

AGENDA.

Council Agenda Briefing

19 March 2024

Notice of Meeting

Mayor and Councillors

The next Council Agenda Briefing of the City of South Perth Council will be held on Tuesday 19 March 2024 in the City of South Perth Council Chamber, corner Sandgate Street and South Terrace, South Perth commencing at 6.00pm.



MIKE BRADFORD
CHIEF EXECUTIVE OFFICER

15 March 2024

Acknowledgement of Country

Kaartdjinin Nidja Nyungar Whadjuk Boodjar Koora Nidja Djining Noonakoort kaartdijin wangkiny, maam, gnarnk and boordier Nidja Whadjuk kura kura.

We acknowledge and pay our respects to the traditional custodians of this land, the Whadjuk people of the Noongar nation and their Elders past and present.

Our Guiding Values



Disclaimer

The City of South Perth disclaims any liability for any loss arising from any person or body relying on any statement, discussion, recommendation or decision made during this meeting.

Where an application for an approval, a licence or the like is discussed or determined during this meeting, the City warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the City.

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Council Agenda Briefing Meeting - Agenda

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

2. DISCLAIMER

3. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

4. ATTENDANCE

4.1 APOLOGIES

4.2 APPROVED LEAVE OF ABSENCE

Nil.

5. DECLARATIONS OF INTEREST

6. PUBLIC QUESTION TIME

This item will be dealt with at the Ordinary Council Meeting.

7. CONFIRMATION OF MINUTES AND TABLING OF NOTES OF BRIEFINGS

This item will be dealt with at the Ordinary Council Meeting.

8. PRESENTATIONS

8.1 PETITIONS

This item will be dealt with at the Ordinary Council Meeting.

8.2 GIFTS / AWARDS PRESENTED TO COUNCIL

This item will be dealt with at the Ordinary Council Meeting.

8.3 DEPUTATIONS

9. METHOD OF DEALING WITH AGENDA BUSINESS

This item will be dealt with at the Ordinary Council Meeting.

10. DRAFT REPORTS

10.1 STRATEGIC DIRECTION 1: COMMUNITY

10.1.1 Collier Park Village Business Plan

File Ref: D-23-50410
Author(s): Donna Shaw, Director Development and Community Services
Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

The purpose of this report is for Council to consider a business plan for the disposal of Collier Park Village pursuant to Section 3.59 of the *Local Government Act 1995*.

Officer Recommendation

That Council adopt the business plan for the disposal of Collier Park Village, pursuant to Section 3.59 of the *Local Government Act 1995*, for the purposes of public advertising.

Background

At its meeting held 31 October 2023, Council resolved to:

1. Endorse Amana Living Incorporated being the preferred proponent for the transfer of Collier Park Village.
2. Authorise the Chief Executive Officer to negotiate entering into a nonbinding Heads of Agreement with Amana Living Incorporated, for the transfer of ownership and operation of Collier Park Village, consistent with the criteria contained within the Request for Proposal and Amana Living Incorporated's response.
3. Authorise the Chief Executive Officer and the Mayor to execute the land transfer documents to effect the transfer of the Collier Park Village site from the State to the City in conditional freehold title and to enable a retirement village memorial to be placed on the site.

The following has since occurred:

- Amana Living Incorporated has been publicly announced as Council's preferred proponent for the transfer/ future operator of Collier Park Village (CPV);
- The City has agreed to the terms for the non-binding Heads of Agreement with Amana Living Incorporated that establishes the framework and key indicative terms for the proposed agreement between the parties for the transfer of CPV; and
- The City has liaised with the Department of Lands and agreed on the future permitted purpose of the land (i.e. accommodation and/or care for persons aged over 55 years and facilities and amenities to provide services to or for the support of, persons residing on or occupying the land), for any future development application on the site.

In accordance with Section 3.59 of the *Local Government Act 1995* (the Act), a Major Land Transaction Business Plan is required to be advertised to progress the transfer of CPV from the City to Amana Living Incorporated as detailed in this report.

Comment

Major Land Transaction

Section 3.59 of the Act details the process governing 'commercial enterprises' by local governments, including 'Major Land Transactions'. A 'Major Land Transaction' means the acquisition, disposal (sell, lease or otherwise dispose of, whether absolutely or not) or development of land that is not exempt under the Act, and where the total value of:

- (a) The consideration under the transaction; and
 - (b) Anything done by the local government for achieving the purpose of the transaction;
- is more or is worth more than either \$10m or 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year.

Disposal of the City's interest in CPV is considered a major land transaction under the Act, which requires a business plan to be prepared in accordance with section 3.59 of the Act and the Local Government (Functions and General) Regulations 1996 (the Regulations).

The business plan is required to include an overall assessment of the major trading undertaking or major land transaction and is to include details of:

- its expected effect on the provision of facilities and services by the local government; and
- its expected effect on other persons providing facilities and services in the district; and
- its expected financial effect on the local government; and
- its expected effect on matters referred to in the local government's current plan prepared under section 5.56 (Strategic Community Plan); and
- the ability of the local government to manage the undertaking or the performance of the transaction; and
- any other matter prescribed for the purposes of the subsection in the Act.

A business plan for the CPV at **Attachment (a)** has been developed to comply with the Act and the Regulations.

Additional Requirements

As previously detailed to Council, in addition to the Major Land Transaction Business Plan, prior to the completion of this transaction, the City must also:

- Obtain Ministerial approval to transfer the land from the Crown to the City and to change the tenure of the land to “conditional freehold” (retaining the conditional freehold provision of aged accommodation);
- Ensure the lodging of a memorial over the CPV land which gives notice that the land is only to be used as a retirement village and is evidence of the existence of a statutory charge against the land securing, in priority, to all other encumbrances, the resident’s right to a refund of the payment of a premium under the *Retirement Villages Act 1992*; and
- Obtain further Ministerial approval to transfer the land the Amana Living Incorporated for the purposes of a retirement village.

A further decision of Council is required as to the contract to transfer the village, which will be considered following completion of advertising of the business plan.

Consultation

The Major Land Transaction business plan requires consideration of public comments, prior to the transaction taking place. The public comment period, advertised State-wide, is to be open for a period of not less than six weeks (closing date for submissions will be 10 May 2024).

During this advertising period, submissions are invited from members of the public. Council must consider any submission received during the advertised period before it decides to proceed (or not) with the business plan.

Policy and Legislative Implications

Section 3.59 of the Act and Regulations 8 and 8A of the Regulations, require the City to prepare a Business Plan before it considers entering into a major land transaction and/or major trading undertaking.

The format for this Business Plan is prescribed in legislation.

Financial Implications

The preparation of the Major Land Transaction business plan was carried out within current budgetary allocations.

Key Risks and Considerations

Risk Event Outcome	<p>Legislative Breach</p> <p>Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation</p> <p>Reputational Damage</p> <p>Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.</p>
Risk rating	Medium
Mitigation and actions	<p>The City has limited expertise in retirement living and with the upcoming changes to the <i>Retirement Villages Act 1992</i>, it will become increasingly difficult for the City to fulfil its obligations under the <i>Retirement Villages Act 1992</i>.</p> <p>The transfer CPV from the City to Amana Living Incorporated cannot occur until the business plan requirements in section 3.59 of the Act have been fully complied with and only if Council has thereafter resolved to proceed with the transaction proposed in the business plan.</p>

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.1 Maintain current and plan, develop and facilitate community infrastructure to respond to community needs and priorities

Attachments

10.1.1 (a): Collier Park Village - Corporate Business Plan

10.1.2 RFT 10/2023 - Provision of Pump Track at George Burnett Park

File Reference: D-24-9261
Author(s): Adrian Jarvis, Recreation Development Officer
Patrick Quigley, Manager Community, Culture and Recreation
Reporting Officer(s): Donna Shaw, Director Development and Community Services

Summary

This report considers submissions received from the advertising of Tender 10/2023 for the Provision of a Pump Track at George Burnett Park including the design and delivery of the Pump Track.

This report will outline the assessment process used during evaluation of the tenders received and recommend approval of the tender that provides the best value for money and level of service to the City.

Officer Recommendation

That Council:

1. Accepts the tender submitted by Three Chillies Design Pty Ltd for the Provision of a Pump Track at George Burnett Park in accordance with Tender Number 10/2023 for the period of supply up to 30 June 2025 inclusive;
2. Accepts the tender price included in **Confidential Attachment (a)**;
3. Notes that tender price will be included in the Ordinary Council Meeting Minutes; and
4. Authorises the Chief Executive Officer to execute the contract with Three Chillies Design Pty Ltd for the Provision of a Pump Track at George Burnett Park.

Background

In 2018 the City of South Perth developed a Bike Plan in collaboration with the Town of Victoria Park. This Bike Plan identified George Burnett Park (the park) as a suitable location for a pump track. Additionally, in 2018/19 a Masterplan was developed for the George Burnett Recreation Precinct, which includes a recommendation for a Pump Track on the site nearby the skate park.

At its meeting held 23 November 2021, Council resolved to give future consideration of a Pump Track at the park; and for the City to investigate external funding opportunities to assist with the development of the proposed Pump Track.

At its meeting held 27 June 2023, Council resolved to adopt the City's 2023/24 Budget, which included an allocation of funds for a Pump Track. Since that time the City has also been able to source external funding for the project, which is outlined further in the 'Financial Implications' section of this report.

Comment

The park is a 24ha regional reserve located on Manning Road in Karawara. The Pump Track project will involve the design and construction of a purpose-built bicycle pump track to increase the overall amenity and utility of the park for local residents and visitors to the area. The project is also planned to include associated landscaping and a mountain bike jump line trail.

There are various other pump tracks with associated bike trails recently constructed around the Perth metropolitan area, including at Britannia Reserve (City of Vincent), Lake Monger (Town of Cambridge), and Boo Park (City of Fremantle).

The rationale for the addition of a bike jump trail at the park is to provide a cycling activity aimed at older children and youth/young adults, particularly for those bicycle users who are currently using local bushland areas for this purpose. In particular, in recent years the City has become aware of unauthorised bike jumps being built in bushlands in Karawara and Manning and the use of soil and bushland vegetation to create the jumps, which is damaging to the bush conservation areas. The addition of bike jumps alongside the pump track at the park seeks to address (or at least minimise) the damage caused by bike riders who are using local bushland areas.

The pump track will deliver a community recreation facility that is not currently available within the City, so it will provide a new recreational opportunity particularly for children and youth.

The pump track is planned to be installed in the flat, open grassed area between the George Burnett Leisure Centre and the skatepark. This site provides the most overall advantages, including:

- Effective synergies/linkage with the skate park and path network;
- It is situated away from surrounding residents so is less likely to generate noise complaints;
- It is located close to the car park for parents of young children who will drive to the site; and
- The proposed project site will not require tree removal.

The City is conscious of the need to minimise impact on the operation of the Manning Farmer's Market, held on Saturday mornings at the park. The City has met with the market proprietors to discuss the pump track and is currently working with them to develop a parking plan, including any areas of overflow parking, to ensure market parking requirements can best be met at the park.

A Request for Tender (RFT) 10/2023 for the Provision of Pump Track at George Burnett Park was advertised in The West Australian on 4 November 2023 and closed at 2pm on 30 January 2024.

The RFT process also involved a mandatory site briefing held at the park on 8 November 2023, which all potential respondents were required to attend.

Additionally, due to the park historically being used as a rubbish tip, the City arranged for a geotechnical study to be undertaken to inform the tender respondents. An extended tender response period was provided to allow all potential tenderers to assess the geotechnical report outcomes and consider relevant works as part of their tender submissions.

10.1.2 RFT 10/2023 - Provision of Pump Track at George Burnett Park

The project is to be completed and acquitted by 30 June 2025 (as this is a funding body requirement).

At the close of the tender advertising period, two submissions had been received and these are tabled below:

TABLE A – Tender Submissions

Tender Submission
1. Common Ground Trails Pty Ltd
2. Three Chillies Design Pty Ltd

All tenders were initially reviewed against the compliance criteria before being reviewed by an evaluation panel and assessed according to qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Relevant Experience	30%
2. Key Personnel, Skills and Resources	20%
3. Demonstrated understanding and Methodology	30%
4. Timeframes	10%
5. Price	10%
Total	100%

Based on the assessment of all submissions received for Tender 10/2023 Provision of Pump Track at George Burnett Park, it is recommended that the tender submission from Three Chillies Design Pty Ltd be accepted by Council as the preferred tender.

More detailed information about the assessment process can be found in the Recommendation Report – **Confidential Attachment (a)**.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995* (the Act).

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

The total anticipated cost of the entire project is \$600,000, which includes the pump track, bike jump trail and landscaping/amenities around the cycling facilities (i.e. turf reinstatement, plantings, mulching, and associated infrastructure like seating, water fountains etc). Half of this project cost (\$300,000) is allocated for the pump track and bike jump trail itself, which is the subject of this tender.

The majority of required project funds have already been secured by the City sourcing the following external funding:

- \$300,516 – has been approved through the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Local Roads and Community Infrastructure Program).
- \$100,000 – has been approved through Lotterywest. These funds were provided towards the provision of the landscaping components.

The remaining funds required to undertake the project (\$199,484) will be sourced with a municipal funding allocation within the City's 2024/25 Budget.

Key Risks and Considerations

Risk Event Outcome	Business Interruption Incorporates the impact of events which impinge upon the City's capacity to deliver expected services to the community. These interruptions can range from minor inconvenience requiring an alternative method of service delivery being employed through to forced loss of ability to provide multiple services to all or some of the community. Knowledge loss, technological failure and property damage will also contribute to this outcome
Risk rating	Low
Mitigation and actions	Failure to establish a contract for the Supply and Installation of the Pump Track may impact on the ability of the City to meeting grant funding timeframes Approval of the tender report at the March 2024 OCM.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.1 Maintain current and plan, develop and facilitate community infrastructure to respond to community needs and priorities

Attachments

10.1.2 (a):	RFT 10/2023 - Provision of Pump Track at George Burnett Park - Recommendation Report (<i>Confidential</i>)
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10.1.3 RFT 11/2023 - Provision of Lift Maintenance Services

File Reference: D-24-8220
Author(s): Andy Robinson, Facilities Coordinator
Con Angelidis, Manager Waste, Fleet & Facilities
Reporting Officer(s): Anita Amprimo, Director Infrastructure Services

Summary

This report considers submissions received from the advertising of Tender 11/2023 for the Provision of Lift Maintenance Services.

This report will outline the assessment process used during evaluation of the tenders received and recommend approval of the tender that provides the best value for money and level of service to the City.

Officer Recommendation

That Council:

1. Accepts the tender submitted by TK Elevator for the Provision of Lift Maintenance Services in accordance with Tender 11/2023 for the period of supply up to five years inclusive;
2. Accepts the tender price included in **Confidential Attachment (a)**;
3. Notes that tender price will be included in the Ordinary Council Meeting Minutes; and
4. Authorises the Chief Executive Officer to execute the contract with TK Elevator for the Provision of Lift Maintenance Services.

Background

A Request for Tender (RFT) 11/2023 for the Provision of Lift Maintenance Services was advertised in The West Australian on Saturday 25 November 2023 and closed at 2pm on Tuesday 16 January 2024.

Tenders were invited as a Schedule of Rates:

- Schedule 1A - Comprehensive Inspection and Maintenance, Breakdown Repairs and Digital Services
- Schedule 1B - Labour & Material Rates (For Repairs not Covered in Comprehensive Contract)

The contract is for the period of three years and includes one option to extend the contract for a further 24 months exercisable at the sole discretion of the City.

Comment

At the close of the tender advertising period two submissions had been received and these are tabled below:

TABLE A – Tender Submissions

Tender Submission
TK Elevator
Schindler Lifts Australia

The Tenders were reviewed by an Evaluation Panel and assessed according to the qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Relevant Experience	30%
2. Key Personnel, Skills & Resources	20%
3. Demonstrated Understanding	30%
4. Asset Management & Quality Management System inc. Scheduling, Digital Reporting of inspections with safety information sheet	20%
Total	100%

Based on the assessment of all submissions received for RFT 11/2023 Provision of Lift Maintenance Services, it is recommended that the tender submission from TK Elevator be accepted by Council.

More detailed information about the assessment process can be found in the Recommendation Report – **Confidential Attachment (a)**.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995* (the Act).

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250,000 unless subregulation (2) states otherwise.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

The full cost of the annual works is included in the 2023/24 operational budget. The costs for the subsequent years will be sought in the future City operational budgets for the life of the contract.

Key Risks and Considerations

Risk Event Outcome	Business Interruption Incorporates the impact of events which impinge upon the City's capacity to deliver expected services to the community. These interruptions can range from minor inconvenience requiring an alternative method of service delivery being employed through to forced loss of ability to provide multiple services to all or some of the community. Knowledge loss, technological failure and property damage will also contribute to this outcome.
	Property Damage Relates to damage or destruction of City assets. Causes include but are not limited to theft, vandalism, fire or water damage and failure to adequately insure buildings, property and assets.
Risk rating	Low
Mitigation and actions	Approval of the report at the March OCM.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.1 Maintain current and plan, develop and facilitate community infrastructure to respond to community needs and priorities

Attachments

10.1.3 (a):	RFT 11/2023 - Provision of Lift Maintenance Services - Recommendation Report (<i>Confidential</i>)
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10.1.4 RFT 13/2023 - Comer Public Toilet Upgrade

File Reference: D-24-8223
Author(s): Andy Robinson, Facilities Coordinator
Con Angelidis, Manager Waste, Fleet & Facilities
Reporting Officer(s): Anita Amprimo, Director Infrastructure Services

Summary

This report considers submissions received from the advertising of Tender 13/2023 for the Comer Public Toilet Upgrade.

This report will outline the assessment process used during evaluation of the tenders received and recommend approval of the tender that provides the best value for money and level of service to the City.

Officer Recommendation

That Council:

1. Accepts the tender submitted by West to West Carpentry Services Pty Ltd for the Comer Public Toilet Upgrade in accordance with Tender Number 13/2023 for the period of supply up to 30 June 2024 inclusive;
2. Accepts the tender price included in **Confidential Attachment (a)**;
3. Notes that tender price will be included in the Ordinary Council Meeting Minutes; and
4. Authorises the Chief Executive Officer to execute the contract with West to West Carpentry Services Pty Ltd for the Comer Public Toilet Upgrade.

Background

A Request for Tender (RFT) 13/2023 for the Comer Public Toilet Upgrade was advertised in The West Australian on Saturday 16 December 2023 and closed at 2pm on Tuesday 30 January 2024.

The scope of works include includes refurbishment of the existing building that will modernise the facility and bring the toilet up to current standards as the existing facility is not fit for purpose. An impression and layout plan of the proposed works can be found at **Attachment (b)**.

Tenders were invited as a Lump Sum Contract.

The contract is for the period of the duration of the project with a one-year Defect Liability Period (DLP).

Comment

At the close of the tender advertising period, seven submissions were received, and these are tabled below:

TABLE A – Tender Submissions

Tender Submission
AE Hoskins Building Services
Bello Designs & Construct Pty Ltd
Brausch Construction Group
Geared Construction Pty Ltd
O'Neill's Design Construction
Schlager Group Pty Ltd
West to West Carpentry Services Pty Ltd

The Tenders were reviewed by an Evaluation Panel and assessed according to the qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Relevant Experience	40%
2. Skills and experience of key personnel	30%
3. A Demonstrated understanding of the required tasks	30%
Total	100%

Based on the assessment of all submissions received for RFT 13/2023 Comer Public Toilet Upgrade, it is recommended that the tender submission from West to West Carpentry Services Pty Ltd be accepted by Council.

More detailed information about the assessment process can be found in the Recommendation Report – **Confidential Attachment (a)**.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995* (the Act).

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250,000 unless subregulation (2) states otherwise.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

The City's 2023/24 Annual Budget makes provision for the Comer Public Toilet Upgrade. A budget amendment was approved at the Ordinary Meeting of Council on 27 February 2024 to increase the budget to \$450,000. The price for the recommended Tenderer is within this budget allocation.

Key Risks and Considerations

Risk Event Outcome	Business Interruption Incorporates the impact of events which impinge upon the City's capacity to deliver expected services to the community. These interruptions can range from minor inconvenience requiring an alternative method of service delivery being employed through to forced loss of ability to provide multiple services to all or some of the community. Knowledge loss, technological failure and property damage will also contribute to this outcome
Risk rating	Low
Mitigation and actions	Approval of the report at the March OCM

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.2 Effectively develop, manage and optimise the use of the City's properties, assets and facilities

Attachments

10.1.4 (a):	RFT 13/2023 - Comer Public Toilet Upgrade - Recommendation Report (<i>Confidential</i>)
10.1.4 (b):	Comer PT - Proposed Floor Plan

10.1.5 RFT 1/2024 - Provision of Graffiti Removal & High Pressure Cleaning

File Reference: D-24-8214
Author(s): Andy Robinson, Facilities Coordinator
Con Angelidis, Manager Waste, Fleet & Facilities
Reporting Officer(s): Anita Amprimo, Director Infrastructure Services

Summary

This report considers submissions received from the advertising of Tender 1/2024 for the Provision of Graffiti Removal & High Pressure Cleaning.

This report will outline the assessment process used during evaluation of the tenders received and recommend approval of the tender that provides the best value for money and level of service to the City.

Officer Recommendation

That Council:

1. Accepts the tender submitted by Kleenit Pty Ltd for the Provision of Graffiti Removal & High Pressure Cleaning in accordance with Tender 1/2024 for the period of supply up to five years inclusive;
2. Accepts the tender price included in **Confidential Attachment (a)**;
3. Notes that tender price will be included in the Ordinary Council Meeting Minutes; and
4. Authorises the Chief Executive Officer to execute the contract with Kleenit Pty Ltd for the Provision of Graffiti Removal & High Pressure Cleaning.

Background

A Request for Tender (RFT) 1/2024 for the Provision of Graffiti Removal & High Pressure Cleaning was advertised in The West Australian on Saturday 20 January 2024 and closed at 2pm on Tuesday 6 February 2024.

Tenders were invited on a Schedule of Rates basis:

- Schedule 1A - Graffiti Removal Services
- Schedule 1B - High Pressure Cleaning Services

The contract is for the period of three years and includes one option to extend the contract for a further 24 months at the sole discretion of the City.

Comment

At the close of the tender advertising period six submissions had been received and these are tabled below:

TABLE A – Tender Submissions

Tender Submission
Blackhawk Xpress
Graffiti Systems Australia
Kleenit Pty Ltd
Russell Jones
FCT Trust
UQGFLZ

The Tenders were reviewed by an Evaluation Panel and assessed according to the qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Relevant Experience	40%
2. Key Personnel, Skills & Resources	30%
3. Demonstrated Understanding of the Requirements	30%
Total	100%

Based on the assessment of all submissions received for Tender 1/2024 Provision of Graffiti Removal & High Pressure Cleaning, it is recommended that the tender submission from Kleenit Pty Ltd be accepted by Council.

More detailed information about the assessment process can be found in the Recommendation Report – **Confidential Attachment (a)**.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995* (the Act).

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250,000 unless subregulation (2) states otherwise.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

The full cost of the annual works is included in the 2023/24 operational budget. The costs for the subsequent years will be sought in the future City operational budgets for the life of the contract.

Key Risks and Considerations

Risk Event Outcome	<p>Property Damage</p> <p>Relates to damage or destruction of City assets. Causes include but are not limited to theft, vandalism, fire or water damage and failure to adequately insure buildings, property, and assets.</p> <p>Reputational Damage</p> <p>Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.</p>
Risk rating	Low
Mitigation and actions	Approval of the report at the March OCM.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.1 Maintain current and plan, develop and facilitate community infrastructure to respond to community needs and priorities

Attachments

10.1.5 (a):	RFT 1/2024 - Provision of Graffiti Removal & High Pressure Cleaning - Recommendation Report (<i>Confidential</i>)
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10.3 STRATEGIC DIRECTION 3: ENVIRONMENT (BUILT AND NATURAL)

10.3.1 Proposed Outbuilding - Lot 100, No. 20 Clydesdale Street (Neil McDougall Park), Como

Location:	Lot 100, No. 20 Clydesdale Street (Neil McDougall Park), Como
Ward:	Como Ward
Applicant:	Action Sheds Australia Pty Ltd
File Reference:	D-24-6663
DA Lodgement Date:	26 October 2023
Author(s):	Heidi Miragliotta, Urban Planner
Reporting Officer(s):	Donna Shaw, Director Development and Community Services

Summary

The purpose of this report is to consider an application for development approval for an Outbuilding at Neil McDougall Park, to be leased to the South Perth Society of Arts and Crafts.

