

# minutes

## Special Meeting of Council

MEETING HELD ON

TUESDAY 7 FEBRUARY 2023

### **Acknowledgement of Traditional Custodians**

The City of Joondalup acknowledges the traditional custodians of the land, the Whadjuk people of the Noongar nation, and recognises the culture of the Noongar people and the unique contribution they make to the Joondalup region and Australia. The City of Joondalup pays its respects to their Elders past and present and extends that respect to all Aboriginal and Torres Strait Islander peoples.

*This document is available in alternate formats upon request*

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## CITY OF JOONDALUP

SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBER, JOONDALUP CIVIC CENTRE, BOAS AVENUE, JOONDALUP ON TUESDAY 7 FEBRUARY 2023

### DECLARATION OF OPENING

The Mayor declared the meeting open at 6.01pm.

### ANNOUNCEMENT OF VISITORS

#### Mayor:

HON. ALBERT JACOB, JP

#### Councillors:

CR TOM MCLEAN, JP	North Ward	
CR ADRIAN HILL	North Ward	
CR NIGE JONES	North Central Ward	
CR DANIEL KINGSTON	North Central Ward	
CR RUSSELL POLIWKA	Central Ward	
CR CHRISTOPHER MAY	Central Ward	<i>from 6.07pm</i>
CR SUZANNE THOMPSON	South Ward	
CR RUSS FISHWICK, JP	South Ward	
CR JOHN RAFTIS	South-West Ward	
CR CHRISTINE HAMILTON-PRIME, JP	South-West Ward	
CR JOHN LOGAN	South-East Ward	
CR JOHN CHESTER	South-East Ward	

#### Officers:

MR JAMES PEARSON	Chief Executive Officer	
MR JAMIE PARRY	Director Governance and Strategy	
MR CHRIS LEIGH	Director Planning and Community Development	
MR NICO CLAASSEN	Director Infrastructure Services	
MR MAT HUMFREY	Director Corporate Services	
MR BLIGNAULT OLIVIER	Manager City Projects	<i>to 6.52pm</i>
MRS CATHRINE TEMPLE	Manager Planning Services	<i>absent from 7.28pm to 7.29pm</i>
MRS REBECCA MACCARIO	Manager Strategic and Organisational Development	<i>to 7.40pm</i>
MRS KYLIE BERGMANN	Manager Governance	
MR STUART McLEA	Media and Communications Officer	<i>absent from 6.20pm to 6.23pm</i>
MRS VIVIENNE STAMPALIJA	Governance Coordinator	
MRS DEBORAH GOUGES	Governance Officer	
MRS SUSAN HATELEY	Governance Officer	<i>absent from 7.00pm to 7.02pm</i>

#### Guest:

MR SIMON MOEN	Partner, Jackson McDonald	<i>to 6.52pm</i>
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There were 20 members of the public and no member of the press in attendance.

## DECLARATIONS OF FINANCIAL INTEREST / PROXIMITY INTEREST / INTEREST THAT MAY AFFECT IMPARTIALITY

### Disclosures of Interest affecting Impartiality

Elected Members (in accordance with clause 22 of Schedule 1 of the *Local Government [Model Code of Conduct] Regulations 2021*) 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 their interest.

<b>Name / Position</b>	<b>Mayor Hon. Albert Jacob, JP.</b>
<b>Item No. / Subject</b>	JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mayor Jacob is a member of the Development WA Government Steering Committee for Ocean Reef Marina. Also, many of the members of the ORSSC (Ocean Reef Sea Sports Club) and other site users/residents nearby are known to Mayor Jacob.

<b>Name / Position</b>	<b>Mr James Pearson, Chief Executive Officer.</b>
<b>Item No. / Subject</b>	JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mr Pearson is a member of the Ocean Reef Marina Steering Committee.

<b>Name / Position</b>	<b>Cr Russ Fishwick, JP.</b>
<b>Item No. / Subject</b>	JSC05-02/23 - Annual Financial Report 2021-22.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Cr Fishwick is a WALGA State Councillor, WALGA North Metropolitan Zone Member and WALGA Life Member.

## PUBLIC QUESTION TIME

The following summarised questions were submitted in writing prior to the Council meeting:

### N Dangar, Beldon:

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

*Q1 Will the City please state whether the Risk Management Committee considered the health of the population who live in Ocean Reef and the surrounds and direct me to the actual Council Meeting when the risk to the people was considered because in the EPA Ministerial Statements I read that the only environment risk considered was to life of marine and coast?*

*A1 The Western Australian Planning Commission (WAPC) is the planning authority for the Ocean Reef Marina. The City is of the understanding that the impact of the development was considered when approvals were granted.*

- Q2 *As there is a known historical risk of asbestos dumping in Western Australia will the City please advise whether a register is maintained and if it is searchable and accessible by the community who bear the full risks?*
- A2 Any asbestos dumping at the Ocean Reef Marina site would have been illegal and the City has no record of this occurring. The City confirms that site surveys have not revealed any Asbestos Containing Materials (ACMs) at this stage.
- Q3 *The fact the land was agreed to be sold for \$2.00 (tonight's agenda item) is it also a fact that the land was only worth that because of possible risk of being contaminated land?*
- A3 The *Major Land Transaction Business Plan* was advertised from 6 March 2021 to 19 April 2021 and was in accordance with sections 1.8 and 3.59 of the *Local Government Act 1995* and regulation 3B of the *Local Government (Administration) Regulations 1996*. The land was not sold for \$2.00; the Business Plan articulates the full consideration received by the City.
- Q4 *It is understood that some decisions are made behind doors on a regular basis but will the City please undertake to fulfil the obligations of full disclosure on this matter as our community health depends on it?*
- A4 The City will meet its public disclosure obligations on this matter.
- Q5 *In the document "EPA Ministerial Statement" (below) there is a clear pathway for appropriate consultation to include full disclosure at each of the many stages of development: I ask the City, have any steps been overlooked?*
- [https://www.epa.wa.gov.au/sites/default/files/Ministerial\\_Statement/Ministerial%20Statement%201107\\_1.pdf](https://www.epa.wa.gov.au/sites/default/files/Ministerial_Statement/Ministerial%20Statement%201107_1.pdf)
- A5 The City is not aware of any steps being overlooked.

**M Kwok, Ocean Reef:**

- Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*
- Q1 *According to Contaminated Sites Act 2003, there is a duty for land owner to report asbestos contamination to the Chief Executive Officer and be classified for further action, has this been carried out?*
- A1 The question incorrectly assumes that there is asbestos contamination, current investigations indicate that there is none.

- Q2 *Does the City have copies of the "Construction Environmental Plan" and "Dust management Plan" that are available to the public? Can the City please supply links to the documents.*
- A2 No, the City does not have copies of the "Construction Environmental Plan" and Dust Management Plan".
- Q3 *The massive earthworks and disturbances happening right now is creating fine dust particulates that are landing on residents' properties and being inhaled, how is it acceptable to address this later at the subdivision process?*
- A3 DevelopmentWA have extensive dust management controls in place and work directly with any adversely impacted residents once contacted by the resident. Residents and community members experiencing dust issues are asked to contact DevelopmentWA's Community Relations Advisor on 1800 943 121 or [oceanreefmarina@developmentwa.com.au](mailto:oceanreefmarina@developmentwa.com.au)
- Q4 *Thirteen hundred dwellings planned is bigger than the suburb of Burns Beach with 1,122 dwellings. The volumes, intensity and regularity of dust deposits are clear. Where is the laboratory analysis of the dust particulates to determine particulate size and or contaminants contained?*
- A4 This question is taken on notice.
- Q5 *Since the role of Elected Members is to represent the interests of electors, ratepayers and residents. The ongoing dust particulates caused by the inadequacy on dust suppression which has resulted in a number of health concerns.*
- How does the City intend to address the issue?*
- A5 The City is monitoring complaints and working with DevelopmentWA to ensure that complaints are resolved.
- DevelopmentWA have extensive monitoring controls in place and, as the developer, is working with adversely impacted residents.

**M O'Byrne, Kinross:**

- Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*
- Q1 *Development WA will eventually no longer be the responsible agency for managing public health and safety standards at the Ocean Reef Marina (ORM), then what action will the City of Joondalup take as part of the above agreement (JSC01-02/23) to mitigate public liability exposure to Joondalup ratepayers with regard to the already acknowledged public health dangers posed by the polluting Beenyup outfall which is situated just 300 metres from the ORM breakwall?*
- A1 Schedule 2 – Land and Asset Divestment Strategy (Part 2 - City of Joondalup) reflects the land that the City will be responsible for, the Department of Transport is the agency responsible for managing the water body and marine precinct areas at the Ocean Reef Marina.

- Q2 *Why should ratepayers conclude the City has effectively achieved an arrangement that meets Council's expectations for the City's ongoing management maintenance and operating responsibilities at Ocean Reef Marina when the City has been unable to obtain even the power to lease all public open space for a period of up to 21 years?*
- A2 It is not normal practice for the City to lease Public Open Space and subsequently does not have power to lease the majority of public opens spaces within the City of Joondalup. The City has obtained power to licence over all public open space at the Ocean Reef Marina for a term not exceeding 12 months at a time.
- Q3 *Why shouldn't the City be both Bold and Courageous and leverage what the City needs from this agreement before signing it?*
- A3 The City has negotiated excellent outcomes for the City including the land where the Ocean Reef Sea Sports Club will be relocated in Fee Simple.
- Q4 *It makes sense to incorporate Smart City Infrastructure at Ocean Reef Marina, but why would the City agree to having no choice or control over which operator is chosen to implement the Smart City Infrastructure?*
- A4 The City has agreed to work cooperatively with DevelopmentWA and has secured the right to choose who will operate smart infrastructure at the point of handover of the infrastructure.
- Q5 *Why is there no indication as to what part paid parking at the Ocean Reef Marina will play in order to meet Council's expectations for the City's ongoing management maintenance and operating responsibilities at Ocean Reef Marina?*
- A5 The City is yet to establish paid parking arrangements at the Ocean Reef Marina. Any future paid parking provisions would be determined by Council. Rates would be set not to inhibit public visitation to, and activation of, the Marina Project Area and provide a return to the City for maintenance and operating responsibilities.

**The following summarised questions were submitted verbally at the Special meeting of Council:**

**N Dangar, Beldon:**

Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Q1 *As there is a well-documented historical risk of asbestos dumping in Western Australia, and various documents highlighting asbestos at the site: will there be a register maintained by the City, which is searchable and accessible by the community?*

A1 The Director Corporate Services responded that while the Department of Water and Environmental Regulation do maintain a register, it cannot yet be confirmed whether it is public or searchable. The City is not aware of any contamination at the site, and has been provided with reports by reputable consultants stating that the site is not contaminated and that exposure to the soil at the site poses no threat to human health.

