



City of Bunbury Council

Notice of Meeting and Agenda 15 September 2020



CITY OF BUNBURY
4 Stephen Street
Bunbury WA 6230
Western Australia

Correspondence to:
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Bunbury WA 6231

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|------------|--|-----------|
| 1. | Declaration of Opening / Announcements of Visitors | 7 |
| 2. | Disclaimer | 7 |
| 3. | Announcements from the Presiding Member | 7 |
| 4. | Attendance | 8 |
| 4.1 | Apologies | 8 |
| 4.2 | Approved Leave of Absence | 8 |
| 5. | Declaration of Interest..... | 8 |
| 6. | Public Question Time..... | 9 |
| 6.1 | Public Question Time | 9 |
| 6.2 | Responses to Public Questions Taken ‘On Notice’ | 9 |
| 7. | Confirmation of Previous Minutes and other Meetings under Clause 19.1..... | 10 |
| 7.1 | Minutes | 10 |
| 7.1.1 | Minutes – Ordinary Council Meeting | 10 |
| 7.1.2 | Minutes – Council Advisory Committees and Working/Project Groups | 10 |
| 8. | Petitions, Presentations, Deputations and Delegations..... | 11 |
| 8.1 | Petitions | 11 |
| 8.2 | Presentations | 11 |
| 8.3 | Deputations | 11 |
| 8.4 | Council Delegates’ Reports | 11 |
| 8.5 | Conference Delegates’ Reports | 11 |
| 9. | Method of Dealing with Agenda Business..... | 11 |
| 10. | Reports | 12 |
| 10.1 | Advisory Committee Reports..... | 12 |
| 10.1.1 | Conservation Management Plan Reviews – Heritage Advisory Committee | 12 |
| 10.2 | Chief Executive Officer Reports | 15 |
| 10.2.1 | CEO Exercise of Delegation Report – 30 August 2020 | 15 |
| 10.2.2 | New Delegation – Agreement as to Payment of Rates and Service Charges..... | 17 |
| 10.3 | Director Strategy and Organisational Performance Reports..... | 20 |
| 10.3.1 | Local Government House Trust – Deed of Variation..... | 20 |
| 10.4 | Director Sustainable Communities Reports..... | 23 |
| 10.4.1 | Proposed Omnibus Scheme Amendment No. 2 to City of Bunbury Local Planning Scheme No. 8..... | 23 |
| 10.5 | Director Infrastructure Reports | 28 |
| 11. | Applications for Leave of Absence..... | 28 |
| 12. | Motions on Notice..... | 28 |
| 13. | Questions on Notice | 28 |
| 13.1 | Response to Previous Questions from Members taken on Notice | 28 |

| | | |
|------------|---|-----------|
| 13.2 | Questions from Members..... | 28 |
| 14. | New Business of an Urgent Nature Introduced by Decision of the Meeting | 28 |
| 15. | Meeting Closed to Public | 28 |
| 15.1 | Matters for which the Meeting may be Closed | 28 |
| 15.2 | Public Reading of Resolutions that may be made Public..... | 28 |
| 16. | Closure..... | 28 |

Acknowledgement of Country

We acknowledge the Traditional Custodians of this land, the Wardandi Noongar people, and pay our respects to Elders past, present and future.

Vision

Bunbury: welcoming and full of opportunities.

Organisational Values

#WEARECOB

WE ARE COMMUNITY

We are one team
We keep each other safe
We display empathy and respect
We have fun and celebrate our successes
We work together to achieve great outcomes

WE ARE OPEN

We are open to opportunities
We actively listen and think things through
We are inclusive and treat everyone equally
We are honest and open in our communications
We are open to feedback to improve our performance

WE ARE BRAVE

We lead the change, we own it
We trust and empower each other
We have the difficult conversations early
We hold ourselves to the highest standard
We have the courage to improve and simplify

Nature of Council's Role in Decision Making

Advocacy: When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

Executive/Strategic: The substantial direction setting and oversight role of the Council, e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

Legislative: Includes adopting local laws, town planning schemes and policies.

Review: When Council reviews decisions made by Officers.

Quasi-Judicial: When Council determines an application/matter that directly affects a person's rights and interests. The Judicial character arises from the obligations to abide by the principles of natural justice.

Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

City of Bunbury Council Notice of Meeting

In accordance with the *Local Government (Administration) Regulations 1996*, the next Ordinary Meeting of the City of Bunbury Council will be held in the Council Chambers, City of Bunbury Administration Building, 4 Stephen Street, Bunbury on Tuesday, 15 September 2020 at 5.30pm.



MJ (Mal) Osborne
Chief Executive Officer
(Date of Issue: 10 September 2020)

Agenda

15 September 2020

Note: The recommendations contained in this document are not final and are subject to adoption, amendment (or otherwise) at the meeting.