This item is referred to Council as Neil McDougall Park is a Category B Heritage listed place and the proposal is for works by a private entity on City owned land and therefore falls outside of the delegation to officers.

Should Council resolve to approve the development application, the existing lease will be required to be amended to include the portion of the reserve where the Outbuilding is proposed to be located.

For reasons outlined in this report, it is recommended that the application be approved, and the lease be amended.

Officer Recommendation

1. That pursuant to the provisions of the City of South Perth Town Planning Scheme No.6, the application for development approval for the construction of an outbuilding at Lot 100, No. 20 Clydesdale Street (Neil McDougall Park), Como, **be approved** subject to the following conditions:
 - i) The development shall be carried out only in accordance with the terms of the application as approved herein, and any approved plan.
 - ii) Prior to or in conjunction with the submission of a building permit application, the applicant must be in receipt of an approved "Stormwater Drainage Application" that confirms the design is to the satisfaction of the City of South Perth. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of South Perth.
 - iii) All existing trees shall be retained on site and protected during the works in accordance with AS 4970-2009 – Protection of trees on development sites, to the satisfaction of the City of South Perth.

- iv) Prior to or in conjunction with the submission of a building permit application, the applicant is to submit to a final material, colours and finishes schedule and approved in writing to the satisfaction of the City of South Perth.
- 2. That Council:
 - a) Approves the surrender of lease and new lease for part Lot 100 on Diagram 71837, Como to South Perth Society of Arts and Crafts (Incorporated) consistent with the terms of the lease executed 16 February 2024 subject to a variation of the leased premises to include the outbuilding; and
 - b) Approves an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the Local Government (Functions and General) Regulations 1996 for the lease of part Lot 100 on Diagram 71837, Como.

Applicant Details	Action Sheds Pty Ltd
Landowner	City of South Perth

Development Site Details

The development site details are as follows:

Zoning	Parks and Recreation
Density coding	N/A
Lot area	8.37ha
Building height limit	N/A

Comment

(a) Background

On 26 October 2023, the City accepted an application for additions to an existing Outbuilding on Neil McDougall Park, currently leased to the South Perth Society of Arts and Crafts (SPSAC), for the purposes of storing book binding equipment.

The applicant originally sought approval for the Outbuilding to be located at the front of the site to the south of Hazel McDougall House, directly adjacent to an existing Outbuilding used by SPSAC.

This location was not supported by the City as it would have been highly visible from the street and would obstruct views of the heritage building.

The applicant subsequently considered several alternative locations within the site and submitted amended plans to locate the Outbuilding to the south east corner of Hazel McDougall House.

Whilst the development proposed is minor in nature, this item is referred to Council following the amendment of Delegation DC690 Town Planning Scheme 6 (TPS6) by Council in June 2023, which removed the delegation to officers to consider any development applications on City owned or managed land by a private entity, irrespective of the scale of development.

This has been addressed in the review of Delegation DC690 at the March 2024 Audit, Risk and Governance Committee, as a consequence of the imminent gazettal of Local Planning Scheme 7 (LPS 7).

(b) Description of the surrounding locality

McDougall Dairy Farm and Farmhouse (Former), now known as Neil McDougall Park and Hazel McDougall House respectively, once formed part of the McDougall dairy farm established in 1914. In 1964 an area of 6,070m² around the house was fenced, and the remainder of the land created as a park by the City of South Perth.

The buildings within the park which are leased to SPSAC comprise Hazel McDougall House as depicted in the site photographs at **Attachment (a)**.

The site has frontage to Clydesdale Street to the west and is bounded by the remainder of Neil McDougall Park to the north, east and south as seen in Figures 1 and 2 below:

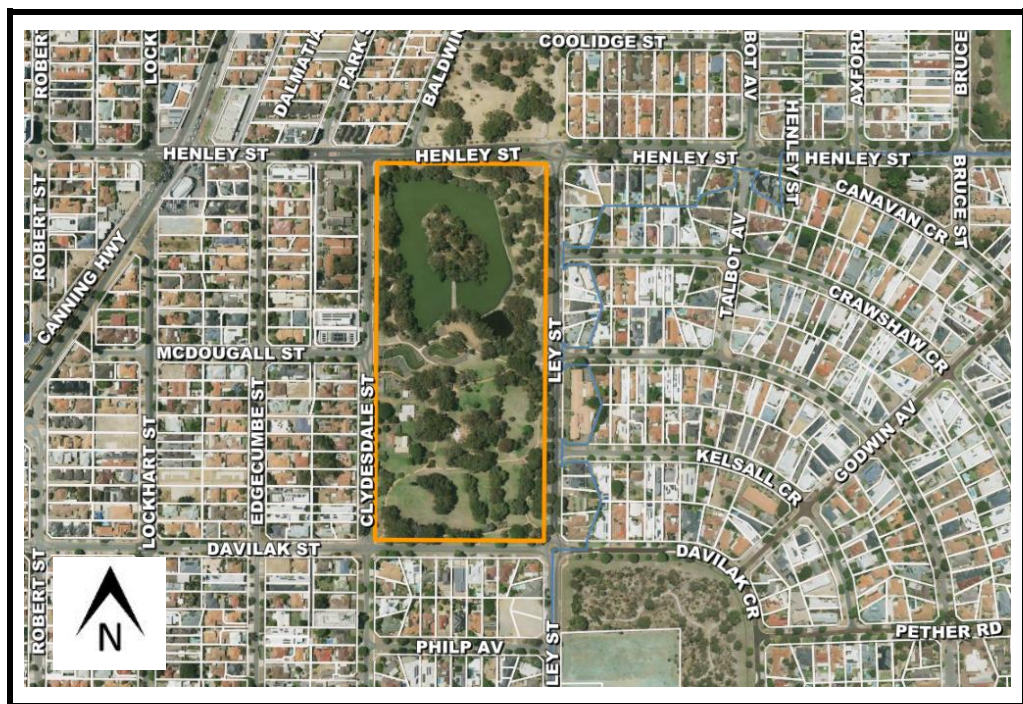


Figure 1: Aerial image of the subject site

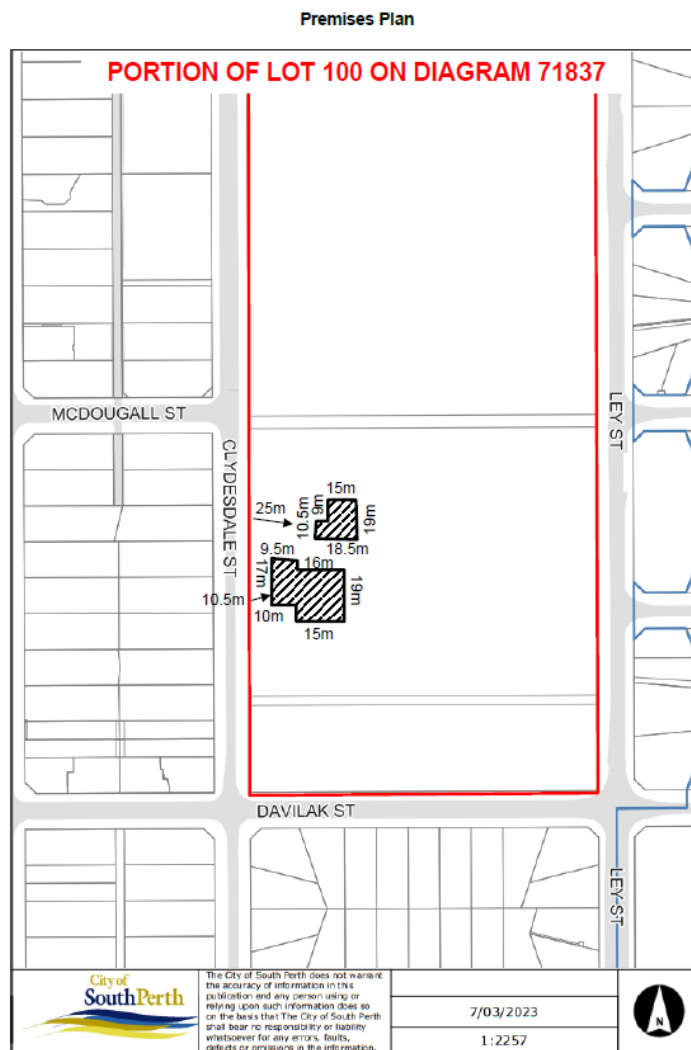


Figure 2: Buildings under the Lease of the South Perth Society of Arts and Crafts

(c) Description of the Proposal

The proposed Outbuilding is 3.9m wide x 8.0m long x 2.4m high and will be constructed of Colorbond, finished in a colour similar to existing structures on the site as depicted in **Attachment (b)**.

The Outbuilding is proposed to be located behind existing buildings and trees, 1.0m from the rear fence and 3.2m from the southern fence. No trees are required to be removed to accommodate the development nor will be impacted by the construction. The proposed works are depicted in the plans submitted at **Attachment (c)**.

(d) Amendment to Lease Area

The premises plan of the lease area in the event of the outbuilding receiving approval from Council, will need to be amended.

The proponent has been granted a lease by the City of South Perth for part Lot 100 on Diagram 588291. This lease is in term until the 30 April 2028. The leased premises comprises Hazel McDougall House and the adjacent Cow Shed and does not extend to any part of the surrounding land. To include the outbuilding within the leased premises, a surrender of lease and new lease granting the additional area of land is required.

The City is bound by specific conditions under the *Local Government Act 1995* with regard to the disposal of property. Section 3.58 of the Act enables a local government to dispose of a property to the highest bidder at a public auction, by way of a public tender process or by giving local public notice of the proposed disposition and following the public consultation process as prescribed by sub-section section 3.58 (3) of the *Act*. In this context, disposing of a property means to 'sell, lease or otherwise dispose of, whether absolutely or not.'

South Perth Society of Art and Crafts (Incorporated) are a registered not-for-profit association and are eligible for an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the Local Government (Functions and General) Regulations 1996. As such, disposal (lease) of this portion of the site is not required to be advertised and it is recommended that the lease area is extended to include the addition to the outbuilding, should development approval be granted.

An exemption is also sought under section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the Local Government (Functions and General) Regulations 1996 for the lease of part Lot 100 on Diagram 71837, Como. The exemption would permit the lease to be amended without the need for advertising.

(e) Planning framework

TPS 6 does not provide development standards to assess works located on land reserved for Parks and Recreation. The proposed works are therefore considered against Clause 67(2) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, the objectives of TPS 6, and draft LPS 7.

The Department of Planning, Lands and Heritage have advised that draft LPS 7 will be presented to the Minister for Planning for signing imminently with gazettal following shortly after.

The subject site is reserved Parks and Recreation under draft LPS 7; draft LPS 7 does not provide development standards to assess works located on land reserved Parks and Recreation and therefore the proposed works are required to be considered against the Reserve Objectives as outlined in Table 1 of draft LPS 7 and Clause 67(2) of the Deemed Provisions. A dual assessment has been undertaken given that LPS 7 may be gazetted during the preparation of this agenda prior to Council's consideration.

(f) Scheme Objectives: Clause 1.6 of Town Planning Scheme No. 6

In considering the application, the local government is required to have due regard to, and may impose conditions with respect to, matters listed in clause 1.6 of TPS6, which are, in the opinion of the local government, relevant to the proposed development.

The matters relevant to the proposal are:

- (f) Safeguard and enhance the amenity of residential areas and ensure that new development is in harmony with the character and scale of existing residential development;*
- (h) Utilise and build on existing community facilities and services and make more efficient and effective use of new services and facilities; and*
- k) recognise and preserve areas, buildings and sites of heritage value.*

The proposed Outbuilding will be located at the rear of the site away from the adjoining street and heritage listed buildings. The proposed Outbuilding will support the existing community facility on the site.

It is considered that the scale and location of the proposed structure will not detract from the character of the heritage place and ensures the retention of existing trees. The proposed development is considered satisfactory and is in accordance with the objectives of TPS 6.

(g) Reserve Objectives: Table 1 of Draft Local Planning Scheme No. 7

In considering an application for development approval, the local government is to have due regard to, and may impose conditions with respect to, the objectives listed in Table 1 of draft LPS 7, which are, in the opinion of the local government, relevant to the proposed development.

The matter relevant to this proposal is:

- *To provide for a range of active and passive recreation uses such as recreation buildings and courts and associated car parking and drainage.*

The proposed Outbuilding will provide additional storage for the SPSAC which facilitates recreational activities for its members.

(h) Matters to be considered by Local Government: Clause 67(2) of the Deemed Provisions for Local Planning Schemes

In considering an application for development approval, the local government is to have due regard to the matters listed in clause 67(2) of the Deemed Provisions to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application.

The matters relevant to the proposal are:

- (l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;*
- (m) the compatibility of the development with its setting including –*
 - (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) the amenity of the locality including the following –*
 - (ii) the character of the locality.*
- (k) the built heritage conservation of any place that is of cultural significance;*

The proposed Outbuilding will be located behind existing buildings and trees and will therefore have no impact on the cultural significance of the existing heritage building. The materials and colours are compatible with existing development on the site. The proposed works will not have an undue impact on the general amenity and character of the area.

(i) Consultation

Nil.

Policy and Legislative Implications

In accordance with clause 68(2) of the Deemed Provisions, the local government may determine an application for development approval by -

- (a) granting development approval without conditions; or
- (b) granting development approval with conditions; or
- (c) refusing to grant development approval.

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	Reputational Damage Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.
Risk rating	Low
Mitigation and actions	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.2 Sustainable built form
Strategy:	3.2.1 Develop and implement a sustainable local planning framework to meet current and future community needs

Sustainability Implications

Nil.

Conclusion

It is considered that the proposal meets the relevant objectives and provisions of TPS 6, draft LPS 7 and the Deemed Provisions. It is considered that the scale and location of the proposed Outbuilding will not detract from the character of the heritage place nor detrimentally impact the residential amenity of adjacent residential dwellings.

Accordingly, it is recommended that the application be approved subject to conditions, and the existing lease being amended to include the proposed Outbuilding location.

Attachments

10.3.1 (a):	Attachment (a) - Site Photographs
10.3.1 (b):	Attachment (b) - Plan View and Elevations
10.3.1 (c):	Attachment (c) - Site Plan

10.3.2 Design Review Panel - Appointment of Panel Members

File Ref: D-24-5973
Author(s): Donna Shaw, Director Development and Community Services
Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

The purpose of this report is for Council to consider appointing members to the City of South Perth Design Review Panel for a two-year period.

Officer Recommendation

That Council appoints the following candidates to the City of South Perth Design Review Panel for a term of two years:

- (a) Applicant A as chairperson
- (b) Applicant B as a member
- (c) Applicant C as a member
- (d) Applicant D as member
- (e) Applicant F as member
- (f) Applicant G as member
- (g) Applicant H as member
- (h) Applicant I as member
- (i) Applicant J as member
- (j) Applicant K as member

As contained within **Confidential Attachment (a)**.

Background

The City's Design Review Panel (DRP) is responsible for reviewing development applications and providing independent expert design advice to the City. The panel does not make any decisions on applications, nor does it liaise directly with applicants and other interested parties outside of the meetings.

The advice provided often influences improved built form outcomes prior to formal lodgement of a development application and is increasingly being recognised by State Government decision makers and the State Administrative Tribunal (SAT) where decisions regarding quality of design are concerned.

DRPs are typically required to operate in accordance with Terms of Reference to ensure DRPs function effectively. Members are also required to adhere to the City's Code of Conduct, with members remunerated as part of their appointment to the panel.

The City's DRP is seen as an exemplar example of a DRP and the City has hosted a number of officers from other local governments to observe the DRP in operation. The history of the Policy framework supporting the DRP is detailed below.

- The City has operated a Design Advisory Consultants group since the early 1960s.
- Planning Policy P371 - Design Advisory Committee (DAC) was endorsed in April 1999. This Policy stated that a selection of members will be determined at the discretion of the Council, which was then rescinded.
- In May 2005 as part of its consideration of Policy P502 relating to Community Advisory Groups, Council resolved *the reappointment of the Design Advisory Committee group be deferred until such time as a policy is developed and, in the meantime, the current membership of the DAC group stands.*
- At its meeting held 26 March 2008, Council adopted Policy P371 - Design Advisory Consultants, and also sought expressions of interest for new interested architects to join, as well as inviting present members to renominate.
- In 2019, as part of the introduction of State Planning Policy 7.0 - Design of the Built Environment, the Design Review Guide was released to assist local governments with the establishment and operation of design review panels.
- Local Planning Policy – Design Review Panel P303 was adopted by Council in 2013 and recently reviewed and adopted by Council at its 31 October 2023 Ordinary Meeting.

On 23 January 2024, the City sought expressions of interest (EOI) from suitably qualified and experienced professionals to join the pool of DRP members for a two-year term as a member or as the Chairperson.

This report presents the findings of the EOI, with a recommendation to vary the provisions of Local Planning Policy P303 (Policy P303) to appoint additional members to the DRP.

Comment

DRP Member Appointment Process

An EOI seeking nominations from suitably qualified and experienced professionals to join the DRP was undertaken between 23 January 2024 to 14 February 2024.

The criteria used to determine the shortlisting of nominations and recommendation for appointment is in accordance with the Terms of Reference contained in Policy P303.

Details of the candidates, their ability to meet the criteria and whether they were nominating for appointment as Chair or panel member is included in **Confidential Attachment (a)**.

Panel Membership

The City's current DRP operates with a pool of up to six members in accordance with Policy P303 from a range of disciplines, with panels typically comprising four members including the Chair.

Given the quality of nominations received during the EOI, it is recommended that Policy P303 be varied in this instance to appoint 10 members to the DRP pool. The DRP panel itself will remain unchanged, with up to four members comprising each panel.

This will enable the City to tailor each panel with suitable members based on the respective discipline of the panel members depending on the nature of the proposal (e.g. a member with heritage experience for proposals involving heritage listed places).

Applicant Fees and Remuneration

Fees associated with DRPs are not prescribed in Planning Regulations and as such, each local government determines fees for use of the DRP as well as remuneration for DRP members as part of their annual budget.

The City currently charges applicants \$850 per item reviewed, per meeting. The following details applicant fees for other local government DRPs for context:

Local Government	Applicant Fees
City of Vincent	\$705 per item
City of Nedlands	\$5,000, including two full DRP reviews plus a third review by the Chair only.
City of Bayswater	\$2,500 for an unlimited number of reviews
City of Stirling	First meeting – free Subsequent meetings - \$1,250

The following details remuneration for DRP members for other local government DRPs for context:

Local Government	Remuneration
City of Vincent	Chairperson - \$500 per meeting including preparation prior to meeting, review of minutes and provision of final advice to the City. Panel Members - \$400 per meeting including preparation.
City of Subiaco	All - \$225 per hr inclusive of GST up to a maximum of 3hrs per meeting. Chairperson receives an additional \$100 per meeting.
City of Stirling	Chairperson - \$275 per hour plus 1hr of preparation Panel Member - \$240 per hour plus 1hr of preparation
City of Swan	Chairperson - \$250 per hour, capped at 3hrs plus 1hr preparation. Panel Member - \$200 per hour, as above

Policy P303 states that fees for the DRP shall be in accordance with Council's adopted fees and charges. A review of both the remuneration for DRP members and applicant fees will be undertaken as part of the 2024/25 budget preparation.

Future Use

The City's DRP has previously been used by the City of Mandurah, and the City has been approached by the Shire of Murray for this purpose. The City intends to enable shared use of its DRP to those local governments without a DRP, subject to payment of the required fees plus a nominal administrative fee to the City. This will also be considered as part of the 2024/25 budget preparation.

Consultation

Nil.

Policy and Legislative Implications

Local Planning Policy – Design Review Panel P303

Financial Implications

Remuneration fees in accordance with Council's adopted fees and charges.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation.
Risk rating	Low
Mitigation and actions	Review of all City policies on a regular basis.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.2 Sustainable built form
Strategy:	3.2.1 Develop and implement a sustainable local planning framework to meet current and future community needs

Attachments

10.3.2 (a):	City of South Perth Design Review Panel - Selection Criteria Matrix (<i>Confidential</i>)
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10.4 STRATEGIC DIRECTION 4: LEADERSHIP

10.4.1 Listing of Payments February 2024

File Ref: D-24-10164
Author(s): Abrie Lacock, Manager Finance
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report presents to Council a list of accounts paid under delegated authority between 1 February 2024 to 29 February 2024 for information. It also includes purchase card transactions between 1 January 2024 to 31 January 2024 in line with new legislative requirements. The City made the following payments:

EFT Payments to Creditors	(496)	\$4,278,374.46
Cheque Payment to Creditors	(1)	\$18,060.00
Total Monthly Payments to Creditors	(497)	\$4,296,434.46
EFT Payments to Non-Creditors	(77)	\$186,497.86
Cheque Payments to Non-Creditors	(12)	\$9,643.31
Total EFT & Cheque Payments	(586)	\$4,492,575.63
Credit Card Payments	(68)	\$12,990.32
Fleet Card Payments	(60)	\$5,175.78
Total Payments	(714)	\$4,510,741.73

Officer Recommendation

That Council receives the Listing of Payments for the month of February 2024 as detailed in **Attachment (a)**.

Background

Council has delegated to the Chief Executive Officer (CEO) the exercise of power to make payments from its Municipal and Trust Funds. In accordance with regulation 13(1) of the Local Government (Financial Management) Regulations 1996, a list of accounts paid by the CEO is to be prepared each month and presented to Council at the next Ordinary Meeting of the Council after the list is prepared. The Local Government (Financial Management) Regulations 1996 have been amended. Regulation 13A have been inserted requiring payments made with purchase cards to be included in the list of accounts paid.

Comment

The payment listing for February 2024 is included in **Attachment (a)**.

The attached report includes a "Description" for each payment. The City's officers have used best endeavours to redact (in black) information of a private or confidential nature.

The report records payments are classified as:

- Creditor Payments

These include payments by both cheque and EFT to regular suppliers with whom the City transacts business. The reference numbers represent a batch number of each payment.

- Non-Creditor Payments

These are one-off payments that include both cheque and EFT that are made to individuals/suppliers who are not listed as regular suppliers. The reference numbers represent a batch number of each payment.

- Purchase Cards

Purchase card payments are included in the listing of payments as required by the amended Regulations. The amended Regulations requires the City to prepare a list of the payments made with each card and to present it to Council. Due to the time lag between receiving the statements and the successful acquittal of transactions in the City's system this listing will always be for the month preceding the month for which creditor and non-creditor payments are being reported.

Details of payments made by direct credit to employee bank accounts, in accordance with contracts of employment, are not provided in this report for privacy reasons. The payments of bank fees, such as merchant service fees which are directly debited from the City's bank account in accordance with the agreed fee schedules under the contract for provision of banking services, are also not provided in this report.

Consultation

Nil.

Policy and Legislative Implications

Regulations 12, 13(1) and 13A of the Local Government (Financial Management) Regulations 1996. Policy P602 Authority to Make Payments from the Municipal and Trust Funds.

Financial Implications

The payment of authorised amounts is within existing budget provisions.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Low
Mitigation and actions	Monthly Financial reporting timelines exceeding statutory requirements

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A visionary and influential local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.4.1 (a): Listing of Payments February 2024

10.4.2 Monthly Financial Statements February 2024

File Ref: D-24-11074
Author(s): Abrie Lacock, Manager Finance
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

The monthly Financial Statements are provided within **Attachments (a)–(i)**, with high level analysis contained in the comments of this report.

Officer Recommendation

That Council notes the Financial Statements and report for the month ended 29 February 2024.

