



City of Belmont
SPECIAL COUNCIL MEETING
MINUTES
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19 February 2019

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ATTACHMENTS INDEX

Attachment 1- Item 5.1 refers

MINUTES

PRESENT

Cr P Marks, Mayor (Presiding Member)	East Ward
Cr R Rossi, JP, Deputy Mayor	West Ward
Cr M Bass	East Ward
Cr B Ryan	East Ward
Cr J Davis	South Ward
Cr J Powell	South Ward
Cr S Wolff	South Ward
Cr L Cayoun	West Ward
Cr G Sekulla, JP	West Ward

IN ATTENDANCE

Mr J Christie	Chief Executive Officer
Mr R Garrett	Director Corporate and Governance
Mr A Sheridan	Director Infrastructure Services
Mr W Loh	A/Director Community and Statutory Services
Mr J Olynyk, JP	Manager Governance
Mrs M Lymon	Principal Governance and Compliance Advisor
Ms D Morton	Media and Communications Officer
Ms S D'Agnone	Governance Officer

MEMBERS OF THE GALLERY

There were four members of the public in the gallery and no press representative.

1. OFFICIAL OPENING

6.34pm The Presiding Member welcomed all those in attendance and declared the meeting open.

The Presiding Member read the Acknowledgement of Country.

Before I begin I would like to acknowledge the traditional owners of the land on which we are meeting today, the Noongar Whadjuk people, and pay respect to Elders past, present and future leaders.

The Presiding Member invited Cr Davis to read aloud the Affirmation of Civic Duty and Responsibility on behalf of Councillors and Officers. Cr Davis read aloud the affirmation.

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 office for all the people in the City of Belmont according to the best of my judgement and ability. I will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.

2. APOLOGIES AND LEAVE OF ABSENCE

Ms J Hammah (Apology)

Director Community and Statutory Services

3. DECLARATIONS OF INTEREST THAT MIGHT CAUSE A CONFLICT

3.1 FINANCIAL INTERESTS

Nil.

3.2 DISCLOSURE OF INTEREST THAT MAY AFFECT IMPARTIALITY

Nil.

**ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION) AND
DECLARATIONS BY MEMBERS**

3.3 ANNOUNCEMENTS

Nil.

6.35pm The Principal Governance and Compliance Advisor departed the meeting.

3.4 DISCLAIMER

6.35pm The Presiding Member drew the public gallery's attention to the Disclaimer.

The Presiding Member advised the following:

I wish to draw attention to the Disclaimer Notice contained within the Agenda document and advise members of the public that any decisions made at the meeting tonight can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received.

**3.5 DECLARATIONS BY MEMBERS WHO HAVE NOT GIVEN DUE CONSIDERATION TO
ALL MATTERS CONTAINED IN THE BUSINESS PAPERS PRESENTLY BEFORE THE
MEETING**

Nil.

4. PUBLIC QUESTION TIME

4.1 QUESTIONS FROM MEMBERS OF THE PUBLIC

The Presiding Member advised that Public Question Time during Council meetings is audio recorded for minute verification purposes and requested the Governance Officer to commence recording.

6.36pm The Presiding Member drew the public gallery's attention to the rules of Public Question Time as written in the Agenda. In accordance with rule (I), the Mayor advised that he had registered two members of the public who had given prior notice to ask questions.

The Presiding Member invited members of the public who had yet to register their interest to ask a question to do so. One further registration was forthcoming.

6.37pm The Principal Governance and Compliance Advisor returned to the meeting.

4.1.1 MR R FOSTER, 140 COOLGARDIE AVENUE, REDCLIFFE

1. Regarding the Local Government Act 1995 Review Paper, that with such an important topic as this Review Paper, why has the City of Belmont neglected to consult with resident and ratepayers in formulating this submission?

Response

The Chief Executive Officer advised that the Department of Local Government, Sport and Cultural Industries (DLGSCI) is seeking feedback on the *Local Government Act 1995 Review* from a number of different sections of the community apart from local governments, some of which include resident associations, businesses and individual Councillors.

The City's submission, however, is in response to a request for feedback from within the local government industry.

The Minister is encouraging all members of the community who believe they have something to contribute to the review to consider making a formal submission through the DLGSCI website.