Council Members:

Mayor Gary Brennan
Deputy Mayor Jaysen Miguel
Councillor James Hayward
Councillor Michelle Steck
Councillor Karen Steele
Councillor Todd Brown
Councillor Tresslyn Smith
Councillor Betty McCleary
Councillor Kris Plumb
Councillor Amanda Yip
Councillor Cheryl Kozisek
Councillor Wendy Giles
Councillor Karen Turner

1. Declaration of Opening / Announcements of Visitors

2. Disclaimer

The City of Bunbury accepts no responsibility for any act, omission, statement or intimation that occurs during Council Briefings or Council Meetings. The City refuses liability for any loss caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation occurring during Council Briefings or Council Meetings. Any person or legal entity acting or failing to act in reliance upon any statement, act or omission made during a Council Briefing or Council Meeting does so at their own risk.

Please note the recommendations contained in this document are not final and are subject to adoption, amendment (or otherwise) at the meeting.

Any statement or intimation of approval regarding any planning or development application made during a Council Briefing or Council Meeting is not to be taken as notice of approval from the City. The City advises that anyone who has an application lodged with the City must obtain and should only rely on WRITTEN CONFIRMATION of the outcome of the application, and any conditions attached to the decision made by Council regarding the application.

Copyright

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Recording and Webstreaming of Meetings

- All Ordinary and Special Council Meetings are electronically recorded except when Council resolves to go behind closed doors
- All recordings are retained as part of the City's records in accordance with the General Disposal Authority for Local Government Records produced by the Public Records Office
- The live stream can be accessed at <http://www.bunbury.wa.gov.au/Pages/Live-Stream.aspx>
- Recordings can be accessed at <http://www.bunbury.wa.gov.au/Pages/Council-Meeting-Videos-2020.aspx>
- Images of the public gallery are not included in the streaming, however the voices of people in attendance may be captured and streamed.
- If you have any issues or concerns regarding the live streaming and recording of meetings, please contact the City's Governance Officer on 9792 7273.

3. Announcements from the Presiding Member

4. Attendance

4.1 Apologies

4.2 Approved Leave of Absence

5. Declaration of Interest

Members should fill in Disclosure of Interest forms for items in which they have a financial, proximity or impartiality interest and forward these to the Presiding Member before the meeting commences.

Section 5.60A: *“a person has a **financial interest** in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.”*

Section 5.60B: *“a person has a **proximity interest** in a matter if the matter concerns –*

- (a) a proposed change to a planning scheme affecting land that adjoins the person’s land; or*
- (b) a proposed change to the zoning or use of land that adjoins the person’s land; or*
- (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person’s land.”*

Regulation 34C (Impartiality): *“**interest** means an interest that could, or could reasonably be perceived to, adversely affect the **impartiality** of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*

6. Public Question Time

In accordance with Reg. 7(4)(a) of the Local Government (Administration) Regulations 1996, members of the public in attendance at the meeting may stand, state aloud their name and address, and ask a question in relation to any matter over which the municipality of Bunbury has jurisdiction or involvement.

In accordance with Standing Order 6.7(3)(a) a person wishing to ask a question, must complete a question form which is provided in the trays at the back of the public gallery and on the City's website. The completed form must include your name and address and contain no more than three (3) questions. If your question requires research or cannot be answered at the meeting, it will be taken on notice and you will receive a written response and a summary of your question (and any responses provided) will be printed in the minutes of the meeting.

6.1 Public Question Time

6.2 Responses to Public Questions Taken 'On Notice'

Nil

7. Confirmation of Previous Minutes and other Meetings under Clause 19.1

7.1 Minutes

7.1.1 Minutes – Ordinary Council Meeting

The minutes of the Ordinary meeting of the City of Bunbury Council held on 1 September 2020 have been circulated.

Recommendation

The minutes of the Ordinary meeting of the City of Bunbury Council held 1 September 2020 be confirmed as a true and accurate record.

Voting Requirement: Simple Majority Required

7.1.2 Minutes – Council Advisory Committees and Working/Project Groups

| | |
|------------------------------|--|
| Applicant/Proponent: | Internal Report |
| Author: | Liz Allan, Executive Research and Project officer |
| Executive: | Gary Barbour, Director Sustainable Communities |
| Authority/Discretion: | <input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input checked="" type="checkbox"/> Information Purposes |
| Attachments: | Appendix MTBN-1 Heritage Advisory Committee – 12 August 2020 |

Summary

The following Advisory Committee Meeting was held, and the minutes are presented for noting:

- Title: Heritage Advisory Committee – 12 August 2020
Author: Liz Allan, Executive Research and Project officer
Appendix: MTBN-1

Council Committee Recommendation

The following Advisory Committee meeting minutes listed in the report be accepted and noted:

- Heritage Advisory Committee – 12 August 2020

Voting Requirement: Simple Majority Required

8. Petitions, Presentations, Deputations and Delegations

8.1 Petitions

Pursuant to clause 6.10(2) of the City of Bunbury Standing Orders 2012, upon receiving a petition, the Council is to