Background

Regulations 34(1) of the Local Government (Financial Management) Regulations 1996, requires each local government to present a Statement of Financial Activity reporting on income and expenditure as set out in the annual budget. Regulation 34(3) specifies that the nature or type classification must be used. In addition, regulation 34(5) requires a local government to adopt a percentage or value to report on material variances between budgeted and actual results. In addition to the above Regulation 35 requires a local government to present a Statement of Financial Position. The 2023/24 budget adopted by Council on 27 June 2023, determined the material variance amounts of \$10,000 or 10% for the financial year. The Financial Management Reports contains an Original and Revised Budget column for comparative purposes.

Comment

The Statement of Financial Position and the Statement of Financial Activity is required to be produced monthly in accordance the Local Government (Financial Management) Regulations 1996. The Statement of Financial Activity is a financial report is unique to local government drawing information from other reports to include Operating Revenue and Expenditure, Capital Income and Expenditure as well as transfers to reserves and loan funding.

Ongoing supply shortages an effect of COVID-19 and the war in Ukraine are responsible for continued stubborn inflation worldwide including Australia. The quarterly December 2022 to December 2023 Perth CPI of 3.6% remains higher than the Reserve Bank of Australia (RBA) target rates of between 2% and 3%.

The monthly weighted average CPI of eight capital cities January 2023 to January 2024 of 3.4% is still regarded as too high.

To curb the high inflation the RBA have been raising interest rates since June 2022 increasing the cash rate target from 0.10% to 4.35%. At its February meeting the RBA decided to leave the cash rate target unchanged.

The RBA made the following statement at its Board meeting of 6 February 2024: “Higher interest rates are working to establish a more sustainable balance between aggregate demand and supply in the economy. Accordingly, conditions in the labour market continue to ease gradually, although they remain tighter than is consistent with sustained full employment and inflation at target. Wages growth has picked up but is not expected to increase much further and remains consistent with the inflation target, on the assumption that productivity growth increases to around its long-run average. Inflation is still weighing on people’s real incomes and household consumption growth is weak, as is dwelling investment.”

Council adopted the midyear budget review on 27 February 2024 reflecting a forecasted operating surplus (\$0.76m) as opposed to the original budgeted operating loss (-\$1.06m). The year-to-date budget versus actual expenditure have been updated to reflect the revised budget. Budget phasing has also been revised as part of the review this is demonstrated by the lower year-to-date (YTD) variances between revised budget and actual results. The City continues to prudently manage its finances whilst remaining conscious of the need to provide quality services to our community.

Actual income from operating activities for February year-to-date (YTD) is \$64.62m in comparison to budget of \$64.59m, favourable to revised budget by \$0.03m or 0.06%. Actual expenditure from operating activities for February is \$44.04m in comparison to the budget of \$44.08m, favourable to budget by \$0.04m or 0.09%. The February Net Operating Position of \$20.58m is \$0.07m favourable in comparison to budget.

Capital Revenue is lower than budget by \$0.03m, \$1.07m compared to budget of \$1.04m, revenue recognition is dependent on capital project completion. Actual Capital Expenditure YTD is \$6.01m in comparison to budget the budget of \$5.99m marginally higher than the revised budget by \$0.02m or 0.29%. A variance analysis is provided within **Attachment (e)** titled Significant Variance Analysis.

Cash and Cash Equivalents which amounted \$82.12m, \$7.85m more than the prior year comparative. Consistent with previous monthly reports, the Cash and Cash Equivalents balance is contained within the Statement of Financial Position. In addition, further detail is included in a non-statutory report (All Council Funds).

Interest rates seems to have steadied, with banks offering average interest rates of 4.73% for investments under 12 months. The City holds a portion of its funds in financial institutions that do not invest in fossil fuels. Investment in this market segment is contingent upon all the other investment criteria of Policy P603 Investment of Surplus Funds being met. At the end of February 2024, the City held 41.31% of its investments in institutions that do not provide fossil fuel lending. The Summary of Cash Investments illustrates the percentage invested in each of the non-fossil fuel institutions and the short-term credit rating provided by Standard & Poors for each of the institutions.

Consultation

Nil.

Policy and Legislative Implications

This report is in accordance with the requirements of the Section 6.4 of the *Local Government Act 1995* and regulations 34 and 35 of the Local Government (Financial Management) Regulations 1996.

Financial Implications

The preparation of the monthly financial reports occurs from the resources provided in the annual budget.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Low
Mitigation and actions	Monthly Financial reporting timelines exceeding statutory requirements

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.4.2 (a):	Statement of Financial Position
10.4.2 (b):	Statement of Change in Equity
10.4.2 (c):	Statement of Financial Activity
10.4.2 (d):	Operating Revenue and Expenditure
10.4.2 (e):	Significant Variance Analysis
10.4.2 (f):	Capital Revenue and Expenditure
10.4.2 (g):	Statement of Council Funds
10.4.2 (h):	Summary of Cash Investments
10.4.2 (i):	Statement of Major Debtor Categories

10.4.3 Electors' General Meeting 2022/23

File Ref: D-24-9029
Author(s): Morgan Hindle, Governance Coordinator
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report allows Council to consider the outcome of the Electors' General Meeting held Tuesday 6 February 2024.

Officer Recommendation

1. That the minutes of the 2024 Electors' General Meeting held Tuesday 6 February 2024 and contained in **Attachment (a)** be received.
2. That Council notes the decisions made at the 2024 Electors' General Meeting held Tuesday 6 February 2024 as outlined in the body of this report.

Background

The Electors' General Meeting was held at 6pm on Tuesday 6 February 2024 in the City of South Perth Council Chamber. There were approximately 65 members of the public present.

Comment

In accordance with Section 5.33 of the *Local Government Act 1995*, Council is required to consider any decisions that result from the meeting.

There were 13 motions moved as follows:

Motion 1

"Moved: Mr Les Ozsdolay of Como.

Seconded: Mr Bill Gleeson of South Perth.

That the Annual Report for the City of South Perth for the year 2022/23, the 2022/23 Annual Financial Statements and the 2022/23 Auditor's Report, be accepted.

The Motion was put and declared CARRIED."

Motion 2

“Moved: Ms Vicki Redden of South Perth.

Seconded: Mr Doug Minchin of South Perth.

That the City of South Perth:

- 1) *Trial closing the Millers Pool Carpark area and the adjacent water ski carpark on the opposite side of the Narrows Bridge every night between 9:30pm and 5am, for a 4-week trial period, so that the City can determine if there is a reduction in hooning and a consequential change to the noise and impact on residents.*
- 2) *CEO follow up with the Police Department - specifically the Traffic Police to look at what speed cameras could be installed along Mill Point Road to curb the incessant hoons and motorbikes who drive at speed, creating excessive noise.*
- 3) *Conduct a trial on the South Perth Peninsula using 'Noise Cameras', like the devices being trialled on the East Coast. These are believed to be operational and effective in at least half a dozen cities worldwide.*
- 4) *Work strenuously with Main Roads to have the speed limit reduced to 40kph in the South Perth Activity Plan area - that being all the Peninsula, the South Perth Esplanade and Mends Street area.*
- 5) *Co-ordinate a more effective and comprehensive 'Blitz on Hoons' for a month. This would require an enthusiastic participation of not just the City and City Rangers, but Mains Roads and the WA Police Department.*

The Motion was put and declared CARRIED.”

Officer Comment

Council endorsed a Notice of Motion presented at the Ordinary Meeting of Council held on 27 February 2024 on the above topic. The City will action this Council Resolution and provide a report back in accordance with the Resolution no later than the May 2024 Ordinary Council Meeting. Whilst not identical, the Council Resolution is consistent with the intent of the above.

Motion 3

“Moved: Mr John Bassett of Como.

Seconded: Ms Vicki Redden of South Perth.

That the City of South Perth:

- 1) *Prioritises the review of the 2018-2023 Urban Forest Strategy to incorporate a tree canopy target of 30% by 2040, supported by appropriate planning, policy changes, funding, monitoring, education strategies and annual reporting; and*
- 2) *Presents to the March 2024 Council meeting a report that includes a project outline and timeline for the review of the Urban Forest Strategy, which reflects the urgency of its review.*

The Motion was put and declared CARRIED.”

Officer Comment

The City completed a workshop on the Urban Forest Strategy (UFS) review with Council in June 2023 where the City provided details on the background and approach. A sum was included in the adopted 2023/24 Annual Budget to commence work on the review.

To date the City has reviewed the numerous documents that contain relevant information to support development of the revised UFS. This and other information is now being collated to prepare material for use in the stakeholder engagement process with the community. The City anticipates there will be significant interest from the community, therefore the stakeholder engagement process will be held over an extended period and take different forms. All comments from the community will be reviewed by the City and these will be used to inform drafting of the revised UFS. The City will provide the draft for review by key stakeholders including for public comment before presenting for final adoption by Council.

The City continues to manage the urban forest in line with the adopted Urban Forest Strategy consistent with provisions within the annual budget allocation. The City also continues to apply for external funding to enhance the urban forest.

Motion 4

“Moved: Ms Michelle Terri of South Perth.

Seconded: Mr Mario Terri of South Perth.

That the City of South Perth undertake to do all things necessary to repair or replace the two Lake Douglas bridges for the reasons mentioned in our preamble earlier this evening and these works to be prioritised in 2024/25 financial year.

The Motion was put and declared CARRIED.”

Officer Comment

Options will be presented to Council through the 2024/25 budget setting process. A final decision on the future of the structures is likely to coincide with the City's annual budget deliberation in June 2024.

Motion 5

“Moved: Dr Mark Brogan of Kensington.

Seconded: Ms Bronwyn David of South Perth.

That the City of South Perth Street Tree Management Plan be updated to reflect current issues and new practices and to maximise community benefit. Including:

- a) mandated street tree provision on all verges where trees can physically and practically be accommodated (not optional or opt in);*
- b) a move away from the traditional street tree theme approach in order to provide biodiversity and resilience to pests and diseases;*
- c) maximisation of the canopy that street trees provide, aiming for continuous canopy coverage after 20 years of moderate growth and the combined value of all trees on a verge to be 1.5 x the verge area;*

- d) *that the street tree species list including default street tree species which are large trees native to the local government area that provide food and habitat for our local fauna and are not susceptible to Polyphagus Shot Hole Borer (ie. Tuart, Jarrah, Flooded Gums);*
- e) *tree species susceptible to forecast rising temperatures in our warming climate and know pests and disease be removed from the street tree species list;*
- f) *street tree removal to facilitate private development being more strongly discouraged through policy, and where removal of a street tree to accommodate development cannot be avoided the amenity value for the tree paid by the adjoining land owner being allocated to the street tree budget*
- g) *authorisation for removal of street trees to facilitate private development or street parking be removed from the Chief Executive Officer's Delegations and instead being a decision of the Council.*
- h) *where a street tree has been vandalized signage being installed in its place to notify the community of the vandalism;*
- i) *developers to pay a bond of sufficient amount to cover the cost of remediating damage to a street tree resulting from building activities.*

The Motion was put and declared CARRIED."

Officer Comment

The motion above contains points relevant to the review of the Urban Forest Strategy (UFS) and the details will be logged as feedback for review when drafting the revised UFS.

The City currently supports mandated street tree provision within the road reserve and whilst there is an element of an ability to opt out of having a tree, in practice it is not currently preventing trees being planted to the extent provided for in the budget. As space is now becoming more limited, mandating of street trees will be included in the draft revised UFS.

The City recognises the need to increase biodiversity and resilience in the urban canopy but also acknowledges in some instances there is likely to be a community desire for themed species in statement streets. As part of the consultation, options that blend these needs will be provided for feedback. The tree species will be chosen for diversity, resilience, food source, and those that provide habitat for native fauna.

In respect to street tree removal to facilitate private development, the relevant deemed-to-comply criteria contained within State Planning Policy 7.3 - Residential Design Codes as it relates to driveways states that driveways are to be located as to avoid street trees, or where this is unavoidable, the street trees replaced at the applicant's expense or re-planting arrangements to be approved by the decision maker. The City had previously permitted street tree removal requests to accommodate dwelling/ driveway design and future crossover locations. Since mid-2023, the City has instead been requesting applicants amend the design to alter the location of carports/ garages to accommodate future driveway locations to retain street trees. Prospective applicants are also encouraged to liaise with the City prior to lodgement to discuss their designs.

In relation to removing delegation for removal of street trees to accommodate verge parking for private developments, the City has proposed amendments to Council Policy P210 – Street Verges to restrict use of the verge for this purpose within the Canning Bridge Activity Centre Plan area. The City has not proposed this elsewhere in the City given the approval process for applications assessed under the R-Codes provides the ability for the use of a design principle assessment and use of the verge for parking bays associated with the development where the deemed-to-comply criteria has not been achieved.

The City provides public notification when trees on public land have been vandalised. Considered on a case-by-case basis, signs in the location of the vandalised tree are installed. Funding for increased signage relating to vandalism is something that will be considered as part of the overall management of the urban forest.

The City currently collects a bond from developers prior to building works commencing.

Motion 6

“Moved: Mr Bill Gleeson of South Perth.

Seconded: Mr Les Ozsdolay of Como.

That the CEO Mike Bradford instruct the Local History Librarian Anthony Styan to prepare a report to Council on how best to display the revived honour boards and photos of former Elected Members of the City of South Perth and place them in an appropriate place.

The Motion was put and declared CARRIED.”

Officer Comment

The honour boards were first implemented following a request from former Councillor, Bill Gleeson in 2005 and were displayed in the Reception Room at the Civic Centre. The Reception Room is utilised by the City’s administration for meetings, training, Councillor workshops and dinners and is not generally available for public use.

In total there were 16 honour boards which consisted of two types:

1. 6 x Perspex (acrylic) boards which displayed a list of names of Elected Members and CEO’s in chronological order; and
2. 10 x photo boards in wooden frames which displayed Elected Members and senior City Officers in chronological order for a given period.

In 2019 an internal upgrade of the Civic Centre was carried out, this upgrade included changes to the Reception Room such as repainting, new carpet and the display of images from across the City representing the City’s vision:

“A city of active places and beautiful spaces. A connected community with easily accessible, vibrant neighbourhoods and a unique, sustainable natural environment”.

As a result of the upgrade the honour boards were removed and are stored within the South Perth Library records. The public currently has access to these honour boards in the following manner:

- A digital copy of the wooden boards is available via the Library Services Team; and
- A listing of previous Elected and administrative leaders of the City is available on the City’s [website](#).

Motion 7

“Moved: Ms Bronwyn David of South Perth.

Seconded: Dr Mark Brogan of Kensington.

That the City of South Perth urgently present to the Council alternative options for the protection of large trees on private land, for the Council to progress as a priority when the Planning Minister announces his rejection of the Draft Local Planning Scheme No.7 Tree Protection Provisions.

The Motion was put and declared CARRIED.”

Officer Comment

The City has provided a response to Councillor Prendiville’s Notice of Motion relating to the creation of a Local Planning Policy for tree protection on private property. This report includes additional measures the State Government could consider for protection of large trees on private land.

Council will be required to consider the Notice of Motion and if supported, the City will prepare a Local Planning Policy for Council’s consideration.

Motion 8

“Moved: Ms Heidi Schmidt of South Perth.

Seconded: Mr Trevor Ridgeway of Como.

That the City of South Perth forthwith, determine, budget for and implement an audit of tree species known to provide food and or roosting places for Black Cockatoo species within the City of South Perth as a matter of priority and; that this data be made available to the public.

Specifically requiring audit are the Pinus Pinaster and Macadamia trees within the City as they’re proven to be a premium core food source species and roosting sites for these endangered birds (as documented by researchers at Murdoch University).

Endemic species including Marri, Jarrah, banksia and Hakea are also critical food sources as they provide additional nutrients, and so must also be audited.

this audit data should be mapped and include:

- *Location of trees by species*
- *Numbers of each species per location*
- *Age of trees;*
- *Any intended removal of such trees within 5 years including stating the reasons for intended removal, plus what species and numbers of trees will be planted to replace them including any timing for any removal.*

The Motion was put and declared CARRIED.”

Officer Comment

The City is currently updating the data and the tree management system for its trees. Limited data is currently available to the public via the City’s website. Once the data has been compiled to a sufficient quality, the form in which data is released will be determined.

Motion 9

“Moved: Ms Ellen Miller of South Perth.

Seconded: Ms Heidi Schmidt of South Perth.

That the City of South Perth ensure that the printed misinformation sent to 40,000 residents in the mySouthPerth magazine stating that ‘Black Cockatoos become too heavy to fly after eating pine nuts’ be visibly and transparently retracted and corrected in the next issue of that magazine and on the City's website.

The Motion was put and declared CARRIED.”

Officer Comment

The City has responded directly to individuals that have queried the article and have also provided comment in the public forum. The City will not print a retraction or correction with regard to the “Cockatoos of Collier Park Golf Course” article printed in December 2023 edition of mySouthPerth magazine.

The article does not contain misinformation, however, the City understands that greater clarity could have been included regarding the City’s revegetation strategy, including the reasons for replacing dying pine trees, at Collier Park Golf Course, which was created in consultation with experts on Black Carnaby’s Cockatoos.

Motion 10

“Moved: Ms Silvia Serra of South Perth

Seconded: Ms Loanne Castle of Como.

That the City of South Perth amends the workforce structure in the next budget to include a full-time equivalent position responsible for coordinating and managing all matters pertaining to the urban forest across the seven suburbs of the City of South Perth.

The Motion was put and declared CARRIED.”

Officer Comment

Managing and improving the urban forest requires a variety of skills and experience. The City employs various staff who contribute to the management and development of the urban forest. As part of the revising of the Urban Forest Strategy, identifying any additional resources that may be required will be included.

Motion 11

“Moved: Ms Valmae Stonehouse of South Perth

Seconded: Ms Silvia Serra of South Perth.

That the City of South Perth ensure that the past practices regarding tree vandalism on the City of South Perth land are reinstated.

This should include large, obvious signage stating what has occurred as well as replanting of two trees, per tree that's been vandalised.

The Motion was put and declared CARRIED.”

Officer Comment

The City provides public notification when trees on public land have been vandalised. Considered on a case-by-case basis, signs in the location of the vandalised tree are installed. Funding for increased signage relating to vandalism is something that will be considered as part of the overall management of the urban forest. Planting of replacement trees is ongoing.

Motion 12

“Moved: Ms Selena Hughes of Como.

Seconded: Ms Bronwyn David of South Perth.

That the City of South Perth lobby the Western Australian Local Government Association (or WALGA) via a motion at the next South East Metropolitan WALGA Zone Meeting to urgently procure updated tree canopy and heat mapping data for the Perth and Peel area. In order to provide a better understanding of the current canopy situation and informed planning policy changes, funding, and monitoring.

The Motion was put and declared CARRIED.”

Officer Comment

In November 2018, WALGA along with the Western Australian Planning Commission and the Department of Planning, Lands and Heritage (DPLH) released the Better Urban Forest Planning Guide. The Guide will assist Councils, developers and government agencies in their planning and policies around urban greening, tree retention and replacement. It includes information on planning, market based and regulatory ‘tools’, case studies that highlight ‘best-practice’ actions and how to access CSIRO’s Urban Monitor data.

Urban Monitor has recently transferred from the DPLH to Landgate, and provides mapped data of the urban tree canopy for the Perth and Peel Regions in Western Australia under the Better Urban Forest program.

Using four-band aerial imagery, vegetation height has been calculated and reported for each height strata of 0–3 metres, 3–8 metres, 8–15 metres and 15+ metres.

Landgate has procured Urban Monitor data from CSIRO for 2024, which was collected in January and is expected to be available mid-2024

For the first time, data collection for the Urban Heat Index was added to the Urban Monitor contract for 2024.

Motion 13

“Moved: Mr Oliver Crosthwaite of South Perth.

Seconded: Ms Heidi Schmidt of South Perth.

That the City of South Perth Council amend Policy P210 Street Verges and the City Street Tree Verge Landscape Guidelines to exclude artificial turf from a list of permitted verge treatments and encourage other treatments that are environmentally friendly and sustainable.

The Motion was put and declared CARRIED.”

Officer Comment

Policy P210 – Street Verges requires permission to be sought from the City for the installation of treatments such as artificial turf and refers to the provisions within the Street Verge Landscaping Guidelines. The Guidelines expressly state that artificial turf is not approved as a treatment and requires approval from the City. The City has no record of ever granting permission for artificial turf.

Further review of the Policy will occur by the City's Infrastructure Services with respect to verge treatments and landscaping. Currently, residents are required to seek approval for verge treatments.

Consultation

In accordance with Section 5.29 of the *Local Government Act 1995*, an advertisement was placed in the Southern Gazette on 25 January 2024 and 1 February 2024, in the City's my Snapshot that was circulated on Thursday 25 January 2024, on the City's website and on all noticeboards in the City's Administration Centre and Libraries.

Policy and Legislative Implications

Section 5.27 of the *Local Government 1995* states that a general meeting of electors is to be held once every financial year to consider the contents of the annual report for the previous year, and consider other general business.

Section 5.29 of the *Local Government Act 1995* states that local public notice must be given. Section 5.33 of the *Local Government Act 1995* states that all decisions made at an electors' meeting are to be considered at a Council meeting.

Financial Implications

Advertising costs were incurred and taken from the 2023/24 budget.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Low
Mitigation and actions	Report compiled following completion of the minutes and sent to the next Ordinary Council Meeting.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.4.3 (a):	Electors' General Meeting Minutes
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10.4.4 RFT 2/2024 - Provision of Catering Services

File Reference: D-24-9309
Author(s): Morgan Hindle, Governance Coordinator
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report considers submissions received from the advertising of Tender 2/2024 for the Provision of Catering Services.

This report will outline the assessment process used during evaluation of the tenders received and recommend approval of the tender that provides the best value for money and level of service to the City.

Officer Recommendation

That Council:

1. Accepts the tender submitted by Heart in Hospitality Pty Ltd trading as Fresh Catering and Events for the Provision of Catering Services in accordance with Tender Number 2/2024 for the period of two years with an option to renew for a further two one-year periods at the City's sole discretion;
2. Accepts the estimated tender price included in **Confidential Attachment (a)**;
3. Notes that tender price will be included in the Ordinary Council Meeting Minutes; and
4. Authorises the Chief Executive Officer to execute the contract with Heart in Hospitality Pty Ltd trading as Fresh Catering and Events for the Provision of Catering Services.

Background

A Request for Tender (RFT) 2/2024 for the "Provision of Catering Services" was advertised in The West Australian on Wednesday 7 February 2024 and closed at 2pm on Wednesday 21 February 2024.

Tenders were invited as a Schedule of Rates;

- Schedule 1 – Council and Committee Meeting Dinners, Workshop/Briefing Dinners.
- Schedule 2 – Staff Functions including Workshops and Training Courses.
- Schedule 3 – Casual Engagement of Staff for Functions.
- Schedule 4 – Delivery.

The successful Tenderer will be required to do all things necessary for the supply and preparation of food for the City's catered meetings and functions, ensuring the highest standards of quality of food, hygiene and service are maintained at all times.

The contract is for a period of two years commencing in May 2024. The Contract includes two options to extend the contract, each being for an additional 12 months exercisable at the sole discretion of the City.

Comment

At the close of the tender advertising period four submissions had been received and these are tabled below:

TABLE A – Tender Submissions

Tender Submission
Acclaimed Catering
Heart in Hospitality Pty Ltd trading as Fresh Catering and Events
The Trustee for the C Fogliani Family Trust trading as Indigo Bay Catering and Events
Ultimo Catering

The Tenders were reviewed by an Evaluation Panel and assessed according to the qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Demonstrated Understanding of the Request Requirements	30%
2. Organisations Capacity to Deliver Service	40%
3. Key Proposed Personnel	25%
4. Membership with Professional Bodies	5%
Total	100%

Based on the assessment of all submissions received for Tender (RFT) 2/2024 for the “Provision of Catering Services”, it is recommended that the tender submission from Heart in Hospitality Pty Ltd trading as Fresh Catering and Events be accepted by Council.

