

MINUTES

OF THE

SPECIAL MEETING OF COUNCIL

HELD ON

TUESDAY

27 MARCH 2012

AT 6.30PM IN THE COUNCIL CHAMBERS

MELVILLE CIVIC CENTRE

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MINUTES OF THE SPECIAL MEETING OF THE COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 6.30PM ON TUESDAY, 27 MARCH 2012.

1. OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and declared the meeting open at 6:30pm. Mr J Clark the Governance and Compliance Program Manager read aloud the Disclaimer and then His Worship the Mayor R A Aubrey, read aloud the Affirmation of Civic Duty and Responsibility.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Elected Members and Officers of the City of Melville. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.

2. PRESENT

His Worship the Mayor, Russell Aubrey

COUNCILLORS

Cr N Pazolli, Cr P Reidy
Cr A Nicholson
Cr J Barton, Cr S Taylor-Rees
Cr R Hill, Cr B Kinnell

WARD

Applecross/Mount Pleasant
City
Bicton/Attadale
Palmyra/Melville/Willagee

3. IN ATTENDANCE

Dr S Silcox	Chief Executive Officer
Mr M Tieleman	Director Corporate Services
Ms C Young	Director Community Development
Mr S Cope	Director Urban Planning
Mr J Christie	Director Technical Services
Mr L Hitchcock	Executive Manager Legal Services
Mr B Taylor	Manager Information, Technology & Support
Mr J Clark	Governance & Compliance Program Manager
Ms D Beilby	Minute Secretary

At the commencement of the meeting there were no members of the public and no members from the Press in the Public Gallery.

4. APOLOGIES AND APPROVED LEAVE OF ABSENCE**4.1 APOLOGIES**

Cr Robartson (Deputy Mayor)	Bull Creek/Leeming Ward
Cr Willis	Bull Creek/Leeming Ward
Cr Foxton	University Ward
Cr Reynolds	University Ward
Cr D Macphail	City Ward

4.2 APPROVED LEAVE OF ABSENCE

Nil.

5. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION) AND DECLARATIONS BY MEMBERS**5.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil.

5.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ THE ELECTED MEMBERS BULLETIN.

Nil.

6. QUESTION TIME

Nil.

7. DECLARATIONS OF INTEREST**7.1 FINANCIAL INTERESTS**

Nil.

7.2 DISCLOSURE OF INTEREST THAT MAY CAUSE A CONFLICT

Nil.

8. APPLICATIONS FOR NEW LEAVES OF ABSENCE

Nil.

9. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

- P12/3301 Confidential Item – Purchase of Western Power Land 58 – 60 Murray Road, Bicton

The above matter is confidential in accordance with Section 5.23 (2) (c) & (h) of the Local Government Act 1995, and Local Government (Administration) Regulations 1996 Clause 4A relating to the sale or purchase of property.

10. REPORTS OF THE CHIEF EXECUTIVE OFFICER

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

Ward : All
 Category : Operational - Building
 Subject Index : Acts, Statutes and Local Laws
 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 : Nil
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Tony Capobianco
 Manager Building 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 review decisions made by Officers.</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>

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- The State Government will implement the new Building Act 2011 (the Act) on 2 April 2012.
- The Act mandates the role of the Local Government as a Permit Authority to issue approvals for buildings, developments, demolitions, occupancy of buildings and compliance enforcement.
- The Act identifies the opportunities for Local Governments to offer a building certification service to its customers.
- This report outlines the changes that are proposed in the new Building Act 2011.
- The report recommends that the Council endorses the proposal for the City of Melville (the City) to provide a building certification service within its municipal boundaries in addition to its statutory role as a permit authority in accordance with the new Building Act 2011.
- The report recommends that in accordance with the Local Government Act 1995 Section 6.16 (3) (a) the Council by Absolute Majority adopts the fee schedule for Uncertified Applications for Occupancy and Building Permit approvals as detailed in Table 1 of this report.

BACKGROUND

A new Act named the Building Act 2011 has been drafted and was granted Royal Assent on 11 July 2011 with the commencement date yet to be proclaimed. Delays in commencement have been experienced due to a number of issues having been identified and the commencement date is now expected to be 2 April 2012.

