

6.1: ALBANY ENTERTAINMENT CENTRE/WATERFRONT AGREEMENT

- Proponents** : Chief Executive Officer
- Attachments** :
 - Draft Albany Entertainment Centre/Waterfront Agreement 2011
 - Albany Entertainment Centre/Waterfront Agreement 2007
 - Minister for Planning; Culture & the Arts, Letter received 22 March 2011
- Responsible Officer(s)** : Chief Executive Officer (F James)

IN BRIEF

- Consider the City's position in respect to proposed draft Albany Entertainment Centre (AEC)/Waterfront Agreement between the City of Albany and State Government, and future of negotiations with the State.

ITEM 6.1: RESPONSIBLE OFFICER RECOMMENDATION

VOTING REQUIREMENT:SIMPLE MAJORITY

MOVED: COUNCILLOR MATLA

SECONDED: COUNCILLOR WELLINGTON

That Council APPROVE the Draft Albany Entertainment Centre/Waterfront Agreement between the City of Albany and State Government 2011 for presentation to the State Government.

Council DELEGATE to the Chief Executive Officer the power to finalise the Draft Albany Entertainment Centre/Waterfront Agreement 2011, on the condition there are no financial implications to the City beyond those already committed to.

The Council DELEGATE to the Mayor, the CEO and other Councillors the CEO recommends, future discussions with the State Government regarding Council's position for the future of the Albany Entertainment Centre post 30 June 2012, bringing back to Council a proposed "way forward" at some time in the future.

**ITEM 6.1: AMENDMENT BY COUNCILLOR D BOSTOCK
VOTING REQUIREMENT:SIMPLE MAJORITY****MOVED: COUNCILLOR D BOSTOCK
SECNDED: COUNCILLOR J BOSTOCK****THAT the third paragraph of the Responsible Officer Recommendation be amended to read as follows:****The Council DELEGATE to the Mayor, the CEO and other Councillors **the Mayor recommends** , future discussions with the State Government regarding Council's position for the future of the Albany Entertainment Centre post 30 June 2012, bringing back to Council a proposed "way forward" at some time in the future.****CARRIED 11-0**

6.03PM. The Presiding Member adjourned the Special Council Meeting to allow the Agenda Briefing Session to commence.

7.56PM. The Special Council Meeting resumed.

ITEM 6.1: AMENDMENT BY COUNCILLOR M LEAVESLEY**MOVED: COUNCILLOR LEAVESLEY
SECONDED: COUNCILLOR HAMMOND****THAT the Amended Responsible Officer Recommendation be amended further to remove the first paragraph, and the second paragraph read as follows:****Council DELEGATE to the Chief Executive Officer the power to finalise the Draft Albany Entertainment Centre/Waterfront Agreement 2011, with input from Council members to the CEO over the next two days, on the condition there are no financial implications to the City beyond those already committed to.****CARRIED 11-0**

ITEM 6.1: AMENDED RESPONSIBLE OFFICER RECOMMENDATION

Council DELEGATE to the Chief Executive Officer the power to finalise the Draft Albany Entertainment Centre/Waterfront Agreement 2011, with input from Council members to the CEO over the next two days, on the condition there are no financial implications to the City beyond those already committed to.

The Council DELEGATE to the Mayor, the CEO and other Councillors the Mayor recommends, future discussions with the State Government regarding Council's position for the future of the Albany Entertainment Centre post 30 June 2012, bringing back to Council a proposed "way forward" at some time in the future.

ITEM 6.1: RESOLUTION (Amended Responsible Officer Recommendation)

MOVED: COUNCILLOR MATLA

SECONDED: COUNCILLOR WELLINGTON

THAT the Amended Responsible Officer Recommendation be ADOPTED.

CARRIED 11-0

BACKGROUND

The City needs to negotiate with the State Government regarding the future management, control and ownership of AEC, while ultimately ensuring good stewardship of City resources and rate payer funds.