More detailed information about the assessment process can be found in the Recommendation Report – **Confidential Attachment (a)**.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995* (the Act).

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

The cost of the contract for this financial year is included in the 2023/24 budget.

Key Risks and Considerations

Risk Event Outcome	Business Interruption Incorporates the impact of events which impinge upon the City's capacity to deliver expected services to the community. These interruptions can range from minor inconvenience requiring an alternative method of service delivery being employed through to forced loss of ability to provide multiple services to all or some of the community. Knowledge loss, technological failure and property damage will also contribute to this outcome
Risk rating	Low
Mitigation and actions	Approval of a Catering company to facilitate City events and functions.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.4.4 (a):	RFT 2/2024 - Provision of Catering Services - Recommendation Report (<i>Confidential</i>)
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10.4.5 Meeting Fees for Independent Committee Members

File Ref: D-24-9746
Author(s): Morgan Hindle, Governance Coordinator
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report seeks Council's approval for independent committee members to receive meeting fees in accordance with the Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2023.

Officer Recommendation

That Council approves a meeting fee of \$305 for independent committee members in accordance with the provisions of the Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2023.

Background

The *Local Government Act 1995* has been amended to provide for independent committee members to receive meeting fees.

An independent committee member is a committee member who is not an elected member or an employee of the local government. The meeting fees are not applicable to advisory groups, only committees of Council.

The Salaries and Allowances Tribunal issued a variation to Determination No.1 of 2023 in October 2023 (the Determination) to allow for the payment of meeting fees to independent committee members. From 1 January 2024, local governments can make payment to independent members in accordance with the Determination. In order to make these payments, Council is to resolve to make the payment and determine the fee amount.

Comment

At its meeting held 31 October 2023, Council appointed two independent committee members to the City's Audit, Risk and Governance Committee.

The City is recommending that the independent committee members on the Audit, Risk and Governance Committee receive a meeting fee in line with the maximum of \$305 as provided for by the Determination in the table below.

	Elected members		Independent committee members	
Band	Minimum	Maximum	Minimum	Maximum
1	\$325	\$415	\$0	\$415
2	\$195	\$305	\$0	\$305
3	\$100	\$215	\$0	\$215
4	\$50	\$125	\$0	\$125
All regional local governments	\$50	\$125	\$0	\$125

Consultation

Nil.

Policy and Legislative Implications

Local Government Act 1995

Local Government Chief Executive Officers and Elected Members Determination No. 1 of 2023

Financial Implications

The payment of independent committee members is already contained within the 2023/24 Governance budget.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Low
Mitigation and actions	Payment of independent Committee Members in accordance with the Determination.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

Nil.

10.5 MATTERS REFERRED FROM COMMITTEE MEETINGS

10.5.1 Quarterly Activity Report

File Ref: D-24-11742
Author(s): Christine Lovett, Senior Governance Officer
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report outlines the activities undertaken by the City of South Perth relating to Risk Management, Business Continuity and Workplace, Health and Safety in the third quarter of the 2023/2024 Financial Year and an overview of the activities planned for the fourth quarter.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Mayor Greg Milner

That the Audit, Risk and Governance Committee recommends to Council that it:

1. Notes the details of the Quarterly Activity Report as contained in the body of the report;
2. Notes the three Corporate Operational Risks being escalated as contained within the report;
3. Notes the details of the ISO 45001 Health and Safety Surveillance audit report as contained in the body of this report and **Confidential Attachment (b)**; and
4. Endorses the Strategic Risk Register as contained in **Confidential Attachment (a)**.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

The Council is responsible for the strategic direction of the City. The City's Audit, Risk and Governance Committee (ARGC) is a Committee of Council in accordance with the *Local Government Act 1995* (the Act) and is responsible for providing guidance, assistance and oversight to the Council, in relation to matters which include the City's compliance with Regulation 17 of the Local Government (Audit) Regulations 1996.

The responsibility of the Chief Executive Officer (CEO) in relation to Regulation 17 of the Local Government (Audit) Regulations 1996 (the audit regulations) includes reviewing the appropriateness and effectiveness of the City's systems and procedures in relation to:

- a) risk management;
- b) internal control; and
- c) legislative compliance.

This activity report will provide an update on the City's Risk Management, Business Continuity and Workplace Health and Safety activities undertaken for the previous quarter and identifies proposed activities for the upcoming quarter.

Information contained in this report will assist the Audit, Risk and Governance Committee in fulfilling their responsibilities as they relate to Regulation 17 of the audit regulations.

Comment

1) Strategic Risk Register

The Strategic Risk Register (register) has been developed in consultation with the City's Elected Members and external members of the Audit Risk and Governance Committee (the Committee). The register was last endorsed by Audit, Risk and Governance Committee at its meeting held 13 November 2023.

The Strategic Risk Register, as contained in **Confidential Attachment (a)**, has been reviewed and updated to reflect the City's current environment with all amendments being contained to existing controls and highlighted in red text.

This register is presented to ARGC for review and recommendation to Council for endorsement.

2) Operational Risk Register

The Internal Risk Management Committee (IRMC) met on 6 February 2024 at which time the Operational Risk Register was presented for review.

The following three risks having been reviewed and remain at a high risk rating. In accordance with the requirements of the Risk Management Framework 2021 these risks are presented to the Audit, Risk and Governance Committee for review.

i. Corp Risk 1.2 Physical security of City Officers and Assets

Outcome: Health/Injury

Due to the recent increase of hostile incidents related to the Animal Care Facility the residual likelihood of this risk event occurring has been reassessed from 1(Rare) to 3 (Possible).

This has resulted in the risk rating being increased from Moderate to High.

Controls

Established Corporate policies, management practices, procedures and strategies including:

- Communications on 'increased alert level' provided via email
- External provider engaged for building security

- | | |
|--|---|
| • Swipe card access to staff areas | Additional security cameras installed at Animal Care Facility, GBLC and Civic Centre Customer Service |
| • Audio communication on CCTV at Waste Kiosk and thermographic camera to be installed at Recycling Centre 'battery storage area' | Personal duress alarm for Animal Care Facility Officers working alone |
| • Training and awareness sessions provided | Cashless operations at the Civic Centre |

Further actions/comments

- Develop and review policies and management practices to address security access
- Further rollout/renew/upgrade of CCTV at all City buildings
- Replacement of security gate and fencing at Civic Centre staff carpark (currently in progress February 2024)
- Physical review of security at the Animal Care Facility, Rangers Office and Operations Centre reception area to be carried out.

ii. Corp Risk 5.0 Dependency on contractors to deliver key project/services.

Outcome: Service Interruption

Due to the current labour market the residual likelihood of this event occurring remains as Possible, with the risk rating remaining as High.

Controls

- | | |
|---|------------------------------------|
| • Robust supplier selection | • Use of WALGA preferred suppliers |
| • Procurement Management provided by the Finance Services Business Unit | • Relationship management |

Further Actions/Comments

- Review contracts
- Review public liability insurance levels (required by contractors)
- Consider the establishment of panel of contractors
- While the residual rating of this risk is high, it is considered that all available mitigation strategies are in place to reduce the outcome of this risk impacting the City's community. Where necessary, key communication methods are utilised to inform our community of any delays/interruption to the expected delivery of a project or service.

iii. **Corp Risk 5.4 Employee attraction and retention**

Outcome: Service Interruption

Due to the current labour market the residual likelihood of this event occurring remains as Possible, with the risk rating remaining as High.

Controls

Established Corporate policies, management practices, procedures and strategies including:

- Flexible working arrangements and working from home arrangements
- Learning and development opportunities
- Equal Opportunity Employer
- Phased retirement
- Health and Wellbeing Program for employees
- Reward and Recognition Program
- Superannuation benefits
- Performance Management Framework
- Annual performance reviews
- Learning & Development Framework
- Workforce Plan
- Secondment opportunities.
- Mentorship program and internal training to staff so they are interchangeable, as required.
- Advertised positions to be reviewed against the current market, so that position description is aligned with the offered remuneration package, including market supplements.

Further Actions/Comments

- The Workforce Plan is reviewed annually by the Manager People and Performance and EMT in consultation with the Leadership Team.
- While the residual rating of this risk is high, it is considered that all available mitigation strategies are in place to reduce the outcome of this risk impacting the City's community. Where necessary, key communication methods are utilised to inform our community of any delays/interruption to the expected delivery of a project or service.

2. **Business Continuity**

A Business Continuity Management Framework (BCMF) has been developed and was presented and noted at the 12 September 2023 Audit, Risk and Governance Committee Meeting. City Officers continue to progress the implementation of this framework.

3. Workplace, Health and Safety

- **ISO 45001 Health and Safety**

The ISO 45001 Health and Safety Surveillance audit report as contained in **Confidential Attachment (b)** was completed on 11 December 2023. The purpose of this audit is to determine implementation of the City's management system; the capability and effectiveness of the management system in ensuring continual compliance with customer statutory and regulatory requirements in meeting our specified objectives, and conformity of the management system to stated criteria.

No major or minor non-conformance reports (NCR) as a result of this audit. ISO 45001 Health and Safety reaccreditation was subsequently successful.

4. Planned Activities

The following activities are planned (subject to the availability of organisational officers) for the fourth quarter of the 2023/24 financial year:

System/Procedure	Activity	Expected Outcome
Risk Management	Operational risks to be reviewed on a quarterly basis	The City's Corporate Operational Risk register to be as current as reasonably practicable.
Risk Management	Development of further fraud and corruption training	Increased knowledge within the City's business units in order to further protect resources and information and safeguard the integrity and reputation of the City.
Business Continuity	Business Continuity Plans to be reviewed in accordance with the requirements of the Business Continuity Management Framework	The City's Business Continuity Plans to be as current as reasonably practicable.
Risk Management	Updated Management Practice M695 Risk Management to be rolled out across all Business Units	Sound risk management practices and procedures to be further integrated into the City's strategic and operational planning process and day to day business practices.
Risk Management	Implement training program for identified officers	Provide support and guidance to officers ensuring they have familiarity with the City's risk management practices.

Risk Management	Review Risk Management Framework	Risk Management Framework to be reviewed and presented to the June Audit, Risk and Governance Committee.
Workplace, Health and Safety	Continue to implement the annual Targets & Objectives	Targets are achieved by end of 2023/24.

Consultation

Nil.

Policy and Legislative Implications

- Reg 17 (1) (a) (b) and (c) of the Local Government (Audit) Regulations 1996
 17. CEO to review certain systems and procedures
 - (1) The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to –
 - (a) risk management;
 - (b) internal control; and
 - (c) Legislative compliance
- *Work Health and Safety Act 2020*

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Low
Mitigation and actions	Continuous review and improvement in relation to all Risk Management, Business Continuity and Workplace Health and Safety activities.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.4 Maintain a culture of continuous improvement

Attachments

10.5.1 (a):	Strategic Risk Register (<i>Confidential</i>)
10.5.1 (b):	ISO 45001 Health and Safety Surveillance Audit Report (<i>Confidential</i>)

10.5.2 Council Policy P210 - Street Verges

File Ref: D-24-11755
Author(s): Donna Shaw, Director Development and Community Services
Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

This report recommends amendments to Council Policy P210 – Street Verges to restrict the use of the verge for constructed residential and visitors car parking bays associated with development applications.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf

Seconded: Mayor Greg Milner

That the Audit, Risk and Governance Committee recommends to Council that it adopts amended Council Policy P210 – Street Verges as contained in **Attachment (a)**.

CARRIED (3/1).

For: Mayor Greg Milner, Councillor André Brender-A-Brandis, Ms Shona Zulsdorf.

Against: Councillor Bronwyn Waugh.

Background

At its meeting held 18 April 2023, Council considered a response to a Notice of Motion from former Councillor Carl Celedin at the September 2022 Ordinary Council Meeting in relation to the impact on traffic and parking within the Canning Bridge Activity Centre Plan Area (CBACP) as a result of recent development approvals and resolved as follows:

1. *Notes Policy P210 will be reviewed with respect to the use of the City's street verges for visitor parking bays for developments throughout the district; and*
2. *Notes a further report will be presented to Council on this matter.*

In considering the above, the City had previously recommended that the Policy be amended to exclude the use of the City's verges to accommodate visitor or other parking provision associated with development within the CBACP area only, with other areas within the City considered on their individual merits.

Comment

Canning Bridge Activity Centre Plan

Element 18 of the CBACP addresses parking and specifically states:

"Parking should be provided to ensure that the CBACP area can provide for its residents and guests but should balance this need with a need to discourage private vehicle travel generally. Alternative transport is encouraged by way of providing for bicycle parking and storage, and motorcycle and scooter parking."

In September 2020 modifications were made to the CBACP area that related to parking requirements within each quarter (sub-precinct) as follows:

Dwelling type	Q1 & Q2	Q3, Q4 & Q5
Studio or single bedroom dwelling	Min: 0.75 Max 1.0	Min: 0.75
Two or three bedroom dwellings	Min: 0.75 Max 1.5	Min: 1.0
Four or greater bedroom dwellings	Min: 1.25 Max 2.0	Min: 1.25
Residential visitor	N/A	1 bay per eight dwellings for developments greater than 12 dwellings.
Motorcycle/Scooter parking	N/A	1 motorcycle/scooter space for every 10 car bays for developments greater than 20 dwellings

Since September 2020, 14 developments have been approved within the CBACP area as detailed below.

Development	Bays Required	Bays Provided	On Street Bays	Supply	Decision Maker
3 Davilak St & 135 Robert St, Como	Resident: 101 Visitor: 14	Resident: 163 Visitor: 8 (on-site), 5 on-street)	5	Resident: 62 Visitor: -1	JDAP
117-119 Lockhart Street (Form 2), Como	Resident: 78 Visitor: 9	Resident: 117 Visitor: 3	0	Resident: 39 Visitor: - 6	JDAP
73 Lockhart St, Como	Resident: 14 Visitor: 2	Resident: 14 Visitor: 2	0	Resident: 0 Visitor: 0	JDAP
31 Baldwin St, Como	Resident: 14 Visitor: 2	Resident: 23 Visitor: 0 (Approved with condition requiring 2 visitor bays on site)	0	Resident: 9 Visitor: 0	JDAP

150 Robert St, Como	Resident: 21 Visitor: 3	Resident: 22 Visitor: 2	0	Resident: 1 Visitor: -1	JDAP
63-65 Ley St, Como	Resident: 107 Visitor: 16	Resident: 122 Visitor: 16	0	Resident: 15 Visitor: 0	JDAP
110 Lockhart St, Como	Resident: 18 Visitor: 3	Resident: 22 Visitor: 2	0	Resident: 4 Visitor: -1	JDAP
124 Lockhart St & 33 Edgumbe St, Como	Resident: 13 Visitor: 0	Resident: 20 Visitor: 0	0	Resident: 7 Visitor: 0	JDAP
39 Clydesdale St, Como	Resident: 18 Visitor: 3	Resident: 26 Visitor: 0	2	Resident: 8 Visitor: -3	JDAP
154 & 156A Robert St & 1 Woollana St, Como	Resident: 18 Visitor: 3	Resident: 26 Visitor: 1	0	Resident: 8 Visitor: -2	JDAP
109-113 Robert St, Como	Resident: 296 Visitor: 37	Resident: 258 Visitor: 20	0	Resident: -38 Visitor: -17	SDAU
202, 203 & 204 Melville Parade, Como	Resident: 109 Visitor: 16	Resident: 134 Visitor: 16 (5 on-site, 11 verge bays proposed) Approved with condition requiring 16 bays provided on site.	0	Resident: 25 Visitor: 0	JDAP
116 Mary Street, Como	Resident: 13 Visitor: 2	Resident: 25 Visitor: 2	0	Resident: 12 Visitor: 0	JDAP

16 Philp Avenue, 37 & 39 Ley Street, Como	Resident: 12 Visitor: 1	Resident: 22 Visitor: 1	0	Resident: 10 Visitor: 0	JDAP
Total	Resident: 832 Visitor: 113	Resident: 968 Visitor: 73	7	Resident: 162 Visitor: -30	

As detailed above, developers have been seeking an over provision of resident car parking bays on site beyond what is otherwise required by the CBACP/ State Planning Policy 7.3 – Residential Design Codes (R-Codes), which is subsequently being approved by the JDAP.

Whilst developers are also requesting the required visitor car parking bays be located within the verge as opposed to on the development site to ensure space is available on site for the additional resident bays, instances of this being approved is minimal and it is more likely that a shortfall of visitor bays is approved.

Council Policy P210 - Street Verges Proposed Amendment

It is recommended that the Policy be amended to insert the following for the reasons further outlined in this report:

“The use of the verge for constructed residential and visitors car parking bays associated with development applications within the Canning Bridge Activity Centre Plan is not supported”.

Relationship to State Planning Policy 7.3 – Residential Design Codes (R-Codes)

The CBACP requires applications to be assessed against the R-Codes - Volume 2 – Apartments, which does not explicitly specify that car parking must be located on site. Rather, car parking is required to be designed to be safe and accessible, the provision appropriate to the location having regard to public transport and cycling networks and to reduce negative impacts on amenity and the streetscape. Amendments to the Policy to specify that parking will not be supported in the verge will address this issue.

It is noted that a reduction in resident and visitor parking can be considered where the development is in proximity to high frequency public transport and where there is adequate on-street parking in the vicinity of the development.

The R-Codes - Volume 1 is largely applicable to other areas of the City, as well as the type of development proposed (single houses in areas coded less than R50 and grouped dwellings and multiple dwellings in areas coded less than R30).

The deemed-to-comply criteria of the R-Codes Volume 1 requires car parking to be located on-site, however, where this is not achieved, the 'design principles' provide for consideration of some or all of the required car parking spaces to be located off-site, provided that these spaces meet the following:

- The off-site car parking area is sufficiently close to the development and convenient for use by residents and/or visitors;
- Any increase in the number of dwellings or possible plot ratio being matched by a corresponding increase in the aggregate number of car parking spaces;
- Permanent legal right of access being established for all users and occupiers of dwellings for which the respective car parking space is to be provided; and
- Where off-site car parking is shared with other uses, the total aggregate parking requirement for all such uses, as required by the R-Codes and the Scheme being provided. The number of required spaces may only be reduced by up to 15 per cent where the non-residential parking occurs substantially between 9 am and 5 pm on weekdays.

Whilst approval of the City is required to construct bays within the verge area, the approval process for applications assessed under the R-Codes Volume 1 provides the ability for the above design principle assessment and use of the verge for parking bays associated with the development where the deemed-to-comply criteria has not been achieved. As such, it is recommended that any modification to the Policy to restrict the use of the verge for parking is provided in the CBACP only and not elsewhere for this reason.

Relationship to Payment in Lieu of Parking Plan

At its meeting held 31 October 2023, Council adopted the Payment in Lieu of Parking Plan (PILP). The PILP includes a reasonable estimate of costs for the City to provide parking and other infrastructure in lieu of providing parking on the development site, and is applicable to non-residential development only in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015.

Items in the PILP include at-grade on-street car parking bays and other transport infrastructure such as upgrades to bicycle networks, electric charging facilities, technology to increase efficiency and turnover of bays and shade trees.

Where a shortfall of parking is proposed and cash in lieu conditioned on a development approval, the City will investigate the delivery of parking infrastructure in the vicinity of the development (which may include at-grade embayed parking), having regard to Council's priority to maintain verge areas for street trees.

It is noted that whilst money collected under the PILP can only be used for the items contained within the PILP, there is no requirement for expenditure to be apportioned amongst all items. For example, Council could choose to only spend funds collected on electric charging facilities or street trees, despite at-grade car parking being provided in the PILP.

Verge Treatments

Whilst this report addresses the use of the City's verges to accommodate visitor or other parking provision associated with development within the CBACP area only, the City intends to schedule a workshop with Elected Members to discuss verge treatments more broadly, including the use of artificial turf and appropriate plant species.

Further amendments to the Policy can occur if required following the outcomes of this workshop.

Consultation

Nil.

Policy and Legislative Implications

Local Government Act 1995

Planning and Development (Local Planning Schemes) Regulations 2015

Canning Bridge Activity Centre Plan

City of South Perth Integrated Transport Plan 2021-2031

Council Policy P210 Street Verges

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	N/A
Risk rating	Not Applicable
Mitigation and actions	N/A

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.3 Enhanced environment and open spaces
Strategy:	3.3.3 Improve the amenity value and sustainable uses of our streetscapes, public open spaces and foreshores

Attachments

10.5.2 (a): Draft Council Policy P210 - Street Verges

10.5.3 Council Policy P402 - Alfresco Dining

File Ref: D-24-11760
Author(s): Fiona Mullen, Manager Development Services
Reporting Officer(s): Donna Shaw, Director Development and Community Services

Summary

This report recommends amendments to Council Policy P402 – Alfresco Dining to provide detailed requirements for the use and management of alfresco dining, as well as inclusion of criteria for parklets.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Councillor Bronwyn Waugh

That the Audit, Risk and Governance Committee recommends to Council that it adopts amended Policy P402 – Alfresco Dining and Parklets as contained in **Attachment (b)**.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

Policy P402 – Alfresco Dining (P402) was adopted by Council in December 2003 and last reviewed in September 2022. A copy of the existing Policy is contained as **Attachment (a)**.

The Economic Development Plan (EDP) was adopted by Council in September 2021, and includes actions to review the City's Alfresco Dining Policy, Alfresco Dining Trading Licence and associated fees, as well as to develop a policy and guidelines for the implementation of parklets.

At its meeting held 12 December 2023, Council authorised the Chief Executive Officer to issue a licence in accordance with Clause 8.2 (1) of the City of South Perth Public Places and Local Government Property Local Law 2011 for a proposed parklet within the Angelo Street Road Reserve abutting No. 79 Angelo Street, South Perth.

In considering the above, it was noted that whilst Council has an existing Policy relating to Alfresco Dining (Policy P402), it does not relate specifically to 'parklets' and that the City was in the process of reviewing Policy P402 to provide a framework to guide the assessment of parklets.

Given the above, the City has prepared amendments to P402 which incorporates revised criteria for alfresco dining and the inclusion of criteria for parklets as outlined in this report. A copy of the revised Policy is contained in **Attachment (b)**.

CommentAlfresco Dining

The following outlines the proposed modifications to P402 in relation to alfresco dining:

- Providing technical specifications for furniture, signage and outdoor heating devices;
- Addressing matters related to public health, such as light nuisance, smoking and the need to ensure compliance with liquor licencing requirements;
- Requiring the trader to ensure the alfresco dining area and surrounds are in a neat and tidy condition at all times;
- Requiring the trader to ensure access to the footpath is maintained to ensure the thoroughfare is not obstructed; and
- Specifying the public liability insurance required.

Parklets

Parklets are temporary moveable structures placed in car parking bays, providing publicly accessible seating and amenities for the community and local businesses. They effectively repurpose part of the street, providing a space for people to linger within the street environment.

Draft amendments to P402 include locational requirements, specifically that parklets shall be located:

- In existing on-street car parking bays (not loading, taxi, or bus or accessible car parking bays) on a local distributor road with a speed limit of no greater than 50km/h;
- So as to cause no damage or obstruction to a manhole, inspection pit, fire hydrant, water, gas, electrical or communications infrastructure drainage or other service within the location of a parklet;
- At least one car parking space (or a minimum of 6.0m) from a corner and at least 0.3m from the edge of the traffic lane; and
- So as to not have a detrimental impact on the functionality or amenity of the existing streetscape, including the availability of on-street car parking bays.

In addition, proposed requirements establish construction and design standards.

Draft amended P402 also includes provision for a minimum 14 day public consultation period with advertisement to landowners and occupants within a 100m radius of a proposed parklet.

Whilst the EDP recommended creation of associated guidelines, the draft amended P402 is considered to provide sufficient detail for guidance to prospective applicants.

The draft amended P402 is considered to provide more specific guidance for traders as to the acceptability of alfresco dining, as well as incorporate provisions to guide applications for parklets. It is therefore recommended that Council adopt the draft amended P402.

