



Belmont Trust

Agenda

Tuesday 21 May 2024



**City of
Belmont**

Notice of Meeting

A Special Meeting of the **Belmont Trust** will be held in the Council Chamber of the **City of Belmont Civic Centre**, 215 Wright Street, Cloverdale, on **Tuesday 21 May 2024**, commencing at 6.00pm.

Wilmot Loh
Acting Chief Executive Officer

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CITY OF BELMONT

Belmont Trust

Agenda

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Attachments Index

Attachment 6.1.1 – Item 6.1 refers

Purpose of the Belmont Trust

The City of Belmont is the sole trustee of the Belmont Charitable Trust (Trust). The purpose of the Trust is to hold certain land for public recreation and enjoyment on behalf of the beneficiaries of the Trust, being the public and community users of the land. As Trustee, the City via its Council, is required to act in the best interests of the beneficiaries of the Trust and make decisions according to the *Local Government Act 1995 (WA)*, *Trustees Act 1962 (WA)* the City of Belmont Standing Orders and the terms of the trust deed.

1 Official Opening

The Presiding Member will read aloud the Acknowledgement of Country.

Acknowledgement of Country

Before I begin, I would like to acknowledge the Whadjuk Noongar people as the Traditional Owners of this land and pay my respects to Elders past, present and emerging.

I further acknowledge their cultural heritage, beliefs, connection and relationship with this land which continues today.

2 Apologies and leave of absence

Cr Vijay (leave of absence) Central Ward

3 Declarations of interest that might cause a conflict

Councillors/Staff are reminded of the requirements of s5.65 of the *Local Government Act 1995*, to disclose any interest during the meeting when the matter is discussed, and also of the requirement to disclose an interest affecting impartiality under the City's Code of Conduct for Council Members, Committee Members and Candidates and the Code of Conduct for Employees.

3.1 Financial interests

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

Name	Item No and Title	Nature of Interest (and extent, where appropriate)

3.2 Disclosure of interest that may affect impartiality

Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member/employee is also encouraged to disclose the nature of the interest. The member/employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member/employee declares that their impartiality will not be affected then they may participate in the decision-making process.

Name	Item No and Title	Nature of Interest (and extent, where appropriate)

4 Confirmation of Minutes

4.1 Special Belmont Trust Meeting held 16 May 2023

Officer Recommendation

That the Minutes of the Special Belmont Trust Meeting held on 16 May 2023 be confirmed as a true and accurate record.

5 Public question time

5.1 Responses to questions taken on notice

Nil.

5.2 Questions from members of the public

6 General business

6.1 Belmont Trust - 2024-25 Budget and Review of Delegations

Voting Requirement	:	Absolute Majority
Subject Index	:	132/001 - Minutes and Agendas of Trustees
Location/Property Index	:	Lot 5 Stoneham Street, Lot 642 Great Eastern Highway
Application Index	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	16 May 2023 Item 6.1
Applicant	:	N/A
Owner	:	City of Belmont
Responsible Division	:	Corporate and Governance

Trust role

The City of Belmont is the entity which is the trustee (Trustee) of the Belmont Charitable Trust (Trust). The City's Elected Members, as members of Council being the decision-making body of the City are the representatives of the City as Trustee of the Trust. The purpose of the Trust is to hold certain land for public recreation and enjoyment on behalf of the beneficiaries of the Trust, being the public and community users of the land. As Trustee, the City via its Elected Members, is required to act in the best interests of the beneficiaries of the Trust.

Purpose of report

To present the 2024-25 Belmont Trust budget for consideration, and formally delegate the Chief Executive Officer to perform certain functions for the Belmont Trust as the Trust Officer.

Summary and key issues

As the 2024-25 Trust budget is a component of the City of Belmont's 2024-25 budget to be adopted at the Ordinary Council Meeting on 25 June 2024, Council is required to consider and adopt the 2024-25 Trust budget for inclusion in City of Belmont's 2024-25 budget.

The delegation of powers to the CEO to administer the Trust as the Trust Officer is also required to be updated (approved) annually and be noted on the Trust delegation register.

