Recommendation in Item UP23-4025 are proposed in order to include the Community Consultation results and the CRG recommendations in the consideration of Item UP23-4025 so that all of these recommendations may be included for discussion and acceptance or rejection in the Council Resolution.

The recommendations below if accepted will replace or amend the HRD recommendations.

[Attachment 1- Updated Schedule of Modifications\(Further modification to the CBACP post-advertising\)](#)

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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At 9:17pm the Mayor agreed to voting on each point within the attachment separately.

COUNCIL RESOLUTION

At 8:46pm Cr Ross moved, seconded Cr Spanbroek –

That the following amendments to Attachment 5 of the Officer Recommendation in Item UP23-4025 are proposed in order to include the Community Consultation results and the CRG recommendations in the consideration of Item UP23-4025 so that all of these recommendations may be included for discussion and acceptance or rejection in the Council Resolution.

The recommendations below if accepted will replace or amend the HRD recommendations.

Attachment 1- Updated Schedule of Modifications(Further modification to the CBACP post-advertising)

Point 1 – Remove M15+ Area

- 1. Update Figure 2 and Figure 27 to remove reference to M15: Mixed Use Up to 15 Storeys; Additional Discretionary Height Concessions for Community area**

At 9:26pm, the Mayor declared the motion

CARRIED (11/1)

For	11	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr N Robins, Cr C Ross, Cr M Sandford, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall and Cr N Pazolli
Against	1	Cr D Macphail

Point 2 – Modified ACP Boundary

- 2. Update Figure 1, 2, 2A , 3 and other relevant maps in the Explanatory Section to remove the areas south of Helm Street and south of Wren Street from the ACP altogether.**

At 9:26pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 3 – Height on Forbes Road

- 3. Update Figure 2, 2A and other relevant maps in Explanatory Section to revert properties on the Western side of Forbes Road between Kishorn Road and Tweeddale Road from H8 to H4.**

At 9:27pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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Point 4 – Remove Bonus Height Opportunities

1. Removing Clauses 21.5 and 22.2
2. Desired Outcome 3 to be amended to remove references to bonus height
3. Amend Cl.2.7.4 reference to bonus provisions
4. Remove Cl.3.4 reference to bonus provisions
5. Remove Explanatory Section on bonus provisions (pg52)
6. Remove reference to additional heights on Pg. 110
7. Remove Explanatory Section 6.2 and 6.3 (pg. 120)

At 9:28pm, the Mayor declared the motion

CARRIED (10/2)

For	10	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr C Ross, Cr M Sandford, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall, Cr N Pazolli
Against	2	Cr D Macphail, Cr N Robins

Point 5 – Remove Cash in Lieu of Parking

1. Update Table 18.3,
2. Remove Cl.18.5,
3. Update Desired Outcome 18 to remove reference to cash in lieu

At 9:29pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 6 – Public Open Space Contributions

1. Update Cl.10.9.1 as follows;

Where a development site (or the previous subdivision that created it) has not previously been required to provide public open space, a development may be required to provide up to 10% as public open space. Any requirement for public open space should be established as early as practicable in the design development process.

At 9:29pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 7 – Remove Balconies as Landscaping Areas

1. Modify Cl. 10.3 to exclude balconies as landscaping areas.

At 9:29pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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Point 8 – Minimum 20% Deep Soil Area in M10 & M15 Areas

1. Add Cl.10.10;

All development in the M15 and M10 Zone shall provide a minimum deep soil area equal to 20% of the overall site area. The deep soil areas shall be designed in accordance with the definition in Residential Design Codes Vol.2.

At 9:29pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 9 – Increase Minimum Lot Sizes H4 1000sqm, H8 1800sqm, M10 2000sqm, M15 2000sqm

1. Modify Cl.2.2 to be as follows;

In addition to the height limits established in Figure 2 and Element 3, the following minimum lot sizes are required for development in each zone. For clarity the maximum building height in each zone is also shown;

*H4 zone - Minimum lot size 1000sqm Maximum 14m (approximately four storeys)
H6-8 zone - Minimum lot size 1800sqm Maximum 26m (approximately eight storeys)
M10- M15 - Minimum lot size 2000sqm Maximum 32m (M10) and Maximum 48m (M15)*

Amalgamation of adjacent parcels will be encouraged as an appropriate outcome to achieve this scale of development.

2. Remove the now redundant Cl.2.3.

At 9:30pm, the Mayor declared the motion

CARRIED (10/2)

For	10	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr C Ross, Cr M Sandford, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall, Cr N Pazolli
Against	2	Cr D Macphail, Cr N Robins

Point 10 – Street Setbacks

1. Modify Cl.4.10.1 to increase minimum active frontage to 3m (from 2m) and remove ability to vary setback to nil.

2. Add Cl.4.10.4 as follows;

Secondary street setbacks for podiums shall be a minimum of 3 metres.

At 9:31pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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Point 11 – Side and Rear Setbacks

1. **Modify Cl. 5.8.3(a) to increase the minimum forward side setback in the Active Frontage area from 0m to 4m, and in the Mixed Frontage from 2m to 4m.**
2. **Modify Cl. 5.8.4 as follows;
*Development within the H4 zone shall be setback a minimum of 6m or 20% of the lot width (whichever is lesser) from side boundaries.***
3. **Add Cl. 5.8.5 as follows;
*Development shall be setback as follows;***
 - a) 4 metres from the rear boundary within the H8 zone and M10 or M15 zoned land with a rear boundary abutting H4 and H8 zoned land, and***
 - b) 6 metres from the rear boundary within the H4 zone.***
4. **Thereafter renumber current Cl.5.8.5 as Cl.5.8.6.**

At 9:31pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 12 – Plot Ratio

1. **Amend Cl.2.7.4 as follows;
*The following plot ratio limits apply for development within each zone:***

<u><i>Zone</i></u>	<u><i>Maximum Plot Ratio</i></u>
<i>H4</i>	<i>1.0</i>
<i>H8</i>	<i>2.1</i>
<i>M10</i>	<i>2.9</i>
<i>M15</i>	<i>4.2</i>
2. **Modify definition in Part 8 Interpretations (pg. 56) as follows;
Plot Ratio
*- For the avoidance of doubt, plot ratio shall be measured and defined as in the State Planning Policy 7.3 Residential Design Codes Vol. 2- Apartments (R-Codes Vol. 2), with the exception of enclosed balconies primarily facing Canning Highway which shall be excluded from plot ratio area calculations, for which the first 15sqm of balcony area per unit shall be excluded from plot ratio area as defined by WAPC in State Planning Policy 7.3 and associated calculations.***

At 9:31pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

**UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
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Point 13 – Isolated Landholding

1. Introduce definition in Part 8 Interpretations (pg. 56) as follows;

Isolated Landholding (Stranded Assets)

1. Introduce definition in Part 8 Interpretations (pg. 56) as follows;
Isolated Landholding - A lot or lots immediately adjoining a proposed development with a combined area below the minimum lot size specified in Clause 2.2 to qualify for development in the CBACP zone where the lot or lots are located, and that are surrounded by streets or roadways or development, which in the opinion of the City of Melville, has no reasonable prospect of redevelopment (for example due to surrounding development being recent or subject to heritage controls).
2. Insert Cl. 2.8 that states as follows;
All development in Q1 and Q2 must avoid the creation of an isolated landholding and must not be approved unless the developer has made reasonable documented efforts to acquire the potentially isolated lots at market value determined by an independent valuer(s).

At 9:31pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Point 14 – Identify Prospective POS

Update Figure 1, 2, 2A & 3 as follows;

3. Depict 27, 29 and 31 Moreau Mews, and 50 Kishorn Street as POS
4. Depict 13 The Esplanade and 64 Kishorn Road as POS
5. Use a green asterisk to depict "General location of public open space" at the corner of Canning Beach Road and Kintail Road, and North-West corner of Kishorn Road and Forbes Road.
6. Depict "Linking Pathway" along Canning Highway West of Canning Bridge

At 9:32pm, the Mayor declared the motion

CARRIED (10/2)

For	10	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr J Edinger, Cr C Ross, Cr M Sandford, Cr J Spanbroek, Cr K Wheatland, Cr M Woodall, Cr N Pazolli
Against	2	Cr D Macphail, Cr N Robins

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Substantive Motion as Amended

At 8:46pm Cr Sandford Moved, Seconded Cr Edinger –

That the Council:

1. in accordance with Schedule 2, Part 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to forward the advertised draft Canning Bridge Activity Centre Plan to the Western Australian Planning Commission with a recommendation that it be approved subject to the following modifications as outlined in Attachment 5 to this report ([Updated Recommended Schedule of Submissions](#)).
2. endorses the document entitled “*Report on Consideration of Submissions*”, attached to this item, being forwarded to the Western Australian Planning Commission, noting the adjustments to the schedule of modifications as resolved above.
3. acknowledges the need to explore the additional studies identified in the *Report on Consideration of Submissions* with a view to these being revisited for Council direction following the WAPC determination.
4. acknowledges the longer-term actions identified in the *Report on Consideration of Submissions* with regard to splitting of the Activity Centre Plan between the Cities of South Perth and Melville and the possibility of incorporating key provisions of the Activity Centre Plan within the Local Planning Scheme, noting that these actions be initiated as separate projects following the Western Australian Planning Commission determination.

At 9:35pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

At 9:37pm Cr Mair returned to the meeting.

At 9:37pm the Mayor brought forward Motion with Notice Item 15.5 Bombard Street Ardross Traffic Treatments for the convenience of those in the public gallery.

15.5 Bombard Street Ardross Traffic Treatments

Disclosure of Interest

Member	Cr Woodall
Type of Interest	Financial Interest
Nature of Interest	Own a property on Bombard Street
Request	Leave
Decision Leave	Leave

At 9:37pm having declared an interest in the matter, Cr Woodall left the meeting.

Motion

At 9:37pm Cr Mair moved, seconded Cr Ross –

That the Council directs the CEO to

- 1. Investigate traffic treatments on Bombard Street, Ardross**
- 2. Report back to the May Ordinary Meeting of Council**

At 9:37pm, during discussion and debate, the mover and seconder consented to the inclusion/deletion of the words *and Mount Pleasant after Ardross in Point One* and change *May to July Ordinary Meeting of Council in Point 2 to read:*

That the Council directs the CEO to

- 1. Investigate traffic treatments on Bombard Street, Ardross and Mount Pleasant*
- 2. Report back to the July 2023 Ordinary Meeting of Council*

Motion

At 9:37pm Cr Mair moved, seconded Cr Ross –

That the Council directs the CEO to:

- 1. Investigate traffic treatments on Bombard Street, Ardross and Mount Pleasant**
- 2. Report back to the 18 July 2023 Ordinary Meeting of Council**

Amendment

At 9:43pm Cr Pazolli moved, seconded Cr Spanbroek –

That Point 1 be amended to include the following at the end:

The report to include traffic analysis on the impacts of any proposed Bombard Street traffic treatments on Mitchell Street, Ullapool / Sleat Road and Reynolds Road traffic.

At 9:52pm, the Mayor declared the motion

CARRIED (9/3)

For	9	Mayor G Gear, Cr T Fitzgerald, Cr G Barber, Cr D Macphail, Cr N Robins, Cr C Ross, Cr J Spanbroek, Cr K Wheatland, Cr N Pazolli
Against	3	Cr J Edinger, Cr K Mair, Cr M Sandford

15.5 Bombard Street Ardross Traffic Treatments, continued.

Substantive Motion as Amended

At 9:37pm Cr Mair moved, seconded Cr Ross –

That the Council directs the CEO to:

- 1. Investigate traffic treatments on Bombard Street, Ardross and Mount Pleasant. The report to include traffic analysis on the impacts of any proposed Bombard Street traffic treatments on Mitchell Street, Ullapool / Sleat Road and Reynolds Road traffic.**
- 2. Report back to the 18 July 2023 Ordinary Meeting of Council**

At 9:52pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Reasons for the Motion as provided by Cr Mair

1. Bombard Street, Ardross is suffering the same “rat run” problem that McCrae Rd, Applecross once had before traffic treatments and road closures were put in position.
2. Not only do residents suffer from peak hour traffic rat runs but also school pick ups and drop offs.
3. They also have to endure traffic associated with Woolworths on the corner of Reynolds and Canning Hwy. This traffic is not limited to private vehicles but also delivery trucks that use Bombard St to go to Woolworths.
4. This rat run is dangerous for pedestrians, children and cyclists especially because of its proximity to St Benedicts Primary School.
5. The Council Traffic Control Coordinator, Kamal Khalil has indicated that a new traffic survey will be conducted shortly. This will measure the volume of traffic, the type of vehicle and the speed of traffic.
6. Previous surveys have confirmed that Bombard St has substantially more traffic volume than Macrae Road had prior to its closure.

At 9:55pm the Mayor brought forward Item UP23/4028 – Erection of Floodlights to Applecross Tennis Club – Lots 260-264 (30) The Strand, Applecross WA 6153 for the convenience of those in the public gallery.

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPLECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPLECROSS WA 6153 (REC) (ATTACHMENT)

Ward : Applecross-Mount Pleasant Ward
Category : Operational
Application Number : DA-2023-30
Property : Lots 260-264 (30) The Strand, Applecross WA 6153
Proposal : Floodlight Additions to Applecross Tennis Club
Applicant : Applecross Tennis Club Inc
Owner : State of Western Australia (C/- City of Melville)
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer : Peter Prendergast
Manager Statutory Planning
Previous Items : N/A

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 type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 checked="" 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 (e.g. 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 to note.</i>

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPLECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPLECROSS WA 6153 (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- Department of Biodiversity, Conservation and Attractions (DBCA) approval is sought for the installation of floodlight columns to Courts 11-14 at Applecross Tennis Club.
- A total of twelve floodlighting towers are proposed, four at a height of 10 metres and eight to a height of eight metres.
- The application site is located on land zoned Parks and Recreation under the Metropolitan Region Scheme (MRS). As the subject site is located within the Swan Canning Development Control Area, DBCA is responsible for assessment of development applications as per Part 5, Section 72(1) of the *Swan and Canning Rivers Management Act 2006*.
- In accordance with the *Swan and Canning Rivers Management Act 2006*, the Minister for the Environment is the decision maker for Part 5 applications. The City's comments will be included in a final report prepared by DBCA to the Minister for Environment on the proposal.
- Details of the proposed development were presented to the Development Advisory Unit (DAU) meeting held on 14 March 2023 with an associated report published to the City's website.
- The application seeks approval for the floodlights to operate for the four courts up until 10pm every night to allow for League (Pennant) Tennis to be played up to that time.
- The details of the proposed development have been assessed against *Local Planning Scheme No. 6 (LPS6)*, *Local Planning Policy 1.16 – Flood and Security Lighting (LPP1.16)* and *Local Planning Policy 3.4 – Tennis Courts (LPP3.4)*.
- The application was advertised via letters to surrounding landowners and occupiers. Two on site signs were also erected and full details of the proposal were made available on the City's Melville Talks website.
- A total of 145 submissions were received with 13 objections, 131 supports and 1 neither supporting nor objecting to the proposal.
- The proposed development is considered to be acceptable when assessed against the relevant policy requirements. A condition of approval is recommended to limit floodlight operation to 9.00pm, in keeping with the relevant Council policy.
- It is recommended that the application be recommended to DBCA for conditional approval.



Figure 1: Aerial photography of subject site

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BACKGROUND

Scheme Provisions

MRS Zoning	: Parks and Recreation
LPS6 Zoning	: MRS Reserve for Parks and Recreation
R-Code	: N/A
Use Type	: Active Recreational Reserve
Use Class	: N/A, no change to existing use of reserve (Tennis).

Site Details

Lot Area	: 13842m ²
Retention of Existing Vegetation	: Yes
Street Tree(s)	: Yes, to be retained
Street Furniture (drainage pits etc.)	: N/A
Site Details	: Refer to Figure 1 above

[4028 Plans Applecross Tennis Club](#)

BACKGROUND

In 2019, a development application (DA-2019-1424) was referred to the City for comment under Part 5 of the *Swan and Canning River Management Act 2006*. This sought approval for the conversion of two courts to grass courts, the conversion of four grass courts to hard courts and installation of 12, 10m high floodlight towers to the proposed four hard courts. However, this application was withdrawn in 2020 after it was determined by the DBCA that the cyclone fencing referenced in the plans was already approved, in which case the applicant made the decision to apply for the remainder of the work under a separate application.

Therefore, a new development application (DA-2020-442) was lodged in the form of a Form 7 permit which consisted of the following and was also referred to the City to comment on by DCBA:

- The conversion of four existing grass courts into four hard courts;
- These same four courts were proposed to be floodlit by 12, 10m high floodlight towers, with the lights to be off by 10pm;
- Two courts converted from hard courts to grass courts;
- Minor retaining along parts of the affected courts (less than 500mm); and
- Associated stormwater management.

After the City completed an extensive community consultation process, the City was of the opinion that the concerns raised by objectors had been adequately addressed by the supporting information and the benefits to the community of extending the operating hours of the tennis club were considered to be substantial. As such, the City recommended support the proposal to DBCA subject to the inclusion of conditions, including a condition to limit the use of the lights to 9pm only.

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The DBCA has issued two separate permits in relation to the above development application, in relation to court resurfacing and perimeter fencing. The issue of the floodlighting installation remains outstanding however and is the subject of this current application. It is noted that the Tennis Club currently operates without the benefit of any floodlighting which serves to limit their playing ability outside daylight hours.

DETAIL

The site is under the ownership of the City and is zoned Parks and Recreation under the MRS. Courts 11 and 12 are proposed to be lit by four towers, each at 10metres in height. Courts 13 and 14 are proposed to have four towers for each court, with the towers at 8m in height. The floodlights are proposed to automatically turn off at 10pm every night to allow for League (Pennant) Tennis to be played outside daylight hours.

The minimum distance between a residential property (41 The Strand) and the proposed floodlights is 30m, this distance being in respect of one single column. Other columns are located further away, with the maximum separation between residential properties and the floodlights being up to 70m (refer to Figure 2 below).



Figure 2: Location of proposed floodlighting towers

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Lighting

The proposed lighting is designed in accordance with *Australian Standards AS2560.2 Sports Lighting* and *AS4282-2019 Control of Obtrusive Effect of Outdoor Lighting*. The Lighting report submitted in support of the proposal concludes that there will be no light spill into any of the nearby residential properties to the south of the tennis courts.

The Lighting Report includes inconsistencies in respect of the impact of the lighting on the footpath located to the immediate north of the tennis club. On the one hand it is suggested that the maximum light levels (brightness) exceed the recommended levels, although elsewhere the Lighting Report suggests otherwise. It is considered that as the use of the footpath does not directly impact residential amenity, and as users are unlikely to be compromised by a well-lit footpath, that for the purposes of this referral the inconsistency be simply noted.

Local Planning Policies

The application has been assessed against the provisions of LPS6, LPP1.16 pertaining to floodlighting towers on reserves under the care and control of the City of Melville and LPP3.4 pertaining to tennis courts lighting.