- a) Receive the petition and refer to the relevant officer for a report to be submitted within the next two (2) rounds of Council meetings; or
- b) Reject the petition

8.2 Presentations

8.3 Deputations

8.4 Council Delegates' Reports

8.5 Conference Delegates' Reports

9. Method of Dealing with Agenda Business

10. Reports

10.1 Advisory Committee Reports

10.1.1 Conservation Management Plan Reviews – Heritage Advisory Committee

| | |
|-----------------------------|--|
| File Ref: | COB/517 |
| Applicant/Proponent: | Heritage Advisory Committee |
| Responsible Officer: | Lacey Brown, Strategic Planning Officer (Heritage) |
| Responsible Manager: | Felicity Anderson, Manager City Growth |
| Executive: | Gary Barbour, Director Sustainable Communities |
| Authority/Discretion | <input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input checked="" type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes |
| Attachments: | Appendix RAC-1: Addendum for King Cottage Appendix RAC-2: Addendum for Teede House Appendix RAC-3: Addendum for Bunbury Railway Station Appendix RAC-4: Addendum for Bunbury Boys School Appendix RAC-5: Addendum for Picton Agricultural Hall |

Summary

The purpose of this report is to note the completion of addendums for five Conservation Management Plans that reflect updated works and provide clear guidance regarding the ongoing conservation and management of the sites' heritage values.

Heritage Advisory Committee Recommendation

That Council:

- Note the addendums for the Conservation Management Plans for:
 - King Cottage (**attached** at Appendix RAC-1);
 - Teede House (fmr) (**attached** Appendix RAC-2);
 - Bunbury Railway Station (fmr) (**attached** Appendix RAC-3);
 - Bunbury Boys School (fmr) (**attached** Appendix RAC-4);
 - Picton Agricultural Hall (**attached** Appendix RAC-5); and
- Direct all maintenance and refurbishment works for the heritage places be consistent with the recommendations of the Conservation Management Plans and updated addendums, subject to future budget deliberations and work schedules.

Voting Requirements: Simple Majority

Strategic Relevance

Theme 4: Our City

Goal: Civic leadership, partnerships and sound governance in delivering with and for the community.

Objective 4.2: A highly-engaged and involved community, working together on strategy development and implementation.

- Theme 3: Our places and spaces
Goal: A natural and built environment that reflects Bunbury’s core values.
Objective 3.3 High-quality urban design, well planned neighbourhoods with housing choice, and appropriate provision for diverse land uses to meet the community’s needs.

Regional Impact Statement

Retention and conservation of heritage places will ensure that residents of Bunbury, Greater Bunbury and those visiting the City can continue to appreciate heritage values and benefit from the positive contribution heritage makes to the community.

Background

The completion of a Conservation Management Plan (CMP) review will assist the City of Bunbury in the long-term conservation and management of its assets.

The reviews involved assessing any works that have been carried out against the CMPs and updating the information accordingly. An addendum to the CMP, rather than complete rewriting of the document, is deemed the most appropriate approach. The review is on the following CMPs:

- King Cottage (Heritage Place No.: 339), CMP dated 2011
- Teede House (fmr) (Heritage Place Number:5699), CMP dated 2012
- Bunbury Railway Station (fmr) (Heritage Place Number:331), CMP dated 2014
- Bunbury Boys School (fmr) now the Bunbury Museum and Heritage Centre (Heritage Place number:330), CMP dated 2012
- Picton Agricultural Hall (currently recommended for entry on MHI and Heritage List), CMP dated 2011

Council Policy Compliance

Bunbury lead by example through the management of these premises in accordance with the Local Planning Strategy and associated heritage policies. Endorsement of the CMP is consistent with this policy position.

Legislative Compliance

The completion of the CMP, and associated reviews, supports requirements of the Australian International Council on Monuments and Sites (ICOMOS) Burra Charter; *Heritage Act 2018* and the *Planning and Development Act 2005*.

Officer Comments

The CMPs, which were prepared in accordance with the Heritage Council of WA’s standard brief, include:

- historical and physical evidence relevant to the assessment of the cultural heritage significance of the place;
- assessment of the place’s cultural heritage significance;
- conservation policy recommendations; and
- implementation recommendations.

In essence, they are property management tools that aim to provide the knowledge and framework necessary to conserve (and where appropriate, interpret) the significance of the place and to

manage necessary alterations and works over time. Conservation and maintenance schedules assist in the prioritisation and scope of works recommended. The addendums provide an update to these schedules of works for project and budget planning purposes.

Analysis of Financial and Budget Implications

Implementation of the recommendations contained within these CMPs have financial implications. It should be noted that the plans contain recommendations and provide a useful property management tool for prioritisation and scheduling of works (resources permitting).

Community Consultation

This report seeks to consult with community members of the HAC.

