

# minutes

## Ocean Reef Marina Committee

MEETING HELD ON **WEDNESDAY, 5 DECEMBER 2012**

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## CITY OF JOONDALUP

### MINUTES OF THE OCEAN REEF MARINA COMMITTEE MEETING HELD IN CONFERENCE ROOM 1, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON WEDNESDAY, 5 DECEMBER 2012.

#### ATTENDANCE

##### Committee Members:

Mayor Troy Pickard      *Presiding Member*  
Cr Geoff Amphlett, JP  
Cr Russ Fishwick, JP      *Deputy Presiding Member*  
Cr Christine Hamilton-Prime  
Cr Kerry Hollywood  
Cr Philippa Taylor  
Cr Sam Thomas

##### Observers:

Cr Tom McLean, JP  
Cr Liam Gobbert

##### Officers:

Mr Garry Hunt	Chief Executive Officer
Mr Blignault Olivier	Manager City Projects
Mr Brad Sillence	Manager Governance
Mr John Byrne	Governance Coordinator
Mr Scott Collins	Senior Projects Officer
Mrs Lesley Taylor	Governance Officer

##### In Attendance:

Mr Bill Burrell	Taylor Burrell Barnett
Ms Karen Hyde	Taylor Burrell Barnett

#### DECLARATION OF OPENING

The Presiding Member declared the meeting open at 7.37am.

#### APOLOGIES/LEAVE OF ABSENCE

Apology

Cr John Chester

**CONFIRMATION OF MINUTES****MINUTES OF THE OCEAN REEF MARINA COMMITTEE MEETING HELD ON 29 NOVEMBER 2011**

**MOVED Cr Fishwick, SECONDED Cr Amphlett that the minutes of the meeting of the Ocean Reef Marina Committee held on 29 November 2011 be confirmed as a true and correct record.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs Amphlett, Fishwick, Hamilton-Prime, Hollywood, Taylor and Thomas.

**ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION**

Nil.

**DECLARATIONS OF INTEREST****Disclosure of Financial Interest/Proximity Interest**

Nil.

**Disclosure of interest affecting impartiality**

Elected Members (in accordance with Regulation 11 of the *Local Government [Rules of Conduct] Regulations 2007*) and employees (in accordance with the Code of Conduct) are required to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making process. The Elected Member/employee is also encouraged to disclose the nature of the interest.

<b>Name/Position</b>	<b>Mayor Troy Pickard.</b>
<b>Item No/Subject</b>	Item 1 – Ocean Reef Marina – Project Status Report.
<b>Nature of interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mayor Pickard is a patron of Whitford Volunteer Sea Rescue Group.

<b>Name/Position</b>	<b>Cr Sam Thomas.</b>
<b>Item No/Subject</b>	Item 1 – Ocean Reef Marina – Project Status Report.
<b>Nature of interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Cr Thomas is a member of Whitford Volunteer Sea Rescue Group.

<b>Name/Position</b>	<b>Mayor Troy Pickard.</b>
<b>Item No/Subject</b>	Item 2 – Ocean Reef Marina – Environmental and Planning Approvals Strategy.
<b>Nature of interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mayor Pickard is a patron of Whitford Volunteer Sea Rescue Group.

<b>Name/Position</b>	<b>Cr Sam Thomas.</b>
<b>Item No/Subject</b>	Item 2 – Ocean Reef Marina – Environmental and Planning Approvals Strategy.
<b>Nature of interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Cr Thomas is a member of Whitford Volunteer Sea Rescue Group.

#### **IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY SIT BEHIND CLOSED DOORS**

In accordance with Clause 76 of the City's *Standing Orders Local Law 2005*, this meeting was not open to the public.

#### **PETITIONS AND DEPUTATIONS**

Nil.

**REPORTS****ITEM 1 OCEAN REEF MARINA - PROJECT STATUS REPORT**

**WARD:** North-Central

**RESPONSIBLE DIRECTOR:** Mr Garry Hunt  
Office Chief Executive Officer

**FILE NUMBER:** 04171, 101515, 07303

**ATTACHMENTS:** Nil.

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**PURPOSE**

For the Ocean Reef Marina Committee to be informed on the activities and tasks undertaken on the Ocean Reef Marina project in reaction to Council decisions of 11 October 2011.

**EXECUTIVE SUMMARY**Glossary of Terms

DoP	Department of Planning.
WAPC	Western Australian Planning Commission.
EPA	Environmental Protection Authority.
OEPA	Office of the Environmental Protection Authority.
DEC	Department of Environment and Conservation.
EP Act	<i>Environmental Protection Act 1986 (State).</i>
EPBC	<i>Environmental Protection and Biodiversity Conservation Act 1999 (Commonwealth).</i>
DSEWPC	Department of Sustainability, Environment, Water, Population and Communities (Commonwealth).
MRS	Metropolitan Region Scheme.
DPS2	<i>District Planning Scheme No. 2.</i>
MOU	The Ocean Reef Marina Memorandum of Understanding between the City and State Government (formally signed February 2012).

