



Ordinary Council Meeting

Minutes

Wednesday 31 January 2024

CONFIRMED

MINUTES

Minutes of a meeting of the Busselton City Council held in the Council Chambers, Administration Building, Southern Drive, Busselton, on Wednesday 31 January 2024 at 5:30pm.

TABLE OF CONTENTS

1. OFFICIAL OPENING.....	4
2. ATTENDANCE.....	4
3. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION).....	5
4. DISCLOSURES OF INTEREST	6
5. CONFIRMATION AND RECEIPT OF MINUTES.....	6
5.1. ORDINARY COUNCIL MEETING 13 DECEMBER 2023	6
6. PUBLIC QUESTION TIME.....	7
6.1. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE.....	7
6.2. QUESTION TIME FOR PUBLIC.....	7
7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS	10
7.1. PETITIONS.....	10
7.2. PRESENTATIONS BY PARTIES WITH AN INTEREST	10
7.3. DEPUTATIONS.....	10
8. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION) 10	
9. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY	11
10. REPORTS OF COMMITTEE	12
10.1. BUSSELTON MARGARET RIVER AIRPORT UPDATE.....	12
11. COMMUNITY PLANNING REPORTS.....	20
11.1. DEVELOPMENT APPLICATION - DA22/0817 - BED AND BREAKFAST (CHANGE OF USE AND NEW DEVELOPMENT) - SPECIAL CONTROL AREA AT LOT 301 (NO. 29) CARNARVON CASTLE DRIVE EAGLE BAY.....	20
11.2. DEVELOPMENT APPLICATION - DA23/0327 - SINGLE HOUSE (SWIMMING POOL, GYM & GARAGE) - SPECIAL CHARACTER AREA AT LOT 16 (NO. 6) SEAVIEW RISE, EAGLE BAY.....	34
12. INFRASTRUCTURE AND ENVIRONMENT REPORTS	47
13. ECONOMIC AND BUSINESS DEVELOPMENT REPORTS.....	48
14. CORPORATE STRATEGY AND PERFORMANCE REPORTS	49
14.1. MONTHLY FINANCIAL REPORT - YEAR TO DATE 30TH NOVEMBER 2023.....	49
14.2. LIST OF PAYMENTS MADE - NOVEMBER 2023	56

14.3. AUDIT AND RISK COMMITTEE: TERMS OF REFERENCE AND INDEPENDENT MEMBER.....	59
15. CHIEF EXECUTIVE OFFICER REPORTS	68
15.1. ELECTED MEMBER INFORMATION BULLETIN.....	68
16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	71
16.1. NOTICE OF MOTION - BUSSELTON JETTY COMMITTEE	71
16.2. NOTICE OF MOTION - COUNCIL MEETING SCHEDULE.....	77
16.3. NOTICE OF MOTION - JETTY RESERVE FUND.....	78
16.4. NOTICE OF MOTION - VASSE RIVER COMMITTEE	82
16.5. NOTICE OF MOTION - CITY OF BUSSELTON PLANNING APPROACH.....	93
16.6. NOTICE OF MOTION - AUDIT AND RISK COMMITTEE.....	100
17. URGENT BUSINESS	101
18. CONFIDENTIAL MATTERS	101
19. CLOSURE	101

1. OFFICIAL OPENING

The meeting opened at 5:41pm.

The Mayor welcomed Councillors, staff, guests and members of the public to the Ordinary Council Meeting of 31 January 2024.

The Mayor acknowledged the Wadandi and Bibbulmun people as the traditional custodians of this region and paid respects to Elders past and present.

This meeting was audio recorded for minute taking purposes. The meeting was also live streamed on the City of Busselton YouTube channel.

Pastor Lee Sykes from Church read out a prayer as part of the opening of this meeting.

2. ATTENDANCE

PRESIDING MEMBER	MEMBERS
Mayor Phill Cronin	Cr Anne Ryan <i>Deputy Mayor</i>
	Cr Andrew Macnish
	Cr Jodie Richards
	Cr Kate Cox
	Cr Val Kaigg
	Cr Sue Riccelli
	Cr Mikayla Love
	Cr Jarrod Kennedy

OFFICERS	
Ms Sarah Pierson	Acting Chief Executive Officer
Mr Gary Barbour	Director Community Planning
Ms Maxine Palmer	Director Economic and Business Development
Mr Paul Sheridan	Acting Director Corporate Strategy and Performance
Mr Daniell Abrahamse	Acting Director Infrastructure and Environment
Ms Tegan Robertson	Governance and Risk Coordinator
Ms Jo Barrett-Lennard	Governance Officer

APOLOGIES	
Nil	

LEAVE OF ABSENCE

Nil

MEDIA

Nil

PUBLIC

23

COUNCIL DECISION

C2401/3 Moved Cr Val Kaigg, seconded Cr Mikayla Love

That Cr Jarrod Kennedy be granted a leave of absence for the Ordinary Council Meeting to be held 21 February 2024.

CARRIED 9 / 0

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish,
Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli**

AGAINST: Nil

3. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

The Mayor announced that Monday 29 January, the City of Busselton held its 2024 Annual General Meeting of Electors, where the Annual Report inclusive of the Financial Report for 2022/2023 was presented and endorsed.

The Mayor welcomed 41 new Australian Citizens, sworn in at the Citizenship Ceremony held on Friday 26 January, and thanked the Rotary Club of Busselton Geographe Bay and Dunsborough Progress Association for hosting celebrations on Australia Day.

The Mayor congratulated Community Citizens of the Year award winners, Carol Smith, Caitlyn Butler and Jenny Monson, and acknowledged the nominees of the award.

The Mayor also congratulated Jacquie Happ, Rick Winch, Trevor Fisher and Delys Forrest, who were recognised for their remarkable commitment to community service, and awarded with the Order of Australia Medal.

4. DISCLOSURES OF INTEREST

DISCLOSURES OF FINANCIAL INTEREST

Nil

DISCLOSURES OF IMPARTIALITY INTEREST

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1. Ordinary Council Meeting 13 December 2023

COUNCIL DECISION

C2401/4 Moved Cr Val Kaigg, seconded Cr Jarrod Kennedy

That the Minutes of the Ordinary Council Meeting 13 December 2023 be confirmed as a true and correct record.

CARRIED 9 / 0

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish,
Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli**

AGAINST: Nil

6. PUBLIC QUESTION TIME

6.1. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

The following questions were taken on notice at the 13 December 2023 Ordinary Council Meeting.

Below is a summary of the question and response provided by the CEO.

Dr Andrew Dickie

Question

When will the tender for stage three of the sediment removal program in the Lower Vasse River be issued?

Response

It is planned that the Request for Tender for the sediment removal for Stage 3 of the Lower Vasse River Sediment Removal Program, will be advertised in January/February 2024, and the procurement process finalised by April 2024. Physical sediment removal in Stage 3 is planned for approximately May – June 2024 based on increased water flows and reduced water temperatures during this time.

Question

What is the total amount of funds available for stage three including grants and rates?

Response

\$938,025 is budgeted for Stage 3 of the Lower Vasse River Sediment Removal Program, comprising of \$407,964 State NRM grant funding.

6.2. QUESTION TIME FOR PUBLIC

Ms Susan Willets

Question

What is the City doing about the smell that is coming from the Wonnerup Estuary?

Response

(Sarah Pierson, Acting Chief Executive Officer)

The City understands that the Department of Water and Environmental Regulation (DWER) and Water Corporation are planning a sediment removal program adjacent to Estuary Drive in Wonnerup. Works are expected to commence in autumn 2024 subject to aboriginal heritage approvals and a suitable dredging contractor being sourced

The City takes, and acts on, advice from the Department of Health on potential health impacts. The City is not in a position to provide health advice.

Mr Vern Bussell

Question

How can the media and City staff claim that the Lower Vasse River dredging program (stages one and two) has been successfully completed when this statement does not appear to be correct?

Response

(Sarah Pierson, Acting Chief Executive Officer)

Stages one and two of the dredging program have been completed, those works are finished.

The Council has committed to reviewing the effectiveness of three stages of sediment removal before it proceeds with any further sediment removal. This assessment will occur at the end of stage three. Stage three and the success of the program will be measured through water quality monitoring undertaken by DWER.

The City has also reported the tonnes of dry sediment removed in stages one and two, which is another way of measuring outcomes. However it was never the intent to remove 100% of the sediment.

Question

Are you personally aware that when the dredging was carried out, only one third of the sediment that was known to be in the river was removed?

Response

(Sarah Pierson, Acting Chief Executive Officer)

I am not personally aware of the ins and outs of the sediment removal, however I am aware that there were a number of factors that influenced the dredging in each of the stages with around 30% removed in stage one. There were some improvements sought for stage two.

Mr Terry Ealing

Question

In [Development Application] DA20/0438 dated 16 October 2020, titled 'Notice of Determination on Application for Development Approval City of Busselton Local Planning Schedule 23', General Conditions section one states:

"The development hereby approved is permitted to operate for five years from the date of this decision or until 168,750 cubic metres volume has been extracted (whichever is sooner)"

Why has the total amount extracted never been calculated?

Response

(Sarah Pierson, Acting Chief Executive Officer)

Some information regarding this issue was provided in January, indicating that the City had received a survey, and that the site had not reached its extraction capacity.

Question

Who was the licenced surveyor that conducted the calculations?

Response

(Sarah Pierson, Acting Chief Executive Officer)

We will take that question on notice.

Mr Keith Sims

Question

At the Annual General Meeting of Electors held Monday 29 January 2024, attendees were told that the Council would be presented with a request for a new contingency budget for Saltwater. The original \$3 million contingency was included in the \$44.5 million total budget, leaving \$6.5 million in addition to the \$38 million construction contract, that is \$3.5 million for the landscaping etc to complete the project.

Will the new contingency amount be transparent, listing what each amount is for?

Response

(Sarah Pierson, Acting Chief Executive Officer)

The City is reviewing the contingency budget, and until that review is undertaken the City has not determined if any amendments to the contingency budget are required. Any final costings for the project will be made public.

Question

If there are amendments, and these amendments come before Council for changes or additional contingency money, would those funds be for Broad Construction as this would increase their \$38 million contract?

Response

(Sarah Pierson, Acting Chief Executive Officer)

The City couldn't answer that at this point in time, we do not have those details.

Question

How much is the expected cost to rise from \$3.5 million balance?

Response

(Sarah Pierson, Acting Chief Executive Officer)

As the contingency budget is being reviewed, the information is not yet available.

Question

Is there any reason the City can't install a public car park sign or ensure that the Hilton Hotel does for the public half-share of the car park?

Response

(Sarah Pierson, Acting Chief Executive Officer)

The City is looking into the matter, however if it is a public car park, then the City could install a public car park sign.

Dr Andrew Dickie

Question

Has any Elected Member or officer viewed the most recent Department of Water and Environmental Regulation phytoplankton water test results from the Lower Vasse River, particularly from the Peel Terrace section that has been dredged and phoslock applied?

Response

(Mayor Phill Cronin)

We will take that question on notice.

7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS

7.1. PETITIONS

Nil

7.2. PRESENTATIONS BY PARTIES WITH AN INTEREST

Mr Don Best (on behalf of Residents of Eagle Bay Association) spoke in relation to item 11.1 'Development Application - DA22/0817 - Bed and Breakfast (Change of Use and New Development) - Special Control Area at Lot 301 (No 29) Carnarvon Castle Drive Eagle Bay'.
Mr Best spoke in support of Mayor Cronin's alternative to the officer recommendation.

Ms Teena Smith and Mr Lee Smith spoke in relation to item 11.1 'Development Application - DA22/0817 - Bed and Breakfast (Change of Use and New Development) - Special Control Area at Lot 301 (No 29) Carnarvon Castle Drive Eagle Bay'. Ms and Mr Smith spoke in support of the officer recommendation.

Mr Don Best (on behalf of Residents of Eagle Bay Association) spoke in relation to item 11.2 'Development Application - DA/23/0327 - Single House (Swimming Pool, Gym & Garage) - Special Character Area at Lot 16 (No 6) Seaview Rise, Eagle Bay'.
Mr Best spoke in support of the officer recommendation.

7.3. DEPUTATIONS

Nil

8. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)

Nil

9. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY

ADOPTION BY EXCEPTION RESOLUTION EN BLOC

COUNCIL DECISION

C2401/5 Moved Cr Anne Ryan, seconded Cr Val Kaigg

That the Officer Recommendations for items 11.2, 14.1 and 14.2 be carried en bloc.

Item	Report
11.2	Development Application - DA23/0327 - Single House (Swimming Pool, Gym & Garage) - Special Character Area at Lot 16 (No. 6) Seaview Rise, Eagle Bay
14.1	Monthly Financial Report - Year to Date 30th November 2023
14.2	List of Payments Made - November 2023

CARRIED 9 / 0

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish,
Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli**

AGAINST: Nil

10. REPORTS OF COMMITTEE

10.1 Busselton Margaret River Airport Update

Strategic Theme:	Key Theme 3: Opportunity 3.4 Develop aviation opportunities at the Busselton Margaret River Airport.
Directorate:	Economic and Business Development
Reporting Officer:	Manager Airport - Jennifer May
Authorised By:	Director of Economic and Business Development - Maxine Palmer
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Draft Final Airport Master Plan [7.1.1 - 79 pages] 2. Drawings from Busselton [7.1.2 - 17 pages]

This item was considered by the Airport Advisory Committee at its meeting on 13 December 2023, the recommendations of which have been included in this report.

Prior to the meeting, Cr Macnish foreshadowed an alternative that was different to the committee recommendation. In accordance with clause 10.18(7) of the City of Busselton *Standing Orders Local Law 2018*, the committee recommendation was considered first.

The committee recommendation lapsed for want of a mover.

SUBSTANTIVE MOTION

That the Council receives and notes the Busselton Margaret River Airport Update report and the Busselton Margaret River Airport Master Plan (2023).

LAPSED FOR WANT OF A MOVER

With the committee recommendation having lapsed, the foreshadowed alternative was moved and carried.

COUNCIL DECISION

C2401/7 Moved Cr Andrew Macnish, seconded Cr Anne Ryan

That the Council:

- 1. Receives and notes the Busselton Margaret River Airport Update report.**
- 2. Authorises and requires the CEO to publish the periodical BMRA Update report one week after the publication of the Airport Advisory Committee (AAC) meeting minutes should the AAC endorse the BMRA Update report.**

3. That the Council adopt the final BMRA Master Plan (version 2024) as a guide for future planning, and henceforth it is termed the Final Airport Master Plan Busselton Margaret River Airport (2023-2043) and replaces the existing BMRA Master Plan (2016-2036).
4. Requests the CEO undertake a broader review of the terms of reference of the AAC to clarify the purpose and function of the committee, and meeting frequency and processes, to provide a report to Council at the March 2024 Ordinary Council meeting.

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

Reasons: Council resolved to review the Terms of Reference for the Airport Advisory Committee, clarify the adoption of the Busselton Margaret River Airport Master Plan, and review the requirements for noting the Busselton Margaret River Airport update report.

Council considered the Busselton Margaret River Airport Master Plan (2023) at an information briefing on 6 December 2023 and provided feedback. This feedback has been incorporated, and the updated Margaret River Airport Master Plan (2024) is provided as an attachment to this report for noting, per the Committee recommendation.

OFFICER RECOMMENDATION

That the Council receives and notes the Busselton Margaret River Airport Update report and the Busselton Margaret River Airport Master Plan (2023).

EXECUTIVE SUMMARY

This report provides an overview of the operations and activities of Busselton Margaret River Airport (BMRA) for the reporting period 1 July 2023 through 30 November 2023 and for the 2023/24 year. This includes an update on passenger numbers, regular public transport services (RPT), closed charter and general airport operations.

STRATEGIC CONTEXT

Regular updates on Busselton Margaret River Airport aids in the development of opportunities at Busselton Margaret River Airport and aligns with Strategic Theme 3.4.

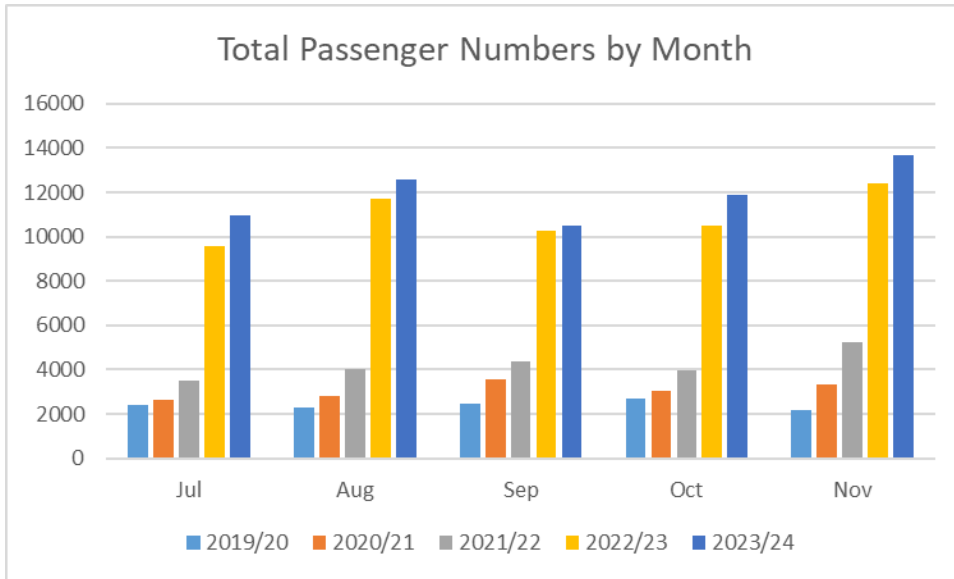
BACKGROUND

BMRA continues to experience consistent growth in passenger and aircraft movement numbers as the Airport business unit continues to progress business development opportunities and focuses on operational improvement projects.

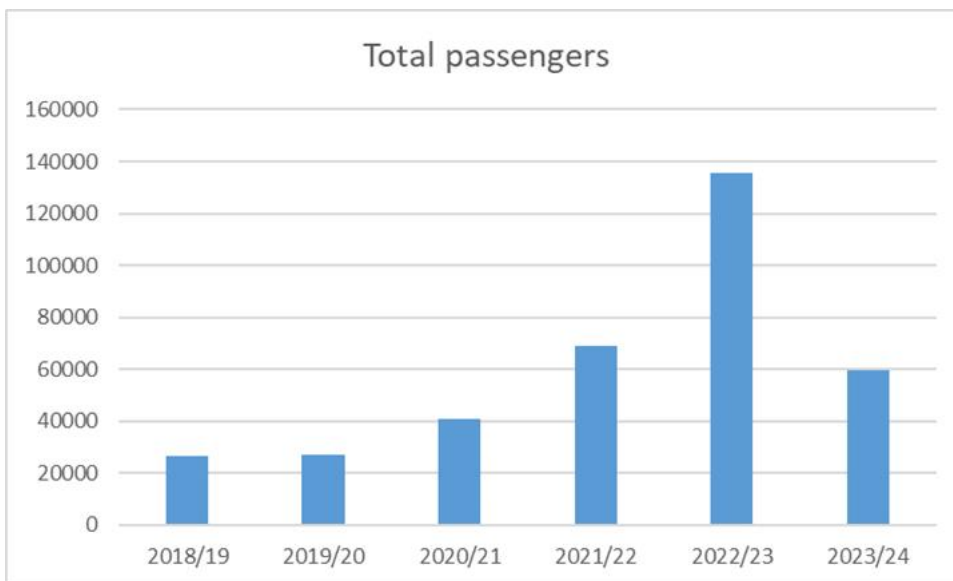
Passenger Numbers

The total passenger numbers for the reporting period (1 July 2023 – 30 November 2023) were 59,565 compared to 54,409 for the same period in 2022, representing an increase of 9.5%. The

continued increase in passenger numbers can be attributed to the growth in FIFO passenger numbers across all closed charter airlines servicing Rio Tinto, BHP and FMG.



The total passenger numbers by financial year can be viewed below.



