



AGENDA

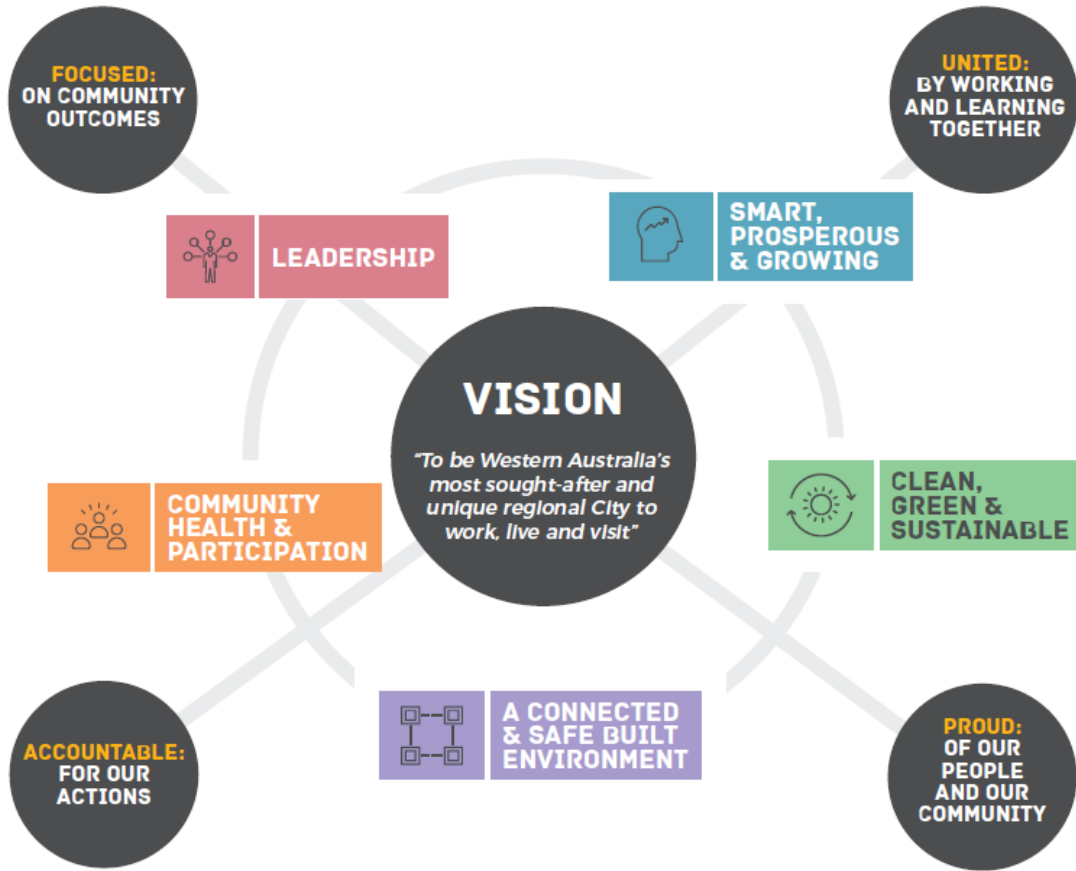
COMMUNITY AND CORPORATE SERVICES COMMITTEE

Tuesday 13 April 2021

6.00pm

Council Chambers

CITY OF ALBANY
COMMUNITY STRATEGIC PLAN (ALBANY 2023)



Community & Corporate Services Committee
Terms of Reference

Functions: The Committee is responsible for the following functions:

Community Services:

The delivery of “*Community Health & Participation Objectives*” contained in the City of Albany Strategic Plan:

- To build resilient and cohesive communities with a strong sense of community spirit.
- To create interesting places, spaces and events that reflect our community’s identity, diversity and heritage.
- To develop and support a healthy inclusive and accessible community.

Corporate Services:

Monitoring and commenting on the financial health and strategies of Council.

The delivery of “*Leadership Objectives*” contained in the City of Albany Strategic Plan:

- To establish and maintain sound business and governance structures.
- To provide strong, accountable leadership supported by a skilled & professional workforce.
- To engage effectively with our community.

Economic Development:

Considering and recommending to Council ways to strengthen the local Albany economy.

The delivery of “*Smart, Prosperous and Growing Objectives*” contained in the City of Albany Strategic Plan:

- To strengthen and grow our region’s economic base.
- To develop a smart city that supports economic growth.
- To develop and promote Albany as a unique and sought-after visitor location.

Governance:

- Review of Council's policies;
- Supporting Elected Members in their governance role;
- Developing amendments to existing, or new, local laws;
- Consideration of the Council's draft Strategic Plan;
- Consideration of the Council's draft Annual Report;
- Matters pertaining to the conduct of the Council's Annual General Meeting;
- Consideration of the proposed meeting schedule for Council and its Committees;
- Receiving reports from Council representatives on outside bodies, and from other bodies as determined by Council; and
- Considering matters not falling within the terms of reference of any other Council committee.

Service Complaint Internal Review:

- Responsible for reviewing unresolved service complaints, in accordance with the Service Complaints Policy.

It will achieve this by:

- Developing policies and strategies;
- Establishing ways to measure progress;
- Receiving progress reports;
- Considering officer advice;
- Debating topical issues;
- Providing advice on effective ways to engage and report progress to the Community; and
- Making recommendations to Council.

Membership: Open to all elected members

Meeting Schedule: Monthly

Meeting Location: Council Chambers

Directorates: Corporate & Community Services

Executive Officer(s): Executive Director Corporate & Commercial Services,
Executive Director Community Services

Delegated Authority: None

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1. DECLARATION OF OPENING

2. PRAYER AND ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS

“Heavenly Father, we thank you for the peace and beauty of this area. Direct and prosper the deliberations of this Council for the advancement of the City and the welfare of its people. Amen.”

“We would like to acknowledge the Noongar people who are the Traditional Custodians of the Land.

We would also like to pay respect to Elders past, present and emerging”.

3. RECORD OF APOLOGIES AND LEAVE OF ABSENCE

Mayor	D Wellington
Councillors:	
Member	P Terry (Chair)
Member	G Stocks (Deputy Mayor)
Member	M Benson-Lidholm JP
Member	E Doughty
Member	J Shanhun
Member	T Sleeman
Member	S Smith (Deputy Chair)
Member	A Goode JP
Member	C Thomson
Member	R Sutton
Staff:	
Chief Executive Officer	A Sharpe
Executive Director Corporate & Commercial Services	D Olde
Executive Director Community Services	N Watson
Meeting Secretary	C Crane
Apologies:	
Member	R Hammond (Leave of Absence)

4. DISCLOSURES OF INTEREST

Name	Committee/Report Item Number	Nature of Interest

5. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE
Nil.

6. PUBLIC QUESTION TIME

7. PETITIONS AND DEPUTATIONS – Nil.

8. CONFIRMATION OF MINUTES

DRAFT MOTION

THAT the unconfirmed minutes of the Community and Corporate Services Committee held on 9 March 2021, as previously distributed, be CONFIRMED as a true and accurate record of proceedings.

9. PRESENTATIONS Nil.

10. UNRESOLVED BUSINESS FROM PREVIOUS MEETINGS

CCS332: FINANCIAL ACTIVITY STATEMENT – FEBRUARY 2021

Proponent	: City of Albany
Attachments	: Financial Activity Statement – February 2021
Report Prepared by	: Manager Finance (S Van Nierop)
Responsible Officer	: Executive Director Corporate & Commercial Services (D Olde)

RECOMMENDATION

CCS332: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Financial Activity Statement for the period ending 28 February 2021 be RECEIVED.

COVID-19 IMPACT

1. Impacts to the financial performance of the City are detailed in the 'Explanation of Material Variances to the YTD Budget in Excess of \$100,000' (Note 1) of the Attachment to this report (Statement of Financial Activity).