At its meeting held on 11 October 2011(C52-10/11 refers), as recommended by the Ocean Reef Marina Committee, Council resolved inter alia, that it:

- “3 *AUTHORISES the preparation of a Business Case and Structure Plan for the Ocean Reef Marina based on Concept Plan 7.2, which will proceed in accordance with a revised Project Plan timetable and the new Environmental and Planning Approval Strategy;*
- 4 *ENDORSES obtaining strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission;*

- 5 *NOTES the actions to be taken pursuant to the obtaining of strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission.”*

The principal activities undertaken since October 2011 pursuant to the above decisions include:

- Engagement of environmental consultant Strategen to assist with progressing the Environmental and Planning Approvals Strategy.
- Completion of a Gap Analysis to identify issues requiring attention prior to the submission of documentation for a Section 16 environmental assessment submission.
- Extensive meetings and negotiations with the following state government agencies to determine the requirements for the approvals process:
  - Office of the Environmental Protection Authority (OEPA);
  - Department of Planning;
  - Western Australian Planning Commission (WAPC);
  - Department of Environment and Conservation.
- Numerous meetings and negotiations with the following State Government agencies on Bush Forever and Marmion Marine Park issues:
  - Marine Parks and Reserves Authority;
  - Department of Fisheries;
  - Department of Environment and Conservation;
  - Department of Transport;
  - Water Corporation.
- Presentation of the Ocean Reef Marina project to the Marine Parks and Reserves Authority (MPRA) and receipt of feedback from the Authority.
- State Cabinet endorsement, finalisation and signing of the Memorandum of Understanding (MOU) between the State Government and City for the Ocean Reef Marina development (14 February 2012).
- Engagement with the Department of the Premier and Cabinet on progressing the project pursuant to the MOU.
- Identification of the project as a level 1 lead agency project and the nomination of the Department of Planning as the lead agency.
- Presentation of the Ocean Reef Marina project to LandCorp.
- Preparation of updated artist impressions based on Concept Plan 7.2.
- Preparation of 3D virtual fly through model commenced.

It should be noted that the work undertaken in accordance with the Environmental and Planning Approvals Strategy forms part of the development of a Structure Plan and Business Case and is relevant and transferable to all approval processes.

*It is recommended that the Ocean Reef Marina Committee NOTES the Ocean Reef Marina Project Status Report.*

## **BACKGROUND**

### Concept Plan 7.2

Concept Plan 7.2 was prepared in response to Council's consideration of the amendments made to Concept Plan 7 and the resultant financial feasibility of the amended plan (Concept Plan 7.1). Concept Plan 7.2 addressed Council's decisions of 14 December 2010 which sought to ensure an equitable balance between public equity and commerciality within the Ocean Reef Marina development (C71-12/10 refers).

Concept Plan 7.2 generates a significantly improved financial outcome to that of Concept Plan 7. The primary drivers of this improvement are:

- A reduction in the size of the marina water body;
- Provision of single residential lots;
- Increase in the proportion of freehold lots;
- Utilisation of the central pier for short stay accommodation and mixed use retail while maintaining public access;
- Reduction in the height of revetments and circular road;
- The artificial surf reef, ocean pool, second internal marina beach and super yacht berths have been earmarked as amenities for future development.

### Environmental and Planning Approvals Strategy

In August 2011, the City commissioned consultants Taylor Burrell Barnett (TBB) in collaboration with environmental consultants Strategen to formulate an environmental and planning approvals strategy for the Ocean Reef Marina project.

The methodology applied was consultative and TBB recommended that the principal stakeholders come together in a workshop environment to discuss the development objectives and the issues that would influence the formulation of a preferred environmental and planning approvals strategy.

The workshop was held on Friday, 9 September 2011 and was attended by representatives from:

- Department of Planning;
- Department of Environment and Conservation;
- Office of the Environmental Protection Authority;
- Taylor Burrell Barnett;
- Strategen;
- MP Rogers & Associates;
- City of Joondalup.



The Environmental and Planning Approvals Strategy is critically important in maintaining the integrity of the concept plan and informing the preparation of a Structure Plan for the development. Given the complexity of scale of the development, the Ocean Reef Marina development does not fit comfortably into any planning policy framework and will therefore require consideration by the State and Federal Governments as a project in total.

The recommended approvals strategy was formulated with inputs from the City, relevant government agencies and the project team and was presented to Council at its meeting held on 11 October 2011 (C52-10/11 refers). At that meeting Council resolved inter alia, that it:

- “2 *ENDORSES the Ocean Reef Marina Development – Concept Plan 7.2 Report;*
- 3 *AUTHORISES the preparation of a Business Case and Structure Plan for the Ocean Reef Marina based on Concept Plan 7.2, which will proceed in accordance with a revised Project Plan timetable and the new Environmental and Planning Approval Strategy;*
- 4 *ENDORSES obtaining strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission;*
- 5 *NOTES the actions to be taken pursuant to the obtaining of strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission:*
  - 5.1 *Undertake a gap analysis of available environmental information to identify further work required to support the provision of definitive Section 16 strategic advice from the Environmental Protection Authority;*
  - 5.2 *Prepare a scope of work for the preparation of documentation to support provision of Section 16 strategic advice by the Environmental Protection Authority;*
  - 5.3 *Undertake discussions with the Environmental Protection Authority to reach agreement on the scope and timing of the Section 16 process;*
  - 5.4 *Continue discussions and negotiations with relevant State Government agencies with respect to the resolution of issues associated with the Bush Forever site and Marmion Marine Park;*
  - 5.5 *Continue a dialogue with Commonwealth Department of Sustainability, Environment, Water, Population and Communities with a view to engaging their involvement at a strategic level to confirm requirement in relation to the Environmental Protection and Biodiversity Act 1999.”*

#### Memorandum of Understanding

At its meeting held on 14 December 2010 (C71-12/10 refers), Council authorised the Chief Executive Officer, in conjunction with the Mayor, to initiate negotiations with the State Government to develop a Memorandum of Understanding (MOU) for the Ocean Reef Marina Development.

Premier Colin Barnett expressed his support for an MOU between the City and the State Government for the Ocean Reef Marina at a briefing meeting held in March 2011. Following this briefing a draft MOU was prepared in consultation with the Office of the Premier.

Council considered the draft document at meetings held on:

- 16 August 2011 (CJ151-08/11 refers);
- 3 November 2011 (JSC3-11/11 refers).