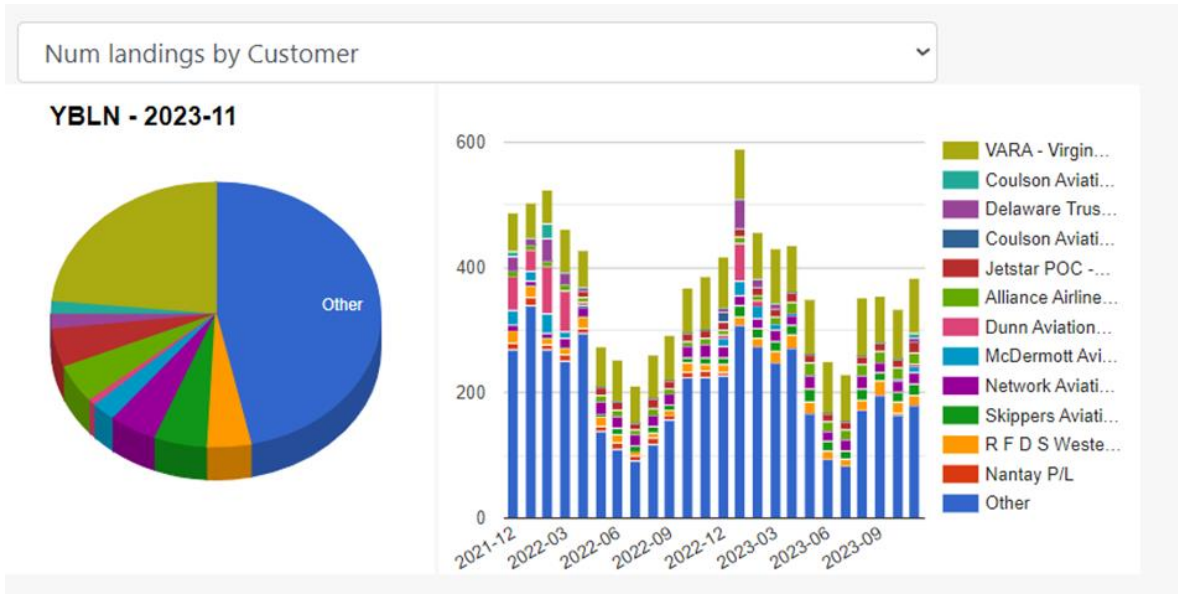
Aircraft Movements

The total number of scheduled services operating from BMRA as of the end of the reporting period was 35 movements per week, with 31 Fly in Fly out (FIFO) closed charter and 4 RPT services, with a fourth Jetstar service starting on 4 November.

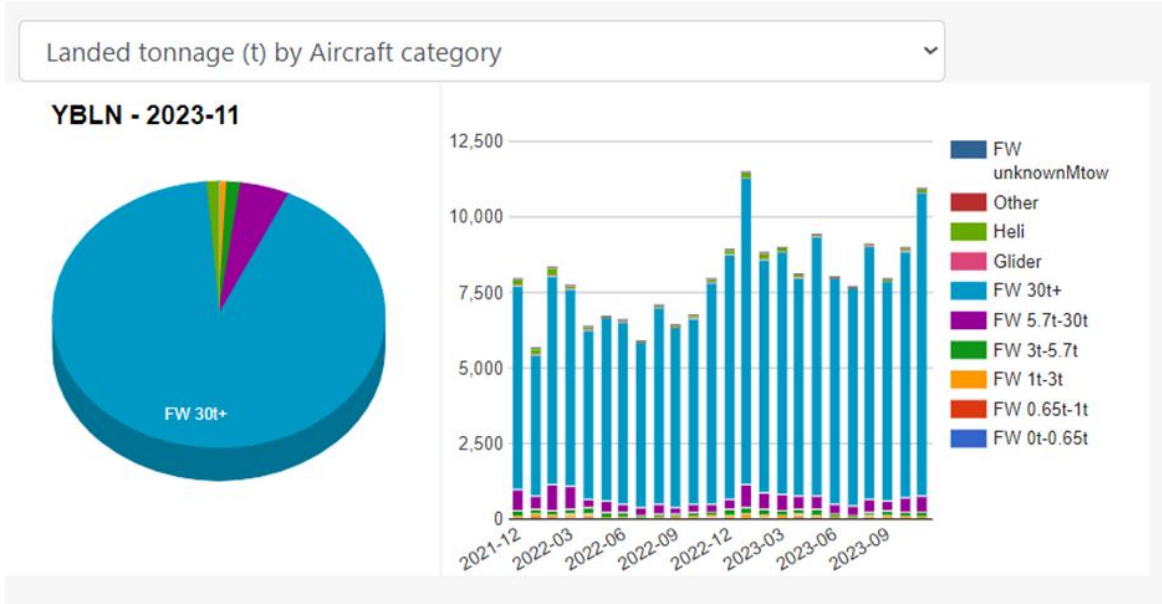
Five airlines are operating from BMRA with RPT and closed charter services utilising aircraft types from Dash 8-300 to A320 and B737-700 aircraft servicing destinations such as Melbourne and multiple mining operations across Western Australia. There has also been an increase in the number of A320/B737 aircraft operating compared to Fokker100 aircraft with a split of 56:44 respectively for the reporting period compared to 40:60 respectively for the same period in 2022.

There have been 11 formal landing approvals granted for private jet/charter operations for the reporting period.

The below graph shows the number of landings by customer at BMRA.



There has been 2230 landings during the reporting period compared to 1912 landings for the same period in 22/23 FY. The following graph represent the breakdown of landings by Maximum Take Off Weight (MTOW) at BMRA by year.



Operations Update

Since the beginning of this financial year the Airport team have completed the following projects:

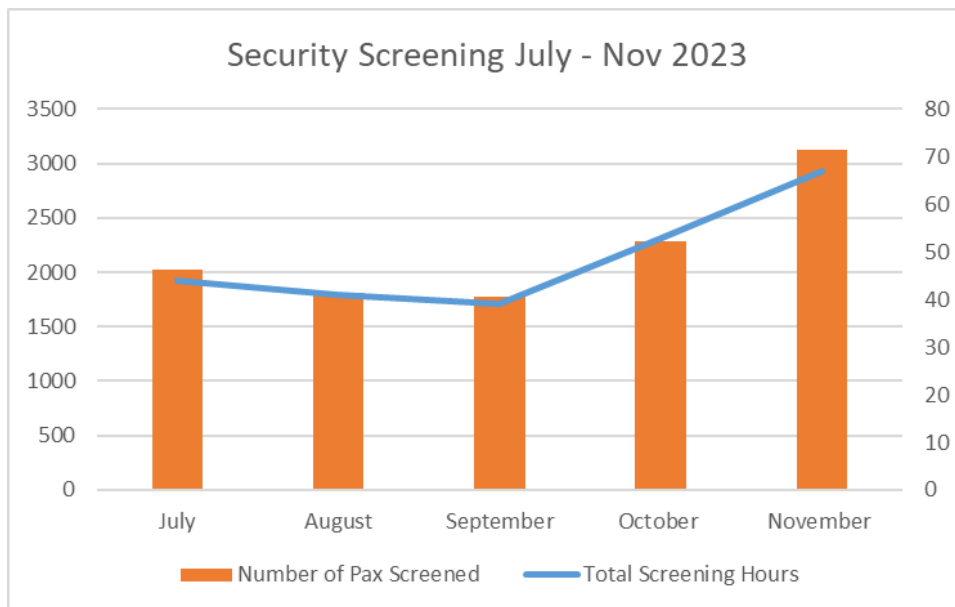
- Runway line marking and central apron equipment clearance markings;
- Back of house asphalt expansion area;
- RFDS apron and building RFQ’s awarded and works planned;
- Apron and additional CCTV RFQ awarded and installation due to commence 18 December; and
- Office/Training transportable in place and operational.

The focus for the 2023/24 summer will be the following projects:

- RFDS relocation project - construction of new patient transfer hangar and apron in the general aviation precinct.
- General aviation hangars.
- Runway strip compliance works.
- Central Apron Bay 10 lighting project.
- Obstacle Limitation Surface infringement – management/trimming of vegetation.

Security Screening Activities

The graph below shows the number of people screened and screening point hours per month for the 23/24 FY.



OFFICER COMMENT

The 2023/24 FY is proving to be a very busy year with Officers receiving enquiries regarding new closed charter services and the announcement of Jetstar to commence a direct Sydney – Busselton service three times a week from 25 March 2024. This is in addition to the four times a week direct Melbourne - Busselton services.

Passenger numbers and aircraft movements are increasing compared to the same reporting period last year and Officers are exploring ways to improve processes, including infrastructure improvements at the Airport to ensure that operations are managed safely and compliantly as well as providing a good passenger experience.

Increased visitation to the airport has resulted in additional car parking usage and Officers are monitoring the available car parking spaces on a weekly basis. For the month of November, the average number of free car parking spaces in the public car park was 46, noting that some patrons are parking on the kerbs and non-parking areas. With the commencement of Jetstar Sydney services in March 2024 and the increasing trend in FIFO passengers, it is likely that an additional public car park will need to be constructed in 2024.

The existing terminal building septic systems has been running at capacity and requires upgrading. In late 2022, Officers engaged a contractor to undertake an assessment of the existing systems and provide options to upgrade the existing terminal system on the basis that a new terminal was likely to be constructed in the future. An application was submitted to the Department of Health to construct / install a system for the treatment of sewage at the Airport and subsequently approved in February 2023. The application is valid for a two-year period and Officers are working with the contractor to prepare a design and costs for installation of an upgraded system. Officers may be requesting a budget amendment in early 2024 depending on timeframes for installation so that the current Department of Health approval does not lapse.

Officers have been progressing the BMRA Master Plan (2023) with the master planning consultants presenting the final draft to Council on 6 December 2023. The BMRA Master Plan (2023) is the plan that will guide the development for the future of the airport and has a planning horizon of twenty years out to 2043. Some of the facilities and activities identified in the BMRA Master Plan will be developed in the near term, whereas some will take several years to justify and might be expected to be implemented in 10 to 15 years from now. The Master Plan identifies areas of the airport site that are reserved to enable the City to react to opportunities that might develop in the future but are not presently apparent thus giving the City flexibility to react to a changing landscape and business practices. Officers are proposing as part of the Officer's recommendation, that Council note the BMRA Master Plan 2023 (attached) for future planning and integration with the long term financial plan where needed.

A Request for Quotation (RFQ) for the engagement of consultants to prepare a business case for the construction of a new terminal building and associated landside and airfield infrastructure at BMRA has been awarded. The business case will need to comprehensively present the benefits and costs to the City of Busselton and the economic and social impacts to the wider South West region of the available infrastructure investment options to facilitate future commercial aviation at BMRA. The business case will form the basis of funding applications for both State and Federal Government. The RFQ was awarded to KPMG, with the project kick-off meeting and the first workshop held in early December. Officers are continuing to progress the quantity surveyor costings for the terminal concept designs and will finalise the Asset and Financial Management framework that will input into the business case.

The Airport team have been liaising with officers from RAAF Pearce with regards to a training deployment planned in early 2024. The deployment will involve PC21 training aircraft and supporting crew deployed to Busselton for 2 weeks. The deployment will also provide the opportunity for community engagement with schools and other educational institutions and the Airport Team will liaise with the RAAF on community consultation prior to the deployment.

Statutory Environment

BMRA operates in accordance with the following:

- *Aviation Transport Security Act 2004*
- *Aviation Transport Security Regulations 2005*
- CASA part 139 Manual of Standards (Aerodromes)
- City of Busselton Transport Security Plan
- Ministerial Statement 1088.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

BMRA Master Plan 2016-2036

Policy:

Not applicable.

Financial Implications

The net operating result (exclusive of depreciation and the Airline Attraction allocations) for the reporting period is a surplus of \$1,665,305 compared to a budget surplus of \$1,164,466. There are a few factors contributing to this result:

YTD actual revenue of \$2,168,679 compared to YTD budgeted revenue of \$1,857,927 with the following allocations exceeding projections;

- Airport Landing & Take-off revenue - \$829,206 actual compared to \$541,667 budgeted;
- Car Parking revenue - \$583,062 actual compared to \$440,000 budgeted.

YTD actual expenditure of \$503,737 is less than the YTD budgeted expenditure of \$693,461 due to the following;

- Decreased salaries and allowances due to vacant positions;
- Contractor and airport maintenance allocations being lower than expected with reduced operational maintenance performed during the winter months.

External Stakeholder Consultation

Consultation has been occurring on a regular basis with Department of Transport, South West Development Commission, Tourism WA, Australia Southwest, airport stakeholders, Department of Home Affairs - Aviation Marine Security (AMS), Civil Aviation Safety Authority (CASA), Air Services Australia, Virgin Australia Regional Airline, Qantas Group, Southwest Aviation Services, the Busselton Aero Club, Albany, Esperance, Geraldton Airports and Australian Airports Association, concerning many topics and issues relating to the Airport.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City’s risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could choose not to receive and note the Busselton Margaret River Airport Update Report and /or the Busselton Margaret River Master Plan (2023).

CONCLUSION

The first half the 2023/24 financial year has proved to be a busy year with increased passenger numbers and aircraft movements. The announcement of Jetstar direct Sydney – Busselton flights to commence on 25 March 2024 is a great result for the BMRA, tourism and local businesses throughout the South West region. The start of the Sydney flights and continuation of the Melbourne flights will mean that there are direct flights six days a week from the East Coast for not only domestic visitors but also enabling international travellers to access the South West region.

Focus continues to be on business development with leases for the general aviation precinct, working with key stakeholders on intrastate and new FIFO services and attracting aviation businesses.

The final presentation of the Draft BMRA Master Plan (2023), the completion of the new terminal design concepts and start of the BMRA Terminal Business Case Project supported by business planning in early 2024 will place BMRA in a positive position for achieving operational efficiencies and forecast growth.

With recruitment for the new Airport team structure almost complete and the planning of the coming year’s works, Officers will continue to strive to provide high levels of customer service at BMRA, while ensuring the airport is compliant, safe and security is maintained throughout.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Busselton Margaret River Airport Master Plan (2024) published on City of Busselton and BMRA websites.	February 2024.

11. COMMUNITY PLANNING REPORTS

11.1. Development Application - DA22/0817 - Bed and Breakfast (Change of Use and New Development) - Special Control Area at Lot 301 (No. 29) Carnarvon Castle Drive Eagle Bay

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Community Planning
Reporting Officer:	Planning Officer – Devin Moltoni
Authorised By:	Acting Director Community Planning - Rachel Runco
Nature of Decision:	Regulatory: To determine an application/matter that directly affects a person’s right and interests e.g. development applications, applications for other permits/licences, and other decisions that may be reviewable by the State Administrative Tribunal.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Location Plan [11.1.1 - 1 page] 2. Development Plans (Amended) [11.1.2 - 5 pages] 3. Original Development Plans [11.1.3 - 62 pages] 4. Original Planning Assessment Report [11.1.4 - 60 pages] 5. Original Schedule of Submissions [11.1.5 - 15 pages] 6. Aerial Indicating Upper Floor Proportion Share of Surrounding Dwellings [11.1.7 - 1 page]

Prior to the meeting, Mayor Cronin foreshadowed an alternative that was different to the officer recommendation.

The motion was moved, there was opposition and debate ensued. During debate, Cr Riccelli foreshadowed an alternative to the substantive motion.

The alternative motion was lost.

COUNCIL DECISION

C2401/8 Moved Mayor Phill Cronin, seconded Cr Anne Ryan

That the Council:

- 1. Notes that the development application for Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay was previously refused by the City on 20 September 2023 (“the decision”).**
- 2. Notes that, pursuant to review proceedings under the *State Administrative Tribunal Act 2004* (the SAT Act), the Applicant has provided amended plans to the City, responding to concerns raised in the decision.**
- 3. Notes further, that the Tribunal has now invited the City to reconsider its decision.**

4. Pursuant to section 31(2)(a) of the SAT Act, sets aside the decision and substitutes its new decision as follows:
- i. That application DA22/0817 submitted for development of Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay, is considered by the Council to be consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located.
 - ii. To grant development approval for the proposal subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The use hereby approved shall at all times comply with the definition of Bed and Breakfast as provided in Schedule 1 of the City of Busselton *Local Planning Scheme No. 21*, as follows:

"Bed and Breakfast" means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast.

Notwithstanding the above interpretation, the approved use is restricted to a maximum of four (4) guests.

3. Advertising signage associated with the approved use shall be no greater than 0.2m², located within the subject site.
4. A minimum number of four car parking bays shall be provided on the site comprising two for the residents of the dwelling and two for the guests of the Bed and Breakfast.

PRIOR TO COMMENCEMENT CONDITIONS

5. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and approved in writing:
 - 5.1 Updated plans shall be submitted reducing the wall height of the outbuilding to 3.1m to comply with Local Planning Policy 4.10 Outbuildings and Other Non-Habitable Buildings and removal of the roller door from the western elevation to the southern elevation.
 - 5.2 A revised version of the Bushfire Management Plan prepared by Envision Bushfire Protection shall be submitted to the satisfaction of the City of Busselton.

5.3 A Landscape Plan which shall include landscaping along the western and northern elevation of the outbuilding, hereby approved, which shall at maturity sufficiently screen the outbuilding from Carnarvon Castle.

ONGOING CONDITIONS:

6. The works undertaken to satisfy Conditions 3, 4 and 5 shall be subsequently maintained for the life of the development and the following complied with:

6.1 The owner must implement the revised Bushfire Management Plan and Bushfire Emergency Evacuation Plan prepared by Envision Bushfire Protection required pursuant to Condition 5.2 for the duration of the development (Advice Note 11).

6.2 Landscaping and reticulation shall be implemented in accordance with the approved landscape Plan and shall therefore be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants, which, within a period of five years from first planting, are removed, die or are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

LOST 0 / 9

FOR: Nil

AGAINST: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

With the substantive motion being lost, the foreshadowed alternative was moved and carried,

COUNCIL DECISION

C2401/9 Moved Cr Sue Riccelli, seconded Cr Mikayla Love

That the Council:

- 1. Notes that the development application for Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay was previously refused by the City on 20 September 2023 (“the decision”).**
- 2. Notes that, pursuant to review proceedings under the *State Administrative Tribunal Act 2004* (the SAT Act), the Applicant has provided amended plans to the City, responding to concerns raised in the decision.**
- 3. Notes further, that the Tribunal has now invited the City to reconsider its decision.**
- 4. Pursuant to section 31(2)(a) of the SAT Act, sets aside the decision and substitutes its new decision as follows:**

- i. That application DA22/0817 submitted for development of Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay, is considered by the Council to be consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located.
- ii. To grant development approval for the proposal subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The use hereby approved shall at all times comply with the definition of Bed and Breakfast as provided in Schedule 1 of the City of Busselton *Local Planning Scheme No. 21*, as follows:

"Bed and Breakfast" means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast.

Notwithstanding the above interpretation, the approved use is restricted to a maximum of four (4) guests.

3. Advertising signage associated with the approved use shall be no greater than 0.2m², located within the subject site.
4. A minimum number of four car parking bays shall be provided on the site comprising two for the residents of the dwelling and two for the guests of the Bed and Breakfast.

PRIOR TO COMMENCEMENT CONDITIONS

5. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and approved in writing:
 - 5.1 Updated plans shall be submitted reducing the wall height of the outbuilding to 3.1m to comply with Local Planning Policy 4.10 Outbuildings and Other Non-Habitable Buildings.
 - 5.2 A revised version of the Bushfire Management Plan prepared by Envision Bushfire Protection shall be submitted to the satisfaction of the City of Busselton.
 - 5.3 A Landscape Plan which shall include landscaping along the western and northern elevation of the outbuilding, hereby approved, which shall at maturity sufficiently screen the outbuilding from Carnarvon Castle.

ONGOING CONDITIONS:

6. The works undertaken to satisfy Conditions 3, 4 and 5 shall be subsequently maintained for the life of the development and the following complied with:

6.1 The owner must implement the revised Bushfire Management Plan and Bushfire Emergency Evacuation Plan prepared by Envision Bushfire Protection required pursuant to Condition 5.2 for the duration of the development (Advice Note 11).

6.2 Landscaping and reticulation shall be implemented in accordance with the approved landscape Plan and shall therefore be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants, which, within a period of five years from first planting, are removed, die or are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

Reasons: To provide for landscaping to screen the shed structure from the western street frontage of Carnarvon Castle Drive.