Parklet, Alfresco Dining Trading Licence and Associated Fees

An action within the EDP includes a review of Alfresco Dining Trading Licence and associated fees. The 2023/24 adopted budget provides fees for new alfresco dining licences (\$172.00) and fees per seat (\$69.00).

In considering the proposed parklet for Nextdoor and Olsen Butchers at its meeting held 12 December 2023, in accordance with section 6.12 (1)(b) of the *Local Government Act 1995*, Council resolved to waive licence fees and alfresco dining fees for the parklet for the duration of the licence period.

There is currently no fee prescribed for parklets.

Matters related to fees are appropriately determined when setting the annual budget and as such, have not been included in the draft amended P402. Council will be required to consider whether it introduces a fee for parklets, as well as the existing fees for alfresco dining through this process.

Consultation

Nil.

Policy and Legislative Implications

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

City of South Perth Public Places and Local Government Property Local Law 2011

Council Policy P402 – Alfresco Dining

City of South Perth Economic Development Plan

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation.
Risk rating	Low
Mitigation and actions	Review of all City policies on a regular basis.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.3 Enhanced environment and open spaces
Strategy:	3.3.3 Improve the amenity value and sustainable uses of our streetscapes, public open spaces and foreshores

Attachments

10.5.3 (a):	Existing Policy P402 - Alfresco Dining
10.5.3 (b):	Proposed Policy P402 - Alfresco Dining and Parklets

10.5.4 Delegation DC690 Town Planning Scheme 6

File Ref: D-24-11762
Author(s): Donna Shaw, Director Development and Community Services
Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

This report presents new delegations in response to State Government planning reform and to support implantation of Local Planning Scheme No.7, which was granted final approval by the Minister for Planning. It also presents a proposed new delegation for matters pertaining to illegal development under the *Planning and Development Act 2005*.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf

Seconded: Mayor Greg Milner

That the Audit, Risk and Governance Committee recommends to Council that:

1. On the date of gazettal of Local Planning Scheme No. 7 and in accordance with Section 5.46(2) of the *Local Government Act 1995*
 - a. Revoke Council Delegation DC690 Town Planning Scheme 6 as contained in **Attachment (a)**.
 - b. Adopt Council Delegation DC690 Local Planning Scheme No.7 as contained in **Attachment (b)**.
2. In accordance with Section 5.46(2) of the *Local Government Act 1995*, adopt Council Delegation DC692 Enforcement and Legal Proceedings – Illegal Development as contained in **Attachment (d)**.

CARRIED (3/1)

For: Mayor Greg Milner, Councillor André Brender-A-Brandis, Ms Shona Zulsdorf.

Against: Councillor Bronwyn Waugh.

Background

The *Local Government Act 1995* (the Act) recognises the importance of the demarcation between the Administration and the Council, with Council deciding what should be done for the community as a whole, and the Administration implementing those decisions.

Essential to good governance is a set of clearly defined, understood and accepted rules for governing the local government. If the rules are properly understood and adhered to, the scope for ignoring or breaching them is reduced.

Separation of the Administration and Council is critical. The employees in the Administration should not try to usurp the decision-making role of the Council, and council members should not interfere in the day-to-day work of the Administration. This ensures that good governance is applied to the functioning of both the Council and the Administration.

Delegations play an integral role in this separation of functions, as it clearly delineates responsibility for determining applications.

Delegations

Delegated authority refers to the giving or assigning authority to someone to carry out specific activities. Section 5.42 of the Act provides for Council to delegate to the Chief Executive Officer (CEO) the exercise of any of its powers or the discharge of any of its duties under the Act, other than a small number of functions which may not be delegated.

There are several related Acts which authorise the CEO and designated officers to perform specific enforcement functions including those under the *Planning and Development Act 2005* (PD Act). As it relates to planning, the activities typically permitted under delegated authority enable the City to carry out day to day statutory planning functions, such as determining development applications.

Whilst Council has a strategic oversight role, where there is ineffective delegation, this may result in:

- Additional costs associated with administrative resources (e.g. preparing reports to Council);
- Slower decision making and associated holding costs for applicants;
- Risk of not meeting statutory timeframes for determinations prescribed in the Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations);
- Agendas predominantly comprising of individual development applications, as opposed to items related to the strategic vision and aspirations of the local government; and
- Risk that decisions made by Council may not adhere to the requirements of quasi-judicial decision making, which is a requirement in planning decision making.

Notwithstanding, a balance of delegation is required to ensure that Council fulfills its oversight role under Act and therefore it is recommended that Council retains decision making powers for specific types of planning proposals which are deemed to be of significance to the community.

Delegations related to planning matters are currently contained under Delegation DC690 Town Planning Scheme 6 (TPS 6) (DC690) contained as **Attachment (a)**. It is proposed to retain these delegations until such time Local Planning Scheme No. 7 is gazetted, following which Town Planning Scheme No. 6 will be revoked. Draft delegations for LPS 7 are contained as **Attachment (b)**, which are recommended for adoption by Council to come into effect on the date of gazettal of LPS 7. Details of the draft delegation are further discussed in this report.

Recent Modifications to DC690

At its meeting held 27 June 2023, Council resolved to include the following amendments to Schedule 1, Conditions of Delegation, to Delegation DC690 Town Planning Scheme 6 (DC690):

“3. Developments involving the exercise of a discretionary power

This power of delegation does not extend to approving development applications involving the exercise of a discretionary power in the following categories:

- e) Applications for Heritage Listed properties or within a Heritage Area except, in the opinion of the delegated officer, the proposal is minor in nature.*
- f) Applications on City owned or managed land by a private entity; and*
- g) Applications for illuminated signage opposite (directly or diagonally) to or adjoining a residential zone.”*

Delegation (e) and (g) are proposed to be retained under the draft delegations for LPS 7 as further outlined in this report.

Legislative Changes

The *Planning and Development Amendment Bill 2023* (Bill) received Royal Assent on 11 December 2023 and will come into effect from 1 July 2024. The Bill includes various changes to the PD Act focused on streamlining processes, reducing red tape and improving efficiencies in planning processes and decision-making to support the delivery of housing and other critical infrastructure.

Part 4 – Performance of development approval functions of the Bill inserted a head of power into the PD Act to make regulations governing the performance of certain development approval functions pertaining to single houses and related development.

The Regulations were amended to empower the CEO of each local government, or an authorised local government employee, to determine most development applications for single houses and ancillary development (e.g. carports, patios, fences etc.), except where heritage is involved.

Definitions of the related terms were inserted into the PD Act as follows:

- development approval function, which is intended to cover the various functions involved in accepting, assessing, and determining a development application for a single house development.
- single house, which is further defined by reference to:
 - building type – broadly understood, as defined in the LPS Regulations and Residential Design Codes, as meaning a building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not compromise a single family; and
 - land tenure – with that dwelling being found on land tenure that would be widely recognised as supporting a single house, usually by way of a freehold (green title) lot or survey-strata lot, and not land that instead typically supports apartments or units, such as a strata scheme or community titles (building) scheme.

10.5.4 Delegation DC690 Town Planning Scheme 6

- single house development, which is intended to cover:
 - any initial wholesale construction activities, as well as any subsequent renovations by way of additions or alterations; and
 - not merely the primary building that comprises the single house itself, but ancillary structures one would normally associate with being part-and-parcel of owning a home (e.g. carports, patios, fences etc).

Given this authorisation will occur, the draft delegations for LPS 7 do not include delegations that relates to single houses, as these will now be required to be determined by the Administration as further discussed below.

Local Planning Scheme No. 7

LPS 7 has been approved and will be gazetted in the near future, which has the effect of revoking TPS 6.

Given DC690 Town Planning Scheme 6 provides delegations under TPS 6, adoption of delegations for LPS 7 is appropriate to enable the City to determine planning applications under delegated authority. A new delegation has been created given the clauses referenced in DC690 are not contained in LPS 7.

Given the date of gazettal is unknown at this point in time, it is recommended that Council retain DC690 Town Planning Scheme 6 until gazettal, to enable the City to continue to determine applications under delegation authority until this Scheme is revoked.

Comment

Legislative Context

In addition to Section 5.42 of the Act further provides for the CEO to sub-delegate some of its powers to another employee, which must be in writing. The CEO may place conditions on any sub-delegations, if required.

Delegations assist local governments to efficiently deal with a wide range of operational matters that are minor and/ or administrative in nature. By incorporating conditions into delegations, such as limiting the use of when a delegation can be exercised, Council can set parameters to the extent in which its decision-making powers can be exercised by its delegates and sub-delegates.

As it relates to planning, section 5.42 of the Act only applies to the delegation of section 214 – Illegal development provisions of the *Planning and Development Act 2005*. Other matters are dealt with via the Regulations. Regulation 82 of the Regulations provides the power to discharge any of the local government's duties under the Regulations other than the power of delegation.

The amendments to the PD Act provide that regulations made under the PD Act may prescribe that the performance of certain development approval functions of local governments under local planning schemes, relating to single house development, must be performed by the CEO or authorised local government employees, on behalf of the local government, and not by the Council or a Council committee.

The changes are new authorisations, not delegations, and therefore the decision-making power will not be available to Council after 1 July 2024. Draft delegations for LPS 7 are by exclusion, and as such, 'single house' and 'single house development' will only require Council determination where it relates to heritage places.

It should be noted that whilst the legislative changes provide the ability for Council to consider 'single house development' for heritage places, Council has already delegated development proposals for heritage listed places or within heritage areas which in the opinion of the delegated officer are minor in nature. Whilst it is intended for single houses where heritage is involved to still be determined by Council under draft delegations for LPS 7, it is proposed to retain this delegation for proposals that are minor in nature.

Amendments to the PD Act provide that any regulations made under the relevant subsection have effect despite any provisions of the PD Act. Regulations made pursuant to this section are intended to take precedence over any arrangements made under the PD Act.

Modifications to Delegation

Whilst delegations to LPS 7 are proposed to be a new delegation, with DC690 Town Planning Scheme 6 retained until LPS 7 is gazetted, the following table provides a comparison between the existing and proposed delegation. A tracked version of the changes is also contained as **Attachment (c)**.

Administrative	Rationale
Rename to Local Planning Scheme No. 7.	To reflect the new scheme to which the delegations apply.
Delete reference to Manager Strategic Planning and Urban Planner and rename Urban Planning Coordinator.	The Manager Strategic Planning Position no longer exists, as statutory and strategic planning services report to the Manager Development Services. Urban Planning Coordinator was renamed Coordinator Urban Planning. Delegations are proposed to be removed for Urban Planner(s) to ensure all decisions are reviewed by a higher-level position.
Delegations	Rationale
Modify 1 - Specific Uses as follows: <ul style="list-style-type: none"> - (a) 'Child Day Care Centres' to 'Child Care Premises' - (b) 'High Level Residential Aged Care Facilities' to 'New Residential Aged Care Facility'. - (c) 'Residential Buildings' to 'Residential building'. - Delete (d) 'Student Housing' - Replace (f) 'Tourist Accommodation' with 'Holiday house' and 'Holiday accommodation' 	To reflect revised land use terminology or land uses that no longer exist under LPS 7.

Amend 1 – High Level Residential Aged Care Facilities, or substantive additions to High Level Residential Aged Care Facilities (b) to ‘New Residential Aged Care Facilities’.	The modification to ‘new’ residential aged care facility is to enable additions to an existing residential aged care facility to be determined under delegated authority.
Amend 1 – Tourist Accommodation (f) to ‘Holiday house and Holiday accommodation’ where objections are received during advertising.	<p>The land use terminology has been updated to reflect new land use definitions under LPS 7 as outlined above.</p> <p>Development approval may only be granted for a discretionary land use the local government exercises its discretion.</p> <p>Clause 67 of the Regulations require the City to assess amenity impacts associated with all development applications.</p> <p>All holiday house and holiday accommodation applications will be advertised in accordance with Local Planning Policy – Advertising of Planning Proposals and the Regulations given there may be amenity impacts. If objection(s) are received, the application will be required to be referred to Council for determination.</p>
Amend 1 - Specific Uses (g) ‘Non-residential “DC” uses within the Residential zone, except Family Day Care, where the City does not receive objections during consultation’ to ‘non-residential ‘A’ uses within the Residential zone, where objections are received during advertising.’	<p>‘DC’ (discretionary subject to consultation) permissibility has been replaced with ‘A’ (means that the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions) consistent with the Regulations under LPS 7.</p> <p>Family Day Care is a permitted use in the Residential Zone under LPS 7.</p>
Amend 1 - Specific Uses (h) ‘Uses not listed in Table I of the Scheme being considered under Clause 3.3(7) of the Scheme, except Display Homes where the City does not receive objections during advertising’ to ‘use not listed’.	<p>All applications for uses not specifically listed in the zoning table are to be considered by Council.</p> <p>Display Homes are no longer a land use under LPS 7 and would be treated as a use not listed.</p>

Delete Amend 1 - Specific Uses (i) 'Temporary Uses being considered under Schedule A (Part 9) Clause 72. (1) of the Scheme, except where the City does not receive objections during advertising.'	Temporary works are exempt from requiring development approval under the Regulations where the works are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12-month period. A longer period would require a development application and be assessed against the appropriate land use or use not listed accordingly.
Amend 1 - Specific Uses (j) Change of Non-Conforming Use to 'a non-conforming use where objections are received from adjoining landowners during advertising'.	To reflect LPS 7 provisions in accordance with the Regulations. Council determination will be required where objections are received from adjoining landowners for a proposed change to an existing non-conforming use.
Delete 2 – Major Development (a) 'Non-residential development which, in the opinion of the delegated officer, is likely to have a significant impact on the City'.	This is proposed to be removed as it is covered within other delegations proposed. It is likely that applicants will opt to use the Joint Development Assessment Panel (JDAP) or significant development pathway for significant development proposals.
Delete 2 – Major Development (b) 'Residential development which is 9.0 metres or higher, or comprises 10 or more dwellings' to 'Residential development which comprises 10 or more dwellings.'	State Planning Policy 7.3 – Residential Design Codes (R-Codes) were amended in 2021 to permit residential development up to 10 metres for gable, skillion and concealed roofs and 12 metres under the deemed-to-comply provisions. All residential development is required to be assessed in accordance with the R-Codes.
Delete 2 – Major Development (c) 'Development of the kind referred to in items (a) and (b) above, comprising a mixture of non-residential and residential components'.	This is proposed to be removed as it is covered elsewhere in the delegation. It is likely that applicants will opt to use the JDAP or significant development pathway for significant development proposals.

<p>Delete 2 - Major Development (d) ‘Development not of the kind referred to in items (a) to (c) above, which, in the opinion of the delegated officer, is contentious and is the subject of significant community interest.’</p>	<p>This is proposed to be removed as it is covered elsewhere in the delegation. It is likely that applicants will opt to use the JDAP or significant development pathway for significant development proposals.</p> <p>All applications that require advertising and where objections are received would require Council determination unless the condition contained within the draft delegation have been met.</p>
<p>Amend 3 –Developments involving the exercise of a discretionary power (a) to reflect the name of the relevant Local Planning Policy only and deleting the detail relating to various heights as this is contained within the Policy.</p>	<p>To reflect LPS 7 to which the delegations apply - Precinct 13 -Salter Point Escarpment will become ASR12- Salter Point Escarpment, Salter Point in LPS 7.</p> <p>Local Planning Policy P320 Assessment of Significant Obstruction of Views in Precinct 13 – Salter Point was revoked by Council at the 27 February Ordinary Council Meeting and replaced with Local Planning Policy - Salter Point Escarpment.</p>
<p>Amend 3 – Developments involving the exercise of a discretionary power (b) Applications which, in the opinion of the delegated officer, represent a significant departure from the Scheme, the R-Codes or relevant Local Planning Policies to replace ‘R-Codes’ with State Planning Policy.</p>	<p>State Planning Policy 7.3 – Residential Design Codes (R-Codes) are a State Planning Policy. This change will capture any future naming changes to the R-Codes and all other applicable State Planning Policies.</p>
<p>Delete 3 – Developments involving the exercise of a discretionary power (d) Applications involving the exercise of discretion under Clauses 6.2A or Schedule A (Part 3) clause 7A & 12. (4) of the Scheme.</p>	<p>These clauses refer to pre-scheme developments and supplemental provisions to the deemed provisions of the Regulations which are not replicated in LPS 7.</p>
<p>Amend 3 – Developments involving the exercise of a discretionary power (f) ‘Applications on City owned or managed land by a private entity;’ to ‘Applications on City owned or managed land by a private entity which propose significant works or a change of land use’</p>	<p>It is considered that these developments which generally originate from community groups and the City itself are insignificant and do not warrant the consideration of Council unless the application does not meet the other delegation criteria.</p>

<p>Insert New Clause 4– Development where advertising is required.</p> <p>‘This power of delegation does not extend to approving development applications where advertising of the application is required unless:</p> <ul style="list-style-type: none"> - consent, no objection or no response is received from those consulted; or - in the opinion of the delegated officer, the proposal is consistent with the objectives and intent of the Local Planning Scheme and any Policy, as well as the principles of orderly and proper planning; or - in the opinion of the delegated officer, the proposal is consistent with the objectives and intent of the Local Planning Scheme and any Policy; or - any objection received can be addressed by imposing a condition(s) on the development approval granted, or modifying the design of the development; or - in the opinion of a delegated officer the objection does not relate to valid planning considerations. 	<p>For development applications that require advertising, the proposed amendments provide planning related parameters to consider whether Council determination is required.</p>
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<p>Amend 4 and replace with new Clause 5 – Applications previously considered by Council from ‘this power of delegation does not extend to applications for development approval previously considered by Council, where drawings supporting a current application have been significantly modified from those previously considered by Council at an earlier stage of the development process, including at an earlier rezoning stage, or as a previous application for development approval’ to ‘this delegation does not extend to development applications previously determined by Council. All subsequent applications relating to the same proposal are to be presented to Council for determination unless in the opinion of a delegated officer, it is of a minor nature or satisfies the requirements of the planning framework.’</p>	<p>Remove reference to ‘an earlier rezoning stage’ as development applications are quasi-judicial decisions treated independently of any legislative rezoning decisions. Any rezoning of the land would provide for the proposed land use unless the use was not listed in which case Council determination is required in any instance.</p>
<p>Delete 5 – Amenity impact from ‘In considering any application for development approval, the delegated officer shall take into consideration the impact of the proposal on the general amenity of the area. If, in the opinion of the delegated officer, any significant doubt exists, the application shall be referred to Council for determination’.</p>	<p>Clause 67 of the Regulations require the City to assess amenity impacts associated with all development applications.</p> <p>Applications that are likely to result in amenity impacts require advertising.</p> <p>Proposed amendments to 3 – Developments involving the exercise of a discretionary power will capture amenity where this matter is raised during consultation.</p>

Enforcement Provisions

There is currently no delegation to enable the City to issue a directions notice under Section 214 of the *Planning and Development Act 2005*. When investigating compliance matters, the City takes an education first approach, liaising with landowners requesting compliance with regulatory requirements (such as lodging a development application or ceasing use) however, these are not formal directions under the PD Act.

Whilst this approach has been successful to date, there may be instances where it is necessary to issue a formal directions notice to enforce development compliance. As compliance matters can include matters of which there are urgent public safety and amenity considerations, it is recommended that a new delegation be created for Section 214 Illegal development, responsible authority's powers as to section 214(2), 214(3) and 214(5) of the Act, being:

1. Give a written direction to the owner or any other person undertaking an unauthorised development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the planning scheme, interim development order or planning control area requirements;
2. Give a written direction to the owner or any other person who undertook an unauthorised development to (i) remove, pull down, take up, or alter the development; and (ii) to restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the responsible authority; and
3. Give a written direction to the person whose duty it is to execute work to execute that work where it appears that delay in the execution of the work to be executed under a planning scheme or interim development order would prejudice the effective operation of the planning scheme or interim development order.

A copy of this proposed delegation is contained as **Attachment (d)**.

Consultation

Nil.

Policy and Legislative Implications

Section 5.46(2) of the *Local Government Act 1995* requires all delegations to be reviewed at least once each financial year.

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation.
Risk rating	Low
Mitigation and actions	Annual reviews are in place.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.5.4 (a):	Delegation DC690 Town Planning Scheme 6
10.5.4 (b):	Draft Delegation DC690 Local Planning Scheme 7 (track changes)
10.5.4 (c):	Draft Delegation DC690 Local Planning Scheme No. 7 (final)
10.5.4 (d):	Draft Delegation DC692 - Enforcement and Legal Proceedings - Illegal Development

10.5.5 Audit Register Progress Report - 2nd Quarter Update

File Ref: D-24-11763
Author(s): Christine Lovett, Senior Governance Officer
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report provides an update on the progress of actions included in the Audit Register. The Audit Register includes all open audit findings that have previously been accepted by the Audit, Risk and Governance Committee and Council.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Mayor Greg Milner

That Audit, Risk and Governance Committee recommends to Council that it:

1. Notes the progress recorded against each item within the Audit Register in **Confidential Attachment (a)**;
2. Approves the findings marked as Complete (100%) in the Audit Register, to be registered as closed and no longer reported to the Committee.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

The confidential Audit Register lists internal and external audit findings and describes the progress of implementing improvements and the percentage completion. This report is prepared for noting the progress and completion of findings since the last meeting.

Comment

The Audit Register contained in **Confidential Attachment (a)** presents audit outcomes by 'Finding' numbers. Any given Finding may have more than one 'Recommendation' and associated 'Agreed Management Action.'

Only when all Agreed Management Actions related to a Finding are marked as 100% complete, will the report be presented to the Audit, Risk and Governance Committee (ARGC), with a recommendation that the Finding be closed.

The Audit Register has been formatted to ensure clarity as detailed below:

1. Each Finding which has more than one Agreed Management Action is represented with double lines around that entire Finding.
Example:
Finding number FIND149 has three Agreed Management Actions.
2. Updates in relation to each Finding are displayed in chronological order i.e. latest update appears at the bottom of each Finding.
3. Each Finding that is to be closed (i.e. 100% complete for all Agreed Management Actions) is represented by a purple 'Closed Tally' column on the right and numbered; and
4. All Findings that are being recommended for closure by the ARGC are filtered to the end of the register.

The November 2023 Audit Register Progress Report included 18 open information systems audit findings. As detailed in the Information Systems Audit (External) Report, which was presented to the November 2023 ARGC, these 18 findings have now been closed and are incorporated in the 20 new Information Systems Audit findings identified in the 2022/23 external audit, carried out by the Office of Auditor General.

The ARGC is requested to recommend that Council note the progress and officer comments. In addition, it is recommended all Findings marked as complete (100%) in the Audit Register be registered as closed. All closed items will not form part of the Audit Register report for future meetings.

It is requested to note the Audit Register in **Confidential Attachment (a)**.

Strategic Internal Audit Plan

Work has been progressing with scheduled audits which were identified in the Strategic Internal Audit Plan which was presented to the 13 March 2023 ARGC meeting.

Reports with associated findings, recommendations and actions in relation to Procurement & Contract Management and 2023 Compliance Audit Return have been presented to March 2024 ARGC.

Work has commenced on the internal audit for Asset Management and Project & Program Management with reports to be presented following receipt by the City.

Consultation

Nil.

Policy and Legislative Implications

The Internal Audit function is considered a business improvement process that will assist in compliance with Regulation 5 of the Local Government (Financial Management) Regulation 1996 (CEO's duties as to financial management) and Regulation 17 of the Local Government (Audit) Regulations 1996 (CEO to review certain systems and procedures).

Financial Implications

The Internal Audit function (Paxon) has a budget of \$40,000 for the 2023/24 financial year, and it is anticipated that a budget of a similar amount is to be adopted for future years. Officers' effort to undertake the improvements and report on progress has not been estimated.

The fee for finalising the External Audit for the 2022/23 Annual Financial Statements is estimated at around \$85,000 (excl GST) an amount of \$73,000 was included in the budget, however a budget adjustment of \$12,000 will be required in due course.