The signing of the MOU was a significant milestone for the project as it is considered of vital importance that the project is officially recognised by the State Government.

## **DETAILS**

### Environmental and Planning Approvals Strategy

At the workshop held on 9 September 2011 (attended by representatives from State Government departments and agencies) it was recommended that the Environmental Protection Authority be approached with a request to provide strategic advice on the development pursuant to Section 16 of the *Environmental Protection Act 1986* (EP Act). It was agreed that this process would enable the City to receive upfront advice on the likely environmental acceptability of the project and the management of the key environmental issues.

The advice received would enable the City to determine the next formal process required for gaining environmental and planning approval; for example – proceeding to a Section 38 (EP Act) Environmental Assessment and/or proceeding straight to an amendment to the Metropolitan Region Scheme (MRS) and environmental assessment under Section 48A of the EP Act.

### *Gap Analysis*

In accordance with the actions to be taken as noted by Council at its meeting held on 11 October 2011, Taylor Burrell Barnett (in collaboration with sub-consultants Strategen) were engaged to undertake a Gap Analysis to identify further investigations required to support a Section 16 submission.

The gap analysis was undertaken on all available environmental studies and the results and recommendations related only to the City's intended submission to the Environmental Protection Authority for strategic advice on the project. The gap analysis identified that the studies undertaken to date by the City were sufficient for the Section 16 process with the following exceptions:

- Discussions with the Department of Planning Bush Forever Group should be undertaken to address issues with Bush Forever offsets;
- Natural values of marine habitat and biota in the vicinity of the marina and its significance within the context of the Marmion Marine Park should be investigated.

### *Bush Forever*

Discussions with the Department of Planning have occurred regarding the off-set requirements for the area of Bush Forever land affected by the Ocean Reef Marina development.

Preliminary indications suggest that for every 1ha of “Bush Forever” land affected by the development, 1.5ha of “like for like” land will be required. The City has identified approximately 1.25ha of City owned land that could be utilised for offsets. During offset negotiations the shared ownership between the City (46.76%), the Crown (46.97%) and the Water Corporation (6.29%) should be considered.

Through liaison with the Department of Planning, other potential actions that may be initiated to satisfy the off-set requirements have been identified. These include the rehabilitation of degraded sections of current Bush Forever areas on both City owned and Crown land. Areas that have been identified as potential rehabilitation sites include:

- the degraded sections of the Ocean Reef Marina site;
- portions of the Yellagonga Reserve;
- Lake Joondalup Foreshore;
- Pinnaroo Point Coastal Foreshore;
- Central Node Foreshore;
- Bush Forever area north of Burns Beach;
- Areas in the vicinity of Lake Goollelal.

### *Carnaby's Black Cockatoo and Graceful Sun Moth*

The development is likely to impact on an area of feeding habitat (within Bush Forever) for the Carnaby's Black Cockatoo which is an endangered species under both State and Commonwealth legislation. While the area of impact is relatively small, it is likely to require the provision of appropriate offsets.

The Bush Forever area also contains a population of the Graceful Sun Moth which is currently listed as an endangered species under Commonwealth legislation. While the design retains the majority of habitat area for the species, residual impacts will occur.

It should be noted that the Graceful Sun Moth has recently been removed from the State threatened species list and it is possible that the species will be removed from the Commonwealth list.

The City, together with consultants Strategen, are continuing investigations into potential offset sites and other actions that may be initiated to satisfy the off-set requirements of Bush Forever and legislative requirements relative to the Graceful Sun Moth.

### *Marmion Marine Park*

The Marmion Marine Park was identified as an environmental approval issue early in the project and was included in the risk management assessment undertaken in 2009. Advice received at that time indicated that the proposed marina development could be seen as a ‘compatible use’ within the marine park particularly as it would be an expansion to the existing boat launching facility and other uses that are currently within the park.

The project team considered it necessary to develop a concept plan (and resultant financial feasibility) for the development prior to addressing the issue of the marine park with the relevant approval authorities. Therefore the Marmion Marine Park was identified as an issue to be addressed via the Environmental and Planning Approvals Strategy.

Advice received from consultants Strategen indicates that the Ocean Reef Marina development will require an additional 30ha of marine park area (beyond existing extent). The current total area of the Marmion Marine Park is approximately 9,495ha meaning that the development will take up an additional 0.3% of the park.

Of particular significance in this particular area of the marine park is the abalone habitat. The existing length of the coastline within the proposed development area is approximately 1,400 metres. However the length of the potential habitat created by the breakwater will be approximately 2,800 metres – effectively doubling the potential for abalone (on an artificial surface).

The City, together with consultants Taylor Burrell Barnett and Strategen, briefed the Marine Parks and Reserves Authority on the project at the Authority's monthly meeting held on 16 August 2012.

In response to the briefing, the Authority noted the information provided including the location, size and potential impact within the marine park and that the proposed development is significantly larger than the existing marina facility.

To enable the Authority to make an assessment of the proposal or to provide detailed comment significantly more information detailing the nature of the development, the drivers behind the proposal and the likely impact upon the marine park (values) is required. This information forms part of the documentation required for a formal assessment process at which time the Authority will provide formal comment.

### *Section 16 Strategic Advice*

At the Environmental and Planning Approval Strategy Workshop held on 9 September 2011, representatives from the OEPA and the Department of Environment and Conservation advised that a Section 16 (*EP Act*) environmental assessment process was the preferred 'first step' in obtaining environmental and planning approval for the development. This advice was also supported by the Department of Planning.

