



# Agenda

## Finance, Policy, Operations and Legislation Committee

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Wednesday, 23 January 2019, 6.00pm

**CITY OF FREMANTLE**  
**NOTICE OF A FINANCE, POLICY, OPERATIONS AND LEGISLATION**  
**COMMITTEE MEETING**

Elected Members

A Finance, Policy, Operations and Legislation Committee meeting of the City of Fremantle will be held on **Wednesday, 23 January 2019** in the North Fremantle Community Hall, located at 2 Thompson Road, North Fremantle commencing at 6.00 pm.



Joel Hurst  
**Acting Director City Business**

18 January 2019

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**CITY OF FREMANTLE**

**Finance, Policy, Operations and Legislation Committee**

**Agenda**

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**1. OFFICIAL OPENING, WELCOME AND ACKNOWLEDGEMENT**

We would like to acknowledge this land that we meet on today is the traditional lands of the Nyoongar people and that we respect their spiritual relationship with their country. We also acknowledge the Whadjuk people as the custodians of the greater Walyalup area and that their cultural and heritage beliefs are still important to the living Whadjuk people today.

**2. ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE**

The Mayor, Brad Pettitt and Cr Rachel Pemberton are on leave of absence.

**3. DISCLOSURES OF INTERESTS**

Elected members must disclose any interests that may affect their decision-making. They may do this in a written notice given to the CEO; or at the meeting.

**4. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE**

There are no responses to public questions taken on notice at a previous meeting.

**5. PUBLIC QUESTION TIME**

Members of the public have the opportunity to ask a question or make a statement at council and committee meetings during public question time.

Further guidance on public question time can be viewed [here](#), or upon entering the meeting.

**6. PETITIONS**

Petitions to be presented to the committee.

Petitions may be tabled at the meeting with the agreement of the presiding member.

**7. DEPUTATIONS**

**7.1 Special deputations**

A special deputation may be made to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

There are no special deputation requests.

## **7.2 Presentations**

Elected members and members of the public may make presentations to the meeting in accordance with the City of Fremantle Meeting Procedures Policy 2018.

## **8. CONFIRMATION OF MINUTES**

### **Officer's recommendation**

**That the minutes of the Finance, Policy, Operations and Legislation Committee meeting dated 14 November 2018 be confirmed as a true and accurate record.**

## **9. ELECTED MEMBER COMMUNICATION**

Elected members may ask questions or make personal explanations on matters not included on the agenda.

## 10. REPORTS AND RECOMMENDATIONS

### 10.1 COMMITTEE DELEGATION

#### **FPOL1901-1 ACCEPTANCE OF TENDER - FCC529/18 - SUPPLY AND INSTALL NEW CCTV INFRASTRUCTURE AND UPGRADE EXISTING**

<b>Meeting Date:</b>	23 January 2019
<b>Responsible Officer:</b>	Manager Field Services
<b>Decision Making Authority:</b>	Committee
<b>Agenda Attachments:</b>	Scoring Matrix Pricing Matrix (Confidential Attachment)

### **SUMMARY**

**The purpose of this report is to consider the acceptance of tender number FCC529/18 for the supply and install of new CCTV infrastructure and upgrade of existing at various locations across the city.**

**This report recommends that Committee accepts the tender submitted by The Trustee for Astuta Trust t/as Zenien Pty Ltd in accordance with the tender evaluation undertaken as per the selection criteria included in the tender document.**

**The report further recommends that Committee approve the CEO to enter into discussion with The Trustee for Astuta Trust t/as Zenien Pty Ltd, to amend the scope of work to meet the financial limits of the Federal Government Safer Communities grant.**

### **BACKGROUND**

At the September 2018 Ordinary Meeting of Council, the Council resolved that:

*“Council adopts the City of Fremantle CCTV Plan 2019 – 2023 as attached to the Finance, Policy, Operations and Legislation (FPOL) Committee agenda of 12 September 2018”.*

The Plan included the installation of new fixed CCTV locations and the upgrade of existing cameras. In November 2017 the City applied for the Federal Government Safer Communities grant, to purchase and improve the CCTV coverage of the City. The City’s application for grant funding included the following:

- Installation of an additional 25 fixed High Definition 360 degree CCTV cameras;
- Installation of 5 fixed Automatic Number Plate Recognition (ANPR) cameras;
- Purchase of 2 mobile CCTV trailers;
- Installation of optic fibre within the CBD; and
- Future expansion to cover key locations in suburbs outside the CBD.

The City was successful in obtaining the grant funding of \$928,390 (ex. GST) and has been to market to find a CCTV supplier capable of installing 30 new cameras and upgrading 6 current cameras.

## **FINANCIAL IMPLICATIONS**

The table below summarises the available budget and recommended tender price provided by the preferred contractor for the project, and associated expenses:

<b>Description</b>	<b>Expenditure</b>	<b>Budget</b>
<b>Budget</b>		
Allocated grant funding for 2019		\$928,390
<b>Expenditure</b>		
Expenditure incurred to date:	\$0	
Procurement activities <ul style="list-style-type: none"> <li>• Tender number FCC529/18 Supply and Install New CCTV Infrastructure and Upgrade Existing</li> </ul>	\$928,390	
<b>Total expenditure</b> (estimated)	\$928,390	
<b>Balance</b>		\$0

The Tendered price included non-critical items. The City will negotiate with the preferred Tenderer (if agreed by Committee), to remove the non-critical elements in order for the project to be delivered within the amount provided by the Federal Government Safer Communities Grant.