BACKGROUND

2. The Statement of Financial Activity for the period ending 28 February 2021 has been prepared and is attached.
3. In addition to the statutory requirement to provide Council with a Statement of Financial Activity, the City provides Council with a monthly investment summary to ensure the performance of the investment portfolio is in accordance with anticipated returns and complies with the Investment of Surplus Funds Policy.

DISCUSSION

4. In accordance with section 34(1) of the *Local Government (Financial Management) Regulations 1996*, the City of Albany is required to prepare each month a Statement of Financial Activity reporting on the revenue and expenditure of the local authority.
5. The requirement for local governments to produce a Statement of Financial Activity was gazetted in March 2005 to provide elected members with a greater insight in relation to the ongoing financial performance of the local government.
6. Additionally, each year a local government is to adopt a percentage or value to be used in Statements of Financial Activity for reporting material variances. Variations in excess of \$100,000 are reported to Council.
7. These financial statements are still subject to further yearend adjustments and have not been audited by the appointed auditor.

"Please note that rounding errors may occur when whole numbers are used, as they are in the reports that follow. The 'errors' may be \$1 or \$2 when adding sets of numbers. This does not mean that the underlying figures are incorrect."

STATUTORY IMPLICATIONS

8. Section 34 of the *Local Government (Financial Management) Regulations 1996* provides:
- I. A local government is to prepare each month a statement of financial activity reporting on the revenue and expenditure, as set out in the annual budget under regulation 22 (1)(d), for that month in the following detail:
 - a. annual budget estimates, taking into account any expenditure incurred for an additional purpose under section 6.8(1)(b) or (c); and
 - b. budget estimates to the end of the month to which the statement relates; and
 - c. actual amounts of expenditure, revenue and income to the end of the month to which the statement relates; and
 - d. material variances between the comparable amounts referred to in paragraphs (b) and (c); and
 - e. the net current assets at the end of the month to which the statement relates.
 - II. Each statement of financial activity is to be accompanied by documents containing –
 - a. an explanation of the composition of the net current assets of the month to which the statement relates, less committed assets and restricted assets; and
 - b. an explanation of each of the material variances referred to in sub regulation (1)(d); and
 - c. such other supporting information as is considered relevant by the local government.
 - III. The information in a statement of financial activity may be shown –
 - a. according to nature and type classification; or
 - b. by program; or
 - c. by business unit.
 - IV. A statement of financial activity, and the accompanying documents referred to in sub regulation (2), are to be —
 - a. presented at an ordinary meeting of the council within 2 months after the end of the month to which the statement relates; and
 - b. recorded in the minutes of the meeting at which it is presented.
 - V. Each financial year, a local government is to adopt a percentage or value, calculated in accordance with the AAS, to be used in statements of financial activity for reporting material variances

POLICY IMPLICATIONS

9. The City's 2020/21 Annual Budget provides a set of parameters that guides the City's financial practices.
10. The Investment of Surplus Funds Policy stipulates that the status and performance of the investment portfolio is to be reported monthly to Council.

FINANCIAL IMPLICATIONS

11. Expenditure for the period ending 28 February 2021 has been incurred in accordance with the 2020/21 proposed budget parameters.
12. Details of any budget variation in excess of \$100,000 (year to date) follow. There are no other known events which may result in a material non recoverable financial loss or financial loss arising from an uninsured event.

File Number (Name of Ward)	FM.FIR.7 - All Wards
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CCS333: LIST OF ACCOUNTS FOR PAYMENT – MARCH 2021

Business Entity Name : City of Albany
Attachments : List of Accounts for Payment
Report Prepared By : Manager Finance (S Van Nierop)
Responsible Officers: : Executive Director Corporate and Commercial Services
(D Olde)

RECOMMENDATION

CCS333: RESPONSIBLE OFFICER RECOMMENDATION

That Council RECEIVE the list of accounts authorised for payment under delegated authority to the Chief Executive Officer for the period ending 15 March 2021 totalling \$6,351,863.95.

BACKGROUND

1. Council has delegated to the Chief Executive Officer the exercise of its power to make payments from the City's municipal and trust funds. In accordance with Regulation 13 of the *Local Government (Financial Management) Regulations 1996*, a list of accounts paid by the Chief Executive Officer is to be provided to Council.

DISCUSSION

2. The table below summarises the payments drawn from the municipal fund for the period ending 15 March 2021. Please refer to the Attachment to this report.

Municipal Fund	
Trust	\$0.00
Credit Cards	\$14,555.00
Payroll	\$1,540,453.49
Cheques	\$14,702.33
Electronic Funds Transfer	\$4,782,153.13
TOTAL	\$6,351,863.95

As at 15 March 2021, the total outstanding creditors stands at \$300,023.22 and is made up as follows;

Current	\$274,158.78
30 Days	\$29,569.36
60 Days	\$51,533.15
90 Days	-\$55,238.07
TOTAL	\$300,023.22
Cancelled Cheques	Nil

STATUTORY IMPLICATIONS

3. Regulation 12(1)(a) of the *Local Government (Financial Management) Regulations 1996*, provides that payment may only be made from the municipal fund or a trust fund if the Local Government has delegated this function to the Chief Executive Officer or alternatively authorises payment in advance.

4. The Chief Executive Officer has delegated authority to make payments from the municipal and trust fund.
5. Regulation 13 of the *Local Government (Financial Management) Regulations 1996* provides that if the function of authorising payments is delegated to the Chief Executive Officer, then a list of payments must be presented to Council and recorded in the minutes.

POLICY IMPLICATIONS

6. Expenditure for the period to 15 March 2021 has been incurred in accordance with the 2020/2021 budget parameters.

FINANCIAL IMPLICATIONS

7. Expenditure for the period to 15 March 2021 has been incurred in accordance with the 2020/2021 budget parameters.

CONCLUSION

8. That list of accounts have been authorised for payment under delegated authority.
9. It is requested that any questions on specific payments are submitted to the Executive Director Corporate Services by 4pm of the day prior to the scheduled meeting time. All answers to submitted questions will be provided at the Committee meeting. This allows a detailed response to be given to the Committee in a timely manner.

File Number (Name of Ward)	:	FM.FIR.2 - All Wards
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CCS334: DELEGATED AUTHORITY REPORTS – FEBRUARY 2021 to MARCH 2021

Proponent	: City of Albany
Attachments	: Executed Document and Common Seal Report
Report Prepared by	: Personal Assistant to the ED Corporate & Commercial Services (H Bell)
Responsible Officer	: Chief Executive Officer (A Sharpe)

BACKGROUND:

In compliance with Section 9.49A of the *Local Government Act 1995* and Part IV of the *Local Government (Functions and General) Regulations 1996* the attached report applies to the use of the Common Seal and the signing of documents under Council's Delegated Authority:

- Delegation: 006 - SIGN DOCUMENTS ON BEHALF OF THE CITY OF ALBANY (Chief Executive Officer)
- Delegation: 009 - GRANT FUNDING, DONATIONS, SPONSORSHIP
- Delegation: 018 - CHOICE OF TENDER, AWARD CONTRACT

RECOMMENDATION

CCS334: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Delegated Authority Reports 16 February 2021 to 15 March 2021 be RECEIVED.

COVID-19 IMPACT

- COVID-19 has no impact on this report.

CCS335: ALBANY VISITORS CENTRE OPERATIONS (AVC)

Report Prepared By : Executive Director Corporate & Commercial Services (D Olde)
Responsible Officers: : Executive Director Corporate & Commercial Services (D Olde)

CONFIDENTIAL

(Not for public distribution)

This item is confidential and not for further distribution in accordance with section 5.23 (2a) of the Local Government Act 1995 a matter affecting City of Albany Employees.