Local Planning Policy 1.16 – Flood and Security Lighting

Development Requirement	Proposed	Comments	Delegation to approve variation
(a) Location of the proposed lighting towers in relation to the surrounding properties.	Floodlighting towers setback a minimum of 30 metres from adjoining residential properties.	Requires assessment against the policy objectives of LPP1.16.	Development Advisory Unit (DAU)
(b) Light emissions wholly contained within the subject lot and satisfy <i>Australian Standard AS.2560 – Sports Lighting</i> .	The majority of light emissions are contained for within the subject lot. Light spillage does not impact any residential property.		
(c) Hours of operation for flood lighting.	Lights to be turned off by 10pm every night.		
(d) The potential adverse impacts upon any adjoining residential properties.	Light emissions contained for the majority, wholly within the subject site.		

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Local Planning Policy 3.4 – Tennis Courts

Development Requirement	Proposed	Comments	Delegation to approve variation
4.1 Floodlighting for tennis courts shall comply with the following requirements and be certified** as being compliant with the relevant Australian Standard*** by a suitably qualified lighting consultant*:	Lighting Report has been prepared by a qualified lighting consultant who has confirmed that the report is compliant with the relevant Australian Standards. However, as identified above, a discrepancy in the Lighting Report has been identified which will need to be addressed.	Requires assessment against the policy objectives of LPP3.4.	DAU
4.2 A timer is to be installed in the lighting circuit to ensure that all floodlights are extinguished between the hours of 9pm and 7am.	Floodlights proposed to be extinguished at 10pm each night.		
4.3 In order to mitigate the impacts of the flood lighting on adjoining residential properties, screen planting may be required.	No screen planting proposed and not required as no light spill falls into any adjoining residential properties.		
6.1 Applications for the installation of tennis courts are to be made in accordance with the Regulations.	Lighting Report has been prepared by a qualified lighting consultant who has confirmed that the report is compliant with the relevant Australian Standards. No Acoustic Report has been provided as part of this revised submission. Applicants are relying on previous report provided as part of DA-2020-442.		
6.4 Subject to public consultation as outlined in Clause 4.3 above, the allowable times for the flood lighting of tennis courts may be increased to 10 pm where the amenity of the adjoining residents is safeguarded.	Floodlights proposed to be extinguished at 10pm each night.		

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STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Advertising Required: Yes
Neighbour's Comment Supplied: Yes
Reason: Required pursuant to LPP 1.1 Planning Process and Decision Making Clause 3.4(a)
Support/Object: 145 submissions were received with 13 raising objections, 131 in support and 1 neither supporting nor objecting to the proposal.

A summary of the comments received and the City's response is provided in the table below.

Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Support expressed for extended usage of the courts .	Support Noted.	Uphold
The extended usage of hours for night is a benefit as the reserve would be utilised all year round and security enhanced.	Support Noted.	Uphold
More opportunity for players to play and develop their skills.	Support Noted.	Uphold
Very positive impact for club & community.	Support Noted.	Uphold
Currently use these courts and the lights would enable to get much more use of them during the year especially in winter when days are shorter.	Support Noted.	Uphold
Increases opportunities for both club members and the broader community, including local residents, to enjoy recreational tennis, which aligns with the City's strategic objectives to support healthy lifestyles and provide a sense of community.	Support Noted.	Uphold
The project will align to one of Tennis West's four strategic priorities, which are key to the successful and sustainable development of tennis facilities. Of these, Priority 2 - Enhancing venue capacity, specifically states "Additional floodlighting is required at strategic locations to support the demand for night tennis."	Support Noted.	Uphold

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Concerns for the local fauna, especially the birdlife nesting and living in close proximity to the tennis club. Studies overseas have shown that LED lighting can affect the local biodiversity.	Noted. DBCA have received advice from their Species and Communities Program that seven nationally listed migratory shorebird species have been recorded within a 500 m radius of the Applecross Tennis Club. The most important observation is of Great Knot, which is listed as critically endangered under the <i>Biodiversity Conservation Act 2016</i> . The environmental report submitted in 2019, didn't include a fauna survey. This is a matter for consideration of the DBCA. An advice note to raise awareness of the expressed concern is proposed to be provided to the DBCA.	Advice Note recommended
There is no demonstrable demand for the proposed facilities.	Application has been lodged in response to applicants assessment of demand.	Not Uphold
Inadequate parking at the Club and what is being proposed is only going to exacerbate the matter further.	The installation of floodlighting does not result in the need for additional car parking as the tennis club land use exists already and has the associated car parking facilities.	Not Uphold
Applecross Tennis Club has continued to encroach upon open public space by building more tennis courts.	The proposed floodlighting extends the active use of the reserve for tennis. The use of the reserve for tennis is consistent with the intended use of the reserve given its zoning under the MRS as a 'Parks and Recreation' reserve.	Not Uphold
The new proposed lighting will cause light spill into the home.	A Light Assessment has been provided by the applicant demonstrating the proposed lights used within the towers will not spill into any residential properties to the south.	Not Uphold
Don't support lights till 10pm.	Noted. A condition has been recommended requiring the towers to be switched off after use and by 9pm each night.	Condition recommended
Social issues that will arise by lights being on late at night.	This is not a material planning consideration.	Not uphold
Not a valid application.	The application is valid and has been referred to the City by DBCA.	Not Uphold
The proposed light poles will be visually obtrusive.	Concerns about the visual amenity of the foreshore are rebuffed on the grounds that the generally uninhibited vista of the Swan River foreshore is not considered to be encumbered via the narrow light poles proposed.	Not Uphold

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Environmental statement within Environment report is purely subjective.	Noted. This is referring to a report provided as part of a previous application in 2019. No environmental report has been provided to the City by DBCA to review as part of the City's assessment of this application. However, DBCA as part of their assessment will need to ensure all relevant environmental requirements are addressed. An advice note has been recommended ensuring all environmental aspects are to comply with the relevant standards.	Advice Note recommended
The statement from the report dated 13/8/2019 prepared by Gabriels Hearne Farrel Acoustic Consultants dated 13/8/2019 that <i>"predicted noise emissions are unlikely to be any louder than those that exist"</i> is clearly based on daytime use of hardcourts but is not valid for the current application for floodlighting to permit night tennis up to 10pm.	Noted. This is referring to a report provided as part of a previous application in 2019. No acoustic report has been provided to the City by DBCA to review as part of the City's assessment of this application. However, DBCA as part of their assessment will need to ensure all relevant noise requirements are addressed. An advice note has been recommended ensuring noise is to comply with the relevant standards.	Advice Note recommended
Contrary to existing City policies.	Noted. Conditions have been recommended to ensure compliance with relevant City Local Planning Policies in regard to operating hours of the lights being switched off at 9pm each night and before the floodlights are installed, verification is required to confirm that the floodlights are in accordance with the relevant Australian Standards.	Conditions recommended

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Summary of Issues Raised	Comments	Action (Condition/ Uphold/ Not Uphold)
Noise emitting from the development.	<p>The application is for twelve floodlighting towers. The noise associated with tennis being played on this reserve is considered acceptable and consistent with the designation of the reserve at Applecross Tennis Club as an active reserve. The lighting is required to be switched off from 9pm which will ensure sports activity cease at this time reducing any potential amenity impact.</p> <p>An advice note has been recommended to ensure that noise is to comply with the <i>Environmental Protection (Noise) Regulations 1997</i> at all times.</p>	Advice Note recommended
No protection or cover provided from the lights.	The proposed floodlighting towers have been designed to minimise light spill. The floodlights are designed in accordance with the relevant Australian Standards to direct illumination towards the playing area, and as stated avoids spill towards residential properties.	Not Uphold

II. OTHER AGENCIES / CONSULTANTS

As the subject site is located within the Swan Canning Development Control Area, DBCA is responsible for assessment of development applications as per Part 5, Section 72(1) of the *Swan and Canning Rivers Management Act 2006*. In accordance with the *Swan and Canning Rivers Management Act 2006*, the Minister for the Environment is the decision maker for Part 5 applications. The City's comments will be included in a final report prepared by DBCA to the Minister for Environment on the proposal.

STATUTORY AND LEGAL IMPLICATIONS

If the Minister for Environment gives an approval subject to a condition or restriction, the applicant may request the Minister to reconsider that condition or restriction under Part 5 s.82 of the *Swan and Canning Rivers Management Act 2006*.

FINANCIAL IMPLICATIONS

There are no financial implications for the City relating to this proposal.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There is no strategic risk or environmental management implications with this application.

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POLICY IMPLICATIONS

There are no Local Planning Policy or Council Policy implications in relation to this development.

COMMENT

Sections 2 and 3 of LPP1.16 require planning approval for the installation of all floodlights within reserves under the care and control of the City of Melville. Applications for floodlighting in such instances are assessed taking into account the following:

- (a) The location of the proposed lighting towers in relation to the surrounding properties.
- (b) Whether the light emissions are wholly contained within the subject lot and satisfy Australian Standard AS.2560 – Sports Lighting.
- (c) Hours of operation.
- (d) The potential adverse impacts upon any adjoining residential properties.

Sections 4 of LPP3.4 outlines that tennis courts are to comply with the following in respect of lighting:

- 4.1 Floodlighting for tennis courts shall comply with the following requirements and be certified as being compliant with the relevant Australian Standard by a suitably qualified lighting consultant.
- 4.2 A timer is to be installed in the lighting circuit to ensure that all floodlights are extinguished between the hours of 9pm and 7am.
- 4.3 In order to mitigate the impacts of the flood lighting on adjoining residential properties, screen planting may be required.

LPS6 does not have any specific requirements regarding the setback distances for structures on reserved land, however, the scheme objectives for public open space promote the use of recreation buildings and associated facilities to encourage active and passive use of the City's reserves and open spaces.

In consideration of the above criteria, it is considered that the twelve floodlights proposed by this proposal are supported in planning terms as:

- The closest tower is located 30 metres from the nearest residential property to the south along The Strand, and there is no light spill from any of the proposed floodlighting towers;
- The applicant has provided a Light Assessment which has been prepared by a suitably qualified lighting engineer, assessed by the City, and supported on that basis. The lighting report demonstrates that there is no lighting spill onto any of the properties located on The Strand;
- The ability to play tennis and therefore use the reserve to its full potential after dark is supported as being aligned with the Scheme objectives in respect of Open Space reserves;

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- It is recommended that the floodlights are turned off by 9pm. This will align the use with LPP1.16 and LPP3.4. This will still allow the opportunity for tennis to be played for longer durations of the day than currently enjoyed at Appalcross Tennis Club. However, 9pm rather than 10pm is considered acceptable as it allows players and spectators to finish playing and leave the tennis courts before 10pm. This is also consistent with Clause 6.4 of LPP3.4 which states as follows:

6.4 Subject to public consultation as outlined in Clause 4.3 above, the allowable times for the flood lighting of tennis courts may be increased to 10pm where the amenity of the adjoining residents is safeguarded.

It is acknowledged that the light from the floodlights if operational until 10pm would not in itself compromise amenity levels for owners and occupiers of the closest residential properties, there being no light spill towards those properties from the floodlights, and there being a substantial separation distance between them. Rather, there is a concern that the activities associated with the end of play, such as the opening and closing of car doors, car engine noise, and conversations between players, have the ability to compromise amenity, particularly if taking place after 10pm when the ambient noise environment for residents is at its quietest. To reduce the hours of operation to 9pm aligns with the concerns expressed by those submitters who oppose the development. As such a condition has been recommended to DBCA outlining this; and

- In view of the above and the conditions recommended to the DBCA, it is considered that any amenity impacts from the proposed floodlighting towers will be effectively managed.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

It is recommended to Council that the DBCA be advised that the City supports the proposed development subject to the imposition of conditions of approval.

If Elected Members have an alternative view, this may form the recommendation to the DBCA from the City. This will then be taken into account by the DBAC in dealing with the application from then on. It is noted that as the Minister is the final decision maker in this case, the report from the DBCA to the Minister will make reference to the recommendation of the City in respect of this matter.

CONCLUSION

The proposed development is considered to be consistent with the intent and provisions of Local Planning Scheme No. 6, Local Planning Policy 1.16 – Flood and Security Lighting and Local Planning Policy 3.4 – Tennis Courts. The application is recommended for conditional approval to DBCA on that basis.

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At 9:55pm Cr Woodall returned to the meeting.

At 9:55pm Cr Ross left the meeting.

OFFICER RECOMMENDATION (4028)

APPROVAL

At 9:55pm Cr Fitzgerald moved, seconded Cr Macphail –

That the Council recommends approval to Department of Biodiversity, Conservations and Attractions subject to the following:

Conditions:

1. All stormwater is to be retained on site in accordance with the approved detailed design plans, to the satisfaction of the Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.
2. All floodlights are to be installed in accordance with AS2560.2.1-2003 and AS4282 (as amended) and are to be hooded such that the light source is not visible from the adjoining residential properties to the satisfaction Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.
3. The flood lights are to be installed with a timer which ensures the lights do not operate between the hours of 9pm and 6am, Monday to Sunday.
4. Prior to the floodlights becoming operational, written confirmation from a suitably qualified lighting consultant to confirm that the lighting has been installed in compliance with conditions 2 and 3 above will be required to the satisfaction of Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.

Advice Notes:

- i. The *Environmental Protection (Noise) Regulations 1997* must be complied with at all times. These regulations stipulate allowable noise levels which if breached constitute unreasonable noise for the purposes of the *Environmental Protection Act 1986*. These regulations can be obtained from www.slp.wa.gov.au.
- ii. It is recommended that an updated Environmental Report shall be provided to the Department of Biodiversity, Conservation and Attractions (including a fauna survey) to ensure the proposed development is compliant with all necessary environmental legislation.

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Amendment

At 9:56pm Cr Spanbroek moved, seconded Cr Woodall –

That the Office Recommendation be amended as follows:

1. Point 3 to be amended to read:

“The floodlights are to be installed with a timer and do not operate outside of the hours of 10pm to 6am Monday to Thursday.”

2. A new Point 4 be inserted to read:

“that the application consider retractable lights”.

3. The current Point 4 to be renumbered to Point 5.

Reason for the Amendment as provided by Cr Spanbroek

1. To allow the Club to hold the Pennants competitions Tuesday to Thursday and for the public to be able to book the courts when they are not being used for Pennants competitions.
2. Noise concerns.

At 9:57pm Cr Ross returned to the meeting.

During discussion and debate on the matter with the consent of the mover and the seconder the amendment wording was altered for clarity.

Amendment

That the Officer Recommendation be amended as follows:

At 9:56pm Cr Spanbroek moved, seconded Cr Woodall –

1. Point 3 to be amended to read:

“The floodlights to be installed with a timer and operate from Sunset to 10pm Tuesday to Thursday or on any other days.”

2. A new Point 4 be inserted to read:

“that the application consider retractable lights”.

3. The current Point 4 to be renumbered to Point 5.

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At 10:08pm the Mayor adjourned the meeting until 6:30pm Wednesday, 19 April 2023.

At the time of adjournment and pursuant to Clause 16.2 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* it is noted that:

- Cr Fitzgerald moved the Officer Recommendation.
- Cr Macphail seconded the Officer Recommendation.
- Cr Spanbroek moved and spoke to the Amendment.
- Cr Woodall seconded the Amendment.
- Cr Fitzgerald spoke against the Amendment.

MEETING RECOMMENCEMENT

The Presiding Member advised that the Meeting that was adjourned at 10:04pm on Tuesday 18 April 2023 is recommenced at 6:30pm 19 Wednesday 2023 and welcomed everyone back to the meeting.

At the recommencement of the meeting the following Elected Members and officers were in attendance.

Mayor Hon. G Gear

In Attendance

Cr T Fitzgerald (Deputy Mayor)
Cr K Wheatland
Cr N Pazolli
Cr D Macphail (*from 6:43pm*)
Cr N Robins
Cr G Barber (*until 9:08pm*)
Cr J Edinger
Cr J Spanbroek
Cr M Woodall
Cr M Sandford
Cr K Mair

Palmyra – Melville – Willagee
Palmyra – Melville – Willagee
Applecross – Mount Pleasant (*electronic attendance*)
Bateman – Kardinya – Murdoch
Bateman – Kardinya – Murdoch
Bicton – Attadale – Alfred Cove (*electronic attendance*)
Bicton – Attadale – Alfred Cove
Bull Creek – Leeming
Bull Creek – Leeming (*electronic attendance*)
Central
Central

Officers

Mr M Tieleman
Mr M McCarthy
Mr G Ponton
Ms G Bowman (*until 8.21pm*)
Ms C Newman
Ms R Davis

Chief Executive Officer
Director Environment and Infrastructure
A/Director Urban Planning
Director Community Development (*electronic attendance*)
Head of Governance
Governance Officer

At the commencement of the meeting:

Public Gallery	3
Electronic	6
Press	0

Apologies

Cr C Ross	Applecross – Mount Pleasant
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On Approved Leave of Absence

Nil.

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See the full report commencing on page 62.

At the time of deferral and pursuant to Clause 16.2 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* it is noted that:

- Cr Fitzgerald moved the Officer Recommendation
- Cr Macphail seconded the Officer Recommendation
- Cr Spanbroek moved and spoke to the Amendment
- Cr Woodall seconded the Amendment
- Cr Fitzgerald spoke against the Amendment

In resuming debate on this matter, clause 12.11 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* applies:

- (1) A Member is not to address the Council more than once on any motion or amendment except-
 - (a) as the mover of a motion, to exercise a right of reply; or
 - (b) to raise a point of order; or
 - (c) to make a personal explanation; or
 - (d) subject to clause 10.3, to ask a question.

Amendment

At 9:56pm (at OMC 18 April 2023) Cr Spanbroek moved, seconded Cr Woodall –

That the Office Recommendation be amended as follows:

1. Point 3 to be amended to read:

“The floodlights to be installed with a timer and operate from Sunset to 10pm Tuesday to Thursday and not on any other days.”

2. A new Point 4 be inserted to read:

“That the application to consider retractable lights”

3. The current Point 4 to be renumbered to Point 5.

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At 6:32pm Cr Spanbroek advised the meeting that a change would be made to the original amendment to reflect the time of 9pm rather than 10pm. The seconder consented to the change.

Amendment

At 9:56pm (at OMC 18 April 2023) Cr Spanbroek moved, seconded Cr Woodall –

That the Office Recommendation be amended as follows:

1. Point 3 to be amended to read:

“The floodlights to be installed with a timer and operate from Sunset to 9pm Tuesday to Thursday and not on any other days.”

2. A new Point 4 be inserted to read:

“That the application to consider retractable lights”

3. The current Point 4 to be renumbered to Point 5.

At 6:41pm, the Mayor declared the motion

LOST (5/6)

For	5	Cr J Spanbroek, Cr N Robins, Cr T Fitzgerald, Cr M Woodall, Cr G Barber
Against	6	Mayor G Gear, Cr J Edinger, Cr K Wheatland, Cr K Mair, Cr M Sandford, Cr N Pazolli

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At 6:43pm Cr Macphail entered the meeting.