Upon commencement the Act will replace Parts VIII IX and XV of the Local Government (Miscellaneous Provisions) Act 1960 as the building control legislation and will result in the repeal of the Building Regulations 1989 and the Local Government (Prohibition on Dealing in Land) Regulations 1973 as well as making amendments to various other Acts. The Building Regulations 1989 will be replaced with the Building Regulations 2012.

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

The Building Commission has been established to manage and control the building practitioner registration building standards, complaints process and policies in association with the State Government Building Regulation reform which comprises the following Acts:

- Building Services (Complaint Resolution and Administration) Act 2011
- Building Services (Registration) Act 2011
- Building Services Levy Act 2011
- Building Act 2011

Some of the key changes that will affect Local Governments and introduce new practices and terms are:

- Private Certification
- Permit Authorities
- Time frames for Approvals
- Building and Demolition Permits
- Building Approval Certificates
- Work affecting other land

[3297 Building Act Terms Explained](#)

[3297 Key Features Building Act](#)

[3297 Fees Schedule 2](#)

[3297 Approval by Local Government process](#)

DETAIL

The current legislation being the Local Government (Miscellaneous Provisions) Act 1960 and the Building Regulations 1989 empowers local government in Western Australia to have responsibility and accountability for the assessing of applications, the issuing of building licences and ensuring compliance with those approvals including the issuing of relevant Classification Certificates, Strata Certificates and initiation of prosecution action.

The purpose of the new Building Act 2011 is to reform the current approval processes and enable new private sector involvement via provision of a building certification service. The most significant change is to separate and create a distinction between certification of compliance to Building Codes of Australia and Standards and the administrative process of issuing a building permit.

This process change will introduce private sector certification as part of the process which diminishes the role of individual local governments to be responsible for total control of assessing building applications and issuing building licences (building permits).

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

The three roles open to, or mandatory for Local Governments to undertake are as follows:

1. Operate as a Permit issuing Authority for all applications received (Certified Applications) (i.e. building, demolition, occupancy permits) for all classifications of buildings (Class 1 and 10, and 2 to 9). (Prescribed legislated fee set).
2. Receiving and processing of uncertified building and demolition applications for Class 1 and 10 buildings and issuing a Certificate of Design Compliance (Uncertified Applications) prior to issuing of Permits. (Prescribed legislated fee set).
3. Provide a Certification Service (as Building Services currently provide) for all classifications of buildings (i.e. Class 1 through to 10). No prescribed legislated fee set for this service i.e. this is a fee for service, in competition with private industry and potentially other local authorities.

The current process under the Local Government (Miscellaneous Provisions) Act 1960

Building Licence Applications for Residential (Class 1 and 10) and Commercial (Class 2 to 9)

- Applications lodged with local government
- Assessment of compliance with Building Code of Australia, external referrals to other agencies, e.g. Fire & Emergency Services Authority
- Assessment for compliance with, Planning Services, Environmental Health Services and Technical Services requirements.
- Approval issued (Building Licence)

The proposed process under the new Building Act 2011

Certified applications Class 1 and 10 and 2 to 9 (s.14 Building Act 2011)

- External approvals obtained by applicant (Fire & Emergency Services Authority, Water Corporation, Heritage Council, Swan River Trust, WA Planning Commission, WA Health Department),
- Internal approvals obtained by applicant (City of Melville Planning Services, Environmental Health Services and Technical Services);
- Applicant to provide Certificate of Design Compliance (for Building Code of Australia compliance);
- Application lodged with local government;
- Assessment for compliance with Planning, Environmental, Health and Technical Services requirements;
- Approval issued (Building Permit).

Uncertified applications Class 1 and 10 (s.17 Building Act 2011)

- External approvals obtained by applicant (Fire & Emergency Services Authority, Water Corporation, Heritage Council, Swan River Trust, WA Planning Commission, WA Health Department).
- Internal approvals obtained by applicant (City of Melville Planning Services, Environmental Health Services and Technical Services);
- Application lodged with local government;

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
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- Internal assessment for compliance with Planning, Health and Technical Services requirements;
- City's Building Surveyor (may be internal or contracted surveyor) to provide Certificate of Design Compliance (for Building Code of Australia compliance);
- Approval issued (Building Permit).