CCS336: CENTENNIAL STADIUM – NAMING RIGHTS SPONSORSHIP

Land Description	: Part of the land in Crown Reserve 405 and Certificate of Title Volume LR3009 Folio 774, being part of Lot 1359 on Deposited Plan 185302
Proponent	: Centennial Stadium Inc
Owner	: Crown (City of Albany under Management Order)
Report Prepared By	: Team Leader Property and Leasing (T Catherall)
Responsible Officers:	: Executive Director Corporate and Commercial Services (D Olde)

CONFIDENTIAL REPORT

This report is confidential in accordance with section 5.23(2) (c) and (e, iii) of the Local Government Act 1995, being: (e) a matter that if disclosed, would reveal – (iii) information about the business, professional, commercial or financial affairs of a person

**CCS337: HARVEST ROAD AQUACULTURE PROPOSAL – LAND
TENURE & LEASE DELEGATED AUTHORITY**

Land Description	: Part of the land in Crown Reserve 42964 and portion of Lot 501 on Deposited Plan 64940, the subject of Certificate of Title Volume LR3159 Folio 265, Emu Point
Attachments	Report (CONFIDENTIAL)
Business Entity Name	: City of Albany
Owner	: Crown (City of Albany under Management Order)
Report Prepared By	: Team Leader Property and Leasing (T Catherall)
Responsible Officers:	: Executive Director Corporate and Commercial Services (D Olde)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To establish and maintain sound business and governance structures.
 - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

 - **Theme:** Smart Prosperous & Growing.
 - **Objective:** To strengthen and grow our region’s economic base.
 - **Community Priority:** Work with business and other stakeholders to attract investment; diversify the economy; create jobs and support small business growth.

COVID-19 IMPACT

- Covid-19 has no impact on this report.

Maps and Diagrams:



In Brief:

- Harvest Road Oceans Pty Ltd (HRO) has approached the City with a proposal to expand their lease area, adjacent to the existing lease, on Crown Reserve 42964 to redevelop and expand aquaculture activities.
- Department of Planning, Lands and Heritage (DPLH), as landowner, were consulted and in response advised they do not support commercial development on Crown Reserves and do not support a direct lease from the HRO, in the same manner as the existing lease.
- DPLH preferred approach is to excise the commercial land from the reserve and provide a head lease to the City with terms to enable the land to be subleased to HRO.
- This report requests that Council approve the following actions to resolve tenures and facilitate HRO development:
 - Excise a portion of Reserve 42964 to be occupied by HRO and revert to DPLH to allow for a head lease arrangement between the City and State of WA and subsequent sublease between the City and HRO.
 - Delegation to CEO to secure and finalise head lease with DPLH.
 - Delegation to CEO to surrender existing lease with HRO and replace with a sublease, approved by DPLH.
- Council is asked to support the Officer's Recommendation.

RECOMMENDATION

CCS337: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council:

- i) APPROVES a request to the Minister for Lands to excise portion of land approx. 7465m² from Reserve 42964 and revert to the Department of Planning, Lands and Heritage to allow a head lease with the City of Albany.**
- ii) DELEGATES authority to the Chief Executive Officer to negotiate with Department of Planning, Lands and Heritage to secure and finalise a head lease with the State of WA over excised portion of Reserve 42964 to facilitate a sublease with Harvest Road Oceans Pty Ltd.**
- iii) DELEGATES authority to the Chief Executive Officer to approve the surrender of the current lease with Harvest Road Oceans Pty Ltd and replace with a sublease over excised portion of Reserve 42964 to expedite Harvest Road Oceans Pty Ltd aquaculture development proposal.**
- iv) All costs associated with tenure arrangements and lease documentation will be met by Harvest Road Oceans Pty Ltd.**

BACKGROUND

2. Reserve 42964, Emu Point is a 'C' class reserve under Management Order issued to the City of Albany with the power to lease or licence for the purpose of "Marine and Associated Purposes" for a term not exceeding 50 years subject to the consent of the Minister for Lands.
3. Council at its meeting on 25 February 2020 approved a new lease to HRO for aquaculture farming and associated activities over portion of Reserve 42964 for a term of 50 years, commencing April 2020.
4. HRO have approached the City with a proposal to redevelop and expand aquaculture activities in two stages and are seeking additional lease area over the existing bitumen car park towards the foreshore within Reserve 42964.

DISCUSSION

Land Tenure

5. In September 2020, the HRO proposal was referred to the DPLH, as the land owner, for comment.
6. DPLH confirmed the Department's position is that Crown Reserves should only be used for public purposes to deliver community benefit and should not be used for commercial purposes. This is their current policy approach which is applied state-wide.
7. DPLH further advised they do not support a City direct lease with HRO in the same manner as the existing lease and alternate tenure arrangements will be required to allow the proposed development.
8. DPLH requires the commercial development land to be excised from the reserve to facilitate the proposal by a direct lease between the State and HRO. Where the Local Government can demonstrate the social and economic benefits of the proposed development to the reserve, City and Community, a head lease between the State and the City with sublease to HRO can be considered.
9. City Officers determined the best approach would be to pursue the head lease / sublease model to comply with DPLH policy as it avoids policy conflicts and potentially provides the most certainty in the future for the City and HRO.
10. Should Council adopt the Officer recommendation, Officers will commence the statutory process with DPLH to excise the land from the reserve and negotiate the lease agreements for the HRO development.

Development Application Stages 1 & 2

11. HRO have lodged an application for stage 1 for proposed development within the current lease area. This development was considered and approved at the OCM 23 March 2021.
12. An application for stage 2 will be submitted to the City for assessment once the tenure matters are settled.
13. DPLH are required to sign the Development Application as landowner, and confirm they are willing to do so also once tenure matters are resolved.
14. Stage 2 will be referred to Council at a later date for consideration.

GOVERNMENT & PUBLIC CONSULTATION

15. DPLH has been consulted as landowner. The City is working with the Department to settle land use tenure matters.
16. Department of Transport has been consulted given adjacent to the marina and associated land uses and interaction with Management Order for adjacent Reserve 49354.

STATUTORY IMPLICATIONS

17. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased/licensed land and buildings. It requires Council to give local public notice of its intention to dispose of property, and consider any submissions which are received within the specified period.
18. The sublease with HRO will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.
19. Section 51 of the *Land Administration Act 1997* provides for the Minister to cancel, or amend the boundaries of a reserve.
20. Section 18 of the *Land Administration Act 1997* states that a person shall not assign, sell, transfer or otherwise deal with interests on Crown land, create, or grant an interest in Crown land without the prior approval in writing of the Minister for Lands.
21. Voting Requirement: **Absolute Majority**.

POLICY IMPLICATIONS

22. The Property Management (Leases and Licences) Policy aims to support the equitable access, and the efficient and effective management of City owned and managed properties in line with statutory procedures.
23. The recommendation is consistent with the Policy.
24. HRO development will be assessed taking into consideration the State Planning Policy 2.6 – State Coastal Planning Policy and City of Albany Development in Flood Prone Areas Local Planning Policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation: adverse community response to sub lease with HRO	Unlikely	Minor	Low	Regular engagement with the community regarding the HRO proposal Seek to negotiate terms to Council satisfaction
Reputation: unable to agree tenure matters with DPLH to City satisfaction	Unlikely	Minor	Low	Regular engagement with DPLH Seek to negotiate terms to Council satisfaction
Opportunity: Demonstrate the City's commitment to attracting investment, tourism, economic development and new jobs to the region.				
Opportunity: To secure tenure for HRO aquaculture development.				

FINANCIAL IMPLICATIONS

26. There will be costs associated with the required excision of land, survey and creation of a new lot for HRO proposal. These costs are estimated at approximately \$6,000 and will be met by the sub tenant, HRO.
27. All costs associated with the development and finalisation of the lease documentation will be met by the sub tenant, HRO.
28. Sublease rental from HRO to the City will be a market rent determined by a licensed Valuer.
29. DPLH head lease condition requires that the City forward all rental into a reserve fund allocated to manage Reserve 42964.

LEGAL IMPLICATIONS

30. The head lease agreement will be provided by DPLH with the sublease prepared by City's lawyers with enforceable terms and conditions.

ENVIRONMENTAL CONSIDERATIONS

31. HRO lease area is adjacent to an 'A' class reserve allocated for conservation. In assessing the HRO development application the Department of Biodiversity, Conservation and Attractions had no objections to the proposal.