OFFICER RECOMMENDATION

That the Council:

1. Notes that the development application for Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay was previously refused by the City on 20 September 2023 (“the decision”).
2. Notes that, pursuant to review proceedings under the *State Administrative Tribunal Act 2004* (the SAT Act), the Applicant has provided amended plans to the City, responding to concerns raised in the decision.
3. Notes further, that the Tribunal has now invited the City to reconsider its decision.
4. Pursuant to section 31(2)(a) of the SAT Act, sets aside the decision and substitutes its new decision as follows:
 - i. That application DA22/0817 submitted for development of Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay, is considered by the Council to be consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located.

- ii. To grant development approval for the proposal subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The use hereby approved shall at all times comply with the definition of Bed and Breakfast as provided in Schedule 1 of the City of Busselton *Local Planning Scheme No. 21*, as follows:

"Bed and Breakfast" means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast.

Notwithstanding the above interpretation, the approved use is restricted to a maximum of four (4) guests.

3. Advertising signage associated with the approved use shall be no greater than 0.2m², located within the subject site.
4. A minimum number of four car parking bays shall be provided on the site comprising two for the residents of the dwelling and two for the guests of the Bed and Breakfast.

PRIOR TO COMMENCEMENT CONDITIONS

5. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and approved in writing:
 - 5.1 Updated plans shall be submitted reducing the wall height of the outbuilding to 3.1m to comply with Local Planning Policy 4.10 Outbuildings and Other Non-Habitable Buildings.
 - 5.2 A revised version of the Bushfire Management Plan prepared by Envision Bushfire Protection shall be submitted to the satisfaction of the City of Busselton.

ONGOING CONDITIONS:

6. The works undertaken to satisfy Conditions 3, 4 and 5 shall be subsequently maintained for the life of the development and the following complied with:
 - 6.1 The owner must implement the revised Bushfire Management Plan and Bushfire Emergency Evacuation Plan prepared by Envision Bushfire Protection required pursuant to Condition 5.2 for the duration of the development (Advice Note 11).

EXECUTIVE SUMMARY

The Applicant has sought review in the State Administrative Tribunal (Tribunal) of the Council's decision on 20 September 2023 to refuse the development application for a Bed and Breakfast (Change of Use of Existing Single House and New Development) at Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay.

As part of this review the Tribunal has invited the City to reconsider its decision, by 12 February 2023.

The Applicant has submitted amended plans in order to address concerns raised by the Council in its reasons for refusal. The Applicant has:

- Reduced the building height to 7.5m;
- Reduced the outbuilding wall height to 3.1m subject to the submission of amended plans pursuant to Condition 5.2;
- Increased the outbuilding setback to the western lot boundary by an additional 3m;
- Removed the water tank (in order to accommodate the increased outbuilding setback); and
- Reduced the scale of the upper storey to cover 59.7% of the ground floor, considering amendments to the plans and revised calculation inputs.

As a result of the changes that have been made to the proposed development, officers recommend that the development application be approved, subject to conditions.

STRATEGIC CONTEXT

As per Objective 4.2 of the Strategic Community Plan the application has been referred to Council to facilitate transparent decision making, specifically in the Special Character Areas (SCAs) of the City.

BACKGROUND

The Council is asked to reconsider its previous decision to refuse a development application for a Bed and Breakfast (Change of Use of Existing Single House and New Development) at Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay (the Site). The Council's reasons for refusal are provided below:

That the Council determines:

- A. *That application DA22/0817 submitted for development of Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay, is considered by the Council to not be consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.*
- B. *To refuse to grant development approval, for the following reasons:*
 1. *Uncertainty exists around whether lawful discretion exists.*
 2. *The proposal is considered to have excessive landscape and visual elements particularly in relation to:*

- a) *Dwelling is proposed to reach a height of 8.45m, inclusive of a chimney height, in lieu of the development standard permitted height of 7.5m.*
- b) *Upper store floor area covers 89% of the ground floor footprint in lieu of 50% permitted by the Development Standard.*
- c) *Outbuilding wall height (shed) of 3.34m in lieu of permitted Residential Design Codes -2.4m, LPS 21 - 2.7m and LPP 4.10 - 3.1m*

Key information regarding the application is set out below:

1. **Landowner:** Teena and Lee Smith
2. **Applicant:** MNB Residential
3. **General description of the site:**

The Site is a corner lot on a 90-degree corner bend of Carnarvon Castle Drive.

The Site is zoned 'Residential' by *Local Planning Scheme No. 21* (the Scheme) with a density coding of R2.5. The adjoining properties to the south and east are similarly zoned 'Residential' with a density of coding of R2.5. The properties to the west, on the opposite side of Carnarvon Castle Drive, are zoned 'Rural Residential'.

A Location Plan is provided in Attachment 1.

4. **Existing development/use:**

On this site there is a current approval for a Single House, holiday home that is currently under construction. This development was approved 2021 and subsequently modified in 2022.

5. **Applicable zoning and special control area designations:**

- Zoning – Residential.
- Density - R2.5.
- Landscape Value Special Control Area.
- Eagle Bay Special Character Area Special Control Area.

6. **Land use Permissibility:**

Pursuant to the Scheme, the Site is zoned 'Residential'. Bed and Breakfast is a discretionary ('D') land use under Table 1 – The Zoning Table of the Scheme and therefore the use is not permitted unless the local government has exercised its discretion by granting development approval.

7. Brief description of the proposed development:

The proposal refused by council at the meeting 20 September 2023 consisted of the following elements:

- Proposed new two-storey Single House;
- Change of use of existing Holiday Home (Single House);
- All development on the site to be considered a single Dwelling and the single land use 'Bed and Breakfast' accommodating a maximum of four guests; and
- Ancillary buildings consisting of a water tank and outbuilding.

Following mediation through the Tribunal the applicant has made the following changes to the original development for Council consideration:

- Reduce the building height to 7.5m (from 7.87m).
- Reduce the outbuilding wall height to 3.1m (from 3.34m) subject to the submission of amended plans pursuant to Condition 5.2.
- Increase the setback to the outbuilding by an additional 3m from the western lot boundary (from 5m to 8m setback).
- Remove the water tank from the proposal to accommodate the relocation of the outbuilding.
- Reduced the scale of the upper storey to cover 59.7% of the ground floor, considering revised calculation inputs and amendments to the plans.

This report is supported by the following attachments –

1. Attachment 1 – Location Plan
2. Attachment 2 – Development Plans (Amended)
3. Attachment 3 – Original Development Plans
4. Attachment 4 – Original Planning Assessment Report
5. Attachment 5 – Original Schedule of Submissions
6. Attachment 6 – Aerial indicating upper floor proportion share of surrounding dwellings.

OFFICER COMMENT

Each of Council's reasons for refusal are discussed below, including how these have been addressed by the Applicant in the amended plans -

Reason for refusal 1: 'Uncertainty exists around lawful discretion'.

The property is located within a SCA under the Scheme, which has set development standards contained in schedule 4 that are incapable of variation (as per the *Pennock* decision). Other development standards that apply, set elsewhere within the planning framework, such as structure plans or local planning policies, can be varied through lawful discretion.

In relation to the previous decision by the Council, there was uncertainty around if there was discretion to approve a development above the 7.5m height control, in addition to the applicable setbacks. These are both discussed further below.

Building Height

The building height has been amended to 7.5m above natural surface level, and now complies with the build height set through both Schedule 4 and the Eagle Bay Structure Plan.

Therefore, the legal issue raised by HWL Ebsworth concerning whether a development standard contained in a Structure Plan is incapable of variation has fallen away (as the Applicant has complied with that standard).

(The exclusion of the chimney (from building height calculations) is discussed further below under Reason 2(a)).

Building Setbacks

Although not listed as a reason for refusal there was some uncertainty in relation to whether the applicable building setbacks were as per the table in Schedule 4 or as per the Structure Plan.

The opening words of Schedule 4, Clause 5(a) clarify this issue and specify “Other than provided for in a Structure Plan.....”. This means, if there is a structure plan, those provisions take precedence. Therefore, the setbacks are as per the Structure Plan.

This was acknowledged by the Residents of Eagle Bay Association (REBA) and their legal representatives – HWL Ebsworth.

The proposed development complies with all applicable setbacks under the Structure Plan.

Reason 2 (a) the ‘dwelling is proposed to reach a height of 8.45m, inclusive of a chimney height, in lieu of the development standard permitted height of 7.5m’.

The amended plans for Council consideration have a reduced maximum dwelling height of 7.5m (exclusive of the chimney), which complies with the requirements of both Scheduled 4 and the Eagle Bay Structure Plan.

The chimney was initially included in the building height calculation. However, upon review, through the Tribunal process, it has been determined that the chimney cannot be included in the measurement of the building height as it is deemed a minor projection under *State Planning Policy 7.3 Residential Design Codes (R-codes)*.

Building height is defined, under the Deemed Provisions, as per the R-Codes. The R-Codes define building height as

*“the distance between the point where the base of the wall meets the natural ground level and measured to the highest point of a wall or roof of a building vertically above that point (for measurement guidance refer to Figure Series 7) **excluding minor projections**”* (emphasis added).

Minor projections are defined to include chimneys (as well as vent pipes, aerials and other things of a like scale).

The rationale behind excluding these types of items from a building height development standard is readily apparent. If building height standards are for the purpose of reducing bulk and scale impacts, then a minor projection will not contribute to these impacts.

Reason 2 (b) ‘upper storey floor area covers 89% of the ground floor footprint in lieu of 50% permitted by the development standard’.

The development standard requiring that the upper floor area be no more than 50% of the ground floor area is contained within the Eagle Bay Structure Plan. A structure plan is considered to be a guiding document when undertaking a merit-based assessment of a development application and can be varied.

The intent of the standards controlling upper storey coverage of the ground floor are to limit building bulk. However, they rely on controlling proportionate building bulk, not absolute building bulk. This could result in situations where the ground floor is made larger resulting in a development that is compliant with the 50% upper floor requirement however the overall size of the development is larger.

The calculation of the upper storey floor area coverage of 89% of the ground floor footprint previously considered by Council was based on the footprint of the new development area and did not include within the calculation the previously approved building footprint currently under construction.

Within the development plans proposed for Council consideration, the calculation is revised to include the existing approved building footprint on the site in the ground floor. In conjunction with the amendments made to reduce the upper floor area, the outcome is a proposed upper storey coverage equating to 59.7%. However, if the existing development is excluded from the calculations, it is noted that the second storey bulk is still reduced by 10%, and considered appropriate in scale.

Examples of this can be seen in a number of other dwellings in the locality including those identified below –

Address	Ground Floor (GF) Area	Upper Floor (UF) Area	Proportionate Share	Officer Comment
Subject Site	264.52m ²	162.8m ²	59.7%	- Ground Floor area includes existing and proposed development
Lot 303 (No. 15) Carnarvon Castle Drive	362m ²	169m ²	46%	- Complies with proportion share - GF is 180m ² larger than proposed development. - UF is 7m ² larger than proposed development.
Lot 304 (No. 11) Carnarvon Castle Drive	428m ²	246 m ²	57%	- Does not comply with proportion share - GF is 246m ² larger than proposed development - UF is 84m ² larger than proposed development

Address	Ground Floor (GF) Area	Upper Floor (UF) Area	Proportionate Share	Officer Comment
Lot 305 (No. 35) Carnarvon Castle Drive	289m ²	127m ²	58%	<ul style="list-style-type: none"> - Does not comply with proportion share. - GF is 108m² larger than proposed development - UF is 35m² smaller than proposed development

An aerial indicating the location of the above-mentioned properties is provided at Attachment 6.

It is considered that the development as proposed provides less of an impact in terms of building bulk than those dwellings listed above and therefore the size of the upper floor is appropriate in this instance.

Reason 2 (C) ‘outbuilding wall height (shed) of 3.34m in lieu of the permitted Residential Design Codes – 2.4m, Local Planning Scheme – 2.7m and Local Planning Policy 3.1m’.

The amended plans indicate an outbuilding of 3m. However, taken from natural ground level at the rear of the outbuilding (furthest from the street), the wall height (inclusive of earthworks) would reach 3.8m. However, it is the intent of the Applicant to comply with 3.1m wall height standard provided the City’s *Local Planning Policy 4.10 Outbuildings and other non-habitable buildings* (LPP 4.10). Therefore, with the agreement of the Applicant, a condition of approval has been included requiring the submission of updated plans demonstrating compliance with LPP 4.10.

In addition, the Applicant has provided amended plans that move the outbuilding an additional 3m back from the street. The rationale behind this move is to provide additional measures to mitigate against potential visual impacts of the outbuilding from the street, as referenced in the Council decision.

Statutory Environment

Legislation

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 21

State Government Policies

State Planning Policy 7.3 Residential Design Codes

State Planning Policy 3.7 Planning in Bushfire Prone Areas

Structure Plans/Development Guide Plans

Eagle Bay Structure Plan

Development Guide Plan for Lot 50 Eagle Crescent and Portion Location 1348 Carnarvon Castle Drive, Eagle Bay

Relevant Plans and Policies

Local Planning Policy 3.3 Eagle Bay Special Character Area

Provides development guidelines specific to the designated Eagle Bay Special Character Area.

Local Planning Policy 4.2 Bushfire

Provides guidance on the City's assessment of development addressing the requirements of State Planning Policy 3.7 Planning in Bushfire Prone Areas to achieve acceptable bushfire protection.

Local Planning Policy 4.10 Outbuildings and Other Non-Habitable Buildings

Provides guidance on the assessment of outbuildings.

Financial Implications

There are no financial implications associated with the officer recommendation.

However, if the matter were to be refused and proceed to a final hearing in the Tribunal then expert witness and legal representative costs could be anywhere between \$60,000 to \$100,000.

External Stakeholder Consultation

Consultation on the original development application was undertaken by mailing letters to surrounding land-owners. The City received submissions by surrounding landowners as well as REBA and their legal representative HWL Ebsworth. The concerns in the submissions related to:

1. Overdevelopment of the built form on the site;
2. Non-compliance with setback standards and which setback standards apply to the site;
3. Building Height and Bulk;
4. Provision of Parking;
5. Use of the site for short-stay accommodation;
6. Bushfire risk; and
7. Removal of vegetation.

Consultation has not been undertaken in relation to the amended plans as it is considered that the changes that have been made largely address the issues raised by the Council in their refusal. However, all submitters have received notification that the matter will be returning to Council for reconsideration so have the ability to present to Council, if inclined.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. The key risks are considered to be reputational.

Options

As an alternative to the proposed recommendation the Council could:

1. Affirm the decision to refuse the proposal, setting out reasons for doing so; or
2. Apply additional or different conditions.

However, it should be noted that if the decision on the amended plans is a refusal, then that decision becomes the decision under review in the Tribunal. (The Applicant could also seek to return to their original plans in a final hearing context). The matter would then be programmed through to a final hearing where the Tribunal is the decision-maker. As the Officer Recommendation is for approval then the City would need to engage an independent planning witness who could provide evidence as to why the proposal was inconsistent with orderly and proper planning. The City would also need to engage an independent representative (usually a lawyer) to represent the City in proceedings. As mentioned under financial implications, this could be in the vicinity of \$60,000 - \$100,000.

CONCLUSION

Subject to conditions, the proposal is considered appropriate to support and accordingly is recommended for approval.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Applicant and submitters advised of Council decision	Within 2 weeks of Council decision

11.2. Development Application - DA23/0327 - Single House (Swimming Pool, Gym & Garage) - Special Character Area at Lot 16 (No. 6) Seaview Rise, Eagle Bay

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Community Planning
Reporting Officer:	Planning Officer – Kelley Nilsson-Linne
Authorised By:	Acting Director Community Planning – Rachel Runco
Nature of Decision:	Regulatory: To determine an application/matter that directly affects a person’s right and interests e.g. development applications, applications for other permits/licences, and other decisions that may be reviewable by the State Administrative Tribunal.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Location Plan – 11.2.1 2. Development Plans – 11.2.2 3. Aerial indicating building setback line from Eagle Bay Road –11.2.3 4. Officer Assessment Report - 11.2.4 5. Schedule of Submissions – 11.2.5 6. Perspectives Plan – 11.2.6

The officer recommendation was moved and carried.

COUNCIL DECISION

C2401/10 Moved Cr Anne Ryan, seconded Cr Val Kaigg

That the Council determines:

- 1. That application DA23/0327 submitted for a Single House (Swimming Pool, Gym and Outbuilding) on Lot 16 (No. 6) Seaview Rise, Eagle Bay is generally consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located; and**
- 2. Grant development approval for the proposal subject to the following conditions:**

GENERAL CONDITIONS:

- 1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.**
- 2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the City.**

PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS:

- 3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and**

approved in writing:

3.1 Details of on-site effluent disposal.

3.2 Details of stormwater and surface water drainage. Stormwater to be retained for use and/or infiltration within the lot at a rate of 1m³ per 65m² of impervious area.

3.3 A notification in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended) is to be placed on the Certificate of Title of the lot advising that:

“This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and maybe subject to a Bushfire Management Plan. Additional planning and building requirements may apply to development on this land”

A copy of the Certificate of Title with section 70A notification registered against it, or a Landgate lodgement receipt, is to be submitted to the City.

PRIOR TO OCCUATION/USE OF THE DEVELOPMENT CONDITIONS:

4. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2 and 3 have been implemented, and the following Condition(s) complied with:

4.1 Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

ONGOING CONDITIONS:

5. The works undertaken to satisfy Condition(s) 2, 3 and 4 shall be subsequently maintained for the life of the development, and the following Condition(s) complied with:

5.1 The external materials of the approved development shall comprise of prescribed materials as identified by the City of Busselton *Local Planning Scheme No.21*.

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

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OFFICER RECOMMENDATION

That the Council determines:

1. That application DA23/0327 submitted for a Single House (Swimming Pool, Gym and Outbuilding) on Lot 16 (No. 6) Seaview Rise, Eagle Bay is generally consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located; and
2. Grant development approval for the proposal subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the City.

PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS:

3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and approved in writing:
 - 3.1 Details of on-site effluent disposal.
 - 3.2 Details of stormwater and surface water drainage. Stormwater to be retained for use and/or infiltration within the lot at a rate of 1m³ per 65m² of impervious area.
 - 3.3 A notification in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended) is to be placed on the Certificate of Title of the lot advising that:

“This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and maybe subject to a Bushfire Management Plan. Additional planning and building requirements may apply to development on this land”

A copy of the Certificate of Title with section 70A notification registered against it, or a Landgate lodgement receipt, is to be submitted to the City.

PRIOR TO OCCUATION/USE OF THE DEVELOPMENT CONDITIONS:

4. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2 and 3 have been implemented, and the following Condition(s) complied with:
 - 4.1 Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City. Unless

otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

ONGOING CONDITIONS:

- 5 The works undertaken to satisfy Condition(s) 2, 3 and 4 shall be subsequently maintained for the life of the development, and the following Condition(s) complied with:
 - 5.1 The external materials of the approved development shall comprise of prescribed materials as identified by the City of Busselton *Local Planning Scheme No.21*.

EXECUTIVE SUMMARY

The report has been amended and republished since its original publication in the agenda for the 31 January 2024 Ordinary Council meeting to include the following:

- **Incorporation and consideration of elements raised through two submissions made through the City's Yoursay platform, unavailable when the report was drafted;**
- **Inclusions within the Officer comment to clarify the permissible application of discretion applied to the assessment of the building envelope with consideration of SP6;**
- **Update to Attachment 4: Officer assessment report expanded to include more detail of the R-codes assessment to explain application of clause 4.3.1 of the Scheme applied to the building envelope assessment;**
- **Update to Attachment 4: Explanation of how submissions related to bushfire risk concerns have been addressed through the development landscaping plan.**
- **Update to Attachment 5: Schedule of submissions to respond to missing two submissions.**
- **Perspective plan included as Attachment 6.**

The City has received a development application for a Single House (Swimming Pool, Gym and Outbuilding) at Lot 16 (No. 6) Seaview Rise, Eagle Bay which is located within the Eagle Bay Special Character Area (EBSCA).

The Council has requested that, due to the nature of the development, the application be determined by the Council.

Having considered the application, including submissions received, it is considered that the application is consistent with the City of Busselton *Local Planning Scheme No.21* ("Scheme") and the relevant elements of the broader planning framework.

Therefore, it is recommended that the application be approved, subject to appropriate conditions.

STRATEGIC CONTEXT

As per Objective 4.2 of the Strategic Community Plan the application has been referred to Council to facilitate transparent decision making, specifically in the Special Character Areas of the City.