Certification Service

The new Building Act 2011 does allow and makes provision for Local Government to provide a building certification service and assessment service. This has traditionally been the role of local government for many years.

The Building Act 2011 determines that the Local Government can still be actively involved in a full range of building control activities by undertaking its required role as a permit authority but also establishing a Building Certification Service Local Government will be able to charge a fee to recover costs for Building Certification services.

These may include:

- Certificate of design compliance (certification services for all Classes of buildings);
- Certificate of construction compliance (inspection and certification of various buildings during construction);
- Certificate of building compliance (inspect and certify completed buildings to be compliant with approvals).

PUBLIC CONSULTATION/COMMUNICATION

Not applicable.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

The Local Government Act 1995 Section 3.18 addresses the role of Local Governments performing executive functions.

In performing this function a Local Government may provide a service and in providing that service it is to satisfy itself that the service it provides integrates and coordinates so far as practicable with that provided by a Commonwealth, State or public body and not to duplicate to the degree that the Local Government, considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person whether public or private and are managed effectively and efficiently.

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(AMREC) (ATTACHMENT)**

Building Act 2011 – Sections 14, 15 & 57
Local Government Act 1995 – Sections 3.18, 3.20 & 6.16.

The release of the draft Building Regulations 2012 (which is complementary to the new Building Act 2011) confirms legislated or prescribed fees under Schedule 2 – Fees.

Statutory fees are applicable for each permit and certificate or service that is to be provided by the Local Government. However, this does not include chargeable market rates for providing independent certification services.

It is evident with the fee structure proposed that the income currently received for Building Services will be reduced by up to 40% of the statutory fees previously received, should the sole function of the Local Government be to restrict its activities to the administrative function of only issuing building permits.

If the current level of building control is maintained i.e. including the provision of a building certification service, then a cost plus recovery rate can be charged for this service and if the charge out rate is competitive with those offered by private industry or other local governments, the City should be able to maintain revenue close to current levels as well as maintaining the current level of building services for the benefit of the City's customers.

Fees and ChargesStatutory Fees

Statutory fees are prescribed by the State government in the Building Regulations 2012.

The new Building Act 2011 determines that applications must be accompanied by the prescribed fee for building [s.16 (l), demolition and occupancy permits (s.54 (4) (d)]

The draft Building Regulations 2012 proposes new rates for various types of applications and permits. In addition statutory fees for applications and certificates will be applied to the following:

- Application for Occupancy Certificate
- Application for Temporary Occupy Permit
- Modification to Occupancy Certificate
- Replacement of Occupancy Certificates

Non Statutory Fees

Non statutory fees are those that are imposed by Local Government for a service that is not legislated (i.e. inspection services and private certification service, kerb security deposit bonds).

Under the new Building Act 2011 Local Governments have the opportunity to provide a service to the community to carry out inspections for the purpose of obtaining the appropriate certificates under a certificate of design compliance of a Building Permit or Certificate of Completion.

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(AMREC) (ATTACHMENT)**

In addition a non statutory fee can be applied for requested certification services for the issue of a Certificate of Design Compliance. As this fee is imposed by Local Governments it is required to be advertised in accordance with s.6.19 of the Local Government Act 1995.

Based on the current salaries budgeted for the Building Service area the estimated recovery rate is approximately \$80.50 per hour per officer.

The Table 1 below outlines the hourly rate proposed to apply for inspection and certification services.

