
SPECIAL BELMONT TRUST MEETING

AMENDED AGENDA¹

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29 November 2021

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ATTACHMENTS INDEX

Attachment 1 - Item 6.1 refers

Attachment 2 - Item 6.1 refers

Attachment 3 - Item 6.1 refers

¹ The Agenda was amended on 29 November 2021 to include responses to questions taken on notice at the meeting held 17 June 2021 and to update item numbers accordingly.

PURPOSE OF THE BELMONT TRUST

The City of Belmont as part of a Trust Deed is the sole trustee who holds property for the purpose of public recreation and enjoyment. As the trustee the Council can only make decisions on behalf of the City of Belmont in accordance with the Local Government Act 1995, Trustees Act 1962 and the City of Belmont Standing Orders.

1. OFFICIAL OPENING

The Presiding Member will read aloud the Acknowledgement of Country.

Before I begin I would like to acknowledge the Noongar Whadjuk 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.

The Presiding Member will cause the Affirmation of Civic Duty and Responsibility to be read aloud by a Councillor.

Affirmation of Civic Duty and Responsibility

I make this affirmation in good faith and declare that I will duly, faithfully, honestly, and with integrity fulfil the duties of my role as a Trustee of the Belmont Trust according to the best of my judgement and ability. I will observe the City's Code of Conduct and Standing Orders to ensure efficient, effective and orderly decision making within this forum.

2. APOLOGIES

Cr D Sessions (Apology)

West Ward

3. DECLARATIONS OF INTEREST THAT MIGHT CAUSE CONFLICT

3.1 FINANCIAL INTERESTS

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

3.2 DISCLOSURE OF INTEREST THAT MAY AFFECT IMPARTIALITY

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

4. CONFIRMATION OF MINUTES

4.1 SPECIAL BELMONT TRUST MEETING HELD 17 JUNE 2021 (Circulated under separate cover)

OFFICER RECOMMENDATION

That the Minutes of the Special Belmont Trust Meeting held on 17 June 2021 be confirmed as a true and accurate record.

5. PUBLIC QUESTION TIME

5.1 RESPONSES TO QUESTIONS TAKEN ON NOTICE

5.1.1 Ms L HOLLANDS ON BEHALF OF BELMONT RESIDENT AND RATEPAYER ACTION GROUP (BRRAG)

The following questions were taken on notice at the 17 June 2021 Special Belmont Trust Meeting. Ms Hollands was provided with a response on 21 July 2021. The response from the City is recorded accordingly:

1. In the Minutes of the Belmont Trust Meeting held on 2 July 2013, Trustees resolved that the required action is to remain confidential until legal resolution is complete. Is the legal resolution complete yet and, if yes, when can we expect the details?

Response

The legal resolution was completed in the Supreme Court in 2014 with all necessary documents executed in 2015.

The Belmont Trust resolution of July 2013 details:

'GEE MOVED, MARTIN SECONDED, That the Trust

1. ***Notes and receives the information contained within this confidential report and endorses the required action.***
2. ***Confirm that the required action as detailed is to remain confidential until legal resolution is complete.***

CARRIED 8 VOTES TO 0'

Item 5.1.1 Continued

The required action as detailed in the report was:

'That the Trust resolve to accept payment of all Supreme Court costs involved with the process of obtaining a sanction for the compelling moral obligation.'

Further, and pertinent to this matter is the Belmont Trust resolution of 22 December 2009 which details:

'POWELL MOVED, WHITELEY SECONDED,

That the Trust:

- 1. Note and receive the information contained within the confidential report and endorses the required actions.***
- 2. Confirm that the required actions as detailed are to remain confidential until legal resolution is complete.***

CARRIED 8 VOTES TO 0'

The required action as detailed in the report was:

- '1. The amount as contained in the confidential report is to be communicated to Ascot Fields Nominees Pty Ltd as an offer toward the compelling moral obligation, improvements of Trust land and subject to the qualification that the payment will need to be sanctioned by order of a Supreme Court Judge.***
 - 2. Correspondence is to be forwarded to Ascot Fields Nominees Pty Ltd as explained within the confidential report.***
 - 3. The Chief Executive Officer to engage in discussion with Mallesons Stephen Jaques Lawyers to determine suitability and appointment in regard to acting as the independent lawyers for the Trust if the matter progresses to the Supreme Court.'***
2. What was the nature and expenses of on-going legal advice and was there appropriate management of the interest to the Trust Reserve as the Reserve has reduced from \$1.78m in 2012 to \$1.5m in 2020?