BACKGROUND

Key information regarding the application is set out below:

1. **Landowner:** Chermaine Leo, Lauren and Kayla Fallace
2. **Applicant:** Joe Ferrant
3. **General description of the site:**

The Site is located off Seaview Rise, which is located along the northeast boundary. Eagle Bay Road is located along the southwest boundary. The site is regular in shape, it has an area of 5,907m² and rises approximately 3.6m; rising from 63.5AHD at the north boundary (Seaview Rise) up to 67.10AHD at the south boundary (Eagle Bay Road). The Site adjoins a residential property to the northwest, Lot 38 (No. 4) and a residential property to the southeast, Lot 17 (No. 8)

A Site Location Plan is provided at Attachment 1.

4. **Current development/use:**

The Site is currently vacant with no previous approvals on the site.

5. **Applicable zoning and special control area designations:**

- Zoning – Residential.
- Density - R2.5.
- Landscape Value Special Control Area.
- Eagle Bay Special Character Area Special Control Area.

6. **Land use Permissibility:**

Single House is a permitted (“P”) land use under Table 1 – The zoning table of the Scheme.

7. **Brief description of the proposed development:**

The proponent lodged a development in application in May 2023 for a ‘Single House’, the proposal comprises a dwelling that is mainly two-storey with a partially three-storey element (where the garage is in part below ground level) as well as a separate single storey habitable building proposed to be used as a “gym” and another separate single storey games and change room, with pump room enclosed. The development also includes a below ground swimming pool and outbuilding.

This report is supported by the following attachments:

1. Attachment 1 – Site Location Plan
2. Attachment 2 – Development Plans
3. Attachment 3 – Aerial indicating building setback line from Eagle Bay Road
4. Attachment 4 - Officer Assessment Report
5. Attachment 5 – Schedule of Submissions
6. Attachment 6 – Perspectives Plan

OFFICER COMMENT

The components of the planning framework that relate to this development, and how they should be considered in relation to assessment of the proposal are summarised below:

- LPS21 (Schedule 4) EBSCA
Setbacks
Specifies the minimum setbacks for R2.5 density properties, front 20m, Rear 6m, Secondary Street (if applicable) 12m.
Building Height
The applicable height limits will be 7.5 metres within 150 metres of the mean high water mark and 9.0 metres for all other areas unless otherwise determined by zoning provisions, a Structure Plan (see comments below regarding discretion applicable to a Structure Plan).

As identified through the Pennock decision, there is no discretion to vary the provisions contained within Schedule 4 of the Scheme. The proposal satisfies all relevant elements of Schedule 4 – EBSCA as applicable to the development site.

- Special Provision 6 (SP6)
Building height
SP6 specifies a maximum height limit at 7.5m.
- Eagle Bay Structure Plan (2007)
Setbacks
The Structure Plan specifies a setback to Eagle Bay Road of 40 m. *Building Height*
The Structure Plan specifies a maximum height limit at 7.5m.

The planning framework allows for discretion to be applied to conditions within Structure Plans and Special Provisions.

In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, clause.67 (Consideration of application by local government) (Regulations)* and *clause 27(1) of the Deemed Provisions*: the structure plan is a “due regard” planning instrument only. Therefore, even though the structure plan is referenced to within Schedule 4, as the Regulations are the higher order planning document, the provisions contained within the Structure Plan are “due regard” only meaning discretion exists to vary any provisions contained within the structure plan.

Clause 4.5 of the Scheme - Variations to Site and Development Standards and Requirements provides discretion to vary site and development standard and requirements within the Scheme where R-codes do not apply. As such, it is considered that the provisions contained within SP6 are able to be varied.

In light of the above, it is considered that as there is discretion to vary the above-mentioned Structure Plan and Special Provisions, a merit-based assessment to determine the appropriateness of these discretions must be undertaken. The matters listed in clause 67 of the Regulations should be considered in the assessment of these discretions.

Setbacks

- LPS21 (Schedule 4) EBSCA – Cannot be varied
Setbacks
Specifies the minimum setbacks for R2.5 density properties, front 20m, Rear 6m, Secondary Street (if applicable) 12m.
- EBSP (2007) - Discretion applies
Setbacks
The Structure Plan specifies a setback to Eagle Bay Road of 40 m.

When submitted the development proposal was set back 15m from Eagle Bay Road. Officers requested that this setback be amended to a minimum of 22m, in accordance with similar established setbacks of the two dwellings on lots either side of the Site:

- A. Lot 38 (No.4 Seaview Rise), adjoining the north/ northwest boundary of the Site, has an approved setback of 22m from the dwelling to Eagle Bay Road.
- B. Lot 17 (No.8 Seaview Rise), adjoining to the southeast boundary of the Site, has an approved setback of 22m from the dwelling to Eagle Bay Road.

An aerial marking the 22m setback line of these existing dwellings as well as the proposed dwelling is provided at Attachment 3.

To further ameliorate any visual impact of the dwelling from Eagle Bay Road the applicant has provided a landscaping plan which proposes vegetation that at its maturity will assist in screening the development from Eagle Bay Road. A copy of the landscaping plan is provided within the proposed development plans at Attachment 2.

Although a variation to the Structure Plan, the 22m setback to Eagle Bay Road fully accords with the setback requirements as set out in *LPS 21, Schedule 4 – Eagle Bay Special Character Area and the State Planning Policy 7.3 - Residential Design Codes Volume 1 (R-Codes)*. LPS21, Schedule 4 and the R-Codes both require a 6m setback to Eagle Bay Road.

Given the above, the proposed setback of 22m is considered to be in keeping with the established building line along this section of Eagle Bay Road, while still adequately separated from the road by distance and landscaping.

Building Height

- LPS21 (Schedule 4) EBSCA - Cannot be varied
Building Height
Specifies the maximum building height is 7.5m if within 150 of the mean high water mark and 9.0 metres for all other areas, or as specified within a Structure Plan
- Special Provision 6 (SP6) - Discretion applies
Building height
SP6 specifies a maximum height limit at 7.5m.
- EBSP (2007) - Discretion applies
Building Height
The Structure Plan specifies a maximum height limit at 7.5m.

The EBSP and SP6 both contain a 7.5m height building control, however, as this property is over 150m from the high-water mark, without the structure plan a 9.0 metre height would apply under the EBSCA.

The development originally proposed the highest point of the dwelling at 9m. Following the advertising of plans to neighbours, amended plans were received, lowering the highest point of the dwelling to 8.7m. This proposed building height is 0.1m lower than the neighbouring property (Lot 48, Number 4 Seaview Rise).

The highest point of the proposed dwelling is 8.7m, this is located along the northern elevation to accommodate the partial underground garage. It is important to note, that only a section of the northern elevation will be 8.7m high, with the majority of the building height 8.3m or below with the additional wall heights ranging from 4.2m, 6.5m, 7.1m, 7.3m, 7.5m, 7.7m and 8.2m. The proposal has been designed to address the site's natural slope and for the most part is a two-storey dwelling on all other elevations, with three storeys only proposed where the garage is located.

There are several examples of constructed buildings in the vicinity of the proposal subject to the same SP6 provisions that have been approved with heights greater than 7.5m including:

- A. Lot 38 (No.4 Seaview Rise), adjoining the north/northwest boundary of the Site, dwelling approved with its highest point at 8.8m above natural ground level.
- B. Lot 28 (No. 22 Seaview Rise) dwelling approved with its highest point at 8.6m.

Furthermore, below are several examples of other three storey dwellings within the EBSCA -

- A. Lot 15 (No. 4) Wedgetail View is a three storey dwelling that was approved in 2003, due to the slope of the site basement level was largely cut into the site.
- B. Lot 67 (No.16) Gipsy Street is a three storey dwelling that was approved in 2008, and due to the slope of the site it has been designed to address the natural contours of the site (the site slope from the north to the south, 101 AHD to 107 AHD). Due to the contours of the site some sections of the elevations are greater than 7.5m and some sections of elevation are more than 9m high.

- C. Lot 69 (No.1) Otranto Close is a three storey dwelling that was approved in 2007. This dwelling has also been designed to address the contours of the site.

Extracts of the approved plans referenced above are provided within the Officer's report provided at Attachment 4.

It is considered that due to the design, layout, sloping site and extensive landscaping plan the proposed height of the dwelling in this instance is acceptable. The highest point of the dwelling is set back from neighbours to the north by 15.4m, which is deemed an adequate distance and will not result in overlooking or over shadowing. The highest points of the dwelling are setback from Eagle Bay Road by approximately 54m and setback from Seaview Rise by approximately 22m-37m.

It is the Officer's perspective that due to the design, context within the location as well as the combination of cut and fill and the landscaping that is to be installed, the proposed dwelling will not have a detrimental impact on the character of the EBSCA and therefore is appropriate in this instance.

Building Envelope – Discretion Applied

LPS21 Clause 4.3.1 (g) requires for properties zoned R2.5 that:
'all building development is to be contained within a building envelope area which does not exceed 1,000m², or as otherwise required by a plan adopted pursuant to Part 4 of the Deemed Provisions' (Structure Plan).

There is no designated building envelope delineated through a current structure plan for this lot. Discretion can be applied to the application of *clause 4.3.1 (g)*. The proposed building development is calculated to be 1194m², 194m² over the 1000m². To consider the appropriateness of exercising discretion, the R-Codes provides guidance in respect of the extent of building development within the Residential zone.

For R2.5 zoned properties the Open Space requirement is a minimum of 80%. Due to the lot size of the property this means the proposed building development area complies with the Open Space requirement, including the Design Principles of Open Space and all setbacks to neighbouring properties.

It is considered appropriate to exercise discretion to allow for the 194m² increase in building development.

Statutory Environment

The key statutory documents relevant to this proposal include the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and the relevant objectives and provisions of the Scheme. Each is discussed below under the relevant subheadings:

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2 of the Regulations, (the Deemed Provisions) are to be read in conjunction with the Scheme with clause 67 setting out the matters to be considered by a local government in the determination of any development application.

In considering an application for development approval (other than an application on which approval cannot be granted under subclause (1)), the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- ...*
- (c) any approved State planning policy*
- ...*
- (f) any policy of the State;*
- (g) any local planning policy for the Scheme area;*
- (h) any structure plan or local development plan that relates to the development;*
- ...*
- (m) the compatibility of the development with its setting, including —*
 - (i) the compatibility of the development with the desired future character of its setting; and*
 - (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 —*
 - (i) environmental impacts of the development;*
 - (ii) the character of the locality;*
 - (iii) social impacts of the development;*
- ...*
- (y) any submissions received on the application;*

Attachment 4 provides for a full assessment against the relevant elements of clause 67.

Local Planning Scheme No. 21

The proposal is consistent with the objectives of the ‘Residential’ zone as defined by the Scheme, specifically to “to facilitate and encourage high quality design, built form and streetscapes.”

It is considered that given the site layout, design and landscaping; the proposal is fully compliant with clause 5.4 Landscape Value Area.

Further, the application complies with Schedule 4 of the Scheme which sets out the area specific development controls for the EBSCA.

State Planning Policy 7.3 Residential Design Codes

The R-Codes are the over-arching planning document guiding built form outcomes in the ‘Residential’ zone and are to be read as part of the Scheme. The compliance of the proposal with the requirements of the R-Codes has been discussed above and in Attachment 4.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plans or policies:

State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)

SPP 3.7 directs how land use and development should address bushfire risk management and applies to all land which has been designated as ‘bushfire prone’ by the Fire and Emergency Services Commissioner as per the ‘Map of Bushfire Prone Areas. The compliance of the proposal with the requirements of the SPP3.7 has been discussed in the Offers Report, Attachment 4.

Local Planning Policy 3.1 - Reflective Building Materials (LPP 3.1)

LPP 3.1 Provides guidance on the control reflective building materials to protect the visual amenity of residential living environments. A schedule of materials has been provided that demonstrate the development will comply with the requirements of LPP3.1 and the use of dark tones are proposed.

Local Planning Policy 3.3 – Eagle Bay Special Character Area (LPP 3.3 EBSCA)

LPP 3.3 in conjunction with Schedule 4, establishes the baseline development controls for the EBSCA with the principal objective of preserving the unique and specific character of Eagle Bay. The design setting and appearance of the proposed single house complements the established character and attributes of the area.

The proposal is consistent with the requirements of LPP 3.3.

Local Planning Policy 4.2 - Bushfire (LPP 4.2)

LPP 4.2 provides guidance on the City’s assessment of development addressing the requirements of State Planning Policy 3.7 Planning in Bushfire Prone Areas to achieve acceptable bushfire protection. The compliance of the proposal with these requirements have been discussed in the Offers Report, Attachment 4.

Local Planning Policy 6.1 - Stormwater Management (LPP 6.1)

Provides guidance on acceptable stormwater management. A condition is recommended that demonstration of compliance with this local planning policy being achieved.

Local Planning Policy 4.10 - Outbuilding and Other Non-habitable Buildings (LPP 4.10)

LPP 4.10 establishes development standards for outbuildings and non-habitable buildings (i.e – carports, patios etc) within the City. The proposal satisfies the height and size requirements of the policy however proposes a variation in regard to setbacks which are to be in accordance with the R-Codes. The appropriateness of the proposed setbacks is discussed in the assessment provided at Attachment 4.

Financial Implications

Not Applicable

External Stakeholder Consultation

Consultation on the proposed development was undertaken by mailing letters to four surrounding property owners and occupiers. In response to consultation, four submissions were received, three from a surrounding landowner and one from the president of the Residents of Eagle Bay Association.

All submissions received raised concerns with the proposed development. An outline of the concerns raised in these submissions is listed below with full details provided within Attachment 5:

1. Overall height of the development.
2. Proposed setback from Eagle Bay Road.
3. Amount of fill proposed.
4. Large size of the development footprint.
5. Development will result in significant building bulk.
6. Visual impact of the development on the ridge line.

Concerns relevant to the assessment of the proposal under the planning framework have been addressed in the officer comment section of this report. Responses to other items are addressed in Attachment 4 – Officer Report.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

No risk of medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could:

1. Resolve to refuse the application and provide reasons for such a decision: or
2. Approve the development subject to additional or different conditions.

CONCLUSION

It is deemed that lawful discretion to vary the elements of the development which do not comply with the relevant planning framework exists. Therefore a determination of the application must be made on a merit-based assessment taking into consideration the relevant matters to be considered under the clause 67 of the Regulations. It is deemed that the development is compatible within its setting and is consistent with the other development approved within the locality. Furthermore, it is considered that the development is consistent with the character of the locality.

Accordingly, the application is recommended for approval subject to conditions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Issue the development approval to the applicant	Within two week of Council decision

12. INFRASTRUCTURE AND ENVIRONMENT REPORTS

NIL

13. ECONOMIC AND BUSINESS DEVELOPMENT REPORTS

NIL

14. CORPORATE STRATEGY AND PERFORMANCE REPORTS

14.1. Monthly Financial Report - Year to Date 30th November 2023

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making. 4.5 Responsibly manage ratepayer funds to provide for community needs now and in the future.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Acting Director Corporate Strategy and Performance – Paul Sheridan
Authorised By:	Acting Director Corporate Strategy and Performance – Paul Sheridan
Nature of Decision:	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies. Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Monthly Financial Report - November 2023 [14.1.1 - 27 pages] 2. Investment Report - November 2023 [14.1.2 - 1 page] 3. Loan Schedule - November 2023 [14.1.3 - 1 page]

The officer recommendation was moved and carried.

COUNCIL DECISION

C2401/11 Moved Cr Anne Ryan, seconded Cr Val Kaigg

That the Council receives the statutory monthly financial report for the period ending 30 November 2023, pursuant to Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996*.

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

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OFFICER RECOMMENDATION

That the Council receives the statutory monthly financial report for the period ending 30 November 2023, pursuant to Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996*.

EXECUTIVE SUMMARY

Pursuant to Section 6.4 of the *Local Government Act 1995* (the Act) and Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996* (the Regulations), a local government is to prepare, on a monthly basis, a monthly financial report that reports on the City's Statement of Financial Activity, Statement of Financial Position, and its performance in relation to its adopted / amended budget.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the City's financial performance on a year-to-date basis, for the period ending 30th November 2023.

STRATEGIC CONTEXT

Provision of the monthly financial report, while a statutory requirement, also supports open and accountable governance.

BACKGROUND

The Regulations detail the form and manner in which the monthly financial report is to be presented to the Council, and is to include the following:

- Annual budget estimates;
- Budget estimates to the end of the month in which the statement relates;
- Actual amounts of revenue and expenditure to the end of the month in which the statement relates;
- Material variances between budget estimates and actual revenue/expenditure (including an explanation of any material variances);
- The net current assets at the end of the month to which the statement relates (including an explanation of the composition of the net current position); and
- Statement of Financial Position

Additionally, and pursuant to Regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year.

At its meeting on 26 July 2023, the Council adopted (C2305/57) the following material variance reporting thresholds for the 2023/24 financial year:

That pursuant to Regulation 34(5) of the Local Government (Financial Management) Regulations, the Council adopts a material variance reporting threshold with respect to financial activity statement reporting for the 2023/24 financial year as follows:

- *Variances equal to or greater than 10% of the year-to-date budget amount as detailed in the Income Statement by Nature and Type/Statement of Financial Activity report, however variances due to timing differences and/or seasonal adjustments are to be reported only if not to do so would present an incomplete picture of the financial performance for a particular period; and*
- *Reporting of variances only applies for amounts greater than \$50,000.*

OFFICER COMMENT

To fulfil statutory reporting requirements and to provide the Council with a synopsis of the City's overall financial performance on a year-to-date basis, the following financial reports are attached hereto (Attachment 1):

Statement of Financial Activity

This report provides details of the City's operating revenues and expenditures on a year-to-date basis, by nature (i.e. description). The report has been further extrapolated to include details of non-cash adjustments and capital revenues and expenditures, to identify the City's net current position; which reconciles with that reflected in the associated Net Current Position report.

Statement of Financial Position

A statement of financial position is a financial statement that summarises the reporting entities assets (what it owns), liabilities (what it owes), and equity (assets less liabilities) on a particular date.

Basis of Preparation Note (Note 1)

Explains the regulatory framework upon which the financial statements have been prepared.

Statement of Financial Activity Note (Note 2)

Explains the non-cash items that have been excluded from the calculation of the Net Current Position in the Statement of Financial Activity.

Explanation of Material Variances Note (Note 3)

Provides a breakdown by directorate and cost centre of each of the variances on the face of the Statement of Financial Activity that meet Councils adopted material variance threshold for 2023/24.

Net Current Position Summary Report

This report provides details of the composition of the net current asset position on a year-to-date basis and reconciles with the net current position as per the Statement of Financial Activity.

Capital Acquisition & Construction Report

This report provides full year budget performance (by line item) in respect of the following capital expenditure activities:

- Land and Buildings
- Plant and Equipment
- Furniture and Equipment
- Infrastructure

This report outlines the actual and budgeted movement from the start of the financial year to date, that result in the balances listed in the Statement of Financial Position for Property, Plant & Equipment.

Reserve Movements Report

This report provides summary details of transfers to and from reserve funds, and associated interest earnings on reserve funds, on a full year basis.

Additional reports and/or charts can be provided as required to further supplement the information comprised within the statutory financial reports.

Net Current Position Chart

Tracks the net Current Position over the year in comparison to previous 4 years.

Comments on Financial Activity to 30 November 2023

The Statement of Financial Activity (FAS) for the year to date (YTD) shows an overall Net Current Position (NCP) of \$39.5M as opposed to the YTD budget of \$22M.

The following table summarises the major YTD variances that appear on the face of the FAS, which, in accordance with Council's adopted material variance reporting threshold, collectively make up the above difference. Each numbered item in this lead table is explained further in note 3 of the attached Monthly Financial Report.