A Section 16 environmental assessment process was initially seen as a method for gaining upfront advice on the key environmental and approval risks of the project against the identified environmental constraints ahead of a formal submission via Section 38 and/or 48A (*EP Act*) environmental assessment. The Section 16 environmental assessment process precedes the MRS planning process leaving the issue of realignment of the Marmion Marine Park boundary to be considered only in the context of the environmental issues.

Discussions with OEPA have indicated that this agency would prefer to proceed directly to a formal Section 38 and/or Section 48A environmental assessment if it is known that the issues (such as Marmion Marine Park) can be adequately addressed.

Through discussions with the various agencies, including the Department of Planning and the Western Australian Planning Commission it has become more apparent that a Section 38 and/or 48A environmental assessment process may be more appropriate because the adjustment to the marine park boundary (if required) to accommodate the development should occur as part of the overall MRS Amendment process. This ensures that the merits of the project, adjustments, offsets, sustainability and access issues are considered holistically. Impact upon and adjustment to the marine park should be considered in light of the overall project rather than in isolation as a single issue. As a major amendment to the MRS, the project would go before both houses of Parliament and the project benefits and disbenefits weighed against each other.

Detailed information regarding the identified approval options and the merits and motivations for each process is provided in a separate report.

It should be noted that the work undertaken thus far for the Environmental and Planning Approvals Strategy, pursuant to Council's decisions of October 2011, is transferrable to a formal Section 38 and/or Section 48A environmental assessment.

#### Memorandum of Understanding

At its meeting held on 13 February 2012 (JSC01-02/12 refers), Council endorsed the amended MOU for signature by the Mayor and Chief Executive Officer under Common Seal.

The MOU was signed on behalf of the State Government by the Hon. Troy Buswell MLA (Minister for Transport) and Hon. John Day MLA (Minister for Planning). In the presence of Premier Colin Barnett, the MOU was signed and sealed by the City at a ceremony held on 14 February 2012.

The MOU between the State Government and the City articulates the shared commitment of the parties to:

- 1 Acknowledge the substantial community support for the development of the Ocean Reef Marina.
- 2 Recognise and accept the iterative approach undertaken by the City for the development of a Concept Plan for the Ocean Reef Marina.
- 3 Acknowledge that as land owners of the site, together with the Water Corporation, they have a vested interest in a collaborative approach to developing the site in accordance with community expectations and their previously stated objectives for the site.
- 4 Acknowledge that the City cannot deliver a project of this size and complexity independently and that liaison with designated State Government agencies will be necessary to determine the optimum arrangements for achieving the approval of a Structure Plan.
- 5 Recognise that supplementary agreements with designated State Government agencies will be required as the Project progresses.
- 6 Recognise the necessity for observing due process and having proper regard for the environmental, planning and other regulatory functions of State Government agencies.

- 7 Acknowledge the substantial financial investment in the project made by the City to date and acknowledge that some level of State Government financial support will need to be given.

The signing of the MOU was a significant milestone for the project as it is considered of vital importance that the project is officially recognised by the State Government.

The MOU has also raised the awareness of the ORM project within State Government departments and provided the impetus for the identification of the ORM as a priority project.

Through the State Government Lead Agency Framework, and in support of the MOU, the project has been identified as a Level 1 lead agency project. Through the framework, the lead agency provides support and assistance to project proponents and project officers are assigned from within the lead agency to provide advice and coordinate approvals across government agencies, as may be required. A Level 1 proposal is considered to be of such a scale that it can be accommodated through existing environmental, social and economic assessment processes. The lead agency may provide advice and support including introduction to the relevant agencies, negotiating with applicants and the referral to the relevant agencies where issues arise.

The Department of Planning has been nominated as lead agency for the Ocean Reef Marina project and preliminary discussions have been held with the department in relation to the prerequisites for the initiation of the approvals process. Proponents may be requested to provide updates to the lead agency as required.

Level 2 and 3 proposals are viewed as more complex of nature, resulting in a more intensive and potentially time consuming approvals process.

## **OTHER ACTIVITIES**

- 1 Following Council's authorisation of the preparation of a Business Case and Structure Plan for the Ocean Reef Marina based on Concept Plan 7.2, updated artist impressions were prepared that illustrate:
  - Overall view;
  - Boardwalk view;
  - Public open space view.

These illustrations have been made available to the public via the City's internet site.

- 2 The preparation of a 3D virtual fly through model of Concept Plan 7.2 has commenced. The model enables any potential impact on the view corridor within the vicinity of development site to be determined. This model can be refined and modified as the project progresses and reaches major milestones.
- 3 Minor amendments were made to Concept Plan 7.2 including the notation on the plan of amenities that could be included in future development stages (ocean pool, artificial reef and super yacht berths).

- 4 A meeting of the Ocean Reef Marina Government Steering Committee was held on 14 May 2012 where members of the Committee were briefed on the status of the project. The meeting also provided the opportunity for Committee members to provide comment and opinion on the Environmental and Planning Approvals Strategy and the issues to be addressed.

**Issues and options considered:**

Consideration of the advice received from the OEPA, Departments of Planning and Environment and Conservation, the Western Australian Planning Commission together with the feedback received from the MPRA will enable recommendations on the optimum environmental and planning approvals process to be considered by the Ocean Reef Marina Committee and ultimately Council.

These recommendations, together with detailed information on the options available, are provided in a separate report.

The activities outlined in this report, undertaken as part of the endorsed Environmental and Planning Approvals Strategy, contribute to the development of a Structure Plan and Business Case and are relevant and transferable to all approval processes.

**Legislation/Strategic Community Plan/Policy Implications:**

**Legislation** The City is governed by the requirements of the *Local Government Act 1995* in relation to dealings involving commercial undertakings and land development.