**TABLE 1
Fee structure for all classification of buildings 1 to 10 inclusive for applications for building and occupancy approvals**

Item	Description of Service Provided	Fee (\$) – Note Estimated construction value is the GST inclusive value
1	Request for Certificate of Design Compliance for Class 1 and 10 buildings (unless included in a Building Permit application)	0.13% of the estimated construction value or \$90 minimum
2	Request for a Certificate of Design Compliance for Classes 2 to 9 buildings within the district of City of Melville	0.09% of the estimated construction value or \$200 minimum plus GST
3	Application to Amend a Building Permit (Uncertified Application)	0.32% of the estimated construction value or \$90 minimum
4.	Request to provide a Certificate of Construction Compliance Includes one on site inspection	\$180 minimum plus GST Additional inspections \$120 plus GST each
5.	Request to provide a Certificate of Building Compliance Includes one on site inspection	\$180 minimum plus GST Additional inspections \$120 plus GST each
6.	Building Information Copies of Permits, Building Approval Certificates (s129 Building Act 2011) Copies of Building Records to an interested person (s131 Building Act 2011)	 \$80 minimum plus GST \$80 minimum plus GST
7.	Professional Advice Request from a Qualified Building Surveyor, or request seeking confirmation from Environmental Health, Planning or Technical Services	\$120 per hour plus GST

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

Legislated fees Building Act 2011, Building Regulations 2012

Building Regulations 2012

Fees Schedule 2

Applications for building permits, demolition permits **Division 1**

Draft 7

Schedule 2 — Fees

[r. 11]

Division 1 — Applications for building permits, demolition permits

Item Application Fee

1. Certified application for a building permit (s. 16(l)) —

(a) for building work for a Class 1 or Class 10 building or incidental structure

0.19% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90

(b) for building work for a Class 2 to Class 9 building or incidental structure

0.09% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90

2. Uncertified application for a building permit (s. 16(l))

0.32% of the estimated value of the building work as determined by the relevant permit authority, but not less than \$90

3. Application for a demolition permit (s. 16(l)) —

(a) for demolition work in respect of a Class 1 or Class 10 building or incidental structure

\$90

(b) for demolition work in respect of a Class 2 to Class 9 building

\$90 for each storey of the building

4. Application to extend the time during which a building or demolition permit has effect (s. 32(3) (f))

\$90

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

**Division 2 — Application for occupancy permits,
building approval certificates
Item Application Fee**

1. Application for an occupancy permit for a completed building (s. 46)	\$90
2. Application for a temporary occupancy permit for an incomplete building (s. 47)	\$90
3. Application for modification of an occupancy permit for additional use of a building on a temporary basis (s. 48)	\$90
4. Application for a replacement occupancy permit for permanent change of the building's use, classification (s. 49)	\$90
5. Application for an occupancy permit or building approval certificate for registration (s. 50(1) and (2))	\$10 for each strata unit of strata scheme, plan of re-subdivision covered by the application, but not less than \$100
6. Application for an occupancy permit for a building in respect of which unauthorised work has been done (s. 51(2))	0.18% of the estimated value of the unauthorised work as determined by the relevant permit authority, but not less than \$90
7. Application for a building approval certificate for a building in respect of which unauthorised work has been done (s. 51(3))	0.38% of the estimated value of the unauthorised work as determined by the relevant permit authority, but not less than \$90
8. Application to replace an occupancy permit	\$90

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

for an existing building (s. 52(1))

9. Application for a building approval certificate for an existing building where unauthorised work has not been done \$90

10. Application to extent to extend the time during which an occupancy permit or building approval certificate has effect (s. 65(3) (a) (s. 52(2)) \$90

Building Regulations 2012 Part 8 Division 3 r.55 to r. 62: Smoke Alarms

Regulation r.61 Local Government approval of battery powered smoke alarms.

Application to Council for approval to install a battery powered smoke alarm (other than a mains powered alarm) regulated set fee \$170.00

As previously indicated in this report the proposed legislated fee structure changes do not provide a standard fee for a certification service where the Local Government has been requested to provide an independent certification service by the customer.

The new fees and charges are required to be approved by an Absolute Majority decision of Council in time for when applications are received after the commencement date of 2 April 2012. As there are currently no established benchmarks for certification services provided by Local Government any proposed fee structure for the delivery of services should be realistic and based on a competitive cost recovery plus a margin basis in order to maintain market demand and therefore fee revenue. The City must also pay due regard to National Competition Policy when setting fees so that it is not seen to be competing in an unfair manner with private industry by settings fees that do not reflect the full cost of carrying out the service including costs such as taxes that are not normally incurred by the City due to it's tax exempt status.