Description	2023/24 Actual YTD \$	2023/24 Budget YTD \$	2023/24 Budget \$	2023/24 YTD Bud Variance %	2023/24 YTD Bud Variance \$	Change in Variance Current Month \$
Amount Attributable to Operating Activities				14.61%	6,579,398	1,161,920
Revenue from Operating Activities				4.05%	3,107,938	1,255,797
1. Grants, Subsidies and Contributions	1,896,870	673,133	5,325,685	181.80%	1,223,737	709,196
2. Other Revenue	214,319	84,947	334,932	152.30%	129,372	2,952
3. Interest Earnings	2,764,469	2,209,803	4,305,492	25.10%	554,666	177,533
Expenses from Operating Activities				9.70%	4,118,370	991,328
4. Materials & Contracts	(8,172,444)	(11,984,525)	(29,072,925)	31.81%	3,812,081	142,126
5. Other Expenditure	(948,636)	(2,105,827)	(6,823,844)	54.95%	1,157,191	(294,340)
Amount Attributable to Investing Activities				66.94%	16,057,262	3,146,934
6. Capital Grants, Subsidies and Contributions	1,196,834	26,430	19,724,075	4428.32%	1,170,404	1,001,979
7. Land & Buildings	(6,135,227)	(14,679,375)	(29,976,325)	58.21%	8,544,148	266,206
8. Plant & Equipment	(318,751)	(736,305)	(6,078,421)	56.71%	417,554	79,109
9. Furniture & Equipment	(89,564)	(682,725)	(1,510,209)	86.88%	593,161	98,660
10. Infrastructure	(2,839,924)	(8,117,734)	(21,994,529)	65.02%	5,277,811	1,727,049

Description	2023/24 Actual YTD \$	2023/24 Budget YTD \$	2023/24 Budget \$	2023/24 YTD Bud Variance %	2023/24 YTD Bud Variance \$	Change in Variance Current Month \$
11. Proceeds from Sale of Assets	204,487	150,300	863,800	36.05%	54,187	(15,000)
Amount Attributable to Financing Activities				510.51%	(5,154,005)	(296,578)
12. Proceeds from New Loans	0	1,750,000	2,000,000	(100.00%)	(1,750,000)	0
13. Transfer to Restricted Assets	(14,777,232)	(8,669,978)	(9,200,455)	(70.44%)	(6,107,254)	(944,781)
14. Transfer from Restricted Assets	6,681,590	8,567,950	22,096,174	(22.02%)	(1,886,360)	58,664
15. Transfer from Reserves	27,113,867	22,640,277	60,071,435	19.76%	4,473,589	515,537

Investment Report

Pursuant to the Council's Investment Policy, a report is to be provided to the Council monthly, detailing the investment portfolio in terms of performance and counterparty percentage exposure of total portfolio. The report (see attached) is also to provide details of investment income earned against budget, whilst confirming compliance of the portfolio with legislative and policy.

A brief summary of the details contained in the report are as follows:

As at the 30 November 2023 the value of the City's invested funds increased to \$128M from \$122M as at 31st October 2023. The increase is a result of grants and rates received.

As at the 30 November 2023 the 11am account balance decreased to \$7.5M from \$26.95M as funds were invested in term deposits.

During the month of November six terms deposits totalling the amount of \$25.5M were opened and 2 term deposits matured. These were re-invested for a further 231 days at 5.15%.

The official cash rate during the month of November 2023 was 4.35%. Further movement in the cash rate is currently uncertain, although it is expected to stay steady.

Borrowings Update

During the month no new loans were drawn, with nothing paid off the principal and interest on existing loans. The attached Loan Schedule outlines the status of all existing loans YTD.

Chief Executive Officer – Corporate Credit Card

Details of transactions made on the Chief Executive Officer's corporate credit card during November 2023 are provided below to ensure there is appropriate oversight and awareness.

Date	Payee	Description	\$ Amount
9/11/2023	NOVOTEL	STAFF TRAINING ACCOMMODATION	250.85
10/11/2023	THE GOOSE	THANK YOU VOUCHER FOR BEN ROSE FOR INTERVIEW PANEL	100.00
23/11/2023	WEST AUSTRALIAN	DIGITAL SUBSCRIPTION-PR	28.00
23/11/2023	CV SCREEN POLICE CHECK	MAYOR CRONIN	39.98
27/11/2023	BAKED	ELT LUNCH CATERING	116.50
29/11/2023	DAN MURPHY	COUNCIL REFRESHMENTS	11.99
29/11/2023	SPOTLIGHT BUSLTON BUSSELTON	ITEMS FOR STAFF CHRISTMAS PARTY	100.50
29/11/2023	WESTERN GROWER FR PL BUSSELTON	GF ROLLS FOR STAFF CHRISTMAS PARTY	108.22
30/11/2023	MAILCHIMP	ELECTRONIC NEWSLETTER PR	376.77
		TOTAL	1,132.81

Donations & Contributions Received

During the month no non-infrastructure asset (bridges, roads, POS etc), donations or contributions were received.

Statutory Environment

Section 6.4 of the Act and Regulation 34 of the Regulations detail the form and manner in which a local government is to prepare financial activity statements.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Annual Adopted Budget 2022-2023

[Strategic Community Plan 2021-2031](#)

[Corporate Business Plan 2022-2026](#)

[Long Term Financial Plan 2022/23 - 2031/32](#)

Policy:

There are no relevant policies for this report.

Financial Implications

Any financial implications are detailed within the context of this report.

External Stakeholder Consultation

Not applicable.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

The Statements of Financial Activity are presented in accordance with Section 6.4 of the Act and Regulation 34 of the Regulations and are to be received by Council. Council may wish to make additional resolutions as a result of having received these reports.

CONCLUSION

As at 30 November 2023, the City's net current position stands at \$39.5M, and cash reserve balances remain sufficient for their purposes.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Not Applicable.

14.2. List of Payments Made - November 2023

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making. 4.5 Responsibly manage ratepayer funds to provide for community needs now and in the future.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Acting Director Corporate Strategy and Performance – Paul Sheridan
Authorised By:	Acting Director Corporate Strategy and Performance – Paul Sheridan
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. List of Payments for Council November 2023 [14.2.1 - 11 pages] 2. CONFIDENTIAL REDACTED - Confidential List of Payments for Council November 2023 [14.2.2 - 1 page]

The officer recommendation was moved and carried.

COUNCIL DECISION

C2401/12 Moved Cr Anne Ryan, seconded Cr Val Kaigg

That the Council notes payment of voucher numbers for the month of November 2023 as follows:

CHEQUE PAYMENTS	119799 - 119817	44,842.05
ELECTRONIC FUNDS TRANSFER PAYMENTS	99087 - 99776	8,565,634.79
TRUST ACCOUNT PAYMENTS	EFT# TR000015 - TR000017	60,426.14
PAYROLL PAYMENTS	01.11.2023 - 30.11.2023	1,772,286.78
INTERNAL PAYMENT VOUCHERS	DD #5500 - 5535	25,595,810.30
TOTAL PAYMENTS		36,039,000.06

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

EN BLOC

OFFICER RECOMMENDATION

That the Council notes payment of voucher numbers for the month of November 2023 as follows:

CHEQUE PAYMENTS	119799 - 119817	44,842.05
ELECTRONIC FUNDS TRANSFER PAYMENTS	99087 - 99776	8,565,634.79
TRUST ACCOUNT PAYMENTS	EFT# TR000015 - TR000017	60,426.14
PAYROLL PAYMENTS	01.11.2023 - 30.11.2023	1,772,286.78
INTERNAL PAYMENT VOUCHERS	DD #5500 - 5535	25,595,810.30
TOTAL PAYMENTS		36,039,000.06

EXECUTIVE SUMMARY

This report provides details of payments made from the City's bank accounts for the month of November 2023 for noting by the Council and recording in the Council Minutes.

STRATEGIC CONTEXT

Provision of the list of payments, while a statutory requirement, also supports open and accountable governance.

BACKGROUND

The *Local Government (Financial Management) Regulations 1996* (the Regulations) requires that, when the Council has delegated authority to the CEO to make payments from the City's bank accounts, a list of payments made is prepared each month for presentation to, and noting by, the Council.

OFFICER COMMENT

In accordance with regular custom, the list of payments made for the month of November 2023 is presented for information. Also attached is a separate confidential payment listing relating to confidential matters under section 5.23(2)(c) of the *Local Government Act 1995* (the Act).

Statutory Environment

Section 6.10 of the Act and more specifically Regulation 13 of the Regulations refer to the requirement for a listing of payments made each month to be presented to the Council.

Relevant Plans and Policies

Not applicable.

Financial Implications

Not applicable.

External Stakeholder Consultation

Not applicable.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

Not applicable.

CONCLUSION

The list of payments made for the month of November 2023 is presented for information.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Not applicable.

14.3. Audit and Risk Committee: Terms of Reference and Independent Member

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Manager Legal and Governance - Ben Whitehill
Authorised By:	Acting Director of Corporate Strategy and Performance – Paul Sheridan
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Amended Audit and Risk Committee - Terms of Reference [14.3.1 - 4 pages] 2. Request for Expressions of Interest - Independent External Member [14.3.2 - 4 pages] 3. Audit and Risk Committee Terms of Reference - Current [14.3.3 - 3 pages]

Prior to the meeting, officers foreshadowed an amendment to the officer recommendation. The amended recommendation was moved and carried.

COUNCIL DECISION

C2401/13 Moved Cr Andrew Macnish, seconded Cr Jodie Richards

That the Council:

1. **Adopts the amended Audit and Risk Committee Terms of Reference in Attachment 4.**
2. **Accepts the CEO's responses to the request in Council Resolution C2311/178.**

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

Reasons: Officers included amendments to clarify the internal auditors reporting relationships, the timing of notice of meeting and agenda papers and the types of matters that will be considered on the committee's agenda.

OFFICER RECOMMENDATION

That the Council:

1. Adopts the amended Audit and Risk Committee Terms of Reference in Attachment 1.
2. Accepts the CEO's responses to the request in Council Resolution C2311/178.

EXECUTIVE SUMMARY

This report recommends that the Council adopt an amended Terms of Reference for the Audit and Risk Committee incorporating the independent member. It also deals with a request to the CEO in a Council resolution from 15 November 2023 (C2311/178).

STRATEGIC CONTEXT

A well-functioning Audit and Risk Committee with appropriate terms of reference helps deliver governance systems that facilitate open, ethical and transparent decision making.

BACKGROUND

The *Local Government Act 1995* (Act) requires that all local governments establish an audit committee. Audit committees play a key role in assisting the local government to fulfil its governance and oversight responsibilities in relation to financial reporting, risk management systems, legislative compliance and the internal and external audit functions.

The City has established an Audit and Risk Committee in accordance with the relevant provisions of the Act.

At the Council Meeting on 15 November 2023, the Council resolved to (C2311/178):

Request the CEO to provide a further report on recommendations to the Council with the following elements:

- i. the relevance of retaining/replacing the BCC,*
- ii. the implications of and brief for the attracting and appointment of an independent person to be an additional member of the ARC.*
- iii. the relevance and implications for the ARC's Terms of Reference to be recast based on the Local Government Department's Audit Guidelines* and its appended model terms of reference; https://www.dlgsc.wa.gov.au/docs/default-source/local-government/operational-guidelines/operational-guideline-9-the-appointment-function-and-responsibilities-of-audit-committess.pdf?sfvrsn=77bf5a06_1*
- iv. What model options are available to the ARC to assess Risk in the local government governance context.*
- v. The Terms of Reference number of positions of the ARC pursuant to the above.*

At the Special Council Meeting on 29 November 2023 at 9:30am, the Council resolved (C2311/185):

That the Council:

1. *In addition to the elected members appointed at the special meeting on 25 October 2023, appoint Cr Ryan to the Audit and Risk Committee and the following nominating elected members:*

*Cr Jarrod Kennedy
Cr Val Kaigg
Cr Kate Cox
Cr Mikayla Love
Cr Jodie Richards*
2. *Appoint an independent member position to the Audit and Risk Committee Terms of Reference; and*
3. *Request the CEO to undertake an expression of interest process for a suitably qualified and experienced independent member and recommend appointment to Council.*

These Council decisions have necessitated that the Terms of Reference for the Audit and Risk Committee be amended to reflect the increased membership (all elected members and an independent member) and to further consider the objectives, duties and responsibilities of the Audit and Risk Committee.

OFFICER COMMENT

It is evident from recent Council meetings that the Council has an increased interest in matters relating to audit and risk. In addition, it is apparent that the Council wish to improve the effectiveness of the Audit and Risk Committee for the benefit of the community. Improving the effectiveness of audit and risk management at the City is a worthy objective of the Council.

The amended Terms of Reference presented in this report (and attached as Attachment 1) are intended to improve the effectiveness of the Audit and Risk Committee by clarifying its objectives, duties and responsibilities, and updating its membership to reflect recent Council decisions.

In preparing an amended Terms of Reference, officers have considered the relevant legislative framework, being the Act and *Local Government (Audit) Regulations 1996* (Audit Regulations). Officers have also considered the existing terms of reference (attached as Attachment 3), the *Western Australian Public Sector Audit Committees – Better Practice Guide* published by the Office of the Auditor General (Better Practice Guide), the *Audit in Local Government – Local Government Operational Guidelines* published by the Department of Local Government (Department Guidelines) and the terms of reference of various Western Australian local government audit committees. Officers have also considered the findings of the City's Regulation 17 Review conducted by AMD in 2023 (Regulation 17 Review).

Contextual observations on reference documents

Before considering the objectives, role and responsibilities of the Audit and Risk Committee that are outlined in the amended Terms of Reference, it is necessary to make some contextual observations on each of the reference documents that informed the drafting of the amended Terms of Reference.

Firstly, the Better Practice Guide provides better practice principles relevant to the West Australian public sector but does not contemplate the specific legislative and regulatory requirements of local government entities. In this regard the Better Practice Guide states (at page 4):

“The guide provides principle-based guidance for State and local government entities in Western Australia. We recognise that the specific legislative and regulatory requirements for State and local government entities are different, and it is therefore difficult to have a ‘one-size-fits-all’ approach for better practice guidance. Entities need to consider their relevant legal and regulatory requirements as well as operating environment when using this guide.”

Therefore, the guidance contained in the Better Practice Guide must always be considered in the context of the legal and regulatory requirements, in this case the Act and Audit Regulations, as well as the City’s operating environment. Many of the powers and functions outlined in the Better Practice Guide are incompatible with the local government legislative requirements.

Secondly, the Department Guidelines which were drafted for the local government context were last revised in September 2013 and therefore do not necessarily deal with all matters in a contemporary manner.

Finally, when considering the terms of reference of other local government, it is important to acknowledge that each local government may have different a different emphasis based on the circumstances, resourcing and strategic priorities of that local government.

Officers have taken these matters into consideration when preparing the amended Terms of Reference. This has resulted in officers proposing to align the amended Terms of Reference with the Department Guidelines. Due to the age of the Department Guidelines, officers have had to make modifications to ensure they are contemporaneous. These modifications have involved including additional duties and responsibilities relating to the oversight of risk management, fraud and corruption prevention, and financial management systems and procedures.

The role of the Audit and Risk Committee

In the local government context, the role of the Audit and Risk Committee is to oversee and advise the Council on matters of internal or external audit, risk management, financial reporting, internal controls, ethical accountability, and the legislative compliance functions of the City.

The primary objective of the Audit and Risk Committee is to accept responsibility for the annual external audit so that the Council can be satisfied with the performance of the local government in managing its financial affairs. Other matters that fall within the scope of the Audit and Risk Committee include monitoring the City’s internal audit activities as well as reviewing the appropriateness and effectiveness of the City’s systems and procedures in relation to risk management, internal controls and legislative compliance. The Committee is also responsible for reviewing the annual Compliance Audit Return and recommending to the Council the results of that review.

Powers of the Audit and Risk Committee

The Audit and Risk Committee serves an oversight and advisory role for the Council. It is important to note that it does not have powers or authority to implement actions in areas over which the CEO has legislated responsibility, and does not have any delegated financial responsibility. Furthermore, the Audit and Risk Committee does not have management functions and cannot involve itself in

management processes or procedures. For example, the Audit and Risk Committee is not comparable to a parliamentary committee and does not have powers to carry out investigations, hear evidence or summons a person to appear before the committee and/or produce documents.

Section 7.1B of the Act states that despite section 5.16 of the Act, which (subject to 5.17 of the Act) allows a local government to delegate any of its powers to a committee, the only powers and duties that a local government may delegate to its audit committee are the powers and duties contained in Part 7 of the Act (other than the power of delegation). The only power that has been delegated to the Audit and Risk Committee is delegation DA 11 – 02 which includes meeting with the City's auditor at least once every year.

Membership of the Audit and Risk Committee

The amended Terms of Reference incorporate the changes to committee membership. The new provisions relating to committee membership contemplate a minimum of three and a maximum of nine elected members, as well as at least one independent external member. They also set out the selection criteria for the independent external member relating to expertise and knowledge in financial management, risk management, governance and audit (internal and external), as well as the processes for attracting and appointing an independent external member. Finally, the provisions also consider the payment of meeting attendance fees and reimbursement of approved expenses for independent external members.

Duties and responsibilities of the Audit and Risk Committee

The Act and Audit Regulations provide for the functions of the Audit and Risk Committee. The functions are set out in regulation 16 of the Audit Regulations. The duties and responsibilities of the Audit and Risk Committee as outlined in paragraph 2.2 of the amended Terms of Reference can be broadly categorised as relating to the oversight of the following areas:

- external audit;
- internal audit;
- risk management;
- financial reporting;
- internal control; and
- legislative compliance.

The duties and responsibilities as set out in the amended Terms of Reference are based on the model terms of reference found in the Department Guidelines with additional duties and responsibilities relating to the oversight of risk management, fraud and corruption prevention, and financial management systems and procedures.

Implications associated with the amended Audit and Risk Committee Terms of Reference

The amended Terms of Reference for the Audit and Risk Committee provide clarity on the kinds of matters that the committee will have an oversight and advisory role. It is expected that the Audit and Risk Committee will want to receive reporting on matters such as risk management and internal audit. Officers note that the Regulation 17 Review identifies the basic level of maturity and resourcing that the City currently has in these areas. To undertake and report on these matters it is likely that there will need to be additional resourcing provided, as well as time to appropriately develop and implement the relevant frameworks, systems and processes.

A report on risk management is being prepared for the March 2024 Audit and Risk Committee meeting which will have recommendations pertaining to the City's risk systems and resourcing. A further report about internal audit will also be presented to the March 2024 Audit and Risk Committee meeting outlining the implications and resourcing requirements for undertaking internal audit activities.

Responses to 15 November 2023 Council Resolution C2311/178

The CEO has provided the following responses to the Council for the matters set out in Council Resolution C2311/178.

Relevance of retaining/replacing the BCC

Elected Members will be briefed on the relevance of retaining or replacing the Behaviour Complaints Committee on 31 January 2024 and will be provided with a further report with recommendations to the February or March 2024 Council Meeting.

Implications of and brief for appointment of an independent member of the ARC

Guidance on audit committees recommends external and independent membership to deliver high level, professional finance and governance skills as well as a fresh perspective. There are financial implications for including an independent member.

A copy of the brief for the independent member is provided with this report as Attachment 2. The Council Resolution on 29 November 2023 has given the CEO authority undertake an expression of interest process for a suitably qualified and experienced independent member and recommend appointment to Council. It is anticipated that a recommendation will be presented to the Council at the March 2024 ordinary Council meeting.

The relevance and implications for the ARC's Terms of Reference to be recast based on the Local Government Department's Audit Guidelines

The amended Terms of Reference have considered the Department Guidelines, the Better Practice Guide and the terms of reference of other local governments. Officers believe that, using these resources, the amended Terms of Reference provide clarity on the objectives, duties and responsibilities of the Audit and Risk Committee as outlined in this report.

Model options available to assess risk

The City has an established Risk Management Framework which reflects good practice and sound corporate governance principles. The framework was based on the risk management guidelines and principles set out in the Australian Standard for Risk Management (AS ISO 31000:2018). It prescribes the process for risk assessment and defines risk reference tables to ensure risk is evaluated consistently across the organisation. The City's risk assessment process and risk reference tables are broadly aligned to the AS ISO 31000:2018 standard and the Department's guidance, with inherent and residual risk assessed using a 5 x 5 consequence and likelihood matrix.

The City also has a Risk Management policy which describes the City's commitment to ensuring that effective risk management remains central to all its operations. The policy aligns to the updated standard and affirms the City's commitment to the effective management of risk, to be achieved through the implementation of a risk management framework, processes and systems.