Response

Belmont Trust Reserve funds are invested on an annual basis with interest earned deposited to this Reserve.

Legal costs associated with the Belmont Trust over the preceding decade have included matters regarding general management issues, interpretation and application of relevant legislation, advice to Councillors on their role in representing the Belmont Trust, a Compelling Moral Obligation matter between the Belmont Trust, City of Belmont, and Ascot Field Nominees, including relevant involvement from - the Advisory Trustee, State Solicitors Office, and Supreme Court. The Advisory Trustee has also provided opinions on matters to ensure that no conflict of interest arises for Councillors in their roles representing the local government and the Belmont Trust.

Item 5.1.1 Continued

3. When the Trust Reserve was first established, where did the initial funds come from?

Response

The Belmont Trust Reserve was established in 2012 with funds received from the land taking associated with Great Eastern Highway widening.

4. Was the 2002 copy of Hansard distributed to Councillors and, if so, when?

Response

The City is unable to ascertain if the 2002 Hansard materials, distributed to Councillors at the Belmont Trust Meeting of 17 June 2021, were previously distributed to Councillors at any time from 18 December 2002. However, this does not mean that the information was not distributed or the subject of consideration by Councillors at some point.

5. Has the Trust Land been varied in any way since the Trust was formed?

Response

The only variations that the City of Belmont is aware of are:

- 1. 352m² of land taken by Water Corporation for a Pumping Station, Circa 1986.**
- 2. 1770m² of land taken and associated with the widening of Great Eastern Highway, August 2011.**
- 3. 11636m² created as waterway access to Ascot Waters Development. Note: This land is still in the ownership of the City of Belmont and subject to the Declaration of Trust.**

5.1.2 MR P HITT, 14 MCLACHLAN WAY, BELMONT

The following questions were taken on notice at the 17 June 2021 Special Belmont Trust Meeting. Mr Hitt was provided with a response on 21 July 2021. The response from the City is recorded accordingly:

1. Is it legally or morally right to engage an Engagement Officer, AHA! Consulting for the sum of \$72,480 when many of the questions in the Hansard put forward by the Hon Peter Foss (a lawyer that specialises in Trusts) have not been answered to my knowledge up to this present time?

Response

The remarks made by the then Attorney General, Hon Peter Foss, dated December 2002 and distributed at your request to the Belmont Trust on 17 June 2021 were in fact statements of opinion and directed to the Legislative Council and not the City of Belmont. There is nothing legally or morally incorrect in the Belmont Trust making a decision to engage a Consultant for the purpose of community consultation. This will assist the Belmont Trust in establishing a strategic direction for the Trust Land. In fact, it is most beneficial in not only soliciting the views of the community but demonstrating a clear separation of responsibilities between that of the Council representing the interests of the local government district and that of its special role as Trustee.

2. Were the boundary changes to the Trust mentioned in Hansard ever formally gazetted and approved?

Response

The boundary changes you have referred to in the Hansard dated December 2002 refer to the creation of the Waterway for access to the Ascot Waters Development. There has been no change to the boundary as it is still in the ownership of the City of Belmont and subject to the Declaration of Trust.

3. Has the Trust ever received compensation for the loss of land now used as a waterway into the Ascot Marina?

Response

The land in question is still in the ownership of the City of Belmont and subject to the Declaration of Trust.

4. Has the Trust ever received monies from the rent of the land when used for baseball?

Response

A similar question was asked at the Ordinary Council Meeting of 16 December 2020 with the response provided to you on 6 January 2021 which stated:

“From the records available it does not appear income or expenditure attributed to those activities has been recorded against the Belmont Trust although given the length of time that has since transpired it is difficult to confirm.”

5.1.3 Ms S HOLT ON BEHALF OF THE ASCOT KILNS AND PARRY FIELD ACTION GROUP

The following question was taken on notice at the 17 June 2021 Special Belmont Trust Meeting. Ms Holt was provided with a response on 21 July 2021. The response from the City is recorded accordingly:

1. Can you provide evidence that funds for the Belmont Trust have been expended in accordance with the Declaration of Trust and the Charitable Trust Act 1982?

Response

Funds that have been expended from the Belmont Trust Reserve have been in relation to the maintenance of the land, generally for mowing and upkeep, as well as any legal costs associated in the management of the Belmont Trust. These costs are in keeping with the Declaration of Trust and the Charitable Trusts Act 1962.