Councillor/Officer Consultation

The CMPs are all endorsed and consultation occurred with relevant City Departments, the HAC and Council at the time that they were completed. The consultants met with relevant officers as part of this review.

Applicant Consultation

Not applicable

Timeline: Council Decision Implementation

The CMPs each contain a recommended conservation works schedule and maintenance schedule. These are prioritised as short term (1-2 years); medium term (2-5 years); ongoing and annual inspections. This is standard for asset management of a building and the addendums provide an update on completed works.

10.2 Chief Executive Officer Reports

10.2.1 CEO Exercise of Delegation Report – 30 August 2020

| | |
|-----------------------------|--|
| File Ref: | COB/371 |
| Applicant/Proponent: | Internal Report |
| Responsible Officer: | Mal Osborne, Chief Executive Officer |
| Responsible Manager: | Mal Osborne, Chief Executive Officer |
| Executive: | Mal Osborne, Chief Executive Officer |
| Authority/Discretion | <input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input checked="" type="checkbox"/> Information Purposes |
| Attachments: | CEO-1- Exercise of Delegations Report to 31 August 2020 |

Summary

At the Ordinary Council Meeting held 31 March 2020, Council resolved to amend conditions for Delegation 1.1.16 *Defer, Grant discounts, Waive or Write-Off Debts* (Decision 067/20)

In accordance with point 7 (condition b) of the delegation, the purpose of this report is to notify Council of any delegation exercised and the requirement for the Chief Executive Officer to report these to Council.

Executive Recommendation

That Council notes the information provided in this report and the delegations exercised for the period ending 31 August 2020.

Voting Requirements: Simple Majority

Strategic Relevance

Theme 4: Our City
Goal: Civic leadership, partnerships and sound governance in delivering with and for the community.
Objective 4.3: Trusted leadership and robust decision-making.

Regional Impact Statement

Nil

Background

At the Ordinary Council Meeting held 31 March 2020, Council made a number of decisions surrounding the impacts of COVID-19 pandemic. As part of the Council Decision, they resolved (067/20) to amend conditions for Delegation 1.1.16 *Defer, Grant discounts, Waive or Write-Off Debts* as follows:

7. *Amend the conditions for Delegation 1.1.16 Defer, Grant Discounts, Waive or Write Off Debt to read as follows:*
Conditions

- a. *This Delegation does not apply to debts, which are prescribed as debts that are taken to be a rate or service charge.*
 - b. *A list of waivers, concessions, and debts written-off under this authority will be presented to Council on a monthly basis.*
 - c. *The CEO is to consult with and seek the approval of the Mayor and/or his delegate prior to granting a waiver or concession under this authority.*
8. *Require the CEO present to Council a subsequent review of Delegation 1.1.16 Defer, Grant Discounts, Waive or Write Off Debt by the end of July 2020, where conditions can be considered and/or reapplied at that time.*

In accordance with point 7 (condition b), the purpose of this report is to notify Council of any delegation exercised in this regard.

Council Policy Compliance

Not applicable

Legislative Compliance

The Chief Executive Officer is delegated a number of functions by Council in accordance with section 5.42 of the *Local Government Act 1995*.

Officer Comments

Attached at Appendix CEO-1 is a report showing all the determinations made in accordance with the conditions of delegation *1.1.16 Defer, Grant discounts, Waive or Write-Off Debts* between 1 July and 31 August 2020 which were also approved by the Mayor.

The Chief Executive Officer is required to consult with and seek the approval of the Mayor and/or his delegate prior to granting a waiver or concession under this authority and any time a waiver or concession is granted under this delegation.

Analysis of Financial and Budget Implications

The determinations made since of 1 July and through to 31 December 2020 amount to \$41,946. These include the 50% Sportsground levies discount, suspension of membership fees for the Bunbury Visitor Centre from 1 July to 31 December, Rent Reduction for Discovery Holiday Parks for the period March 2020 – July 2020 and waiver of Outdoor Eating License and Chair Fees to 31 December 2020.

Community Consultation

Nil

Timeline: Council Decision Implementation

The information in this report is only for noting.

10.2.2 New Delegation – Agreement as to Payment of Rates and Service Charges

| | |
|-----------------------------|---|
| File Ref: | COB/306 |
| Applicant/Proponent: | Internal |
| Responsible Officer: | Leanne French, Senior Governance and Risk Officer |
| Responsible Manager: | Greg Golinski, Manager Governance |
| Executive: | Dave Chandler, Director Strategy and Organisational Performance |
| Authority/Discretion | <input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input checked="" type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes |
| Attachments: | Appendix CEO-2: New Instrument of Delegation – Agreement as to Payment of Rates and Service Charges |

Summary

The purpose of this report is for Council to consider a new delegated authority to be given to the Chief Executive Officer to facilitate payment arrangements for rates or service charges in accordance with section 6.49 of the *Local Government Act 1995*.

Executive Recommendation

That Council adopt the new delegation 'Agreement as to Payment of Rates and Service Charges' as presented at Appendix CEO-2.

Voting Requirement: Absolute Majority

Strategic Relevance

Theme 4 Our City
Goal Civic leadership, partnerships and sound governance in delivering with and for the community
Objective 4.1 A passionate advocate for the community, with strong partnerships to amplify the outcomes that can be achieved

Regional Impact Statement

The delegation only applies to agreements for payment of rates and service charges within the jurisdiction of the City of Bunbury.

Background

The City of Bunbury has two Council Policies that provide direction regarding agreements which may be entered into for payment of rates and service charges, being Council Policy COVID-19 Financial and Hardship, and Council Policy Corporate Revenue Debt Collection.

The Corporate Revenue Debt Collection Policy was originally adopted on 16 April 2013 and was last reviewed by Council on 21 January 2020 (refer Council Decision 006/20).

The COVID-19 Financial Hardship Policy was adopted at the Ordinary Council meeting on 14 April 2020 and was produced in direct response to the circumstances being experienced within the community as a result of the global COVID-19 pandemic.

Consistent with Council Decision 067/20, the Corporate Revenue Debt Collection Policy has been suspended until 30 September 2020.

The City has recently received an application to enter into a payment arrangement for rates, due to financial challenges arising from the COVID-19 pandemic. It is anticipated that the City will continue to receive further applications of this nature.

Section 6.49 of the *Local Government Act 1995* provides that

“A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.”

Both policies provide a position in relation to when and how the City will enter into an agreed payment plan for the payment of any rate and service charge debts, albeit in different situations.

Officers have recognised that whilst the intent of both policies is clear, they do not provide the CEO or any other City Officer with the authority to make an agreement with a person for the payment of rates of service charges on behalf of the local government.

The proposed delegation seeks to provide authority to the CEO to implement payment agreements in accordance with policy conditions.

Council Policy Compliance

This report proposes a new delegation to support the application of two Council Policies COVID-19 Financial Hardship and Revenue Debt Collection.

Legislative Compliance

Section 5.42(1) of the *Local Government Act 1995* applies when delegating powers or duties to the Chief Executive Officer.

Officer Comments

Providing authority to the CEO to facilitate payment arrangements of an agreed frequency and amount will enable the City to provide a timely response to applicants, rather than waiting for their application to be considered by Council at the next available Ordinary Council meeting, which is understood to never have been the intent of either of the policies.

Analysis of Financial and Budget Implications

The new delegation will have no financial impact as the rate payments will still be required to be paid.

Community Consultation

N/A

Elected Member/Officer Consultation

New Council delegations would ordinarily be channelled through the Policy Review and Development Committee, however given that the Committee has only just met and the need to be able to consider the current application within a reasonable timeframe, it is considered appropriate for this matter to be presented directly to Council for consideration.

Applicant Consultation

N/A

Timeline: Council Decision Implementation

The new delegation would become effective immediately following adoption by Council.

10.3 Director Strategy and Organisational Performance Reports

10.3.1 Local Government House Trust – Deed of Variation

| | |
|-----------------------------|--|
| File Ref: | COB/1342 |
| Applicant/Proponent: | Western Australia Local Government Association |
| Responsible Officer: | Gemma Stewart, Lands Officer |
| Responsible Manager: | David Ransom, Manager Finance |
| Executive: | Dave Chandler, Director Strategy and Organisation Performance |
| Authority/Discretion | <input type="checkbox"/> Advocacy <input checked="" type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes |
| Attachments: | Appendix DSOP-1: Deed of Variation – Local Government House Trust |

Summary

The City is a part owner of the Local Government House Trust (the “Trust”) with other Councils which provides accommodation to the Western Australia Local Government Association (the “Applicant”) at 170 Railway Parade, West Leederville. In February 2020 the Applicant requested the City give consent to the Deed of Variation attached at Appendix DSOP-1. The Trust Deed amendments set out in the Deed of Variation are based on legal advice and are intended to assist the Trust’s income tax exempted status by strengthening the position that the Trust is a State/Territory Body.

Executive Recommendation

That Council agrees to the Deed of Variation of the Local Government House Trust over 170 Railway Parade, West Leederville, subject to the Applicant paying all costs associated with the Deed of Variation.

Voting Requirement: Simple Majority

Strategic Relevance

| | |
|---------------|--|
| Theme 4 | Our City |
| Goal | Civic leadership, partnerships and sound governance in delivering with and for the community. |
| Objective 4.4 | A skilled organisation, which exercises responsible asset stewardship, sound financial management, and exemplary customer service. |

Regional Impact Statement

No benefit to the region as the building is located at 170 Railway Parade, West Leederville.

Background

The current Trust commenced in 1993 and was amended in 2002 to reflect the merger of the Local Government Association of Western Australia and the Country Shire Council’s Association into Western Australia Local Government Association.

Since January 2014 the Trust was formed for the purpose of housing the Applicant at 170 Railway Parade, West Leederville. Under the current trust, 132 Local Governments contributed creating a Trust comprising 620 units. The City has eight (8) units in the Trust.

Council Policy Compliance

Not applicable.

Legislative Compliance

Not applicable.

Officer Comments

The following comments have been provided by the Chief Executive Officer of the Applicant to explain further the need for this Deed of Variation:

Trust Deed amendments set out in the Deed of Variation are based on legal advice and are intended to assist the Trust's income tax exempt status by strengthening the position that the Trust is a State / Territory Body (STB).

Legal advice identified that the Trustee's ability to retire and appoint a new Trustee might affect the Trust's classification as a State or Territory Body (STB). This view, while based upon highly technical grounds, is a risk nonetheless.

Subsequently the Deed of Variation aims to strengthen the position that the Trust is a STB through the following amendments:

- 1. Removing the existing Trustee's power to retire and appoint a new Trustee (Clause 2.1 and 2.2 (22.3) of the Deed of Variation)*
- 2. Enabling the Beneficiaries to appoint and remove a Trustee (Clause 2.2 (22.4) of the Deed of Variation), and*
- 3. Ensuring that the Board of Management is the 'governing body' of the Trust (Clause 2.3 of the Deed of Variation).*

The three proposed amendments when applied to the relevant clauses inserted by the Deed of Variation dated 5 June 2002 will subsequently read as follows:

- 1. Variation 2.1 amends clause 22.1 to point to additional clause:*

*22.1 Any Trustee of the Trust may retire as Trustee of the Trust. **Subject to clause 22.3**, the right to appoint any new or additional trustee or trustees of the Trust is hereby vested in the retiring or continuing trustee. A corporation or incorporated association may be appointed as Trustee of the Trust.*

- 2. Variation 2.2 inserts two new clauses:*

22.3 The retiring or continuing trustee shall only be entitled to appoint any new or additional trustee of the Trust with the consent of not less than 75% of the Beneficiaries.

22.4 The Beneficiaries may at any time by Special Resolution:

- (a) remove a Trustee from the office as Trustee of the Trust; and*
- (b) appoint such new or additional Trustee.*

3. Variation 2.3 insert a new clause 13A

13A Delegation to the Board of Management

Unless the Beneficiaries otherwise direct (such direction to be given by not less than 75% of the Beneficiaries), the Trustees shall delegate all of the powers authorities and discretions contained in subclauses (a) to (x) of clause 12 to the Board of Management. The Trustees shall, at the direction of the Board of Management, do such things as may be necessary to give effect to the exercise of a power, authority or discretion by the Board of Management.

The first two amendments outlined above remove powers granted to the Trustee in the 2002 Deed Variation resulting from the merger to a single Association representing WA Local Governments. The proposed amendment collectively now requires that the appointment of any new or additional trustee requires the consent of the Beneficiaries.

The final amendment intends to confirm that power rests with the Board of Management. As the Board of Management comprises representation from Local Governments, this satisfies the requirements of a STB for tax purposes. This amendment reflects the actual operation of the Trustee in implementing the decisions of the Board of Management whilst retaining sufficient operational discretion to place and renew investments and pay suppliers.

These amendments provide greater power to beneficiaries through the Board of Management, and as such it is anticipated they will be considered acceptable.

Analysis of Financial and Budget Implications

The Applicant will pay the costs of any incidentals for the preparation, execution and stamping of the Deed of Variation.

Community Consultation

Not applicable.

Elected Member/Officer Consultation

The Lands Officer has been in discussion with Applicant regarding the changes in the Deed of Variation.

Applicant Consultation

The Applicant has corresponded with every Local Government who holds Trust units, including the City. The Deed of Variation is sought by the Trust's Board of Management to assist the Trust's income exempt status.

Timeline: Council Decision Implementation

The Applicant will be contacted immediately following the Council decision to implement the Deed of Variation as soon as possible.

10.4 Director Sustainable Communities Reports

10.4.1 Proposed Omnibus Scheme Amendment No. 2 to City of Bunbury Local Planning Scheme No. 8

| | |
|-----------------------------|--|
| File Ref: | COB/1497 |
| Applicant/Proponent: | City of Bunbury |
| Responsible Officer: | Kelvin Storey, Team Leader Strategic Planning and Urban Design |
| Responsible Manager: | Felicity Anderson, Manager City Growth |
| Executive: | Gary Barbour, Director Sustainable Communities |
| Authority/Discretion | <input type="checkbox"/> Advocacy <input type="checkbox"/> Review <input type="checkbox"/> Executive/Strategic <input type="checkbox"/> Quasi-Judicial <input checked="" type="checkbox"/> Legislative <input type="checkbox"/> Information Purposes |
| Attachments: | Appendix DSC-1: Omnibus Scheme Amendment 2 Report Appendix DSC-2: Schedule of Local Government Modifications Report Appendix DSC-3: Schedule of Submissions Appendix DSC-4: Local Government Planning Assessment Report Appendix DSC-5: Legal Advice (McLeods Barristers & Solicitors) Appendix DSC-6: Submission by Planning Solutions Australia Pty Ltd Appendix DSC-7: Submission by LFRA |

Summary

Ongoing monitoring and review of the City of Bunbury Local Planning Scheme No. 8 (LPS8) since its gazettal on 9 March 2018 has revealed several additions and adjustments that would be appropriate to introduce by way of an amendment to the Scheme.

Omnibus Scheme Amendment No. 2 was prepared as a 'standard' amendment in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 and was initiated and adopted by Council for the purpose of public advertising in August 2019 (Council Decision 219/19). The Omnibus Scheme Amendment No. 2 Report is **attached** at Appendix DSC-1.

Following conclusion of the first community consultation period the scheme amending documentation, submissions and modification proposals were returned to Council for its consideration on 9 June 2020, where it was decided to publicly advertise proposed modifications for a period of 21 days. The Schedule of Modifications Report to Omnibus Scheme Amendment No. 2 is **attached** at Appendix DSC-2.

Two objections were received during the public advertising of the proposed modifications. The item is now returned to Council for further consideration.

Executive Recommendation

That Council, pursuant to the *Planning and Development Act 2005* and the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to:

1. Support proposed Omnibus Scheme Amendment No. 2 to the City of Bunbury Local Planning Scheme No. 8 with modifications as advertised within the Schedule of Modifications Report, in accordance with regulation 50(3)(b) of the Planning and Development (Local Planning Schemes) Regulations 2015.
2. Notify the Western Australian Planning Commission of Council's resolution and refer the

Omnibus Scheme Amendment No. 2 documentation, including the Schedule of Modifications Report to the Commission for their further review and consideration.

3. Advise submitters of Council's resolution.

Voting Requirement: Simple Majority

Strategic Relevance

| | |
|---------------|--|
| Theme 2 | Our economy |
| Goal: | A thriving and dynamic economy, that plays to its strengths, and confidently presents to the world. |
| Objective 2.1 | Bunbury builds on its competitive advantages, supports innovation and celebrates business success. |
| Objective 2.2 | Bunbury is known far and wide for its strengths as a place to live, visit and do Business. |
| Theme 3 | Our places and spaces |
| Goal: | A natural and built environment that reflects Bunbury's core values. |
| Objective 3.3 | High-quality urban design, well-planned neighbourhoods with housing choice, and appropriate provision for diverse land uses to meet the community's needs. |
| Theme 4 | Our City |
| Goal: | Civic leadership, partnerships and sound governance in delivering with and for the community. |
| Objective 4.2 | A highly-engaged and involved community, working together on strategy development and implementation. |
| Objective 4.3 | Trusted leadership and robust decision-making. |
| Objective 4.4 | A skilled organisation, which exercises responsible asset stewardship, sound financial management, and exemplary customer service. |

Regional Impact Statement

The proposed amendments that have been publicly advertised are not expected to have significant impacts beyond the local government's administrative boundary (Scheme area).

Background

Ongoing monitoring of LPS8 has uncovered several typographical and cartographic anomalies that require correction and revealed opportunities for modifications and enhancements that will assist the Scheme in responding to emerging issues and development trends.

Whereas Omnibus Scheme Amendment No. 1 (formally gazetted on 13 August 2019) captured minor changes and was a 'basic' amendment, Omnibus Scheme Amendment No. 2 deals with modifications that are more substantial in nature and proceeds as a 'standard' amendment in accordance with the requirements of the Planning and Development (Local Planning Schemes) Regulations 2015.

Omnibus Scheme Amendment No. 2 was publicly advertised for 42 days late in 2019. Although there were no submissions of objection to the advertised proposals, two submissions were received requesting the inclusion of additional changes. In considering those submissions the City prepared a Schedule of Modifications Report that has been the subject of further public advertising.

Council Policy Compliance

There are no Council policy compliance considerations impacting on this report.

Legislative Compliance

The following statutory planning instruments of the State Planning Framework and Local Planning Framework are of most relevance in considering this standard amendment proposal:

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- State Planning Policy 7.3 Residential Design Codes Volume 2 - Apartments;
- Greater Bunbury Strategy 2013;
- Greater Bunbury Region Scheme (GBRS);
- Activity Centres for Greater Bunbury Policy 2012;
- City of Bunbury Local Planning Strategy 2018; and
- City of Bunbury Local Planning Scheme No. 8.

Officer Comments

The Omnibus Scheme Amendment 2 Report contains 20 proposed modifications to the Scheme text and 11 proposed modifications to the Scheme map. The range of modifications extends to:

- introducing two new land use classes and associated definitions;
- adjustments to land use class levels of permissibility;
- updating of zone development requirements;
- changes to the number and extent of Special Control Area (SCA) boundaries for Development Areas;
- provision of guidance in respect of individual SCA Development Areas; and
- corrections and adjustments to zoning and reserve boundaries.