Officers' ongoing effort to undertake the improvements and report on progress has not been estimated.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Medium
Mitigation and actions	Quarterly reporting of progress on the Audit Register to the Audit, Risk and Governance Committee and Council. In the report, Officer comments on actions taken and progressive completion of Actions are noted. Actions which are 100% complete are closed out and reported to the Audit, Risk and Governance Committee. There is no future reported on closed out actions.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.1 Foster effective governance with honesty and integrity and quality decision making to deliver community priorities

Attachments

10.5.5 (a): Audit Report (*Confidential*)

10.5.6 Internal Audit Report - 2023 Compliance Audit Return

File Ref: D-24-11764
Author(s): Garry Adams, Director Corporate Services
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report tables the Internal Audit Report – 2023 Compliance Audit Return in accordance with the City’s Strategic Internal Audit Plan 2022/2023 to 2026/2027.

The report identified that the process followed by the City in compiling the 2023 Compliance Audit Return was appropriate and in line with the requirements set by regulations, therefore no audit findings were identified.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Councillor André Brender-A-Brandis

That the Audit, Risk and Governance Committee recommends to Council that it:

1. Notes the Internal Audit Report – 2023 Compliance Audit Return contained in **Attachment (a)**; and
2. Notes that no audit findings were identified.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

For each Internal Audit completed, the reports are presented to the Audit Risk and Governance Committee (ARGC) and then Council for acceptance of the recommendations. Paxon attend the relevant ARGC meeting to respond to questions relating to the report. Management responds to Paxon’s recommendations, in relation to their findings, and these are listed in the Audit Register if findings are identified.

Comment

The Internal Audit Report – 2023 Compliance Audit Return is a confidential report to be used for internal purposes to assist in improving business processes and systems. The report includes the strengths, weaknesses, rating, issues, risk ratings, recommendations and management comments.

Internal Audit is an essential component of the City's continuous improvement process and findings are welcome. As many areas have never been audited before, it is likely that each Internal Audit may contain many findings. The 2023 Compliance Audit Return report identified that the process followed by the City in compiling the 2023 Compliance Audit Return was appropriate and in line with the requirements set by regulation 13 of the Local Government (Audit) Regulations 1996 and *Local Government Act 1995*. The review noted that the 2023 Compliance Audit Return has been completed by the City and does not require any adjustments, therefore no audit findings were identified.

Consultation

Nil.

Policy and Legislative Implications

The Internal Audit function is considered a business improvement process that will assist in compliance with the Local Government (Financial Management) Regulations 5 (CEO's duties as to financial management) and the Local Government (Audit) Regulations 17 (CEO to review certain systems and procedures).

Financial Implications

The Internal Audit function (Paxon) has a budget of \$40,000 for the 2023/24 financial year, and it is anticipated that a budget of a similar amount is to be adopted for future years. Officers' effort to undertake the improvements and report on progress has not been estimated.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Medium
Mitigation and actions	Quarterly reporting of progress on the Audit Register to the ARGC and Council. In the report, Officer comments on action taken and progressive completion of Actions are noted. Actions which are 100% complete are closed out and reported back to the ARGC. There is no future reporting on closed out actions.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.4 Maintain a culture of continuous improvement

Attachments

10.5.6 (a):	Internal Audit Report - 2023 Compliance Audit Return
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10.5.7 Compliance Audit Return

File Ref: D-24-11765
Author(s): Toni Fry, Manager Governance
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report provides the City's response to the Department of Local Government, Sport and Cultural Industries 2023 Compliance Audit Return.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Councillor André Brender-A-Brandis

That the Audit, Risk and Governance Committee recommends to Council that it:

1. Adopts the Department of Local Government, Sport and Cultural Industries Compliance Audit Return for the period 1 January 2023 to 31 December 2023 as contained in **Attachment (a)**;
2. Authorises the certification to be jointly completed by the Mayor and Chief Executive Officer in accordance with Regulation 15 of the Local Government (Audit) Regulations 1996; and
3. Instruct the Chief Executive Officer to provide the Compliance Audit Return and Council's Resolution to the Department of Local Government, Sport and Cultural Industries by 31 March 2024.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

The City is required to carry out an annual audit of statutory compliance in accordance with Regulation 14 of the Local Government (Audit) Regulations 1996. The Department of Local Government, Sport and Cultural Industries distributed a Compliance Audit Return for the period 1 January 2023 to 31 December 2023 which focused on those areas considered high risk in accordance with the *Local Government Act 1995* and associated regulations.

Comment

The 2023 Compliance Audit Return contained the following compliance categories:

- Commercial Enterprises by Local Governments;
- Delegation of Power/Duty;
- Disclosure of Interest;
- Disposal of Property;

10.5.7 Compliance Audit Return

- Elections;
- Finance;
- Integrated Planning and Reporting;
- Local Government Employees;
- Official Conduct;
- Optional Questions; and
- Tenders for Providing Goods and Services.

Each section of the 2023 Compliance Audit Return was completed by the relevant business unit.

Consultation

Nil.

Policy and Legislative Implications

In accordance with Regulation 14 of the Local Government (Audit) Regulations 1996 the completed 2023 Compliance Audit Return is to be reviewed and the results presented to Council. Following Council's adoption, the 2023 Compliance Audit Return must be submitted to the Department of Local Government, Sport and Cultural Industries by 31 March 2024.

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	Reputational Damage Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.
Risk rating	Low
Mitigation and actions	The City has strong controls in place for the Compliance Audit Return.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.4 Maintain a culture of continuous improvement

Attachments

10.5.7 (a): Compliance Audit Return 2023

10.5.8 Internal Audit Report- Procurement & Contract Management

File Ref: D-24-11768
Author(s): Garry Adams, Director Corporate Services
Reporting Officer(s): Garry Adams, Director Corporate Services

Summary

This report tables the Internal Audit Report – Procurement & Contract Management in accordance with the City’s Strategic Internal Audit Plan 2022/2023 to 2026/2027.

The report contains three detailed audit findings, with a number of notations and observations. The audit includes strengths, weaknesses, rating, issues, risk ratings, recommendations and management comments.

Officer Recommendation AND COMMITTEE RECOMMENDATION

Moved: Ms Shona Zulsdorf
Seconded: Mayor Greg Milner

That the Audit, Risk and Governance Committee recommends to Council that it:

1. Notes the Internal Audit Report - Procurement & Contract Management contained in **Confidential Attachment (a)**; and
2. Accepts the three recommendations contained in Section 5 of the Internal Audit – Procurement & Contract Management report be added to the Audit Register.

CARRIED (4/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis and Bronwyn Waugh, Ms Shona Zulsdorf.

Against: Nil.

Background

For each Internal Audit completed, the reports are presented to the Audit Risk and Governance Committee (ARGC) and then Council for acceptance of the recommendations. Paxon attend the relevant ARGC meeting to respond to questions relating to the report. Management responds to Paxon’s recommendations, in relation to their findings, and these are listed in the Audit Register.

Comment

The Internal Audit Report – Procurement & Contract Management is a confidential report to be used for internal purposes to assist in improving business processes and systems. The report includes the strengths, weaknesses, rating, issues, risk ratings, recommendations and management comments.

Internal Audit is an essential component of the City's continuous improvement process and findings are welcome. As many areas have never been audited before, it is likely that each Internal Audit may contain many findings. The Procurement & Contract Management report resulted in three findings to be included in the Audit Register.

Consultation

Nil.

Policy and Legislative Implications

The Internal Audit function is considered a business improvement process that will assist in compliance with the Local Government (Financial Management) Regulations 5 (CEO's duties as to financial management) and the Local Government (Audit) Regulations 17 (CEO to review certain systems and procedures).

Financial Implications

The Internal Audit function (Paxon) has a budget of \$40,000 for the 2023/24 financial year, and it is anticipated that a budget of a similar amount is to be adopted for future years. Officers' effort to undertake the improvements and report on progress has not been estimated.

Key Risks and Considerations

Risk Event Outcome	Legislative Breach Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation
Risk rating	Medium
Mitigation and actions	Quarterly reporting of progress on the Audit Register to the ARGC and Council. In the report, Officer comments on action taken and progressive completion of Actions are noted. Actions which are 100% complete are closed out and reported back to the ARGC. There is no future reporting on closed out actions.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Leadership
Aspiration:	A local government that is receptive and proactive in meeting the needs of our community
Outcome:	4.3 Good governance
Strategy:	4.3.4 Maintain a culture of continuous improvement

Attachments

10.5.8 (a): Procurement & Contract Management (*Confidential*)

11. APPLICATIONS FOR LEAVE OF ABSENCE

This item will be dealt with at the Ordinary Council Meeting.

12. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Debate on Item 12.1 Notice of Motion – Councillor Bronwyn Waugh – Advertising of Short Term Accommodation Local Planning Policy was adjourned to the March Ordinary Council Meeting at the Ordinary Council Meeting held 27 February 2024. Prior to the adjournment the Item was moved by Councillor Bronwyn Waugh and seconded by Councillor Hayley Prendiville.

12.1 NOTICE OF MOTION - COUNCILLOR BRONWYN WAUGH - ADVERTISING OF SHORT TERM ACCOMMODATION LOCAL PLANNING POLICY

File Ref: D-24-7714
Author(s): Donna Shaw, Director Development and Community Services
Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

Councillor Bronwyn Waugh submitted the following Notice of Motion prior to the Council Agenda Briefing held 20 February 2024.

Notice of Motion Recommendation (Suggested Officer Recommendation page 116)

1. That the Council, pursuant to Schedule 2, Part 2, Clause 4(1) of the Planning and Development (Local Planning Schemes) Regulations 2015, advertises the draft Local Planning Policy – Short Stay Accommodation in the terms annexed hereto, save for clause 2.2.1 for which the Chief Executive Officer has discretion to include the relevant carparking requirements prior to the publication of the Policy.
2. That a report to Council on the above be presented by no later than the May 2024 Ordinary Council Meeting.

Background

Councillor Bronwyn Waugh submitted a Notice of Motion (NoM) regarding the adoption of a new Local Planning Policy for Short Term Accommodation.

The reasons for the NoM are as follows:

“This motion requests Council to consider the advertising of a new Short Term Accommodation Policy to replace the current policy.

The proposed policy is designed to cater for the new LPS7 and to provide clarity to the community and potential proponents to provide guidance. The proposed policy takes into consideration the recent parliamentary enquiry, the proposed amendments to the local planning regulations and the Planning for Tourism and Short-term Rental Accommodation Guidelines position paper and the Planning Bulletin produced by the WAPC.

In September 2019, The Economics and Industry Standing Committee delivered its report entitled Levelling the Playing Field, Managing the impact of the rapid increase of Short-Term Rentals in Western Australia.

The Parliamentary Committee concluded relevantly:

- *Finding 1 – as of early 2019, there were at least 20,000 Short-Term Rental listings in Western Australia.*
- *Finding 6 – Traditional Accommodation providers generally have greater overhead costs than individuals offering Short-Term Rentals as a direct result of existing State and local government regulations and policy settings;*
- *Finding 10 - Traditional Accommodation providers in the South West of Western Australia indicated a significant drop in their revenue and occupancy rates.*
- *Finding 11 – Evidence ... demonstrates that growth in Short-Term Rentals affects the availability of long-term rentals and affordable housing.*
- *Finding 15 - Short-Term Rentals can cause a range of amenity impacts in residential areas, such as parking, the creation and collection of rubbish, the noise and anti-social behaviour of guests, and the behaviour of their pets.*
- *Finding 17 ... many local governments are not adequately enforcing compliance with their local planning schemes, local planning policies and local laws.*

The Parliamentary Committee also found on page 63 that “local governments are able to prepare a local planning policy (LPP) to address any matter relating to the planning and development within any area covered by their LPS. LPPs are non-binding documents generally developed “to guide applicants in their submission of an application.”

In response to the Parliamentary Inquiry Report, on 18 January, the WAPC released a planning position statement for tourism and short-term rental accommodation and launched a registration scheme for short-term rental accommodation providers.

The Planning for Tourism and Short-term Rental Accommodation Guidelines released by the WAPC will be read in conjunction with the Position Statement entitled “Planning for Tourism and Short-term Rental Accommodation”.

It is intended to guide the implementation and aims to:

- *provide context for planning and decision making on tourism and short-term rental accommodation development and land use;*
- *encourage strategic planning that considers local tourism and its broader context;*
- *assist local government in planning for tourism and short-term rental accommodation in its local planning strategy and local planning scheme;*
- *encourage a consistent approach to tourism and short-term rental accommodation in local planning frameworks; and*
- *encourage the flexible and adaptive design of tourism and mixed-use development suited to each local government area.*

The guidelines state:

“Local governments have the opportunity to consider where tourism uses are best located and the amount of land required to service tourism through community consultation and the preparation or review of the local planning strategy, local planning scheme and local planning policies.”

Unfortunately, the guidelines do not provide significant direction to the development of Local Planning Policy, which has been left to Local Government.

Local planning policies can be prepared to inform land use and development control. The Guidelines refer to section 5.4.2 of the Position Statement for specific guidance on preparing local planning policies to outline the local government's approach to short-term rental accommodation.

Clause 5.4.2 of the Position Paper States:

Development control measures can be set through local planning schemes and local planning policies to manage size, location, and potential amenity impacts.

The guidelines and position paper also recommend amendments to the Local Planning Scheme. This will need to be considered more formally later, as stated in the Planning Bulletin "from a land use planning perspective".

By Planning Bulletin 115/2023 issued by the WAPC, entitled Short-Term Rental Accommodation, It is anticipated that these will result in "amendments to the Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations) to introduce new land use classes and exemptions for STRA".

Interim Guidance for local government in the Bulletin states:

Local governments will play an important role in implementing these changes through their local planning frameworks. Most significantly, this will include amendments to local planning schemes to incorporate new land use classes for STRA, along with the deletion of any superseded land uses where relevant. Local planning policies may also be prepared to provide further guidance on various other matters.

A coordinated approach is expected across Local Government by way of amendment to the Planning and Development (Local Planning Schemes) Regulations 2015 that will, in the main, deal with 'Hosted Short-Term Rental Accommodation' as exempt development and 'Unhosted Short-Term Rental Accommodation'.

Exempt development is not to be considered against the policy criteria. Put another way, if development is exempt, a Local Planning Policy does not apply as an instrument to which due regard is to be had in the grant of approval because it is an exempt development.

The need for the Council to provide leadership in its district in this area is critical. As an inner City Local Government the City of South Perth is under pressure for more Short-Term Rentals, returns on Short-Term Rentals can be more than double the usual rents. However, the Council must ensure that the City does not become the subject of Short-Term Rental Accommodation in random locations scattered throughout the City. It must adopt a policy that guides decision-making where Short Term Rental may be provided and where it is inappropriate.

Further, Short-Term Rentals divert from traditional accommodation providers. Leadership is required to preserve those locations supported for traditional accommodation. Several providers are located within the City of South Perth.

If the City enables scattered Short-Term Rentals throughout its district, it has the effect of subverting legitimate professional accommodation providers.

Further, the City of South Perth must show leadership in ensuring the fabric of our communities is protected without an erosion of the amenity. As the Parliamentary Inquiry found:

“Short-Term Rentals can cause a range of amenity impacts in residential areas, such as parking, the creation and collection of rubbish, the noise and anti-social behaviour of guests, and the behaviour of their pets.”

In this respect, robust measures are being recommended to ensure providers adhere to the Management Plans that they submit to the City and to provide a mechanism of enforcement if those management plans are breached by removing the grant of the Development Approval (this is permissible. The Parliamentary Inquiry found it is often difficult to enforce planning conditions around several persons in Short-Term Rental or parking requirements. However, the possibility of losing Approval ought to be a significant incentive to ensure compliance. Removing an approval granted is permissible by law (see Section 50 of the Interpretation Act).

This is a matter of great importance to the City of South Perth to ensure it supports short-term rentals in the appropriate locations. Adopting a new Local Planning Policy under LPS 7 is required given the palace state of rental accommodation that is available, otherwise known as the rental crisis.

Other inner-City local government districts are also reporting a proliferation of Short Stay Rental and are considering the adoption of Local Planning Policies to guide development approval decision making.

It is known that in 2019, 20,000 Short-term Rentals were available for Western Australians, which will go a considerable way to alleviating the rental crisis in Western Australia.

A Local Planning Policy dealing with Short Term Rental ought to be adopted by the Local Government to address appropriate locations for Development Applications being made for Short-Term Rentals, going some way to address the present housing crisis and ensure that locations are identified that are suitable for Short-Term Rental accommodation with proximity to Tourist Sites, or within Centre Zones to limit amenity impacts and locate Short-Term Rentals in areas that are appropriate. Even if certain types of short-term rentals become exempt development uses, the City ought to continue the adoption of appropriate policies to address the present needs. If a Policy needs to change, then this can be done with relative ease.

PROCESS FOR ADOPTING A POLICY

The procedure for making a Local Planning Policy is in the Planning and Development (Local Planning Schemes) Regulations 2015, specifically clause 4 of Schedule 2. The process is summarised below:

- 1. Published the proposed policy in accordance with clause 87, giving details of the policy, objectives, and the manner and form of submissions, as well as giving at least 21 days within which submissions are to be made.*
- 2. If the Policy is inconsistent with a State Planning Policy, give notice to the WAPC;*
- 3. Carry out any other consultation that the City considers appropriate, and this would usually include the WAPC;*
- 4. After the closure of submissions, review of the submissions and proceeding with or without modifications to the policy, the WAPC ought at this time to have approved the policy as part of the consultation process;*
- 5. If the Local Government decides to proceed with the policy, then publish a notice in accordance with clause 87 of the Planning and Development (Local Planning Schemes) Regulations 2015;*
- 6. Publish and keep up to date with the policy.*

CONCLUSION

In respect to Local Planning Policy, the Bulletin states: “Local governments may develop local planning policies or additional scheme provisions to address specific STRA planning issues in their area provided these are consistent with the LPS Regulations and Position Statement.”

This proposed policy is consistent with the Position Policy, LPS Regulations, and proposed LPS 7 upon adoption and ensures a current framework is in place to guide decision-making on the most appropriate location for Short-Term Accommodation.

This Policy is consistent with State Planning Policies. It provides leadership to ensure the vibrancy of our community while identifying appropriate locations where short-term rentals are to be located.

This policy will ensure that:

- 1. Short-Term Rentals are located in appropriate locations consistent with the Parliamentary Inquiry outcomes, the Short Stay Rental Guidelines and the Position Paper and Planning Bulletin issued by the WAPC;*
- 2. Adopting a Short-Term Rental policy under LPS 7 is essential in circumstances where a new policy is being adopted;*
- 3. Residential amenity is maintained in the City of South Perth;*
- 4. Ensuring residential homes are available for rental, alleviating the current rental crisis, and*
- 5. Ensuring traditional accommodations providers, who are subject to significant regulatory burden, are not diminished as a consequence of Short-Term Rental accommodation by avoiding a proliferation of Short-Term Rentals within the City of South Perth.*

LOCAL PLANNING POLICY - SHORT-TERM RENTAL

This is a Local Planning Policy prepared under Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations). This Policy may be cited as Local Planning Policy – Short Term Rental.

INTRODUCTION

The City of South Perth is within proximity to the Perth Central Business District, tourist attractions such as the iconic river foreshore, Perth Zoo, main street entertainment areas, and public transport networks. This makes the City of South Perth attractive for Short Term Accommodation. Short-stay accommodation must be appropriately located and managed to ensure the ongoing amenity of the residential areas and to ensure the City remains a vibrant community where people live, work and recreate.

The City of South Perth is supportive of diversity in accommodation types to ensure economic vibrancy and facilitate a local tourist economy; the purpose of this Policy is to guide decision-making in respect of appropriate locations where Short Term Accommodation is to be located.

When considering any Development Application for short-term accommodation, it is important to ensure land use compatibility with existing uses within an area and to minimise land use conflict, specifically in residential areas. This is because the activities associated with short-stay accommodation land uses are different to those of permanent residential populations. Whereas the purpose of residential areas is to adequately protect areas, the City should also ensure that it provides short-term rental accommodation close to tourist sites.

This policy ensures that Short-stay accommodation will only be located in appropriate locations proximate to Tourist Sites.

When considering a proposal for short-stay accommodation, the City will apply strict locational and management conditions to ensure ongoing compatibility with surrounding land uses.

PURPOSE

The purpose of this policy is to provide clear standards for short-term accommodation proposals within the City of South Perth and ensure operators understand their responsibilities to ensure that residential amenity is not affected. The purpose of this policy is also to ensure that the amenity of existing localities and residents remain intact, but that Short Term Accommodation is located proximate to Tourist Sites.

OBJECTIVES

The objectives of this policy are to ensure Short Term Accommodation in the City of South Perth:

- 1. Positively contributes to the surrounding locality and diversity of accommodation types offered in the area;*
- 2. Are contextually appropriate and respond to the emerging State Government framework for host and un-hosted tourist accommodation;*
- 3. Are managed in a manner that protects the amenity of the surrounding community, especially existing and established residential areas;*
- 4. Are located, designed and operated in a manner that minimises the level of noise generated by guests in the surrounding community;*
- 5. Do not negatively impact the heritage integrity of a place or its historical and social value;*
- 6. Do not have an undue impact on the amenities of the area, including surrounding residential properties and businesses; and*
- 7. Provide sufficient car parking or access to alternative transport modes to minimise the negative impact on the area's amenity.*

SCOPE

This policy applies to the following land uses within the City of South Perth's Local Planning Scheme No. 7 area:

- *Bed and Breakfast;*
- *Holiday House;*
- *Holiday Accommodation;*
- *Hotel;*
- *Motel;*
- *Serviced Apartment;*
- *Tourist Development; and*
- *Any unlisted use that is used for short-term accommodation.*

Land use definitions are provided in Part 6, Division 2 – Land use terms used in Scheme, Clause 38 of Local Planning Scheme No. 7.

This policy has been prepared in accordance with Table 3: Short-term Rental Accommodation Planning Scheme and Conditions of the Planning for Tourism and Short-term Rental Accommodation Guidelines dated November 2023, released by the State Government of Western Australia.

On this basis, the requirement for development approval (i.e., the provisions of this policy) will apply only to un-hosted short-stay accommodation outside of tourist zones.

PART 2 – POLICY PROVISIONS**1. DEFINITIONS**

Family means a group of one or more parents/caregivers and their children residing together as a unit.

Guest means a person who occupies a building for short-term accommodation but is not covered by a Residential Tenancy Agreement.

Host means a person who permanently resides at a building used for short-term accommodation and is responsible for its upkeep and management.

Short-term accommodation/short stay accommodation means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12-month period. **Strata Company** means a body corporate constituted under section 32 of the Strata Titles Act 1985, whether for a strata scheme or a survey-strata scheme.

Tourist Sites include the Old Mill and Perth Zoo.

2. DEVELOPMENT APPROVAL REQUIREMENTS

Unless exempt, proposals to operate short-term accommodation require the submission and approval of an application for development approval by the following requirements.

2.1 Specific requirements for all Short-Term Accommodation that require development approval**NEIGHBOURHOOD CENTRE ZONE**

- a) *The preferred location for short-term accommodation uses is on land zoned Neighbourhood Centre. This is because the City's Neighbour Centre Zone has high entertainment, amenity value, and accessibility.*
- b) *Proposals for short-term accommodation shall demonstrate that the use is compatible with and would not negatively impact the amenity of surrounding uses by addressing the following Acceptable Development Criteria:*
 - *The proposal is in respect of the heritage significance of the subject site or immediately adjoining sites listed in the City of South Perth's Municipal Heritage Inventory or the State Heritage Register as detailed in the place's Statement of Heritage Significance.*
 - *Short-term accommodation areas that propose a sufficient distance and separation from the outdoor living area of the adjoining property(s) to minimise noise generated by guests.*
 - *An accommodation that has a direct interface with noise-generating (non-residential) uses or where ambient noise/activity already exists.*
 - *As a host is not present, a management plan (in accordance with Clause 2.2.3 below) is to be submitted, ensuring the proposal is consistent with the objectives of this policy.*

CENTRE ZONES

Consistent with Clause 18.6 of LPS 7, Short Term Accommodation uses shall be identified within the relevant structure plan or local development plan.