**L Smyth, Iluka:**

*Re: JSC03-02/23 - City of Joondalup Annual Report 2021-22.*

*Q1 The Annual Report 2021-2022 outlines various funding provided to community sporting clubs within the City of Joondalup. The list features additional clubs, not included in previous Annual Reports, including several clubs from the Arena Community Sport and Recreation Association (ACSRA).*

*Why have those additional clubs been added in this year's Annual Report, that have not been listed in previous Annual Reports?*

*A1 The Director Corporate Services responded in reference to page 286 of the Annual Report 2021-2022, that the list includes clubs that have received direct assistance from the City in provision of the sports and services they provide. ACSRA clubs do receive financial support via the City making contribution to VenuesWest for the maintenance of the grounds at the Arena Joondalup.*

*Q2 Does the list reflect all funding provided by the City of Joondalup to all of its clubs, and if not, can one be provided with a similar degree of detail as in the Annual Report?*

*A2 The Director Corporate Services responded that the list would not include all clubs that receive support from the City, as there would be a number of small grants approved throughout the year. The question will be taken on notice.*

*Cr May entered the Chamber at 6.07pm.*

**S Boylan, Mullaloo:**

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

*Q1 What is the latest update on the success of the Abalone Relocation Program, relating to the Ocean Reef Marina project?*

*A1 The Director of Corporate Services responded that it is understood that the Abalone Relocation has gone to plan, however, an update from DevelopmentWA is to be requested and the question taken on notice.*

*Q2 Why have the residents of the City of Joondalup not been informed of the many stipulations placed on the Ocean Reef Development by the Environmental Protection Authority (EPA), such as monitoring of flora and fauna, water pollution, dust pollution, and the success of the abalone relocation attempt?*

*A2 The Director of Corporate Services responded that there are a number of agencies involved in the Ocean Reef Marina development, with DevelopmentWA and the EPA being responsible for monitoring the environmental outcomes. An update from DevelopmentWA is to be requested and the question taken on notice.*

**J Swanepoel, Ocean Reef:**

Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Q1 *Why are the Construction Environmental Plans not shared with the ratepayers?*

A1 The Director of Corporate Services responded that the Construction Environmental Plans do exist and were provided to the relevant planning authority at the point that approval was provided. However, the City is not the approving agency in this particular circumstance, and as such were not provided with copies of those plans. The City was provided with extracts of the parts that affected the City, although not the entire plans.

**M Kwok, Ocean Reef:**

Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Q1 *The City has indicated that current investigations show that there is no asbestos at the Ocean Reef Marina construction site, and yet there are documents (two from Strategen and one from EPA) referring to asbestos. Are these documents incorrect?*

A1 The Director of Corporate Services responded by reading directly from the Strategen Report, *“the soils at the site are not contaminated and there is no risk to human health or the environment, from exposure to the soil”*. The documents point out that as the area is a large open space, there is the risk of fly-tipping (illegal dumping of materials). The risk is of asbestos containing materials, but it is incorrect to say that the soil itself is contaminated.

Q2 *If the dust could potentially be contaminated with asbestos, and people are breathing in the dust, will this be a liability problem for the City?*

A2 The Director of Corporate Services responded that according to the information the City has at the moment, the soil is not contaminated. Normal practice is that an inspection be done by the contractors and supervisors responsible, in this case DevelopmentWA, to ensure that any asbestos containing material is removed by properly licensed and qualified personnel before major works begin.

**D Torpy, Ocean Reef:**

Re: *JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Q1 *In relation to the Ocean Reef Marina Project, is the City of Joondalup acting on behalf of the residents?*

A1 Mayor Jacob responded that the City of Joondalup is here as a representative body of the residents of the City of Joondalup.

Q2 *What is the City of Joondalup going to do, to ensure that the Developers adhere to what residents are saying that they want?*

A2 Mayor Jacob responded that the City will perform its role within its local government responsibilities. In relation to this project, the City is not the regulator for some aspects of the project.

The Director of Corporate Services responded saying that the City would treat the Ocean Reef Marina Development the same as any other development. The City's compliance teams will be involved in making sure the developer complies with what is required.

## **PUBLIC STATEMENT TIME**

**The following summarised statements were submitted verbally at the Special meeting of Council:**

### **S Boylan, Mullaloo:**

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Ms Susan Boylan raised concerns over the costs and implications of the Ocean Reef Marina - Development Agreement and Land Transfer Deed. Ms Boylan doubted the likelihood of ratepayers' involvement and emphasised that the Environmental Protection Authority (EPA) outlined the public is to be informed before changes are made to the documents.

Ms Boylan drew attention to the City working collaboratively with government, and implications within the document that the Council are involved in financial aspects that have not previously been disclosed to the public, such as the proposed ocean pool project. Ms Boylan suggested that the management of such a pool is extensive and would include maintaining sanitation, water quality, and security costs.

Ms Boylan urged Councillors to ensure that the development does not become an environmental and financial disaster for the City of Joondalup.

### **P Westcott, Ocean Reef:**

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Mr Peter Westcott informed Council of potential health impacts which the development of the Ocean Reef Marina is observed to be having on residents. Mr Westcott explained that his home, being 2600m from the Marina development, receives direct strong winds. In this position, Mr Westcott has observed his son's asthma intensifying with the increase in construction and movement of sand at the site. Mr Westcott described the development of his own skin rash and mentioned that numerous other residents and local pets are also experiencing coinciding skin allergies and health concerns.

Mr Westcott suggested that some elderly residents would likely not have been able to attend the Special Council Meeting or aware that it was being held, thereby remaining unaware that health concerns are being shared among other residents.

**D Torpy, Ocean Reef:**

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Ms Torpy addressed Council to confirm the health impacts of the Ocean Reef Marina development on people and animals, noting that her dog had developed multiple eye infections since the development commenced. In reference to plans for rocks to be crushed on site, Ms Torpy posed the question of whether the rocks could be removed and crushed offsite, in order to avoid negative health impacts.

**M Kwok, Ocean Reef:**

*Re: JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.*

Ms Michele Kwok spoke in relation to the Ocean Reef Marina – Development Agreement and Land Transfer Deed, expressing concern over perceived environmental and health impacts.

Ms Kwok outlined environmental impacts such as loss of the surf breaks, loss of the abalone reef, proliferation of blowfish and degraded water quality. Further concerns over the spread of sand due to high wind speeds in the area were raised, with Ms Kwok explaining that dust suppression measures are insufficient and residents fear damage to their properties and health. A summary of the poor health experienced by residents included hay fever and colds symptoms, sore throats, asthma, conjunctivitis, and eye problems.

Ms Kwok directed attention to potential asbestos contamination on site and questioned why residents do not have access to the dust management plan. Ms Kwok emphasised the problems associated with development of the Ocean Reef Marina.

*The Media and Communications Officer left the Chamber at 6.20pm and returned at 6.23pm.*

## **APOLOGIES AND LEAVE OF ABSENCE**

Nil.

## **IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC**

Nil.

## REPORTS

### Disclosures of Interest affecting Impartiality

<b>Name / Position</b>	<b>Mayor Hon. Albert Jacob, JP.</b>
<b>Item No. / Subject</b>	JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mayor Jacob is a member of the Development WA Government Steering Committee for Ocean Reef Marina. Also, many of the members of the ORSSC (Ocean Reef Sea Sports Club) and other site users/residents nearby are known to Mayor Jacob.

<b>Name / Position</b>	<b>Mr James Pearson, Chief Executive Officer.</b>
<b>Item No. / Subject</b>	JSC01-02/23 - Ocean Reef Marina – Development Agreement and Land Transfer Deed.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Mr Pearson is a member of the Ocean Reef Marina Steering Committee.

### JSC01-02/23 OCEAN REEF MARINA – DEVELOPMENT AGREEMENT AND LAND TRANSFER DEED

<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Mat Humfrey Corporate Services
<b>FILE NUMBER</b>	04171, 101515
<b>ATTACHMENTS</b>	Attachment 1 Development Agreement Attachment 2 Land Transfer Deed Attachment 3 Confidential – Jackson McDonald Sign Off Letter Attachment 4 Comparison Development Agreement (DA) Attachment 5 Comparison Land Transfer Deed (LTD)  <i>(Please Note: Attachment 3 is Confidential and will appear in the official Minute Book only).</i>
<b>AUTHORITY / DISCRETION</b>	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

### PURPOSE

For Council to authorise the execution of the Development Agreement between the City of Joondalup and DevelopmentWA and the Land Transfer Deed between the City of Joondalup, DevelopmentWA and Minister for Lands associated to the Ocean Reef Marina development.

## EXECUTIVE SUMMARY

At its meeting held on 16 February 2021 Council authorised the execution of the Ocean Reef Marina Heads of Agreement (CJ019-02/21 refers).

Subsequently in May 2021, the Ocean Reef Marina Heads of Agreement was executed by the City and DevelopmentWA. Clause 4.1(a) of the document contained the following agreed principles *“that the finalisation and execution of the Development Agreement and Land Transfer Deed must occur as expeditiously as possible to ensure that the Ocean Reef Marina can be developed without hinderance.”*

Since the inception of the Ocean Reef Marina project the City has continued to work cooperatively and collaboratively with the State Government and DevelopmentWA. Initially executing the Memorandum of Understanding followed by the Heads of Agreement both of which formed the basis of the negotiations and principals for the development of the project and completion of the attached final Development Agreement and Land Transfer Deed.

Through the Major Projects and Finance Committee, Council has been informed of progress on the preparation of the Ocean Reef Marina Development Agreement and Land Transfer Deed, its components, companion agreements/deeds and key principals. Following extensive negotiations with DevelopmentWA the agreements were presented to a Special Council Meeting held on 29 March 2022 (JSC01-03/22 refers) where Council resolved to:

- 1 *AUTHORISE the Mayor and Chief Executive Officer to:*

  - 1.1 *execute the Development Agreement as detailed in Attachment 1 to Report JSC01-03/22, subject to any minor drafting amendments required;*
  - 1.2 *execute the Land Transfer Deed as detailed in Attachment 2 to Report JSC01-03/22 subject to any minor drafting amendments required;*

- 2 *NOTES that the final form of both agreements will be reviewed by the City’s solicitors and in the event the solicitor is of the opinion that any part of the final agreement is materially different to those shown in the attachments, the agreements will be presented back to Council for consideration;*
- 3 *NOTES that Elected Members will receive a copy of the final form of both agreements, accompanied by the City’s solicitor’s opinion on these agreements 48 hours prior to them being signed as authorised in Part 1 above.*

Following the Special Council Meeting on 29 March 2022, the City continued to negotiate, update, and finalise the Development Agreement and Land Transfer Deed with DevelopmentWA and in December 2022 all parties reached a consensus.

The City’s solicitor has reviewed the documents and is of the opinion that whilst the intent of the documents remains unchanged; they are characterised as having minor drafting amendments and therefore are presented back to Council for approval and execution as noted in Part 2 above.

The final form of both agreements is accompanied by a summary of the City’s solicitor’s opinion of the changes (Attachment 3 refers) as noted in Part 3 above. The summary does not include minor formatting changes.