5.2 QUESTIONS FROM MEMBERS OF THE PUBLIC

6. GENERAL BUSINESS

6.1 BELMONT TRUST LAND ENGAGEMENT AND COMMUNICATION PLAN

ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 1 – Item 6.1 refers	Belmont Trust Land – Engagement and Communication Plan
Attachment 2 – Item 6.1 refers	Belmont Trust Land – Costing Additional Engagement Elements
Attachment 3 – Item 6.1 refers	Belmont Trust Land – Website and Visual Identity

Voting Requirement	:	Simple Majority
Subject Index	:	132/002 – Belmont Trust Administrative
Location/Property Index	:	Lot 5 Stoneham Street, Lot 642 Great Eastern Highway
Application Index	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	City of Belmont
Responsible Division	:	Corporate and Governance

Item 6.1 Continued

ROLE

- | | | |
|-------------------------------------|-----------------------|---|
| <input type="checkbox"/> | Advocacy | <i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
| <input checked="" type="checkbox"/> | Executive | <i>The substantial direction setting and oversight role of the Council eg adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i> |
| <input type="checkbox"/> | Legislative | <i>Includes adopting local laws, local planning schemes and policies.</i> |
| <input type="checkbox"/> | Review | <i>When Council reviews decisions made by Officers.</i> |
| <input type="checkbox"/> | Quasi-Judicial | <i>When Council determines an application/matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |

PURPOSE OF REPORT

To seek approval of:

- The Scope and Engagement Goals of the Belmont Trust Land Community Engagement and Communication Plan ([Attachment 1](#));
- \$21,800 expenditure for additional engagement elements ([Attachment 2](#)); and
- The Belmont Trust website and visual identity ([Attachment 3](#)).

SUMMARY AND KEY ISSUES

It is recommended that the Belmont Trust approve the Scope and Engagement Goals of the Belmont Trust Land Community Engagement Plan ([Attachment 1](#)), funds for additional engagement elements and for the Belmont Trust website and visual identity to allow for the consultation for the future use of the Belmont Trust Land to commence. A summary of the items is as follows:

- The Belmont Trust Land Community Engagement and Communication Plan ([Attachment 1](#)) outlines the community engagement project to assist the Trustees to understand the community aspirations for the 'recreational use' of the Belmont Trust Land;
- Additional engagement elements have been requested for inclusion in the project following the workshop with the Trustees to ensure the broad engagement is appropriate. \$21,800 additional expenditure has been quoted for the additional engagement elements ([Attachment 2](#)); and
- The Belmont Trust website has been developed to provide a platform to display all publicly available information pertaining to the Belmont Trust Land throughout the consultation period, and visual identity of a tri colour hexagon ([Attachment 3](#)) is proposed to be used for the community consultation process and future correspondence related to the Belmont Trust Trustees.

Item 6.1 Continued

LOCATION



The Belmont Trust Land is a parcel of land adjacent to the Swan River of approximately 14ha. It is bounded to the north by the 'Ascot Waters' land development, to the south by residential development, to the east by Great Eastern Highway and Stoneham Street, and the west by the Swan River. The parcel of land includes a section of the southern end of Black Swan Island, a nature reserve joined to the mainland by a road bridge.

CONSULTATION

The City of Belmont has involved the Attorney General, the Independent Advisory Trustee, and the State Solicitors Office in the process to ensure that there is no perception of any conflict of interest between the City's role as a local government and that of the Belmont Trust.

There has been no other 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.
- 5.2 Manage the City's assets and financial resources in a responsible manner and provide the best possible services for the community.
- 5.5 Engage and consult the community in decision-making.
- 5.6 Deliver effective, fair and transparent leadership and decision-making, reflective of community needs and aspirations.

Item 6.1 Continued

POLICY IMPLICATIONS

There are no policy implications associated with this report.

STATUTORY ENVIRONMENT

Under WA law, a trust for recreation is regarded as a charitable trust and therefore subject to the strict statutory controls of the *Charitable Trusts Act 1962*.

BACKGROUND

The City of Belmont Councillors are the Trustees of the Belmont Trust and that land ("the Trust Land") is to be used for recreational purposes in accordance with the Declaration of Trust, established under the *Charitable Trusts Act 1962*.

Council, when deliberating matters relevant to the Belmont Trust, must be cognisant that it is not meeting in its capacity as the Council with responsibility for the good governance of the district. It is meeting in its capacity as the trustee of the Trust Land. On this basis, Councillors are not attending these meetings to make decisions for the benefit of the City of Belmont, but instead for the beneficiaries of the Trust Land. That is why Belmont Trust meetings are separate to those of Ordinary Council meetings.