The proposed revisions are regarded as commensurate with a 'standard' amendment as defined in the Planning and Development (Local Planning Schemes) Regulations 2015. As such, the proposals remain in keeping with the intentions and strategies contained within the adopted City of Bunbury Local Planning Strategy 2018 and are not regarded as inconsistent with any statutory instruments that form part of the State Planning Framework.

Whilst no objections were received during the public advertising of the Omnibus Scheme Amendment No. 2 Report, two submissions were received requesting to extend the suite of amendments to include the following changes:

- a reduced front setback distance (to nil setback) in the 'Local Centre Zone';
- modification to the land use definition of 'bulky goods showroom'; and
- removal of floorspace caps on 'trade display' and 'bulky goods showroom' uses within certain zones.

Several of the additional changes being sought are similar in character to matters previously raised by the same submitters and presented to Council when the final draft LPS8 was originally being considered. At the time of the Scheme review those changes (received as objections) were not supported by the City of Bunbury or the WAPC.

After reviewing the submissions made in respect of the Omnibus Scheme Amendment No. 2 a Schedule of Modifications Report was prepared by City officers that includes the following additional

changes:

- a revised definition of ‘bulky goods showroom’; and
- a relaxation in the maximum floor space restriction provisions for ‘bulky goods showroom’ uses located within the Mixed Use – Commercial Zone.

In accordance with decision 116/20 from the Ordinary Council Meeting held of 9 June 2020 the modified proposals were publicly advertised for a period of 21 days. Submissions were subsequently received from the two submitters that had requested the inclusion of the additional amendments. They object to the proposed modifications as they fall short of the changes they are seeking.

A key point of difference remains in respect to the definition of ‘bulky goods showroom’. Whereas the two objectors request that the definition default to the version contained in Planning and Development (Local Planning Schemes) Regulations 2015, it remains the opinion of City officers (supported by legal advice) that the model scheme text definition is flawed and may lead to ‘bulky goods showrooms’ adopting business models that directly competes with traditional retailers such as supermarkets and department stores. The revised definition of ‘bulky goods showroom’ appearing within the Schedule of Modifications Report proposes that the model scheme text definition supplemented is with a caveat, similar to that already applied in the states of NSW and Victoria, that would provide far greater certainty and clarity in administering this land use classification.

Submissions received during the public advertising of the Omnibus Scheme Amendment No. 2 Report and the public advertising of the Schedule of Modifications Report are captured in the Schedule of Submissions **attached** at Appendix DSC-3, with corresponding officer responses provided as appropriate. A summary analysis of this information is also contained in the Local Government Planning Assessment Report **attached** at Appendix DSC-4, along with a copy of legal advice provided by McLeods Barristers & Solicitors **attached** at Appendix DSC-5.

Following Council’s decision, the proposed scheme amendments - as adopted, the Schedule of Submissions and other relevant documentation will then be forwarded to the WAPC for their consideration and the Minister for Planning’s final approval.

Analysis of Financial and Budget Implications

The recommendation has no direct budgetary or financial implications for the City of Bunbury.

Community Consultation

The Omnibus Scheme Amendment No. 2 Report was publicly advertised for a period of not less than 42 days in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015. Public consultation measures included the following:

- letters to landowners and occupants of properties directly affected;
- public notices published in a locally circulating newspaper;
- notice of proposal posted on the City of Bunbury’s website; and
- copies of the Omnibus Scheme Amendment No. 2 Report made available at the City of Bunbury’s libraries and customer service centre.

In total, three public submissions were received, none of which were objections. However, as previously stated, two submissions requested additional amendments to those proposed in the advertised version of the Omnibus Scheme Amendment No. 2 Report.

The Schedule of Modifications Report was advertised for a period of 21 days. Two submissions of

objection were received. These are recorded within the Schedule of Submissions and are also **attached** in their original form as Appendix DSC-6 and Appendix DSC-7. Officer responses to each of these submissions are captured within the Schedule of Submissions.

Councillor/Officer Consultation

The draft proposals were referred to the City of Bunbury’s Development Coordination Unit (DCU) for professional advice and technical assessment prior to Council’s initiation of the original amendment report.

Council previously debated this item at the Ordinary Council Meeting held on 9 June 2020.

Applicant Consultation

Not applicable.

Timeline: Council Decision Implementation

Council officers will act upon the decision of Council within five working days.

10.5 Director Infrastructure Reports

Nil

11. Applications for Leave of Absence

12. Motions on Notice

13. Questions on Notice

13.1 Response to Previous Questions from Members taken on Notice

13.2 Questions from Members

14. New Business of an Urgent Nature Introduced by Decision of the Meeting

15. Meeting Closed to Public

15.1 Matters for which the Meeting may be Closed

15.2 Public Reading of Resolutions that may be made Public

16. Closure