*It is therefore recommended that Council:*

- 1 *NOTES that the final Development Agreement has been reviewed by the City's solicitors and in parts considered materially different to the draft Development Agreement presented to the Special Council Meeting held on 29 March 2022;*
- 2 *NOTES that the final Land Transfer Deed has been reviewed by the City's solicitors and in parts considered materially different to the draft Land Transfer Deed presented to the Special Council Meeting held on 29 March 2022;*
- 3 *NOTES the summary of changes provided by Jackson McDonald - Sign Off Letter as detailed in Attachment 3 to Report JSC01-02/23;*
- 4 *AUTHORISES the Mayor and Chief Executive Officer to affix the Common Seal of the City of Joondalup and:*
  - 4.1 *EXECUTE the Development Agreement as detailed in Attachment 1 to Report JSC01-02/23;*
  - 4.2 *EXECUTE the Land Transfer Deed as detailed in Attachment 2 to Report JSC01-02/23.*

## **BACKGROUND**

The Ocean Reef Marina project has been in the planning since 2004 when the State Government committed \$700,000 toward the development of a Concept Plan, to guide the redevelopment of the then, Ocean Reef Boat Harbour.

Subsequently significant milestones have been achieved such as:

- endorsement of the project's Philosophies and Parameters
- development of a Concept Plan
- extensive community consultation undertaken
- execution of a Memorandum of Understanding between the City and the State Government
- amendment of the Metropolitan Region Scheme
- endorsement of the Planning and Environmental Approvals Strategy
- Public Environmental Review process.

In July 2017, the Western Australian Government approved the Business Case for the Ocean Reef Marina development which documented the following project implementation phases:

- |  |              |
|--|--------------|
| • Marine works                               | Commenced    |
| • Stage 1 Commences                          | 2021-22      |
| • First lots released for sale               | 2022-23      |
| • Construction commences for first buildings | 2023-24      |
| • Project Execution and Completion           | 2025 to 2036 |

Throughout the initial project planning stages, the City has always maintained that it did not have the capacity, resources, and expertise to bring the development to fruition without the support of the State Government or third parties.

In September 2017, Premier Mark McGowan announced that the State Government would contribute \$120 million to the project and that DevelopmentWA (formerly Landcorp) will lead the development and work with the City of Joondalup to deliver the project.

Following the State Government announcement, in February 2018 the City and DevelopmentWA executed a Memorandum of Understanding which set out the roles of the parties and how they will work together in implementing the Ocean Reef Marina project as approved by Government.

Throughout 2019 additional key outcomes were achieved such as, Ministerial approval and the gazettal of the Metropolitan Region Scheme. Also, during 2020 the Ocean Reef Marine Park was excised, the gazettal of the Improvement Scheme was completed, and early works commenced at the Ocean Reef Marina site.

Subsequently in May 2021, the Ocean Reef Marina Heads of Agreement was executed by the City and DevelopmentWA. This document established the agreed principles to facilitate further discussion and negotiation pursuant to the preparation and execution of the Ocean Reef Marina Development Agreement and Land Transfer Deed.

## **DETAILS**

Throughout 2022, the City continued to negotiate the Development Agreement and Land Transfer Deed with DevelopmentWA.

The execution of these key documents is a critical step in progressing the development of the marina and DevelopmentWA's ability to progress the construction of the Ocean Reef Marina project.

The approval and execution of the Development Agreement and Land Transfer Deed are legally binding and supersede the Heads of Agreement. They also outline the future responsibilities of the City and the relevant State Government departments in the management of the relevant components of the development.

To further clarify, the purpose of the key documentation is as follows:

Development Agreement sets out the framework by which DevelopmentWA will undertake and deliver the project and:

- sets out the roles, rights, and obligations of the City and DevelopmentWA
- facilitates implementation and the completion of the project.

Land Transfer Deed is interdependent with the Development Agreement must be entered into on the same date as the Development Agreement and:

- sets out responsibilities, project staging and processes for the transfer of land to each party pre- and post- construction
- includes the Land Assembly Strategy, Land Divestment Strategy, Boundary of Responsibility.

Through extensive negotiations, the City with DevelopmentWA has been able to achieve a Development Agreement and associated Land Transfer Deed that meets Council's expectations for the City's ongoing management, maintenance, and operating responsibilities at the Ocean Reef Marina, including obtaining the "The Future Club Facilities Lot" in fee simple as per council recommendation JSC03-03/22 Item 3.1 refers.

The City's legal advisor, Jackson McDonald has undertaken a review of the final documents and is of the opinion that the intent of the final Development Agreement and final Land Transfer Deed are not inconsistent to the ones presented to Council in March 2022, however, are considered to have more than minor formatting and drafting amendments.

A summary of these changes has been provided by the City's Solicitor as detailed in Attachment 3 Jackson McDonald – *Sign off letter*. The summary does not include minor changes.

To assist with reviewing and identifying all the changes, the City has provided Attachment 4 - Comparison DA and Attachment 5 – Comparison LTD, these attachments have been compared with versions presented to Council in March 2022 and the final documents received in December 2022, the highlighted tracked changes reflect formatting changes, updates, and amendments since March 2022.

Many of the drafting amendments are considered to be minor in nature, however, the following subject areas were discussed at length with DevelopmentWA and have been subsequently resolved, resulting in positive outcomes for the City, these included:

### **Development Agreement**

#### **Design of Future City Areas**

Clauses 12.2 to 12.5 have been rewritten and describe the future design process that will apply and is to the benefit of the City. The changes streamline the process, describe the purpose, and improves the intent, which was for the City to provide feedback in a structured manner on all draft design documents prior to DevelopmentWA initiating the statutory process.

#### **Smart City and Microgrid**

The City has agreed to cooperate with DevelopmentWA to explore and promote opportunities for Smart City Infrastructure at the Ocean Reef Marina. This includes a renewable energy microgrid and acknowledges that a grant of lease, easement, or other right over the roof top of a building that the City owns or has the care and control of through a management order in favour of the operator may apply.

### **Land Transfer Deed**

#### **Transfer of the "Future Club Facilities Lot" in fee simple**

The City has negotiated the transfer of the Future Club Facilities Lot in fee simple, the Lot will be transferred in fee simple to the City by DevelopmentWA 10 business days after practical completion of the Ocean Reef Sea Sports Club facility and subject to the positive and restrictive covenants as detailed in Section 15 Covenant (Schedule 7 to the Land Transfer Deed).

At this stage it is too early to finalise the details of the Covenant and therefore details such as, the number of public car parking provisions and the percentage of commercial revenue agreed for maintenance and improvements on the land and surrounding areas will be finalised prior to the Lot being transferred to the City. Once transferred the encumbrance will be registered against the Certificate of Title for a period of 25 years.

### Ocean Pool

In November 2022, the state government announced further funding for the construction of the ocean pool and associated facilities such as a kiosk. In acknowledgement of the transfer of the Future Club Facilities Lot in fee simple, the City has agreed to consider responsibility for the day-to-day management and day to day maintenance of the ocean pool. The City will not be responsible for any repairs, maintenance, replacement, upgrade, or replacement of the ocean pool.

Once designed and construction commences DevelopmentWA, and the City will negotiate an agreement which gives effect to the management and responsibilities of the ocean pool.

### Statutory Declaration and Responsibility

The provision of clause 16.2 and inclusion of Schedule 6 in the Land Transfer Deed, draft statutory declaration is new. The City confirms to the best of knowledge to have provided DevelopmentWA with copies of all documents, reports, studies and other information in its possession or control that relates to any possible contamination of the Land pertaining to the Ocean Reef Marina project area.

Clause 17, in particular 17.2(b) has been rewritten to reflect that when the Project Lots are handed over to DevelopmentWA they will become responsible and liable to remediate any contamination in, on or under a Project Lot that is required to be carried out for the development of the project.

### Power to lease over Public Open Space

The City endeavoured to obtain power to lease on all public open space for a period of up to 21 years, however the Minister would not agree to this request and has determined in accordance with the Divestment Strategy that the City will obtain power to licence over all public open space for a period of 12 months at a time.

At this stage, the Future Club Facilities Lot and Beach Parking Area will be transferred in freehold. There is no public open space set aside for leasing for up to 21 years, unless otherwise agreed by the Minister at the time of granting the associated management order.

### **Issues and options considered**

Option 1: Council decides not to approve and execute the Ocean Reef Marina Development Agreement and Land Transfer Deed.

This option would significantly delay the project and run the risk that the State Government could resume the land regardless which would severely limit the City's ability to negotiate beneficial terms for its on-going role in the construction, management, and future operation of the marina.

The City could also face considerable political and reputational risk if the project is delayed due to key documentation not being approved and executed.

It should also be noted that should Council decide not to approve and execute the Ocean Reef Marina Development Agreement and Land Transfer Deed, the recommendation previously endorsed at Special Council Meeting held 29 March 2022 will need to be revoked (JSC01-03/22 Part 1 refers).

This option is not recommended.

**Option 2:** Council approves and executes the Ocean Reef Marina Development Agreement and Land Transfer Deed.

This option ensures that the project can progress in accordance with the required DevelopmentWA and State Government timelines. It also reinforces the City's commitment to working collaboratively to ensure the project is delivered in accordance with community expectations.

The City, DevelopmentWA and the State Government have committed considerable funding and resources to the development of the Ocean Reef Marina project, the finalisation of the Development Agreement and Land Transfer Deed concludes the next stage and meets Council's expectation for the City's on-going management, maintenance, and operating responsibilities for Ocean Reef Marina.

This option is recommended.

**Option 3** Council requests further amendments to the Development Agreement and Land Transfer Deed.

This option would significantly delay the project, the City's administration has negotiated the agreements in good faith with DevelopmentWA and meet the needs of both parties and ensures that the development is of a scale and quality acceptable for the City's for on-going management, maintenance, and operating responsibilities at the Marina.

The City and DevelopmentWA would also incur additional legal costs if further amendments are requested to the Development Agreement and Land Transfer Deed at this late stage.

This option is not recommended.

### **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 include the following:

- *Planning and Development Act 2005.*
- *Environmental Protection Act 1986.*
- *Fisheries Adjustment Scheme Act 1987.*
- *Land Administration Act 1997.*
- *Planning and Development (Local Planning Schemes) Regulations 2015.*
- *Environmental Protection, Biodiversity and Conversation Act 1999 (Cwlth).*
- *Native Title Act 1993 (Cwlth).*

### **10-Year Strategic Community Plan**

**Key theme** Economy.

**Objective** Appealing and welcoming - you welcome residents, and local and international visitors to the City.

### Risk management considerations

The City needs to ensure that all decisions made in relation to the Development Agreement and associated Land Transfer Deed are in its best interests, both short and long-term.

Legal advice and detailed interrogation of all aspects of the Development Agreement and associated Land Transfer Deed have occurred to ensure both meet the best interests of the City and its ratepayers.