2. In your own words Mr Mayor, would you be able to explain to the residents and ratepayers present, what a Beneficial Enterprise is and how will this benefit the residents and ratepayers of the City of Belmont?

Response

The Presiding Member advised that a common misconception of Beneficial Enterprise is that it relates only to property. A Beneficial Enterprise is a standalone, arm's length business entity that carries out commercial enterprises and delivers projects and services within the community in a more efficient manner than a local government may be able to achieve in its own right. Essentially its purpose is to address a gap in the provision of services and facilities that are not attractive to private investors or where the market has failed.

4.1.2 Ms B SCHARFENSTEIN, 140 COOLGARDIE AVENUE, REDCLIFFE

1. Given the City of Belmont Local Government Act Discussion Paper does not make comment or recommendations in regard to the Department of Local Government's Community Engagement Discussion Paper:
 - a. Was the Community Engagement Discussion Paper provided to Councillors during Councillor Discussions at the Special Information Forum at 5 February 2019?
 - b. Did the City recommend to Councillors to omit responding to the topics raised in the Department of Local Government's Community Engagement Discussion Paper?
 - c. Can the City explain its rationale for omitting to address the under the Topic of Inclusion in its LGA Discussion paper the matters raised in the Department of Local Government's Discussion Paper on Community Engagement, such as its recommendation that community engagement 'encompasses the way in which local governments inform, consult, engage and empower activity by the community'.

Response

The Presiding Member advised that the questions would be taken on notice.

4.1.3 Ms L HOLLANDS, 2 MILLER AVENUE, REDCLIFFE

1. Beneficial Enterprise - how is this new arrangement going to change things and what benefit will there be to the City?

6.46pm The Coordinator Environment entered the meeting.

Response

The Chief Executive Officer advised that the City's submission is in support of Beneficial Enterprise, however there is no suggestion that the City of Belmont will undertake a Beneficial Enterprise as a result of the submission.

The City's submission is in support of allowing local government entities, particularly those in regional Western Australian, an opportunity to enter into Beneficial Enterprises. In the context of regional airports or regional sporting complexes, this type of arrangement could be beneficial.

There is no indication that the City will undertake any Beneficial Enterprise, however any such undertaking would require careful scrutiny and any associated risks would need to be examined. It is expected that the Office of the Auditor General would have a particular interest in this area as they are now auditing local governments.

6.47pm The Coordinator Environment departed the meeting and did not return.

2. If this submission is on behalf of the City of Belmont, why are we so concerned about regional Councils?

Response

The Chief Executive Officer advised that all local governments across Western Australia will be impacted by the review of the *Local Government Act 1995* and therefore it should be supported by the industry in general.

3. Please clarify what benefits will come from the review (financial)?

Response

The Chief Executive Officer advised he had already answered this question, and reiterated that if the Act is amended and Beneficial Enterprises are permitted, a full assessment, including a financial assessment, would be undertaken.

6.49pm As there were no further questions, the Presiding Member declared Public Question Time closed and requested that the Governance Officer cease the audio recording.

5. REPORTS OF ADMINISTRATION

5.1 LOCAL GOVERNMENT ACT REVIEW – STAGE 2

BUSINESS EXCELLENCE BELMONT

ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 1 – Item 5.1 refers	<u>Local Government Act 1995 Review Paper – Stage 2</u>

Voting Requirement	:	Simple Majority
Subject Index	:	119/001 WALGA, 39/002 DLGSCI
Location/Property Index	:	N/A
Application Index	:	N/A
Disclosure of any Interest	:	Nil.
Previous Items	:	N/A
Applicant	:	WALGA and DLGSCI
Owner	:	N/A
Responsible Division	:	Corporate and Governance

COUNCIL 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 checked="" 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

This report seeks Council's endorsement of the City of Belmont submission to the Western Australian Local Government Association (WALGA) and the Department of Local Government, Sport and Cultural Industries (DLGSCI) on Stage 2 of the Local Government Act Review.