Other applicable legislation includes:

- *Planning and Development Act 2005;*
- *Environmental Protection Act 1986;*
- *Environmental Protection, Biodiversity and Conservation Act 1999.*

**Strategic Community Plan**

**Key Theme:** Economic Prosperity, Vibrancy and Growth.

**Objective:** Destination City.

**Strategic initiatives:** Facilitate the establishment of major tourism infrastructure.

Encourage diverse accommodation options.

**Policy:**

Recognition that the project will conform to the City's governance framework and is aligned with the Project Philosophy and Parameters Report as endorsed by Council (JSC5-05/09 refers).

**Risk Management Considerations:**

The comprehensive Risk Assessment Report prepared in 2009 identified the issues currently being addressed through the Environmental and Planning Approvals Strategy. The report will be updated to include potential risks and mitigation strategies identified during the current process.

**Financial/Budget Implications:**

<b>Account No:</b>	C1001
<b>Budget Item:</b>	Ocean Reef Marina
<b>Budget Amount:</b>	\$ 1,386,603
<b>Amount Spent To Date:</b>	\$ 59,962
<b>Proposed Cost:</b>	\$ N/A
<b>Balance:</b>	\$ 1,355,904

The 2012/2013 Budget allocation includes estimations for studies and tasks to inform the structure plan and business case as identified by the City's Project Team (including external consultants).

**Regional Significance:**

The development of the Ocean Reef Marina will become a significant tourist/visitor destination and a key focal point within the northern Perth corridor.

**Sustainability Implications:**

Progression of the structure planning process will facilitate a number of studies/reports that address key issues pertaining to sustainability such as economic feasibility and environmental sustainability. The undertaking of these studies is aligned with the Project Philosophy and Parameters Report as endorsed by Council (JSC5-05/09 refers).

**Consultation:**

Consultation was undertaken with the City's consultants and State and Federal Government departments and agencies.

**COMMENT**

Not Applicable.

**VOTING REQUIREMENTS**

Simple Majority.



**OFFICER'S RECOMMENDATION:**

That the Ocean Reef Marina Committee NOTES the Ocean Reef Marina Project Status Report.

**MOVED Cr Hamilton-Prime, SECONDED Cr Hollywood that the:**

- 1 Ocean Reef Marina Committee NOTES the Ocean Reef Marina Project Status Report;**
- 2 Ocean Reef Marina Project Status Report be uploaded to the City's public website at the conclusion of this meeting.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs Amphlett, Fishwick, Hamilton-Prime, Hollywood, Taylor and Thomas.

## ITEM 2 OCEAN REEF MARINA - ENVIRONMENTAL AND PLANNING APPROVALS STRATEGY

<b>WARD:</b>	North-Central
<b>RESPONSIBLE DIRECTOR:</b>	Mr Garry Hunt Office of the Chief Executive Officer
<b>FILE NUMBER:</b>	04171, 101515
<b>ATTACHMENTS:</b>	Attachment 1      The Integrated Approvals Strategy vs the Endorsed Strategy

### PURPOSE

For Council to be informed of the outcomes of the negotiations with State Government departments/agencies in relation to obtaining environmental and planning approval for the development. Options for progressing an Environmental and Planning Approval Strategy are also presented for consideration.

### EXECUTIVE SUMMARY

#### Glossary of Terms

DoP	Department of Planning
WAPC	Western Australian Planning Commission
EPA	Environmental Protection Authority
OEPA	Office of the Environmental Protection Authority
DEC	Department of Environment and Conservation
EP Act	<i>Environmental Protection Act 1986 (State)</i>
EPBC	<i>Environmental Protection and Biodiversity Conservation Act 1999 (Commonwealth)</i>
DSEWPC	Department of Sustainability, Environment, Water, Population and Communities (Commonwealth)
MRS	Metropolitan Region Scheme
DPS2	<i>District Planning Scheme No. 2</i>
MOU	The Ocean Reef Marina Memorandum of Understanding between the City and State Government (formally signed February 2012)

At its meeting held on 10 October 2011 (C52-10/11 refers) Council resolved inter alia, that it:

- “4      *ENDORSES obtaining strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission;*
- 5      *NOTES the actions to be taken pursuant to the obtaining of strategic advice from the Environmental Protection Authority via a Section 16 (Environmental Protection Act 1986) submission:*

- 5.1 *Undertake a gap analysis of available environmental information to identify further work required to support the provision of definitive Section 16 strategic advice from the Environmental Protection Authority;*
- 5.2 *Prepare a scope of work for the preparation of documentation to support provision of Section 16 strategic advice by the Environmental Protection Authority;*
- 5.3 *Undertake discussions with the Environmental Protection Authority to reach agreement on the scope and timing of the Section 16 process;*
- 5.4 *Continue discussions and negotiations with relevant State Government agencies with respect to the resolution of issues associated with the Bush Forever site and Marmion Marine Park;*
- 5.5 *Continue a dialogue with Commonwealth Department of Sustainability, Environment, Water, Population and Communities with a view to engaging their involvement at a strategic level to confirm requirement in relation to the Environmental Protection and Biodiversity Act 1999.”*

Developed in consultation with the City's project team and state government departments/agencies, Phase 1 of the Environmental and Planning Approvals strategy was to seek advice from the Environmental Protection Authority (EPA) via a Section 16 *Environmental Protection Act 1986* (EP Act) submission.

A Section 16 process was initially seen as a the most appropriate method for gaining upfront advice on the key environmental and approval risks of the project against the identified environmental constraints ahead of a formal submission via Section 38 or 48A of the EP Act. The Section 16 process precedes the Metropolitan Region Scheme (MRS) planning process leaving the issue of realignment of the Marmion Marine Park boundary to be considered only in the context of the environmental issues.

Discussions with the Office of the Environmental Protection Authority (OEPA) have indicated that this agency would prefer to proceed directly to a Section 38 and/or Section 48A formal assessment if it is known that the issues (such as Marmion Marine Park) can be adequately addressed.