### Financial / budget implications

As part of the business plan presented to Council in February 2021 a financial evaluation was prepared. The key aspects of the evaluation were as follows:

- Impacts to the City only were included.
- Two financial objectives are defined for the project as follows:
  - (a) Operating Surplus/Deficit: Recurring impacts, including depreciation, should be no worse than zero once the site is fully developed. This is measured by comparing the project impacts to the existing baseline deficit.
  - (b) Cashflow: The 50-year cashflow impacts are zero or positive.
- All data used was from verifiable sources.
- Three scenarios prepared (Best case, Realistic and Worst Case).

It is the City's desire that the financial impacts of Ocean Reef Marina are sustainable in the long term and do not place an unreasonable financial burden on the City's ratepayers.

The financial evaluation was updated in January 2022 and presented to Special Council Meeting in March 2022 (JSC03-03/22 refers). The estimated recurring steady state (2032-33) impacts of each scenario are summarised below. The table indicates that the realistic scenario may provide a benefit of \$673,000 per year when compared to the existing operating deficit at the marina. However, the actual income and expenses will vary due to a wide number of reasons.

Operating Surplus excluding escalation	Baseline	Scenario1	Scenario2	Scenario3
	Current I&E	Best Case	Realistic	Worst Case
	\$000s	\$000s	\$000s	\$000s
Operating Income	\$230	\$4,521	\$3,745	\$3,279
Operating Cash Expenses	(\$216)	(\$1,736)	(\$1,782)	(\$1,683)
<b>Operating Surplus/(Deficit) BEFORE Depn</b>	<b>\$14</b>	<b>\$2,785</b>	<b>\$1,963</b>	<b>\$1,597</b>
Depreciation / Asset Replacement	(\$102)	(\$1,310)	(\$1,378)	(\$1,452)
<b>Operating Surplus/(Deficit) AFTER Depn vs Baseline</b>	<b>(\$88)</b>	<b>\$1,475</b>	<b>\$585</b>	<b>\$144</b>
		<b>\$1,563</b>	<b>\$673</b>	<b>\$232</b>

Since the Special Council Meeting in March 2022, there have been no material changes to the assumptions associated with the Development Agreement and Land Transfer Deed and therefore the financial evaluation has not been updated since then.

The financial evaluation will be further refreshed prior to Council determining the final form of the funding agreement for the Ocean Reef Sea Sports Club Building and to take account of any other material changes in the financial impacts to the City such as the positive impact of holding the land in fee simple and the ability to develop a commercial area within that site against the costs associated with the management of the ocean pool.

Following this update Council will be requested to consider contributing to the cost of developing any potential commercial facility and other public amenities (for example public toilets) associated with the new ORSSC facility situated within the Marine Services Precinct.

The amount of \$3.5 million was listed for consideration within the 2022-23 budget for the new Ocean Reef Sea Sports Club facility, this aligns with the outcomes of the Special Council Meeting on 29 March 2022 (JSC03-03/22, Item 1 refers).

All amounts quoted in this report are exclusive of GST.

### **Regional significance**

The Ocean Reef Marina Development is an important regional project. The Development Agreement and Land Transfer Deed will facilitate the next phase of the development for the project.

With the recent inclusion of an Olympic-sized ocean lap pool, along with a range of public amenities, the transformation of the Ocean Reef Marina will be a popular tourist attraction for residents and visitors alike.

### **Sustainability implications**

#### Economic

The financial evaluation undertaken by the City assessed the potential impact to the City from the anticipated income and expenditure relating to the City's responsibilities once the marina is developed.

As stated in the Financial Evaluation – Overall Summary, provided as Attachment 3 to the Ocean Reef Marina Business Plan report presented to Council at its meeting held on 16 February 2021 (CJ019-02/21 refers), the Ocean Reef Marina is highly likely to provide a positive financial outcome to the City, both in terms of the recurring operating impacts and the overall cashflow. There will be significant economic and social benefits to the local and regional economy.

### **Consultation**

Throughout the initial planning phases of the Ocean Reef Marina project extensive consultation was undertaken with the community (including community surveys in 2002 and 2007), State Government, and other key stakeholders.

In 2009, residents and ratepayers in the City of Joondalup received a survey seeking comment on the Ocean Reef Marina Concept Plan, in the region of the 60,000 surveys were mailed out, along with advertisements through the City's website, community newspapers and at local shopping centres. The consultation was the largest undertaken by the City and resulted in a return of 11,278 surveys, of which 93.5% supported the development of the Ocean Reef Marina.

Also, in 2013 the City conducted a series of forums in which to update the community on the progress of the Ocean Reef Marina project, the forums attracted approximately 600 attendees.

In 2017, Premier Mark McGowan announced that DevelopmentWA (formerly Landcorp) will lead the project and following the execution of the Memorandum of Understanding, DevelopmentWA and the City agreed to develop a communications protocol to guide the coordination of joint communications when dealing with the media, stakeholders, and community information.

DevelopmentWA's legal advisors (Minter Ellison) prepared the initial draft Development Agreement and Land Transfer Deed in early 2020, for the City to consider and review. Over the past two years the City has continued to work co-operatively and collaboratively with DevelopmentWA continually reviewing and updating both documents to ensure it meets the philosophies and parameters endorsed by Council in 2009 and the need of both parties to deliver the project and address statutory and legislative requirements.

In December 2022 a consensus on the Development Agreement and Land Transfer Deed was reached by both parties, the documents have been reviewed by DevelopmentWA's legal advisors, Minter Ellison, and the City's legal advisor, Jackson McDonald.

## **COMMENT**

The Ocean Reef Marina development is a transformational project for our State and will create another iconic coastal destination in Perth, the project will create more than 8,600 construction jobs, and is expected to inject \$3 billion into the Western Australian economy.

In completing the key documentation, the objective for both parties was to finalise and execute a Development Agreement which is mutually beneficial and cognisant of each party's interest and desired outcomes.

The interest common to the Parties is the development of a vibrant marina precinct comprising of recreational, boating, tourism, residential, retail, and commercial facilities which aligns with the previously agreed Project Vision contained within the philosophies and parameters endorsed by Council in 2009, (JSC5-05/09 refers).

The final documents for execution reflect a culmination of actions over decades towards the Ocean Reef Marina's projects vision and seek to ensure that the development is of a scale and quality acceptable for the City's on-going management, maintenance, and operating responsibilities at the Marina.

Construction works at the Ocean Reef Marina have advanced considerably since the approval of the stage one subdivision in September 2022. The two new breakwaters are near completion and the project has entered its next stage of development which includes dredging to ensure adequate depth for boat movement and storage within the marina, also contractors have commenced land reclamation and partial construction of the internal marine wall.

Clearing and land reclamation works have also commenced on the Future Club Facilities Lot in preparation for the construction of the new Ocean Reef Sea Sports Club and Marine Rescue Whitfords facilities in 2023.

In November 2022, Premier, Mark McGowan announced a further \$96.5 million towards the development of the Ocean Reef Marina, bringing the total project expenditure to \$223 million.

The additional funding will cover the construction of Perth's first coastal pool an architecturally designed hospitality building with rooftop amenity, shade structures and seating, a play space, public art, inclusive facilities throughout the marina precinct and general cost escalations in a heated construction market. Further details will become available as DevelopmentWA progress the concept design of the ocean pool and associated amenities.

Following the funding announcement DevelopmentWA have advertised an Expression of Interest seeking a "master developer" in which to deliver the first stage of the project. The proponent will be responsible for the delivery of the Town Centre which will feature shopping, dining, residential and holiday accommodation sites, and commercial opportunities.

Stage 1 of the expression of interest closes on 21 February 2023.

Through the agreements the City sought to ensure that the development was of a scale and quality acceptable by the City, this has largely already been achieved prior to the execution of these documents, therefore the focus of the negotiating team has been to obtain the Future Facilities Club Lot in fee simple, have input into the future design areas and to ensure that the public infrastructure delivered is of a suitable quality to minimise risk in the development in later years. The final documents have achieved these outcomes and are therefore presented to Council for approval and execution.

Finally, the signing of both agreements will allow the Ocean Reef Marina project to move from a conceptual project to one of infrastructure delivery. Once the agreements are in place, the role of the City will revert to one of development regulator, who will eventually become the owner of the infrastructure assets. In this sense, it will allow the City to have a relationship with DevelopmentWA that is far closer to a "developer / local government" relationship than one of development partners. This role clarification will be of great benefit for the project delivery and the community.

## **VOTING REQUIREMENTS**

Simple Majority.

**MOVED Cr Jones, SECONDED Mayor Jacob that Council:**

- 1 NOTES that the final Development Agreement has been reviewed by the City's solicitors and in parts considered materially different to the draft Development Agreement presented to the Special Council Meeting held on 29 March 2022;**
- 2 NOTES that the final Land Transfer Deed has been reviewed by the City's solicitors and in parts considered materially different to the draft Land Transfer Deed presented to the Special Council Meeting held on 29 March 2022;**
- 3 NOTES the summary of changes provided by Jackson McDonald Sign off Letter as detailed in Attachment 3 to Report JSC01-02/23;**
- 4 AUTHORISES the Mayor and Chief Executive Officer to affix the Common Seal of the City of Joondalup and:**
  - 4.1 EXECUTE the Development Agreement as detailed in Attachment 1 to Report JSC01-02/23;**
  - 4.2 EXECUTE the Land Transfer Deed as detailed in Attachment 2 to Report JSC01-02/23.**

**C001-02/23                    EXTENSION OF TIME TO SPEAK**

**MOVED Cr Kingston, SECONDED Cr Poliwka that Cr Kingston be permitted an extension of time to speak for a further five minutes.**

**The Motion was Put and**

**CARRIED (12/1)**

**In favour of the Motion:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Kingston, Logan, McLean, Poliwka, Raftis and Thompson.

**Against the Motion:** Cr May.

**The Motion was Put and**

**CARRIED (9/4)**

**In favour of the Motion:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Logan, May and McLean.

**Against the Motion:** Crs Kingston, Poliwka, Raftis and Thompson.

*Appendix 1 refers*

*To access this attachment on electronic document, click here: [Attach1agn230207.pdf](#)*

## **JSC02-02/23      CONTRIBUTION TO THE LORD MAYOR'S DISTRESS RELIEF FUND – KIMBERLEY FLOODS APPEAL**

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<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBER</b>	44606, 101515
<b>ATTACHMENT</b>	Nil
<b>AUTHORITY / DISCRETION</b>	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

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### **PURPOSE**

For Council to give consideration to donating an amount of \$10,000 to the Lord Mayor's Distress Relief Fund to assist those impacted by the recent Kimberley floods.

### **EXECUTIVE SUMMARY**

People in the Kimberley have been badly affected by the recent once-in-100-year flood.

Destruction and property damage across the Kimberley region caused by the flood emergency has led to the activation of the Lord Mayor's Distress Relief Fund (LMDRF) to assist individuals and communities affected by the cyclone. The State Government has made a \$3 million contribution and the Federal Government has established Disaster Recovery Funding Arrangements.

The City of Joondalup has a long-standing history of contributing donations to the fund in the wake of significant disasters and as such, it is recommended that the Council approves a donation of \$10,000 to the Kimberley Floods Appeal to assist those impacted and demonstrate support to the broader community of the region.

### **BACKGROUND**

The LMDRF was established in 1961 to provide relief of personal hardship and distress arising from natural disasters occurring within Western Australia. The perpetual fund is a registered charitable body and has the approval of the Australian Taxation Office for tax deductibility of contributions.

The objectives of the fund are as follows:

- To provide a permanent fund for the alleviation and relief of distress, suffering, hardship and misfortune to individuals brought about by any disaster or emergency of a general application which has been declared as such by the Western Australian government through the Department of Fire and Emergency Services of Western Australia (DFES).

- To provide relief and aid as determined by the Lord Mayor Distress Relief Fund Board to individuals undergoing such distress, suffering, hardship or misfortune brought about by any event mentioned above.
- To provide assistance to individuals for the alleviation and relief of distress, suffering, hardship or misfortune following a minor localised disaster.

The [Lord Mayor's Distress Relief Fund \(appealswa.org.au\)](http://appealswa.org.au) has a history of coordinating the raising of funds to assist Western Australians in times of disaster. Recent examples where the fund has been used to directly support Western Australian communities include the following:

- 2002 for Western Australians affected by the Bali bombing.
- 2003 Bridgetown fires.
- 2007 Dwellingup fires.
- 2009 Toodyay bushfires.
- 2011 Gascoyne and Mid-West Floods.
- 2011 Perth Hills fires.
- 2011 Margaret River fires.
- 2014 Parkerville bushfires.
- 2015 Esperance bushfires.
- 2016 Waroona bushfires.
- 2021 Wooroloo and Hills bushfires.
- 2021 Seroja tropical cyclone.

City donations have been between \$5,000 and \$10,000 with the most recent 2021 Wooroloo and Hills bushfires and Seroja tropical cyclone appeal funds both receiving donations of \$10,000 from the City of Joondalup.

Historically, the Council has also donated the following to assist with similar significant disasters outside of the State:

#### **January 2005**

\$10,000 (\$5,000 to Save the Children Australia and \$5,000 to CARE Australia) as part of the Asian Tsunami Disaster.

#### **February 2009**

\$10,000 to the Victorian Bushfire Appeal (managed by Red Cross Australia).

#### **DETAILS**

People in the Kimberley have experienced a one-in-100-year flood event, the worst flooding Western Australia has ever seen. More than 230 people were required to be rescued from the floodwaters; with many residents displaced as more than 30 houses were destroyed; tens of thousands of livestock and wildlife species were lost; and the clean-up and infrastructure investment efforts is expected to be both complex and costly.

As a result, the Lord Mayor's Distress Relief Fund has been activated to coordinate donations to assist those impacted with the State Government having made a \$3 million contribution. The Federal Government has also established Disaster Recovery Funding Arrangements.

All donations made to the Fund are fully accounted for and it is the coordinating body for most natural disaster appeals within Western Australia. No administrative charges are made by the City of Perth for support services provided to the Fund, allowing 100% of donated funds available for those in need of financial assistance as a result of experiencing a declared disaster.

There is a prescribed process in the Constitution of the Lord Mayor's Distress Relief Fund in relation to the formal announcement of appeals.

Pledges and donations for the Kimberley Floods appeal total \$11,017,163.24 as at Friday 20 January 2023.

In accordance with the City's historical association with the fund, Council is requested to consider approval for a donation of \$10,000 towards the fund.

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

Council has the option to:

- agree to donate an amount to the Kimberley Floods Appeal (recommended \$10,000)
- agree to donate an amount to the Kimberley Floods Appeal (up to \$10,000)  
or
- not agree to donate to the Kimberley Floods Appeal.

#### **Legislation / Strategic Community Plan / policy implications**

**Legislation** Not applicable.

**10-Year Strategic Community Plan** Not applicable.

#### **Risk management considerations**

Not applicable.

#### **Financial/budget implications**

The 2022-23 budget does not include funds for such a donation, therefore, it will be necessary to approve the expenditure by an absolute majority.

<b>Account no.</b>	1.526.A5206.3292.0000.
<b>Budget Item</b>	Council Administration – Donations.
<b>Budget amount</b>	\$0
<b>Amount spent to date</b>	\$0
<b>Proposed cost</b>	\$10,000
<b>Balance</b>	\$(10,000)

All amounts quoted in this report are exclusive of GST.

#### **Regional significance**

Any donation will support the broader community of the Kimberley region and those areas affected by the flooding.

**Sustainability implications**

Donations to the appeal will greatly assist individuals and communities affected by the devastation caused by the flooding.

**Consultation**

Not applicable.

**COMMENT**

A donation of \$10,000 from Council to the Kimberley Floods Appeal is comparable with the donations made to previous natural disasters and tragedies.

It is considered that the Lord Mayor Distress Relief Fund is the most appropriate mechanism for the City to donate towards the relief of those affected by the recent cyclone. There are many ways that the community and organisations can donate to the Lord Mayor Distress Relief Fund, including through the appeals website.

**VOTING REQUIREMENTS**

Absolute Majority.

*The Manager City Projects and the Partner, Jackson McDonald left the Chamber at 6.52pm.*

*The Manager Planning Services left the Chamber at 7.00pm and returned at 7.02pm.*

**MOVED Mayor Jacob, SECONDED Cr Logan that Council BY AN ABSOLUTE MAJORITY:**

- 1 DONATES an amount of \$10,000 to the Lord Mayor's Distress Relief Fund's Kimberley Floods Appeal in response to the disaster;**
- 2 AMENDS the 2022-23 Mid-Year Budget to include \$10,000 in Council Administration - Donations.**

**The Motion was Put and**

**CARRIED (10/3)**

**In favour of the Motion:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Logan, May, McLean and Thompson.

**Against the Motion:** Crs Kingston, Poliwka and Raftis.

**JSC03-02/23 CITY OF JOONDALUP ANNUAL REPORT 2021-22**

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<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBER</b>	38745, 101515
<b>ATTACHMENTS</b>	Attachment 1 City of Joondalup Annual Report 2021-22 Attachment 2 City of Joondalup Annual Report 2021-22 — Part 2 Annual Financial Report
<b>AUTHORITY / DISCRETION</b>	Executive — The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

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**PURPOSE**

For Council to accept the City of Joondalup Annual Report 2021-22.

**EXECUTIVE SUMMARY**

In accordance with Section 5.53 of the *Local Government Act 1995*, the City of Joondalup Annual Report has been prepared for the 2021-22 financial year. The Annual Report provides a summary of the previous year's achievements and challenges, and the outlook for the year ahead. It includes specific statutory requirements and demonstrates performance against the City's *10-Year Strategic Community Plan*. The City of Joondalup Annual Report 2021-22 is provided as Attachment 1.

The Annual Report also includes the City's Annual Financial Report for 2021-22 which has been audited by the Office of the Auditor General and was presented to the Audit and Risk Committee on 31 January 2023 (Item 1 refers). The City of Joondalup Annual Report 2021-22 — Part 2 Annual Financial Report is presented as a separate document and is provided as Attachment 2.

In accordance with Section 5.54 of the *Local Government Act 1995*, the Council is required to accept an Annual Report by an absolute majority and present the Annual Report to the Annual General Meeting of Electors, which is to be held not more than 56 days after the Annual Report is accepted.

*It is therefore recommended that Council, by an absolute majority, accepts the City of Joondalup Annual Report 2021-22 and notes the City of Joondalup Annual Report 2021/22 — Part 2 Annual Financial Report forming attachments 1 and 2 to report JSC03-02/23.*

**BACKGROUND**

The *Local Government Act 1995* requires every local government to prepare an Annual Report. The Annual Report informs the community and key stakeholders about the achievements and challenges from the previous financial year and provides information on the future outlook.

The audited accounts for the financial year are incorporated into the Annual Report following the annual external audit by the Office of the Auditor General.

The 2021-2022 Annual Report forms the main item of business discussed at the Annual General Meeting of Electors. Section 5.27 of the *Local Government Act 1995* requires that the Annual General Meeting of Electors be held on a day selected by the local government, but not more than 56 days after the Annual Report is accepted.

## DETAILS

The Annual Report for 2021-22 has been prepared addressing the City's performance against the following six key themes of the City's *10-Year Strategic Community Plan: Joondalup 2022*:

- Governance and Leadership.
- Financial Sustainability.
- Quality Urban Environment.
- Economic Prosperity, Vibrancy and Growth.
- The Natural Environment.
- Community Wellbeing.

(Note that, although Council has adopted the new *10-Year Strategic Community Plan: Joondalup 2032*, the previous plan, *Joondalup 2022*, covers the period addressed in this Annual Report).

As in previous years, the Annual Report for 2021-22 includes a range of Global Reporting Initiative (GRI) Standard Disclosures to report the City's environmental, economic, social and governance performance. The Standard Disclosures are in line with the *GRI Sustainability Standard 2016*.

The Annual Report also includes measurements against the Strategic Performance Indicators developed within each key theme of *Joondalup 2022* and against statutory requirements.

### Legislation / Strategic Community Plan / Policy implications

**Legislation**                      *Local Government Act 1995.*  
    *Local Government Administration Regulations 1996.*

### 10-Year Strategic Community Plan

<b>Key theme</b>	Leadership.
<b>Outcome</b>	Capable and effective - you have an informed and capable Council backed by a highly-skilled workforce.  Responsible and financially-sustainable - you are provided with a range of City services which are delivered in a financially responsible manner.
<b>Policy</b>	Not applicable.

Section 5.53 of the *Local Government Act 1995* states the following in relation to the contents of the annual report:

#### **5.53 Annual reports**

- (1)     *The local government is to prepare an annual report for each financial year.*

- (2) *The annual report is to contain:*
- a. *a report from the mayor or president;*
  - b. *a report from the Chief Executive Officer;*
  - c. *deleted;*
  - d. *deleted;*
  - e. *an overview of the plan for the future of the district made in accordance with Section 5.56 including major initiatives that are proposed to commence or to continue in the next financial year;*
  - f. *the financial report for the financial year;*
  - g. *such information as may be prescribed in relation to the payments made to employees;*
  - h. *the auditor's report for the financial year;*
  - ha. *a matter on which a report must be made under section 29(2) of the Disability Services Act 1993;*
  - hb. *details of entries made under section 5.121 during the financial year in the register of complaints, including –*
    - (i) *the number of complaints recorded in the register of complaints;*
    - (ii) *how the recorded complaints were dealt with; and*
    - (iii) *any other details that the regulations may require; and*
  - i. *such other information as may be prescribed.*

Section 5.54 of the *Local Government Act 1995* states the following in relation to the acceptance of the Annual Report:

#### **5.54 Acceptance of annual reports**

- (1) *Subject to subsection (2) the annual report for a financial year is to be accepted\* by the local government no later than 31 December after that financial year.*

*\*absolute majority required*

- (2) *If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than two months after the auditor's report becomes available.*

Section 5.55 of the *Local Government Act 1995* states the following in regard to the notice regarding the availability of the Annual Report:

#### **5.55 Notice of annual reports**

*The Chief Executive Officer is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.*

*Regulation 15 of the Local Government (Administration) Regulations 1996 details the matters for discussion at the Annual General Meeting of Electors. They include the contents of the annual report for the previous financial year and then any other general business.*

*Regulation 19B of the Local Government (Administration) Regulations 1996 (Local Government Act s5.532)(g) and (i)) requires information to be published on Elected Member diversity, including gender, linguistic background and country of birth, age and whether Elected Members identify as Aboriginal or Torres Strait Islander, if the information is available.*

### **Risk management considerations**

Not adopting the Annual Report for 2021-22 will result in non-compliance with the requirements of the *Local Government Act 1995*.