Officer Recommendation

That Council:

1. Adopt the Belmont Charitable Trust Budget 2024-25 as contained within this report and that the adopted Belmont Charitable Trust Budget 2024-25 be included in the City of Belmont Budget 2024-25 scheduled for adoption in June 2024; and
2. Endorse the appointment of the Chief Executive Officer as the Trust Officer of the Belmont Charitable Trust for 2024-25 and the Belmont Trust Delegation Register be updated as detailed in Attachment 6.1.1.

An absolute majority of Council is required

Location



The Trust land occupies 160 Stoneham St and 154 Great Eastern Highway and consists of approximately 16 hectares of land situated between the Swan River and Great Eastern Highway near the Ascot Racecourse.

Consultation

There has been no specific consultation undertaken in respect to this matter.

Strategic Community Plan implications

In accordance with the 2020–2040 Strategic Community Plan:

Goal 5: Responsible Belmont

Strategy: 5.1 Support collaboration and partnerships to deliver key outcomes for our City.

Policy implications

There are no policy implications associated with this report.

Statutory environment

Trustee Act 1962 (WA)

11. Corporation may act as trustee in some cases

- (1) Any trustee corporation may be appointed and may lawfully act as the sole trustee in respect of any trust, notwithstanding that the instrument creating the trust may provide for or direct the appointment of 2 or more trustees; and nothing in this subsection prevents any other corporation from acting as a trustee in accordance with any authority vested in it in that behalf, whether by its memorandum of association or otherwise, but a corporation shall not administer the estate of any deceased person unless expressly authorised to do so by any Act.
- (2) This section does not permit the appointment of a corporation as trustee if the instrument creating the trust forbids the appointment of the corporation.
- (3) This section extends to any trust or instrument and to any appointment of trustees, whether created or made before or after the commencement of this Act.

Local Government Act 1995 (WA)

2.5 Local Government created as bodies corporate

- (1) When an area of the State becomes a district, a local government is established for the district.
- (2) The local government is a body corporate with perpetual succession and a common seal.

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —
 - (a) this Act other than those referred to in section 5.43; or
 - (b) the Planning and Development Act 2005 section 214(2), (3) or (5).

* Absolute majority required.

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
 - (a) the CEO’s power under this section to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO’s delegate, are subject to any conditions imposed by the local government on its delegation to the CEO.
- (4) Subsection (3)(b) does not limit the CEO’s power to impose conditions or further conditions on a delegation under this section.

5.46. Register of, and records relevant to, delegations to CEO and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Background

The effect of the Trust is that the City of Belmont has been appointed as the Trustee of the Trust and holds the trust property (“the Trust land”) in trust for the purposes of public recreation and enjoyment. The City of Belmont’s Elected Members act for the City as Trustee.

Council is the overall decision-making body of the City of Belmont, and Council members act for the City as Trustee and must make decisions in relation to the Trust land consistent with the purpose and in the best interests of the beneficiaries.

As Councillors are appointed to their role on Council under the *Local Government Act 1995 (WA)* (the Act), any meetings at which Councillors are to deal with Trust matters must be conducted according to the provisions of the Act.

The Trust is not a separate legal entity, and it cannot own property in its own name. There is no separate organisation or body called the Belmont Trust, this

name simply describes the Trust land and dealings associated with it. Instead, the Trust land is held/owned by the City of Belmont as Trustee. The City in its capacity as Trustee must deal with and account for the assets and liabilities of the Trust, including Trust income and expenditure, consistent with the purpose of the Trust for the benefit of the beneficiaries.

Report

Trust Budget

In preparation for and prior to formal adoption of the City of Belmont Budget, Council is required to endorse the 2024-25 Trust budget for the funding required to manage the Trust.

The City maintains a reserve known as the Belmont Trust Reserve which is restricted specifically for purposes associated with the Trust. These funds are used to maintain the Trust land and other related needs.

When preparing the Belmont Trust Reserve operating component, expenditure and income are transferred between the City's municipal budget and the Belmont Trust Reserve, resulting in a net impact of nil in the City's municipal budget.