The fee schedule proposed in Table 1 above is for uncertified building applications and is supplementary to the regulated fees under the draft Building Regulations 2012.

FINANCIAL IMPLICATIONS

With respect to the impact of the new Building Act 2011 on the City's income received for building applications it is estimated that approximately 30% of residential applications and 95% of commercial applications may become privately certified applications.

The new Building Act 2011 provides the opportunity for Local Government to provide additional services to the industry in the form of inspection and certification services to customers. The proposed fee schedule for service is expected to provide potential for further financial income.

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk	Risk Mitigation Strategy
If no increases in Fees or Charges are prescribed for a service which the Council provides this may result in a reduction in income.	Moderate	Fees and Charges model for Certification Service is expected to attain a level of additional revenue for service.
If the City were to operate as a Permit Authority only and not provide a Certification Service the level of service to the City's ratepayers would be reduced	Moderate	The City should provide a Certification Service and maintain the expected level of service to customers and ratepayers.
Professional Indemnity and Public Liability insurance	Low	Adequate insurance cover for staff carrying out certification and inspection services
Ability to retain a sufficient number of qualified staff resources	Moderate	Fill current vacancies and attract qualified experienced resources

POLICY IMPLICATIONS

There is no Council policy which relates to the setting of non statutory Fees and Charges.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The three roles open to Local Government to undertake, two mandatory and one non-mandatory, have been highlighted above and are further detailed below.

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

1. Operate as a Permit issuing Authority for all applications received (Certified Applications) (i.e. building, demolition, occupancy permits) for all classifications of buildings (Class 1 and 10, and 2 to 9). (Prescribed legislated fee set).
2. Receiving, processing of building & demolition applications for Class 1 and 10 buildings and issuing a Certificated of Design Compliance (Uncertified Applications) prior to issuing of Permits. (Prescribed legislated fee set).
3. Provide a Certification Service (as Building Services currently provide) for all classification of buildings (i.e. Class 1 through to 10). (For a fee for service, in competition with private industry and other local authorities. No prescribed legislated fee set for this service).

The Local Government is obliged to accept Certified and Uncertified Applications (refer 1 and 2 above) and issue Building Permits for all Classes of buildings.

However Local Government may choose not to provide a Certification Service for Classes 2 to 9 buildings. Should the City resolve not to provide a certification service in competition with other providers it will only provide the prescribed services as required by the new Building Act 2011.

In addition to providing a Certification Service the City may undertake to carry out an inspection service for design, construction and building compliance, for a fee for service, in competition with private industry and other local authorities. No prescribed legislated fee is set for this service with the fee charged being up to the discretion of the Council subject to the requirements of the Local Government Act 1995, Regulations and National Competition Policy principles being met.

Conclusion

With the implementation of the new building legislation the State Government proposes to reform and modernise Local Government building control and overhaul the building industry.

The introduction of competition to the process for building certification will present challenges for Local Governments as consumers will have a choice of who they engage to provide the certification and inspection services and can therefore shop around for the least cost service provider should they so desire.

The new Building Act 2011 does however impose on the Local Government the role of a permit authority. This requires the Local Government to accept applications of a certified or uncertified nature and issue occupancy, building, and demolition permits including an enforcement role within the municipality.

This new model proposes to separate the process for assessment of building compliance (certifying) with the Building Codes of Australia and Australian Standards, and the issuing of the relevant building demolition and occupancy building permits.

The distinction and separation of processes will allow a suitably qualified registered building surveyor practitioner in private practice as well as qualified Building Surveyor employed by

**P12/3297 – PROPOSED BUILDING CERTIFICATION SERVICES AND FEE STRUCTURE
(AMREC) (ATTACHMENT)**

Local Government to offer a certification service to customers for buildings proposed within the municipality district.

The Building Act 2011 does allow the local authority as the permit authority to offer an “uncertified application” certification service for (Class 1 & 10) residential buildings whereby local ratepayers can demand their Local Government provide a certification and approval service. The City currently provides this complete service and therefore currently has the experience and expertise to provide a building certification service to the public.