Good corporate governance typically adopts a three lines of defence model to ensure effective management of risk. The model consists of the following three levels of defence:

1. The first line of defence is formed by managers and staff who are responsible for identifying assessing, evaluating and treating risk as part of their accountability for achieving objectives;
2. The second line of defence is formed by functions that oversee or who specialise in compliance or the management of risk. The second line owns the risk management framework and practices, and provide tools, support, oversight and monitoring; and
3. The third line of defence is formed by functions, such as internal audit, that provide independent assurance to ensure that risk management governance and internal control processes are adequate and effective.

The purpose of this model is to distribute responsibilities across different lines of defence, establish effective risk management and governance practices, and enhance the organisation's ability to identify, assess and mitigate risks.

The Regulation 17 Review conducted in 2023 made several findings and recommendations regarding the operationalisation of the risk management framework and enhanced risk reporting to the Audit and Risk Committee. The City accepted these findings, and acknowledged its risk management systems are at a basic level of maturity.

The first step towards addressing these findings was the alignment of the risk function with governance and legal, and the appointment of a Governance and Risk Coordinator in late 2023 (with risk being included into the existing Governance Coordinator role). This has enabled the City to commence an assessment of the resources required to implement AMD's recommendations and to improve the City's overall risk posture. A report is being prepared for the Audit and Risk Committee meeting in March 2024 which will have recommendations pertaining to the City's risk systems and resourcing.

The Terms of Reference number of positions of the ARC

Council have decided to appoint all elected members and an independent member to the Audit and Risk Committee. This will mean that the Audit and Risk Committee will comprise 10 members. Officers note that the number of elected members for this committee is high and the reference documents recommend fewer elected members. The addition of an independent external member is supported by the reference documents and the contemporary practices of local governments in Western Australia, noting that many metropolitan local governments are now appointing up to two independent external members to assist with providing the high level of expertise and knowledge in financial management, risk management, governance and audit (internal and external).

Statutory Environment

The Local Government Act 1995 (the Act) requires that all local governments establish an audit committee. Part 7 of the Act and the Audit Regulations deal with the requirements of the annual audit. Regulation 16 of the Audit Regulations sets out the functions of the audit committees.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:
Not applicable.

Policy:
Not applicable.

Financial Implications

Section 5.100 of the Act was recently amended to make it permissible to pay committee members who are neither elected members or employees for attending committee meetings in addition to the already permissible reimbursement of reasonable expenses. For a band 1 local government the permissible committee meeting attendance fee is between \$0 and \$415. The Council will need to determine the appropriate fee for the independent external member. Officers believe that a fee at the upper end of the band is appropriate.

Operationally there is likely to be significant cost associated with resourcing risk management and internal audit. Further reports will be presented to the Audit and Risk Committee about both risk management and internal audit outlining the resourcing implications for these functions.

External Stakeholder Consultation

Not Applicable

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could retain the existing Terms of Reference for the Audit and Risk Committee. This is not recommended as it does not incorporate the changes to the committee membership.

CONCLUSION

Officers recommend that the Council adopt the amended Audit and Risk Committee Terms of Reference to make amendments to the committee's membership as well as clarifying the role, duties and responsibilities of the Audit and Risk Committee.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Commence Expressions of Interest process for Independent Member	February 2024
Recommendation presented to the Council on Independent Member	March 2024
Report to Audit and Risk Committee on risk systems and resourcing	March 2024
Report to Audit and Risk Committee on internal audit and resourcing	March 2024

15. CHIEF EXECUTIVE OFFICER REPORTS

15.1. Elected Member Information Bulletin

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Executive Assistant to Council - Katie Banks
Authorised By:	Chief Executive Officer - Tony Nottle
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Council Tender Report December 2023 [15.1.1 - 1 page] 2. Current Running SAT Reviews as at 11 January 2024 [15.1.2 - 2 pages] 3. Council Resolution Status Update [15.1.3 - 40 pages] 4. Correspondence from Hon David Templeman MLA: Department of Planning, Lands and Heritage's Local Government Heritage Consultancy Program [15.1.4 - 1 page] 5. Correspondence from Department of Local Government, Sport and Cultural Industries [15.1.5 - 1 page] 6. Impact Report from Cancer Council WA [15.1.6 - 5 pages]

Prior to the meeting, officers foreshadowed an amendment to the officer recommendation. The amended recommendation was moved and carried.

COUNCIL DECISION

C2401/14 Moved Cr Mikayla Love, seconded Cr Andrew Macnish

- 1) That the following items from the elected member information bulletin be noted:
 - a) Minutes of committee meetings
 - b) Minor Donations Program
 - c) Current active tenders
 - d) State Administrative Tribunal reviews update
- 2) That the Council resolution status update be noted as per attachment 15.1.3, subject to:
 - a) Part 1 of Council resolution C2312/202 being noted as in progress (not complete as indicated);
 - b) The meeting year being noted as 2023 (not 2030 as indicated) for the following council resolutions:
 - i) C2306/109
 - ii) C2306/111
 - iii) C2306/121
 - iv) C2306/108
 - v) C2306/116

- vi) C2302/024
- vii) C2306/118; and
- c) The meeting year being noted as 2021 (not 2030 as indicated) for Council resolution C2112/119

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

Reasons: Errors were identified in the Council resolution status update published in the agenda as attachment 15.1.3 after publication.

OFFICER RECOMMENDATION

That the items from the Councillors Information Bulletin be noted:

- Minutes of Committee Meetings
- Minor Donations Program
- Current Active Tenders
- State Administrative Tribunal Reviews Update
- Council Resolution Status Update

EXECUTIVE SUMMARY

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence, but is presented in this bulletin for the information of the Council and the community.

INFORMATION BULLETIN

Minutes of Committee Meetings

Minutes of the following Committee Meetings listed in the table below are to be noted as received:

Committee	Meeting Date	Minutes
Finance Committee	6 December 2023	Minutes – 6 December 2023
Airport Advisory Committee	13 December 2023	Minutes – 13 December 2023

Minor Donations Program – December 2023

The Minor Donations Program is currently on hold and scheduled for review. Therefore, no applications were approved in December.

Current Active Tenders

The Tender update for December 2023 is provided at Attachment 1.

State Administrative Tribunal Reviews Update

The Current State Administrative Tribunal Reviews is at Attachment 2.

Council Resolution Status Update

The Council Resolution Status Update is at Attachment 3.

Correspondence: Local Government Heritage Consultancy Grant

Correspondence from Hon David Templeman MLA regarding the Department of Planning, Lands and Heritage's Local Government Heritage Consultancy Program is at Attachment 4.

Correspondence: Department of Local Government, Sport and Cultural Industries - City of Busselton Extraordinary Vacancy

Correspondence from the A/Executive Director Local Government regarding the City of Busselton Extraordinary Vacancy is at Attachment 5.

Cancer Council WA City of Busselton Donation Impact Report

The City of Busselton Donation Impact Report from the Cancer Council WA is at Attachment 6.

6:47pm: At this time, Daniell Abrahamse left the meeting.

6:54pm: At this time, Daniell Abrahamse returned to the meeting.

16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

16.1. Notice of Motion - Busselton Jetty Committee

Cr Anne Ryan, having given notice, moved the below motion.

There was opposition to the motion and debate ensued.

During debate, Cr Mikayla Love foreshadowed an alternative to the substantive motion.

The substantive motion was lost.

COUNCIL DECISION

C2401/15 Moved Cr Anne Ryan, seconded Cr Jodie Richards

- 1. That the Council terminates the Busselton Jetty Advisory Group and establishes the Busselton Jetty Committee under 5.8 of the *Local Government Act 1995*.**
- 2. The Committee is to reflect 5.9(2)(d) (council members and other persons) of the *Local Government Act 1995*.**
- 3. That the Council adopts the Terms of Reference as per Attachment 1.**

LOST 4 / 5

FOR: Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg and Cr Andrew Macnish

AGAINST: Mayor Phill Cronin, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

With the substantive motion lost, Cr Mikayla Love moved her foreshadowed alternative motion.

There was opposition to the alternative and debate ensued.

During debate, Cr Andrew Macnish foreshadowed an alternative motion.

Cr Mikayla Love's alternative motion was lost.

COUNCIL DECISION

C2401/16 Moved Cr Mikayla Love, seconded Cr Kate Cox

That the Council:

- 1. Retain the Busselton Jetty Reference Group**
- 2. Request that the CEO include the minutes of the Busselton Jetty Reference Group meetings in the Elected Members' information bulletin, as a part of the agenda for each Ordinary Council Meeting**
- 3. Request the CEO undertake a review of the Terms of Reference and provide a report to the Council, by April 2024, considering:**
 - a. The membership of the Busselton Jetty Reference Group**
 - b. Reporting items and the format of minutes for Busselton Jetty Reference Group meetings**
 - c. The schedule and content for regular information briefings to be provided to Elected Members, with briefings provided at a minimum twice per year**

LOST 4 / 5

FOR: Mayor Phill Cronin, Cr Mikayla Love, Cr Kate Cox and Cr Sue Riccelli

AGAINST: Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish and Cr Jarrod Kennedy

7:27pm: At this time, in accordance with clause 9.6(1) of the City of Busselton *Standing Orders Local Law 2018*, the Mayor adjourned the meeting for a period of five minutes.

7:34pm: At this time the meeting resumed.

With the alternative motion being lost, Cr Andrew Macnish moved his foreshadowed alternative motion.

The alternative motion was carried.

COUNCIL DECISION

C2401/17 Moved Cr Andrew Macnish, seconded Cr Mikayla Love

That the Council:

- 1. Retain the Busselton Jetty Reference Group**
- 2. Request that the CEO include the minutes of the Busselton Jetty Reference Group meetings in the Elected Members' information bulletin, as a part of the agenda for each Ordinary Council Meeting**

- 3. Request the CEO undertake a review of the Terms of Reference and provide a report to the Council, by April 2024, considering:**
- a. The membership of the Busselton Jetty Reference Group**
 - b. Reporting items and the format of minutes for Busselton Jetty Reference Group meetings**
 - c. The schedule and content for regular information briefings to be provided to Elected Members, with briefings provided at a minimum twice per year**
 - d. the inclusion of a specific clause in the ToR that requires the group to familiarise itself with the licence agreement between the BJI and City of Busselton, and agreement between the Department of Transport and City of Busselton, and any other associated documentation**

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

NOTICE OF MOTION

Cr Anne Ryan has given notice that at the meeting on 31 January 2024 she will move the following motion:

- 1. That the Council terminates the Busselton Jetty Advisory Group and establishes the Busselton Jetty Committee under 5.8 of the Local Government Act 1995.*
- 2. The Committee is to reflect 5.9(2)(d) (council members and other persons) of the Local Government Act 1995.*
- 3. That the Council adopts a Terms of Reference, similar to that of the Airport Advisory Committee with the following specific alterations:*
 - a. The Council will appoint up to four elected members to the Committee along with two members of Busselton Jetty Inc and one Deputy as approved by the BJI Board.*
 - b. The Presiding Member and Deputy Presiding Member shall be a Councillor of the City of Busselton.*

REASONS

1. It has become evident that Advisory Groups have not been recognised by full Council of late. This was reflected when the former mayor stated there were only two Councillors on the Group and it held no power.

Staff can spend as much time preparing for Group meetings and minutes are taken but not distributed to Councillors or information flow to the community. Currently there is no mechanism to outline to the Council what has taken place during the meeting.

The City's Jetty Reserve holds a significant amount (\$7,345,736) and the information exchange also appears to be limited. Councillors and committee members (both CoB and BJI) should be able to obtain a listing of in and out payments of this reserve on a regular basis (similar to the

Finance Committee agenda), along with forecasted works to ensure there are no future surprises.

The City has a Busselton Airport Advisory Committee and a reflected Terms of Reference and is one of the biggest businesses our Council runs, the Busselton Jetty does not hold the same magnitude and this is anomalous in the least. As a comparison

Airport (22/23 Annual Report)

- Passenger numbers 135,700
- Net Operating Surplus \$331,863

Jetty (2022/23 BJI Annual Report)

- 323,241 paid visitors and 248,993 unpaid
- \$1.33 million licence fee contribution to City's Jetty Maintenance Reserve
- \$6,231,557 annual turnover
- Approximately 60 staff plus many volunteers

Both the Airport and Jetty are both catalysts for tourism numbers to Busselton that have huge indirect economic benefits, not just the income they generate directly, but through bringing tourists to town to spend money on accommodation, cafes, retail, food, petrol etc. All of these businesses pay rates and so do the employees.

2. The Local Government Act allows for "other persons" to be a Committee Member and I suggest BJI should have two persons, along with a Deputy allowing for absent members so they can fulfil the requirement.
3. The Terms of Reference for the Airport Advisory Committee suggests 4 members. This NoM suggests up to 4. It also suggests that as an addition to the ToR, the Chair and Deputy are Council Members.

<https://www.busselton.wa.gov.au/documents/725/airport-advisory-committee-meeting-2016-04-29-agenda>

OFFICER COMMENT

Section 5.8 of the *Local Government Act 1995* (Act) provides that:

"A local government may establish committees of 3 or more persons to assist the council and to exercise and discharge the duties of the local government that can be delegated to committees"

Before establishing a committee, the Council and the administration should consider:

- the need and merits of establishing such a committee;
- the costs and impacts of establishing such a committee; and
- the terms of reference for the committee and the actual work that such a committee will undertake for the Council.

Committees under section 5.8 are not setup for the purposes of information sharing and dissemination.

The Council has previously had a Busselton Jetty Advisory Committee. This committee was not re-established in 2015 when the Council determined that the Busselton Jetty Reference Group could adequately deal with matters relating to Busselton Jetty and was the appropriate forum to do so.

The Council further resolved to retain the Busselton Jetty Working Group with elected member representation of 2 elected members and 1 deputy member at the October 2023 Ordinary Council meeting (C2310/144).

Officers are of the view that the Busselton Jetty Reference Group is functioning as intended. Recent meetings have reviewed and improved the agenda structure to align with the Jetty License Agreement performance measures and more detailed information is now being provided for works funded by the Jetty Maintenance Reserve. It is considered that the creation of a formal committee is unnecessary.

The local government currently exercises its duties by way of decision-making by the full Council with respect to matters concerning the Busselton Jetty. It is not entirely clear how the proposed Jetty committee would further assist the Council, or whether the proposed committee would have delegated decision-making authority.

The establishment of a new committee will not contribute to efficient or timely decision making, as matters that are currently considered directly by the Council will first require consideration by the committee. This will almost certainly result in slower decision-making on these matters than is currently possible.

Pursuant to section 5.9(2)(d) of the Act, committees may comprise of council members and other persons. This provides for representatives of Busselton Jetty Inc. (BJI) to act as members of the proposed new committee of council. However, careful consideration will be required to assess and manage the potentially significant conflicts of interest created by establishing a committee with BJI employees as members.

Consideration will also be required regarding the payment of sitting fees to independent members allowable from 1 January 2024, however any financial impacts to the City are expected to be modest.

With respect to information flow about reserve account movements and works, the monthly Finance Committee reporting, which is also provided to the full Council each month, provides details of transfers to and from the Jetty Maintenance Reserve and any variations to the annual budget. The Busselton Jetty Maintenance Plan noted by Council in March 2022 (C2203/045) included forecasted works for Busselton Jetty as part of the Jetty Maintenance Plan review. The plan is due for review in 2024. Whilst a briefing of Council specifically about the Jetty Maintenance Plan has not yet taken place, a briefing about the Jetty development project was given in November in which the relevance of the Jetty Maintenance Reserve was captured.

Officers acknowledge that given the strategic importance of Busselton Jetty it is appropriate to provide Elected Members with additional visibility of the management of the Busselton Jetty, including the Jetty maintenance plan and priorities. It is also acknowledged that information provided to date has been irregular and could be presented in a more digestible format.

However, Officers are confident this can be achieved without establishing another committee of council, which increases administrative overhead (to ensure compliance with the regulatory

requirements associated with formal committees) and has the potential to slow down decision making which is something BJI have regularly expressed frustration with.

Officers propose that information availability can be improved, without affecting the timeliness of decision making or administrative overhead, by reviewing the Terms of Reference of the Busselton Jetty Reference Group to include the outcomes sought by this Notice of Motion including group membership, tabled reports with agreed content, reformatted minutes published in the Elected Member Information Bulletin and by ensuring that regular Busselton Jetty information briefings for elected members are scheduled throughout the year.

However, should the Council resolve that a new committee be established, it is recommended that, as a pre-requisite, an assessment is first completed to comprehensively consider:

- the objectives, duties, responsibilities and work to be undertaken by the committee
- delegations of authority to the committee
- committee membership and the management of potential actual or perceived conflicts of interest
- the committee's role in the City's broader decision making framework.

This will enable a terms of reference to be appropriately defined and adopted by the Council.

16.2. Notice of Motion - Council Meeting Schedule

The motion was not moved by Cr Anne Ryan and lapsed under clause 5.8(5) of the City of Busselton *Standing Orders Local Law 2018*.

16.3. Notice of Motion - Jetty Reserve Fund

Cr Anne Ryan, having given notice, moved the below motion.

The motion was carried.

COUNCIL DECISION

C2401/18 Moved Cr Anne Ryan, seconded Cr Jarrod Kennedy

That the CEO bring a report to the Council on or before the last scheduled meeting in March 2024, noting Resolution C2203/045 of 9 March 2022 *“(3) Notes Councillors to be briefed on the current status of the Busselton Jetty Maintenance Plan every 2 years following Council Elections”*.

The report to include:

- 1. The purpose of the Jetty Maintenance Reserve and Jetty Self Insurance Reserve and what funds have been expended over the last 2 years.**
- 2. What funds are currently being put aside annually and the individual source/s of those funds.**
- 3. With reference to Resolution C2203/045 and the comment in relation to the spikes at 2035, 2055, and 2060, *“The basis of this assumption was that grant funding would be obtained given the status of the Busselton Jetty being a State significant asset”*, what certainty is there in this statement given the original Grant Agreement on receipt of the \$24m; what if no funding was forthcoming and what measures could the Council take to alleviate this shortfall if and when required.**
- 4. Further to Resolution C2203/045 and the statements:
 - a. *“The majority of capital works planned for 2020 could be delayed until 2030”*. Why and what specifically does this comment refer to and what benefits/negatives does this achieve;**
 - b. *“Capital works planned for 2030 can be pushed back to 2035”*. Why and what specifically does this comment refer to and what benefits/negatives does this achieve;**
 - c. *“Replacement of decking and refurbishment of steelwork to HIN 4 can be brought forward from 2035 to either 2025 or 2030 (to be confirmed during the next 5 yearly assessment in 2024)”*. Why and what specifically does this comment refer to and what benefits/negatives does this achieve.****
- 5. What strategy is in place should a catastrophic event occur at any point in the future.**
- 6. What risk assessments are in place covering a minor event or a major catastrophic event.**
- 7. What specific infrastructure does the Jetty Maintenance Reserve and the Jetty Self Insurance Reserve cover.**
- 8. What specific infrastructure doesn't the Jetty Maintenance Reserve and the Jetty Self Insurance Reserve cover.**

9. What specifically does LGIS cover the IC and UWO for (ie what constitutes an act of the sea, what is claimable and what isn't under this insurance cover).
10. What salaries and/or wages and any other costs are paid/deducted from the Jetty Maintenance Reserve and Jetty Self Insurance Reserve.
11. What was the rationale for reducing the amount paid into the Reserve Funds in 2012.
12. What was the reason for the \$3.66m underspend from the 50 Year Maintenance Plan between 2013-2022.
13. Can the City and BJI work more collaboratively with regards to the Maintenance Schedule.
14. Given the Cruise Ship Tender Platform was 50% funded from the Jetty Maintenance Reserve, are the City charging the same as other WA Cruise Ship Ports that have Cruise Ships berthing?

CARRIED 9 / 0

FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

AGAINST: Nil

NOTICE OF MOTION

Cr. Anne Ryan has given notice that at the meeting on 31 January 2024, she will move the following motion:

That the CEO bring a report to the Council on or before the last scheduled meeting in March 2024, noting Resolution C2203/045 of 9 March 2022 "(3) Notes Councillors to be briefed on the current status of the Busselton Jetty Maintenance Plan every 2 years following Council Elections".