The table below is an extract from the draft 2024-25 City of Belmont Annual Budget scheduled for adoption by Council in June 2024. Belmont Trust expenditure and income is as follows:

1. Legal Costs: This is an indicative amount to cover any legal services required for the proper management of the Belmont Trust (\$30,000).
2. Consultants: this is an indicative amount to cover the Landscape Masterplan commencement. The master planning process will involve site investigations, stakeholder and community engagement and concept level design. Services – Other Consultants (\$150,000).
3. General Maintenance: This is the cost associated with the City's Parks, Leisure and Environment Department undertaking general mowing and maintenance of the Trust land (\$15,500).
4. Services Other: Allocation of the Project Delivery Coordinator (\$21,324)
5. Interest: This is the estimated interest from the investment of funds held in the Belmont Trust Reserve (-\$74,620).

Account	Description	2023-24 Budget (\$)	2023-24 Estimated Actual (\$)	2024-25 Proposed Budget (\$)	2024-25 Budget Comment
Expenditure					
921600-00-1270	Services Legal	10,000	0	30,000	Contingency
921600-00-1271	Services – Other Consultants	10,000		150,000	Commence Landscape Masterplan
921600-00-1279	Services Other	0	0	21,324	Allocation of Project Delivery Coordinator to project
P14300	Belmont Trust – Gen Maintce	15,500	0	15,000	Parks and fencing maintenance
		35,500	0	216,324	
Income					
921600-00-4854	Interest	(61,896)	(61,896)	(74,620)	Estimated interest
		(61,896)		(74,620)	

Belmont Trust Reserve Balance	2023-24 Budget (\$)	2023-24 Estimated Actual (\$)	2024-25 Proposed Budget (\$)
Opening Balance – 1 July	1,471,352	1,630,571	1,707,597
Closing Balance – 30 June	1,533,248	1,707,597	1,565,893

Delegation

The Trustee via Council makes the general policy decisions for the Trust, and any major decisions involving the expenditure of the Trust funds or decisions impacting on the Trust scheme. It is necessary for administrative decisions and day to day matters to be dealt with by an officer of the City. The role of the day to day administrative decisions for the Trust are delegated the Chief

Executive Officer – to act as the Trust officer - and the Chief Executive Officer can sub-delegate in accordance with s.5.44 of the *Local Government Act 1995 (WA)* to the Director Corporate and Governance.

Examples of decisions that are applicable under this delegation include decisions to appoint a solicitor to provide advice on matters relating to the administration of the Trust, or to appoint a consultant to carry out work for the Trust within the budget set by the Trustees. There are only minor administrative amendments to the delegation relating to updating policy referencing and inclusion of “(WA)” after legislation.

Financial implications

The Belmont Trust Reserve is budgeted to have a balance of \$1,533,248 on 30 June 2024.

Based on the estimated 2023-24 closing position, the balance of the reserve is estimated to increase to \$1,707,597. Unspent budgeted funds in 2023-24 or 2024-25 will remain in the reserve.

There is no impact on the City of Belmont municipal budget as all funds are accessed from the Belmont Trust Reserve.

Environmental implications

There are no environmental implications associated with this report.

Social implications

There are no social implications associated with this report.

Attachment details

Attachment No and title
1. Belmont Trust Delegations Tracked Changes [6.1.1 - 8 pages]



Belmont Trust - Delegations



Publication date: [00/00/00]

Attachment 6.1.1 Belmont Trust Delegations Tracked Changes

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Introduction

Council is responsible for the overall government of the City's functions. The Chief Executive Officer is responsible for the day-to-day management of the administration of the City's functions amongst other functions such as advising Council.

Legislation applicable to local government may reserve specific powers and duties to the Council, the CEO or a defined authorised person or class of persons. Where legislation refers to a power or duty of the "local government" this is generally interpreted to mean the Council unless otherwise specified even if the power or duty is operational in nature.

The provisions of the *Local Government Act 1995 (WA)* (the Act) and *Trustees Act 1962 (WA)* are relevant for the delegations of the trustees included.