In addition the Local Government can choose to provide a certification service which offers the same effective service of assessing and issuing of permits under the current Local Government (Miscellaneous Provisions) Act 1960 and the Building Regulations 1989.

The certification service would include the assessment of building applications, checking documentation, coordination of approvals from other authorities and City of Melville service areas including issuing of approval certificates for construction and occupation of buildings.

In offering this service the City is supported by a highly qualified, experienced and competent building surveying team who are trained to provide a professional certifying service as well as function as a permit authority.

It is recommended that Council endorse this proposal for the City of Melville to provide a building certification service in accordance with the Building Act 2011.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (3297)**ABSOLUTE MAJORITY**

At 6.36pm Cr Reidy moved, seconded Cr Barton -

That the Council:

- 1. Endorse the proposal for the City of Melville to provide a Building Certification and Inspection Service in addition to its mandated role as a permit authority in accordance with the Building Act 2011; and**
- 2. Adopt the fees schedule for Applications for Building Permits, Demolition Permits, Occupancy Permits and Building Approval Certificates as listed in Building Regulations 2012: Schedule 2; and**
- 3. In accordance with the Local Government Act 1995 Section 6.16 (3) (a) by Absolute Majority of the Council adopt the fees for discretionary services for Building Certification and Inspection Services as detailed in Table 1 (Attached) to be effective from 4 April 2012; and**
- 4. Receive a progress report after a period of 12 months from 4 April 2012 on a review of the Building Certification and Inspection Services and the schedule of fees in relation to the Building Act 2011.**

At 6.36pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (8/0)

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011
(AMREC) (ATTACHMENT)**

Ward : All
 Category : Operational
 Subject Index : Delegated Authority
 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 : Nil
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Tony Capobianco
 Manager Building 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 review decisions made by Officers.</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>

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)****KEY ISSUES / SUMMARY**

- State Government will implement the new Building Act 2011 (the Act) on 2 April 2012.
- The Act determines the role of Local Government and provides for the delegation of statutory powers under legislation.
- This report seeks approval under the Act that identifies officers be given delegated authority to ensure that the City's statutory responsibilities are carried out effectively.
- The current delegated authorities are to remain effective for the transitional periods prescribed in the new Building Act 2011 and the Local Government Act 1995 to allow applications received prior to 2 April 2012 to be effectively dealt with.

BACKGROUND

On 11 June 2011 the new Building Act 2011 was granted Royal Assent and the date it is to be proclaimed is expected to be 2 April 2012.

The new Building Act is intended to provide for the following:

- The annulment of the Local Government (Miscellaneous Provisions) Act 1960.

Authorities to issue:

- The repeal of the Building Regulations 1989 and the Local Government (Prohibition on Dealing in Land) Regulations 1973.
- Permits for building and demolition work.
- Standards for the construction and demolition of buildings and incidental structures.
- The use and maintenance and requirements in relation to existing buildings and incidental structures.
- Work affecting land other than the land on which the work is done.
- Delegation of the powers of a local government to a person employed by the Local Government. The Building Act 2011 enables a Council to delegate its powers and duties under the Act to any employee and not only to the Chief Executive Officer.

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)**

- The Act does not make provisions for the sub-delegation of powers and duties. Where the Council delegates a power and duty to an employee that power or duty cannot be further delegated to another employee.

LEGISLATION

Building Act 2011

DETAIL

The City currently has the following delegations under the provisions of the Local Government (Miscellaneous Provisions) Act 1960:

Delegations

[3298 Building Act 2011 Delegation of Authority](#)
[3298 Grant of Building Permit](#)
[3298 Grant of Demolition Permit](#)
[3298 Refuse an application for Building or Demolition Permit](#)
[3298 Impose Conditions on Permits](#)
[3298 Seek Further Information](#)
[3298 Grant Occupancy Permit and Building Approval Certificate](#)
[3298 Impose Conditions on Occupancy Permits and Building Approval Certificate](#)
[3298 Extend Period of Duration](#)
[3298 Finishes of Walls Close to Boundaries](#)
[3298 Authorised Person](#)
[3298 Building Orders](#)
[3298 Notice of Proposed Building Orders](#)
[3298 Revocation of Building Order](#)
[3298 Give Effect to Building Order](#)
[3298 Inspection and Copies of Building Records](#)

A review of the Building Act 2011 has been undertaken to identify those powers and duties that can be delegated to officers to ensure that the requirements of the Act are administered effectively.

The review has identified the listed sections of the Act as follows that can be delegated to the various officers holding the identified positions:

The proposed delegations to officers are based on the City's expectations of skills and qualifications in order to perform the required duties

Authorisation

The City currently has one authorisation under the Local Government (Miscellaneous Provisions) Act 1960 that provides authority to inspect swimming pools within the City.

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)**

With the introduction of the new Building Act 2011 existing authorisations will not be affected, however additional authorisations are required by officers to carry out relevant provisions under the new Building Act 2011. Given that the legislation has not come into effect the new authorisations can not be undertaken by officers until such time as it is proclaimed.

It is therefore proposed that the Council approves authorised officers and adopts the authorisation to be implemented at the time the legislation is proclaimed. The Council may under s. 96 of the new Building Act 2011, designate an employee as an authorised officer. The new Building Act 2011 authorises permit authorities (Local Governments) to designate employees as authorised persons. The following authorisations are therefore proposed in relation to different sections of the new Building Act 2011.

List of the following authorisations:

- s.100 Entry Powers
- s.101 Power after entry for compliance
- s.102 Obtaining information and documents
- s.103 Use force and assistance
- s.106 Apply for entry warrants

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)**

Section of the Building Act 2011	Proposed Delegation of Statutory Power
20	Grant of Building Permit
21	Grant of Demolition Permit
22	Refuse an application for Building or Demolition Permit
27(1) and (3)	Impose conditions, add, vary or revoke conditions imposed on a Building or Demolition Permit
55	Seek further information to enable determination of an application for a Building or Demolition Permit
58	Grant an Occupancy Permit and Building Approval Certificate
62(1) and (3)	Impose conditions an Occupancy Permit and a Building Approval Certificate and impose conditions or add, vary or revoke conditions imposed
65(4)	Extend the period during which an Occupancy Permit or Building Approval Certificate has effect
88(3)	Finishes of Walls Close to Boundaries. Impose a condition or make a building order in respect in which an outward facing side of a particular <i>close wall</i> as defined in the Act must be finished
96(3)	Authorised Persons. Designate an employee as an authorised officer
110(1)	Building Orders. Issue of building orders
111(1)	Notice of Proposed Building Orders. Issue notice of Proposed Building Orders
117	Revoke Building Order
118	Give effect to Building Order if non compliance exists
131(2)	Inspection and Copies of Building Records. Permit inspections or provide a copy of Building Records

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)**

The new Building Act 2011 enables a Local Government to authorise and commence legal action on its behalf against a person who commits an offence under the Act.

It is proposed that the Chief Executive Officer, Director Urban Planning, Executive Manager Legal Services and Manager of Building Services be authorised to commence legal proceedings against a person who commits an offence under the Act.

PUBLIC CONSULTATION/COMMUNICATION

In accordance with the Local Government Act 1995 and the new Building Act 2011 the legislative changes are not required to be separately advertised.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Local Government Act 1995;
Building Act 2011; and
Building Regulations 2012:

FINANCIAL IMPLICATIONS

There are no financial implications related to this report regarding delegated authority.

POLICY IMPLICATIONS

There is no Council Policy which relates to the Building Act 2011.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

There are no alternative options as the State legislation is expected to be proclaimed on 2 April 2012.

COMMENTS

The delegations of statutory powers under the Act will ensure that the statutory responsibilities of the City are carried out lawfully and effectively.

**P12/3298 – DELEGATION OF AUTHORITY UNDER THE BUILDING ACT 2011 (AMREC)
(ATTACHMENT)****CONCLUSION**

As it is proposed that various statutory powers under the new Building Act 2011 be delegated and officers authorised to instigate legal action under the Act. Where matters arise that may have potentially significant strategic, financial, legal or political implications those issues would be referred to the Council for determination.