The report to include:

1. *The purpose of the Jetty Maintenance Reserve and Jetty Self Insurance Reserve and what funds have been expended over the last 2 years.*
2. *What funds are currently being put aside annually and the individual source/s of those funds.*
3. *With reference to Resolution C2203/045 and the comment in relation to the spikes at 2035, 2055, and 2060, "The basis of this assumption was that grant funding would be obtained given the status of the Busselton Jetty being a State significant asset", what certainty is there in this statement given the original Grant Agreement on receipt of the \$24m; what if no funding was forthcoming and what measures could the Council take to alleviate this shortfall if and when required.*
4. *Further to Resolution C2203/045 and the statements:*
 - a. *"The majority of capital works planned for 2020 could be delayed until 2030". Why and what specifically does this comment refer to and what benefits/negatives does this achieve;*

- b. *“Capital works planned for 2030 can be pushed back to 2035”. Why and what specifically does this comment refer to and what benefits/negatives does this achieve;*
 - c. *“Replacement of decking and refurbishment of steelwork to HIN 4 can be brought forward from 2035 to either 2025 or 2030 (to be confirmed during the next 5 yearly assessment in 2024)”. Why and what specifically does this comment refer to and what benefits/negatives does this achieve.*
- 5. *What strategy is in place should a catastrophic event occur at any point in the future.*
- 6. *What risk assessments are in place covering a minor event or a major catastrophic event.*
- 7. *What specific infrastructure does the Jetty Maintenance Reserve and the Jetty Self Insurance Reserve cover.*
- 8. *What specific infrastructure doesn't the Jetty Maintenance Reserve and the Jetty Self Insurance Reserve cover.*
- 9. *What specifically does LGIS cover the IC and UWO for (ie what constitutes an act of the sea, what is claimable and what isn't under this insurance cover).*
- 10. *What salaries and/or wages and any other costs are paid/deducted from the Jetty Maintenance Reserve and Jetty Self Insurance Reserve.*
- 11. *What was the rationale for reducing the amount paid into the Reserve Funds in 2012.*
- 12. *What was the reason for the \$3.66m underspend from the 50 Year Maintenance Plan between 2013-2022.*
- 13. *Can the City and BJI work more collaboratively with regards to the Maintenance Schedule.*
- 14. *Given the Cruise Ship Tender Platform was 50% funded from the Jetty Maintenance Reserve, are the City charging the same as other WA Cruise Ship Ports that have Cruise Ships berthing?*

REASONS

The Busselton Jetty is one of the City's largest assets, financially and as an economic contributor through the tourists that visit Busselton, specifically as the Jetty was on their bucket list.

The Jetty is also the town's greatest community recreation facility with over 300,000 visitors attending annually, before or after operating hours to fish, swim, walk, dive, snorkel. Another 400,000 attend during operating hours.

Whilst LGIS insures the IC and UWO, they do not insure them for replacement value and they are not covered for acts of the sea. The Jetty itself is self-insured by the City. Should part or all of it be destroyed, the City may not have the funding to replace it to working order.

At the March 2020 meeting, I foreshadowed point 3 of the Resolution C2203/045 to ensure that all Councillors (and specifically newly elected), are aware of the Busselton Jetty Maintenance Plan, future funding spikes and strategies.

The requested report will provide Council with an up to date overview of the Jetty and any issues which may require further discussion to ensure the Council is fully aware of its obligation for this asset. The current amount sitting in the Jetty Maintenance Reserve (Budget as at 30 June 2023) is \$7,129,230 and \$665,083 in the Jetty Self Insurance Reserve.

The City signed an agreement with the Department of Transport to maintain the Jetty in perpetuity. Should it not be able to meet this contractual obligation, it is a large risk to the City.

The Notice of Motion in relation to forming a Jetty Committee (as opposed to an Advisory Group) should also provide Councillors, stakeholders, and the community with history and knowledge in a one stop shop report.

OFFICER COMMENT

It is considered by Officers that this Notice of Motion is more a request for information, rather than a decision of Council. It is agreed, however, that this would be useful background information for all Elected Members to be aware of. Officers are able to brief Council on all these matters and will organise a date for this to be scheduled.

There may also be regular information that both Council and the community are interested in receiving about the Jetty and its operations. This could also be achieved should Council support the officer's proposal in the Notice of Motion regarding the Busselton Jetty Reference Group. This would see a review of the Terms of Reference that could be informed by the Council briefing to capture items of an ongoing nature that Council would like to receive from the minutes of the Reference Group meetings and regular Council briefing sessions.

16.4. Notice of Motion - Vasse River Committee

Cr Anne Ryan, having given notice, moved the below motion.

There was opposition and debate ensued.

SUBSTANTIVE MOTION

- 1. That the Council establishes the Vasse River Committee (The Committee) under 5.8 of the *Local Government Act 1995*.**
- 2. The Committee is to comprise council members and other persons to form a committee under 5.9(2)(d) of the *Local Government Act 1995*.**
- 3. That the Council adopts the attached Terms of Reference.**
- 4. The Council will appoint up to four (but no less than two) elected members to the Committee along with two members of the community also appointed by the Council.**
- 5. The Presiding Member and Deputy Presiding Member shall be a Councillor of the City of Busselton.**

During debate, Cr Mikayla Love foreshadowed an alternative to the motion.

During debate, Cr Andrew Macnish moved an amendment to the substantive motion.

COUNCIL DECISION

C2401/20 Moved Cr Andrew Macnish, seconded Cr Mikayla Love

- 3. That the Council adopts the attached Terms of Reference, amending to include a new 2.8: 'To consider the City's position as the interim Asset Manager', and renumber the Terms of Reference accordingly.**

***See attached Draft Terms of Reference**

CARRIED 9 / 0

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish,
Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli**

AGAINST: Nil

The substantive motion inclusive of amendments was put and lost.

COUNCIL DECISION

C2401/21 Moved Cr Anne Ryan, seconded Cr Jodie Richards

- 1. That the Council establishes the Vasse River Committee (The Committee) under 5.8 of the *Local Government Act 1995*.**
- 2. The Committee is to comprise council members and other persons to form a committee under 5.9(2)(d) of the *Local Government Act 1995*.**
- 3. That the Council adopts the attached Terms of Reference, amending to include a new 2.8: 'To consider the City's position as the interim Asset Manager', and renumber the Terms of Reference accordingly.**
- 4. The Council will appoint up to four (but no less than two) elected members to the Committee along with two members of the community also appointed by the Council.**
- 5. The Presiding Member and Deputy Presiding Member shall be a Councillor of the City of Busselton.**

***See attached Draft Terms of Reference**

LOST 0 / 9

FOR: Nil

AGAINST: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish, Cr Mikayla Love, Cr Kate Cox, Cr Jarrod Kennedy and Cr Sue Riccelli

With the substantive motion (inclusive of the amendment) being lost, Cr Mikayla Love moved her foreshadowed alternative motion.

The alternative motion was carried.

COUNCIL DECISION

C2401/22 Moved Cr Mikayla Love, seconded Cr Anne Ryan

That the Council:

- 1. That the Council establishes the Vasse River and Toby Inlet committee (the Waterways Management Committee (WMC)) under 5.8 of the *Local Government Act 1995*.**
- 2. The Committee is to comprise council members and other persons to form a committee under 5.9(2)(d) of the *Local Government Act 1995*.**
- 3. That the Council adopts the proposed Terms of Reference at attachment 16.4.1 subject to the following amendments:**
 - a. 1.1: The Council of the City of Busselton has established the Vasse River and Toby**

Inlet Committee (the Committee) pursuant to sections 5.8 and 5.9(2)(d) of the *Local Government Act 1995* (the Act)

- b. **2.1: Identifying practical and implementable actions to sustainably improve the health and amenity of the Lower Vasse River and Toby Inlet**
 - c. **2.3: Assisting the City with implementation of the Lower Vasse River Waterway Management Plan, the Toby Inlet Waterway Management Plan and any other action required to assist with 2.1 above;**
 - d. **2.7: To foster liaison and cooperation between the community and stakeholders on matters associated with the Lower Vasse River and Toby Inlet.**
 - e. **2.8 To consider the City's position as Interim Asset Manager, and renumber accordingly**
 - f. **3.2: Two members of the community will be appointed by the Council as independent external members of the Committee**
 - g. **3.5: Independent external members of the Committee may nominate to be reappointed to this role following an ordinary Council election, with appointments and reappointments to the Committee to be made by the Council following each ordinary Council election.**
 - h. **3.5 (duplicated): Renumber to 3.6**
 - i. **New clause 3.7: Members of the community who have been appointed as independent members of the Committee will be required to agree to adhere to the City of Busselton *Code of Conduct for Council Members, Committee Members and Candidates***
 - j. **New clause 3.8: The Presiding Member and Deputy Presiding Member shall be an elected member of the City of Busselton.**
 - k. **5.2: Representatives of partner agencies and other stakeholders may be invited to attend Committee meetings as required. This may include:**
 - a. **Department of Water and Environmental Regulation;**
 - b. **GeoCatch;**
 - c. **Department of Biodiversity, Conservation and Attractions;**
and
 - d. **Water Corporation.**
 - l. **7.1: The Committee will meet at a minimum two times per year.**
- 4. That the Council appoints up to four (but no less than two) elected members to the Committee along with two members of the community also appointed by the Council as independent external members of the Committee.**

CARRIED 7 / 2

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg, Cr Andrew Macnish,
Cr Mikayla Love and Cr Kate Cox**

AGAINST: Cr Jarrod Kennedy and Cr Sue Riccelli

NOTICE OF MOTION

Cr. Anne Ryan has given notice that at the meeting on 31 January 2024, she will move the following motion:

1. *That the Council establishes the Vasse River Committee (The Committee) under 5.8 of the Local Government Act 1995.*
2. *The Committee is to comprise council members and other persons to form a committee under 5.9(2)(d) of the Local Government Act 1995.*
3. *That the Council adopts a Terms of Reference*.*
4. *The Council will appoint up to four (but no less than two) elected members to the Committee along with two members of the community also appointed by the Council.*
5. *The Presiding Member and Deputy Presiding Member shall be a Councillor of the City of Busselton.*

**See attached Draft Terms of Reference*

REASONS

It has become evident that Advisory Groups have not been recognised by full Council of late and very little information flow exists to the Council and in turn the community. Currently there is no mechanism to outline to the Council what has taken place during advisory group meetings in the form of reports and/or discussion.

It is also acknowledged that the Vasse Taskforce, which is a Parliamentary Committee, is also not filtered down to the Council via information flow.

The 2017 Catalyse Community Scorecard had The Vasse River as the third most important project after improved traffic management in the City and development of the Airport and sixth in 2020; no doubt if the community were aware of the cyanobacterial issue this would be higher in the ranking. And our Strategic Community Plan says [pay] “More attention to the Vasse River”.

Specifically the Strategic Community Plan says

“ENVIRONMENT

An environment that is valued, conserved and able to be enjoyed by current and future generations.

LIFESTYLE

A place that is relaxed, safe and friendly, with services and facilities that support healthy lifestyles and wellbeing.

LEADERSHIP

A Council that connects with the community and is accountable in its decision making.

OUR STRATEGIC PRIORITIES 1.3

Work with key partners to improve the health of the Vasse River and other waterways in the Geopraphe catchment."

Being the "Events Capital", also noted in our Strategic Plan and our 'Environment' being Key Theme 1, should surely be inspiration to place higher Council emphasis on the Vasse River?

The health concerns of cyanobacteria formed as a consequence of the poor quality of the water is a massive concern. There is a great deal of scientific evidence to substantiate the link between Motor Neurone disease and neurological illnesses and Council can no longer use the "willful blindness" excuse; the evidence is available.

The abolishment of the Lower Vasse River Management Advisory Group angered many in the community and creating a committee will go some way to appeasing this anger along with a full understanding by the new Council and the community of what has happened and what is being progressed. It is also important to point out the Council, at the 17 May 2023 meeting (C2305/093*) acknowledged its commitment to being interim asset manager for the Lower Vasse River.

At the December 2023 meeting Mr Keith Sims asked the following questions:

"In regards to the City's stewardship of the Vasse River, when will the next community meeting originally scheduled for October 2023 be held?"

Response (Mr Matt Twyman, Acting Director Infrastructure and Environment)

"Under a stakeholder engagement model intended to deliver broader community engagement, the first bi-annual update event was held on Thursday 2 November 2023. The next scheduled bi-annual update event will be held in April 2024, with a date to be confirmed".

"How will the agenda for the next meeting in April 2024 be advertised, and will it include the living streams concept peer review outcomes?"

Response (Mr Tony Nottle, Chief Executive Officer)

"The next event to engage with the community is planned for April 2024, and more information will be available to the community then. Council will also review methods of community engagement as appropriate".

Little information was provided to Council or the community on the November 2023 'engagement' .

*<https://www.busselton.wa.gov.au/documents/12739/20230517-minutes-council-meeting-17-may-2023>

OFFICER COMMENT

Officer recommendation:

It is the officer's recommendation that Council do not establish a Vasse River Committee for the following reasons:

- The proposed objectives for the Committee are almost identical objectives to those of the dissolved Lower Vasse River Management Advisory Group. This group was dissolved by

Council on 17 May 2023, due to the determination by Council that the purpose and objectives of the group had been achieved and it was no longer required for the implementation of the prioritised actions (C2305/093).

- The City has no authority under the *Water Agencies (Powers) Act 1984* in relation to the management of the river.
- The Vasse Taskforce is the overarching decision maker in relation to the management of this waterway and has parliamentary oversight. It is supported by relevant local and state government departments and bodies, community organisations and DWER.
- Due to commitment to delivering operational programs, City staff do not currently have the required resourcing available to support and advise the proposed Committee. The establishment of the proposed committee would require ongoing support and advice from City Officers that are already fully committed to the achievement of a broad range of priority projects. As such there would be a significant deleterious impact on the delivery of these existing priorities.
- There is a risk that the establishment of the proposed committee could be perceived to undermine the established and successful Vasse Taskforce, and impact on the goodwill between the key agencies and the City.
- Any waterway management initiatives undertaken by the City outside of the structure of the Vasse Taskforce would not be supported or funded by the state government, and would jeopardise federal funding opportunities with no demonstrated state government support.
- The Council representative on the Vasse Taskforce is in a valuable position to being a conduit in information flow to Council and invested community members on Vasse Taskforce matters. An additional method of disseminating the outcomes of the Vasse Taskforce meetings may be to include the publicly available key messages from the most recent meeting in Councillor Information Bulletin when available.
- The City takes direction on all public health matters from the Department of Health.

Instead, it is recommended that Council continue to proceed with implementation of the current broader community engagement model supported by Council in May 2023 (C2305/093), with a commitment from officers to provide Council with more regular and ongoing updates on the progress of remediation programs and community engagement. This will enable Council to make informed decisions on waterway matters moving forward.

In September 2023, Council was briefed and were supportive of the proposed implementation of the community engagement model. Since this briefing, officer resourcing has been invested in the rollout of this new model and development of the associated Community and Stakeholder Engagement Strategy, which will be further informed by learnings from the planned community engagement session in April 2024. It is intended for the strategy to be brought to Council for endorsement by June 30 2024.

Detailed officer response to NoM reasons

- 1. It has become evident that Advisory Groups have not been recognised by full Council of late and very little information flow exists to the Council and in turn the community. Currently there is no mechanism to outline to the Council what has taken place during advisory group meetings in the form of reports and/or discussion.**

There is no Advisory group related to the management of the Lower Vasse River. At its ordinary meeting of Council 17 May 2023, Council resolved to disband the Lower Vasse River Management Advisory Group (LVRMAG) in favour of an alternative community engagement model (C2305/093).

LVRMAG was created in June 2020 for the purpose of guiding waterway management actions for the Lower Vasse River. The group comprised of City staff, Councillors, partnering agencies and community members who provided a collaborative environment to provide input into identifying, prioritising, funding and communicating waterway management actions for the Lower Vasse River. This input guided the implementation of the Lower Vasse River Waterway Management Plan (LVR WMP), which provides the guiding framework for prioritisation of waterway management actions for the river for approximately the next 10 years.

With the development and budgeting of a program of works set to guide the implementation of these actions for the next few years, the management of the Lower Vasse River has shifted from a planning phase to an operational implementation phase. As such, Council resolved to dissolve LVRMAG in May 2023 as the intended objectives of the group had been achieved.

In collaboration with partnering agencies, City resources are now focussed on delivering this program of works, and through implementation of the adopted engagement model of biannual update and planning sessions, are engaging and consulting with the broader community on waterway management.

The first of these community information sessions was held in November 2023, and in line with Council resolution C2305/093, the second is scheduled for April 2024.

- 2. It is also acknowledged that the Vasse Taskforce, which is a Parliamentary Committee, is also not filtered down to the Council via information flow.**

The Vasse Taskforce is a partnership between the State, respective local governments, and other key stakeholders. It provides strategic direction to the lead agencies responsible for delivering projects under the Revitalising Geographe Waterways (RGW) program and ensures ongoing collaboration and support between partners.

The Vasse Taskforce, through GeoCatch, reports to the community on the outcomes of activities undertaken to improve waterway health.

The City of Busselton is represented at the Vasse Taskforce by City Officers and an Elected Member. Cr Ryan is the current City of Busselton Council representative on the Vasse Taskforce, and as such is in a valuable position to being a conduit in information flow to Council and invested community members on Vasse Taskforce matters.

An additional method of disseminating the outcomes of the Vasse Taskforce meetings may be to include publicly available key messages from the most recent Vasse Taskforce meeting in Councillor Information Bulletins when available.

- 3. The 2017 Catalyse Community Scorecard had The Vasse River as the third most important project after improved traffic management in the City and development of the Airport and sixth in 2020; no doubt if the community were aware of the cyanobacterial issue this would be higher in the ranking. And our Strategic Community Plan says [pay] “More attention to the Vasse River”.**

The City and partnering agencies have recently demonstrated ongoing commitment to improving the health and amenity of the Lower Vasse River and other waterbodies within the Geographe Catchment through numerous projects. Dependent on funding, procurement and approvals, the City is committed to delivering waterway remediation works over the next few years pursuant to Council resolution C2305/093.

The Council, through this decision, prioritised the delivery of a six-stage sediment removal project spanning approximately seven years. This project was informed through the LVRWMP and developed in consultation with LVRMAG. This is a significant operational waterway management project aimed at reducing the nutrient load and organic sediment volume in the river. Sediment removal in the Lower Vasse River is important to helping to shift the waterway to a more functional ecosystem state, and to improving aesthetic amenity.

In addition, in partnership with DWER, the City has implemented a large-scale Phoslock application trial in a section of the Lower Vasse River throughout the summer 2023/24. This program works to bind phosphorus, a primary nutrient required for algal growth, in both the water column and the sediment layer. Ongoing applications of Phoslock can immediately reduce nutrient availability for algal growth which assists in improving the health of waterways.

If successful, this program will complement the urban and rural catchment nutrient load reductions achieved by partnering agencies DWER and GeoCatch.

Under the direction of the Vasse Taskforce, the City of Busselton has been supporting DWER to develop and implement the Vasse Taskforce water quality management Decision Support Framework, tailored to management of local waterways. The framework will enable a transparent, consistent, and scientifically robust assessment of water quality treatments. It will provide confidence to waterway managers, the community, and the Taskforce in relation to the decision-making mechanisms that inform prioritisation of funding trials and/or implementation of water quality improvement initiatives.

The work undertaken by the City towards improving water quality, and waterway health and amenity is a significant body of work for City staff. A new committee cannot be supported within existing staffing resources without impacting previously committed project deliverables and timelines and / or a reduction in existing service levels.

In addition, the establishment of the proposed Vasse River committee would require participation from partnering agencies who are already committed to supporting management of the waterway through participation in the Vasse Taskforce. Officers are unclear how the establishment of such a committee would provide additional value to the management of the waterway when there is already a Ministerial taskforce that is guiding the City in the management of this waterway.

Staff are concerned that establishment of such a committee may in fact be perceived to undermine the authority, processes and procedures that underpin the Ministerial Vasse Taskforce, and the Vasse Wonnerup Wetlands Partnership (a technical working group governed by the Vasse

Taskforce). The City has worked hard to foster valuable working relationships with partnering agencies, any loss of support from partnering agencies or the Vasse Taskforce would significantly jeopardise the City's ability to function as the interim asset manager for the Lower Vasse River and Toby Inlet and deliver waterway remediation commitments.

- 4. The health concerns of cyanobacteria formed as a consequence of the poor quality of the water is a massive concern. There is a great deal of scientific evidence to substantiate the link between Motor Neurone disease and neurological illnesses and Council can no longer use the "willful blindness" excuse; the evidence is available.**

The Department of Health (DoH) is the authority and lead agency on all human health matters for Western Australia and provides direction to the City on these matters.