Sufficient grant funding has been provided to deliver the project within calendar year 2019.

The grant will be expended across two financial years, with a portion of the grant funds included in the adopted budget for 2018/2019 and the balance of the grant funds, to be included in the 2019/2020 budget.

Additional budget will be required for the on-going maintenance of the new CCTV in future financial years.

## **LEGAL IMPLICATIONS**

Tenders were invited in accordance with section 3.57 of the *Local Government Act 1995* and the tendering procedures and evaluation complied with part 4 of the Local Government (Functions and General) Regulations 1996.

The CCTV locations and infrastructure comply with the Surveillance Devices Act 1998

## **CONSULTATION**

Consultation was undertaken with the Western Australian Police to identify the crime hot spots within the City of Fremantle and for the preferred location of the Automatic Number

Plate Recognition Cameras. Crowded places and critical infrastructure were identified with the assistance of the State Intelligence Division of the WA Police.

Before any works commence, information about the upcoming works will be posted on the City's website and social media channels.

## **OFFICER COMMENT**

### **Detail**

Tender FCC529/18 for the supply and install of new CCTV infrastructure and upgrade of existing was advertised on 14 November 2018 and closed on 21 December 2018.

Essential details of the contract are outlined below:

Contract type	Lump Sum
Contract duration	10 Months
Commencement date	February 2019
Completion date	November 2019

### **Tender evaluation**

Tender submissions were received from the following contractors and evaluated by the tender evaluation panel:

- Downer EDI Engineering Power Pty Ltd
- Guangda Electronic Technology Pty Ltd
- The Trustee for Astuta Trust t/as Zenien Pty Ltd
- Desa Australia Pty Ltd

The tender evaluation panel establishes whether the tender submissions conform to the conditions for tendering and selects a suitably qualified and experienced contractor.

The tender evaluation panel comprised:

- Manager Field Services
- Manager IT
- Team Leader Community Safety
- Team Leader Procurement

To obtain the broadest possible comparison base, each of the tenders was evaluated against the following tender selection criteria and was in turn graded in the tender evaluation matrix.

<b>Item No</b>	<b>Description</b>	<b>Weighting</b>
1	Relevant Experience	15%
2	Key Personnel, Skills and Resources	10%
3	Methodology to undertake the works	30%
4	Occupational Health and Safety	10%
5	Sustainability	5%
6	Tendered Price	30%

Three (3) tender submissions received were conforming, and one (1) tender submission received was non-conforming.

The non-conforming submission was not evaluated as the offer was an alternative offer which did not comply with the terms and conditions of responding to Tender.

The tender submitted by The Trustee for Astuta Trust t/as Zenien Pty Ltd scored the highest rating with 81 points, followed by Downer EDI Engineering Power Pty Ltd 77 points. The remaining tender submissions received lower scores.

The Trustee for Astuta Trust t/as Zenien Pty Ltd, the recommended tenderer, was assessed as having a high level of understanding of the City's requirement, directly relevant experience in the delivery of similar projects and the policies and management procedures required to safely undertake the works and deliver the outcome described in the specification, in accordance with the terms of the tender document.

The evaluation process determined that the tender from The Trustee for Astuta Trust t/as Zenien Pty Ltd is a conforming tender. They are the current provider of maintenance services for the City's current CCTV infrastructure. Reference checks indicate that The Trustee for Astuta Trust t/as Zenien Pty Ltd have provided satisfactory service delivery to their customers on similar projects, and will be a suitable supplier to the City of Fremantle.

### **Environmental considerations**

None

### **Risk consideration**

An assessment undertaken by illion (formerly Dun & Bradstreet) indicates that The Trustee for Astuta Trust t/as Zenien Pty Ltd have the financial capacity to undertake the contract.

There are no strategic or corporate risks within the City's existing risk registers which relate to the issues contained in this report.

Project specific risk assessments have been developed and will be used in the management of this project.

### **Comment**

The Trustee for Astuta Trust t/as Zenien Pty Ltd is a WALGA Panel member for the delivery of CCTV installation projects. The Trustee for Astuta Trust t/as Zenien Pty Ltd are highly experienced with CCTV projects for a wide range of Western Australian Local

Governments. The evaluation panel felt their prior knowledge and experience gained with urban CCTV projects would greatly assist the City with the implementation of this project.

Expenditure on the project will be phased over the 10 month installation period, in line with the acquittal requirements of the Federal Government Safer Communities grant.

Subject to acceptance of the tender, the proposed implementation program is scheduled below:

Project Commencement	February 2019
Project Duration	10 Months
Project Completion	November 2019

## VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

## OFFICER'S RECOMMENDATION

**That the Finance, Policy, Operations and Legislation committee acting under delegation 1.1:**

- 1. Accepts the tender submitted for tender FCC529/18 by The Trustee for Astuta Trust t/as Zenien Pty Ltd, for the supply and install new CCTV infrastructure and upgrade existing.**
- 2. Approves the Chief Executive Officer to negotiate with The Trustee for Astuta Trust t/as Zenien Pty Ltd on the basis of amendments to the scope of work to deliver the services for the amount of \$928,390 (ex GST), as provided for by the Federal Government Safer Communities Grant and any contractual variations, in accordance with Regulation 20 of the Local Government (Functions and General) Regulations 1996.**

**FPOL1901-2 PETITION AGAINST REMOVAL OF PARKING BAYS IN MARKET STREET**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Manager Economic Development and Marketing  
**Decision Making Authority:** Committee  
**Agenda Attachments:** Community engagement report  
Officer Report to Finance, Policy, Operations and Legislation Committee 12 September 2018.