Item 5.1 Continued

SUMMARY AND KEY ISSUES

Stage 2 of the Local Government Act Review is currently in progress and addresses three themes, Agile, Smart and Inclusive through nine key topic areas:

- Beneficial enterprises
- Financial management
- Rates, fees and charges
- Administrative efficiencies and local laws
- Council meetings
- Interventions
- Community engagement — IPR
- Complaints management
- Elections

The attachment to this report provides an insight into these topics and any known positions of WALGA, Local Government Professionals Association WA (LGPro) and the City of Belmont's support or other commentary.

LOCATION

Not applicable.

CONSULTATION

DLGSCI have engaged with communities across Western Australia through its website and community forums. The Executive Leadership Team (ELT) and the Organisational Leadership Team (OLT) have provided input to the submission. Elected Members were also engaged at a Special Information Forum held on Tuesday 5 February 2019.

STRATEGIC COMMUNITY PLAN IMPLICATIONS

In accordance with the Strategic Community Plan Key Result Area: Business Excellence Belmont.

Objective: Achieve excellence in the management and operation of the local government.

Strategy: Ensure Council is engaged at a strategic level to enable effective decision making.

Input to this process may have an influence on legislation which can affect the strategic activities of the City.

POLICY IMPLICATIONS

There are no policy implications associated with this report.

Item 5.1 Continued

STATUTORY ENVIRONMENT

The *Local Government Act 1995* provides the framework for Western Australian local government. Local governments are created by the Act which sets out the functions, responsibilities and powers of local government. This review process may have long term impacts of beneficial or other nature for the community, Councils and the administration.

BACKGROUND

In 2017 the McGowan Government announced a review of the *Local Government Act 1995*. This is the first significant reform of local government conducted in more than two decades. The objective is for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community. The vision is for local governments to be agile, smart and inclusive.

The review has been undertaken in two stages.

Stage 1	Stage 2
Making information available online	Increasing participation in local government elections
Meeting public expectations for accountability	Increasing community participation
Meeting public expectations of ethics, standards and performance	Introducing an adaptive regulatory framework
Building capacity through reducing red tape*	Improving financial management
	Building capacity through reducing red tape*
	Other matters raised in phase 1 consultation

**matter to be dealt with in both phases*

These matters address reforms that have the potential to modernise local government, empower and enable local government, meet community expectations for accountability and transparency, and relieve regulatory burden. Local government autonomy in decision-making remains a key feature of Western Australia's local government system.

Stage 1

The City of Belmont Stage 1 Submission was provided to DLGSCI and WALGA early in 2018.

Item 5.1 Continued

Stage 2

The next stage, currently in progress, is intended to result in a new Local Government Act and focuses on delivering for the community based on the themes Agile, Smart and Inclusive. It considers nine key topic areas:

Agile

Agile includes topics, listed below, that focus specifically on how local governments can best use their resources to adapt to changing conditions. It is important that local governments can strike a balance between community expectations, the practical limitations of revenue and expenditure and external pressures.

- Beneficial enterprises
- Financial management
- Rates, fees and charges

Smart

Smart includes topics, listed below, that focus specifically on enabling local governments to better meet the needs and expectations of their communities through being transparent and accountable.

- Administrative efficiencies and local laws
- Council meetings
- Interventions

Inclusive

Inclusive focuses specifically on local governments representing and involving their communities in decision-making. As the tier of government closest to the community, there is an expectation that local governments represent the whole community, recognise diversity within their district and are responsive to community needs.

- Community engagement — IPR
- Complaints management
- Elections

OFFICER COMMENT

The DLGSCI require submissions no later than 31 March 2019. However, WALGA in November 2018 requested submissions by 1 February 2019. This was later revised based upon local government feedback to WALGA that it was not practicable to undertake this task on such short notice and with many Councils in recess during January. WALGA revised its closing date to 22 February 2019.

There is a significant amount of information across a broad range of legislative matters within the submission document ([Attachment 1](#)). In preparation for Councillor Discussions at the Special Information Forum on 5 February 2019 a Draft Submission document that considers Stage 2 and its 9 topics was circulated. A precis was undertaken of the relevant points from each discussion paper and a comparison made with any previous position of the City through the Local Government Reform process and Stage 1 of the Act's review. Also any known position by WALGA or LGPro on the subject matter has also been detailed.

Councillors discussed and provided comment at the Special Information Forum on Tuesday 5 February 2019 with the submission amended accordingly.

Item 5.1 Continued

Following on from these discussions preliminary research was undertaken on the potential drafting of legislation to grant absolute privilege for councillors and employees. It is thought that given that State Parliament has plenary legislative power, subject to the powers exercised by the Federal Parliament under the Constitution, there is no reason why State Parliament could not legislate to grant privileges or immunities to local government councillors and employees. On that basis the City's submission has be altered to request that appropriate legislation be drafted in this regard.

FINANCIAL IMPLICATIONS

There are a range of financial implications that may arise through this review process. Presently none of these are quantifiable.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

SOCIAL IMPLICATIONS

There are currently no social implications associated with this report.

OFFICER RECOMMENDATION

That Council adopt [Attachment 1](#) as its Submission to the Western Australian Local Government Association and the Department of Local Government, Sport and Cultural Industries on Stage 2 of the Local Government Act Review.

Item 5.1 Continued

Note:

The Motion was separated and Parts A, B, C and D were voted on separately.

Cr Davis put forward the following Alternative Councillor Motion.

ALTERNATIVE COUNCILLOR MOTION

DAVIS MOVED, SEKULLA SECONDED,

A. That Council:

Agrees with the Local Government Act 1995 Item 5.28 Electors' Special Meetings

- (1) A special meeting of the electors of a district is to be held on the request of not less than —***
- (a) 100 electors or 5% of the number of electors — whichever is the lesser number, or***
 - (b) 1/3 of the number of Council members.'***

And the City of Belmont does not agree with WALGA's position to amend Section 5.28(1)(a) of the Local Government Act 1995 be amended:

- (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and***
- (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.***

CARRIED 5 VOTES TO 4

*For: Bass, Cayoun Davis, Rossi, Sekulla
Against: Marks, Powell, Ryan, Wolff*

Reason:

Amending section 5.28 of the *Local Government Act 1995* would restrict the residents and rate payers voicing their concerns as a collective group to Council due to the increase in numbers required to request a special meeting.

Item 5.1 Continued

Cr Rossi put forward the following Alternative Councillor Motion.

ALTERNATIVE COUNCILLOR MOTION

ROSSI MOVED, CAYOUN SECONDED,

B. That the Council does not support an amendment to the Local Government Act 1995 enabling the opportunity to establish Beneficial Enterprises.

CARRIED 5 VOTES TO 4

*For: Bass, Cayoun Davis, Rossi, Sekulla
Against: Marks, Powell, Ryan, Wolff*

Reason:

The ability to form arm's length business entities would allow councils to develop and regenerate land is not something that councils should be involved, it has the potential to lead to misuse and entering into joint venture and partnering relationships with the private sector on conventional commercial terms is fraught with dangers.

Cr Rossi put forward the following Alternative Councillor Motion.

ALTERNATIVE COUNCILLOR MOTION

ROSSI MOVED, WOLFF SECONDED,

C. The Council support the need to create a new offence for improper use of position applicable to the Chief Executive Officer and employees.

CARRIED 9 VOTES TO 0

Reason:

This would ensure that Chief Executive Officers and employees do not escape liability for improperly using their position, especially in situations where the conduct of the individual does not fall within the jurisdiction of the Corruption and Crime Commission or the Public Sector Commission.

POWELL MOVED, CAYOUN SECONDED,

D. That Council adopt the remainder of [Attachment 1](#) as its Submission to the Western Australian Local Government Association and the Department of Local Government, Sport and Cultural Industries on Stage 2 of the Local Government Act Review.

CARRIED 9 VOTES TO 0

6. MATTERS FOR WHICH THE MEETING MAY BE CLOSED

Nil.

7. CLOSURE

There being no further business, the Presiding Member thanked everyone for their attendance and closed the meeting at 7.09pm.

MINUTES CONFIRMATION CERTIFICATION

The undersigned certifies that these minutes of the Special Council Meeting held 19 February 2019 were confirmed as a true and accurate record at the Ordinary Council Meeting held 26 March 2019:

Signed by the Person Presiding: _____



PRINT name of the Person Presiding: _____

PHILIP MARKS

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