In June 2021, the DoH issued the factsheet '*Lower Vasse River, Busselton – Blue-Green algae and human health*' in response to community concerns related to microalgae including cyanobacteria, and potentially associated health implications. This factsheet, supported through research published by the World Health Organisation did not support a link between the cyanobacteria and neurodegenerative disease.

Microalgae are routinely sampled in the Lower Vasse River by DWER. Microalgae species composition and density are reported to a range of stakeholders, including the City of Busselton and the Department of Health. Informed by DWER monitoring results, DoH direct the City on all risk mitigation measures relating to the management any human health concerns. Cyanobacterial blooms are a widespread issue, both nationally and internationally, and this is a role that DoH provides to local governments across the state. Permanent and temporary health warning signage is erected in multiple locations along the river, subject to DoH advice and ease of access. Messaging online or directly to the community is provided as deemed appropriate. This advice warns member of public that the water can cause ill effects to humans and animals, and not to come into contact with the water.

- 5. The abolishment of the Lower Vasse River Management Advisory Group angered many in the community and creating a committee will go some way to appeasing this anger along with a full understanding by the new Council and the community of what has happened and what is being progressed. It is also important to point out the Council, at the 17 May 2023 meeting (C2305/093*) acknowledged its commitment to being interim asset manager for the Lower Vasse River.**

In May 2023 the Council received a report summarising work undertaken by the City in respect to water quality and waterway health since being appointed as interim asset manager of the Lower Vasse River. This report included a review of the need for the LVRMAG for the management of the waterway during the operational implementation stage of the LVRWMP.

As a result of this report, Council resolved to disband the LVRMAG in favour of an alternative community engagement model (C2305/093). Instead, through the community engagement model, adopted by Council, the City is now focussed on engaging and consulting with the broader community on waterway management.

Significant City resources will be required to provide the necessary support and advice to the proposed committee, which may impact the City's ability to achieve the objective of broader community engagement and education in relation to the Vasse River.

The biannual waterway management and sustainability open days deliver transparency to the community on the progress of the actions identified within the LVRWMP and the health status of the river, and has the additional benefit of delivering an opportunity to promote and educate the community in relation to other relevant City and partner agency programs and initiatives.

The adopted engagement model also committed to quarterly Council briefing sessions in relation to progression of the actions in the LVRWMP. It is acknowledged that as a result of recent organisational structure and resourcing changes – with the interim Lower Vasse River management portfolio moving from Community Planning to the Infrastructure and Environment Directorate and a new Sustainability officer appointed in June 2023 – briefings have been less frequent. Moving forward it is intended that City officers will brief council in April, July, October, and January of each year. The last briefing to Council on this project was 13 September 2023, and officers plan to implement a quarterly briefing schedule in 2024.

6. Little information was provided to Council or the community on the November 2023 'engagement'

The first waterway management and sustainability open day was held on 2 November 2023, from 3pm – 6pm, in the Undalup Room at the City's Administration Building. This event was promoted by the City in September and October 2023 through social media, local newspapers, the City's Bay to Bay newsletter (which reaches approximately 14,000 people) and the City's Your Say page. Additionally, Councillors were invited by email to this event.

As a reflection of the feedback received by Community members at the ordinary Council meeting of 13 December 2023 that it was unclear that the event in November 2023 was intended to include the biannual update on the Vasse River Management Project, staff have taken actions to ensure that the messaging in relation to the next community open day event planned for April 2024 clearly articulates this.

The open day in November presented community with informative, interactive displays and ability to engage with project staff and subject matter experts from the City and partnering agencies (DWER, GeoCatch and TIC Group) on a wide variety of topics related to waterway management including:

- Lower Vasse River:
 - DWER water quality monitoring overview and update
 - Waterway Management Plan overview
 - Sediment removal program overview and updates on Stages 1, 2 & 3
- GeoCatch Possum conservation management
- City of Busselton Mosquito management
- City of Busselton Natural Resource Management Programs:
 - Nature Verge
 - Street Trees
 - Friends of Reserves
 - Seedling giveaway
- Toby Inlet:
 - Waterway management plan overview
 - Toby Inlet Catchment Group (TIC Group) work by catchment group and volunteers
- City of Busselton Energy Strategy & WALGA Renewable Energy Program overview and achievements
- Waste education interactive display

Further considerations regarding committees of Council

Section 5.8 of the Local Government Act 1995 (the Act) provides that:

“A local government may establish committees of 3 or more persons to assist the council and to exercise and discharge the duties of the local government that can be delegated to committees”

Before establishing a committee, the Council and the administration should consider:

- the need and merits of establishing such a committee;
- the costs and impacts of establishing such a committee;
- the terms of reference for the committee and the actual work that such a committee will undertake for the Council.

Pursuant to section 5.9(2)(d) of the Act, committees may comprise of council members and other persons. This provides for community members to act as members of the proposed new committee of council. However, officers have specific concerns regarding appointing community members to a committee with delegated decision-making authority. In such an instance, committee members should be required to have appropriate qualifications in waterway management.

Consideration will also be required regarding the payment of sitting fees to independent members allowable from 1 January 2024, however any financial impacts to the City are expected to be modest.

Before any new committees or working group is established, it is recommended that, as a pre-requisite, an assessment is first completed to comprehensively consider:

- the objectives, duties, responsibilities and work to be undertaken by the committee
- the role of the committee relative to partner agencies and agreed joint delivery frameworks
- delegations of authority to the committee
- committee membership

The *Water Agencies (Powers) Act 1984* provides the Minister for Water, and Department of Water and Environment Regulation with the power to perform the general functions of conserving, protecting, assessing, and managing water resources including waterways.

Through the Vasse Taskforce the City was nominated to be interim asset manager, contingent upon continued State support – both technically and financially. However, the City does not have a statutory duty to manage the waterway and could decide to cease being the interim asset manager.

As such, it is unclear from the Notice of Motion what benefit will be achieved by establishing a committee, as the Council has no authority under the *Water Agencies (Powers) Act 1984* in relation to the management of the river, with the Vasse Taskforce, led by DWER responsible for providing this direction and oversight to the City.

Officers emphasise that Council decided to dissolve LVRMAG as it was determined that the group had achieved the objectives it was established for, with the Vasse Taskforce and Council providing sufficient oversight during the operational phase of implementation of the prioritised actions.

16.5 Notice of Motion - City of Busselton Planning Approach

Cr Andrew Macnish, having given notice, moved the below motion.

There was opposition and debate ensued.

The motion was carried.

COUNCIL DECISION

C2401/23 Moved Cr Andrew Macnish, seconded Cr Anne Ryan

That the Council formally approaches the WAPC and requests to make comment on the following town planning sentiment supported for the future direction of the City of Busselton's Local Planning Scheme 22:

- 1. That settlement nodes within the City of Busselton district are planned and designed to a stated (optimal) population number with defined and sustainable (fixed) urban boundaries to protect against sprawl and so as not to detract from the historical and current lifestyle characteristics enjoyed in each respective node.**
- 2. That a new site for significant future urban growth of medium density (a 'City') be created south of Vasse (or planned adjacent to Vasse should core infrastructure of sewer, power and water so justify) to accommodate the long term future population growth of the district and sub-region and for this to be timed for development to ensure the design population numbers for the District's respective settlement nodes (defined in point 1 above) are not pressured to be exceeded. This medium density planned city will promote sustainable living practices.**
- 3. Reflective of the above, an Amendment to (or review of) the Leeuwin Naturaliste Sub-Regional Strategy drawing specific comment including detailing what would be necessary to ensure its prioritising in a very timely manner.**
- 4. The WAPC (its authorised representative/s) be invited to attend and brief the Council on the above and articulate the input mechanism for any relevant WAPC investigations including any broader (SW) Regional Strategy. The briefing to also facilitate questions and views posed by the collective elected member group.**
- 5. The CEO to convene a workshop of elected members and relevant staff to properly understand what needs to be justified or clarified in the LNSRPS and what needs to be added or modified from a City perspective, (i.e. a deep dive into the document and its governing development and decision-making process).**
- 6. The CEO to ensure the workshop and the request/approach is a priority matter for addressing by the new Director of Planning. Progress on prosecuting this matter will be the subject of timely briefings as and when feedback occurs and failing feedback, a report of status to be given to the Council by the end of February 2024.**

CARRIED 6 / 3

**FOR: Mayor Phill Cronin, Cr Anne Ryan, Cr Jodie Richards, Cr Val Kaigg,
Cr Andrew Macnish and Cr Jarrod Kennedy**

AGAINST: Cr Mikayla Love, Cr Kate Cox and Cr Sue Riccelli

NOTICE OF MOTION

Cr Andrew Macnish has given notice that at the Ordinary Council meeting on 31 January 2024 he will move the above motion.

REASONS

- It is vital the City and WAPC have a mutually agreed understanding of the value of local community input into future town planning for the district with the right of our community of interest to self-determination and thus full inclusion and interaction with the considerations within the broader (State) planning process.
- The WAPC has not yet concluded its high level planning work for the region and sub-region. Previous attempts at constructive dialogue may have been adversely impacted upon and now with a new Council, the clear connection must be offered and established. This will be facilitated with the commencement of the new Director of Planning.
- (New) Councillors will benefit from the workshop and it will help position the City in its preparations for the desired engagement with the WAPC.
- As the airport expands and the region's exposure grows, tourists will need contemporary experiences such as those that can be created in a developing new city.
- Industry needs workers and more trade skills will be attracted to the district for construction and maturing phases of a new City. A critical mass of economy size has yet to be reached to self-sustain the district.
- A new city increases the opportunity to address/provide for public housing options.
- Design populations for the City's respective settlement nodes will breed infrastructure and service level certainty and of a centre of the anticipated size, facilities such as a 50m pool can be planned for with confidence (including the setting of a defensible developer contributions regime).
- Supporting such an intervention into the town planning process signals a willingness to embrace a desired future and respond directly to recent public sentiment against sprawl, moon-scaped landscapes hosting tiny lots and more opportunity for public and low cost housing away from high cost real estate driving factors.
- The WAPC's subregional investigations have progressed, but as yet not been cast in stone so although timing is late, if the Council acts now it can shape the next 20 years and protect the lifestyle (by better managing growth) some would contend it is obliged to.

- It appears the previous Council was not asked for its input to the Leeuwin Naturaliste sub-regional strategy currently being progressed and resolved major concerns in March 2023 (Item 13.3 Council meeting).

COUNCIL DECISION

C2303/001 Moved Councillor S Riccelli, seconded Councillor R Paine

RECOMMENDATION 2 (LEEWIN-NATURALISTE SUB-REGIONAL STRATEGY)

That the Council, with respect to modifications to the Leeuwin-Naturaliste Sub-Regional Strategy (LNSRS) -

- 2. Indicate that it has significant concerns in relation to elements of both the substantive planning decisions and the processes by which the decisions were made.**
- 3. With respect to the WAPC decision related to LNSRS modifications –**
 - A. Indicate that the key concerns relate to –**
 - i. The fact there was no opportunity for community consultation or formal consultation with the City before amendments were made to the LNSRS, in particular with respect to the Dunsborough Planning Investigation Area;**
 - ii. The direction for Vasse North and Vasse South; and**
 - iii. Seek clarity around land designated as an ‘Open Space Investigation’ area, with respect to the Vasse North Planning Investigation Area and Abbey South Planning Investigation Area as this is not an existing land use designation in the LNSRS**
 - B. Indicate that, with respect to the Dunsborough Planning Investigation Area, the LNSRS needs to more explicitly set out expectations for future structure planning in relation to –**
 - i. Genuine engagement with the community, formal consultation with the City, advertisement and consideration through Council as an integral and essential part of the process;**
 - ii. Maintaining and enhancing environmental values;**
 - iii. Meeting long-term land supply needs for employment and services for the Dunsborough community, through provision of adequate ‘Service Commercial’ and ‘Local Centre’ lots; and**
 - iv. Meeting long term land supply needs for educational, community and recreation facilities for the Dunsborough communities.**
 - C. Request that the WAPC re-consider the LNSRS modifications, in light of the Council’s concerns; and**
 - D. Given that the report considered by the WAPC in October 2021 was released to the City following an FOI request, ask that the WAPC to identify the basis on which the report, and reports of that kind, are not generally available to the public (with personal or other confidential information redacted as necessary).**

CARRIED 8/1

**FOR: CR RICCELLI, CR PAINE, CR HENLEY, CR RYAN, CR RICHARDS,
CR COX, CR CRONIN, CR LOVE**

AGAINST: CR CARTER

Reasons: There are significant concerns about the lack of community and City consultation being conducted regarding the Dunsborough Planning Investigation Area, and there are a number of considerations that have not been identified in the LNSRS.

- State Planning Policy 6.1 Leeuwin-Naturaliste Ridge defined a settlement hierarchy 25 years ago. That policy does not include Busselton nor anything east of Bussell Highway nor any new significant settlement node (thus arguably population pressuring the existing ones).
- “Consideration of the future form that Dunsborough requires consideration to establish an agreed vision and supporting strategy”. That strategy will take significant direction from implementing all measures to be taken to establish and protect hard edges to the development of the town including Reserving land.
- Relevant excerpts from the LNSS are paraphrased below. It demonstrates the importance of the need for the City of Busselton to position its community’s values into the future planning framework as opposed to that which simply might be assumed by the WAPC (headquartered in Perth).

“The Leeuwin-Naturaliste Sub-regional Strategy is an overarching strategic land use planning document outlining the Western Australian Planning Commission’s (WAPC) approach to future planning and development within the City of Busselton and the Shire of Augusta-Margaret River over the next 20 years.

The Strategy provides guidance to help the respective local governments implement State strategic priorities and inform local planning strategies and schemes so that robust planning decisions are made.

It also provides background for the proposed review of State Planning Policy 6.1 Leeuwin- Naturaliste Ridge, which covers the area west of Bussell Highway plus the full extent of the townsites located on Bussell Highway.

In particular, the Strategy plans for population and visitor growth to be accommodated through a combination of urban infill, already-planned greenfield development and potential new expansion areas. A number of sites throughout the sub-region are identified as Planning Investigation Areas, which will require further detailed investigation by the WAPC to determine their suitability for a potential change of use.”

(Ref <https://www.wa.gov.au/system/files/2022-02/Leeuwin-Naturalist-Sub-regional-Strategy.pdf>)

- The need to retain each settlement’s distinct sense of place, community and lifestyle as clearly communicated to candidates campaigning for recent election to the Council.
- The heightened risk of bushfire hazard due to climate change and the outcomes of the publication of State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP3.7) and its guidelines. (hence the need to prevent interconnected sprawl)

- The adverse impacts of increased human activity along the coast on the marine environment means offering an alternative activated node inland from the coast.
- The City of Busselton published a draft Local Planning Strategy for public consultation in March 2016 and subsequently sought WAPC endorsement. Further consideration of the Local Planning Strategy, by the WAPC, is delayed pending the finalisation of the Leeuwin Naturaliste sub-regional strategy.
- Matters of City concern discussed by the CoB Council in March 2023 appear to have to date fallen on deaf ears and relevant excerpts are noted below:

“...immediate term. The approach that the WAPC seems to have taken with the LNSRS modifications is to remove the option of identifying medium- and longer-term growth areas, with areas either identified for urban development in the nearer term, or not at all.

Turning to the second criteria, that of basic raw material needs, starting on page 189 of Attachment B, there is a discussion of basic raw material requirements for development at Vasse South. The report identifies that there is insufficient information to assess the criteria for Vasse South, but also then notes that; “An analysis of available datasets has identified that it is likely that significant amounts of fill will be required to support development...”. The same is, however, true for the other areas in the City assessed by the WAPC, and the report makes no attempt to identify or outline the nature of the ‘available datasets’.

One dataset that would have been available, however, is data identifying existing ground levels for all of the areas assessed. Whilst high resolution data is generally not available, it is clear that essentially all of the Vasse South area is at or above 5.0 metres AHD, with significant parts of the larger area assessed by the WAPC at or above 10.0 metres AHD. That is in significant contrast to Vasse North,...”

The 1:500 year inundation levels (increasing in frequency) will in time, compromise the current Busselton settlement node (and others) and thus to ensure safe continuity of local commerce, the new City will need to be developed on higher ground inland. Strategically, planning for a new city will avail the City a better option other than just to ‘Defend’, (i.e. allowing a staged withdrawal).

Early local aspiration into the planning structure will inform the planning of sewer and water and power servicing as those respective Agencies review their strategic planning. The City cannot afford to not to have its desires embedded in the broader planning structure and risk allowing the imposition of another 20 years of sprawl and infill to negatively impact the Local Planning Scheme currently being drafted.

OFFICER COMMENT

Officers support the requested notice of motion to convene a briefing and workshop between the Council and the relevant Department of Planning Lands and Heritage Officers in relation to the State Planning Framework and its influence and application on the regional and local planning framework in February 2024.

Planning at a local government level is informed and directed by the State Planning and Development framework – Attachment 16.5.1. The *South West Regional Blueprint* (2015) takes an

aspirational view on change and social and economic development to 2050 by identifying key drivers for development and associated infrastructure needs at regional and local levels. The *South West Planning and Infrastructure Framework (2015)* provides the overarching strategic context for planning in the region to 2035.

Leeuwin-Naturaliste Sub-regional Strategy (LNSRS) provides the strategic direction for the Local Government for the implementation of the State planning policies and is considered the guiding framework in relation to land use, land supply, land development, environmental protection, infrastructure investment and the delivery of physical and social infrastructure for the region.

Settlement hierarchy in the City of Busselton is defined through the LNSRS (Attachment 16.5.2):

	Tier	Settlement	Description
1.1	Regional centre	Busselton	Offer a diverse range of high-order services and functions. Centre of economic activity, employment and population and generally provide comparative retail, higher-order education, recreation and health services
1.2	Major town	Dunsborough	Offer a level of service to accommodate the daily needs of their service population, with services relative to the population catchment
1.3	Town	Vasse	
1.4 1.5	Village	Yallingup Eagle Bay	
1.6 1.7	Tourist Node	Bunker Bay Smiths Beach	Primarily accommodate overnight visitors with necessary infrastructure to facilitate this function.

1.1 The *Busselton Regional Land Supply Assessment* identifies potential land supply projections sufficient for a resident population of approximately 44,900.

1.2 Dunsborough has developed rapidly in recent years and requires strategic consideration of the future form through development of an agreed vision and strategy which is currently absent in the City's *Local Planning Strategy (LPS)*.

The reason for this gap is, at the time of finalising the LPS, there was the expectation that this investigation and determination would occur through the development of a town site strategy for Dunsborough and a district level structure plan for the PIA prepared by the City and the WAPC respectively, within the *Leeuwin Naturaliste Sub-regional Strategy (LNSRS)*. The decision of the WAPC to remove these elements and opportunities from the LNSRS creates a level of uncertainty around what the identified PIA for Dunsborough might actually deliver.

1.3 Vasse has experienced extensive population growth in the past decade, and again would benefit from an agreed vision and supporting strategy, to define, in particular the Vasse South PIA.

1.4 The Yallingup settlement area is defined by the bounding National Park and Ocean with no prospect of expansion of the existing settlement area.

1.5 Future development of Eagle Bay is informed through the Eagle Bay Structure Plan (2007), but constrained by access to supporting infrastructure, environmental constraints, and bushfire accessibility.

1.6 and 1.7 Bunker Bay and Smiths Beach are small coastal tourism nodes, with single access routes. There is limited constrained opportunity for future development area expansion.

Planning at a local government level is directly influenced by the defined strategic direction within the State and Regional specific planning framework, policies, and strategies. To develop an agreed vision and strategy for the identified settlements within the municipal area, aligned with community aspirations requires broader community consultation and a collaborative approach between the City and Department of Planning Lands and Heritage.

16.6 Notice of Motion - Audit and Risk Committee

The motion was not moved by Cr Andrew Macnish and lapsed under clause 5.8(5) of the City of Busselton *Standing Orders Local Law 2018*.

17. URGENT BUSINESS

Nil

18. CONFIDENTIAL MATTERS

Nil

19. CLOSURE

The meeting closed at 8:45pm.

The minutes of the Ordinary Council Meeting held 31 January 2024 were confirmed as a true and correct record on

Date: 21-2-24

Presiding Member:

