



MINUTES

SPECIAL MEETING OF COUNCIL

Held on
Tuesday 5 April 2011
5.30pm
City of Albany Council Chambers

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1.0 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

ITEM 1.0: RESOLUTION

MOVED: COUNCILLOR DUFTY

SECONDED: COUNCILLOR LEAVESLEY

THAT Council:

- **SUSPEND Standing Order clause 3.1 to allow recording of proceedings;**
- **SUSPEND Standing Order clause 4.2(4) to allow CEO Faileen James to be seated on the Mayor's right;**
- **ADJOURN the Special Council Meeting at 6pm to allow the Agenda Briefing to proceed, and**
- **RESUME the Special Council Meeting 15 minutes after the Agenda Briefing has concluded.**

CARRIED 11-0

2.0 OPENING PRAYER

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

3.0 PUBLIC QUESTION AND STATEMENT TIME

Council's Standing Orders Local Laws provide that each Ordinary Meeting of the Council shall make available a total allowance of 30 minutes, which may be extended at the discretion of Council, for residents in attendance in the public gallery to address clear and concise questions to His Worship the Mayor on matters relating to the operation and concerns of the municipality.

Such questions should be submitted to the Chief Executive Officer, **in writing, no later than 10.00am** on the last working day preceding the meeting (the Chief Executive Officer shall make copies of such questions available to Members) but questions may be submitted without notice.

Each person asking questions or making comments at the Open Forum will be **LIMITED** to a time period of **4 MINUTES** to allow all those wishing to comment an opportunity to do so.

5.33 PM Mr John O’Dea, Bushby Road, Lower King

Summary of key points:

- Mr O’Dea had been a member of the original committee for the development of the waterfront. The committee dissolved after its input was disregarded. Felt that this development was controlled by the City of Albany and State Government
- AEC pedestrian overpass has spoiled the heritage gardens and the old town jetty has also been destroyed in the name of progress.
- Ratepayers cannot afford to pay for waterfront development and the Albany Entertainment Centre building was too expensive.
- Concerned about the lack of advertising for a recent event held at the Albany Entertainment Centre, and asked if the possibility of two performances for future events could be considered to allow for a wider attendance.

5.37pm Mrs Wendy Wood, Cull Road, Albany

Summary of key points:

- Supported Mr O’Dea’s previous comments regarding the waterfront development. As a member of the Port Users Group, she was assured Princess Royal Drive and the Port would not be affected by development.
- Imperative for Albany’s economy that the Port remains fully functional
- The people of Albany tried to have a say on the location of the Albany Entertainment Centre, but the State government had disregarded local opinion.

5.39pm Mr Neil Smithson, Smithson Planning, Middleton Loop, Albany

Summary of key points:

- Mr Smithson congratulated the City on the Albany Entertainment Centre and asked if the City was on Facebook yet.

CEO Ms Faileen James responded that the City would be writing to Mr Smithson on this point in response to his question at the March OCM.

- Mr Smithson asked for affirmation that adequate notice was given for this Special Council Meeting, so that any decisions made would be legal.

Ms James responded that adequate notice was given as required under Standing Orders Local Law.

5.41pm Mr Trappnell, Cliff Street, Albany

- Congratulated those who were courageous enough to have the wonderful Entertainment Centre built, there were very few entertainment centres in the world which were profitable.
- Did not understand how the original deficit estimate of \$800,000 ballooned to \$2m in a very short time.
- Urged Council to have faith in the local arts community, and remember that local performers need a wonderful facility, the local arts community is vibrant and successful.
- Albany Entertainment Centre cafe should be open for more hours, and a liquor licence is urgently needed.

5.44pm Mr Anthony Wood, Cordillera Street, Albany.

Summary of key points:

- Questioned why Item 6.2: Cull Road Development, would be dealt with behind closed doors; are there items being discussed which are not commercial in confidence?

CEO Faileen James responded that commercial in confidence matters regarding Council's position as a developer would be discussed. There would be some information which was not totally commercial in confidence, however, as the recommendations being made were reliant upon one another to some extent, it would be difficult to separate individual issues.

Forum closed at 5.47pm.