If short-term accommodation can be considered, an application shall not be submitted unless the Strata has expressly granted prior written consent for the application to be made.

All Other Zones (Residential, Private Community Purpose, Mixed Use and Local Centre)

Proposals in these zones will only be considered if they are:

- *Within 200 metres of the Old Mill site.*
- *Within 200 metres of the Perth Zoo site.*
- *Within 400 metres of a Neighbourhood Centre.*

Proposals for short-term accommodation within these locational areas shall demonstrate that the use is compatible with and would not negatively impact the amenity of surrounding uses by addressing the following Acceptable Development Criteria:

- *The proposal is in respect of the heritage significance of the subject site or immediately adjoining sites listed in the City of South Perth's Municipal Heritage Inventory or the State Heritage Register as detailed in the place's Statement of Heritage Significance.*

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- *Short-term accommodation areas that propose a sufficient distance and separation from the outdoor living area of the adjoining property(s) to minimise noise generated by guests.*
- *Accommodation that has a direct interface with noise-generating (non-residential) uses or where ambient noise/activity already exists.*
- *As a host is not present, a management plan (in accordance with Clause 2.2.3 below) is to be submitted, ensuring the proposal is consistent with the objectives of this policy.*

Short-term accommodation will not be considered in these zones unless they meet the above location criteria. If they are located within the above, they must also comply with this policy's general development requirements.

2.2 General Development Requirements for all short-term accommodation proposals that require development approval

2.2.1 Car Parking

The following car parking requirements apply to all short term accommodations where a development application is required:

<i>Use Class</i>	<i>Parking Provision</i>

2.2.2 Management Plan and Code of Conduct

All applications for short term accommodation require a detailed Management Plan and Code of Conduct to be submitted with the development application. The provisions below outline the requirements for Management Plans and Codes of Conduct.

2.2.3 Management Plan

The Management Plan shall address the following:

- Control of noise and other disturbances such that, at a minimum, the use accords with the Environmental Protection (Noise) Regulations 1997;*
- Screening and assessment procedures for all prospective guests;*
- Complaints management procedures, which are to include:*
 - *after-hours complaints procedures, including response times;*
 - *the provision of the telephone number of the accommodation owner(s) and operator for during and after-hours complaints to adjoining and adjacent neighbours prior to the use commencing;*
 - *that guests are provided with the code of conduct prior to and on arrival, and*
 - *that guests are made aware that anti-social behaviour and breaches of conduct will not be tolerated and guests may, as a result, be removed*
- The premises are secure, and guests are aware of emergency phone numbers and protocols; and*
- Control of parking to ensure that all guests are made aware, verbally and in writing, of the parking rules and regulations and the acceptable parking requirements.*

2.2.4 Code of Conduct

An operator of a Short Term Accommodation facility is to demonstrate by the production of a Police Clearance Certificate together with their Development Application that they are a person of good character and repute.

A Code of Conduct shall be prepared by the applicant detailing the expected behaviour of guests in order to minimise any impact on adjoining residents that includes the following:

- (a) contact details of the owner and operator;*
- (b) parking rules and regulations and acceptable parking requirements (details are to include any relevant car parking restrictions applicable to the area in relation to parking vehicles on surrounding properties and within the local streets and any parking arrangements required for the development);*
- (c) requirements around noise and antisocial behaviour;*
- (d) house rules for guests;*
- (e) guests must be made aware of the Code of Conduct, which must be displayed in a prominent position within the premises at all times and*
- (f) any breach of the Code of Conduct will be given consideration as part of the renewal of any Development Application for Short Term Accommodation.*

2.2.5 Residential Building – Specific Requirements

Residential Buildings are subject to the requirements for Lodging Houses set out in the Health Act 1911 and the City's Health Local Law 2002 relating to Lodging Houses.

1.2.6 Serviced Apartments – Specific Requirements**1.2.6.1 Design**

Serviced Apartments shall include a reception desk, which shall be attended by staff at all times when apartment check-ins and check-outs can occur.

1.2.6.2 Servicing Strategy

All applications for Serviced Apartments shall include a Servicing Strategy detailing the level of servicing containing, at a minimum:

- (a) opening hours for guest check-ins and checkouts;*
- (b) method of reservations/bookings;*
- (c) means of attending to guest complaints;*
- (d) cleaning and laundry services, where available;*
- (e) company name and relevant experience of management/operator; and*
- (f) management and accommodation of service vehicles within the context of the overall car parking for the development*

3. PUBLIC ADVERTISING

If advertising is required for applications for Short Term Accommodation, advertising will be undertaken in accordance with the City's Local Planning Policy – Advertising of Planning Proposals

4. TIME LIMITED APPROVALS

In all instances, short-term accommodation proposals will be subject to a time limitation of 12 months. The City will consider the setting and impact on adjoining land uses in determining time-limited approval; if the City does not receive any complaints and the Short Term Accommodation is well-run, the City Officers may grant an application for up to three years.

Comment

On 9 November 2023, the State Government announced new regulations for un-hosted Short-Term Rental Accommodation (STRA) in Western Australia and is currently progressing amendments to the Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations) to introduce 'Hosted Short-Term Rental Accommodation' and 'Unhosted Short-Term Rental Accommodation' land uses and associated exemptions from the requirement to obtain development approval.

It is anticipated that 'Hosted Short-Term Rental Accommodation' will be exempt from development approval in all instances and that 'Unhosted Short-Term Rental Accommodation' will be exempt if the property is not rented for more than 90 nights in a 12-month period, with these amendments expected to take effect in June 2024.

Whilst the City agrees that an updated LPP will be required for those STRA that require development approval, the City has previously advised Council via the Councillor bulletin that it intends to defer review of the current Short-Term Accommodation Local Planning Policy until mid-2024 once the amendments to the Regulations have been finalised. The rationale for this recommendation is further explained below:

- There may be other additions to the Regulations the City is unaware of given the proposed amendments have not been publicly released. Once the amendments to the Regulations are known, the City will present a draft LPP for Council's consideration.
- Local Planning Scheme No.7 (LPS 7) contains 'Holiday accommodation' and 'Holiday house' as the STRA land use definitions. At the time of drafting LPS 7, these were consistent with the Department of Planning, Lands and Heritage (DPLH) draft Position Statement – Planning for Tourism.
- The proposed amendments to the Regulations introduce 'Hosted Short-Term Rental Accommodation' and 'Unhosted Short-Term Rental Accommodation' land uses, and as such, the City will need to progress an amendment to LPS 7 to remove the redundant land uses which will be superseded by the new definitions.
- The State Government has advised that all local governments will be expected to amend their local planning schemes to implement the changes, which will ensure approvals can be issued ahead of the 1 January 2026 STRA Registration Scheme coming into effect. Property owners must demonstrate compliance with local planning requirements or risk de-registration beyond this date.
- The City expects the DPLH will enable this to be treated as a 'basic' scheme amendment, which requires initiation by Council but will not require advertising. This is expected to be presented to Council concurrently with the revised LPP in mid-2024 once the amendments to the Regulations are known.
- The draft LPP provided with the NoM includes land uses reflective of those contained in LPS 7 (e.g. holiday house), which will soon be superseded.

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- The City is anticipating that the new land uses inserted into the Regulations will be contained within the deemed provisions, which automatically apply to all local planning schemes.
- For this reason, should Council progress with a draft LPP ahead of the regulatory changes, it will be required to consult on and consider a draft LPP with land uses soon to be inconsistent with the Regulations, and if included in the deemed provisions, will have no effect.
- Council would then need to recommence consultation and consideration of an amended LPP to ensure consistency with the Regulations and Scheme changes within a short timeframe of adoption of the draft LPP contained within the NoM.
- The City considers this may result in community confusion and an ineffective use of resources.
- The State Government has advised amendments to the Regulations will occur early 2024. Whilst this is anticipated to be completed by June, it is possible that regulatory changes could come into effect whilst consultation on the draft LPP contained within the NoM is occurring.
- Should this occur, the draft LPP would need to be amended. Such modifications would not constitute minor amendments which could otherwise be made when Council is considering the draft LPP contained with the NoM for final adoption, rather, may require re-advertising depending on the extent of changes.

Given the City can already consider any matters related to the management of STRA under the current LPP under Town Planning Scheme No. 6 and Clause 67(2) of the Regulations (amenity impacts, traffic, noise etc.) for when LPS 7 is gazetted, a framework remains in place to enable the assessment of STRA whilst the regulatory changes occur.

In respect to the assessment and compliance of applications, three applications for STRA accommodation have been received in the past year as detailed below:

- Of the three STRA applications received, two were refused (one by Council and one by the City under delegation) and one was approved by Council subject to conditions to ensure appropriate management.
- For the application refused by the City, complaints were received prior to an application being received. The City commenced an investigation and required the landowner to submit an application should they seek approval for the continuation of the use. Once the application was received, following assessment, the application was refused by the City and the use subsequently ceased. No further complaints were received.
- No other complaints have been received in respect to these applications, however, the City can undertake enforcement action in accordance the *Planning and Development Act 2005* should issues arise.

The background to the NoM originally submitted by Councillor Waugh stated that removing an approval granted is permissible by law under Section 50 of the *Interpretation Act 1984* (IA). This is incorrect and not an option available to Council should compliance issues with STRA present in future. Whilst at face value this section of the IA could be seen as permitting a local government to revoke a development approval it had previously granted, the provisions of the IA do not operate where the intent and object of the written law in question, or something in the subject or context of the law, is inconsistent with the application of the IA – section 3 IA.

A development approval has an enduring function and is regarded as equivalent to a right '*in rem*' which runs with the land to which it applies. It protects the holder of the approval from carrying out an activity (i.e. development) that would be unlawful but for the approval. A development approval has an important enduring function of a public nature that can influence landowners other than the current owner. The grant of development approval therefore has a different character to most other administrative decisions and in WA, Supreme Court authority confirms that once a development approval has been granted it cannot be revoked or varied unless there is an express statutory authority to do so. The rationale for that position is that it would be inconsistent with the special nature and enduring public function of a development approval (which arises from the *Planning and Development Act 2005*) for it to be capable of revocation or variation (absent a specific power, rather than the default general position established by the IA).

Clause 77 of the deemed provisions of the Regulations provides a power to amend or cancel a development approval, but that power only operates where the owner of the land the subject of the approval makes an application to amend or cancel. There is no power for the local government to amend or cancel the development approval unilaterally. Further, the IA does not provide a power to allow a local government to unilaterally withdraw a development approval, and to apply that general provision would be inconsistent with the deemed provisions of the Regulations which are made under the *Planning and Development Act 2005*, which are specific to development approvals. Section 3 of the IA means that the section 50(2) power will not apply in those circumstances.

Additional Information post 28 February 2024

Short Term Rental Accommodation Bill 2024

Since this NoM was last considered by Council, on 21 February 2024 the Short Stay Rental Reform Bill was introduced into State Parliament to provide stronger regulation on STRA.

The STRA Register, to be operated by Consumer Protection, is expected to open in mid-2024, with all properties, both hosted and unhosted, required to be registered by 1 January 2025.

The reforms also include changes to planning requirements. Unhosted STRA property owners will need to obtain development approval if the property is rented out for more than 90 nights within a 12-month period in the Perth metropolitan region. As anticipated, Unhosted STRA for less than 90 nights within a 12-month period will be exempt from requiring development approval.

The State Government has advised the City that consultation with local government on the proposed Regulation changes is anticipated to be undertaken either late March or early April 2024. The City also understands that the DPLH is meeting with WALGA in the near future to discuss associated amendments to the Regulations.

Review of Draft Policy

In addition to the above legislative changes, the City has had the opportunity to review Councillor Waugh's draft LPP and raises the following matters:

- The scope of the draft LPP applies to the following land uses only: Bed and Breakfast, Holiday House, Holiday Accommodation, Hotel, Motel, Serviced Apartment, and Tourist Development. The scope then states that it will apply only to un-hosted short-stay accommodation outside of tourist zones. Bed and breakfast, hotel, motel, serviced apartment and tourist development are by their nature all 'hosted' uses. It is therefore unclear whether the draft LPP applies to these uses as the first paragraph conflicts with the last paragraph of the scope.
- The required amendments to schemes to incorporate the new STRA land uses will also remove some of these land uses from LPS 7, which would then require the Policy to be modified.
- The 'All other zone' requirements of the draft LPP include STRA being permitted within 200m of the Old Mill, however none of the zones specified in this section are located in this radius.
- The 'All other zone requirements' within the draft LPP provide for STRA applications to be considered in the Mixed Use zone where they are within 400m of a neighbourhood centre. There are only three Mixed Use zoned properties in the City that would meet this criteria. Consideration of different criteria is instead recommended to provide for STRA.
- STRA and bed and breakfast land uses are not subject to the Health (Public Building) Regulations 1992. If more than six persons are to be accommodated, lodging house provisions will instead apply per the *Health (Miscellaneous Provisions) Act 1911*. The draft Policy instead refers to the City's Health Local Laws 2022.
- A definition of 'Family' is included in the draft LPP as follows: "means a group of one or more parents/caregivers and their children residing together as a unit" yet is not otherwise used in the policy itself. The City considers this definition is inconsistent with Council's adopted Access and Inclusion Plan, as a family can include those without children.
- The draft LPP refers to the 'City's Municipal Heritage Inventory'. The relevant document is named the 'Local Heritage Inventory', which will soon be renamed 'Local Heritage Survey' following review.
- The draft LPP requires STRA approvals be subject to a time limitation of 12-months, yet then states the City will consider the setting and impact on adjoining land uses in determining time-limited approvals. In respect to extending the approval, reference is made to complaints received and the City determining whether the STRA is 'well-run'. The draft LPP does not distinguish whether complaints are based on valid planning reasons, as is required for quasi-judicial applications, and the term 'well run' lacks the specificity to provide guidance on whether an extension should be granted.

12.1 Notice of Motion - Councillor Bronwyn Waugh - Advertising of Short Term Accommodation Local Planning Policy

- The draft LPP requires STRA application to ‘*not negatively impact the amenity of surrounding uses*’ by addressing ‘Acceptable Development Criteria’, which includes a sufficient distance and separation from the outdoor living area of the adjoining property(s) and accommodation that has a direct interface with noise-generating (non-residential) uses or where ambient noise/activity already exists. Further guidance would be required as to what constitutes a ‘sufficient distance’, and it is unclear how noise-generating non-residential land uses would be impacted by an adjoining STRA application in respect to determining existing and potential adverse impacts on amenity.
- ‘Neighbour Zone’ is referred to in the draft LPP in lieu of the correct ‘Neighbourhood Centre’ zone.
- The draft LPP format is inconsistent with recently adopted LPPs (citation heading, removal of introduction, numbering for referencing clauses etc.) References to clauses in draft LPS 7 may change depending on insertion of additional clauses by the Minister for Planning prior to gazettal.

Further, the DPLH Planning Bulletin 115/2023 – STRA Interim Guidance for Local Governments states that:

1. Local governments should update existing LPPs to ensure alignment with the relevant provisions of the Position Statement and subsequent updates to the Regulations once operational.
2. A model LPP is also in development, which can be used to base future local policy provisions for STRA.

Given the updates to the Regulations have not yet occurred, the City maintains that Council should defer review of the current Short-Term Accommodation Local Planning Policy until the amendments to the Regulations have been finalised. The City can then also review the model LPP prepared by DPLH and determine whether amendments are required for the South Perth context.

Consultation

Should Council proceed with the draft LPP as provided in the NoM, the Regulations require public advertising for a minimum of 21 days (excluding holiday periods).

Policy and Legislative Implications

If the local government resolves to adopt an LPP for the purposes of advertising, the local government must, unless the WAPC otherwise agrees, advertise the proposed LPP as follows:

- “(a) *publish in accordance with clause 87 the proposed policy and a notice giving details of*
- (i) the subject and nature of the proposed policy; and*
 - (ii) the objectives of the proposed policy; and*
 - (iii) how the proposed policy is made available to the public in accordance with clause 87;*
 - (iv) the manner and form in which submissions may be made; and*
 - (v) the period for making submissions and the last day of that period.”*

As such, should Council resolve to adopt the draft LPP as provided in the NoM for the purposes of advertising, a public notice will be made available on the City's website in accordance with the Regulations.

Financial Implications

Nil.

Key Risks and Considerations

Risk Event Outcome	<p>Legislative Breach</p> <p>Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation.</p> <p>Reputational Damage</p> <p>Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.</p>
Risk rating	High
Mitigation and actions	It is recommended that Council adopts the suggested officer recommendation, and not proceed with the draft local planning policy provided in support of the notice of motion.

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.2 Sustainable built form
Strategy:	3.2.1 Develop and implement a sustainable local planning framework to meet current and future community needs

Suggested Officer Recommendation

That Council notes a draft Local Planning Policy – Short Term Rental Accommodation, will be presented to Council for consideration for advertising following gazettal of amendments to the Planning and Development (Local Planning Schemes) Regulations 2015 related to Short Term Rental Accommodation.

Reason for Alternative Recommendation

The State Government has announced planning reforms for Short Term Rental Accommodation, including amendments to the Regulations which may otherwise impact the content of a local planning policy.

Attachments

Nil.

12.2 NOTICE OF MOTION - COUNCILLOR HAYLEY PRENDIVILLE - TREE PROTECTION AND URBAN FOREST ADVISORY GROUP

File Ref: D-24-5298

Author(s): Donna Shaw, Director Development and Community Services

Reporting Officer(s): Mike Bradford, Chief Executive Officer

Summary

Councillor Hayley Prendiville submitted the following Notice of Motion prior to the Council Agenda Briefing held 19 March 2024.

Notice of Motion Recommendation (Suggested Officer Recommendation page 132)

- 1) That the Chief Executive Officer be directed to draft a Planning Policy to:
 - i) guide development within the City of South Perth, to ensure that trees are protected before applications for development are made;
 - ii) that if any tree is removed by a developer prior to a development application being made, that the developer must then ensure that the development includes twice the number of trees and canopies from the date of the completion of the development;
 - iii) ensure that following the adoption of LPS 7 there are appropriate protections for trees for any proposed Development;
 - iv) guide decision making under the Residential Design Codes (medium density codes) 7.3, expected for release in April, to deal with site concessions to be afforded where significant trees are retained on site, where the average site area is reduced by 10%, so that trees are appropriately retained, Residential Design
- 2) That the Chief Executive Officer be directed to establish a strategic Committee of the Council entitled the “Urban Forest Advisory Group” to align with the City's Urban Forest Strategy and Strategic Community Plan, and provide comments on Development Applications to protect trees of significance, and that the CEO does:
 - i) Present a motion in the form of a Council resolution to establish a committee under section 5.8 of the Act is to include—set out the terms of reference of the committee;
 - (a) set out the number of council members, employees and other persons to be appointed to the committee;
 - (b) the names or titles of the council members and employees to be appointed to the committee;
 - (c) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and

- (d) details of the delegation of any powers or duties to the committee under section 5.16 of the Act including:
- Provide advice on matters relating to the review, development and implementation of planting and maintenance of the City's flora to enhance the tree canopy and natural fauna development;
 - Assist in the creation of opportunities to increase appropriate native, endemic species for planting to support our natural ecosystem;
 - Provide advice and recommendations to Council on areas of improvement to percentage of tree canopy coverage;
 - Provide advice and recommendations to Council on ways to support local native fauna and tree protection; and
 - Provide advice to the Council on the retention and improvement of tree canopy with the City of South Perth including providing input on development applications where clearing or removal of trees is proposed.

Background

Councillor Hayley Prendiville submitted a Notice of Motion to request Council to consider establishing a committee of the council pursuant to the *Local Government Act 1995* (WA) and City of South Perth Standing Orders for the purpose of guiding decision making and providing advice on trees, including native vegetation.

The role of the committee is to provide input to council decision making for development that proposes to remove trees or native vegetation.

Further, this Motion proposes a Local Planning Policy to assist and guide decision making in respect of the retention of trees to preserve the tree canopy within the district of the City of South Perth. The reasons for the Notice of Motion were as follows:

BASIS FOR A LOCAL PLANNING POLICY

1. *The City's LPS 7 is due for adoption. Under LPS 6, the City of South Perth had identified trees of significance.*
2. *The Draft Residential Design Codes (medium density codes) 7.3 are due for adoption in April 2024.*
3. *It is important for the City to adopt an appropriate policy under LPS 7 that guides development within the City to ensure that existing trees are retained on land.*
4. *In May 2022, WALGA issued a local government approach as to tree retention, it is recognised that the City of South Perth in particular has a significant tree canopy that must be retained and improved as lots are targeted for the purposes of subdivision for medium density.*

5. *As WALGA noted at page 4 of its report entitled Local Government Approaches to Tree Retention:*

“removal of an existing canopy tree can result in a loss of amenity, reduced habitat, and increased urban heat which cannot be easily nor quickly regained by planting of immature replacement trees in often more constrained space and soil conditions, or even on structure.”
6. *WALGA also identified at that time:*

“while the above measures go some way to enabling future canopy growth on private land, the R-Codes do not adequately incentivise the retention of established canopy trees. Development approval is not currently required for the removal of canopy trees, and therefore land may be entirely cleared prior to a development application”.
7. *Recently, this issue arose within a development site within South Perth where trees were cleared from land ahead of Development Approval.*
8. *Schedule 7 of the Planning and Development Act (“the Act”) is expressly provides for the matters for which that may be dealt with by a Town Planning Scheme includes at clause 4(2) “conservation of natural environment of the scheme area, including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological processes and genetic diversity.”*
9. *Whereas it is accepted that clause 4(2) of the Act does not set out the criteria for the preservation of trees within the area, nevertheless, matters of preservation of trees is of significance to the City of South Perth and the mechanisms are necessary to ensure the protection of tree canopy.*
10. *This is consistent with the objects of LPS 7 Clause 9(C) of LPS 7 expressly states “to support an urban environment that encourages healthy, active, and sustainable living”.*
11. *It has long been acknowledged that both under the provisions of the Town Planning and Development Act, as set out above by reference to schedule 7, and as recognised by WALGA, that trees improve the amenity of a local government district.*
12. *It is widely considered that the removal of trees is not development. Whereas this is open to dispute, there must be a significant disincentive to Developers to remove trees without firstly obtaining approval.*
13. *It is for that reason that Council considers it important to include within the policy provisions that make clear that if any tree is removed by a developer prior to a development application being made for a lot, that the developer must then ensure that the development includes twice the number of mature trees and canopies from the date of the completion of the development, and that those trees be maintained for a period of not less than 2 years until they are established;*

14. *The Draft Residential Design Codes (medium density codes) 7.3 provides site area concessions of up to 10% where a significant tree is retained. A “Significant Existing Tree” is one that meets the following criteria: -*
 - *healthy specimens with ongoing viability; and*
 - *species is not included on a State or local area weed register; and*
 - *height of at least 4m; and/or*
 - *trunk diameter of at least 160mm, measured 1m from the ground; and/or*
 - *average canopy diameter of at least 4m; or*
 - *as specified with the local planning framework.*
15. *Whereas the Draft Residential Design Codes (medium density codes) 7.3 are welcomed, it is nevertheless necessary to provide better protections. It will be noted that trees may still be significant even if they are less than 4 meters in height*
16. *With the advent of the medium density codes, as well as LPS 7 being adopted, it is of urgent importance that the local government adopt an appropriate local planning policy to guide the protection of trees within the local government district for appropriate tree protection throughout the District.*
17. *The policy will be put to council and then is to be adopted to ensure appropriate guidance is given in approaching any development application within the City of South Perth and to protect the tree canopy within South Perth and ensure that there is an appropriate mechanism to protect trees.*
18. *It is recognised that it is likely that the State Government is likely to introduce amendments to the Planning and Development (Local Planning Scheme) Regulations 2015, to ensure tree canopy is properly protected across Western Australia, however, the City of South Perth has the opportunity to provide guidance to developers within the City of South Perth.*
19. *Given the change over from Town Planning Scheme 6 to LPS 7, it is important that as a matter of urgency, the City of South Perth adopts its own policy to guide development applications, so as to incentivise the retention of trees in all development areas.*

URBAN FOREST ADVISORY GROUP (UFAG)

20. *In accordance with Section 5.8 of the Local Government Act, “*
“A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.”*
21. *The Local Government is able to delegate some powers and duties to the committees by virtue of Section 5.16 of the Local Government Act, other than those duties that require an absolute majority or council or any power or duty that is prescribed. Section 5.17 of the Local Government Act.*

22. *The purpose of the Urban Forest Advisory Group (UFAG) is to:*
- (a) *Provide advice on matters relating to the review, development and implementation of planting and maintenance of the City's flora to enhance the tree canopy and natural fauna development;*
 - (b) *Assist in the creation of opportunities to increase appropriate native, endemic species for planting to support our natural ecosystem;*
 - (c) *Provide advice and recommendations in alignment with the Public Art Masterplan on acquisitions, decommissions/disposals and artwork concept designs that result from either Policy P101 Public Art and Art Collections, or Policy P316 Developer Contribution for Public Art and Public Art Spaces;*
 - (d) *Provide advice and recommendations to Council on areas of improvement to percentage of tree canopy coverage;*
 - (e) *Provide advice and recommendations to Council on ways to support local native fauna and tree protection; and*
 - (f) *Provide advice to the Council on the retention and improvement of tree canopy with the City of South Perth including providing input on development applications where clearing or removal of trees is proposed.*

Comment

Part 1 - Notice of Motion - Local Planning Policy

Planning and Development Act 2005

To provide context for a local planning policy (LPP), it is first important to understand the relationship between tree removal and the *Planning and Development Act 2005* (the Act).