**SUMMARY**

**The purpose of this report is to acknowledge receipt of a petition tabled at the Ordinary Meeting of Council on the 28 November 2018, which spoke against the removal of parking bays on Market Street adjacent to the Manning Building as part of a development.**

**This report recommends that the Finance, Policy, Operations and Legislation committee acting under delegation 1.1 acknowledge the petition and continue to monitor any impacts to short term parking in adjacent areas after removal of the bays.**

**BACKGROUND**

The development application for 135 High Street Mall (DAP006/17) involved a request by the applicant to remove the current short term parking and loading zones on the eastern side of Market Street, between High Street and South Terrace. This request was supported in principle subject to consulting with surrounding businesses.

A consultation process was delivered and results were presented to the Finance, Policy, Operations and Legislation committee held on 12 September 2018 (FPOL1809-3). After receiving the report the Committee resolved to:

- 1. Receive the attached report on community engagement regarding the request by the Manning Building owners to remove the customer parking bays and loading zone on Market Street to allow for the re-instatement of the awning.*
- 2. Approve the removal of the parking bays and loading zone, to allow for the re-instatement of the awning, monitor the resulting impacts and consider making modifications if required.*

Following the approval of the removal of the parking bays by Council, a petition against the removal of these bays was submitted to the Ordinary Meeting of Council held on 28 November 2018.

## **FINANCIAL IMPLICATIONS**

Should the parking bays in question be removed, the cost of the removal of bays is to be borne by the adjoining property owner undertaking the development.

## **LEGAL IMPLICATIONS**

The City manages all on-street parking.

## **CONSULTATION**

Officers engaged surrounding businesses and property owners to enable them to share their feedback on the proposal to remove the parking bays and loading zone on Market Street. The feedback collected as part of this engagement was presented to the Finance, Policy, Operations and Legislation Committee on 12 September 2018.

Please refer to attachment 1 for full report on the community engagement carried out.

## **OFFICER COMMENT**

A request to remove the parking bays and loading zone on Market Street was part of the development application for 135 High Street Mall (DAP006/17). Removal of the parking bays and loading zone was required due to the reinstatement of an awning as part of the current redevelopment of the Manning Buildings.

Officers identified a series of benefits and considerations relating to urban design, heritage and safety which indicated the addition of the awning and removal of bays will result in a positive outcome for the area. The benefits and considerations are specified in attachment 2, specifically item FPOL1809-3.

The petition received included approximately 1068 signatures, stating the following for consideration:

*“We the undersigned are against the removal of the free 15 minute parking bays and loading zone on Market Street.”*

Upon consideration of the petition, officers determined that the petition question when posed without context of the reason for removal of the bays is unlikely to adequately inform potential signatories as to the benefits or broader outcomes associated with the removal of the bays.

Consideration was also given to the possibility that the removal of free parking in any situation, when considered in isolation of any broader outcome is likely to be met with a negative response by most respondents.

Given there has been no change since the previous decision to approve the removal of the parking bays and loading zone, officers have determined three options in response to the petition received:

### Option 1

Acknowledge the petition against the removal of the free 15 minute parking bays and loading zone on Market Street and continue to monitor any impacts to short term parking in areas adjacent to Market Street.

This would result in the removal of the parking and loading zone bays on Market Street and re-instatement of the awning at 135 High Street, as well as the realisation of benefits relating to urban design, heritage and safety linked to the development of 135 High Street.

### Option 2

Begin the process of attempting to rescind the decision of 12 September 2018 (FPOL1809-3).

Process to undertake this option (in accordance with Regulation 10 of Local Government (Administration) Regulations 1996):

- Stage one: Propose a motion, which must be signed by at least one-third of the number of members, inclusive of the mover, of the council or committee who made the original decision.
- Stage two: Formally raise the motion (if supported) – which must be decided by an absolute majority.

Rescinding the decision would result in the free 15 minute parking bays and loading zone on Market Street being retained however would likely cause significant delays and put design, heritage and pedestrian safety outcomes linked to the 135 High Street development (DAP006/17) at risk. It may also put the proposed investment into the renewal and maintenance of an existing heritage building at risk.

### Option 3

Defer the implementation of the awning associated with development DAP006/17 for a period of two years.

This would result in the free 15 minute parking bays and loading zone on Market Street being retained for a further 2 years however would likely put design, heritage and pedestrian safety outcomes linked to the 135 High Street development (DAP006/17) at risk. It may also put the proposed investment into the renewal and maintenance of an existing heritage building at risk.

It may also unnecessarily extend the period of significant construction being undertaken in the central core due to the Kings Square project, putting further undue pressure on businesses within that area, and detracting from overall visual amenity during the period in which the Kings Square development is likely to be completed and launched.

## **VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required

## **OFFICER'S RECOMMENDATION**

**The Finance, Policy, Operations and Legislation committee acting under delegation 1.1:**

- 1. Acknowledge the petition containing approximately 1068 signatories against the removal of the free 15 minute parking bays and loading zone on Market Street submitted at the Ordinary Meeting of Council on 28 November 2018.**
- 2. Monitor any impacts to short term parking in areas adjacent to Market Street after the removal of the parking and loading zone bays on Market Street and re-instatement of the awning at 135 High Street, Fremantle, and consider making modifications if required.**

## 10.2 COUNCIL DECISION

### FPOL1901-3 SUBMISSION TO PARLIAMENTARY INQUIRY ON SHORT STAY ACCOMMODATION

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Director Planning & Strategic Projects  
**Decision Making Authority:** Council  
**Agenda Attachments:** Nil

#### SUMMARY

**The Economics and Industry Standing Committee of the Legislative Assembly of the Parliament of Western Australia is conducting an inquiry into matters relating to the regulation of short-stay accommodation in WA. The Committee is inviting submissions on the matters covered by the inquiry, to be made by 25 January 2019.**

**Given the significant role played by short-stay accommodation in supporting Fremantle's visitor economy, it is recommended that the City of Fremantle makes a submission. This report sets out the content of a recommended submission by the City for Council's consideration and approval.**

#### BACKGROUND

The Economics and Industry Standing Committee of the Legislative Assembly of the Parliament of Western Australia is conducting an inquiry into matters relating to the regulation of short-stay accommodation in WA, with particular reference to:

1. The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities.
2. The changing market and social dynamics in the short-stay accommodation sector.
3. Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms.
4. Approaches within Australian and international jurisdictions to ensure the appropriate regulation of short-stay accommodation.

The Committee will report to the House by 27 June 2019, and to assist its inquiry it is inviting submissions on matters within the above terms of reference to be made by 25 January 2019.

#### FINANCIAL IMPLICATIONS

Nil

## **LEGAL IMPLICATIONS**

Nil

## **CONSULTATION**

None applicable. The purpose of the report is to recommend a submission by the City in response to consultation being undertaken by the Economics and Industry Standing Committee.

## **OFFICER COMMENT**

Given the significant role played by short-stay accommodation in supporting Fremantle's visitor economy, and the proactive approach taken by the City in recent years in managing certain forms of accommodation through the City of Fremantle Short Stay Accommodation Local Law, it is considered that the City can make a useful contribution to this parliamentary inquiry. The remainder of this report sets out the content of a recommended submission by the City for Council's consideration and approval. The structure of the submission is based on the four key issues identified in the terms of reference for the inquiry.

### **The forms and regulatory status of short-stay accommodation providers in WA, including existing powers available to local government authorities.**

#### **a) Short-stay accommodation is not new, but some business models are.**

Various forms of short-stay accommodation, principally servicing tourists or business visitors, have existed across WA for many years. These include hotels, motels, backpackers/hostel style accommodation, serviced self-catering apartments in purpose-built developments, caravans/park homes/chalets on licensed Caravan Parks, and accommodation offered within residential dwellings either with or without the service of breakfast or other meals.

Most of these forms of accommodation are easily recognised, and already appropriately regulated for at a state and/or local government level. Provisions to assess and regulate the land use impacts associated with the development and use of buildings purposely developed for short-stay use are, in the view of the City of Fremantle, already adequately provided for through the *Planning and Development Act 2005* and local planning schemes prepared and administered under that Act. The model provisions for local planning schemes contained in Schedule 1 to the *Planning and Development (Local Planning Schemes) Regulations 2015* provide consistent categories for the zoning of land, and definitions of land uses, to be applied in individual local planning schemes across WA.

The regulation of building, health, fire and other safety matters, and consumer protection issues associated with short-stay accommodation are also well established through existing state legislation and the City of Fremantle considers adequate inspection and compliance powers are available at state and local level to administer these statutory requirements.

The City considers the primary issue that the Standing Committee's inquiry should focus on is the consequences - both positive and negative - of the use and management as short-stay accommodation of dwellings primarily intended for long-term residential occupation. Although this type of accommodation has existed to some degree for many years (e.g. traditional 'bed and breakfast' establishments), the rapid growth in recent years of online booking platforms aided by disruptive technologies has led to a major increase in the popularity of both providing and staying in conventional dwellings. This has tended to blur the boundary between traditional commercial operators/businesses and the emerging market typified by Airbnb members. This blurring can cause a number of tensions, particularly because a significant proportion of the accommodation offered for rental on Airbnb and similar online platforms is located in predominantly residential areas not traditionally associated with the supply of short-stay, tourist-orientated accommodation.

The City took a proactive approach to addressing this issue ten years ago. Although this pre-dated the major growth in 'Airbnb-type' accommodation offerings and booking technology, the City considers its approach has stood the test of time well and can offer a useful case study to the inquiry that could inform recommendations on a suitable framework for wider application.

#### **b) City of Fremantle's approach to local regulation of short-stay accommodation.**

In 2007-08 the City considered a number of options for dealing with the regulation of short stay accommodation in the form of dwellings used predominantly for that purpose, generally involving the owner/proprietor residing in another property.

The City concluded that it is difficult to satisfactorily deal with such uses through the planning development approval process, because rather than involving assessment of physical aspects of a development which can be objectively assessed (e.g. building design, number of parking spaces, etc.) the use of a dwelling which might otherwise be occupied as a main residence by an owner or long-term tenant as short stay accommodation raises more subjective issues of impacts that *may* occur, but do not occur *of necessity in every case*. Impacts from such use (in terms of potential nuisance to neighbours from noise disturbance, etc.) are more dependent on the manner in which the property is managed than on physical attributes of the use which are really no different to those involved with long term residential occupation of the same building.

The difficulty with attempting to assess impacts such as noise disturbance from comings and goings or social activities by short stay occupants of dwellings through the planning system is that they may equally apply to any long-term household which, through the lifestyle of its occupants, may create local nuisance to neighbours without any opportunity for control through the development approval process. Furthermore, planning enforcement is made difficult by the challenge of clearly distinguishing between short-term and long-term occupancy of a dwelling.

For these reasons, the City decided to adopt an approach of exempting the land use of short-stay accommodation in the form of occupation of single, grouped or multiple dwellings (where occupied by 6 or less people) from requiring development approval in

all zones under the Local Planning Scheme. However, in parallel the City adopted a Short Stay Accommodation Local Law under the provisions of the *Local Government Act 1995*.

The City's reason for adopting this approach was based on evidence that the primary concerns of the local community about short stay accommodation in residential locations related to matters of adequate management of such accommodation and guest behaviour, rather than the use of the property per se. As explained above, the City considered that these issues could not be effectively addressed through the statutory planning process, but could fall within the scope of matters that may legitimately be included in a Local Law made under section 3.5(1) of the *Local Government Act 1995*.

In 2009 the Joint Standing Committee on Delegated Legislation considered, and accepted, the City's proposition that the City of Fremantle Short Stay Accommodation Local Law 2008 was within the City's lawmaking powers under the *Local Government Act 1995* and is not inconsistent with the *Planning and Development Act 2005*.

In summary, the City of Fremantle Short Stay Accommodation Local Law makes the following provisions:

- The proprietor of a dwelling intended to be used as short-stay accommodation must register the dwelling with the City, and must not use the property for such purposes without having been issued a certificate of registration by the City.
- A certificate of registration will not permit more than 6 persons to occupy a dwelling for short-stay accommodation purposes.
- The following conditions apply to all certificates of registration:
  - Each booking must be for a minimum stay of 2 consecutive nights.
  - A minimum of 1 on-site car parking space must be available for the exclusive use of occupants.
  - The manager of the short stay accommodation must be contactable, using contact details provided to the City, at any time of the day or night and the manager must respond, within 12 hours, to any contact made relating to the accommodation.
  - The proprietor must promptly inform the CEO of the City of any change that would affect the currency of the details of the registration.
- A breach of the local law is an offence punishable by a penalty of \$4,000 or modified penalty of \$400.

Since the local law took effect in March 2009, the City has found it to be a generally effective mechanism to regulate the use of dwellings for short-stay accommodation purposes. In particular, the requirements for registration of short-stay dwellings and conditions of registration requiring a minimum stay of 2 consecutive nights and a nominated manager to be contactable by neighbours or any other person on a '24/7' basis have proved very effective in minimising detrimental impacts such as so-called 'party house' one-night bookings by large groups.

Since the local law came into effect, the City has averaged less than 5 complaints per year regarding the operation of registered short-stay dwellings or the operation of alleged unregistered short stay accommodation. As of 1 December 2018, 222 properties within

the City of Fremantle have current certificates of registration for use as short-stay accommodation. In August 2017 the City conducted a cross-check of properties registered for short-stay use against properties within the City of Fremantle being advertised for rental as short-stay accommodation on online booking platforms. This did not reveal any significant disparity between the number of properties advertised for rent on platforms such as Airbnb and the number of properties registered under the City's local law. In fact, the number of registered properties exceeded the number being advertised at the time of the check.

The City considers these statistics indicate a high level of voluntary compliance with the local law by short-stay accommodation operators, and a regulatory approach which balances the interests of accommodation operators, the amenity of neighbours and the resource capacity of the local government in a proportionate manner.

### **c) Suggested guiding principles for a regulatory framework**

Based on its experience with the approach described in b) above, the City suggests that any recommendations the Standing Committee might consider making about regional or state-wide approaches to regulation of short-stay accommodation should be based on the following principles:

- A balanced and practical approach. Clear rules are needed regarding what type of approval is required, and in what circumstances, but at the same time local government does not have the capacity or resources to administer an overly burdensome regulatory framework.
- Flexibility. Consistency of definitions and regulatory approaches across different local government areas will assist all stakeholders, but a regulatory framework needs to be flexible enough to adapt to the local situation given the likelihood of significant variations in the nature, extent and impacts of short-stay accommodation in different locations across both metropolitan and regional WA.
- Simplicity and transparency. It is in the best interests of accommodation providers, the wider community, and regulatory agencies (especially local governments) to provide clear, simple approval and complaint resolution pathways which do not involve excessive 'red tape', are proportionate to the relatively low impact nature of such accommodation, and do not divert local government attention and resources away from dealing with issues of greater strategic significance.
- Blended regulation. A combination of proportionate government regulation and industry self-regulation by accommodation providers and booking platforms/agencies is a preferable approach.

### **The changing market and social dynamics in the short-stay accommodation sector.**

The last decade has seen significant competitive pressures placed on a number of industries as a result of digital disruption. The introduction of Uber rideshare services has changed the way consumers procure transport, which has impacted market share for

traditional taxi services. Similar trends have been seen within the short-stay accommodation sector with the introduction of AirBnB room share based services. Technology has been at the centre of the success of both of these examples, with consumers now able to book competitively priced accommodation or transport at the touch of a button via mobile applications.

Whilst technology has been an enabler for this kind of change, there has also been a shift towards a sharing economy. With the aid of technology consumers are now prepared to step outside of the realm of traditional hotel/B&B type models and start staying in people's homes with the primary drivers being affordability, choice and unique experiences. AirBnB users are able to choose anything from a luxury penthouse, a standard residential apartment, a cabin in a river boat or even a tree house in the forest.

The affordability, choice and uniqueness that models like AirBnB offer consumers adds significantly to a destinations ability to attract visitors, as this increase in supply and choice can help drive demand across a broader range of potential visitors.

### **Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms.**

Whilst the emergence of new technology driven business models in the short stay accommodation sector have helped to drive choice and affordability, the ease at which short-stay accommodation suppliers have been able to engage with platforms such as AirBnB, Expedia and Booking.com has highlighted some concerns around the ability to regulate these operators both from a safety and a commercial land use perspective.

In the absence of a consistent regulatory framework, there is risk of room share and AirBnB providers not meeting health and safety requirements that established commercial accommodation operators would normally be required to adhere to. This has also raised questions around the ability to audit and regulate smaller room share based operators given the number and scale of listings.

The Hotel industry has also been vocal in identifying an 'uneven playing field'. This is primarily due room share based models not being subjected to the usual commercial overheads that hotels are, therefore enabling room share operators to provide significantly cheaper accommodation than hotels.

The City of Fremantle has responded to these issues by introducing a differential rate on registered short stay properties from 1 July 2018.

### **Approaches within Australian and international jurisdictions to ensure the appropriate regulation of short-stay accommodation.**

The City of Fremantle is aware of the following examples of approaches adopted under other jurisdictions, which it considers are relevant to the scope of the inquiry.

In New South Wales, an inquiry by the NSW Parliament's Legislative Assembly Committee on Environment and Planning led to publication of an options paper on short-term holiday letting by the NSW Department of Planning and Environment in 2017.

Following the options paper, in June 2018 the NSW Government announced a whole-of-government framework for short-stay accommodation featuring the following key elements:

- Short-stay letting of residential properties is exempt from requiring planning approval whether the host/owner is present at the property or not, but for properties within Greater Sydney if the host is not present there is a 180 day per year limit on short-term letting.
- A mandatory Code of Conduct for short-stay accommodation operators and online booking platforms covering management issues such as noise and dealing with disruptive guests.
- Provisions for strata property management bodies to adopt strata by-laws prohibiting short-stay letting if the unit owner does not live in the property being let out.
- Recognition of the significant contribution short-stay accommodation booked through online platforms such as Airbnb makes to the Australian economy.

International examples:

San Francisco – local city ordinance (local law) introduced in 2015. This allows permanent residents of San Francisco to register to be a short-term rental host of a residential property which they own and occupy themselves for at least 275 nights per year. Renting out of the property when the host is not in occupation is limited to 90 nights per year. Registration does not override any strata property by-law that may prohibit short-term rental of a dwelling in a multi-unit development. The City of San Francisco local government has an ‘Office of Short Term Rentals’ which administers and enforces the local law.

Vancouver – City of Vancouver local law came into effect on 1 April 2018 requiring property owners intending to let a property for short stay accommodation to obtain a Short Term Rental Accommodation licence from the City. Only properties which are the principal residence of the owner (defined as where they spend over 180 days per year) may be licensed. ‘Good neighbour’ rules require licence holders to take responsibility for guests conforming with noise and parking management protocols.

London – short term rental of an entire residential property without planning approval limited to 90 days per year.

Many major European cities including Paris, Berlin, Madrid and Barcelona operate similar controls (with variations) that require properties used as short stay accommodation to be registered as such, and to be limited in use for a maximum number of nights per year (varied, but generally 120 nights per year or less) and/or to be limited to properties which are the owners’ own principal place of residence.

The City of Fremantle offers the following observations in relation to these examples.

- A common theme of approaches to regulation is the use of a short stay accommodation registration or licensing system, with an onus on property owners/operators to register and comply with basic provisions relating to property

use and responsible management. The approach already applied by the City of Fremantle through its Short Stay Accommodation Local Law is consistent with this trend.

- Major cities which have introduced relatively strict controls over short stay accommodation (particularly controls which limit the maximum number of nights per year accommodation may be let for) are destinations which experience mass tourism on a scale far in excess of that occurring in WA currently or within the foreseeable future. By way of comparison, according to Tourism WA statistics in the year ending 30 June 2018 WA received a total of approximately 2.5 million interstate and international visitors, compared to 15.5 million in NSW (mostly visiting Sydney) in the same period. In 2017, measuring international visitors alone, Berlin received 5.1 million, Madrid 5.5 million, Barcelona 8.9 million and Paris 16.1 million (source: Mastercard 2017 Global Destination Cities Index).
- In some of these overseas cities, there is evidence of distortion of local housing markets (particularly the supply and cost of long-term rental housing for local residents) caused by high concentrations of properties, including entire apartment blocks in some instances, in the most popular tourist localities being turned over to entirely short-stay accommodation. To a lesser degree this has also occurred in limited parts of Sydney and Melbourne, according to a recently published study by the Australian Housing and Urban Research Institute (*Technological disruption in private housing markets: the case of Airbnb*, published November 2018). Measures to restrict the availability of short-stay accommodation in some of the above mentioned cities has, at least in part, been justified as a response to effects on local housing markets. However, the City of Fremantle is not aware of any clear evidence that trends in short stay accommodation supply and demand are causing similar impacts within WA to any significant degree, and therefore it considers that mechanisms such as limiting the maximum number of nights in a year a property may be offered for rent on a short stay basis are not warranted, given the negative impact they would have on the availability of tourist accommodation and the practical difficulties and resource implications they would present in terms of compliance monitoring.

### **Conclusion**

It is recommended that a submission be made by the City based on the contents of the Officer Comment section above. The deadline for submissions is 25 January, prior to the date of the January Ordinary Council Meeting on 30 January. Accordingly it is proposed to lodge the submission immediately after consideration of the item by FPOL Committee, and the Standing Committee will be advised that any additional or amended comments arising from consideration of the item by council on 30 January will be submitted immediately following the council meeting.

### **VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required

## **OFFICER'S RECOMMENDATION**

### **Council:**

- 1. Endorse the submission by the Chief Executive Officer to the Legislative Assembly of WA's Economics and Industry Standing Committee inquiry into Short-Stay Accommodation, based on the contents of the report on the matter included in the agenda of the Finance, Policy, Operations and Legislation Committee meeting held on 23 January 2019.**

## **FPOL1901-4 ADOPTION OF PROPOSED ADVOCACY POLICY**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Manager Communications and Media  
**Decision Making Authority:** Council  
**Agenda Attachments:** Nil

### **SUMMARY**

**This report introduces the City of Fremantle's Advocacy Policy and outlines the process the City will undertake to determine and act on its advocacy priorities.**

**This report recommends that Council:**

**Adopt the Advocacy Policy to assist Council to prioritise progress and evaluate the City's advocacy program.**

### **BACKGROUND**

The City of Fremantle has a long and proud history of strong and robust advocacy, and this policy and associated activities are designed to provide further strategic direction and support.

Advocacy is the process of influencing others to create change. For the City of Fremantle, advocacy is primarily aimed at State and Federal Governments for projects, funding, services and infrastructure outside our own capacity or control.

The City advocates on behalf of the community on a wide range of issues, initiatives and services to achieve our vision of creating a destination city.

With Fremantle undergoing significant transformational change, it is more important than ever that the City manages the needs of its community proactively. For many key infrastructure and social projects, State and/or Federal Government funding and support is necessary to drive change and improvement.

This Advocacy policy is designed to provide a framework to plan and deliver advocacy activities to progress identified priorities of Council that will contribute to the City of Fremantle consolidating its position as Perth's second city.

A key component of the policy is the internal reference group, chaired by the Chief Executive Officer and including the Mayor, Deputy Mayor and 2–3 Elected Members. This group will meet regularly to consider the City's advocacy priorities, discuss progress against objectives and provide feedback on operational actions and initiatives on Council's behalf.

The core advocacy program is formed from positions adopted by Council with City officers producing promotional materials – media statements, fact sheets and other collateral – to support and strengthen the City's efforts to gain support from key stakeholders including State and Federal Government.

Activities currently identified for the City's advocacy program include (but are not limited to) the following objectives:

- improving public transport.
- furthering Fremantle's position as a tourism gateway.
- creating local jobs around a seven-day per week economy.
- connectivity – roads, rail/light rail, traffic bridge and bicycles.
- investment in Fremantle.

## **FINANCIAL IMPLICATIONS**

Funding will be set aside in the City's operational budget to enable development of base materials to support advocacy efforts including, but not limited to, fact sheets, media statements, publications and photography/videography.

City officers' time will be allocated within existing resourcing to support core priorities as agreed by the CEO and advocacy working group.

Any advocacy activities that involve a greater level of resourcing/budget (i.e. major campaigns, community activations etc) will be referred to Council for direction.

## **LEGAL IMPLICATIONS**

Nil

## **CONSULTATION**

The City recognises that when addressing advocacy issues, we will increase our likelihood of success by working in collaboration with other organisations with similar aims. As such, to give our advocacy efforts the best chance of success, we will seek to position ourselves, where possible, in close partnership or alliance with appropriate organisations and bodies.

The City will keep the community informed on our advocacy activities including updates on issues, actions and outcomes.

## **OFFICER COMMENT**

The City of Fremantle 2015–25 Strategic Community Plan is the overarching document that sets out the Council vision for achieving the key priorities and commitments on issues that matter to our community.

The Freo 2029 Transformational Moves document was prepared to support the Fremantle Activity Centre Structure Plan and illustrates how five key 'moves' will help to rejuvenate and revitalise the city as it approaches its 200th birthday.

Both the strategic community plan and the Freo 2029 Transformational Moves document are products of a major community visioning project conducted during 2013–14 that set the blueprint for Fremantle's future growth and direction.

This Advocacy Policy and associated advocacy positions and actions/initiatives are built from the issues and foundations of the Strategic Community Plan and reinforced by Freo 2029 Transformational Moves. The Advocacy Policy will be a further catalyst for defining the themes and priorities for how the City of Fremantle uses its voice on behalf of residents.

Advocacy focuses on what needs to be done to influence other stakeholders or parties that have an authority or significant influence on whether the City can achieve its aspirations and vision.

Our advocacy positions have been developed via a framework informed by our key strategic documents. Successful advocacy will result, or contribute to one, or a combination of the following:

- a change in government legislation, policy or practices, to the overall benefit of residents, the environment and/or local business.
- committed investment into/provision of local infrastructure and/or services by sources other than the City of Fremantle.
- funding for the City of Fremantle to deliver or implement services, projects and initiatives.
- promotion of an issue or information to key decision makers and other levels of government to influence positive change.
- promotion of, or raised awareness of, an issue or information to facilitate positive change in community behaviours or attitudes.

Successful advocacy outcomes ultimately result in a better quality of life for both existing and future residents.

## **VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required

## **OFFICER'S RECOMMENDATION**

### **Council:**

- 1. Adopt the Advocacy Policy (included below) to assist Council to prioritise, progress and evaluate the City's advocacy program.**

### **Advocacy Policy**

#### **Policy scope**

To provide direction for the City of Fremantle's advocacy initiatives, to outline roles and responsibilities and to support the Mayor and Elected Members, the Chief Executive Officer and City officers in their efforts to achieve positive changes to public policy or resourcing for the local community.

This policy applies to Council and City officers when planning and delivering advocacy initiatives and deciding how the City of Fremantle resources its efforts.