Contamination

32. In 2014 the Department of Water and Environmental Regulation (DWER) identified possible hydrocarbon impacted soil on site (such as oil from drums).
33. In 2020 HRO advised that remedial works to remove impacted soil had been completed.
34. Recently DWER in assessing the HRO development application, advised it believes that the stockpiled hydrocarbon impacted soil has been removed and did not raise any contamination concerns.
35. HRO are to provide to the City an environmental assessment as confirmation the remediation works have been completed and the site is free from contamination.

Coastal Inundation & Erosion

36. The subject land is foreshore land and will be impacted by coastal hazards. As such the new sublease will include provisions to ensure the tenant acknowledges and accepts the potential impact of coastal erosion and/or inundation, sea level rises and other coastal processes.
37. The sub tenant occupies the land and buildings entirely at its own risk.
38. Further indemnification clauses will be included in the sublease to ensure the City is not liable for any loss or damage by the sub tenant for any reason arising from coastal processes.
39. In addition, the Development Application for stage 2 will address coastal erosion conditions to mitigate the risks from erosion and inundation such as extending the existing sea wall, at HRO cost.

ALTERNATE OPTIONS

40. As an alternative to Officer recommendation, Council could:

- Accept DPLH conditions required to facilitate a direct lease with HRO in the same manner as the current lease. In addition, a budget allocation will be required to fulfil the conditions.
- Noting this approach is not recommended as does not comply with the DPLH policy and does not provide certainty for the future.

CONCLUSION

41. HRO have requested to lease additional area adjacent to the existing lease on Reserve 42964 to redevelop and expand aquaculture operations at Emu Point.
42. In order for the HRO development to proceed the City has been required to negotiate with DPLH to secure tenure of the foreshore reserve.
43. Council is asked to support actions to resolve tenure matters with DPLH which, if approved, will pave the way for the City of Albany to enter into a sublease agreement with HRO for a lease period of 50 years.

Consulted References	:	<ul style="list-style-type: none">• Council Policy – Property Management (Leases and Licences)• <i>Local Government Act 1995</i>• <i>Land Administration Act 1997</i>
File Number (Name of Ward)	:	PRO460, A150655 (Breaksea Ward)
Previous Reference	:	OCM 25/02/2020 Item CCS225

CCS338: JETTIES, BRIDGES, BOAT PENS AND SWIMMING STRUCTURES AMENDMENT LOCAL LAW 2021

Land Description	: City of Albany
Attachment	: Proposed amendment local law (marked up)
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: Executive Director Corporate & Commercial Services (D Olde)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- On 11/11/2020 Council resolved to accept an undertaking requested by the Joint Standing Committee on Delegated Legislation (the Committee).
- On 15/12/2020 Council resolve to make the amendment local law.
- Council is now requested to complete the process by adopting the proposed amendment local law, noting minor administrative amendments.

COVID-19 IMPACT:

- COVID-19 has no impact on this report.

RECOMMENDATION

CCS338: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to **ADOPT** the *City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021*, in accordance with section 3.12 of the *Local Government Act 1995*, noting the minor administrative amendments detailed in the report.

**LOCAL GOVERNMENT ACT 1995
CITY OF ALBANY
JETTIES, BRIDGES, BOAT PENS AND SWIMMING STRUCTURES
AMENDMENT LOCAL LAW 2021**

1. Enabling Legislation

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on _____ to make the following local law.

2. Citation

This local law may be cited as the *City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law 2021*.

3. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

4. Principal local law amended

In this local law, the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020, as published in the Government Gazette on 6 October 2020 is referred to as the principal local law. The principal local law is amended.

5. Clause 1.5 amended

In clause 1.5, insert the definition of 'Land', and a definition of 'Ellen Cove Jetty'.

Ellen Cove Jetty means the structure located at, and extends from the coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA.

land means that part of the earth's surface that is not covered by water, for the purpose of this local law land vested in the care and control of the local government above the mean high water mark;

6. Clause 1.5 amended:

In clause 1.5 amend the definition of *designated area* by deleting "4.6" and inserting "4.5".

7. Clause 2.2 amended

In clause 2.2, delete each occurrence of the words 'the jetties' and replace them with the words 'a jetty'.

8. Clause 2.3 amended

In clause 2.3(2), delete "3.2(2)(a)" and insert "3.5".

9. Clause 2.19 amended

In clause 2.19(a), delete the word "filth,".

10. Clause 3.8 amended

In clause 3.8(1), delete '4.8' and insert "4.7".

11. Clause 3.9 amended

In clause 3.9(3) delete both instances of "7 days" and replace with "28 days".

11. Clause 4.4 amended

Delete clause 4.4, renumber following clauses accordingly.

12. Clause 5.2 amended

In clause 5.2(3), insert the words 'by resolution' after the word 'decide'.

13. Clause 5.2 amended

After clause 5.2(8), insert the following:

(9) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Cth).

(10) The prohibition of animals in or on any part of the pen system does not apply to assistance animals.

Dated this: day of2021.

The Common Seal of the City of Albany was affixed by the authority of the resolution of Council in the presence of:

.....
Dennis Wellington
Mayor

.....
Andrew Sharpe
Chief Executive Officer

BACKGROUND

- On 15 December 2020, Council resolved to make the amendment local law.

DISCUSSION

- Post the meeting held on 15 December 2020, statutory advertising was undertaken and relevant government departments advised of the proposed amendment local law.
- The Department of Local Government advised that no significant issues were identified, however, the following minor edits were suggested:

Jetties, Bridges, Boat Pens and Swimming Structures Amendment Local Law **2021**

1. Enabling provision

It is suggested that the local law include an enabling provision after the local law's title. The standard wording is as follows:

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the (name of local government) resolved on (date) to make the following local law.

2. Minor edits

The following minor edits are suggested:

- The amendments should be rearranged so that the clauses are amended in numerical order.
- Clause 5:** Change the first line to read:
In clause 1.5, insert the following definitions in alphabetical order:
- Clause 6:** Reword as follows:
In clause 1.5 amend the definition of **designated area** by deleting "4.6" and inserting "4.5".
- Clause 7:** Insert quote marks around "3.5".
- Clause 8:** Insert quote marks around "4.7".
- Clause 9:** Reword as follows:
In clause 3.9(3) delete both instances of "7 days" and replace with "28 days".
- Clause 10:**
 - On the first line, change "2.19" to "2.19(a)".
 - Change "filth" to "filth," (i.e. so it deletes the comma as well).
- Clause 13:**
 - Change the first line to read:
After clause 5.2(8) insert the following:
 - The proposed subclauses (9) and (10) should be indented slightly to the right, so the reader can differentiate them from the clause which inserts them.
- In the final draft, include a section for the common seal and signatures.

The City should also ensure that all references and cross references are accurate, particularly if any changes occur as a result of the Department's comments.

- The proposed amendment local law (marked up) is attached to the report.

GOVERNMENT & PUBLIC CONSULTATION

- 6. Public submissions were opened on the 28 January 2021 and closed on 11 March 2021, in accordance with the prescribed period of no less than 6 weeks.
- 7. No public submissions were received.
- 8. In accordance with the Act, copies of the proposed amendment local law and the local public notice was sent to the Minister for Transport, Planning and Lands and the Minister for Local Government; Heritage; Culture and The Arts.

STATUTORY IMPLICATIONS

- 9. Amending a local law needs to be done in accordance with section 3.12 of the Act which is the same procedure for ‘making’ a local law. This is because an amendment local law is a new law in itself and must follow the full statutory process.
- 10. Section 3.12 of the Local Government Act 1995 (the Act) requires the person presiding at a Council meeting is to ensure the purpose and effect of the proposed amendment local law is given.

Purpose: The purpose of this local law is to amend the principle Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020 in order to comply with the undertaking with the Joint Standing Committee on Delegated Legislation.

Effect: City of Albany compliance with the legal undertaking to amend the principle local law.

- 11. The resolution of Council to ADOPT the local law must be carried by **Absolute Majority**.