Delegation of authority, where allowed, allows for efficient and timely decision making by local governments. Conditions or limitations may be incorporated into delegations such as limiting the circumstances in which a delegation can be exercised or imposing financial or other limits to the delegated power.

The delegation of a power or duty does not preclude a delegator from exercising or performing that power or duty itself or by acting through any employee authorised, by job description or otherwise, to carry out a function as the agent of, and on behalf of, the local government in accordance with approved policies.

A person granted a delegation is not obliged to exercise the delegated power and may, if circumstances indicate, refer the decision back to the delegator. Legislation varies in how delegation of authority is provided for, including limitations, conditions and reporting or review requirements. Reviews of delegations, where required by law, are the responsibility of the delegator.

In some instances, it is most appropriate for a function to be exercised by the Trustees only and as such no delegation is made.

I Delegations by Local Government

The Act allows for the local government (Council) to delegate to the Chief Executive Officer (CEO) the exercise of any of its power or the discharge of any of its duties under the Act in order to effectively manage the day-to-day operations of the City.

s.11(1) of the *Trustees Act 1962 (WA)* acknowledges that a corporation may act as a trustee where it is a body authorised to do so. The City of Belmont is formed under s2.5 of the *Local Government Act 1995 (WA)* (the Act), and under like legislation preceding it, and is created as a body corporate invested with perpetual succession and legal personality. The conditions around delegation of powers are to be in accordance with the Act, be precise, adopted by the Trustee and provide for oversight by the Trustee.

Delegations are required to be made by absolute majority resolution, in writing, and recorded in the Belmont Trust Meeting Minutes.

The Act also allows for the CEO to delegate any powers or discharge of any of the CEO's duties to another employee other than the power of delegation (s 5.44(4)). There is no power other than for the CEO to delegate a power.

All delegations must be in writing and the CEO is able to make the delegation or sub delegation subject to conditions or limitations. When an employee is acting in a position, they are deemed to be able to carry out the functions delegated to that position.

There is no express provision for a local government to delegate its functions under any other legislation. However, this does not prohibit the local government from "acting through" its officers for the purpose of legislation and the manner in which this can be achieved is detailed below.

The *Interpretation Act 1984 (WA)* provides a standard basis on how terms across all Western Australian legislation can be interpreted such as computation of time. It also provides further information on how delegations work and provides a basis for allowing conditions or limitations to be made on the delegation; revocation of the delegation; the continuance of the delegation if a person is acting in the position to which the power is delegated.

II Matters which cannot be delegated

The following cannot be delegated by Council to the CEO under the Act (s 5.43)

- any power or duty that requires a decision of an absolute majority of the council
- accepting a tender which exceeds an amount determined by the local government
- acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government
- any of the local government's powers under
 - s 5.98 – Fees etc for council members
 - s 5.98A – Allowance for deputy mayor or deputy president
 - s 5.99 Annual fee for council members in lieu of fees for attending meetings
 - s 5.99A Allowances for council members in lieu of reimbursement of expenses
 - s 5.100 Payment for certain committee members
- borrowing money on behalf of the local government
- hearing or determining an objection of a kind referred to in s 9.5
- the power under s 9.49A(4) to authorise a person to sign documents on behalf of the local government
- any power or duty that requires the approval of the Minister or the Governor
- such other powers or duties as may be prescribed.

III Acting Through

Section 5.45 of the Act introduces the concept of "acting through." In relation to delegations, s 5.45 of the Act states that nothing prevents a "local government from performing any of its functions by acting through a person other than the CEO" or "a CEO from performing any of his or her functions by acting through another person."

While the Act does not specifically define the meaning of the term "acting through," it cites a key difference between a delegation and "acting through" in that a delegate exercises the delegated decision-making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the "acting through" concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.

For administrative purposes, a person may sign a letter in his or her own name on behalf of the CEO while, with delegated powers, the person would sign a letter in his or her own name, in accordance with the delegated authority.

An appropriate method for a council of a local government to make a decision which will be implemented by its officers is for it to make a policy about particular functions that it performs. In that case there is no need for a delegation as it will be the role of the organisation to implement those policy decisions.