### **Financial / budget implications**

Not applicable.

### **Regional significance**

The Annual Report for 2021-22 sets out the performance of the City which has significance for the development and growth of the region.

### **Sustainability implications**

The programs and projects in the Annual Report 2021-22 are aligned to the key themes in Joondalup 2022 which have been developed to ensure the sustainability of the City.

The City has included Global Reporting Initiative (GRI) Standard Disclosures in the Annual Report in line with the *GRI Sustainability Standard 2016*. This is a best practice sustainability reporting framework for organisations to report on their environmental, economic, social and governance performance

### **Consultation**

There is no legislative requirement to consult with the community on the preparation of the Annual Report. The *Local Government Act 1995* requires an Annual General Meeting of Electors to be held once every year and the Annual Report to be made publicly available.

### **COMMENT**

In addition to the requirements of the *Local Government Act 1995*, the Annual Report is seen as a key reporting mechanism of the City's Integrated Planning and Reporting Framework. In accordance with guidelines from the Department of Local Government, Sport and Cultural Industries, local governments are expected to outline progress towards achieving the objectives of their respective *10-Year Strategic Community Plan* and the major projects and priorities of their *5-Year Corporate Business Plan*.

The Annual Report is also seen as an essential tool to inform the community and key stakeholders about the City's achievements, challenges and future plans, promote greater community awareness of the City's programs and services, and illustrate the City's commitment to accountable and transparent government.

The City received a gold award in the Australasian Reporting Awards (ARA) for its *2020-21 Annual Report*. To achieve a gold award, the City's *2020-21 Annual Report* was considered to have:

- achieved overall excellence in annual reporting
- provided high quality coverage in most aspects of the ARA criteria
- provided full disclosure of key aspects of its core business
- addressed current legislative regulatory requirements
- been judged as a model for other peer reports and reports in that industry sector.

The City will be entering the Annual Report for 2021-22 into the Australasian Reporting Awards once accepted by Council.

## VOTING REQUIREMENTS

Absolute Majority.

## OFFICER'S RECOMMENDATION

That Council BY AN ABSOLUTE MAJORITY:

- 1 ACCEPTS the City of Joondalup Annual Report 2021-22 forming Attachment 1 to Report JSC03-02/23;
- 2 NOTES the inclusion of the City of Joondalup Annual Report 2021-22 - Part 2 Annual Financial Report forming Attachment 2 to Report JSC03-02/23.

## MOVED Cr McLean, SECONDED Cr May that Council BY AN ABSOLUTE MAJORITY:

- 1 **ACCEPTS the City of Joondalup Annual Report 2021-22 forming Attachment 1 to Report JSC03-02/23, subject to the following minor amendments:**
  - 1.1 **Page 28 — delete the page reference (135) to the Strategic Community Plan key performance indicator “To achieve a regional employment self-sufficiency percentage 10% greater than the 2009 baseline data by 2022” whilst maintaining the correct page number reference (72);**
  - 1.2 **Page 57 — amend the caption on the small image in the bottom-right corner to “Beenyup Swamp”;**
  - 1.3 **Page 203 — amend the bar chart titled “Value of building permits issued, 5-year trend” to show the correct data for 2021/22;**
  - 1.4 **Page 203 — amend the pie chart title “Value of building permits issued, 5-year trend” to “Value of building permits issued, 5-year trend, Joondalup City Centre”;**
  - 1.5 **Page 245 — add two small tags referencing the Strategic Community Plan key performance indicators under the chart “Value of funding received for environmental management projects, 5-year trend” and under the infographic “Percentage of successful grant applications for environmental projects”;**
- 2 **NOTES the inclusion of the City of Joondalup Annual Report 2021-22 - Part 2 Annual Financial Report forming Attachment 2 to Report JSC03-02/23.**

**C002-02/23                    PROCEDURAL MOTION - THAT THE ITEM BE REFERRED BACK**

**PROCEDURAL MOVED Cr Kingston, SECONDED Cr Poliwka** that Report JSC03-02/23 - City of Joondalup Annual Report 2021-22 be REFERRED BACK to the Chief Executive Officer.

**The Procedural Motion was Put and** **LOST (5/8)**

**In favour of the Procedural Motion:** Crs Chester, Kingston, Poliwka, Raftis and Thompson.

**Against the Procedural Motion:** Mayor Jacob, Crs Fishwick, Hamilton-Prime, Hill, Jones, Logan, May and McLean.

*The Manager Planning Services left the Chamber at 7.28pm and returned at 7.29pm.*

**The Motion as MOVED Cr McLean, SECONDED Cr May was Put and** **CARRIED (8/5)**

**In favour of the Motion:** Mayor Jacob, Crs Fishwick, Hamilton-Prime, Hill, Jones, Logan, May and McLean.

**Against the Motion:** Crs Chester, Kingston, Poliwka, Raftis and Thompson.

*Appendix 2 refers*

*To access this attachment on electronic document, click here: [Attach2agn230207.pdf](#)*

## **JSC04-02/23      SETTING OF MEETING DATE FOR ANNUAL GENERAL MEETING OF ELECTORS 2022**

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<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBERS</b>	110490, 101515
<b>ATTACHMENT</b>	Nil
<b>AUTHORITY / DISCRETION</b>	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

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### **PURPOSE**

For Council to determine the meeting date for the 2022 Annual General Meeting (AGM) of Electors.

### **EXECUTIVE SUMMARY**

Section 5.27 of the *Local Government Act 1995* requires that the Annual General Meeting of Electors be held on a day selected by the local government, but not more than 56 days after the local government accepts the annual report. It is anticipated that Council will accept the Annual Report at its Special Council meeting to be held on Tuesday 7 February 2023.

Section 5.29 of the *Local Government Act 1995* states the Chief Executive Officer is to convene an electors' meeting by giving at least 14 days public notice. Furthermore, section 5.55 of the *Local Government Act 1995* states the Chief Executive Officer is to give at least seven days public notice of the availability of the Annual Report, following its acceptance by Council.

Should Council adopt the Annual Report at its meeting to be held on Tuesday 7 February 2023, the earliest date to issue local public notice is Thursday 16 February 2023, meaning that the earliest date the Annual General Meeting of Electors can be held is Friday 3 March 2023, with the last date being Tuesday 4 April 2023.

It is considered that the most appropriate date for holding the Annual General Meeting of Electors is Tuesday 7 March 2023, prior to the scheduled Strategy Session. Elected Members are more likely to be available at this time due to their attendance at the Strategy Session and given the informal nature of Strategy Sessions, the Strategy Session can commence when the AGM is finished.

*It is therefore recommended that Council AGREES to convene the 2022 Annual General Meeting of Electors on Tuesday 7 March 2023, commencing at 5.30pm in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup.*

## BACKGROUND

At its meeting held on 16 October 2007 (CJ206-10/07 refers), Council resolved to “*AGREE to hold all future Annual General Meeting of Electors as soon as practical following the adoption of the Annual Report, but in a year where an ordinary election is held, not before the first ordinary meeting of the newly elected Council.*”

The Annual General Meeting of Electors is a statutory requirement under the *Local Government Act 1995* and the meeting is to consider, among other things, the annual report for the previous financial year.

In recent years, the Annual General Meeting of Electors has been convened at 5.30pm and was held immediately prior to the scheduled Briefing Session or Council meeting (refer below, for AGM of Elector’s meeting dates and attendance). The 2020 Annual General Meeting of Electors meeting was delayed and held on 23 March 2021, due to the delayed finalisation of the financial statements by the Office of Auditor General (OAG), in addition the meeting was required to be re-scheduled due to a COVID-19 lockdown in February 2021.

It is recommended that the AGM of Electors be held at 5.30pm immediately prior to the scheduled Strategy Session to be held on Tuesday 7 March 2023.

AGM Date	Start Time	Finish Time	Prior to Meeting	Attendees
Tuesday, 10 December 2013	5.30pm	5.56pm	Council	6
Tuesday, 2 December 2014	5.35pm	6.36pm	Briefing	12
Tuesday 15 December 2015	5.40pm	6.22pm	Council	6
Tuesday, 6 December 2016	5.30pm	6.31pm	Briefing	78
Tuesday, 12 December 2017	5.30pm	7.02pm	Council	27
Tuesday, 4 December 2018	5.30pm	6.27pm	Briefing	14
Tuesday, 10 December 2019	5.30pm	6.52pm	Council	33
Tuesday, 23 March 2021	5.30pm	10.15pm	Nil	67
Tuesday, 8 February 2022	5.30pm	7.23pm	Briefing	101

## DETAILS

The Office of Auditor General (OAG) undertook their final audit in December 2022, with the audited financial statements and independent auditor’s report received in late December 2022. The audited financial statements were presented to the Special Audit and Risk Committee meeting on Tuesday 31 January 2023.

The audited financial statements are a key component of the City’s Annual Report, which will be presented in a separate report to a Special Council Meeting to be held on Tuesday 7 February 2023. The finalised Annual Report will include the audited financial statements.

Receipt of the City’s Annual Report by Council and the holding of an AGM of Electors meeting are both statutory requirements of the *Local Government Act 1995*. A decision is required on the date to hold the AGM of Electors, being aware of Council’s decision on 16 October 2007, as well as complying with the legislative requirements relating to the public notice period and AGM of Electors meeting date being no more than 56 days from Council’s acceptance of the Annual Report.

It is therefore recommended that the AGM of Electors be held on Tuesday 7 March 2023.

## Issues and Options Considered

It is a statutory requirement that Council sets a meeting date for the 2022 Annual General Meeting of Electors.

Council has the option to:

- adopt the date and time as recommended in this report  
or
- select an alternative time and / or date to hold the AGM of Electors.