POLICY IMPLICATIONS

- 12. Nil.

RISK IDENTIFICATION & MITIGATION

- 13. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Legal & Compliance. <i>If amendment local law is not progressed to adoption, the principle local law may be disallowed.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the amendment local law.</i>
Opportunity: <i>Support of the Committee’s request will mitigate disallowance of the Local Law.</i>				

FINANCIAL IMPLICATIONS

- 14. Minor administration costs will be incurred.

LEGAL IMPLICATIONS

- 15. There is no direct legal implication related to this report; however, it is a legal requirement that the undertakings are formalised through the amendment local law process.

ENVIRONMENTAL CONSIDERATIONS

16. Not applicable to this report.

ALTERNATE OPTIONS

17. No alternate options are proposed.

CONCLUSION

18. It is recommended that Council resolve to ADOPT the amended local law; in order to finalise the undertaking process previously resolved by Council.

Consulted References	:	<ul style="list-style-type: none">Local Government Act 1995https://www.dlgsc.wa.gov.au/local-government/local-governments/local-laws
File Number (Name of Ward)	:	All Wards
Previous Reference	:	<ul style="list-style-type: none">OCM 15/12/2021 Resolution CCS313SCM 11/11/2020 Resolution SCM019

CCS339: LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 2019 – MODEL CODE OF CONDUCT

Land Description	: City of Albany
Attachments	: <ul style="list-style-type: none">• Attachment 1 – Local Government (Model Code of Conduct) Regulations 2021• Attachment 2 - Code of Conduct Breach Form Template• Attachment 3 - Department of Local Government, Sport and Cultural Industries Standards and Guidelines: For Local Government CEO Recruitment and Selection, Performance Review and Termination.• Attachment 4 – Amended Policy Position: CEO Performance Review Process Policy
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: Chief Executive Officer (A Sharpe)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- On 3 February 2021, the following regulations took effect implementing the remaining provisions of the Local Government Legislation Amendment Act 2019:
 - Local Government (Model Code of Conduct) Regulations 2021 (Model Code);
 - Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021 (Employee Code Regulations); and
 - Local Government (Administration) Amendment Regulations 2021 (Model Standards)

COVID-19 IMPACT:

- COVID-19 has no impact on this report.

RECOMMENDATION

CCS339: RESPONSIBLE OFFICER RECOMMENDATION

THAT:

- (1) **The Model Code of Conduct for Council Members, Committee Members and Candidates, be ADOPTED.**
- (2) **The Council REAFFIRM the Chief Executive Officer as the Complaints Officer and DELEGATE processing of complaints in regards to a breach of the code of conduct to the CEO, who will prepare a report for council determination.**
- (3) **APPROVE the Code of Conduct Breach Form Template.**

(continued)

(4) The following Council Policy Positions be RESCINDED:

- **Handling of Complaints By or Against Elected Members Policy and Procedures; and**
- **Handling of Complaints By or Against Chief Executive Officer Policy and Procedures.**

(5) NOTE and ADOPT the amended CEO Performance Review Process Policy which aligns with the key provisions contained within Schedule 2 of the Local Government (Administration) Regulations 1996.

BACKGROUND

2. On 3 February 2021, the following regulations took effect implementing the remaining provisions of the Local Government Legislation Amendment Act 2019:
 - a. Local Government (Model Code of Conduct) Regulations 2021 (Model Code);
 - b. Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021 (Employee Code Regulations); and
 - c. Local Government (Administration) Amendment Regulations 2021 (Model Standards).

DISCUSSION

Model Code

3. The recently gazetted *Local Government (Model Code of Conduct) Regulations 2021*, introduce a mandatory code of conduct for Elected Members, committee members and candidates.
4. The Model Code Regulations provide for:
 - a. overarching principles to guide behaviour;
 - b. behaviours which are managed by local governments; and
 - c. rules of conduct breaches which are considered by the Standards Panel
5. The City is required to prepare and adopt a code of conduct to be observed by Elected Members, committee members and candidates that incorporates the Model Code within three months of these regulations coming into effect (by 3 May 2021).
6. Until such time the Model Code applies (refer to attachment).
7. To begin implementation of the Model Code, local governments should:
 - a. appoint a person(s) to receive complaints by either affirming the complaint officers or appointing a new or additional officer(s), and
 - b. approve a form for complaints to be lodged (attached).
8. A copy of the Model Code and associated Explanatory Notes should be provided to all council members, committee members and any candidates in upcoming elections.
9. It is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, the Guidelines on the Model Code as well as any relevant policies of their local government, and to follow the Code at all times.

Employee Code Regulations

10. The conduct of Elected Members, committee members, the CEO, employees and contractors was previously governed by the Code of Conduct Policy (Council Members, Committee Members, Staff and Volunteers).
11. The effect of the new Regulations is to require separate codes of conduct for employees, contractors and the CEO on one hand and Elected Members, committee members and candidates on the other.
12. A new Employee and Contractor Code of Conduct is being developed by Administration and (in accordance with the Employee Code Regulations) will be approved and implemented by the CEO.
13. Until such time the City's Code of Conduct Policy (Council Members, Committee Members, Staff and Volunteers) will still apply and must be observed by the CEO, employees and contractors.

CEO Standards

14. The *Local Government (Administration) Regulations 1996* was amended to prescribe model standards for the recruitment, selection, performance review and termination of Local Government CEOs.
15. In addition to prescribing minimum requirements for these processes, the standards also require Local Governments to advertise the position of CEO if a period of 10 or more years has elapsed since a recruitment process has been carried out.
16. Key provisions include:
 - a. recruitment of CEOs - selection criteria, job description, advertising the vacancy, selection panel, contract of employment, mandatory advertising after 10 years of incumbency;
 - b. performance review of CEO; and
 - c. termination of CEO.
17. The City's CEO Performance Review Process Policy covers the key provisions contained in the Model Standards; however, has been amended to reference to Department's guidelines.
18. The City is required to prepare and adopt a set of CEO Standards within three months of these regulations coming into effect (by 3 May 2021).

GOVERNMENT & PUBLIC CONSULTATION

19. Public consultation was facilitated as part of the Local Government Act review by The Department of Local Government, Sport and Cultural Industries (the Department).
20. Government consultation: The Department of Local Government, Sport and Cultural Industries (the Department) have provided extensive communications to the local government sector.
21. The Department has:
 - a. Recommended that a copy of the Model Code and associated Explanatory Notes should be provided to all council members, committee members and any candidates in upcoming elections; and
 - b. Advised that it is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, the Guidelines on the Model Code as well as any relevant policies of their local government, and to follow the Code at all times.

STATUTORY IMPLICATIONS

Model Code

22. To adopt the Model Code, a resolution passed by an **absolute majority** of the council is required. Once the Code is adopted, it must be published on the local government's official website (section 5.104(7) of the Act).

POLICY IMPLICATIONS

Responding to complaints about behaviour

23. The Model Code provides a high-level process that requires local councils to make a finding on complaints regarding the alleged behaviour of council members, committee members and candidates that have been elected.
24. The City's Handling of Complaints by or Against Elected Members Policy & Procedure has been reviewed by the City's Administration and has identified inconsistencies with the new Regulations.
25. It is recommended that the current policy positions relating to management of complaints in relation to the CEO and Elected Members be **RESCINDED** and Council is guided by the Model Code of Conduct Guidelines.

Dealing with a complaint (Breach of the Code of Conduct)

26. Clause 12 of the Regulations outlines the process for dealing with complaints regarding the conduct of elected members and candidates. The Model Code leaves it open to local governments to determine the most appropriate and effective process for how this is undertaken. Options could include:
 - a. The Mayor or Deputy consider all complaints;
 - b. Delegation of complaints to the CEO to prepare a report for the council;
 - c. Appointment of an independent/external consultant to review complaints and provide a report to the council; and
 - d. Establish a committee to review complaints and report to the council. The committee may include independent members.