OFFICER RECOMMENDATION & COUNCIL RESOLUTION (3298)**ABSOLUTE MAJORITY**

At 6.37pm Cr Reidy moved, seconded Cr Barton -

1. That the Council in accordance with Section 127 (3) of the Building Act 2011 delegates its statutory powers as nominated in the attached schedule of delegations. (Attachment – Schedule of Delegations) effective upon the proclamation of the Building Act 2011 and listed as follows:

[3298 Building Act 2011 Delegation of Authority](#)

[3298 Grant of Building Permit](#)

[3298 Grant of Demolition Permit](#)

[3298 Refuse an application for Building or Demolition Permit](#)

[3298 Impose Conditions on Permits](#)

[3298 Seek Further Information](#)

[3298 Grant Occupancy Permit and Building Approval Certificate](#)

[3298 Impose Conditions on Occupancy Permits and Building Approval Certificate](#)

[3298 Extend Period of Duration](#)

[3298 Finishes of Walls Close to Boundaries](#)

[3298 Authorised Person](#)

[3298 Building Orders](#)

[3298 Notice of Proposed Building Orders](#)

[3298 Revocation of Building Order](#)

[3298 Give Effect to Building Order](#)

[3298 Inspection and Copies of Building Records](#)

2. That the Council in accordance with Section 133 (1) of the Building Act 2011 authorises the Chief Executive Officer, Director Urban Planning and Manager Building Services to commence legal proceedings where offences have been identified in contravention of the Building Act 2011 effective upon the proclamation of the Building Act 2011

At 6.37pm the Mayor submitted the motion, which was declared

CARRIED BY ABSOLUTE MAJORITY (8/0)

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

12. MOTIONS WITHOUT NOTICE BY ABSOLUTE MAJORITY OF THE COUNCIL

Nil.

13. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

At 6.37pm Cr Barton moved, seconded Cr Kinnell -

That the meeting be closed to the public to permit discussion on Item P12/3301 Confidential Item – Purchase of Western Power Land 58 – 60 Murray Road, Bicton covered under Section 5.23 (2) (c) & (h) of the Local Government Act 1995, and Local Government (Administration) Regulations 1996 Clause 4A relating to the sale or purchase of property.

At 6.37pm the Mayor submitted the motion, which was declared

CARRIED (8/0)

There were no members of the public or members of the press in attendance when the meeting was closed to the public.

CONFIDENTIAL ITEM P12/3301 - PURCHASE OF WESTERN POWER LAND 58-60 MURRAY ROAD, BICTON (REC) (CONFIDENTIAL ATTACHMENT)

The report has previously been distributed to Elected Members under separate confidential cover at the Ordinary Council Meeting held on Tuesday, 20 March 2012.

OFFICER RECOMMENDATION (3301)**APPROVAL**

At 6.38pm Cr Barton moved, seconded Cr Taylor-Rees -

That the Council endorses the course of action identified within Confidential Attachment A.

Amendment

That the word Amended be inserted after "Confidential Attachment A."

Reason for Amendment

Ratification by the Council is required to make the acceptance by the Chief Executive Officer legally binding, as set out in the letter of acceptance by the Chief Executive Officer.

The wording of the Attachment has been changed to meet this requirement.

Mr Andrew Smith, Consultant was in attendance to respond to questions from Elected Members.

At 6.46pm Mr Smith entered the meeting.

COUNCIL RESOLUTION (3301)**APPROVAL**

At 6.54pm the Mayor submitted the substantive motion as amended –

That the Council endorses the course of action identified within Confidential Attachment A Amended.

At 6.55pm the Mayor declared the motion

CARRIED (8/0)

At 6.55pm Cr Reidy moved, seconded Cr Kinnell -

That the meeting come out from behind closed doors and the public be invited back into the meeting.

At 6.55pm the Mayor submitted the motion, which was declared

CARRIED (8/0)**14. CLOSURE**

There being no further business to discuss, His Worship the Mayor declared the meeting closed at 6.55pm.