Officer Recommendation

At 9:55pm (18 April 2023) Cr Fitzgerald moved, seconded Cr Macphail –

That the Council recommends approval to Department of Biodiversity, Conservations and Attractions subject to the following:

Conditions:

- 1. All stormwater is to be retained on site in accordance with the approved detailed design plans, to the satisfaction of the Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**
- 2. All floodlights are to be installed in accordance with AS2560.2.1-2003 and AS4282 (as amended) and are to be hooded such that the light source is not visible from the adjoining residential properties to the satisfaction Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**
- 3. The flood lights are to be installed with a timer which ensures the lights do not operate between the hours of 9pm and 6am, Monday to Sunday.**
- 4. Prior to the floodlights becoming operational, written confirmation from a suitably qualified lighting consultant to confirm that the lighting has been installed in compliance with conditions 2 and 3 above will be required to the satisfaction of Department of Biodiversity, Conservation and Attractions, on advice from the City of Melville.**

Advice Notes:

- i. The *Environmental Protection (Noise) Regulations 1997* must be complied with at all times. These regulations stipulate allowable noise levels which if breached constitute unreasonable noise for the purposes of the *Environmental Protection Act 1986*. These regulations can be obtained from www.slp.wa.gov.au.**
- ii. It is recommended that an updated Environmental Report shall be provided to the Department of Biodiversity, Conservation and Attractions (including a fauna survey) to ensure the proposed development is compliant with all necessary environmental legislation.**

At 6:55pm (19 April 2023) the Mayor declared the motion

CARRIED (7/6)

For	6	Cr D Macphail, Mayor G Gear, Cr N Robins, Cr T Fitzgerald, Cr G Barber, Cr M Woodall
Against	6	Cr J Edinger, Cr J Spanbroek, Cr K Wheatland, Cr K Mair, Cr M Sandford, Cr N Pazolli

NOTE: Due to an equality of votes at the Council Meeting, the Presiding Member exercised his right to cast a second vote to reach a decision in this matter (Section 5.21(3) of the *Local Government Act 1995*)

Management Services

At the [Ordinary Meeting of Council held 21 March 2023](#), Mr McLerie gave a deputation and officer's provided an Advice Note on this matter.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

Ward	: All
Category	: Executive
Subject Index	: Property Index 14 Beach Street, Bicton
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item 15.3 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor - Ordinary Meeting of Council held 16 August 2022. Item M22/5937 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor – Ordinary meeting of Council held 15 November 2022.
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Patrick Hughes Manager Building and Environmental Health Services

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"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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>

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- At the 16 August 2022 Ordinary Council Meeting, a Motion with Notice was supported that an independent registered building surveyor be appointed to undertake an inspection of the boundary structure footings and associated retaining structures located at 14 Beach Street, Bicton and provide a report back to the 18 October 2022 Ordinary Meeting of Council.
- This Item was discussed at the Elected Member Engagement Session held 4 October 2022 where it was advised that a report would be presented to the November 2022 Council Meeting.
- A report was then presented to the 15 November 2022 Meeting that provided an update on the progress of actions taken in implementing the August 2022 Council resolution.
- An Independent Registered Building Surveyor (TESG) was appointed, and an inspection of the site was undertaken on 9 December 2022.
- The Final Independent Registered Building Surveyor Report was received on 13 March 2023, and as required by the August 2022 Council resolution, the report is presented to the Council.
- This report recommends that the Council notes the TESG report and consider the Officer recommendation in relation to this matter.

BACKGROUND

At the 16 August 2022 Ordinary Meeting of the Council it was resolved that:

“That the Council directs the CEO to:

- 1. appoint an independent registered building surveyor to undertake an inspection of the boundary structure footings and associated retaining located at 14 Beach Street, Bicton, and***
- 2. provide a report back to the 18 October 2022 Ordinary Meeting of Council which includes a copy of the independent registered building surveyor’s and any other relevant reports.”***

The reasons provided in support of the motion were:

- Since 2017 there have been questions and opinions provided relating to the boundary of 14 Beach Street.
- The Objective is to:
 - inspect the entirety (eastern and western sides) of the footings and retaining on which the boundary structure rests;
 - identify any issues or non-conformances relating to the footings and retaining when compared to Building Approval Certificate (BA14) BA-2017-466;
 - identify any additional issues that become apparent during the inspection.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

- The City will:
 - gain an understanding of the current condition of the entirety of the foundation and retaining along the boundary of 14 Beach Street, Bicton
 - an independent entity will either confirm the foundation and retaining as-built and current condition aligns with the drawings supplied with BA-2017-466 or advise otherwise.
 - be informed as to a path forward should rectification of the foundation, retaining and any other issues be required.
- Potential Risks:
 - Continued lack of clarity in relation to the “as built” status of the foundation and retaining. No resolution to lack of retaining issue.

The Officer Advice Note provided to the August 2022 meeting was:

“Written consent must be obtained, from both property owners, to implement the motion if supported. Without this consent, the CEO cannot implement the actions proposed in the motion.

The objectives call for an inspection of the eastern and western sides of the footings and retaining. The orientation of the properties is that these are the northern and southern sides. To implement the motion as presented, access to both 12 and 14 Beach Street would be required.

The property owner of 12 Beach Street has the option to provide written consent for City Building Surveyors to conduct part of the inspection from their property. If this consent is not provided, this will greatly restrict the City’s ability to assist and investigate. The City will not be in a position to pursue any compliance enforcement process unless evidence is obtained by City Officers. This has been confirmed through legal advice from McLeods.

A specific inspection of the boundary retaining structures and footings may require a Structural Engineer to gain access to both properties. This may result in destructive or sample testing of the structures (coring, digging etc.). Consent will be required from the owner of 14 Beach Street for this to occur, if required.

A Building Surveyor will only provide a visual inspection of the footings and retaining, then provide a conclusion if they believe the structures comply with approved plans and assess if the structures are in a dangerous state. It is not recommended that this motion be put forward until written consent is submitted to the City, from the owners of 12 and 14 Beach Street, for the inspection to take place.”

DETAIL

TESG Building Surveyors were appointed to undertake the inspection, which was undertaken on Friday, 9 December 2022.

A draft copy of the report was received on 15 February 2023, with a final report being received 10 March 2023. Minor changes to correction of dates and numbering were made with the latest corrected version of the report being received Monday, 13 March 2023.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

Elected Members have been advised of the progress of this matter in the Elected Member Bulletins of 3, 17 and 24 February and 3 March 2023. A copy of the 15 February 2023 draft report was published to the Elected Member Portal on 17 February 2023.

The [TESG 14 Beach Street, Bicton Building Code Compliance Report](#) is provided as an attachment to this report.

The following observations are made in relation to the report:

1. The report has confirmed that the screen wall, the subject of this ongoing dispute, appears to be constructed in accordance with Building Approval Certificate BA-2017-466. That is significant, as consistent allegations have been made that the screen wall was not constructed in accordance with that Certificate.
2. The report also noted that, in the independent Building Surveyor's view, although the remains of the limestone retaining wall is not in compliance with the approved structural details for BA-2002-2166, issued in 2002, the limestone retaining wall is not displaying any signs of imminent danger of collapse. As a result, the independent Building Surveyor's view is that the retaining wall is not in a dangerous state and therefore there is no basis, pursuant to the *Building Act 2011*, for the City to pursue any building compliance enforcement action against the owner (14 Beach Street) of the retaining wall to direct them to carry out any repair work.
3. The inspector is also of the view that the City cannot issue the owner of the screen wall (14 Beach Street) a Building Order requiring the outward facing side of the screen wall to be finished in a particular way, pursuant to s.88, *Building Act 2011*. The City has been made aware that the owner of 12 Beach Street will not permit the owner of 14 Beach Street, or her contractors, to enter his property to finish the screen wall, the works cannot be undertaken.
4. Legal advice indicates that in relation to the circumstances above, if the City were to issue a building order (which appears doubtful), it would be invalid and unenforceable.

In view of the report findings, the City is not required to take any further action in this matter, unless the City receives a report by a Structural Engineer that confirms what remains of the retaining wall or any other part of the structure is in a dangerous state. Subsequently, without the consent of the owner of 14 Beach Street, this would require the owner of 12 Beach Street to allow a Structural Engineer onto their property to carry out a visual inspection only of the boundary structures and what remains of the limestone retaining wall.

Invasive sample testing of the structures on 14 Beach Street cannot be undertaken without the property owner's consent. The owner of 14 Beach Street has previously declined consent to access their property for any further inspections and it is for this reason that undertaking a visual inspection to confirm structural adequacy from 12 Beach Street, is not presented as an alternative recommendation.

Previous legal advice obtained in relation to this matter, that is still relevant, has been provided to Elected Members in the 17 March 2023 Elected Members Bulletin. The advice provides the opinion on how the Council may proceed with this matter, which is reflected in the City Officer recommendation.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

STATUTORY AND LEGAL IMPLICATIONS

The TESS report makes reference to the following sections of the Building Act 2011:

<i>Section 88</i>	<i>Finishes of walls close to boundaries.</i>
<i>Section 110</i>	<i>Building Orders</i>
<i>Section 112</i>	<i>Content of Building Order</i>

FINANCIAL IMPLICATIONS

The cost to undertake the inspection and provide the report was \$6,490. Additional expenditure may be incurred should the Council request the independent Building Surveyor to attend a briefing session, to present and discuss his report.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The report addresses the risk and concerns regarding the structural adequacy of the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street, Bicton.

POLICY IMPLICATIONS

The Council Policy CP-114 Compliance and Enforcement Policy needs to be considered in relation to any compliance and enforcements actions relating to this matter.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The August 2022 Council resolution requires that the independent building surveyor's report and any other relevant reports be presented to the Council.

The options now available for the owners of 12 and 14 Beach Street in relation to this matter are:

- The owner of 14 Beach Street may wish to appoint a Structural Engineer to undertake an inspection of the structures and footings of the boundary structures, adjacent to 12 Beach Street, as recommended by the independent Building Surveyor.
- As the City does not have cause at this time to undertake any further action in relation to this matter, in accordance with Recommendation 10 of the Weir Report and legal advice, refer the owners of 12 and 14 Beach Street to processes under the Dividing Fences Act or other legal processes to reach agreement and/or to resolve this matter.
- The owner of 12 Beach Street may wish to appoint a Structural Engineer to undertake a visual inspection only of the 14 Beach Street boundary structures, therefore is considered of limited value.

The options in the above dot points are not enforceable pursuant to the *Building Act 2011*, however, the City will continue to support attempts to achieve the report recommendations.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

CONCLUSION

The TESS Report on the boundary structure footings and associated retaining located at 14 Beach Street, Bicton is presented to the Council as required by the August 2022 resolution. The report provides observations made in relation to the report recommends and advises of options that are now available for the Council to consider.

OFFICER RECOMMENDATION (5937)

NOTING

That the Council:

- 1 Notes the [TESS 14 Beach Street, Bicton Building Code Compliance Report](#) dated 10 March 2023; and
- 2 In accordance with Recommendation 10 of the Weir Report and legal advice received, that the owners of 12 and 14 Beach Street, Bicton now be advised to avail themselves to processes under the Dividing Fences Act or other Legal Processes to reach agreement on the way that the screen fence is finished and resolve any retaining wall and fence matters.

Alternative Motion with Notice

At 7:25pm (on 21 March 2023) Cr Edinger moved, seconded –

That the Council directs the CEO to:

- (a) appoint an independent structural engineer to undertake an inspection of the boundary structure footings and associated retaining located at 14 Beach Street, Bicton, and
- (b) provide a report back to the July 2023 ordinary meeting of Council which includes a copy of the independent structural engineer's and any other relevant reports.

Reasons for the Alternative Motion as provided by Cr Edinger

In the Executive Summary the TESS report conclusion is that:

1. The only structural certification provided by Terpkos civil & structural consulting that relates to the mass limestone retaining wall and screen wall is in the letter dated 14 December 2015.
2. There is no structural certification that specifically addresses the structural adequacy of the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street.

The building surveyor goes on to make the recommendation that “the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street should be inspected by a structural engineer to determine the structural adequacy of the retaining wall to determine: (a) compliance with the approved structural drawings, in particular compliance with Notes 5, 7 and 10; and (b) whether the limestone retaining wall and screen wall can reasonably be believed to be dangerous.”

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

At 7:25pm (on 21 March 2023) Cr Edinger amended the Alternative Motion with Notice before a seconder was sought.

Alternative Motion

At 7:25pm (on 21 March 2023) Cr Edinger moved, seconded –

That the Council directs the CEO to:

- **provide all structural engineering reports; and**
- **provide Building and Energy's presentation, to the Council, of June 2020 to TESS for review of Independent Building Surveyors Report to determine if additional information can be incorporated and the matter be presentation to an Elected Members Engagement Session in May 2023 to with a report to the Ordinary Meeting of Council 20 June 2023.**

At the Ordinary Meeting of Council held 21 March 2023, Item M23/5964 – Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor was deferred to the 18 April 2023 Ordinary Meeting of Council to allow for the matter to be discussed at an Elected Member Engagement Session for further discussion.

At the time of deferral and pursuant to clause 13.4 of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* it is noted that:

- Cr Edinger introduced her amended alternative motion.

In resuming debate on this matter, clause 12.11(1) of the *City of Melville Local Government (Meeting Procedures) Local Law 2022* applies:

"A Member is not to address the Council more than once on any motion or amendment except-

- (a) as the mover of a motion, to exercise a right of reply; or*
- (b) to raise a point of order; or*
- (c) to make a personal explanation; or*
- (d) subject to clause 10.3, to ask a question."*

In resuming this matter, the Mayor advised Cr Edinger that the amended alternative motion was on the table for consideration and required a seconder.

Procedural Motion

At 7:04pm moved Cr Sandford, seconded Cr Mair –

That an extension of five minutes be granted to Cr Edinger to speak on the matter.

At 7:06pm, the Mayor declared the motion

CARRIED (7/5)

For	7	Cr J Edinger, Cr J Spanbroek, Cr K Mair, Cr M Sandford, Cr T Fitzgerald, Cr G Barber, Cr N Pazolli
Against	5	Cr D Macphail, Mayor G Gear, Cr K Wheatland, Cr N Robins, Cr M Woodall

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

Amendment

At 6:56pm Cr Edinger moved, seconded Cr Barber –

Replace item 2 with Issues a building order to make good the boundary structure as per planning and building approvals, including the retaining section and the finish to the western side so as to ensure that compliance is achieved in relation to the approvals issued and any relevant standards and building codes.

At 7:08pm Cr Edinger clarified that she was withdrawing her alternative motion and she had spoken to an amendment to the officer recommendation.

OFFICER RECOMMENDATION

At 7:08pm Cr Robin moved, seconded Cr Wheatland –

That the Council:

- 1** Notes the [TESG 14 Beach Street, Bicton Building Code Compliance Report](#) dated 10 March 2023; and
- 2** In accordance with Recommendation 10 of the Weir Report and legal advice received, that the owners of 12 and 14 Beach Street, Bicton now be advised to avail themselves to processes under the Dividing Fences Act or other Legal Processes to reach agreement on the way that the screen fence is finished and resolve any retaining wall and fence matters.

Amendment

At 6:56pm Cr Edinger moved, seconded Cr Barber –

Replace item 2 with Issues a building order to make good the boundary structure as per planning and building approvals, including the retaining section and the finish to the western side so as to ensure that compliance is achieved in relation to the approvals issued and any relevant standards and building codes.

At 7:16pm, the Mayor declared the motion

LOST (5/7)

For	5	Cr J Edinger, Cr J Spanbroek, Cr K Mair, Cr M Sandford, Cr G Barber
Against	7	Cr D Macphail, Mayor G Gear, Cr K Wheatland, Cr N Robins, Cr T Fitzgerald, Cr N Pazolli, Cr M Woodall

At 6:57pm Cr Wheatland left the meeting and returned at 6:59pm.

M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)

Officer Recommendation

At 7:08pm Cr Robin moved, seconded Cr Wheatland –

That the Council:

- 1 Notes the TESG 14 Beach Street, Bicton Building Code Compliance Report dated 10 March 2023; and**
- 2 In accordance with Recommendation 10 of the Weir Report and legal advice received, that the owners of 12 and 14 Beach Street, Bicton now be advised to avail themselves to processes under the Dividing Fences Act or other Legal Processes to reach agreement on the way that the screen fence is finished and resolve any retaining wall and fence matters.**

At 7:23pm, the Mayor declared the motion

CARRIED (8/4)

For	8	Cr D Macphail, Mayor G Gear, Cr K Wheatland, Cr N Robins, Cr T Fitzgerald, Cr G Barber, Cr N Pazolli, Cr M Woodall
Against	4	Cr J Edinger, Cr J Spanbroek, Cr K Mair, Cr M Sandford

At 7:27pm, the Mayor advised the meeting that an Officer Amendment had been tabled by the Responsible Officer. [Officer Amendment](#)

M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)

Ward	: All
Category	: Executive
Subject Index	: Independent Review
Customer Index	: City of Melville; Weir Legal and Consulting
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Motion with Notice 16.2 Weir Report Special Meeting of Council held 4 April 2022 M22/5927 – Independent Review – Weir Legal and Consulting Report – Ordinary Meeting of Council held 15 November 2022 (deferred to 13 December 2022). M22/5927 – Independent Review – Weir Legal and Consulting Report – Ordinary meeting of Council held 13 December 2022.
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Marten Tieleman Chief Executive Officer

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"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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>

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

KEY ISSUES / SUMMARY

- At the 13 December 2022 Ordinary Meeting of Council, the Council accepted the Weir Legal and Consulting (WLC) - City of Melville Review of Complaints – Building and Planning (Weir Report).
- The Council also noted the City's Response to the 15 Recommendations contained in the report and requested a review and report on the Findings contained on pages 13 to 19 of the report.
- Several presentations have been made at Elected Member Engagement Sessions on the actions undertaken in relation to implementing the Weir report recommendations, the latest being to the Elected Member Engagement Session held 28 February 2023.
- On 2 March 2023, the City received a letter from the Department of Local Government, which made specific reference to the release of the Weir Report to the community.
- This report presents the review of the findings contained on pages 13 to 19 of the report and provides a recommendation in relation to the publication of the report.

BACKGROUND

At the Ordinary Meeting of Council held 13 December 2022 the Council resolved:

That the Council

- 1. Accepts the Weir Legal and Consulting, City of Melville Review of Complaints Building and Planning report dated 17 September 2021 (Final Weir Report).**
- 2. Notes the City's Response to the Recommendations Contained in the Final Weir Report.**
- 3. Directs the CEO to:**
 - a. finalise the "A Way Forward" Recommendations and Responses**
 - b. review and report on the Findings of the Weir Report, contained on pages 13 - 19 of the report;**
 - c. report back to the April 2023 Ordinary Meeting of Council.**

The reasons provided in support of the resolution were:

- 1. The Recommendations and Responses are incomplete.*
- 2. The Findings have not been responded to. It is not acceptable to use the excuse that "the findings contained in the Draft Report were translated to the 15 "A Way Forward" recommendations in the Final Weir Report" as a reason to not examine the Findings in detail. (Refer p10 of the Agenda)*
- 3. The Privacy Act 1988 is clear on what constitutes private information ("personal information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not").*

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Since February 2022, Elected Members have been provided with regular updates on the progress of the City's implementation of the fifteen "A Way Forward" recommendations, the latest being at the 28 February 2023 Elected Member Engagements Session.

Officers will continue to undertake required actions and report on the outstanding recommendations until finalised and are recommending that the City's response to the recommendations be published to the City website, when finalised.

While comment on the findings listed on pages 13 to 19 of the Final Report has been provided, as requested, the findings have been reflected in the 15 recommendations identified in the report and accordingly are dealt within responses to the recommendations. Other matters are noted or responded to in the attachment, which is confidential as the Council has not, yet made a decision to release to report.

The confidential attachment to this report was distributed to Elected Members on Friday, 31 March 2023.

DETAIL

At the December 2022 Ordinary Meeting of Council, no decision was made by the Council in relation to releasing the report to the public. While the document has been requested and released in a redacted version to an applicant under the Freedom of Information Act, it is also for the Council to consider publishing the document, either in its entirety or in some edited format, in the public interest.

At the 19 November 2019 Council Meeting (Item 13.3 Petition – Request for Independent Review) a petition was received signed by 77 residents dated 3 November 2019 the petition requested that:

*"We, the undersigned, all being electors of the City of Melville, respectfully request that the Council conduct an independent review, by parties and on terms as mutually agreed between Council and Mr McLerie, of the performance and conduct of the City of Melville in respect to Mr McLerie's various building related and consequential complaints since 2012, as mentioned in his **27 October 2019 letter to Council**; in relation to various matters that have caused Mr McLerie and his family significant damage and unwarranted distress."*

As a consequence of the petition, several related reports have been presented to and considered by the Council between November 2019 and November 2022, which has further put the matter in the public domain.

M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)

The various items presented to and considered by the Council are:

5 February 2020	Governance Committee	Item 8.1 Motion Without Notice – Independent Review – Mr McLerie (Building Related and Consequential Complaints)
18 February 2020	Ordinary Meeting of Council	Item M20/5730 Report of the Governance Committee Meeting Held 5 February 2020
17 March 2020	Ordinary Meeting of Council	Item M20/5730 M McLerie – Independent Review – Building Related and Consequential Complaints
24 June 2020	Governance Committee Meeting	Confidential Item C20/5752 – McLerie Independent Review -
29 June 2020	Special Meeting of Council	Late Item – Confidential Item M20/5755 Independent Review
19 October 2020	Governance Committee	Item C20/5777 Independent Review – Cessation of Contract
17 November 2020	Ordinary Meeting of Council	Item C20/5788 Independent Review – Cessation of Contract Mr McLerie made a deputation at the 3 November 2020 Agenda Briefing Forum.
15 November 2022	Ordinary Meeting of Council	Item M22/5927 – Independent Review – Weir Legal and Consulting Report Mr McLerie made a deputation at the OMC

The Officer Report to the December 2022 Council Meeting provided the following information and options relating to publishing the report.

The Final Weir Report contains the initials and positions of City of Melville Officers and the initials of the Complainants, which could personally identify individuals. In considering publicly releasing the Final Weir Report, the Council should consider whether to redact any identifying information.

The options presented at the December 2022 Council meeting for publishing the report included:

1. Publishing the Final Weir Report in full accompanied by the City's response to the 15 recommendations.
2. Publishing the Final Weir Report accompanied by the City's response to the 15 recommendations, with the initials of the Complainants and details that may identify staff being redacted.
3. Publishing a version of the Final Weir Report with any opinion and/or commentary associated with the Complainants and/or City Officers and the initials of the Complainants and the positions of Officers being redacted.
4. The Final Weir Report is not published.

At that time, the administration recommended Option 2 as being the preferred option, with the redacted report being published to the City's website. A copy of the redacted in line with Option 2, was included as a confidential attachment to the December report.

M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)

Legal Advice

When considering the release of the report at the December 2022 Council Meeting, concern was expressed by an Elected Member regarding the responsibility and liability of individual Elected Members in respect to potential defamation action, should the Council resolve to publish the report in full, in part or with information redacted.

Legal advice was sought in relation to publishing the report and the responsibility and liability of individual Elected Members in respect to potential defamation action should the Council resolve to publish the report. Elected Members were provided with a copy of the legal advice in the Elected Member Bulletin of 16 December 2022.

In relation to this matter, section 9.56 of *the Local Government Act 1995* provides a significant degree of protection from liability in respect of “an action in tort” (which includes an action for defamations). The protection from liability applies to individual Council members and employees of local governments in respect of anything that the person has, in good faith, done in the performance or purported performance of a function under the Act or any other written law.

The legal advice addresses the “in good faith” and “defamatory material” aspects that relate to this matter. There are sound public interest grounds to support the publication in full of a report of this nature, particularly in the context of the investigation that:

- commenced by the submission of a petition to the Council, signed by 77 residents of the City of Melville requesting the investigation,
- the scope of the investigation which was to review the City’s customer interactions in relation to planning, building and environmental health complaints received, with a view to identifying improvements to the City’s systems and processes, and
- being consistent with openness, transparency and accountability objectives, particularly in the context of the investigation and the circumstance in which it was undertaken and the significant expenditure of public funds.

On the 2 March 2023 the City received correspondence dated 28 February 2023 from the Department of Local Government relating to Governance Concerns at the City of Melville, that required the City to provide a response to the Department’s concerns by the close of business 28 April 2023. One of the matters identified in the letter of concern is that the City needs to provide a response to is that:

“the Council commits to release the final Weir Legal and Consulting Report on the Review of Building and Planning Complaints at the City of Melville in entirety and the City’s progress in implementing the recommendations.”

The findings on pages 13 to 19 of the report respond to 24 questions that were raised relating to the MR complaints. These complaints relate to a 30 unit development approved under the Canning Bridge Activity Centre Plan (CBACP) on the property neighbouring one of the complainants. Officers have provided comment on each of the findings - review and report on the Findings of the Weir Report, pages 13 – 19 of the report.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Overarching comments made by Weir Legal, relating to the MR complaints can be found on pages 4 to 6 of the report.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

There has been no engagement with the community in relation to the Final Weir Report.

II. OTHER AGENCIES / CONSULTANTS

The Department of Local Government has provided comment on the release of the report and the Office of the Information Commission has been consulted in relation to the released of the report because of a Freedom of Information application, requesting a copy of the report.

STATUTORY AND LEGAL IMPLICATIONS

Legal advice that has been received in relation to publishing the report has been advised in the report. The final report remains confidential, at this point in time, as it is alleged by a party that the report contains their personal information.

Section 5.23 of the Local Government Act 1995 provides that, if the Council wishes to discuss the contents of the report and/or findings that the meeting maybe closed to the public if the meeting or part of the meeting deals with or is going to deal with *the personal affairs of any person*.

Section 9.56 of the Act relates to protections to elected members as follows:

Section 9.56. Certain persons protected from liability for wrongdoing

- (1) *A person who is —*
 - (a) *a member of the council, or of a committee of the council, of a local government;*
or
 - (b) *an employee of a local government; or*
 - (c) *a person appointed or engaged by a local government to perform functions of a prescribed office or functions of a prescribed class, is a protected person for the purposes of this section.*
- (2) *An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or under any other written law.*
- (3) *The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or under any other written law may have been capable of being done whether or not this Act or that law had been enacted.*
- (4) *This section does not relieve the local government of any liability that it might have for the doing of anything by a protected person.*

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

(5) *In this section —*

- (a) *a reference to the doing of anything includes a reference to the omission to do anything;*
- (b) *a reference to the doing of anything by a protected person in the performance or purported performance of a function under any written law other than this Act is limited to a reference to the doing of anything by that person in a capacity described in subsection (1)(a), (b) or (c), as the case may be.*

FINANCIAL IMPLICATIONS

The work undertaken by Weir Legal and Consulting to undertake the independent review and produce the City of Melville Review of Complaints – Building and Planning was at a total cost of \$128,590.

In addition to the Final Weir Report, legal fees in respect to the properties the subject of this report were estimated to be more than \$95,000.

Additional funds of approximately \$7,500 have been incurred in appointing an independent building surveyor to undertake an inspection related to recommendation 10 of the report.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
The City of Melville has expended considerable ratepayer funds to undertake the Independent Review. Given that the process was initiated to address concerns expressed by members of the community and the complaints have been previously levelled at the City in respect to a perceived lack of openness and transparency, reputational risk may arise if the community is not provided with access to the Final Weir Report and the actions proposed to be undertaken and/or implemented by the City in response to the 15 recommendations.	Medium	That due to the public interest in this matter and in the interests of openness and transparency the Council publish the report with the comments on the findings and actions undertaken by the City in response to the 15 Recommendations identified.
That members of the community (the Complainants) and Officers (some of whom no longer work at the City) may be identifiable by the contents of the full Final Weir Report.	High	That relevant identifying information (e.g. the initials of the Complainants and the position of officers) be redacted from the version available to the public.
The Complainants may object to the redacted version of the Final Weir Report being released.	High	That identifying information be redacted to mitigate the possibility of involved parties being identified.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

POLICY IMPLICATIONS

Relevant Council Policies, systems, procedures and practices have been and will continue to be reviewed and amended in order that the recommendations as agreed, are met.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Weir Legal and Consulting spent 10 months gathering and considering information, conducting interviews, liaising with the parties involved with the review, and writing the report.

At the December 2022 Meeting the Council accepted the report. It is for the Council to note the comments on the findings contained on pages 13 – 19 of the Report or to request further actions, if required. It is also for the Council to resolve to publish the report either in its entirety, with initials and information identifying the Complainants and Officers involved redacted or not to publish it at all.

The City will be advising the Department of Local Government of the outcome of the Council decision in regards to the Weir report as requested as part of its response by 28 April 2023.

CONCLUSION

The Council's purpose of the independent review of was to review:

- issues associated with the Planning, Building and Environment Health matters raised by two Complainants and
- the City's interactions with both residents relating to their complaints.

The City acknowledges, the outcomes of the in-depth review and the identified improvements in its systems, policies, processes and procedures. The 15 recommendations contained within the Final Weir Report are supported. Since the Final Report was received in September 2021, actions have been undertaken to implement the 15 recommendations and the Council has been advised of this progress through regular updates.

In view of the legal advice received in relation to the proposed publication of the Weir report and the Department of Local Government letter of 28 February 2023, Officers recommend that the Weir Report be published to the City website in its entirety. Should the Council resolve to publish the report in an alternative format, reasons for doing so should be provided so that these can be communicated to the Department of Local Government.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

OFFICER RECOMMENDATION (5968)

APPROVAL

That the Council:

1. Notes the review and report on the findings of the Weir Report, contained on pages 13 – 19 of the report; and
2. Directs the CEO to publish on the City's website:
 - a. The Weir Legal and Consulting City of Melville Review of Complaints Building and Planning, in its entirety; and
 - b. the City's Response to the Recommendations contained in the Final Weir Report, when finalised
for a minimum of two years.

Officer Recommendation as Amended

At 7:25pm Cr Fitzgerald moved, Seconded Cr Macphail–

That the Council:

1. Notes the review and report on the findings of the Weir Report, contained on pages 13 – 19 of the report; and
2. Directs the CEO to publish on the City's website:
 - a. The Weir Legal and Consulting City of Melville Review of Complaints Building and Planning with the following redactions having been made:
 - Names and corresponding initials
 - Job titles/positions
 - Identifying street numbers, initials and names
 - Identifying suburbs
 - Dates of SAT Hearings, including identifying SAT Numbers
 - Dates of JDAP Meetings
 - Dates deputations were made to Council
 - Identifying features of "developments"
 - Dates Building Permits/ Building Orders were issued
 - Dates Noise abatement notices and infringement Notices were issued
 - Dates of excessive noise incidence
 - Inspection report dates
 - Council meeting dates
 - Dates plans were approved
 - Building licence numbers
 - b. the City's Responses to the 15 Recommendations contained in the Final Weir Report, for a minimum of two years with periodic updates on those issues which remain on-going during that period.

**M23/5968 – INDEPENDENT REVIEW – WEIR LEGAL AND CONSULTING REPORT (REC)
(CONFIDENTIAL ATTACHMENT)**

Procedural Motion

COUNCIL RESOLUTION

At 7:31pm Cr Wheatland moved, seconded Mair –

That Cr Fitzgerald be granted an extension of five minutes to speak on the matter.

At 7:31pm the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

At 7:36pm Cr Spanbroek left the meeting and returned at 7:39pm.

Officer Recommendation as Amended

At 7:25pm Cr Fitzgerald moved, Seconded Cr Macphail–

That the Council:

- 1. Notes the review and report on the findings of the Weir Report, contained on page 13 – 19 of the report; and**
- 2. Directs the CEO to publish on the City's website:**
 - a) The Weir Legal and Consulting City of Melville Review of Complaints Building and Planning with the following redactions having been made:**
 - Names and corresponding initials**
 - Job titles/positions**
 - Identifying street numbers, initials and names**
 - Identifying suburbs**
 - Dates of SAT Hearings, including identifying SAT Numbers**
 - Dates of JDAP Meetings**
 - Dates deputations were made to Council**
 - Identifying features of "developments"**
 - Dates Building Permits/ Building Orders were issued**
 - Dates Noise abatement notices and infringement Notices were issued**
 - Dates of excessive noise incidence**
 - Inspection report dates**
 - Council meeting dates**
 - Dates plans were approved**
 - Building licence numbers**
 - b) the City's Responses to the 15 Recommendations contained in the Final Weir Report, for a minimum of two years with periodic updates on those issues which remain on-going during that period.**

At 7:55pm, the Mayor declared the motion

CARRIED (7/5)

For	7	Cr D Macphail, Mayor G Gear, Cr K Wheatland, Cr N Robins, Cr T Fitzgerald, Cr N Pazolli, Cr M Woodall
Against	5	Cr J Edinger, Cr J Spanbroek, Cr K Mair, Cr M Sandford, Cr G Barber

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Item Deferred

See page 139.

Corporate Services

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

Ward	: All
Category	: Operational
Subject Index	: Financial Statements and Investments
Customer Index	: Not applicable
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Standard Item
Works Programme	: Not applicable
Funding	: Not applicable
Responsible Officer	: Debbie Whyte Manager Financial Services

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 type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

This report presents the investment statements for the period ending 28 February 2023 for the Council's information and noting.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

BACKGROUND

The City has cash holdings as a result of timing differences between the collection of revenue and its expenditure. Whilst these funds are held by the City they are invested in appropriately rated and liquid investments.

The investment of cash holdings is undertaken in accordance with Council Policy CP-009 - Investment of Funds, with the objective of maximising returns whilst maintaining low levels of credit risk exposure.

DETAIL

The following statement details the investments held by the City as at 28 February 2023.

CITY OF MELVILLE STATEMENT OF INVESTMENTS FOR THE PERIOD ENDING 28 FEBRUARY 2023		
SUMMARY BY FUND		
Municipal		\$55,580,081
Reserve		\$143,238,104
Trust		\$-
Citizen Relief		\$224,848
TOTAL		\$199,043,033
SUMMARY BY INVESTMENT TYPE		
11AM		\$19,319,731
31Days at Call		\$-
60Days at Call		\$2,000,000
90Days at Call		\$16,600,000
Term Deposit		\$161,123,302
TOTAL		\$199,043,033
SUMMARY BY CREDIT RATING		
AAA Category	AAA	
AA Category (AA+ to AA-)	AA-	\$114,300,272
A Category (A+ to A-)	A+	\$41,742,761
	A	
	A-	
BBB+ Category	BBB+	\$43,000,000
TOTAL		\$199,043,033

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

Exposure to an individual institution is limited according to Council policy and in February 2023 the investments were within the acceptable limits.

Investment with financial institutions						
Institution	Credit Rating	Credit Rating Category	Funds held at period end	Actual %	Limit Per Policy	
ANZ	AA-	AA Category	\$ 3,200,000	1.61%	30.00%	✓
AMP	BBB+	BBB+ Category	\$ -	0.00%	15.00%	✓
Bankwest	AA-	AA Category	\$ -	0.00%	30.00%	✓
Bank of Queensland	BBB+	BBB+ Category	\$ 25,000,000	12.56%	15.00%	✓
ING Bank	A-	A Category	\$ -	0.00%	25.00%	✓
Bendigo & Adelaide	BBB+	BBB+ Category	\$ 18,000,000	9.04%	15.00%	✓
CBA	AA-	AA Category	\$ 24,000,000	12.06%	30.00%	✓
Macquarie	A+	A Category	\$ 2,042,761	1.03%	25.00%	✓
NAB	AA-	AA Category	\$ 52,758,712	26.51%	30.00%	✓
St George	AA-	AA Category	\$ -	0.00%	30.00%	✓
Suncorp	A+	A Category	\$ 39,700,000	19.95%	25.00%	✓
Westpac	AA-	AA Category	\$ 34,341,560	17.25%	30.00%	✓
TOTAL			\$ 199,043,033	100%		

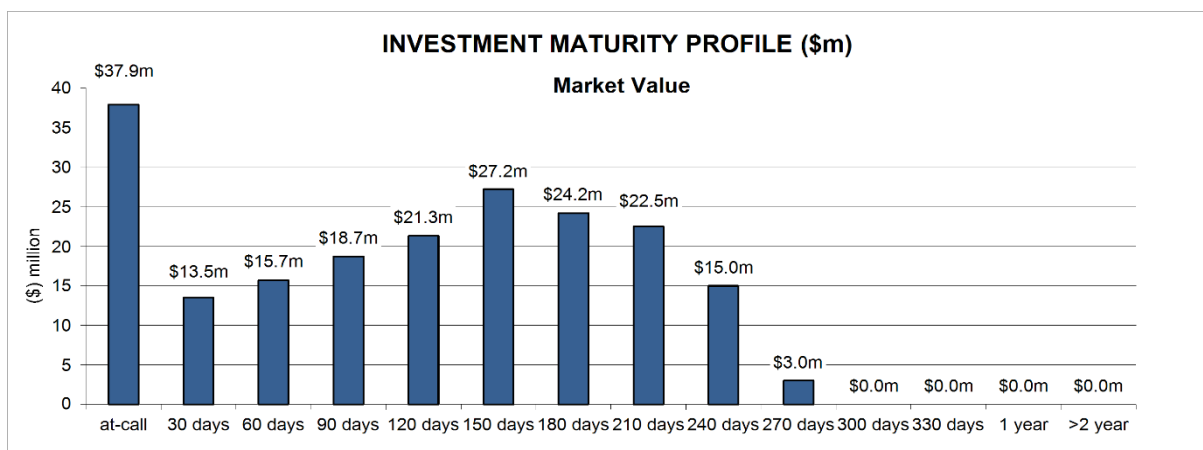
*Standard & Poor's ratings. Source: Policy No. CP-009: Investment of Funds

The City's investments were invested within the limits allowed within each category rating for February 2023.

Maximum Percentage of Average Investment Portfolio Balance				
Long Term Rating	Funds held at period end \$	Actual %	Limit Per Policy	
AAA Category	\$ -	0%	100%	✓
AA Category (AA+ to AA-)	\$ 114,300,272	57%	80%	✓
A Category (A+ to A-)	\$ 41,742,761	21%	50%	✓
BBB+ Category	\$ 43,000,000	22%	25%	✓
TOTAL	\$ 199,043,033	100%		

*Standard & Poor's ratings. Source: Policy No. CP-009: Investment of Funds

The below graph summarises the maturity profile of the City's investments at market value as at 28 February 2023. The immediacy of the demand for funds depends on the particular Fund or Reserve Account(s) of the City. The maturity profile provided in the table above meets the liquidity requirements of the Council policy.



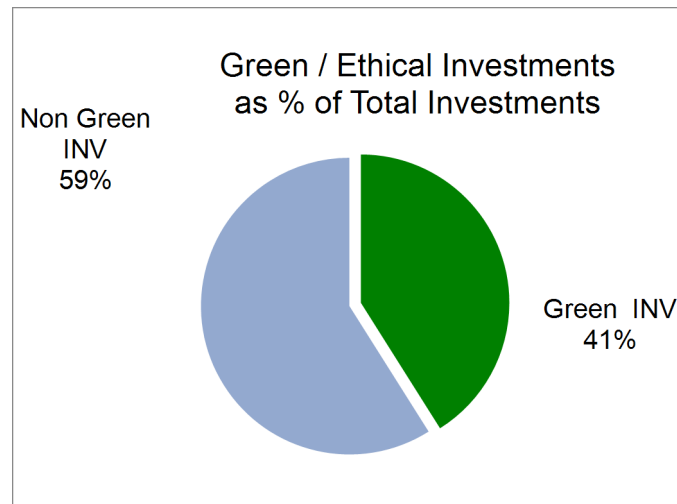
C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

The City exercises a deliberative preference in favour of green/ethical investments. This preference will however only be exercised after the foremost investment considerations of credit rating, comparable rate and risk diversification are fully satisfied.

“Green investments” are authorised investment products made in authorised institutions that respect the environment by not investing in fossil fuel industries.

Environmental, Social & Governance Term Deposit (ESGTD) is a similar product to Green investments. ESGTD's provide the opportunity to invest in products that seek to mitigate environmental and social risks.

The total investment in authorised institutions as at 28 February 2023 was \$81,700,000 or 41% of total investment holdings being in non-fossil fuels institutions, compared to \$86,700,000 (43%) in January 2023. The total investments holding for February and January were \$199,043,033 and \$202,814,229 respectively.



Green / Ethical Investment with financial institutions			
Institution	Credit Rating	Credit Rating Category	Funds held at period end
Bendigo & Adelaide	BBB+	BBB+ Category	\$ 18,000,000
CBA	AA-	AA Category	24,000,000
Suncorp	A+	A Category	\$ 39,700,000
TOTAL			\$ 81,700,000

Green investments are invested in the three banks listed above, in accordance with the council credit rating policy. CBA and Suncorp are unable to accept new money or process rollovers of Green /Ethical Investments which will be withdrawn in future.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

This report is available to the public on the City's website.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

II. OTHER AGENCIES / CONSULTANTS

A wide range of suitably credit rated Authorised Deposit-taking Institutions (ADI's) were engaged with during the course of the month in respect to the placement and renewal of investments.

STATUTORY AND LEGAL IMPLICATIONS

The following legislation is relevant to this report:

- *Local Government (Financial Management) Regulations 1996* Regulation 19 – Management of Investments
- *Trustee Act 1962* (Part 3)

Authorised Deposit-taking Institutions are authorised under the *Banking Act 1959* and are subject to Prudential Standards oversight by the Australian Prudential Regulation Authority (APRA).

The *Local Government (Financial Management) Regulations 1996* (regulation 19C) allows local governments to deposit funds for a fixed term of three years or less. Deposits of greater than one year may, depending on the shape of the yield curve, enable the City to achieve better investment returns.

FINANCIAL IMPLICATIONS

For the period ending 28 February 2023:

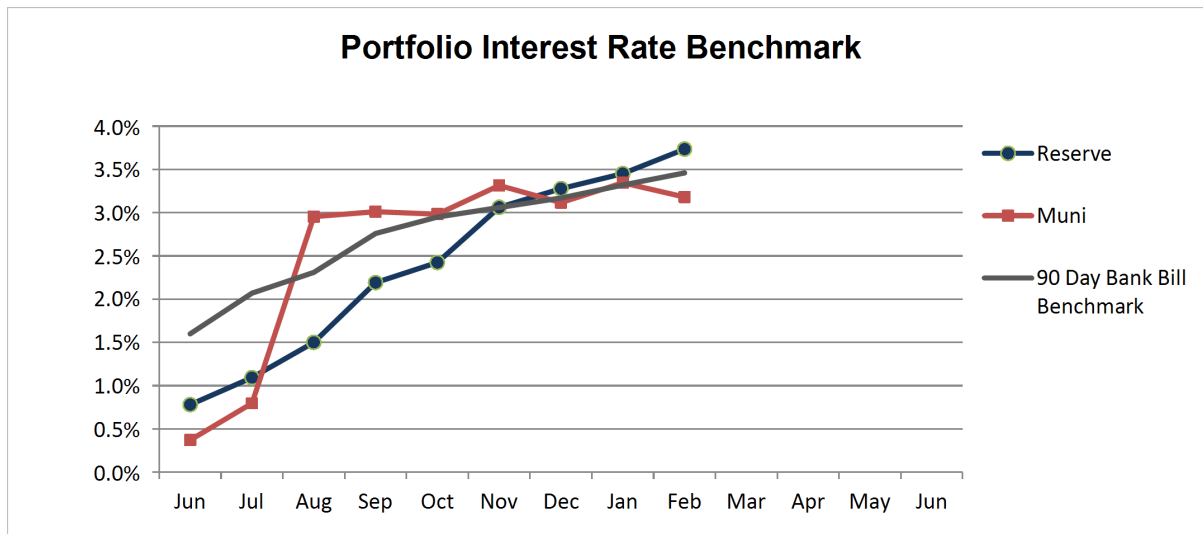
- Investment earnings on Municipal Funds was \$1,229,018 against a year to date budget of \$1,230,000 representing a negative variance of \$982.

The weighted average interest rate for Municipal Fund investments as at 28 February 2023 was 3.18% which compares unfavourably to the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

- Investment earnings on Reserve accounts were \$2,604,284 against a year to date budget of \$2,605,000 representing a negative variance of \$716.

The weighted average interest rate for Reserve account investments as at 28 February 2023 was 3.74% which compares favorably to the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)



STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Strategic

The interest earned on invested funds assists in addressing the following key priority area identified in The City of Melville Corporate Business Plan 2020-2024.

Priority Number One – “Restricted current revenue base and increasing/changing service demands impacts on rates”.

Risk

The Council’s Investment of Funds Policy CP-009 was drafted so as to minimise credit risk through investing in highly rated securities and diversification. The Policy also incorporates mechanisms that protect the City’s investments from undue volatility risk as well as the risk to reputation as a result of investments that may be perceived as unsuitable by the Community.

Environmental

When investing the City’s funds, a deliberative preference will be made in favour of authorised institutions that respect the environment by not investing in fossil fuel industries. This preference will however, only be exercised after the foremost investment considerations of credit rating, risk diversification and interest rate return are fully satisfied.

POLICY IMPLICATIONS

Council Policy CP-009 – Investment of Funds provides guidelines with respect to the investment of City of Melville (the City) funds by defining levels of risk considered prudent for public monies. Liquidity requirements are determined to ensure the funds are available as and when required and take account of appropriate benchmarks for rates of return commensurate with the low levels of risk and liquidity requirements. The types of investments that the City has the power to invest in is limited by prescriptive legislative provisions governed by the *Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996* and Part III of the *Trustees Act 1962*.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable as this report only presents information for noting.

C23/6000 – INVESTMENT STATEMENTS FOR FEBRUARY 2023 (REC)

CONCLUSION

The City's investment portfolio is invested in highly secure investments with a low level of risk yielding a weighted average rate of return of 3.18% to 3.74% which is on par with the benchmark three month bank bill swap (BBSW) reference rate of 3.46%.

41% of the City's investment portfolio is invested in authorised deposit taking institutions that do not lend to industries engaged in the exploration for, or production of, fossil fuels. This compared to 43% in January 2023.

Future investment earnings will be determined by the cash flows of the City and movements in interest rates on term deposits.

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (6000)

NOTING

That the Council notes the Investment Report for the period ending 28 February 2023.

At 6:57pm (18 April 2023) the Mayor declared the motion

CARRIED UNANIMOUSLY EN BLOC (13/0)

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

Ward : All
Category : Operational
Subject Index : Financial Statement and Investments
Customer Index : Not applicable
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items : Standard Item
Works Programme : Not Applicable
Funding : Annual Budget
Responsible Officer : Debbie Whyte
Manager Financial Services

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 type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 September be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

This report presents the details of payments made under delegated authority to suppliers for the period of February 2023 and recommends that the Schedule of Accounts Paid be noted.

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

BACKGROUND

Delegated Authority DA-035 has been granted to the Chief Executive Officer to make payments from the Municipal and Trust Funds. This authority has then been on-delegated to relevant senior officers. In accordance with Regulation 13.2 and 13.3 of the *Local Government (Financial Management) Regulations 1996*, where this power has been delegated, a list of payments for each month is to be compiled and presented to the Council.

A total of \$8,180,815 direct creditor payments were paid during the month, of which, 27% of payments were paid to suppliers located within the City of Melville and 32% to suppliers within the South-West Group, compared to 23% and 31% of total of \$8,059,173 direct creditor payments made over January 2023 respectively.

The largest payment of \$1,251,699 made during the month was for FOGO, gate fees and overheads payment to the Resource Recovery Group (RRG). Approximately 95% of supplier invoices are paid within 30 days of receipt of the invoices.

The list of payment is to show each payment, payee name, amount and date of payment and sufficient information to identify the transaction.

DETAIL

The Schedule of Accounts Paid for February including Payment Register numbers, Cheques: 836-837, Electronic Funds Transfers batches: 817-820, Trust Payments, Card Payments and Payroll was distributed to the Elected Members of the Council on 31 March 2023.

The below table details the Summary of Payments Made for the period:

SCHEDULE OF PAYMENTS MADE FEBRUARY 2023		
<i>Payments made under Delegated Authority DA-035</i>		
MUNICIPAL FUNDS - DIRECT CREDITOR PAYMENTS		
<i>Cheques</i>	Chq Payment Register No. 836 and 837	\$311.00
	Chq Payment on Restricted Funds Register No.	\$0.00
	Less Cancelled Chqs	(\$977.85)
<i>Electronic Funds Transfers</i>	EFT Payment Register No. 818 and 820	\$7,280,232.26
	EFT Payment on Restricted Funds Register No. 817,819 and 129	\$755,411.24
	Less Cancelled EFTs	-
		\$8,034,976.65
<i>Direct Debits</i>	Bank Fees	\$18,606.71
	Ampol Fuel	\$106,192.24
<i>Direct Payments</i>		\$21,039.85
	Total Direct Creditor Payments	\$8,180,815.45
<i>Payroll</i>	Total Pay 16 and 17	\$4,016,223.12
	Total Payroll	\$4,016,223.12
<i>Cards</i>	Westpac Corporate Cards	\$3,209.92
	Westpac Purchase Cards	\$79,619.01
	American Express	\$3,487.87
	Total Card Payments	\$86,316.80
Total Direct Creditor Payments from Municipal Account		\$12,283,355.37

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

Schedule of Payments Made continued.

INTERFUND & INVESTMENT TRANSACTIONS			
<i>Interfund Transfers</i>			
Loan			\$0.00
Citizen Relief Trust			\$0.00
Citizen Relief Operating			\$0.00
Municipal			(\$6,000,000.00)
Reserve			\$6,000,000.00
Trust			\$0.00
<i>Total Interfund Transfers</i>			\$0.00
<i>New Municipal Investments</i>			
Westpac Bank	2/02/2023		\$1,300,000.00
Westpac Bank	6/02/2023		\$600,000.00
Westpac Bank	8/02/2023		\$700,000.00
Westpac Bank	10/02/2023		\$1,000,000.00
Westpac Bank	17/02/2023		\$3,100,000.00
Westpac Bank	21/02/2023		\$1,000,000.00
Westpac Bank	24/02/2023		\$1,700,000.00
<i>Total New Investments</i>			\$9,400,000.00
Grand Total			\$21,683,355.37

Details of the payments are shown in attachment [6001 Payment Details February 2023](#).

Any payment over and above \$25,000.00 has been highlighted under the Payment Amount column in the attachment to this statement named 'Listing of Payments made under Delegated Authority'.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Not applicable.

II. OTHER AGENCIES / CONSULTANTS

STATUTORY AND LEGAL IMPLICATIONS

This report meets the requirements of the *Local Government (Financial Management) Regulations 1996* Part 2: General financial management (s.6.10) regulations 11, 12 & 13.

FINANCIAL IMPLICATIONS

Expenditures were provided for in the adopted Budget as amended by any subsequent Budget reviews and amendments.

C23/6001 – SCHEDULE OF ACCOUNTS PAID FOR FEBRUARY 2023 (REC) (ATTACHMENT)

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There are no identifiable strategic, risk and environmental management implications.

POLICY IMPLICATIONS

Procurement of Products and Services is conducted in accordance with Council Policy CP-023 and Systems Procedure 019 Purchasing and Procurement.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable as this report presents information for noting only.

CONCLUSION

The Schedule of Payments for the month totals \$ 21,683,355 .

The report and the attached Schedule of Accounts Paid are presented for the Council's information.

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (6001)

NOTING

That the Council notes the Schedule of Accounts paid for the period February 2023 as approved by relevant officers in accordance with delegated authority DA-035, and detailed in attachment [6001 Payment Details February 2023](#).

At 6:57pm (18 April 2023) the Mayor declared the motion

CARRIED UNANIMOUSLY EN BLOC (13/0)

C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)

Ward : All
Category : Operational
Subject Index : Financial Reporting - Statements of Financial Activity
Customer Index : Not applicable
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items : Standard Item
Works Programme : Not applicable
Funding : Not applicable
Responsible Officer : Debbie Whyte
Manager Financial Services

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"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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>

KEY ISSUES / SUMMARY

<p>This report presents:</p> <ul style="list-style-type: none"> • The Statements of Financial Activity by Nature or Type and Rate Setting Statement by Program and Nature or Type, for the period ending 28 February 2023 and recommends that they be noted by the Council. • The variances for the month of 28 February 2023 and recommends that they be noted by the Council. • The Budget amendments required for the month of 28 February 2023 and recommends that they be adopted by Absolute Majority decision of the Council.

C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)

BACKGROUND

The Statements of Financial Activity for the period ending 28 February 2023 have been prepared and tabled in accordance with the *Local Government (Financial Management) Regulations 1996*.

OVERALL SUMMARY OF THE CITY'S FINANCIAL POSITION

- The City's total investments holding for February were \$199.04m of which the Municipal cash balance at the end of the month was \$55.5m and \$143.2m was held in reserve accounts, which are restricted to the defined purpose for which the reserve account was established.
- The investment in green/ethical term deposits as at 28 February was \$81.7m or 41% of total investment holdings, compared to \$86.7m (43%) in January 2023.
- The Reserve Bank of Australia (RBA) board raised the cash rate by 25 basis points in March, to its current level of 3.60%, and with the RBA still aiming to get inflation under control, it is likely we have not seen the end of the rate hikes yet. With inflation still rising and the cash rate forecast unclear, some senior economists are predicting that the cash rate may climb as high as 4.10% by mid-2023. However, interest rates on savings and term deposit products could drop during the next 6 months due to mortgage pressure.
- The 2022-2023 Rates generated to 28 February totalled \$96.27m, \$0.104m higher than budgeted due to interim adjustments in respect to both Commercial and Residential improved properties.
- Total debtor collections for February 2023 equalled \$5.98m. The Rates collection target was 85.8% and the actual collection is tracking slightly higher at 86.6%, compared to 86.7% for the same period in 2021-2022. The total outstanding debtors (including all rates and sundry debtors) is \$17.72m as of 28 February 2023.

DETAIL

The attached reports have been prepared in compliance with the requirements of the legislation and Council policy. The three monthly reports that are presented are the:-

1. Statement of Financial Activity by Nature and Type
Provides details on the various categories of income and expenditure.
2. Rate Setting Statement by Program
Provides details on the Program classifications.
3. Rate Setting Statement by Nature or Type
Provides details on the Nature or Type classifications.

C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)

Variances

A detailed summary of variances and comments based on the Rate Setting Statement by Nature or Type is provided in attachments:

[6002B Statement Nature Type February 2023](#): Rate Setting Statement by Nature or Type
[6002H Statement of Variances February 2023](#): Statement of Variances in Excess of \$100,000

Revenue

Rates raised as at 28 February were \$96,271,236, compared to a year to date budget of \$96,166,913. The positive variance of \$104,324 is due to interim adjustments in respect to both Commercial and Residential improved properties.

Rates Collection

SUMMARY OF RATE DEBTOR MOVEMENT					
Detail	Actuals Current Month YTD	Actuals Previous Month YTD	% Diff Current Mth to Previous Mth	Actuals This Month Last Year YTD	% Diff Current Mth to Current Mth Last Yr
Opening Balance - 1 July	5,453,565	5,453,565	0%	6,491,862	-16%
Debtors Raised	120,152,851	120,021,213	0%	118,458,117	1%
Payments Received	(108,587,778)	(103,255,795)	5%	(107,291,544)	1%
Closing Balance	17,018,638	22,218,983	-23%	17,658,435	-4%

Total rate debtor collections for the month equalled \$5,331,983.

Sundry Debtor Movement

SUMMARY OF SUNDRY DEBTOR MOVEMENT					
Detail	Actuals Current Month YTD	Actuals Previous Month YTD	% Diff Current Mth to Previous Mth	Actuals This Month Last Year YTD	% Diff Current Mth to Current Mth Last Yr
Opening Balance - 1 July	642,878	642,878	0%	882,151	-27%
Invoices Raised	5,168,768	4,800,433	8%	4,407,745	17%
Receipts	(5,118,322)	(4,461,500)	15%	(4,568,896)	12%
Prepayments	9,877	10,835	-9%	(32,602)	-130%
Closing Balance	703,200	992,647	-29%	688,398	2%

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

Sundry debtor balances decreased by \$289,446 over the course of February from \$992,647 to \$703,200 of which total 90-day sundry debtors over \$1,000 for the month is \$155,689, representing 22% of total sundry debtors.

Money Expended in an Emergency and Unbudgeted Expenditure

Not applicable for February 2023.

Budget Amendments

Details of Budget Amendments requested for the month of February 2023 that reflect effective changes to budgets are shown in attachment [6002J Budget Amendments February 2023](#). Budget amendments that are purely administrative and detail movements between budget responsible officers are not included in the attachment. This reporting is aligned with legislative requirements.

Variances greater than \$100,000 processed in February 2023 are highlighted in the attachment.

Granting of concession or writing off debts owed to the City

Delegation DA-032 empowers the Chief Executive Officer (CEO) to grant concessions and write off monies owing to the City to a limit of \$10,000 for any one item. The CEO has partially on-delegated this to the Director Corporate Services to write off debts or grant concessions to a value of \$5,000.

Sundry Debtors

There were no sundry debts written off for the month of February.

Rate Debtors

An amount of \$318.61 was written off due to an incorrect account balance given to customer at time of settlement.

C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)

The following attachments form part of the attachments to the Agenda for the month of February 2023.

DESCRIPTION	LINK
Statement of Financial Activity By Nature or Type	6002A Statement Nature Type February 2023
Rate Setting Statement by Program	6002B Rate Setting Program February 2023
Rate Setting Statement by Nature or Type	6002B Rate Setting Nature Type February 2023
Representation of Net Working Capital	6002E Net Working Capital February 2023
Reconciliation of Net Working Capital	6002F Reconciliation Net Working Capital February 2023
Notes on Rate Setting Statement reporting on variances of 10% or \$100,000 whichever is greater	6002H Notes Rate Setting Statement February 2023
Details of Budget Amendments requested	6002J Budget Amendments February 2023
Summary of Rates Debtors	6002L Summary Rate Debtors February 2023
Graph Showing Rates Collections	6002M Rates Collections Graph February 2023
Summary of General Debtors aged 90 Days Old or Greater	6002N General Debtors Aged 90 Days February 2023

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Not applicable.

II. OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Local Government Act 1995 Division 3 – Reporting on Activities and Finance Section 6.4 – Financial Report.

Local Government (Financial Management) Regulation 1996 Part 4 – Financial Reports Regulation 34 requires that:

34. Financial activity statement report — s. 6.4

(1) A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22(1)(d), for that month in the following detail —

- (a) annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c);
- (b) budget estimates to the end of the month to which the statement relates;

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

- (c) *actual amounts of expenditure, revenue and income to the end of the month to which the statement relates;*
 - (d) *material variances between the comparable amounts referred to in paragraphs (b) and (c); and*
 - (e) *the net current assets at the end of the month to which the statement relates.*
- (2) *Each statement of financial activity is to be accompanied by documents containing —*
 - (a) *an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets;*
 - (b) *an explanation of each of the material variances referred to in subregulation (1)(d); and*
 - (c) *such other supporting information as is considered relevant by the local government.*
- (3) *The information in a statement of financial activity may be shown —*
 - (a) *according to nature and type classification; or*
 - (b) *by program; or*
 - (c) *by business unit.*
- (4) *A statement of financial activity, and the accompanying documents referred to in sub-regulation (2), are to be —*
 - (a) *presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and*
 - (b) *recorded in the minutes of the meeting at which it is presented.*
- (5) *Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances.*

The variance adopted by the Council is 10% or \$100,000 whichever is greater.

Local Government Act 1995 Division 4 – General Financial Provisions Section 6.12; Power to defer, grant discounts, waive or write off debts.

FINANCIAL IMPLICATIONS

Variances

Variances are detailed and explained in attachment [6002H Notes Rate Setting Statement February 2023](#): Notes on Statement of Variances in excess of \$100,000 by Nature or Type.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

The impact of Covid-19 on the services provided by the City, the health of the city employees and community itself as well as the financial impacts on the City, State and Federal economy is a significant strategic risk. The City has well developed business continuity plans in place and has enacted the Incident Response Team (IRT) to coordinate and plan the City's response to the Covid-19 crisis.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

POLICY IMPLICATIONS

The format of the Statements of Financial Activity as presented to the Council and the reporting of significant variances is undertaken in accordance with the Council's Accounting Policy CP-025.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable

CONCLUSION

The attached financial reports reflect a positive financial position of the City of Melville as at 28 February 2023.

**C23/6002 – STATEMENTS OF FINANCIAL ACTIVITY FOR FEBRUARY 2023 (AMREC)
(ATTACHMENTS)**

OFFICER RECOMMENDATION AND COUNCIL RESOLUTION (6002)

NOTING and ABSOLUTE MAJORITY

At 7:58pm Cr Macphail moved, seconded Cr Fitzgerald –

That the Council:

- 1. Notes the Rate Setting Statement and Statements of Financial Activity for the month ending 28 February 2023 as detailed in the following attachments:**

DESCRIPTION	LINK
Statement of Financial Activity By Nature or Type	6002A Statement Nature Type February 2023
Rate Setting Statement by Program	6002B Rate Setting Program February 2023
Rate Setting Statement by Nature or Type	6002B Rate Setting Nature Type February 2023
Representation of Net Working Capital	6002E Net Working Capital February 2023
Reconciliation of Net Working Capital	6002F Reconciliation Net Working Capital February 2023
Notes on Rate Setting Statement reporting on variances of 10% or \$100,000 whichever is greater	6002H Notes Rate Setting Statement February 2023
Details of Budget Amendments requested	6002J Budget Amendments February 2023
Summary of Rates Debtors	6002L Summary Rate Debtors February 2023
Graph Showing Rates Collections	6002M Rates Collections Graph February 2023
Summary of General Debtors aged 90 Days Old or Greater	6002N General Debtors Aged 90 Days February 2023

- 2. By Absolute Majority Decision adopts the budget amendments, as detailed in the attached Budget Amendment Reports for February 2023 [6002J Budget Amendments February 2023](#).**

At 7:58pm the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Community Development

Nil.

Environment and Infrastructure

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Ward	:	All
Category	:	Operational
Subject Index	:	Animal Control
Customer Index	:	Environment and Infrastructure
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	:	Item 15.5 Corella Management Plan - Ordinary Meeting of Council held 13 December 2022
Works Programme	:	Not Applicable
Funding	:	Operational \$25,000
Responsible Officer	:	Jeff Bird Manager Natural Areas & Parks

AUTHORITY / DISCRETION

DEFINITION

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<input checked="" type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 (e.g., 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>

KEY ISSUES / SUMMARY

- At the Ordinary Meeting of Council held 13 December 2022, the Council requested that a plan be prepared to effectively manage the Little Corella and/or Eastern Long-billed Corella population in the vicinity of Morris Buzzacott Reserve and in other locations deemed necessary across the City.
- An Elected Members Engagement Session took place on 28 February 2023 to discuss the background around this issue and the options available.
- This report presents the options available to the Council and recommends a combined approach involving community education, working with the State Government and City managed control.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

BACKGROUND

At the Ordinary Meeting of Council held 13 December 2022, the Council resolved to:

- “1. Prepare a plan for effectively managing the Little Corella and/or Eastern Long-billed Corella population in the vicinity of Morris Buzzacott Reserve and in other locations deemed necessary across the City. Officers’ proposal(s) are to be workshopped at an Elected Members Engagement Session prior to a report and suitable recommendation being presented to an Ordinary Meeting of the Council prior to the end of April 2023.*
- 2. Acknowledging Western Australian Local Government Association’s, (WALGA) view that a collaborative, regional approach is most effective and efficient in controlling Corella numbers and that such an approach should be led by the State Government (specifically the Department of Primary Industries and Regional Development (DPIRD) and Department of Biodiversity, Conservation and Attractions (DBCA), in collaboration with Local Governments), lobby the State Government to take the lead in continuing to work towards the development of a state-wide Corella control program.”*

The reasons provided in support of the motion were:

1. The Eastern Long-billed Corella (*Cacatua tenuirostris*) is now well established around Perth and on the southerly Swan Coastal Plain to Busselton. This introduced species (derived from aviary escapees around Perth) is a major threat to our endemic Corellas and Black Cockatoos. The Eastern Long-Billed Corella poses an environmental threat to our endemic Black Cockatoos by out-competing for nest sites, their ability to remove eggs from the nest hollow and to kill and maim advanced nestlings. There is now urgent management needed in the Perth region and on the Swan Coastal Plain to control this introduced pest species.
2. The Melville City Hockey Club, (MCHC) is one of the largest sporting clubs within the City and is required to self-fund the replacement of its artificial surface every seven to eight years. Over the summer of 2021-2022 the MCHC spent \$500,000 of its own funds on a brand-new surface and associated underlay and within weeks of its installation, the Corellas had caused damage to the surface.
3. Attempts by the Club to deter or ‘move on’ the Corellas at a cost of circa \$30,000, plus countless hours of volunteer labour, have to date been unsuccessful. It is estimated that on top of the damage to the turf, \$4,000 per annum is spent on repairing infrastructure surrounding the turf that has also been destroyed by these birds. This figure does not include the additional \$80,000 associated with the premature deterioration of the turf caused by the Corellas and hence its earlier than normal replacement cycle.
4. These birds are a declared pest and are causing significant damage to a wide number of City of Melville assets, with this being just one example. The City has a responsibility to ensure its clubs can continue to operate efficiently and effectively, so it is deemed appropriate to attempt to manage the negative impact this species of Corella is having.
5. A collaborative, regional approach is most effective and efficient in controlling Corella numbers. Informed by experience with the Coordinated Corella Control Program, WALGA considers such an approach should be led by the State Government, specifically the DPIRD and DBCA, in collaboration with Local Governments.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

6. Despite concern at the limited effectiveness of Corella control programs undertaken by other local governments, there has been success. The City of Bunbury has a Corella Management Strategy. Culling resulted in a decrease in ratepayer and resident requests regarding the birds.

DETAIL

There are two species of Corellas - the Little Corella and the Eastern Long Billed Corella that are both considered pest birds in the Perth region. The Little Corella's natural range is in the northern parts of Western Australia including the Pilbara and Kimberley regions. The Eastern Long Billed Corella's natural range is eastern Australia.

Below are some of the impacts increased Corella populations can have:

- Competition for habitat with endemic fauna including the endangered black cockatoo.
- Damage to trees, (defoliation and bark stripping) affecting tree health and contributing to decline.
- Infrastructure damage, (electrical wiring, signage, furniture, buildings).
- Turf damage both natural and synthetic.
- Noise from roost sites near residential properties.
- Fouling of private buildings or public places.

In reviewing our customer requests over the past 5 years, we have determined that many complaints about Corellas relate to residents feeding and attracting birds.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Summary of Complaints		
	No. of Complaints	Location
Numbers	4	Cnr Leach Highway & Winthrop Road, Winthrop
	2	Deep Water Point, Mount Pleasant
	2	Quarantine Park, Bicton
	2	Morris Buzzacott Reserve
	1	Patterson Place, Myaree
	1	Saw Road, Kardinya
	1	Ardross Street, Applecross
Total	13	
Feeding	3	Rowney Close, Bateman
	2	Latham Street, Alfred Cove
	2	Canning Highway, Melville
	2	Hatherley Parade, Winthrop
	1	Davies Crescent, Kardinya
	1	Jefferies Way, Leeming
	1	Harfoot Street, Willagee
	1	Forrest Street, Palmyra
	1	Ripple Way, Bateman
	1	Hodgson Place, Kardinya
	1	Ryan Court, Bull Creek
	1	Petterson Avenue, Kardinya
	1	Harvey Crescent, Kardinya
	1	Bowles Court, Murdoch
	1	Eckersley Heights, Winthrop
	1	Kent Street, Bicton
	1	Solomon Street, Palmyra
Total	22	

In summary, most complaints about Corellas relate to residents feeding and attracting birds with flocks located in residential areas and streets; drawn there by the provision of feed by the residents. Two complaints were received in relation to damage caused to assets, including the MCHC turf complaint.

Previous City Involvement

The City has investigated several options relating to pest birds over the years, noting that the City is not currently undertaking any pest bird control.

In 2011-2012, the City took part in the regional program funded by DBCA which involved culling of the Corellas at Point Walter Golf Course. This process involved setting up a feeding station, then once a month capturing the birds with a net and shooting them. Several hundred birds were culled, however the program stopped after five months due to funding being withdrawn by the State and the fact that the program was not considered effective by City officers in terms of effectiveness in controlling the widespread Corella population.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Complaints were also received from those using the course about the culling when it took place and the damage the birds were doing to the turf. It is interesting to note that Corella numbers have dropped at Point Walter since that time, and the birds are not considered a problem today at the golf course. This could be an indication of the birds being intelligent enough to realise that culling was taking place and they moved on, however moving them on is not solving the problem and why a regional approach is preferred.

The City also previously contributed \$5,000 per year to the WALGA Pest Bird Portal (online reporting), which was used to track regional numbers and movements but unfortunately this program was discontinued several years ago.

On 31 March 2022, the City advised that it had no concerns with the Melville City Hockey Club engaging with a licenced Contractor to undertake culling of the Corellas that were impacting hockey infrastructure at Morris Buzzacott Reserve.

On 6 April 2022, the Club advised that a culling trial was carried out by the club on 4 April 2022 with limited impact, which is not unexpected as the management of Corellas is a longer term issue requiring a coordinated approach and ongoing resourcing.

DPIRD Strategy

The Department of Primary Industries and Regional Development (DPIRD) is currently developing a Pest Parrot and Cockatoo Management Strategy for Western Australia, to help guide stakeholders in the effective management of pest birds. Birds of interest in the survey include Corellas as well as several other pest birds such as the Rainbow lorikeet, Sulphur-crested cockatoo, Indian ringneck parakeet, Alexandrine parakeet and Galah.

The strategy will address key issues including:

- Roles and responsibilities across governments and landholders;
- The need for an integrated and coordinated approach;
- Establishing and setting priorities; and
- Funding.

DPIRD has engaged Strickland Park Economics to assist with the development of the strategy to guide the future management of these pest bird species. An important part of this work is a survey of public attitudes to the control of birds as pests, in particular declared pest parrots and cockatoos.

According to DPIRD, information on the public's understanding of these birds, and how they should be managed, is fundamental to the development of the strategy.

To assist with gaining an understanding, DPIRD sought input from all stakeholders and the Western Australian community earlier this year to provide an understanding of experiences with pest birds and expectations regarding future control efforts throughout Western Australia. Consultation closed on 31 March 2023, with the strategy expected to be completed in late 2023.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Preferred Future Management Approach

In light of the above and in response to Council's request to develop a plan to manage Corellas, the City has developed the following staged approach methodology.

Phase 1 - Engagement and Education

Given most complaints relate to neighbours feeding and attracting Corellas, the City is proposing to develop and implement a community education campaign to discourage feeding. A key part of that messaging will focus on bringing to the community's attention that feeding wildlife is illegal under the Biodiversity Conservation Act 2016 and can attract fines up to \$20,000. The City will also investigate developing a process where DBCA is informed of the feeding incidents as they occur so that they can take action through engagement with residents.

Phase 2 – City Managed Control

The City is in the process of renewing the Contract for Feral Animal Control in the City. The specifications now include control methods for Corellas and other pest birds.

The contractors who undertake feral animal control for the City are all qualified environmental consultancies that specialise in working with terrestrial vertebrate fauna and undertaking feral and pest control management across Western Australia. They are also able to undertake fauna surveys, fauna assessments, fauna relocation and fauna management. Key staff are all very experienced within the industry and regularly research and publish findings and present at industry conferences. All contractors that the City work with are well placed to provide the City with expert advice when dealing with Corellas and other species that may require management.

Control Methodology

Control will be on a site-by-site basis and several factors need to be assessed before control measures are implemented such as extent of damage being caused to infrastructure and tree assets, health concerns, threats to biodiversity, nuisance and other impacts.

The steps proposed to be put in place to undertake Corella control are (in order):

- a) Contractor engaged to undertake a site assessment and recommend a control program for Corellas on a site specific, ad-hoc basis and as requested by the City.
- b) The use of non-lethal methods will be the preferred approach and should be investigated first and to include measures such as scaring or using decoys to disturb a roost or feeding site.
- c) Corella control using pre-baiting, netting, and shooting in an area away from the public eye where possible, and as per DBCA guidelines, may be undertaken once non-lethal measures have been deemed unsuccessful or not appropriate. If lethal control is considered the only available option and is not able to be undertaken away from the public eye, the City will need to advise local users of the space where the culling activity is to occur and ensure that the area is restricted and cleared of persons. We will need to be clear in our communication that the culling process may be confronting to the community if witnessed.
- d) Use of control methods other than those above may be suggested by the Contractor for use, however, will need to be approved by the City prior to use.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

Phase 3 - DPIRD Involvement

The City will be guided by the Department of Primary Industries and Regional Development Pest Parrot and Cockatoo Management Strategy for Western Australia as well as DPIRD advice as the responsible agency. Once a control strategy is finalised and agreed measures identified, the City will take part in any actions required as land managers.

STAKEHOLDER ENGAGEMENT

The Cities of Bunbury and Rockingham both have active control programs. The City of Bunbury provided the following information when conducting a review of the strategy.

“Through its experiences to date in undertaking introduced Corella management, the City has become aware of several key constraints that have the potential to pose a significant impediment to effective corella management including:

- current lack of experienced and equipped introduced corella control contractors*
- limited availability of secure and unimpeded control sites*
- lack of diversity of control methods*
- limited participation by and coordination across key stakeholders*
- limited resources considering the magnitude of the problem.”*

The City of Rockingham advised that it is committed to continuing with ongoing Corella control but raise the point that this is a wide scale problem that needs a regional approach and support across the metro and southwest to reduce environmental impacts.

STATUTORY AND LEGAL IMPLICATIONS

All Australian fauna, including Little Corellas are protected under State and Federal law; the most applicable to Western Australia being the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulations 2018*.

Little Corellas are not native to the southwest of Western Australia and are listed as a Category 3 (C3) declared pest in parts of the southwest under the *Western Australian Biosecurity and Agricultural Act 2007* (BAM Act). C3 categorisation requires management of a species but not exclusion (C1) or eradication (C2). Species such as Corellas can be controlled where necessary under licence from the DBCA. Guidelines are available from the DBCA on this process.

The Eastern Long-Billed Corella is not a declared pest species in Western Australia but are protected by Commonwealth legislation as indicated above.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

The DPIRD is the lead agency in managing pests, with a long-standing focus on controlling agricultural pests. However, it is ultimately landholders who are required to control pests on the land they manage so the responsibility is a shared one that crosses property boundaries and types of landholdings.

FINANCIAL IMPLICATIONS

The proposed phased management approach would cost approximately \$25,000 per year however that is dependent on the number of locations and levels of control implemented.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
A decision to cull or not to cull the Corellas may result in community opposition and reputational damage.	Minor consequences which are likely, resulting in a medium level of risk.	Management of Corellas is undertaken in a staged approach focusing first on community education, progressing to scare tactics, and culling as a last resort. Be guided by the State Strategy and take part in initiatives as they are developed.

POLICY IMPLICATIONS

There is no Council Policy that relates to Corella Management in the City of Melville.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Do nothing and accept that Corellas are part of the environment.

CONCLUSION

The Officers recommendation to reduce Corella numbers in the City is to implement a three-phase approach.

The first phase will involve developing a community education campaign to discourage feeding and discuss the impacts Corellas have on the natural environment and community infrastructure.

The second phase will involve the City undertaking control measures as deemed appropriate by the City's Feral Animal Control Contractor with input from the City on control methodology.

EI23/4013 – CORELLA MANAGEMENT PLAN (REC)

The third phase is to be guided by the Department of Primary Industries and Regional Development Pest Parrot and Cockatoo Management Strategy for Western Australia. Once developed and control strategies identified and understood, the City will take part in any actions required as land managers.

It is anticipated that a phased approach including working with the State Government will meet the needs of Council's request to manage Corellas in the City of Melville.

OFFICER RECOMMENDATION (4013)

APPROVAL

At 7:59pm Cr Robins moved, seconded Cr Wheatland –

That the Council endorse the phased approach to manage Corellas in the City through education and managed control and for the City to implement relevant actions that form part of the Department of Primary Industries and Regional Development (DPIRD) a Pest Parrot and Cockatoo Management Strategy for Western Australia as appropriate.

At 7:59pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Urban Planning

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

Ward : All
 Category : Policy
 Application Number : Not Applicable
 Property : Not Applicable
 Proposal : Not Applicable
 Applicant : Not Applicable
 Owner : Not Applicable
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : Item 15.2 Decibel Monitoring Devices in Public Venues – Ordinary Meeting of Council held 18 October 2022.
 Responsible Officer : Peter Prendergast
 Manager Statutory Planning

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 type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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 (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input checked="" type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

KEY ISSUES / SUMMARY

- At the 18 October 2022 Ordinary Meeting of Council it was requested that a report to Council be prepared on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.
- This report advises Elected Members in relation to this motion and recommends that a planning condition regarding decibel monitoring is not applied to public entertainment venues.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

BACKGROUND

At the Ordinary Meeting of Council held 18 October 2022 the following resolution of Council was forwarded by Cr Ross and approved by Council:

Council requests the CEO to prepare a report to Council on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.

The reasons provided in support of the motion were:

1. Noise pollution is a health and safety issue, and the City has a responsibility to manage the issue.
2. As density increases there is likely to be more noise complaints against public entertainment venues. Self-regulating equipment such as decibel monitors are a preventative mechanism that would reduce the number of complaints and the costs to the City of dealing with complaints.
3. High density living has a number of adverse impacts and noise control is one of those disadvantages for residents. Ensuring acoustic insulation and noise control is good planning in maintaining the health and wellbeing of residents of the City.

City officers have reviewed a wide range of documentation in the preparation of this report, including:

- Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations).
- City of Melville Local Planning Scheme No. 6 (LPS No. 6).
- State Planning Policy 5.4 Road and Rail Noise (SPP5.4).
- Draft position statement – Special entertainment precincts; Department of Planning, Lands and Heritage 2019 (Draft Position Statement).
- Consultation paper: Managing amplified noise in entertainment precinct; Department of Water and Environmental Regulation 2019 (Consultation Paper).
- City of Melville Community Plan.

While the key focus of the State Government, Draft Position Statement and the Consultation Paper is to identify the challenges relating to the management of environmental noise in an entertainment precinct, the issues highlighted are considered to be relevant for suburban areas and other activity centres. The importance of creative industries, including hospitality venues to the state's economy and its cultural identity are acknowledged, as is the challenge of noise management. The Draft Position Statement and Consultation Paper envisage the nomination of special entertainment precincts in a town planning scheme and other changes to ensure business can operate with surety and without compromise to resident amenity. No indication is provided to indicate when the proposed measures will be finalised and adopted. This is indicative of the level of complexity associated with this issue.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

As per the documentation on page 10 of the consultation paper:

The primary instruments for noise regulation in Western Australia are the Environmental Protection Act 1986 (EP Act) and the Noise Regulations. The Noise Regulations set legally enforceable assigned (or allowable) noise levels for noise emitted from a premises or public place when received at another premises. The assigned levels are defined as outdoor levels and vary according to the type of premises receiving the noise and the time of day the noise is received. Higher levels of protection are afforded to the most sensitive premises, classed as 'noise sensitive'.

Local Governments (LG's) administer the Noise Regulations, and Environmental Health Officers employed by LG's, can be appointed as Authorised Persons for the purpose of investigating unreasonable noise emissions. If the noise received at noise-sensitive premises exceeds the assigned levels, an authorised officer has a range of enforcement options, including infringement notices, noise abatement directions, environmental protection notices, and prosecution, available under the EP Act to protect the health and amenity of sensitive receivers.

The City of Melville's Local Planning Strategy, which informs LPS No. 6 and associated Activity Centre Plans, aims to promote activity and intensity in centres while minimising change in suburban areas. Under the provisions of LPS No. 6, and the Regulation's, development approval is often not required for the change of use of a building to a childcare premises or hospitality venue depending on the zoning. This is consistent with the stated objective of the City as outlined in the City of Melville Strategic Community Plan, for residents and the broader Melville community to be able access services and amenities locally, and for businesses to be encouraged to establish here.

Scheme Provisions

MRS Zoning	: N/A
LPS Zoning	: N/A
R-Code	: N/A
Use Type	: N/A
Use Class	: N/A

Site Details

Lot Area	: N/A
Street Tree(s)	: N/A
Street Furniture (drainage pits etc)	: N/A
Site Details	: N/A

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

DETAIL

Elected Members raised the idea of noise monitoring, as a way of dealing with noise complaints, at the 6 September 2022 Elected Members Engagement Session. Following the EMES, advice from the Department of Environmental Regulation, Noise Branch was provided in the 16 September 2022 Elected Member Bulletin. That advice was that the Noise Branch had advised that there was no head of power to require a premises to undertake the actions then proposed and that any policy or local laws relating to noise emissions maybe acting in ultra vires of the *Environmental Protection (Noise) Regulations 1997* and *Environmental Protection Act 1986*.

At the October 2022 Ordinary Council Meeting the Council supported a motion that noise monitoring via a planning condition, be explored. The motion was:

Council requests the CEO to prepare a report to Council on the feasibility and power or authority of the City to include a planning condition requiring that all public entertainment venues, including Hotels, Clubs and Child Care Centres be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate or prescribed levels.

It is not recommended that the Council proceed further with this motion for the reasons outlined below. In particular, it is noted that there is no head of power to require the provision of mechanisms that would intervene with the noise generation from a premises should prescribed limits be exceeded. Notwithstanding the legal limitations, the complexity of noise regulation, the characteristics of sound and environmental circumstances would likely render a noise monitoring and intervention system unfeasible.

Development approval not required in many instances

Under the provisions of the Regulations, LPS No. 6 and City of Melville Activity Centre Plans and Structure Plans, development approval for the change of use of a building is not required from the City in many circumstances. This includes situations where the use is a 'P' use under the scheme or activity centre plan and no external works requiring development approval are required. This is consistent with the strategy of both the state government and the City of Melville to reduce regulatory burden on business.

If development approval is not required, then there is no opportunity to apply any condition of development approval. For existing commercial premises which operate in accordance with their development approval, or which were previously exempt from the need for approval, the ability to retrospectively impose a condition of development approval does not exist.

While a change of use is exempt from the need for development approval under the Regulations, that development is still required to operate in accordance with any other regulatory requirements that apply such as Noise Regulations. If noise from an entertainment venue exceeds the limits set by any applicable regulation, there are range of enforcement options available to the City as outlined in the background section of this report above.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

Acoustic report required for new development

Where a new commercial building is proposed or a change of use is not exempt from the need for development approval, a range of matters are considered as a part of the assessment process. Noise implications are one such material consideration for any associated planning assessment.

Where deemed necessary, supporting information in the form of an acoustic report may be required to be provided. Such reports typically serve two purposes. They can demonstrate that the building has been designed to ensure that the amenity of future occupiers is not negatively impacted by an external noise source, as required in SPP5.4, and/or they can demonstrate that the building has been designed to minimise the impact on adjoining landowners from the activities undertaken within it.

Under the provisions of Local Planning Policy 1.12 Child Care Premises and Family Day Care an acoustic report is required where a Child Care Premise is located adjacent to a residential property and may be required in other circumstances at the discretion of the decision maker. For other development types, an acoustic report may be required to be submitted in support of the associated assessment and decision-making process. The City takes into account the nature of the proposal, its location, scale and intensity and any other the relevant matters to determine whether an acoustic report is required or not.

Where an acoustic report is provided with an application this is referred to the City's Environmental Health Team for review. Where SPP5.4 applies, the acoustic report is referred to Main Roads Western Australia for its review and comment. Once relevant stakeholders are satisfied with the content of the report two standards conditions are applied to a development approval being that the recommendations of the report are complied with at all times unless agreed in writing by the City and that building is constructed in accordance with the recommendations of the report.

Invalid planning condition

As detailed in the EMB item on this subject, the City has received advice, that the introduction of a Local Planning Policy or local law relating to noise emissions and real-time intervention on noise levels could be considered to go beyond the powers of local government. It follows therefore that to impose via a condition of planning approval a requirement that a noise control device be installed to an approved development, that this would similarly go beyond the powers of the City. Control of noise nuisance in development applications is based on an approach whereby a proposal is required to demonstrate upfront that applicable limits will not be exceeded and that this compliance will be maintained during the life of the proposal. A condition requiring an applicant to install and maintain a device to intervene with noise generation, should noise levels be exceeded is likely to be considered unnecessary and unreasonable. To impose such a requirement is unlikely to stand the test of scrutiny if challenged for review at the State Administrative Tribunal (SAT).

Part 4 of the Development Assessment Panel Practice Notes: Making Good Planning Decisions produced by the State Government sets out the purpose of condition setting and tests to be applied to ensure a condition is valid. There are a number of tests to be considered and of relevance to this matter, conditions should;

- relate to planning, not matters covered by other legislation;
- not be applied with an ulterior motive in mind, such as reducing the need for City officers to take compliance action;
- not constrain the design or the operation of the use.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

In respect of these tests, the Environmental Noise Regulations are standalone regulations distinct from the legislation and regulations that exist to govern planning related matters, such as the planning regulations and the Planning and Development Act. Non planning related legislation and/or regulations are not relied upon when determining DA's. As noise levels are dictated to by non-planning related legislation and regulation, a condition of planning approval cannot be imposed, if in order to meet the requirements of the condition, reliance is placed on non-planning related regulation. To impose such a condition of planning approval would be unlikely to stand the test of scrutiny if challenged for review to the SAT.

There may be limited circumstances where a requirement for a noise monitoring/management device may be appropriate. If an acoustic report provided in support of a DA recommended the use of a decibel monitor as a mechanism to manage noise on site, then an associated condition of planning approval could be properly imposed, to ensure the recommendations of the acoustic report are implemented. In the absence of such a requirement, the installation of decibel monitoring equipment would not be substantiated.

Local Planning Scheme and Local Policy Requirements

Not applicable to this report.

R-Code Requirements

Not applicable to this report as the notice of motion relates to noise monitoring for non-residential premises rather than new residential development.

Acoustic considerations are applicable for some residential development including managing impacts on amenity such as in a mixed use setting or from plant and equipment.

STAKEHOLDER ENGAGEMENT

Advertising Required:	N/A
Neighbour's Comment Supplied:	N/A
Reason:	N/A
Support/Object:	N/A

It is recommended that Elected Members do not proceed with this motion and therefore there is no need to engage with stakeholders.

If Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

I. COMMUNITY

Refer above, if Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

II. OTHER AGENCIES / CONSULTANTS

Refer above, if Elected Members adopt a different position to the officer recommendation, stakeholder engagement will be required.

STATUTORY AND LEGAL IMPLICATIONS

As noted in the detail section above, the imposition of a condition requiring decibel monitoring is likely to be outside the power of local government and therefore invalid.

FINANCIAL IMPLICATIONS

There are no financial costs if Elected Members choose not to proceed further with this motion. If Elected Members take a different position, there will be financial costs including additional officer time spent on this matter, legal fees to obtain further advice and costs associated with consultation.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
By maintain the status quo City will receive complaints from neighbours regarding noise from non-residential premises. In the year 21/22 the City's records indicate there were eight concerns raised regarding commercial premises mostly relating to early delivery and bins. City officers will be required to investigate.	Low	City officers to investigate on an as required basis.
Condition requiring noise monitoring recommended to the DAP and not applied.	High	Elected members do not proceed with this motion.
Condition requiring noise monitoring applied to delegated decision and challenged by the applicant at the SAT.	High	Elected members do not proceed with this motion.
A condition may impose an unnecessary cost burden on business looking to establish in the City of Melville which may result in them establishing elsewhere.	Medium	Elected members do not proceed with this motion.

UP23/4026 – DECIBEL MONITORING DEVICES IN PUBLIC VENUES (REC)

POLICY IMPLICATIONS

There are no policy implications if Elected Members support the officer recommendation.

Non-residential development will continue to be assessed having regard to the relevant planning framework.

COMMENT

The imposition of a planning condition requiring to the installation of noise monitoring equipment is not considered feasible for the reasons outlined above, including the requirement that imposed conditions of planning approval must have a clear planning purpose. As stated, in accordance with the planning framework, some non-residential development including change of use proposals within activity centres, is exempt from the need for development approval, and for such exempt developments there is no opportunity to impose conditions to manage their operation. Similarly, there is no scope for the City to retrospectively impose conditions to existing approved developments. Where an existing approved use is operating in breach of the noise regulations, the issue is one for the Noise Regulations, as administered by the City's Environmental Health Officers.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Local Planning Policy 2.2 Non-residential development (LPP2.2) sets out a range of matters to be considered as a part of the assessment of development proposals. LPP 2.2 is scheduled for a review in the coming year. As a part of this review officers can consider modifications to the policy to clearly outline the circumstances where an acoustic report is required as a part of a development application and the matters to be considered. The review of the policy would be the subject of a future Council report.

CONCLUSION

It is recommended that there is no further action taken in relation to developing a planning condition in relation to the installation of decibel monitors devices in all public venues.

OFFICER RECOMMENDATION (4026)

APPROVAL

At 7:59pm Cr Sandford moved, seconded Cr Robins –

That the Council:

- 1 Notes the report on the feasibility and power or authority to require that all public entertainment venues, including hotels, clubs and child care centres to be fitted with a decibel monitoring device or devices that would control the sound levels of entertainment equipment to appropriate to prescribed levels; and**
- 2 Take no further action in developing a planning condition in relation to the installation of decibel monitoring devices in all public venues.**

At 8:00pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

UP23/4028 – ERECTION OF FLOODLIGHTS TO APPLECROSS TENNIS CLUB – LOTS 260-264 (30) THE STRAND, APPLECROSS WA 6153 (REC) (ATTACHMENT)

Item Brought Forward

See page 62.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Ward : All
Category : Policy
Application Number : Not Applicable
Property : 89A Harris Street, Bicton
Proposal : Not Applicable
Applicant : Not Applicable
Owner : J Stevens
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items : Item 12.1 Petition - Request for Resolution of Building Complaints – Ordinary Meeting of Council held 21 March 2023.
Responsible Officer : Marten Tieleman
Chief Executive Officer

AUTHORITY / DISCRETION

DEFINITION

<input checked="" 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 type="checkbox"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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>

KEY ISSUES / SUMMARY

- A petition signed by 24 residents was received from Dr J Stevens on 20 February 2023 requesting resolution of his building complaints.
- Elected Members were advised of receipt of the petition in the 24 February 2023 Elected Member Bulletin and the petition was considered by the Council at the 21 March 2023 Council Meeting.
- The Council resolved to acknowledge the petition and that a report on the petition be prepared and presented to the April 2023 Council Meeting.
- This report makes reference to the encroachment and retaining wall/dividing fence issue, that is the subject of the petition and provides comment on the petition.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

BACKGROUND

At the 21 March 2023 Ordinary Meeting of Council, the Council considered a petition submitted by Dr Jeffery Stevens on 20 February 2023, signed by 24 residents of the City of Melville.

The petition requested:

“We, the undersigned, all being electors of the City of Melville, respectfully ask Council to take all necessary steps, using Council’s powers and duties conferred upon it by the Building or other relevant Acts of Parliament and independent of the CEO and the Administration, to investigate and RESOLVE to my satisfaction the complaints I have made since September 2021 in relation my rear neighbours unauthorised building works, inclusive of the retaining structures encroaching on my land without my consent.”

The Council resolved to acknowledge the petition and that a report be prepared and presented to the April 2023 Council Meeting.

Dr Stevens complaints relate to allegations that the owner of the neighboring rear property (6B First Street Bicton) has building works that encroach onto his property at 89A Harris Street and that the structures were installed without Dr Stevens consent. Dr Stevens also requested that the panel and post retaining wall and Colorbond boundary fence, within his property boundary, be moved to the actual property boundary line.

Questions in relation to this matter were also asked at the 20 February 2023 and 21 March 2023 Council Meetings and a written submission was received from Mr M McLerie that, at his request, was included as an attachment to the 21 March 2023 Council Minutes.

The petition requests that the Council undertake all necessary steps to investigate and resolve the matters. The Council or a committee of Council has no authority or ability to investigate and resolve complaints. The premise of the petition therefore cannot be supported as it is a function of the CEO and the administration to undertake the duties and functions that relate to building issues, the associated administrative matters and dealing with residents’ complaints. These actions are undertaken in accordance with Council’s Compliance and Enforcement Policy CP-114.

City officers have spent a significant amount of time communicating with both owners and investigating, researching the previous applications, approvals and actions undertaken by the owner of 89A Harris Street and the previous and current owners of 6B First Street.

Relevant information has been forwarded to the City’s legal advisor who has reviewed the information and provided the owners with appropriate advice on how to resolve the issues. The City’s legal advisors have undertaken an independent review and a further review of these matters is not required.

The petition also requests that the matters and Dr Steven’s complaint be “resolved” to his satisfaction. Again, this is best pursued as a civil matter as it is a private property boundary dispute and will involve property owner consent to be resolved.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Officers will continue to work through the various issues that relate to the building matters and Dr Stevens complaints and will provide a report to an Elected Member Engagement Session on the findings and actions that can and are being undertaken. Time permitting, it is proposed that this presentation will be conducted prior to the 18 April 2023 Council Meeting. Further information has now been obtained from the developer that owned 6B First Street, prior to the current owner and prior to demolition, subdivision and reconstruction of the improvements that are located on 6B First Street that is relevant to resolving these matters.

DETAIL

City officers have been dealing with the respective residents and responding to the matter which are the subject of this petition. When issues were identified that required attention by both property owners it was considered that the best course of action was that the owners resolve the matter amicably between themselves as opposed to taking the regulatory approach.

Council or a Committee investigating complaints.

The matter of the Council or a Committee of the Council has been previously researched and reported on to the Council in February 2020. On that occasion the City sought legal advice in relation to the Council being informed of and undertaking investigations in relation to complaints received.

From the legal advice received at that time it is advised that it is not lawful and appropriate for the Council to be an investigative body. For example, the Council has no powers to require evidence to be given or to test the veracity of evidence that is given (such as by way of requiring evidence to be on oath or affirmation, or by way of cross-examination). The major legal obstacle to this motion is that there is no express power under the *Local Government Act* for the Council itself to undertake an investigation, or to undertake administrative functions ancillary to the undertaking of an investigation. The generally express powers that the Council has under the *Local Government Act 1995* would be construed in the context of the Council's governance role and governance functions under section 2.7 of the Act – and in the context of the CEO's management role and management functions under section 5.41 of the Act.

The Council's governance role is not consistent with the Council itself undertaking an investigation into complaints made by a member of the public – particularly in circumstances where those complaints are within the jurisdiction of specialist external investigative bodies.

Should a complaint involved allegations of 'serious misconduct' against one or more City employees, the allegations are within the jurisdiction of the Public Sector Commissioner and then the can and should be reported to the Public Sector Commissioner under section 45E of the CCM Act.

Complaints involving allegations of maladministration by the City (not necessarily involving serious or minor misconduct, but simply that the City's actions did not meet reasonable standards expected of a local government), they are within the jurisdiction of the State Ombudsman and may be the subject of a complaint to the Ombudsman under section 17 of the *Parliamentary Commissioner Act 1971*.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

Other external agencies with specialist investigative powers, procedures and expertise to deal with complaints, depending on their nature, include the Office of the Information Commissioner, the Building & Energy (DMIRS), the Office of the Auditor General and the Department of Local Government, Sport and Cultural Industries.

The City could be exposed to the risk of legal challenge based, for example, on the Council (or a committee) unlawfully undertaking an investigate and/or any failure to conduct an investigation in accordance with the rules of natural justice or procedural fairness.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

No engagement with the Community has been undertaken relating to the petition.

II. OTHER AGENCIES / CONSULTANTS

No engagement with other agencies or consultants has been conducted relating to the petition.

STATUTORY AND LEGAL IMPLICATIONS

Section 5.41 of the Local Government Act prescribes the functions of the CEO, with 5.41 (d) being to manage the day-to-day operations of the City.

FINANCIAL IMPLICATIONS

Considerable administration time has already been committed to investigating these matters and expenditure has been incurred, for the reasons stated in the report, in order to resolve the matters raised and respond to the building complaints.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement & Consequence	Level of Risk	Risk Treatment
Council or a committee of Council undertaking tasks and functions that are not lawful.	High	Council to acknowledge the petition and for the administration to resolve the building related matters and complaints.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

POLICY IMPLICATIONS

Councils Compliance and Enforcement Policy CP-114 outlines the City's approach to undertaking compliance and enforcement actions.

The Code of Conduct Elected Members, Committee Members and Candidates describe:

18. Securing personal advantage or disadvantaging others

- (1) A council member must not make improper use of their office -*
(a) to gain, directly or indirectly, an advantage for the council member or any other person; or
(b) to cause detriment to the local government or any other person.

In this respect the petition requests that complaints be resolved to the satisfaction of the complainant/petitioner, which may not be the case.

19. Prohibition against involvement in administration

- (1) A council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or the CEO to undertake that task.*
(2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

There are various options relating to how the building matters and complaints are resolved however, the administration is not proposing any alternative options for dealing with the petition or the specific requests made in the petition at this time.

CONCLUSION

This report considers the petition presented and refers to the building issue that is the subject of the petition. City officers have been and are investigating the building matters and complaints, which are nearing resolution. It is proposed that a presentation on the issues and findings will be made to Elected Members at an Elected Members Engagement Session, prior to the owners of 89A Harris Street and 6B First Street being advised further of the City's position.

**M23/5969 – PETITION – REQUEST FOR RESOLUTION OF BUILDING COMPLAINT 89A
HARRIS STREET, BICTON (REC)**

OFFICER RECOMMENDATION

APPROVAL

At 8:01pm Cr Fitzgerald moved, seconded Cr Robins –

That the Council:

- 1. Notes the Officer Report on the petition signed by 24 residents received from Dr Stevens on 20 February 2023 requesting the Council investigate and resolve his building complaints; and**
- 2. Advise Dr Steven's that the actions requested of the Council within the petition are inconsistent with the governance role and functions of the Council and that the City's administration will continue to progress with current actions regarding the 89A Harris Street and 6B First Street, Bicton building related matters and complaints and that the best course of action is that these matters be resolved amicably between both property owners.**

At 8:20pm, the Mayor declared the motion

CARRIED (8/4)

For	8	Cr D Macphail, Mayor G Gear, Cr J Spanbroek, Cr K Wheatland, Cr N Robins, Cr T Fitzgerald, Cr N Pazolli, Cr M Woodall
Against	4	Cr J Edinger, Cr K Mair, Cr M Sandford, Cr G Barber

At 8:20pm Cr Edinger left the meeting.

C23/5970 – CEO PERFORMANCE REVIEW 1 JULY 2021 – 30 JUNE 2022 (REC)
(CONFIDENTIAL ATTACHMENT)

Item Deferred
See Page 156

C23/5971 – CONFIDENTIAL PETITION – CEO CONTRACT (REC)

Item Deferred
See Page 152

UP23/4033 – CANNING BRIDGE PUBLIC OPEN SPACE OPTION ANALYSIS REPORT (REC)
(ATTACHMENT)

Item Brought Forward
See Page 15

UP23/4025 – REVIEW OF CANNING BRIDGE ACTIVITY CENTRE PLAN –
RECOMMENDATION TO WESTERN AUSTRALIAN PLANNING COMMISSION (REC)
(ATTACHMENT)

Item Brought Forward
See Page 36

15 MOTIONS WITH PREVIOUS NOTICE

15.1 State Government Planning Changes

COUNCIL RESOLUTION

Motion

At 8:20pm Cr Woodall moved, seconded Cr Spanbroek –

That the Council:

1. **Strongly objects to the State Government's proposed changes to the Planning and Development Act 2005 (WA), which will erode local decision making on important planning matters.**
2. **Requests that the Mayor write to the Minister for Planning (WA) and local State MLAs and MLCs:**
 - a. **outlining the Council's opposition to the proposed changes and the erosion of local decision making and community input; and**
 - b. **calling upon the State Government abandon the proposed changes, or failing that, reforming the DAP and SMDAP panels so that local government councillors make up a majority of the members of each panel.**

At 8:26pm the Mayor declared the motion

CARRIED UNANIMOUSLY (11/0)

Reasons for the Motion as Provided by Cr Woodall

1. The State Government's recently announced changes to the *Planning and Development Act 2005 (WA)* include:
 - a. Allowing Development Assessment Panel's (DAP's) to determine all developments over \$2 million value (except single homes); and
 - b. Allowing the WA Planning Commission (via the Special Matters DAP) to determine developments of major significance over \$50m value or in precinct of State importance (including the Canning Bridge Activity Centre Plan area).
2. In the context of Melville, this will effectively mean that all development applications (except single homes) will be determined by either the DAP or the SMDAP instead of the Council. Although the DAP system will still be 'opt-in', we know from past experience that developers nearly always choose the DAP process.
3. Particularly concerning is the proposed removal of the exclusion that applies to less than 10 'multiple dwelling' developments. This means a multiple dwelling development of any size over \$2 million will be able to opt-in to the DAP system.
4. This will reduce the community's input on developments in our suburbs and adjacent to residential homes. These smaller-scale residential developments are best determined at the Council level with local community input, rather than clogging up the DAP system and bypassing locals.

15.1 State Government Planning Changes, continued.

5. Overall the DAP system has failed to meet community expectations regarding new developments. The panels comprise a majority of appointed (unelected) members who are not answerable to the community, unlike councillors. Whilst community consultation does occur, very little weight appears to be placed on the views of the local community. Council recommendations to the DAP are rarely referenced and appear to be routinely ignored.
6. The proposed SMDAP development pathway is perhaps even more concerning. This body is a successor to the SDAU originally set up during COVID to assist with development approvals at a time of economic uncertainty. It is not clear why it needs to become permanent and in any event the SDAU has only determined 16 applications in over 2 years – demonstrating it is ineffective and inefficient. Unsurprisingly though it has approved 100% of applications.
7. However the most significant concern is its ability to completely bypass local planning schemes in its decision making. With the Canning Bridge area deemed a precinct of ‘State importance’, many if not all major developments in the area may fall within its jurisdiction. This should ring alarm bells for residents in the Canning Bridge area, who may lose any protection that a revised Canning Bridge Activity Centre Plan might otherwise bring.
8. In summary, the proposed changes to the DAPs and SMDAP erode the role of Local Government in providing a valuable community perspective on planning proposals. The State Government should heed the views of Local Governments across Perth and abandon these changes, or failing that, at least rebalance the DAP and SMDAP panels by having 3 local government members and 2 appointed members.

At 8:21pm Ms Bowman disconnected from the meeting electronically and did not return.

At 8:26pm Cr Macphail left the meeting.

15.2 Asbestos Removal at Mt Pleasant Bowling Club

An [Officer Advice Note](#) was circulated in relation to this Motion.

Motion

That the Council directs the CEO:

- 1. To remove all asbestos from the Mt Pleasant Bowling Club during the forthcoming renovations.**
- 2. Use funds from the Asbestos Removal Fund in addition to the funds already set aside in the refurbishment project for the removal of all asbestos.**
- 3. In the event that there may be insufficient funds in the Asbestos Removal Fund, funds from elsewhere would be used to make up the shortfall.**

At 8:27pm Cr Mair withdrew the motion.

15.3 Protecting Canning Bridges Verge Trees

Motion

At 8:27pm Cr Pazolli moved, seconded Cr Woodall –

That the Council:

- 1. Notes that the verge trees on portions of Kintail Road, Forbes Road and Sleat Road in Canning Bridge are at risk of removal as a result of the Main Roads initiated Planning Control Area 153, approved in August 2020 by the Minister for Planning, in preparation for the possible future widening of Canning Highway, construction of a new Canning Bridge and construction of a new Canning Bridge Busport.**
- 2. Strongly supports the retention of these verge trees (London Plane & Jacaranda trees), recognising the environmental and amenity value they provide to the community.**
- 3. Calls upon the Minister for Planning, Main Roads and the WA Planning Commission to protect these verge trees by amending the Planning Control Area 153.**
- 4. Requests the Chief Executive Officer and Mayor to write to the WA State Government, particularly to the Minister of Planning, Main Roads and WA Planning Commission, advocating for the retention of these verge trees.**

Amendment

At 8:28pm Cr Sandford moved, seconded Cr Mair –

Insert a point 5) to read

Requests the CEO to prepare a report to Council prior to the 20 June 2023 Ordinary Meeting of Council as to the merits of seeking State Heritage Listing for these trees, as advised by Hatch Roberts Day.

At 8:29pm Cr Macphail returned to the meeting.

At 8:30pm Ms Davis left the meeting and returned at 8.32pm.

At 8:32pm Cr Edinger returned to the meeting.

At 8:34pm after discussion on the matter, Cr Sandford with the consent of the seconder withdrew the Amendment.

15.3 Protecting Canning Bridges Verge Trees

Motion

At 8:27pm Cr Pazolli moved, seconded Cr Woodall –

That the Council:

- 1) Notes that the verge trees on portions of Kintail Road, Forbes Road and Sleat Road in Canning Bridge are at risk of removal as a result of the Main Roads initiated Planning Control Area 153, approved in August 2020 by the Minister for Planning, in preparation for the possible future widening of Canning Highway, construction of a new Canning Bridge and construction of a new Canning Bridge Busport.**
- 2) Strongly supports the retention of these verge trees (London Plane & Jacaranda trees), recognising the environmental and amenity value they provide to the community.**
- 3) Calls upon the Minister for Planning, Main Roads and the WA Planning Commission to protect these verge trees by amending the Planning Control Area 153.**
- 4) Requests the Chief Executive Officer and Mayor to write to the WA State Government, particularly to the Minister of Planning, Main Roads and WA Planning Commission, advocating for the retention of these verge trees.**

Procedural Motion

COUNCIL RESOLUTION

At 8:36pm Cr Wheatland, seconded Cr Sandford –

That an extension of five minutes be granted to Cr Pazolli to speak on the matter.

At 8:36pm the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

15.3 Protecting Canning Bridges Verge Trees

Motion

COUNCIL RESOLUTION

At 8:27pm Cr Pazolli moved, seconded Cr Woodall –

That the Council:

- 1) Notes that the verge trees on portions of Kintail Road, Forbes Road and Sleat Road in Canning Bridge are at risk of removal as a result of the Main Roads initiated Planning Control Area 153, approved in August 2020 by the Minister for Planning, in preparation for the possible future widening of Canning Highway, construction of a new Canning Bridge and construction of a new Canning Bridge Busport.**
- 2) Strongly supports the retention of these verge trees (London Plane & Jacaranda trees), recognising the environmental and amenity value they provide to the community.**
- 3) Calls upon the Minister for Planning, Main Roads and the WA Planning Commission to protect these verge trees by amending the Planning Control Area 153.**
- 4) Requests the Chief Executive Officer and Mayor to write to the WA State Government, particularly to the Minister of Planning, Main Roads and WA Planning Commission, advocating for the retention of these verge trees.**

At 8:40pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Reasons for the Motion as provided by Cr Pazolli

1. The Member for Bateman, Kim Giddens, is currently undertaking a parliamentary survey / petition calling for the retention of these verge trees in Canning Bridge. This Council motion is in support of that petition, but also brings to the public's attention the fundamental infrastructure drivers that have led to the extension of Planning Control Area 153 approved by the Minister of Planning in August 2020 and resulting from the Main Roads' plans for the construction of a new replacement Canning Bridge, the expansion of Canning Highway and the construction of a new Canning Bridge Busport.
2. The affected roads in PCA 153 are Kintail Rd (from Canning Bridge to Forbes St), Forbes Rd (from Kintail Rd to Sleat Rd) and Sleat Rd (from Forbes Rd to Canning Highway). Main Roads proposes these roads to eventually become the public bus transport and Kiss-&-Ride local access to a new Canning Bridge Busport via the existing end-of-life northern Canning Bridge.
3. There are approximately:
 - Kintail Rd: 28 London Plane and two Jacaranda verge trees;
 - Forbes Rd: 22 Jacaranda verge trees;
 - Sleat Rd: 10 Jacaranda trees of which 2 are on the existing verge and the other 8 are planted in the middle median strip of Sleat Rd (6 of which are newly planted immature Jacaranda trees – trees in the median strip are at risk irrespective of any PCA reservation!).
4. This motion emphasises that the controlling decision makers and designers of these bridge and roadway expansion proposals are in the hands of the State Government and its instrumentalities (Main Roads, WAPC & Public Transport Authority). As such the role of the Council is to advocate to the State Government for the broader community benefit.

15.4 Regulation of Drones

Motion

At 8:40pm Cr Fitzgerald moved, seconded Cr Wheatland –

That the Council directs the CEO to:

- 1. Write to WALGA to request the development of a model local government policy for the regulation of drones,**
- 2. Offer WALGA such support as might be required in the formulation of such a policy, and**
- 3. Offer to assist WALGA, where required, in liaising with other local governments in WA and with the Commonwealth Department of Infrastructure on the development of such a policy.**

At 8:49pm, the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

Reasons for the Motion as provided by Cr Fitzgerald

The Federal Government's National Emerging Aviation Technologies Policy Statement noted ["The Department of Infrastructure, Transport, Regional Development and Communications \(DITRDC\) in collaboration with state, territory and local governments and relevant Commonwealth agencies and authorities ..."](#) would develop an appropriate regulatory response to increasing drone flights in and around residential and public areas.

Additionally, there have been recent examples of instances in which drones were flown in a manner which interfered with bird life at the Melville Bird Sanctuary, and in which the various local, state and federal authorities had, because of conflicting, unclear and overlapping authorities, limited capacity to respond. This follows on the back of earlier difficulties at other local governments, such as drones being flown over ANZAC Day dawn services, which required bespoke regulation by those LGs.

This motion seeks to assist in the preparation and progress of a unified position across WA local governments to the emerging issue of drone flights.

15.5 Bombard Street Ardross Traffic Treatments

Item Brought Forward

See Page 60

16 MOTIONS WITHOUT PREVIOUS NOTICE (approval by absolute majority)

Nil.

Disclosure of Interest

Member	Mr Tieleman
Type of Interest	Financial Interest
Nature of Interest	Hold the position of CEO
Request	Leave
Decision Leave	Leave

At 8:50pm having declared an interest in the matter, Mr Tieleman left the meeting.

C23/5971 – CONFIDENTIAL PETITION – CEO CONTRACT (REC)

Ward	: All
Category	: Operational
Subject Index	: City of Melville
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Item 12.2 Confidential Petition – CEO Contract, 21 February 2023 Ordinary Meeting of Council. Item 7.2 Confidential Petition – CEO Contract, 30 March 2023 Governance Committee Meeting
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Corrine Newman Head of Governance

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"/>	Executive	<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>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & 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>

C23/5971 – CONFIDENTIAL PETITION – CEO CONTRACT (REC)

KEY ISSUES / SUMMARY

- At the Ordinary Meeting of Council held 21 February 2023, a confidential petition relating to employee matter was referred to the Governance Committee.
- A Governance Committee Meeting was held on 30 March 2023.
- At the time of the Governance Committee Meeting, a Special Meeting of Council had been scheduled that dealt with the matter the subject of the petition.
- The matter is referred back to the Council for final determination.

BACKGROUND

At the Ordinary Meeting of Council held 21 February 2021, the Council considered a petition regarding the CEO's Contract. As the petition dealt with an employee matter, it was considered behind closed doors, with the Council resolving to refer the matter to the Governance Committee.

DETAIL

At the Governance Committee Meeting held on 30 March 2023, the Committee considered the contents of the petition, which related to the CEO's contract. The Petition related to a matter that was already the subject of a Special Meeting of Council scheduled to be held on 3 April 2023. The Agenda for the Special Meeting of Council, including the officer report on the matter had been distributed prior to the Governance Committee Meeting being held.

The matter is referred back to the Council for final determination.

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

There was no community consultation undertaken in relation to this matter.

II. OTHER AGENCIES / CONSULTANTS

There was no external consultation undertaken in relation to this matter.

STATUTORY AND LEGAL IMPLICATIONS

Section 5.23(2)(a) of the Local Government Act provide that a meeting of the Council or a Committee, or part of a meeting, may be closed to members of the public if a matter affecting an employee is being dealt with.

In relation to petitions, the City of Melville Meeting Procedures provide for the Council to:

- (a) give due consideration to the petition when deliberating on the relevant matter listed on the same agenda; or
- (b) refer it to a committee for consideration and report; or
- (c) direct that a report on the matters raised be prepared by a date determined by Council; or
- (d) take no further action.

C23/5971 – CONFIDENTIAL PETITION – CEO CONTRACT (REC)

FINANCIAL IMPLICATIONS

There are no financial implications associated with this matter.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

As the matter has been considered at a previous meeting of the Council, there are no strategic, risk or environment management implications associated with this report.

POLICY IMPLICATIONS

There are policies associated with this report.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

There are no alternative options associated with this matter.

CONCLUSION

The matter the subject of the petition was considered at the Special Meeting of Council.

At 8:50pm Cr Wheatland left the meeting.

OFFICER RECOMMENDATION

APPROVAL

At 8:51pm Cr Fitzgerald moved, seconded Cr Robins –

That the Council notes the petition, and that the CEO's contract renewal was resolved at the Special Meeting of Council held for 3 April 2023. That the lead petitioner be advised of that determination.

At 8:51pm the Mayor declared the motion

CARRIED UNANIMOUSLY (11/0)

At 8:51pm Cr Wheatland returned to the meeting

17 MATTERS FOR WHICH MEETING WAS CLOSED TO THE PUBLIC

Procedural Motion

At 8:52pm Cr Macphail moved, seconded Cr Edinger –

That the meeting be closed to the members of the public to allow for items deemed confidential in accordance with section 5.23(2)(a) of the Local Government Act 1995, to be discussed behind closed doors.

At 8:52pm the Mayor declared the motion

CARRIED UNANIMOUSLY (12/0)

At 8:54pm Mr Ponton left the meeting and did not return.

At 8:54pm Mr McCarthy left the meeting and did not return.

At 8:56pm the Mayor asked that those attending electronically to confirm that they were attending the meeting from a location that was able to maintain the confidential requirements of the meeting in accordance with clause 6.2 of *the City of Melville Local Government (Meeting Procedures) Local Law 2022*.

At 9:08pm Cr Barber disconnected from the meeting electronically and did not return.

Procedural Motion

At 9:09pm Cr Wheatland moved, seconded Cr Spanbroek –

That the meeting comes out from behind closed doors.

At 9:09pm the Mayor declared the motion

CARRIED UNANIMOUSLY (11/0)

18 DECISIONS MADE WHILE MEETING WAS CLOSED TO THE PUBLIC

At 9:09pm the Mayor advised that the matters behind closed doors related to:

- Item C23/5970 – CEO Performance Review 1 July 2021 – 30 June 2022 was carried 10/2 and the information is available in the minutes of the meeting.

19. CLOSURE

There being no further business to discuss, the Mayor confirmed Cr Woodall and Cr Pazolli was still in attendance electronically and declared the meeting closed at 9:10pm.