Additions to the Model Code

27. Local governments may not amend Division 2 (Principles) or Division 4 (Rules of Conduct).
28. Additional behaviour requirements can be included in Division 3 (Behaviours) if deemed appropriate by the local government. Any additions must be consistent with the Model Code of Conduct (section 5.104(3) of the Act).
29. In preparing the Model Code for adoption, local governments are encouraged to review their existing Code and consider incorporating any additional behaviour requirements that are not represented in the Model Code. This may include specific dress standards or the appropriate use of technology.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Legal & Compliance. <i>If the model code of conduct is not adopted, non-compliance with the Act will result.</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the model code of conduct; or work with staff to adopt the model local law with additional approved content.</i>
Opportunity: <i>Opportunity to consider appointing an additional complaints officer.</i>				
Opportunity: <i>Opportunity to consider additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.</i>				

FINANCIAL IMPLICATIONS

31. Minor administration costs will be incurred.

LEGAL IMPLICATIONS

32. Required actions for local governments and individuals:
- a. Section 5.104 of the Act requires that local governments adopt the Model Code as their Code of Conduct within three months of the Regulations coming into operation (by 3 May 2021).
 - b. In accordance with section 5.104(5), the Model Code applies until the local government adopts it as their Code. This means that the principles, behaviour requirements and rules of conduct of the Regulations apply to council members, committee members and candidates even if their local government has not yet adopted the Model Code.

ENVIRONMENTAL CONSIDERATIONS

33. Not applicable to this report.

ALTERNATE OPTIONS

34. Council may also consider:
- a. The appointment of additional Complaints Officers to receive complaints and withdrawals of complaints in regards to breaches of the Code of Conduct.
 - b. Additions to the Model Code, incorporating additional behaviour requirements that are not represented in the Model Code.

CONCLUSION

35. It is recommended that Council resolve to ADOPT the Model Code of Conduct, REAFFIRM the CEO as the Complaints Officer and ADOPT the Code of Conduct Complaints Form Template.
36. It is recommended that the current policy positions relating to management of complaints in relation to the CEO and Elected Members be RESCINDED.
37. It is recommended that additions to the Code of Conduct and associated processes are workshoped and presented in the future for consideration.

Consulted References	:	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • Department of Local Government, Sport & Cultural Industries online resources • Local Government (Model Code of Conduct) Regulations 2021 • Model Code of Conduct Explanatory Notes • Model Code of Conduct Guidelines • Code of Conduct Breach Template • <i>Current City of Albany's:</i> <ul style="list-style-type: none"> ○ Code of Conduct (Council Members, Committee Members, Staff & Volunteers) ○ Handling of Complaints By or Against Elected Members Policy and Procedures ○ Handling of Complaints By or Against the Chief Executive Officer Policy & Procedure
File Number (Name of Ward)	:	All Wards
Previous Reference	:	<ul style="list-style-type: none"> • OCM 23/05/2017 Resolution CCOS028.

CCS340: BUDGET AMENDMENT REQUEST

Proponent : City of Albany
Report Prepared by : Manager Engineering & Sustainability (R March)
Responsible Officer : Executive Director Infrastructure, Development & Environment (P Camins)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To establish and maintain sound business and governance structures.
 - **Community Priority:** Implement systems and controls that ensure the prudent use of rates and ensure value for money in all aspects of Council operations.

In Brief:

- This is an additional review of budgets for two projects outside the normal budget review process.
- There is a budget shortfall from job number 1977: 'Stirling Terrace New to Spencer' due to increased contractor costs.
- There is an opportunity to install a new 2.5 metre path on Sanford Road which will provide a dual use path that will connect the Youth Precinct works to the surrounding area. The existing path is very narrow and some panels need replacing due to damage caused during various recent and current construction works.

COVID-19 IMPACT

- Due to the large amount of construction work across the State as a result of the high level of economic stimulus, engaging contractors has been problematic and resulted in a general increase in costs to undertake our works program.

RECOMMENDATION

CCS340: RESPONSIBLE OFFICER RECOMMENDATION 1

THAT Council:

- **REALLOCATE \$67,000 from job number 1981 (Stirling Terrace New to York) to job number 1977 Stirling Terrace New to Spencer, resulting in a total budget for job 1977 of \$122,000.**

CCS340: RESPONSIBLE OFFICER RECOMMENDATION 2

THAT Council:

- **REALLOCATE \$5,000 from job number 4155 (Youth Challenge Park) and \$95,000 from account number 13222 (Road Maintenance) to a new job number resulting in a total budget of \$100,000, to renew/upgrade the existing path on Sanford Road with a new 2.5 metre path.**

BACKGROUND

2. Refer to “In Brief” section of report.

DISCUSSION

3. This budget request requires no additional expenditure by the City.
4. The following budget amendments are requested:

Reallocation of \$67,000

- a. Reallocation of \$67,000 from job number 1981 (Stirling Terrace New to York) to job number 1977 (Stirling Terrace New to Spencer).
- b. The costs for these works has increased due to the lack of availability of local contractors. The construction stimulus has seen an increase in construction works which has resulted in contractors increasing their prices for works.
- c. As there are no local contractors available to complete these works, a request for quote was issued to 6 contractors (three local, three non-local) and only one response was received. In order to ensure that Black Spot Funding is not lost, these works need to be completed this financial year. It is proposed that Stirling Terrace New to York will be reprogrammed for 2022-23.

Reallocation of \$5,000

- d. Reallocation of \$5,000 from job number 4155 (Youth Challenge Park) and \$95,000 from Account 13222 (Road Maintenance) to install a new 2.5-metre-wide path on Sanford Road.
- e. This renewal/upgrade is in the current Long Term Financial Plan and it is proposed to bring this forward. This proposal will complete the new works on this section of Sanford Road and provide a strong connection for active transport demands (including pedestrian, cyclists, skateboards, scooters etc.) that are anticipated for the upgraded Youth Precinct and PCYC.
- f. The path upgrade is recommended to occur now instead of expending funds to repair damage made to the existing narrow path during various recent and current construction works on Sanford Rd.

GOVERNMENT & PUBLIC CONSULTATION

5. Department of Local Government guidelines were followed in the preparation of this report.
6. City of Albany Executives, Managers and Officers with budget responsibility were consulted in the preparation of the Budget Review.

STATUTORY IMPLICATIONS

7. Under the *Local Government Act 1995*, section 6.8, a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure:
 - a. is incurred in a financial year before the adoption of the annual budget by the local government
 - b. is authorised in advance by a resolution (absolute majority required) or;
 - c. is authorised in advance by the Mayor in an emergency.
8. The voting requirement of Council is **Absolute Majority**.

POLICY IMPLICATIONS

9. There are no policy implications related to this report.

RISK IDENTIFICATION & MITIGATION

10. The risk identification and categorisation relies on the City's Enterprise Risk & Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation & Organisation's Operations. Non approval of the budget review, may result in significant delays to achieving deliverables and identified opportunities.	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Adopt the Budget Review with amendments (as specified by Council).</i>
Opportunity: <ul style="list-style-type: none"> Provides Council with an additional opportunity to review the City's current budget position. Realise the opportunity to install a new 2.5 metre path on Sanford Road linking the Youth Precinct works to the surrounding area, which will enhance the safety for footpath users. 				

LEGAL IMPLICATIONS

11. Nil.

ENVIRONMENTAL CONSIDERATIONS

12. Nil.

ALTERNATE OPTIONS

13. Committee may consider to:
- Adopt the amendments as recommended; or
 - Adopt the amendments with amendments (as specified by Council).

SUMMARY CONCLUSION

14. That the Responsible Officer's Recommendation to adopt the Budget Amendments in order to complete job number 1977 (Stirling Terrace New to Spencer) and a new project for Sanford Road Footpath Upgrade, be supported

Consulted References	:	<ul style="list-style-type: none"> Adopted Budget 2020/2021 Local Government Act 1995
File Number (Name of Ward)	:	FM.BUG.12
Previous Reference	:	Annual Budget – OCM 28/07/2020 Resolution CCS271

CCS341: FREDERICKSTOWN WARD VACANCY

Proponent	:	City of Albany
Report Prepared by	:	Manager Governance & Risk (S Jamieson)
Responsible Officer	:	Chief Executive Officer (A Sharpe)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme 1:** Leadership.
 - **Objective 1.1:** To establish and maintain sound business and governance structures.
 - **Community Priority 1.1.1:** Implement systems and controls that ensure the prudent use of rates and ensure value for money in all aspects of Council operations.