Through discussions with the various agencies, including the Department of Planning (DoP) and the OPEA it has become more apparent that a Section 38 or 48A process may be more appropriate because the adjustment to the marine park boundary to accommodate the development should occur as part of the overall MRS Amendment process. This ensures that the merits of the project, adjustments, offsets, sustainability and access issues are considered holistically. Impact upon and adjustment to the marine park should be considered in light of the overall project rather than in isolation as a single issue. As a major amendment to the MRS, the project would go before both houses of Parliament and the project benefits and disbenefits weighed against each other.

The Ocean Reef Marina Development requires environmental approvals from both the State, pursuant to the *Environmental Protection Act 1986* (EP Act) and the Commonwealth, under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

*It is recommended that Council:*

- 1 *ENDORSES an integrated Environmental and Planning Approvals Strategy for the Ocean Reef Marina development and the preparation of a request for a major MRS Amendment and corresponding Section 48A Environmental Protection Act 1986 assessment;*
- 2 *NOTES the following actions to be undertaken to progress Part 1 above:*
  - 2.1 *Confirmation of the validity of previous technical advice and update as required. This information will inform the MRS Amendment request report, the project feasibility study and the local structure plan preparation;*
  - 2.2 *Undertake detailed discussions with the Department of Planning and the Office of the Environmental Protection Authority on the format, scope and content of the documentation required for an MRS Amendment and correspondent Section 48A Environmental Protection Act 1986 assessment;*
  - 2.3 *Undertake pre-referral liaison with state and commonwealth agencies relating to the Marmion Marine Park, Bush Forever, Carnaby's Cockatoo and Graceful Sun Moth;*
  - 2.4 *Development of a Local Structure Plan to support the MRS Amendment and potential City of Joondalup District Planning Scheme No. 2 Amendment.*

## **BACKGROUND**

In September 2011 an Environmental and Planning Approvals workshop was convened between the City and representatives of relevant state government departments/agencies. The purpose of the workshop was to interrogate the information gathered to date and formulate a preferred strategy for achieving environmental and planning approval for the Ocean Reef Marina development.

The workshop was attended by representatives from:

- Department of Environment and Conversation (DEC);
- Office of the Environmental Protection Authority (OEPA);
- Department of Planning (DoP);
- Taylor Burrell Barnett (TBB) – town planning consultants;
- Straten – environmental consultants;
- M P Rogers & Associates – marine engineering consultants;
- City of Joondalup.

Based on an assessment of the available background material, the following key environmental issues and key risks informed the preparation of the strategy:

- Planning issues:
  - Concept Plan;
  - Proponency;
  - Policy Framework;
  - Land Assembly.
- Environmental issues:
  - Bush Forever;
  - Carnaby's Black Cockatoo;
  - Graceful Sun Moth;
  - Marmion Marine Park and marine impacts;
  - Coastal Processes and marina water quality.

In formulating the Environmental and Planning Approvals Strategy the following approval processes were considered and interrogated:

<b>Section 16 EP Act</b>	<b>Section 38 EP Act</b>	<b>Section 48A EP Act</b>
Environmental Protection Authority (EPA) provides strategic advice to the Minister (and the public) on environmental aspects of proposals in a non-statutory framework with statutory assessment to follow.	Once Section 16 in place, EPA conducts an environmental assessment of the full proposal with Metropolitan Region Scheme (MRS) to follow.	Proposal assessed through the MRS rezoning process pursuant to Section 48A of the EP Act. Process also enables the Marine Park boundary to be considered in full context.

The recommended approach, arising from the workshop held in September 2011, was that the strategy be undertaken in two phases:

#### Phase 1 – Section 16

Phase 1 recommended that the City approach the EPA to request strategic advice via a Section 16 submission. Through this submission the City would obtain up-front advice on the likely environmental acceptability of the project and the management of the key environmental issues.

This process was seen as particularly advantageous in clarifying project risks and providing certainty to the City and potential development partners on project design and future environmental and planning approvals processes.

It was also felt that the advice obtained via a Section 16 submission would be valuable in identifying outcomes on key issues involving Bush Forever and the Marmion Marine Park.

To support a request to the EPA to provide Section 16 advice, the consulting team recommended the following actions:

- Undertake a gap analysis of available environmental information to identify further work required to support the provision of definitive Section 16 strategic advice from the EPA;
- Prepare a scope of work for the preparation of documentation to support provision of Section 16 strategic advice by the EPA;
- Undertake discussions with the OEPA to reach agreement on the scope and timing of the Section 16 process;
- Continue discussions and negotiations with relevant State government agencies with respect to the resolution of issues associated with:
  - Bush Forever;
  - Marmion Marine Park;
  - Carnaby's Cockatoo;
  - Graceful Sun Moth.

The outcome of discussions regarding the above issues is contained within the report to the Committee titled *Ocean Reef Marina – Project Status Report* (Item 2 refers).

- Continue a dialogue with the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) with a view to engaging their involvement at a strategic level to confirm requirements in relation to the EPBC Act.

#### Phage 2 – Ongoing Approvals

Depending on the outcome/recommendations of the Section 16 processes, it was determined that the next formal processes required to gain environmental and planning approval would involve either:

- Proceeding to a Section 38 Environmental Approval; and/or
- Proceeding straight to an amendment to the MRS and assessment Section 48A of the EP Act.

At its meeting held on 10 October 2011, the Ocean Reef Marina Committee *inter alia* recommended that Council endorse the obtaining of strategic advice from the Environmental Protection Authority via a Section 16 (*Environmental Protection Act 1986*) submission.