## Legislation / Strategic Community Plan / Policy Implications

**Legislation** *Local Government Act 1995.*  
*Local Government (Administration) Regulations 1996.*

### 10-Year Strategic Community Plan

**Key theme** Leadership.

**Outcomes** Capable and effective – you have an informed and capable Council backed by a highly-skilled workforce.

**Policy** Not applicable.

Section 5.27 states the following in regard to the Annual General Meeting of Electors:

#### ***“5.27 Electors’ general meetings***

- (1) *A general meeting of the electors of a district is to be held once every financial year.*
- (2) *A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.*
- (3) *The matters to be discussed at general electors’ meetings are to be those prescribed.”*

Section 5.29 states the following in respect to convening electors’ meetings:

#### ***“5.29 Convening electors’ meetings***

- (1) *The Chief Executive Officer is to convene an electors’ meeting by giving:*
  - (a) *at least 14 days’ local public notice; and*
  - (b) *each council member at least 14 days’ notice,**of the date, time, place and purpose of the meeting.*
- (2) *The local public notice referred to in subsection (1)(a) is to be treated as having commenced at the time of publication of the notice under section 1.7(1)(a) and is to continue by way of exhibition under section 1.7(1)(b) and (c) until the meeting has been held.”*

Section 5.55 states the following in respect to giving notice of annual reports:

**“5.55 Notice of annual reports**

*The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.”*

Section 1.7 of the *Local Government Act 1995* defines ‘local public notice’ and states where such notice is not expressly stated, the notice is to be published and exhibited for at least seven days.

Regulation 15 of the *Local Government (Administration) Regulations 1996* details the matters for discussion at the AGM of Electors. They are the contents of the annual report for the previous financial year and then any other general business. It is suggested that the agenda format for the Annual General Meeting of Electors be as follows:

- Attendances and apologies.
- Contents of the 2021-22 Annual Report.
- General Business.

**Risk Management Considerations**

The risk associated with failing to set a date for the 2022 Annual General Meeting of Electors will result in non-compliance with the requirements of the *Local Government Act 1995*.

**Financial / Budget Implications**

Not applicable.

**Regional Significance**

Not applicable.

**Sustainability Implications**

Not applicable.

**Consultation**

The *Local Government Act 1995* requires an Annual General Meeting of Electors to be held once every year and the annual report to be made publicly available.

While the City advertises the meeting in accordance with the *Local Government Act 1995*, the City will promote the scheduled meeting date as soon as possible and will publicise the 2021-22 Annual Report through the City’s website once it is adopted by Council at its Special meeting to be held on Tuesday 7 February 2023.

**COMMENT**

The audited financial statements for 2021-22 will be the subject of a separate report to Council. Once these statements are adopted by Council, they will be included into the finalised 2021-22 Annual Report.

In order for the City to meet its legislative requirements, it is therefore recommended that Council convenes the 2022 Annual General Meeting of Electors on Tuesday 7 March 2023, commencing at 5.30pm, prior to the scheduled Strategy Session, where Elected Members' attendance is required.

### **VOTING REQUIREMENTS**

Simple Majority.

*The Manager Strategic and Organisational Development left the Chamber at 7.40pm.*

**MOVED Cr Hamilton-Prime, SECONDED Cr Jones that Council AGREES to convene the 2022 Annual General Meeting of Electors on Tuesday 7 March 2023, commencing at 5.30pm in the Council Chamber, Joondalup Civic Centre, Boas Avenue, Joondalup.**

**The Motion was Put and**

**CARRIED (13/0)**

**In favour of the Motion:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Kingston, Logan, May, McLean, Poliwka, Raftis and Thompson.

## REPORT – AUDIT AND RISK COMMITTEE – 31 JANUARY 2023

### Disclosure of Interest affecting Impartiality

<b>Name / Position</b>	<b>Cr Russ Fishwick, JP.</b>
<b>Item No. / Subject</b>	JSC05-02/23 - Annual Financial Report 2021-22.
<b>Nature of Interest</b>	Interest that may affect impartiality.
<b>Extent of Interest</b>	Cr Fishwick is a WALGA State Councillor, WALGA North Metropolitan Zone Member and WALGA Life Member.

### JSC05-02/23 ANNUAL FINANCIAL REPORT 2021-22

<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Mat Humfrey Corporate Services
<b>FILE NUMBERS</b>	109174, 101515
<b>ATTACHMENTS</b>	Attachment 1 2021-22 Annual Financial Report Attachment 2 Independent Auditor's Report Attachment 3 Management Letter 2021-22
<b>AUTHORITY / DISCRETION</b>	Executive - The substantial direction setting and oversight role of Council, such as adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

### PURPOSE

For Council to consider and accept the *2021-22 Annual Financial Report* and Independent Auditor's Report.

### EXECUTIVE SUMMARY

In accordance with Section 6.4 of the *Local Government Act 1995*, the 2021-22 Annual Financial Report has been prepared and, together with the City's accounts, has been submitted to the Office of the Auditor General of Western Australia (OAG) to conduct the annual audit.

The OAG has completed its audit, in accordance with the terms of their engagement and the requirements of Part 7 Division 3 of the *Local Government Act 1995* and the Independent Auditor's Report has been issued. The Annual Financial Report will form part of the City's 2021-22 Annual Report.

*It is therefore recommended that Council:*

- 1 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Annual Financial Report of the City of Joondalup for the financial year 2021-22, forming Attachment 1 to Report JSC05-02/23;*

- 2 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Independent Auditor's Report for the financial year 2021-22, forming Attachment 2 to Report JSC05-02/23;*
- 3 *NOTES the Auditor's Management Letter in respect of the financial audit for the year ended 30 June 2022, forming Attachment 3 to Report JSC05-02/23;*
- 4 *NOTES that no interim Management Letter was issued in respect of the financial audit for the year ended 30 June 2022.*

## **BACKGROUND**

Section 6.4 of the *Local Government Act 1995* requires local governments to prepare an annual financial report and to submit both the report and its accounts to its auditor by 30 September each year. The City of Joondalup has met those requirements and the City's auditor, the OAG, has completed its audit of the accounts and the 2021-22 Annual Financial Report.

The OAG undertook its audit in two stages. The interim audit was undertaken during May and June 2022, while the final audit commenced at the beginning of October 2022. Following the completion of the interim audit, the OAG issued a management letter which incorporated responses from management on the items noted (Attachment 3 refers).

No interim management letter was issued.

The 2021-22 Annual Financial Report is included as Attachment 1 to Report JSC05-02/23.

## **DETAILS**

The preparation and submission of the Annual Financial Report to the auditors for audit are statutory requirements under the *Local Government Act 1995*.

The Annual Financial Report is required to be accepted by Council prior to the holding of the Annual General Meeting of Electors, at which the City's Annual Report containing the Annual Financial Report will be considered. The Annual Financial Report is also required to be submitted to the Department of Local Government, Sport and Cultural Industries (DLGSC).

## **Issues and Options Considered**

### Outcome of the Financial Audit

The financial audit has been completed with an unqualified audit report issued (Attachment 2 refers). The OAG has issued a final management letter in respect of the financial audit (Attachment 3 refers). An interim management letter was not issued.

### End of Financial Year Position

The City has finished the financial year with a Rate Setting Statement surplus higher than estimated. An anticipated end of year surplus as at 30 June 2022 of \$53,549 was used as the opening balance in the *2022-23 Annual Budget*. The final end of year Rate Setting Statement surplus for 2021-22 is \$9,148,338, being \$9,094,790 more than estimated.

When comparing the actual end of year results to the estimate shown in the 2022-23 Annual Budget, in summary terms the variance comprises:

Description	Sub Total	Total
Increased Operating Cash Surplus	\$ 23,323,474	
Reduced Capital Revenue	(\$ 559,989)	
Reduced Capital Expenditure	\$ 8,008,512	\$ 30,771,997
Reduced Net Funding including equity investment movements		(\$ 21,677,207)
<b>Net Variance</b>		<b>\$ 9,094,790</b>

The increased operating cash surplus relative to forecast is driven primarily by Materials and Contracts as a result of a change in the accounting treatment of the \$14,166,667 payment made to Mindarie Regional Council for the City's contribution towards the termination of the Resource Recovery Facility (RRF) agreement. An amendment to the *2021-22 Budget* was approved by Council in August 2021 to include this as an operating cost within Materials and Contracts, with the expectation that when the City's share of MRC's 2021-22 results were accounted for this would be reported in the same manner. However, during the course of the City's audit for 2021-22, advice was received that MRC had included retrospective restatements in their 2020-21 financial statements – after the City had approved the Budget amendment. Consequently, the cost of the City's contribution towards the termination of the RRF agreement is not reflected as an operating expense in the City's 2021-22 financial results but as a non-operating equity investment movement instead.

Higher than estimated net revenue from Catalina Estate sales \$1,420,250 as well as lower than forecast employee costs of \$1,813,306, and other materials and contracts expenditure of \$5,170,663, partly offset by higher depreciation and amortisation \$1,418,150 further contributed to the additional operating cash surplus.

Lower employee costs arose mainly due to vacancies and recruitment processes that were ongoing as at 30 June 2022 as well as new enterprise bargaining agreements not having been finalised by the end of the year and, consequently, no pay increases reflected in the actual results. The current conditions in the labour market have had an impact on the City's ability to retain and recruit in certain areas, which shows in the results. In addition, some of the vacancies are the result of internal restructuring undertaken in certain areas of the organisation, for which recruitment has been progressing.

Lower materials and contracts expenditure includes lower consultancy costs of \$1,019,342, due to progress on various projects compared to estimates including the Local Housing Strategy Review, Multi-Storey Car Park Concept and Social Needs Assessment. In particular, as well as lower external contractors expenses \$1,181,279 spread across a number of areas, reflecting progress on various projects and activities.

Reduced capital expenditure pertains primarily to capital works projects that did not progress to the extent anticipated by 30 June 2022, including projects that received grant funding during the year that were not expended by year end, and are continuing into the subsequent financial year. Municipal and reserve funding unspent on these projects has been carried forward or retained in reserves, respectively.

#### Management Letter – Financial Audit

The auditors identified one finding that was classified significant (Attachment 3 refers).

The significant finding concerns assessments of fair value of land and building assets as well as infrastructure assets and the frequency of valuations. Under the provisions of the *Local Government (Financial Management) Regulations*, the City revalues classes of assets held at fair value at intervals not exceeding five years.

In the intervening years, in accordance with accounting standards, the City considers annually whether the carrying values at which assets are reported are reasonable, or whether there exist factors that may indicate that these reported values could be materially misstated.

One class of assets, namely Drainage assets, was revalued during the 2021-22 in accordance with the requirement of accounting standard *AASB 13 Fair Value Measurement*. In addition, as is the practice each year, the City also undertook a high-level assessment of the carrying values of other assets at fair value to determine whether any factors existed that might indicate whether these could be materially misstated at 30 June 2022. The matter raised by the auditor, as well as the management comments provided are detailed in Attachment 3.

#### Timing and completion of audit process

At the commencement of the 2021-22 audit planning process in March 2022, the OAG advised the City of its intent to perform and complete the audit in October 2022, with the audit report to be made available to the scheduled Audit and Risk Committee meeting in early November 2022. In accordance with the audit plan, an interim audit was performed and completed in June 2022.

No interim management letter was issued.

The OAG returned to the City at the beginning of October 2022 for the final audit. None of the audit team conducting this phase of the audit were the same as those who undertook the interim audit, which meant that continuity was impacted. The main consequence of this for the City was that the audit queries were often sent to City staff multiple times.