In Brief:

- Consider not holding an extraordinary election for Frederickstown Ward.
- Responsible Officer Recommends holding vacancy till October 2021 Ordinary Election.

COVID-19 IMPACT

-

RECOMMENDATION

CCS341: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council DEFER filling of the Frederickstown Ward Vacancy till the October 2021 ordinary election.

BACKGROUND

2. Councillor Rebecca Stephens, tendered her resignation with effect the 23 March 2021, as a result of her move into the role of Albany's Member for Parliament.

DISCUSSION

3. Councillors are elected for terms of four years and elections are held every two years for half of the council, and candidates are elected using the first-past-the-post voting system.
4. The next City of Albany Local Government Election will be held on Saturday 16 October 2021.
5. Generally, if a vacancy occurs within a term, an extraordinary election is held.
6. However, Councillor Stephens' resignation falls within the allowed time period for Council to be able to hold the Frederickstown vacancy until the October 2021 Ordinary Local Government election.
7. The Frederickstown Ward is still represented by Councillor Stocks and the Council enters the care-taker period post the August ordinary meeting of council.
8. Given that Councillor Stephens' term was due to expire in October 2021, it would not be cost effective or practical to hold an extraordinary election to fill the vacancy.

GOVERNMENT & PUBLIC CONSULTATION

9. The Mayor advised Council of Councillor Stephens resignation on 23 March 2021 at Council's Ordinary Meeting of Council.
10. The WAEC was advised of the resignation of Councillor Stephens on the 23 March 2021.
11. The Electoral Commissioner was requested to consider a request under section 4.17(2) of the Local Government Act 1995 (the Act) to defer filling this vacancy until the 2021 Local Government ordinary elections.

STATUTORY IMPLICATIONS

12. Section 4.17 of the Act; states in part:

4.17. Cases in which vacant offices can remain unfilled

(2) If a member's office becomes vacant under section 2.32 —

- a. *after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but*
- b. *before the third Saturday in July in that election year, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.*

(3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.*

*** Absolute majority required.**

13. Council resolved in August 2020, that the Electoral Commissioner be responsible for the conduct of ordinary and extraordinary elections for the City of Albany by postal vote until the end of 2021.

POLICY IMPLICATIONS

14. The Election Caretaker Period Policy establishes protocols for the purpose of preventing actual and perceived advantage or disadvantage to a candidate in a Local Government Election, through the use of public resources or decisions made by the Council or administration on behalf of the City of Albany during the period immediately prior to an election.
15. There are no direct policy implications related to this report.

RISK IDENTIFICATION & MITIGATION

16. The risk identification and categorisation relies on the City's Enterprise Risk & Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputational. Perception of actual and perceived bias if an extraordinary election is conducted prior to the ordinary election.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Adherence to Council's adopted Election Caretaker Period Policy.</i>

FINANCIAL IMPLICATIONS

17. If the position remains vacant there is no additional financial cost.
18. An additional extraordinary election conducted by the Western Australian Electoral Commission would incur additional cost, approximately \$30,000.

LEGAL IMPLICATIONS

19. Nil.

ENVIRONMENTAL CONSIDERATIONS

20. Nil.

ALTERNATE OPTIONS

21. The alternate option is to hold an extraordinary election to fill the vacancy, which term will expire on 16 October 2021.

SUMMARY CONCLUSION

22. Approval has been sought and obtained from the Electoral Commissioner to defer filling this vacancy till the 2021 Local Government ordinary elections.
23. That the Responsible Officer's Recommendation be considered.

Consulted References	:	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • <i>Local Government (Elections) Regulations 1997</i> • <i>Election Caretaker Period Policy</i>
File Number (Name of Ward)	:	GO.ELE.3 – Elections (All Wards)
Previous Reference	:	OCM 11/08/2020 Resolution CCS278.

**CCS342: NEW LEASE – COMMONWEALTH OF AUSTRALIA
REPRESENTED BY GEOSCIENCE AUSTRALIA – ALBANY REGIONAL
AIRPORT**

Land Description	: Lot 4861 on Deposited Plan 157338 and Lot 5643 on Deposited Plan 157458 the subject of Certificate of Title Volume 2088 Folio 492
Proponent	: Commonwealth of Australia represented by Geoscience Australia ABN 80 091 799 039
Owner	: City of Albany
Report Prepared By	: Team Leader Property and Leasing (T Catherall)
Responsible Officers:	: Executive Director Corporate and Commercial Services (D Olde)

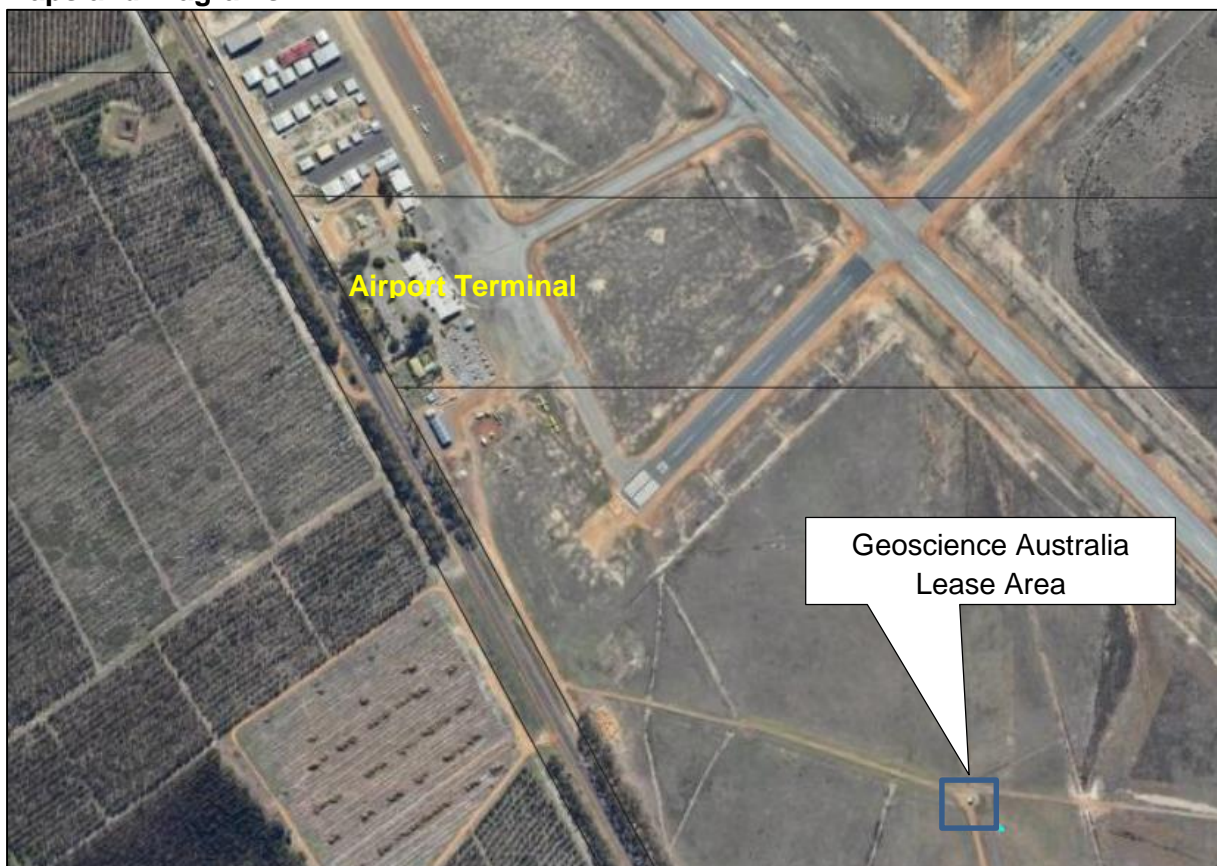
STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To establish and maintain sound business and governance structures.
 - **Community Priority:** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.