The recommendation was subsequently endorsed by Council at its meeting held on 11 October 2011 (C52-10/11 refers).

## DETAILS

In response to Council endorsement to obtain strategic advice from the EPA via a Section 16 submission, consultants TBB and Strategen were engaged to undertake the activities as outlined in the Environmental and Planning Approvals Strategy.

Of significant importance to the strategy was the signing of the Memorandum of Understanding (MOU) in February 2012. The parameters of the MOU enabled the State Government to identify those departments/agencies with a vested interest in the project and further enabled the identification of the project as a level 1 lead agency project. As nominated lead agency for the project, the DoP is charged with providing advice and coordinating approvals across government agencies.

Details of the activities undertaken pursuant to the Environmental and Planning Approvals Strategy are outlined in the report to the Committee titled *Ocean Reef Marina – Project Status Report* (Item 1 refers).

The above activities included extensive negotiations with the OEPA and DoP on the merits of proceeding with the Section 16 submission under the EP Act.

During these negotiations it became apparent that the issues of concern with the Ocean Reef Marina development are not isolated environmental issues but rather extend across both planning and environmental considerations.

Given the level of complexity involved, it has been identified that moving straight to a Section 38 or 48A assessment approach under the EP Act could provide a more timely and certain outcome for the City over a Section 16 assessment. Not only would this reduce the overall assessment timeframe, these assessment approaches would also allow for the concurrent consideration of planning and environmental issues.

Should the City decide to continue with a Section 16 assessment process, then proceed to a standard Section 38 process, a separate MRS amendment would still be required. Advice received indicates this process could take approximately four to five years.

The two potential assessment options are clarified as follows:

- A Section 38 assessment is a standard assessment of the full proposal in relation to Section 38 of the EP Act. With a clear procedural process, a Section 38 assessment provides certainty in terms of outcome approved. The MRS process can be run concurrently with the environmental assessment (to a point), followed by a Reserves Bill to amend the marine park boundaries.
- Alternatively, a Section 48A assessment allows for the project to be assessed through the MRS rezoning process in relation to Section 48A of the EP Act. This allows for concurrent consideration of the planning and environmental aspects through one assessment process and is again then followed by a Reserves Bill to amend the marine park boundaries.

Under this strategy it would be possible to run the required amendments to the Marmion Marine Park Boundary, which triggers legislative changes under the Reserves Bill, in parallel with the Parliamentary process required for the major MRS Amendment. This has the benefit that the marine park boundary changes would be considered in the context of the social and economic amenity outcomes of the project.

It is now considered that a Section 48A environmental assessment under the MRS rezoning would be the most appropriate process for the Ocean Reef Marina development. As described above, the strategy will also enable the MOU to be tested and will harness the facilitation powers of the DoP as lead agency to streamline the approval process.

The proposed strategy has been discussed with OEPA and DoP who have given their in-principle support for the integrated process.

It would also be possible and prudent to advance any required related amendments to the City's *District Planning Scheme No. 2* (DPS2) and update the relevant references in the City's Local Planning Strategy in parallel with the MRS Amendment.

#### Risks and Benefits of the integrated strategy

##### *Benefits:*

- **Timeline:** A comparison of the integrated strategy against the endorsed Environmental and Planning Approvals Strategy indicates that the process could potentially be completed in a significantly shorter time frame (Attachment 1 refers).
- **Costs:** The data and analysis used for the Section 48A process would utilise the existing environmental and planning work carried out to date under the preliminary Section 16 process.

However additional work will be required to prepare the necessary detailed environmental impact assessment documentation. The overall project budget has provisioned for this expenditure.

- **Control:** Strong alignment with planning decision making process, links to public equity, community vision and local planning.
- **Flexibility:** The integrated strategy generally allows for less detail to be provided up front in terms of design and also allows for multiple proponentcy.

##### *Risks*

- A Section 48A process may result in conditions being attached to the Western Australian Planning Commission (WAPC) rather than the proponent. However mechanisms may exist through which the implications of this on the WAPC could be minimised.
- The process does not allow for concurrent approval/assessment through the Commonwealth EPCB Act relating to Carnaby's Cockatoo and Graceful Sun Moth.



- The level of assessment is high and therefore requires additional costs with preparation of the environmental review documentation up front as outlined above.

### Recommended Next Steps

Through an assessment of advice received from the City's consultants and the relevant state government departments/agencies, the optimum Environmental and Planning Approvals Strategy is the preparation of a request for a Major MRS Amendment for the Ocean Reef Marina project with a corresponding Section 48A EP Act environmental appraisal. The process would be supported by documentation in the form of a final Concept Plan and Structure Plan.

The suggested preparatory steps for the recommended process are:

- Confirmation of the validity of previous technical advice and update as required. This information will inform the MRS Amendment request report, the project feasibility study and the local structure plan preparation.
- Detailed discussions to be held with DoP and the OEPA on the format, scope and content of the required documentation.
- Pre-referral liaison with state and commonwealth agencies relating to the Marmion Marine Park, Bush Forever, Carnaby's Cockatoo and Graceful Sun Moth.

It should be noted that the Graceful Sun Moth has been removed from the State EP Act endangered species list. The species remains on the Commonwealth EPBC Act endangered species list however advice received indicates this is likely to change sometime in 2013.

- Lodgement by the City of a Request for MRS Amendment Report with DoP early in 2013.
- Development of a Local Structure Plan to support the MRS Amendment and potential DPS2 Amendment.

It should be noted that although the preferred approach is through a Section 48A environmental assessment approach, the ultimate decision will be made by the OEPA once the proposal is referred by the WAPC, following lodgement of the MRS Amendment request by the City. Should the OEPA disagree and select a Section 38 assessment approach instead, all documentation provided for the Section 48A would be completely transferable

### **Issues and options considered:**

Not Applicable.