In the third week of October, the City was advised in an update meeting with the OAG that no major issues had been identified at that stage and no significant information was pending from the City. The OAG team wrapped up fieldwork and left the City's offices at the end of October. The City, expecting to have the audit finalised shortly, then began receiving several audit queries from the beginning of November through December, many of which ought to have been raised while the audit team was on site.

For example, the City is typically required to send out bank confirmation requests to various banks for balance information at 30 June to be sent by the banks directly to the auditors. The City submitted all these requests to the various banks in June 2022, when the OAG audit team was on site for the interim audit. At the time, two banks advised the City that an audit request could only be made via their designated portal and only by the auditors themselves. The City duly informed the OAG of this at the time. The OAG approached the City for its cash and bank balance accounting information in November 2022, after it had left the City's offices, and it then transpired that the OAG had not approached the two banks in question for balance confirmations despite being informed by the City in June. Requests were only lodged by the OAG with these banks in November 2022.

As another example, the City received multiple requests for standard asset information in November 2022, after the audit team had left the City's offices. This is information that is typically considered while an audit team is present on site, such as information on asset revaluations, additions, disposals, etc. and involves discussions with asset management staff as well.

There were several iterations of the draft annual financial report that the City had to prepare and submit to the OAG, primarily because each time the auditors requested incremental changes that were not previously flagged in the version before it.

Following a delayed audit process for Mindarie Regional Council (MRC) in the previous year, the OAG had indicated its intention to finalise the regional council audits in 2021-22 in sufficient time for the information to be incorporated into the member councils' financial report. The 2021-22 final audit for MRC, however, only commenced at the same time as the City's own audit did, at the beginning of October. The City did not receive final draft financial information for MRC until late November, meaning that even if the City's other audit work had been completed by the end of October, the City still would not have been able to receive its audit report before this.

It may also be noted that, although reporting by Program was discontinued from the 2021-22 financial year following changes to the *Local Government (Financial Management) Regulations 1996*, the OAG directed the City to include a note to the annual financial report incorporating the same Program information, for revenue (including non-operating) and expenditure to comply with *AASB 1052 Disaggregated Disclosures*, in mid-December after multiple iterations of the draft financial statements (without this note) had already been reviewed and confirmed by the OAG.

There is no question that the City provided all requested audit information in a timely fashion. The City had expectations in early March 2022, during the audit planning stage, that the 2021-22 audit would be completed and signed off in early November, which the OAG had advised that it would be seeking to deliver.

## Legislation / Strategic Community Plan / Policy Implications

### Legislation

*Local Government (Financial Management) Regulation 51(2)* states:

*"A copy of the annual financial report of a local government is to be submitted to the Departmental CEO within 30 days of the receipt by the local government's CEO of the auditor's report on that financial report."*

Section 5.53 of the *Local Government Act 1995* states:

#### **5.53 Annual Reports**

- (1) *The local government is to prepare an annual report for each financial year.*
- (2) *The annual report is to contain:*
  - (f) *the financial report for the financial year;*

Section 5.54 of the *Local Government Act 1995* states:

#### **5.54 Acceptance of annual reports**

- (1) *Subject to subsection (2), the annual report for a financial year is to be accepted by the local government no later than 31 December after that financial year.*

*\* Absolute majority required.*

- (2) *If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.*

Section 6.4 of the *Local Government Act 1995* states:

#### **6.4 Financial Report**

- (1) *A local government is to prepare an annual financial report for the preceding financial year and such other financial reports as are prescribed.*
- (2) *The financial report is to –*
- (a) *be prepared and presented in the manner and form prescribed; and*
  - (b) *contain the prescribed information.*
- (3) *By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor –*
- (a) *the accounts of the local government, balanced up to the last day of the preceding financial year; and*
  - (b) *the annual financial report of the local government for the preceding financial year.*

### **10-Year Strategic Community Plan**

<b>Key theme</b>	Leadership.
<b>Outcome</b>	Accountable and financially sustainable - you are provided with a range of City services which are delivered in a financially responsible manner.
<b>Policy</b>	Not applicable.

### **Risk Management Considerations**

Not applicable.

### **Financial / Budget Implications**

#### Current financial year impact

<b>Account no.</b>	Not applicable.
<b>Budget Item</b>	Closing surplus.
<b>Budget amount</b>	\$ 53,549
<b>Actual amount</b>	\$ 9,148,338
<b>Proposed cost</b>	\$ Not applicable.
<b>Balance</b>	\$ 9,094,790

All amounts quoted in this report are exclusive of GST.

## Regional Significance

Not applicable.

## Sustainability Implications

Not applicable.

## Consultation

There is no legislative requirement to consult on the preparation of the Annual Financial Report, although the *Local Government Act 1995* requires the local government to hold an Annual General Meeting of Electors and the City's Annual Report, incorporating the Annual Financial Report is to be made available publicly.

## COMMENT

The Annual Financial Report for 2021-22 reflects the City's financial performance and position for the year ended 30 June 2022.

The Annual Financial Report will be made available on the City's public website as part of the City's Annual Report. A limited number of printed, bound colour copies of the Annual Report, including the Annual Financial Report, will be available for viewing at libraries, leisure centres and the customer service centre.

In order for the City to meet its legislative requirements, it is recommended that the Council accepts the Annual Financial Report for the financial year 2021-22.

## VOTING REQUIREMENTS

Absolute Majority.

## COMMITTEE RECOMMENDATION

The committee recommendation to Council for Report JSC05-02/23 (as detailed below) was resolved by the Special Audit and Risk Committee at its meeting held on 31 January 2023.

The original recommendation as presented by City officers to the Committee is as follows:

That Council:

- 1 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Annual Financial Report of the City of Joondalup for the financial year 2021-22, forming Attachment 1 to this Report;*
- 2 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Independent Auditor's Report for the financial year 2021-22, forming Attachment 2 to this Report;*
- 3 *NOTES the Auditor's Management Letter in respect of the financial audit for the year ended 30 June 2022, forming Attachment 3 to this Report;*
- 4 *NOTES that no interim Management Letter was issued in respect of the financial audit for the year ended 30 June 2022.*

The Committee's subsequent recommendation to Council is as follows (changes identified):

That Council:

- 1 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Annual Financial Report of the City of Joondalup for the financial year 2021-22, forming Attachment 1 to this Report;*
- 2 *BY AN ABSOLUTE MAJORITY, ACCEPTS the Independent Auditor's Report for the financial year 2021-22, forming Attachment 2 to this Report;*
- 3 *NOTES the Auditor's Management Letter in respect of the financial audit for the year ended 30 June 2022, forming Attachment 3 to this Report;*
- 4 *NOTES that no interim Management Letter was issued in respect of the financial audit for the year ended 30 June 2022;*
- 5 *EXPRESSES its disappointment to the Office of the Auditor General for the delay in finalisation of the 2021-22 Financial Year Audit, resulting in a delay to the conduct of the City's General Meeting of Electors;*
- 6 *FORMALLY REQUESTS the Mindarie Regional Council work with the office of the Auditor General and other member Councils to progress their 2022-23 Audit process in a more timely manner.*

**MOVED Cr Raftis, SECONDED Cr McLean that Council:**

- 1 **BY AN ABSOLUTE MAJORITY, ACCEPTS the Annual Financial Report of the City of Joondalup for the financial year 2021-22, forming Attachment 1 to Report JSC05-02/23;**
- 2 **BY AN ABSOLUTE MAJORITY, ACCEPTS the Independent Auditor's Report for the financial year 2021-22, forming Attachment 2 to Report JSC05-02/23;**
- 3 **NOTES the Auditor's Management Letter in respect of the financial audit for the year ended 30 June 2022, forming Attachment 3 to Report JSC05-02/23;**
- 4 **NOTES that no interim Management Letter was issued in respect of the financial audit for the year ended 30 June 2022;**
- 5 **EXPRESSES its disappointment to the Office of the Auditor General for the delay in finalisation of the 2021-22 Financial Year Audit, resulting in a delay to the conduct of the City's General Meeting of Electors;**
- 6 **FORMALLY REQUESTS the Mindarie Regional Council work with the office of the Auditor General and other member Councils to progress their 2022-23 Audit process in a more timely manner.**

**AMENDMENT MOVED Cr Fishwick, SECONDED Cr May that an additional Part be ADDED to the Motion to read as follows:**

**“7 FORMALLY REQUESTS the Western Australian Local Government Association to seek feedback from the local government sector regarding the performance of the Office of the Auditor General with regard to the end of financial year audits, and to provide that feedback to the Premier and Minister for Local Government should the responses be similar to that of the City of Joondalup.”**

**The Amendment was Put and**

**CARRIED (12/1)**

**In favour of the Amendment:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Logan, May, McLean, Poliwka, Raftis and Thompson.

**Against the Amendment:** Cr Kingston.

**The Original Motion as amended, being:**

**That Council:**

- 1 BY AN ABSOLUTE MAJORITY, ACCEPTS the Annual Financial Report of the City of Joondalup for the financial year 2021-22, forming Attachment 1 to Report JSC05-02/23;**
- 2 BY AN ABSOLUTE MAJORITY, ACCEPTS the Independent Auditor’s Report for the financial year 2021-22, forming Attachment 2 to Report JSC05-02/23;**
- 3 NOTES the Auditor’s Management Letter in respect of the financial audit for the year ended 30 June 2022, forming Attachment 3 to Report JSC05-02/23;**
- 4 NOTES that no interim Management Letter was issued in respect of the financial audit for the year ended 30 June 2022;**
- 5 EXPRESSES its disappointment to the Office of the Auditor General for the delay in finalisation of the 2021-22 Financial Year Audit, resulting in a delay to the conduct of the City’s General Meeting of Electors;**
- 6 FORMALLY REQUESTS the Mindarie Regional Council work with the office of the Auditor General and other member Councils to progress their 2022-23 Audit process in a more timely manner;**
- 7 FORMALLY REQUESTS the Western Australian Local Government Association to seek feedback from the local government sector regarding the performance of the Office of the Auditor General with regard to the end of financial year audits, and to provide that feedback to the Premier and Minister for Local Government should the responses be similar to that of the City of Joondalup.**

**Was Put and**

**CARRIED (11/2)**

**In favour of the Motion:** Mayor Jacob, Crs Chester, Fishwick, Hamilton-Prime, Hill, Jones, Logan, May, McLean, Poliwka and Thompson.

**Against the Motion:** Crs Kingston and Raftis.

*Appendix 3 refers*

*To access this attachment on electronic document, click here: [Attach3agn230207.pdf](#)*

## **CLOSURE**

There being no further business, the Deputy Mayor declared the meeting closed at 7.54pm the following Elected Members being present at that time:

HON. ALBERT JACOB, JP  
CR TOM MCLEAN, JP  
CR ADRIAN HILL  
CR NIGE JONES  
CR DANIEL KINGSTON  
CR RUSSELL POLIWKA  
CR CHRISTOPHER MAY  
CR SUZANNE THOMPSON  
CR RUSS FISHWICK, JP  
CR JOHN RAFTIS  
CR CHRISTINE HAMILTON-PRIME, JP  
CR JOHN LOGAN  
CR JOHN CHESTER