COVID-19 IMPACT

- Covid-19 has no impact on this report.

Maps and Diagrams:



In Brief:

- Council is requested to consider a new lease to Commonwealth of Australia represented by Geoscience Australia (GA) to formalise ongoing use of Global Navigation Satellite System facility and operations at the Albany Regional Airport.
- Landgate have occupied the site at the Airport under licence, since 2008. The licence expired April 2018 and Landgate remain on holding over provisions pending a suitable new entity to run these operations.
- Landgate have since advised the ownership and management of its navigation facilities have been transferred to the Commonwealth Government entity, GA.
- GA have contacted the City seeking a new lease to secure its tenure over the existing area.
- It is recommended the new lease is approved.

RECOMMENDATION

CCS342: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council APPROVE a new lease to Commonwealth of Australia represented by Geoscience Australia at the Albany Regional Airport subject to:

- a) Lease purpose being “maintaining and operating a Global Navigation Satellite System ground station within the Albany Regional Airport”.**
- b) Lease term being 10 years with a 10 year further term option, commencing 1 April 2021.**
- c) Lease area being approximately 5m².**
- d) Lease rent being peppercorn \$10 pa plus GST.**
- e) All costs associated with the ongoing operations of the lease property being payable by the tenant.**
- f) All costs associated with the preparation, execution and completion of the lease documentation being payable by the tenant.**
- g) Lease being consistent with Council Policy – Property Management (Leases and Licences).**

BACKGROUND

2. Council at its meeting 15 April 2008 granted a new licence to Western Australian Land Information Authority (Landgate) at Albany Regional Airport for the purpose of installing and operating a global navigation satellite system reference station and associated operations.
3. The term of 5 + 5 years expired in April 2018. Landgate continue to occupy the area under holding over provisions.
4. In 2018 the Commonwealth Government committed to improving the accuracy of navigational positioning for the country. Since then parties have been negotiating a suitable candidate to take over the State and Territory Governments facilities. This is considered necessary to effectively deliver improved productivity, improved community safety and allow for future innovation.

5. Landgate has now advised it has transferred the ownership and management of all its 26 navigation facilities, including the facility located at the Airport, to the Commonwealth Government entity, GA.
6. GA are seeking a new lease to continue and improve navigation operations at the Airport.

DISCUSSION

7. GA is the Australian Government organisation responsible for the development and maintenance of Global Navigation Satellite System (GNSS) ground stations.
8. GA is leading the program to ensure a coordinated national network that provides instant, accurate and reliable navigational positioning data for all Australians.
9. Current position technologies, such as those in smartphones or cars, provides an accuracy of only 5-10 metres. Australia requires a greater accuracy for a range of fundamental functions including aircraft flying in poor weather conditions and for emerging technologies, such as driverless vehicles.
10. To ensure that more accurate positioning information is widely available to the community, GA will establish and/or upgrade the necessary ground infrastructure.
11. Upgrades to existing ground stations will include the installation of new equipment and an upgrade to ageing technology to provide consistency over the entire network. GA advise upgrades will be completed by July 2022.
12. City Officers have been in discussion with GA regarding proposed lease terms. Parties have agreed in-principle to the following summarised terms and conditions subject to Council approval.

ITEM	DETAILS
Tenant	Commonwealth of Australia represented by Geoscience Australia ABN 80 091 799 039
Land Description	Portion of Lot 4861 on Deposited Plan 157338 and Lot 5643 on Deposited Plan 157458 the subject of Certificate of Title Volume 2088 Folio 492
Area	Approximately 5m ² to accommodate navigational equipment shed on plinth, antenna and bollards to protect infrastructure
Land Ownership	City of Albany
Infrastructure Ownership	Commonwealth of Australia
Permitted Use	Maintaining and operating a Global Navigation Satellite System ground station
Term	10 years with a 10 year further term option
Rent	Peppercorn
Outgoings & Utilities	Tenant responsibility as applicable
Insurance	Public Liability Policy for a minimum of \$20 million and appropriate Infrastructure insurance
Indemnity	Indemnify the City for all claims resulting from any damage, loss, death or injury in connection with the Council Property, unless such claims arise out of City's negligence
Maintenance	Tenant responsible for own maintenance
Costs	Tenant has given a \$2,000 plus GST cap for all costs associated with the development and implementation of any new lease document

GOVERNMENT & PUBLIC CONSULTATION.

13. City Officers have been liaising with both Government entities Landgate and GA to formalise GA occupation at the Airport.
14. Section 3.58 of the Local Government Act 1995 outlines the requirements for the disposal of property, including leased/licenced land and buildings. The Act requires the following:
 - a) A local government must give local public notice of the proposed lease/licence inviting submissions from the public, for a period of two weeks.
 - b) Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
 - c) A local government can then proceed with the lease/licence.
15. Section 30 of the Local Government (Functions and General) Regulations 1996 defines the dispositions to which the advertising requirements of Section 3.58 of the Act do not apply. Section 30 (2) (c) (i & ii) states that Section 3.58 of the Act is exempt if:
 - (c) The land is disposed of to –
 - (i) The Crown in right of the State or the Commonwealth; or
 - (ii) A department, agency, or instrumentality of the Crown in right of the State or the Commonwealth.
16. The proposed lease to GA is exempt from the advertising requirements as they are a Government entity.

STATUTORY IMPLICATIONS

17. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased/licenced land and buildings including advertising requirements.

POLICY IMPLICATIONS

18. The Property Management (Leases and Licences) Policy aims to support the equitable access, and the efficient and effective management of City owned and managed properties in line with statutory procedures.
19. The recommendation is consistent with the Policy.

RISK IDENTIFICATION & MITIGATION

20. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation: new lease not approved	Unlikely	Minor	Low	Seek to negotiate terms to Council satisfaction
Reputation: new lease not approved – unable to provide up to date GPS information	Unlikely	Minor	Low	Seek to negotiate terms to Council satisfaction
Opportunity: To provide support to the Commonwealth of Australia in providing accurate and up to date navigational information for all Australians.				
Opportunity: To demonstrate support for the development of new technology with regards to functions such as improving aircraft navigational equipment and mobile phone use.				

FINANCIAL IMPLICATIONS

21. All costs associated with the development and finalisation of the lease documentation will be met by the tenant to a cap of \$2,000 plus GST.

LEGAL IMPLICATIONS

22. The legal agreement with GA will be a formal Deed of Lease with enforceable terms and conditions prepared by City lawyer.

ENVIRONMENTAL CONSIDERATIONS

23. There are no environmental implications.

ALTERNATE OPTIONS

24. Council may:
- a. Approve the new lease request; or
 - b. Decline the request.
25. Should Council decline the request, the Commonwealth Government will need to consider alternate locations suitable for GNSS facility in Albany.
26. Noting this option is not recommended as the current location at the Airport is considered ideal given in an open area providing no interference from obstructions.

CONCLUSION

27. Landgate who were responsible for the GNSS facility have transferred the ownership and management of all its 26 facilities, including the facility located at the Airport, to the Commonwealth Government entity, GA.
28. GA have requested a new 10 + 10 year lease over the existing area occupied at the Airport to formalise current navigational facility operations.
29. It is recommended the new lease to the Commonwealth of Australia, GA is supported.

Consulted References	:	<ul style="list-style-type: none"> • Council Policy – Property Management (Leases and Licences) • <i>Local Government Act 1995</i> • <i>Local Government (Functions and General) Regulations 1996</i>
File Number (Name of Ward)	:	PRO366, A64802, (Kalgan Ward)
Previous Reference	:	OCM 15 April 2008 Item 13.5.1

- 11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12. MEETING CLOSED TO THE PUBLIC**
- 13. CLOSURE**