The Trust includes an Independent Advisory Trustee, who was engaged on this particular matter prior to the Request for Quote process to engage a consultant. This is an impartial person, suitably qualified, and appointed to provide guidance to the Belmont Trust on matters deemed necessary by either the Trust or Attorney General.

For the Belmont Trust to better understand community stakeholder perspectives in relation to any development of the Trust land, City officers requested quotes for a consultant to design and implement a comprehensive and effective community engagement plan to articulate the vision and aspirations of the community.

At its Special Meeting of the Belmont Trust on 17 June 2021, the Trustees considered the process undertaken to invite quotations and evaluate the responses received and awarded the contract for consultancy services as follows:

'ROSSI MOVED, WOLFF SECONDED

That the Belmont Trust award Quotation Q03/2021 – Belmont Trust Land Community Engagement to AHA! Consulting for the sum of \$72,480.

CARRIED 7 VOTES TO 0'

Following engagement of Aha! Consulting, a draft Belmont Trust Land Engagement and Communication Plan has been developed.

Due to the Electoral Caretaker Period, there has been a delay in progressing the community consultation with the draft plan being introduced to the Trustees at a Workshop held on 4 November 2021 for discussion and feedback.

Item 6.1 Continued

OFFICER COMMENT

The proposed approach for the engagement and communication is extensive and varies from previous community consultation used by the City due to the nature of the site and the complexities of the Trust Land. The aim is to gain an understanding from the whole community of its aspirations for the 'recreational use' of the Belmont Trust Land in a financially affordable and sustainable manner.

The quote received by Aha! Consulting was approved by the Trustees at the 17 June 2021 Special Belmont Trust Meeting. Additional elements were identified through discussion and at the Workshop held with Trustees to ensure that full effective engagement is carried out and the elements have been included in the Belmont Trust Land Engagement and Communication Plan. These include additional workshops with the City's Advisory Groups and residents, additional pop-up activities, data entry by the consultant, an additional ceremony and cultural tour, and additional payment for panel members. The additional elements are considered important to ensure the engagement is broad as requested by the Trustees.

To support the proposed community engagement activity, a website dedicated to the Belmont Trust has been developed independent to the City of Belmont website. The visual identity has been created with the aim to enable the community to distinguish between the different roles and responsibilities of the Councillors as Trustees, and City of Belmont Elected Members.

The website will display all publicly available information pertaining to the Belmont Trust Land and the content of the website will evolve throughout the consultation period and will be maintained for historical reference into the future. Information and examples of the proposed Belmont Trust visual identity and website and are included in [Attachment 2](#). The visual identity refers to the information, including graphics and images, to identify the Trust as visually separate from another entity.

The formal launch of the community consultation including the 'go live' of the Belmont Trust website and announcements will occur on 17 January 2022, with the broad engagement taking place between February and May 2022. This will allow for the Christmas and Holiday period before the commencement of the main consultation elements. Prior to the formal launch, some initial discussions will take place with the Aboriginal Advisory Group and the Ascot Kilns and Parry Field Action Group.

FINANCIAL IMPLICATIONS

The Belmont Trust component of the City of Belmont Budget contains \$100,000 expenditure for the community engagement allowing sufficient funding for the approved quote of \$72,480 plus \$21,820 (totaling \$94,300) to undertake the additional engagement elements identified in the Belmont Trust Land Engagement and Communication Plan. [Attachment 2](#) provides detail on the additional costs.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

SOCIAL IMPLICATIONS

There are no social implications associated with this report.

Item 6.1 Continued

OFFICER RECOMMENDATION

That the Belmont Trust approve:

1. **The Scope and Engagement Goals of the Belmont Trust Land Engagement and Communication Plan ([Attachment 1](#)) as proposed by Aha! Consulting;**
 2. **The \$21,820 extra funding required for additional engagement elements of the Belmont Trust Land Engagement and Communication Plan ([Attachment 2](#));**
 3. **The Belmont Trust website and visual identity ([Attachment 3](#)) for use throughout the engagement process;**
 4. **For the Chief Executive Officer to adjust engagement components within the Belmont Trust Land Engagement and Communication Plan if required ensuring alignment with the scope and approved Belmont Trust budget allocation within the City of Belmont Budget; and**
 5. **For the formal launch of the Belmont Trust Land Engagement and Communication project to take place on 17 January 2022.**
-
7. **URGENT BUSINESS APPROVED BY THE CHAIR OR BY DECISION**

 8. **CLOSURE**