IV Register of Delegation

Section 5.46 of the Act requires the Chief Executive Officer (CEO) to maintain a register of delegations made to the CEO and to employees. The register must be reviewed at least once every financial year and the requirement for records to be kept on the exercise of the delegation is also included.

V Standard Conditions of Delegation

Individuals are responsible for ensuring that legislated requirements relating to the exercise of delegated power(s) are complied with.

Any person proposing to exercise a power under delegated authority shall comply with the following standard conditions of delegation:

1. Actual decisions relating to the matter delegated shall be made by the person nominated in the delegation. However, it is understood that other staff may carry out administrative and technical work relating to those decisions.
2. Compliance with all relevant legislative requirements, Local Laws, Council Policies, resolutions of Council and the Business Management System Procedures.
3. Delegated authority cannot be exercised where a Financial Interest or an Interest Affecting Impartiality is evident.
4. It is a statutory requirement to maintain a record of each decision made under delegated authority. Documents relating to delegated authority decisions shall, as a minimum, record:
 - a. Date the decision was exercised;
 - b. Name of the Officer exercising the decision;
 - c. Description of how the person exercised the power or discharged the duty, including where appropriate, any directions to staff to carry out work associated with the decision unless those directions are included in Policies, Management Procedures or the Delegation Register;
 - d. Notation of the people or class of people directly affected by the decision (other than Council or Committee members or employees of the City).

Any exercising of a power and discharging of a duty must be recorded on the Record of Exercise of Power – Delegation of Authority Form and registered in ECM Folder 11/005 at the time of exercising the delegation.

5. Instruction is provided for each delegation on record keeping requirements. All records relating to an exercise of delegation must be recorded in the main official record keeping system of the City, ECM.

LOCAL GOVERNMENT ACT 1995 DELEGATIONS

T1 Trustees (Council) to CEO

T1.1 Trust Officer to act on behalf of the Belmont Trustees

Delegator: Power / Duty assigned in legislation to:	Belmont Trustee (Council)
Express Power to Delegate: Power that enables a delegation to be made	<i>Local Government Act 1995 (WA):</i> s 5.42 Delegation of some powers or duties to the CEO s 5.43 Limitations on delegations to the CEO
Express Power or Duty Delegated:	<i>Local Government Act 1995 (WA)</i> s 5.41 Function of CEO <ul style="list-style-type: none"> perform functions as a Trust Officer to enable the day to day administration of the Belmont Trust
Delegate:	Chief Executive Officer
Function: This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.	<ol style="list-style-type: none"> Make day to day operational decisions for the Belmont Trust to carry out the administrative business for the trust, within current limits of authority set by Council and legislation. Instruct solicitors to obtain advice, where required on matters pertaining to the Belmont Trust Land and operation of the Charitable Trust.
Council Conditions on this Delegation:	Any person proposing to exercise a power under delegated authority shall comply with the Standard Conditions of Delegation and the following specific additional conditions for this delegation. Additional Condition Delegation does not extend to the disposition of any Trust property or equipment.
Express Power to Sub-Delegate:	<i>Local Government Act 1995 (WA):</i> s 5.44 CEO may delegate some powers and duties to other employees

Sub-Delegate/s: Appointed by CEO	Director Corporate and Governance
Additional CEO Conditions on this Sub-Delegation: Conditions on the original delegation also apply to the sub-delegations.	In addition to the Council conditions of delegation to the CEO the following are additional: <ul style="list-style-type: none"> Nil

Attachment 6.1.1 Belmont Trust Delegations Tracked Changes

Compliance Links:	Operational Policy: BEXB32 Decision Making Policy – Decision Level 3 CP 63 - Execution of Documents Policy
Record Keeping:	Records of exercise of delegated authority and associated contracts to be retained in ECM index: 11/005 and 132/003

Version Control:

<u>1</u>	New: Special Belmont Trust Meeting 16/5/2023 Item xx 6.1.
<u>2</u>	Revised Special Belmont Trust Meeting XX/XX/2024 Item XX

7 Urgent business approved by the Chair or by decision

8 Closure