4.0 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Mayor

M J Evans JP

Councillors:

Breaksea Ward	J Bostock
Breaksea Ward	R Hammond
Frederickstown Ward	D Wellington
Frederickstown Ward	Vacant
Kalgan Ward	M Leavesley
Kalgan Ward	C Holden
West Ward	D Wolfe
West Ward	D Dufty
Vancouver Ward	D Bostock
Yakamia Ward	J Matla
Yakamia Ward	R Sutton

Staff:

Chief Executive Officer	F James
A/Executive Director Corporate Services	P Wignall
Community Services Leader	L Hill
Executive Director Planning & Development Services	G Bride
Executive Director Works and Services	K Ketterer
Minutes	J Williamson

Public Gallery and Media:

Approximately ten members of the public and two media representatives were in attendance.

Apologies/Leave of Absence:

Vancouver Ward	R Paver
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5.0 DECLARATION OF INTEREST

[Elected members of Council and staff are asked to use the forms prepared for the purpose, aiding the proceedings of the meeting by notifying the presiding member prior to the conduct of the meeting]

Name	Item Number	Nature of Interest
Councillor Leavesley	6.3	Impartiality. The nature of the interest being that Councillor Leavesley gains income from the tourist industry. Councillor Leavesley remained in the Chamber and participated in the discussion and vote.
Councillor Hammond	6.3	Financial. The nature of the interest being that Councillor Hammond is the owner of the business which is the subject of Item 6.3. Councillor Hammond left the Chamber and did not participate in the discussion or vote.
Councillor Sutton	6.3	Impartiality. The nature of the interest being that Councillor Sutton has a business interest with Councillor Hammond but that interest is not related to the tourism industry. Councillor Sutton remained in the Chamber and participated in the discussion and vote.

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.

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

6.2: CULL ROAD DEVELOPMENT

Proponent : City of Albany
Responsible Officer(s) : Chief Executive Officer (F James)

ITEM 6.2: RESOLUTION

MOVED: COUNCILLOR WELLINGTON
SECONDED: COUNCILLOR LEAVESLEY

THAT Council go behind closed doors to discuss the following business:

- **Item 6.2: Cull Road Development**
- **Item 6.3: Albany Visitor Centre**

CARRIED 11-0

Council delegation is sought for the Chief Executive Officer to undertake further steps for:

- addressing stakeholder concerns regarding the development; and
- marketing and selling lots in the Cull Road Subdivision.

It is recommended that the Cull Road Development Report is tabled and discussed behind closed doors in accordance with section 5.23(2) of the *Local Government Act 1995*, as the matters to be discussed:

- a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and
- legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.

**ITEM 6.2: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

That Council:

- **DELEGATE** to the Chief Executive Officer the power to negotiate the sale of lots in Stage 1.
- **DELEGATE** to the Chief Executive Officer the power to **APPOINT** a non-local independent consultant to make recommendations on a traffic flow and road needs for possible connections between and taking into account the recommendations flowing from the City of Albany Transport Model for:
 - **Mueller Street and Townsend Street;**
 - **Cull Road and Mueller Street; and**
 - **Cumming Road and Cull Road.**
- **DELEGATE** to the Chief Executive Officer the power to **APPOINT** a non-local independent consultant to make recommendations in regards to alleged water run-off from the “The Ridge” Cull Road Development to ensure land owners and residents on the lower side of the development are protected against “post-development” detrimental water-flow effects.
- The City provides to Austin and Wendy Woods a written undertaking that the City will not seek to acquire any portion of their land, unless they initiate the negotiations regarding that and agree to such acquisition.

ITEM 6.2: RESOLUTION (Responsible Officer Recommendation)

MOVED: COUNCILLOR DUFTY

SECONDED: COUNCILLOR MATLA

THAT the Responsible Officer Recommendation be ADOPTED.

**CARRIED 11-0
ABSOLUTE MAJORITY**

Consulted Reference	CEO-In-Confidence, Confidential Briefing Note to Council – Cull Road Development – RPT 2531
File Number (Name of Ward)	PRO357 (Vancouver Ward)
Previous Reference	OCM 15/02/2011 Item 2.4 – Cull Road Subdivision – Sale & Marketing

ITEM 6.3: RESOLUTION

MOVED: COUNCILLOR WELLINGTON

SECONDED: COUNCILLOR SUTTON

THAT Council come out from behind closed doors.

CARRIED 10-0

No members of the public or media returned to the Chamber. Councillor Hammond did not return to the Chamber.

7.0 CLOSURE OF MEETING

ITEM 7.0: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR WELLINGTON

SECONDED: COUNCILLOR SUTTON

THAT Council Resume Standing Order 3.1, to stop recording of proceedings.

CARRIED 10-0

The Presiding member declared the meeting closed at **9.07PM**.



Milton J Evans JP
Mayor