**Legislation/Strategic Community Plan/Policy Implications**

**Legislation** The City is governed by the requirements of the *Local Government Act 1995* in relation to dealings involving commercial undertakings and land development.

Other applicable legislation includes:

- *Planning and Development Act 2005*;
- *Environmental Protection Act 1986*;
- *Environmental Protection, Biodiversity and Conservation Act 1999*.

**Strategic Community Plan**

**Key Theme:** Economic Prosperity, Vibrancy and Growth.

**Objective:** Destination City.

**Policy:**

Recognition that the project will conform to City governance framework and is aligned with the Project Philosophy and Parameters Report as endorsed by Council (JSC5-05/09 refers).

**Risk Management Considerations:**

A comprehensive Risk Assessment Report has been prepared and is reviewed and updated as required.

**Financial/Budget Implications:**

As part of the preparation of a scope of works for the recommended Environmental and Planning Approvals Strategy, a full assessment of the estimate cost of undertaking the strategy will be conducted. It is anticipated that this assessment will be completed within the timeframes of the City's Mid Year Budget review process.

<b>Account No:</b>	C1001
<b>Budget Item:</b>	N/A
<b>Budget Amount:</b>	\$1,386,603
<b>Amount Spent To Date:</b>	\$ 59,963
<b>Proposed Cost:</b>	TBC
<b>Balance:</b>	\$1,326,640

All figures quoted in this report are exclusive of GST.

**Regional Significance:**

The development of the Ocean Reef Marina will become a significant tourist/visitor destination and a key focal point within the northern Perth corridor.

**Sustainability Implications:**

Progression of the structure planning process will facilitate a number of studies/reports that address key issues pertaining to sustainability, for example economic feasibility and environmental sustainability. The undertaking of these studies is aligned with the Project Philosophy and Parameters Report as endorsed by Council (JSC5-05/09 refers).

**Consultation:**

In preparing the Environmental and Planning Approvals Strategy the City has undertaken extensive consultation and liaison with a number of state government departments and agencies including:

- Office of the Environmental Protection Authority;
- Department of Planning;
- Department of Environment and Conservation;
- Department of Transport;
- Department of Fisheries;
- Marine Parks Reserves Authority;
- Western Australian Planning Commission.

**COMMENT**

In light of the prevailing circumstances concerning obtained strategic advice via a Section 16 submission, it is considered that a request for a Major MRS Amendment for the Ocean Reef Marina project with a corresponding Section 48A EP Act environmental assessment is the most appropriate process.

**VOTING REQUIREMENTS**

Simple Majority.

**OFFICER'S RECOMMENDATION:**

That Council:

- 1 ENDORSES an integrated Environmental and Planning Approvals Strategy for the Ocean Reef Marina development and the preparation of a request for a major MRS Amendment and corresponding Section 48A *Environmental Protection Act 1986* assessment;
- 2 NOTES the following actions to be undertaken to progress Part 1 above:
  - 2.1 Confirmation of the validity of previous technical advice and update as required. This information will inform the MRS Amendment request report, the project feasibility study and the local structure plan preparation;
  - 2.2 Undertake detailed discussions with the Department of Planning and the Office of the Environmental Protection Authority on the format, scope and content of the documentation required for an MRS Amendment and correspondent Section 48A *Environmental Protection Act 1986* assessment;
  - 2.3 Undertake pre-referral liaison with state and commonwealth agencies relating to the Marmion Marine Park, Bush Forever, Carnaby's Cockatoo and Graceful Sun Moth;
  - 2.4 Development of a Local Structure Plan to support the MRS Amendment and potential City of Joondalup *District Planning Scheme No. 2* Amendment.

**MOVED Cr Taylor, SECONDED Cr Thomas that:**

- 1 **Council ENDORSES an integrated Environmental and Planning Approvals Strategy for the Ocean Reef Marina development and the preparation of a request for a major MRS Amendment and corresponding Section 48A *Environmental Protection Act 1986* assessment;**
- 2 **Council NOTES the following actions to be undertaken to progress Part 1 above:**
  - 2.1 **Confirmation of the validity of previous technical advice and update as required. This information will inform the MRS Amendment request report, the project feasibility study and the local structure plan preparation;**
  - 2.2 **Undertake detailed discussions with the Department of Planning and the Office of the Environmental Protection Authority on the format, scope and content of the documentation required for an MRS Amendment and correspondent Section 48A *Environmental Protection Act 1986* assessment;**

- 2.3 Undertake pre-referral liaison with state and commonwealth agencies relating to the Marmion Marine Park, Bush Forever, Carnaby's Cockatoo and Graceful Sun Moth;
- 2.4 Development of a Local Structure Plan to support the MRS Amendment and potential City of Joondalup *District Planning Scheme No. 2* Amendment;
- 3 Council NOTES that an updated project plan will be prepared to align with Parts 1 and 2 above and referred to Council for endorsement;
- 4 the Ocean Reef Marina – Environmental and Planning Approvals Strategy Report be uploaded to the City's public website at the conclusion of this meeting.

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Mayor Pickard, Crs Amphlett, Fishwick, Hamilton-Prime, Hollywood, Taylor and Thomas.

*Appendix 1 refers*

To access this attachment on electronic document, click here: [Attach1agnORM061212.pdf](#)

**MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION**

Nil.

**CLOSURE**

There being no further business, the Presiding Member declared the Meeting closed at 8.19am; the following Committee Members being present at that time:

Mayor Troy Pickard  
Cr Geoff Amphlett, JP  
Cr Russ Fishwick, JP  
Cr Christine Hamilton-Prime  
Cr Kerry Hollywood  
Cr Philippa Taylor  
Cr Sam Thomas