The definition of development under the Act is as follows:

“development means the development or use of any land, including —

- (a) *any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- (b) *the carrying out on the land of any excavation or other works;*
- (c) *in the case of a place to which a protection order made under the Heritage Act 2018 Part 4 Division 1 applies, any act or thing that —*
 - (i) *is likely to change the character of that place or the external appearance of any building; or*
 - (ii) *would constitute an irreversible alteration of the fabric of any building.”*

Given the definition does not specifically refer to the pruning, modification or removal of trees, local governments have not interpreted tree removal etc. as development and as such, removal of trees without prior development approval having first being obtained has occurred.

The definition does include *“the carrying out on the land of any excavation or other works”*.

In respect to excavation, the City does not consider tree removal to be excavation and in any instance, chopping and thereafter leaving a tree stump would then otherwise not constitute 'excavation'. Further, State Planning Policy 7.3 – Residential Design Codes (R-Codes), exempt the need for development approval between the street boundary and the street setback, not more than 0.5m above or below natural ground level except where necessary to provide for pedestrian, universal and/or vehicle access, drainage works or natural light to a dwelling.

Given the broad definition of 'works' contained within the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), a case could be made that tree removal is 'works' that would constitute development that otherwise requires approval, however, consideration would need to be given to the nature and scale of the activity.

Given the Act requires development approval for all works, separate scheme provisions are not required to otherwise require a development application to be lodged. An LPP may be adopted to specify that the City's interpretation of development is such that tree removal constitutes 'works' for which development approval is required. Such an LPP may also specify the specific circumstances in which tree removal would constitute works that would otherwise require development approval.

Clause 61(1) of the deemed provisions of the Regulations provides that "works specified in a local planning policy or local development plan that applies to the works as works that do not require development approval" are exempt from requiring development approval. In this respect, an LPP could also specify instances where development approval is not required for tree removal (e.g. invasive species or trees under a certain height).

It is important to note that notwithstanding the above use of 'works' as development, various local planning schemes have previously been approved by the Minister for Planning that include 'clause 61 – development for which development approval is not required', stating that 'Development approval of the Local Government is not required for the following works – The removal of a tree unless it is identified on the significant tree register.' Inclusion of such a provision indicates that the Minister has formed the view that tree removal already constitutes development as otherwise, an exemption clause would not be required in a scheme. This is significant, as an argument could be made that removal of a tree already requires development approval. This has not been tested in the Magistrates Court and for the avoidance of any doubt, it is recommended that Council adopts a Policy so as to provide a local position that tree removal constitutes development (rather than relying solely on the local planning schemes of other local governments).

Existing Draft Local Planning Policy and Local Planning Scheme No. 7

A draft LPP – Tree Preservation, was presented to Council in March 2023 as part of consideration of draft Local Planning Scheme No. 7 (LPS 7). The draft LPP was prepared to address removal of trees on development sites and removal of trees on private land where no development is occurring. The Policy was intended to support implementation of draft LPS 7 provisions related to trees.

LPS 7 provisions were drafted such that development approval was required for removal of a tree over 8.0m in height. The draft LPP provided specific guidance to attempt to prevent clearing of large trees prior to the submission of a development application, such that an assessment could be undertaken to determine if trees could be reasonably accommodated and retained.

The 8.0m height criteria was selected in line with the R-Codes Volume 2 - Apartments, consistent with the 'nominal height at maturity' rate of medium trees and given trees over 8.0m in height make up 48.5% of the City's urban canopy (DPLH, 2020).

In addition to specifying exemptions to the requirement for development approval (e.g. unwanted species), the draft LPP also sought to identify matters the City would give due regard to when assessing an application to remove a tree including:

- Risk of personal injury and/or damage to buildings, structures or services;
- Structural soundness of the tree(s); and
- Whether the pruning or removal of tree(s) including disturbance to the root zone (as defined by the dripline) is likely to occur.

The draft LPP was provided for information purposes and was presented to Council to demonstrate how the draft LPS 7 provisions would operate within the planning framework. Consultation in accordance with the Regulations was not undertaken at that stage, which is required prior to an LPP being adopted.

The Minister for Planning has since approved LPS 7 and removed provisions relating to the requirement for development approval prior to the removal of certain trees, as well as significant tree register provisions.

The provision was drafted as follows:

Clause 61 – Development for which development approval is not required	Column 1 Works	Column 2 Conditions
	Removal of a tree (which includes: ring-barking, cutting down, topping, lopping, removing, pruning, transplanting, filling or excavating around, injuring, or wilful destruction)	(a) Tree pruning which does not remove more than 10% of a tree's canopy which does not damage or affect the health or structural stability of the tree.

Including such a provision exempting development approval for all types of trees except those otherwise specified in the columns conversely would have confirmed that tree removal is development, as it would otherwise not require exempting under the Scheme.

As such, it could be interpreted that tree removal would have already required development approval, with exemptions otherwise specified in the above provision.

Given the Minister for Planning required the above provisions be removed, an LPP can therefore be made to require development approval for tree removal, which otherwise could not have occurred as an LPP cannot override a scheme provision.

In light of this decision, should Council progress with an LPP, the provisions contained within the draft LPP may be reviewed, in addition to the requirements prescribed in the NoM related to an LPP. This is further discussed in this report.

Previous Consultation

Whilst no provisions related to trees were included in the Scheme text itself, the advertising for draft LPS 7 undertaken between 31 August 2022 and 29 November 2022 included a question in the feedback form which asked whether there was support for planning controls to help preserve large trees over 8.0m in height on private property. The following feedback was received:

- Support - 78.9% (307 submissions)
- Objection - 16.2% (63 submissions)
- Unsure - 4.9% (19 submissions)

The Regulations require advertising of an LPP in any instance, however, the City considers it appropriate that should Council proceed to advertise an LPP, the City specifically advises that the LPP would have the effect of making it an offence to remove a tree on private property that is not otherwise exempt under the LPP.

Seeking feedback on LPP provisions that provide criteria for preservation of trees is a different proposition to provisions making it an offence to remove a tree, and this distinction needs to be made to accurately gauge whether there is support for such provisions.

Enforcement and Mapping

Should Council adopt an LPP detailing that tree removal be considered development, it may become an offence under the Act to remove a tree without approval having first being obtained. The ability for the City to enforce LPP provisions is a relevant consideration in whether to adopt an LPP.

Should a tree be removed or damaged, it may be difficult for the City to prove (for the purposes of a prosecution) that the former tree met the criteria contained within the LPP (height, species etc.), which otherwise required a development approval prior to removal.

Whilst the City has aerial imagery and street photography, there is no guarantee that a prosecution action would ultimately be successful. Detailed mapping is therefore required to collect data to enable the City to identify trees over a certain height, consistent with LPP provisions for compliance purposes. If made publicly available, this would also enable landowners to undertake a self-assessment to determine if approval is likely to be required to remove a tree on private property.

The City had previously engaged ArborCarbon, a company which provides 3D modelling of tree canopy area, to assist in monitoring our urban tree canopy. ArborCarbon maps trees across different height bands and displays this information spatially on an interactive map, and the City has been quoted approximately \$12,000 for new data.

Whilst this data would be suitable in the interim should Council adopt an LPP, the City's preference is for uniform mapping coordinated by Landgate. Urban Monitor provides mapped data of the urban tree canopy for the Perth and Peel Regions in Western Australia under the Better Urban Forest program. Urban Monitor has recently transferred from the Department of Planning, Lands and Heritage to Landgate, and provides mapped data of the urban tree canopy for the Perth and Peel Regions in Western Australia under the Better Urban Forest program every two years.

Landgate has procured Urban Monitor data from CSIRO for 2024, which was collected in January and is expected to be available mid-2024. For the first time, data collection for the Urban Heat Index was added to the Urban Monitor contract for 2024.

Using four-band aerial imagery, vegetation height has been calculated and reported for each height strata of 0–3 metres, 3–8 metres, 8–15 metres and 15+ metres, with the most recent flyover occurring early 2024 with the data to be released mid-year.

Core products include digital ortho-photo, vegetation cover, vegetation vigour, vegetation height, ground elevation, surface elevation and a combination of these through a normalised elevation model and vegetation cover to achieve the layers of grass, trees and shrubs.

Mapping for the purposes of compliance would be required should Council adopt an LPP, and the City would need to investigate whether upgrades to its current geographical information system are required to support the products of Urban Monitor needed for compliance purposes.

The City currently has no budget allocation for such upgrades if required, or for the use of private companies such as ArborCarbon. It is recommended that appropriate data is available prior to adoption of an LPP and as such, a budget allocation would be appropriate in this respect.

WALGA Tree Retention Model Local Planning Policy

WALGA has developed a Tree Retention Model Local Planning Policy released which was released to local governments on 5 March 2024. WALGA's model LPP has been discussed with the Department of Planning, Lands and Heritage and the Minister for Planning and:

- Clarifies that the tree removal (or other tree damaging activity) is works that requires development approval.
- Introduces and defines the term 'regulated tree' being a living tree that:
 - Is 8.0m or more high; and/or
 - Has an average canopy diameter of at least 6m; and/or
 - Has a trunk circumference of at least 1.5 metres, measured 1.4m above the ground; and
 - Is of a species that is not included on State or local area weed register.
- Lists the circumstances where tree damaging activity would be exempt from requiring a development approval (i.e. tree does not meet the definition of regulated tree).
- Promotes and facilitates tree preservation at all stages of the planning and development process, including strategic planning proposals and subdivision applications, as well as development applications.

Should Council proceed with the NoM for an LPP, the City can consider the model LPP and whether any amendments/ additions are required for the South Perth context.

Advocacy

Whilst the City understands the intent of the NoM to create an LPP, the City believes tree retention on private property is a matter that needs to be addressed at the State Government level for consistency amongst local governments. Should Council not proceed with an LPP, or in addition to the City preparing an LPP, the City considers the following avenues for tree retention on private property could be considered by the State Government:

- Amending Schedule 7, Part 2, clause 61 of the Regulations such that development is not required for tree removal (column 1) except where conditions are not met in column 2. This has the effect of confirming tree removal is development, yet permitting removal except where trees meet certain criteria (height, species, geographic location in the State etc.). Given this clause is within the deemed provisions, it will apply to all schemes.
- Creating a State Planning Policy for trees and public open space. State Planning Policies provide the highest level of planning policy control and guidance in Western Australia and are prepared under Part 3 of the Act. State Planning Policies are applicable at the time of subdivision as well as development, and associated guidelines can be prepared to assist in information requirements and criteria to consider in determining applications.
- Amending existing State Planning Policies such as State Planning Policy 2.8 – Bushland Policy for the Perth Metropolitan Region. Whilst this Policy currently provides guidance for bushland protection, there is the potential for it to be amended to include trees on private property that meet certain criteria.
- Identification of trees worthy of retention being required as an information requirement on Form 1A (subdivision application form).
- Model subdivision advice note Ena5 – “*The [INSERT LOCAL GOVERNMENT] advises that it has identified trees of significance on the site that may have potential to be retained, and advises the applicant/ landowner to investigate the viability of retention. OR The landowner/applicant is advised to liaise with the [INSERT LOCAL GOVERNMENT] regarding the retention and protection of any trees of significance on the site, and investigating the potential for tree retention within the open space or setback areas of future development*”, being included as a condition of subdivision rather than advice note.
- Model subdivision D4 (fill, drain, stabilise, grade land for small infill and non-problematic sites) being modified to make it clear to developers that the entire site does not need to meet these requirements where it otherwise results in the retention of a mature tree, as well as providing guidance to avoid creation of deep tree wells around existing trees where fill is otherwise greater than natural ground levels.
- Increased frequency of flyovers for mapping for the Urban Monitor by Landgate.

The above suggestions could be included in the City’s response to the proposed Perth and Peel Urban Greening Strategy or via separate advocacy efforts.

Specific Notice of Motion Requirements - Local Planning Policy

The following comments are made in respect to part one (i) to (iv) of the NoM in respect to opportunities and statutory limitations of an LPP.

Part One (iv)

“Guide development within the City of South Perth, to ensure that trees are protected before applications for development are made.”

An LPP that specified (i) that tree removal is ‘works’ that would constitute development that otherwise requires approval and (ii) instances where development approval is not required for tree removal (e.g. invasive species or trees under a certain height) would provide guidance on development approval requirements related to trees.

It is noted that this does not ensure trees are protected, given the only way to prevent a tree being removed is to not cut it down. Rather, it would make it an offence should this occur outside of any exemptions contained within an LPP.

Part One (ii)

“That if any tree is removed by a developer prior to a development application being made, that the developer must then ensure that the development includes twice the number of trees and canopies from the date of the completion of the development.”

Enforcement actions available under the Act are limited to formal directions, proceedings for an offence (prosecution) and infringement notices. There is therefore no power to require a developer to plant additional trees where a tree is removed – enforcement action and the requirement to plant trees cannot be conflated.

In respect to tree planting independent of enforcement action, an LPP may include provisions requiring tree planting, based on matters such as:

- (i) retention of any existing tree to offset required amount to be planted; and
- (ii) the minimum site area requirements of the density code of the site.

Notwithstanding the above, an LPP can only modify State Planning Policy – Residential Design Code (R-Code) provisions related to tree planting in certain circumstances, which is further detailed in response to part one (iv) of the NoM in this report.

Further, whilst provisions related to planting of trees may be considered, it would not be appropriate to require twice the number of *canopies* from the date of completion of development, as the trees would not have grown to maturity to provide the extent of branch foliage to achieve such coverage by the completion of the development.

Part One (iii)

“ensure that following the adoption of LPS 7 there are appropriate protections for trees for any proposed Development.”

The City is expecting LPS7 to be gazetted in the coming weeks. Should this occur, given the statutory advertising requirements for LPPs prescribed in the Regulations, there is no ability for an LPP to be adopted prior to LPS 7 coming into effect.

Part One (iv)

“Guide decision making under the Residential Design Codes (medium density codes) 7.3, expected for release in April, to deal with site concessions to be afforded where significant trees are retained on site, where the average site area is reduced by 10%, so that trees are appropriately retained, Residential Design Codes (medium density codes).”

The amended R-Codes were released on 8 March 2024 and become operational on 10 April 2024. The amended R-Codes include four parts, being Part A (Operation of the Codes), Part B (Low Density), Part C (Medium Density) and Part D (Land).

Part C was originally proposed to apply to all single houses and grouped dwellings in areas coded R30 and above, and multiple dwellings in areas coded R30 to R60. In the updated version of the R-Codes, Part C will apply to the following:

- Single Houses codes R50 and above.
- Grouped Dwellings coded R30 and above; and
- Multiple Dwellings coded R30-60.

Part A of the amended R-Codes explains how the provisions of the code interact with local planning frameworks, including LPPs. It outlines which local planning instruments can modify R-Code provisions to achieve context and site-responsive development outcomes.

Local planning frameworks may amend, replace and/or augment the deemed-to-comply provisions of the R-Codes Volume 1 where the modifications to the R-Codes are:

- i. warranted due to a specific need identified by the decision-maker related to that particular locality or region;
- ii. consistent with the relevant provisions of State Planning Policy 7.0 - Design of the Built Environment;
- iii. consistent with the general objectives of the R-Codes Volume 1, as well as the section objectives and the design principles of Part B and C (as applicable);
- iv. able to be properly implemented and audited by the decision-maker as part of the ongoing building approval process; and
- v. consistent with orderly and proper planning.

The amended R-Codes proposed incentives for the retention of 'significant existing trees', including reduction of soft landscaping area by 10% for single and grouped dwellings. The amended R-Codes also make provision for the Western Australian Planning Commission (WAPC) (in consultation with the Local Government) to vary the average site area up to 5% to facilitate the protection of an environmental feature.

Part A of the amended R-Codes do not permit the local government to modify the average site area requirements through an LPP without the approval of WAPC. Whilst the City could seek WAPC approval to vary the average site area requirements for single and grouped dwellings where a significant existing tree is retained via an LPP:

- Such a provision would unlikely meet the criteria of specific need relevant to the locality, as this matter is relevant to all metropolitan local governments;
- an LPP can be used to modify portions of deemed-to-comply criteria related to street setbacks, lot boundary setbacks and access without WAPC approval, which could be used to assist in designing to retain trees and in any instance; and
- where deemed-to-comply criteria has not been achieved, assessment under the relevant design principles can be undertaken to ensure flexibility in development standards for tree retention regardless of lot size.

It should also be noted that Part A does not permit the local government to modify the trees and landscaping provisions of the amended R-Codes via an LPP without the approval of the WAPC.

Part Two – Notice of Motion - Committee of the Council - Urban Forest Advisory Group

The City does not support the establishment of a committee for this purpose, as the regulatory requirements of the operation of a formal committee may exclude the intent prescribed in the NoM, and the City instead considers a broader range of voices could be heard by other consultation means.

Section 5.8 of the *Local Government Act 1995* (LG Act) enables Council to form committees to assist the Council and to exercise the powers and discharge the duties of the local government that can be delegated to committees. The establishment of such a committee would be governed by the LG Act and would require the selection of small number of community members (or experts), with meetings required to follow standing orders.

Further, the LG Act has recently been amended to provide for independent committee members to receive meeting fees. The Salaries and Allowances Tribunal issued a variation to Determination No.1 of 2023 in October 2023 and the LG Act states independent committee members are entitled to be paid.

Should Council form an Urban Forest Advisory Group as a Committee of Council, independent committee members will be entitled to be paid and Council will need to consider a budget allocation for this purpose.

With respect to decision making of the Committee, in accordance with Section 5.20(2) of the LG Act, a decision of a committee does not have effect unless it has been made by a simple majority or, if another kind of majority has been prescribed by regulations or a local law for the particular kind of decision, by that kind of majority. There are various views from sections of the community related to trees, which may otherwise result in difficulty achieving a simply majority.

The NoM outlines that this would be a committee with delegation, which would remove the decision making power from Council with regards to those matters specified in the NoM (e.g. urban forest strategies and development applications with trees).

As such, it is instead recommended that an Urban Forest Advisory Group (not a formal Committee of Council) be created, with the City preparing terms of reference that generally align with the topics for discussion contained within the NoM, except for development applications or public art proposals.

The City does not consider it appropriate for such a Committee to provide comments on development applications or public art proposals as detailed in the NoM for the following reasons:

- The Regulations prescribe statutory timeframes for the assessment and determination of development applications (60 or 90 days depending on advertising). The agenda timeframes for an Advisory Group to provide comments where clearing or removal of trees is proposed may result in failure to meet statutory timeframes. As a result this Committee would need to meet frequently (likely every few weeks) to ensure compliance.
- Further, whilst the City can consider submissions received on a proposal and environmental impacts of a development, the advice of an Advisory Group or Committee of Council is not otherwise a matter which the local government is to have due regard to in considering an application for development approval in accordance with the Regulations; and
- The City already facilitates a Public Art Advisory Group to provide advice on acquisitions, decommissions/disposals and artwork concept designs related to developer contributions.

Consultation

Should Council proceed with the NoM, once an LPP is adopted by Council for the purposes of advertising, the Regulations require public advertising for a minimum of 21 days (excluding holiday periods).

Policy and Legislative Implications

Should Council consider an LPP for advertising in future, if the local government resolves to adopt an LPP for the purposes of advertising, the local government must, unless the WAPC otherwise agrees, advertise the proposed LPP as follows:

- ‘(a) publish in accordance with clause 87 the proposed policy and a notice giving details of*
 - (i) the subject and nature of the proposed policy; and*
 - (ii) the objectives of the proposed policy; and*
 - (iii) how the proposed policy is made available to the public in accordance with clause 87;*
 - (iv) the manner and form in which submissions may be made; and*
 - (v) the period for making submissions and the last day of that period.”*

Part 5, Division 2 of the LG Act provides for the establishment of committees as follows:

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

* Absolute majority required.

Financial Implications

The operation of the Committee will require Administration resources via the preparation of reports, the compilation of agendas, participation at meetings, the preparation of minutes and actioning any requests, as well as catering and payment of Committee members. A budget allocation of approximately \$60,000 would be required for this purpose should the motion be retained as is, given the Committee would need to meet regularly to ensure development applications are determined within statutory timeframes. Should this component of the Motion be removed, and the Committee meet quarterly, it is estimated that a budget allocation of \$20,000 would be required.

Key Risks and Considerations

Risk Event Outcome	<p>Legislative Breach</p> <p>Refers to failure to comply with statutory obligations in the manner in which the City, its officers and Elected Members conduct its business and make its decisions and determinations. This embraces the full gamut of legal, ethical and social obligations and responsibilities across all service areas and decision making bodies within the collective organisation.</p> <p>Reputational Damage</p> <p>Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.</p>
Risk rating	Medium
Mitigation and actions	<p>The Local Planning Policy must be created in accordance with the requirements of the Planning and Development Act (Local Planning Schemes) Regulations 2015, and cannot alter any provision of State Planning Policy 7.3 – Residential Design Codes, without the prior approval of the Western Australian Planning Commission. Should Council resolve for the City to prepare a draft Local Planning Policy, provisions will be drafted and the Local Planning Policy advertised in accordance with these requirements.</p> <p>There is a potential reputational risk in that the approach may not be supported by the community and/or State Government.</p>

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Environment (Built and Natural)
Aspiration:	Sustainable, liveable, diverse and welcoming neighbourhoods that respect and value the natural and built environment
Outcome:	3.3 Enhanced environment and open spaces
Strategy:	3.3.2 Enhance the City's urban forrest

Suggested Officer Recommendation

That Council:

1. Requests the Chief Executive Officer by no later than the May Ordinary Council Meeting, prepare and present to Council:
 - (i) A Local Planning Policy on matters related to tree protection and provision.
 - (ii) Terms of Reference for the creation of an Urban Forest Advisory Group.
2. Notes that the City will advocate to the State Government for consistent tree protection provisions on private property as part of the State Government's Planning Reform agenda.

Reason for Alternative Recommendation

To ensure provisions contained within the proposed LPP are considered against the WAPC approval requirements of the R-Codes, and to review evidence requirements to increase the likelihood of a successful prosecution.

In respect to the Urban Forest Advisory Group, an Advisory Group rather than a formal Committee of Council is recommended to ensure decision making is retained by Council. This timeframe will enable the City to draft appropriate terms of reference for an Advisory Group, including membership and meeting and operating procedures.

Attachments

Nil.

13. QUESTIONS FROM MEMBERS

This item will be dealt with at the Ordinary Council Meeting.

14. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

This item will be dealt with at the Ordinary Council Meeting.

15. MEETING CLOSED TO THE PUBLIC

Nil.

16. CLOSURE