DISCUSSION:

Council has legally committed itself in the agreement, Albany Waterfront Agreement 2007 to:

"...own and operate the Albany Entertainment Centre and be responsible for the ongoing, care, control and management of the facility which includes any annual operating deficit."

The 2007 Agreement is silent as to when and how such transfer of ownership and control will occur.

The City has interrogated its records management system and has not found any correspondence between parties that would alter the terms of the 2007 Agreement.

The Council must now determine how it complies with that Agreement, while ensuring the City of Albany minimises the risk of maintaining and operating a facility of this size and complexity.

GOVERNMENT CONSULTATION

The AEC Operational Advisory Committee is a Committee of the State Government, chaired by the Perth Theatre Trust and administered by the Great Southern Development Commission.

Mayor Evans and Councillor Holden were appointed to this Committee to represent the City of Albany. Ongoing consultation between the State Government and the City has been facilitated through this Committee.

The CEO attended the most recent meeting of the Committee on 24 March 2011.

PUBLIC CONSULTATION / ENGAGEMENT

No public consultation has been conducted in response to this item.

STATUTORY IMPLICATIONS

If the revised Agreement is endorsed by all parties, that revised (new) agreement will supplement the 2007 Agreement.

Section 5.41(f) of the *Local Government Act 1995* (the Act) allows for the Chief Executive Officer (CEO) to speak on behalf of the local government if the Mayor agrees.

Section 5.41(g) of the Act allows for the CEO to perform a function delegated by the Local government. Therefore, Council could delegate to the CEO, the power to communicate Council's position to appropriate senior public servants and members of the State Government.

STRATEGIC IMPLICATIONS

This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Community Vision: Historic Albany – Home to a vibrant, resourceful and culturally diverse community...

Priority Goals and Objectives: Goal 1: Lifestyle and Environment ... Albany will be Western Australia's regional City of first choice offering a diverse range of healthy and active lifestyle opportunities...

Objective 1.4 Our cultural and artistic communities are valued, celebrated and supported.

City of Albany Mission Statement: At the City of Albany we... Seek innovative ways to do things and empower our people to deliver on expectations and promises.

POLICY IMPLICATIONS

Not applicable.

RISK IDENTIFICATION & MITIGATION

The risk identification and categorisation relies on the City's Risk Management Framework.

| Risk | Risk Analysis | Mitigation |
|--|---------------|--|
| AEC operation at risk if Government ongoing funding is not forth coming. | Medium | The City of Albany and the State formalise an agreement on a range of operational and governance issues regarding the AEC future, both up to and beyond June 2012. |
| Break-down in negotiations, status quo remains. | Medium | Council commits to negotiate in good faith with all Stake Holders. |

FINANCIAL IMPLICATIONS

The longer term operating costs of the AEC are unknown at this stage, but early indications advised by the Perth Theatre Trust show those costs could be approximately \$1M per year in depreciation and greater than \$1M per year in operating deficit.

The Perth Theatre Trust is undertaking financial analysis and projections, using comparator Theatres and information available to them as “experts” in theatre management. Perth Theatre Trust has committed to share that information with the City once available.

LEGAL IMPLICATIONS

An Agreement is governed by the laws of the State of Western Australia. By signing the Agreement, the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

ALTERNATE OPTIONS

It is recommended that if the Responsible Officer’s Recommendation is not supported that an alternate position is prepared and communicated to the State Government as a matter of priority to ensure the stewardship of the rate-payers funds into the future.

SUMMARY CONCLUSION

It is recommended that Council formally communicate to the State Government City’s position through the revised Albany Waterfront Agreement 2011.

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| Consulted References | Nil |
| File Number (Name of Ward) | ED.PJT.1 & ED.PJT.4 (Frederickstown Ward) |
| Previous Reference | OCM 15/02/2011 Item 4.7 - Albany Entertainment Centre (AEC) Operational Advisory Committee Meeting Minutes 25 November 2010 |