Elected Members play a key role in the development and maintenance of political relationships to support the City's strategic priorities and advocacy efforts.

City officers support the development and maintenance of the City's advocacy program and assist to determine priorities and approach.

#### **Policy statement**

Advocacy is the process of influencing others to create change. For the City of Fremantle, advocacy is primarily aimed at State and Federal governments for projects, funding, services and infrastructure outside our own capacity or control.

The City is committed to advocating on behalf of the community on a wide range of issues, initiatives and services to improve the quality of life for our residents and achieve our vision of creating a destination city.

Advocacy can take the form of making a submission, meeting with decision makers, collaboration with other councils and peak bodies, consultation, media and communications strategies and public campaigns.

The City of Fremantle 2015–25 Strategic Community Plan is the overarching document that sets out the Council vision for achieving the key priorities and commitments on issues that matter to our community.

This Advocacy policy, and associated advocacy positions and actions/initiatives, is built from the issues and foundations of the Strategic Community Plan and reinforced by the City's Freo 2029 Transformational Moves blueprint. The Advocacy policy will be a further catalyst for defining the themes and priorities for how the City of Fremantle uses its voice on behalf of residents.

## **Implementation**

### **Advocacy reference group**

To assist the City of Fremantle in its advocacy efforts, an internal reference group will act as a link between Council and City officers to ensure the City of Fremantle's advocacy priorities are supported at both a strategic and operational level.

The reference group will meet regularly, with its primary purpose to:

- advise the CEO on advocacy priorities
- assist the CEO to review and approve materials supporting and promoting advocacy efforts and
- provide a forum for reporting on progress.

### **Advocacy program**

Advocacy positions will be established according to two main categories:

- core and
- campaign.

**Core** advocacy positions are those that align with an existing position of Council and its advocacy principles (as outlined in this policy) and can be resourced and advanced within operational budget.

For core advocacy, the City will prepare position statements, develop support materials, identify key stakeholders and possible funding opportunities, establish and maintain relationships with other levels of government/agencies and facilitate opportunities to advance these positions.

**Campaign** advocacy positions are those that sit outside of existing resourcing or budget requirements and/or require a further commitment by Council. These are where the nature of the project requires complex technical materials, extensive community engagement or further detailed research and analysis.

While the nature of advocacy requires a fluid and agile approach to capitalise on opportunities that arise, the reference group will refer advocacy positions that are above and beyond core activities to Council for direction.

### **Advocacy principles**

The following principles reinforce the City of Fremantle's approach to advocacy:

**Representative of local need** – actions will be based upon policy and strategic positions adopted by Council, established via an evidence base either developed by Council or sourced from other agencies.

**Leadership** – the City will lead through advocacy on behalf of our community on key issues to protect and enhance the City of Fremantle, with an emphasis placed on

working with advocating to State and Federal Governments.

**Transparency** – the City will be open and transparent in our advocacy objectives, activities and priorities.

**Partnership and alliances** – the City recognises that successful advocacy will depend on working in collaboration with other agencies and organisations with similar aims. As such, we will look to partner on issues of joint importance and concern with a variety of local, state and national stakeholders.

**Outcome focused** – the City will seek to position its advocacy as providing solutions to problems, issues or concerns through the development of options that are proactive and innovative.

### **Relationships with other levels of government**

Government at all levels – State, Federal and Local – has the common objective of enhancing the wellbeing of communities. Given we rely on funding and support from both levels of government, the City recognises the importance of maintaining strong relationships with all sides of politics. As such, the City will ensure that it develops and maintains regular engagement with other levels of government, including Ministers, local members and department officials.

### **Monitoring and evaluation**

The City will review and confirm advocacy themes and priorities through:

- meetings of the advocacy reference group
- ongoing community engagement
- continuing work in the development of new and review of existing policy and strategy that guides service delivery.

### **Resources and budget**

Funding will be set aside in the City's operational budget to enable development of base materials to support advocacy efforts including, but not limited to, fact sheets, media statements, publications and photography/videography.

City officers' time will be allocated within existing resourcing to support core priorities as agreed by the CEO and advocacy reference group.

Any advocacy activities that involve a greater level of resourcing/budget (i.e. major campaigns, community activations etc) will be referred to Council for direction.

### **Definitions and abbreviations**

Nil.

## **FPOL1901-5 FREMANTLE FOUNDATION FUNDING**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Director Community Development  
**Decision Making Authority:** Council  
**Agenda Attachments:** Fremantle Foundation Partnership for Support

### **SUMMARY**

**This report seeks council’s consideration of the release of funding to the Fremantle Foundation that was quarantined in the adopted 2018/2019 budget for that purpose. Requirement for the release of funding to the Fremantle Foundation was that the Foundation presented to council a satisfactory proposal for the financial contribution.**

**This report recommends that the amount of \$40 000 in council’s adopted 2018/19 budget for allocation to Fremantle Foundation be approved for release.**

### **BACKGROUND**

Council has previously provided financial support to the Fremantle Foundation, in particular to support their research project that produced the “Vital Signs” report providing a snapshot of the vital statistics for Fremantle.

Fremantle Foundation again requested consideration by council of funding in the draft 2018/2019 budget for a contribution of \$40 000. In adopting the 2018/2019 budget council quarantined the contribution to the Fremantle Foundation subject to receipt of a satisfactory proposal in regard to that funding.

Fremantle Foundation CEO and Board members presented a proposal to Elected Members in December 2018 regarding support to the Foundation on the basis of the benefit to the Fremantle community. The specific nature and details of the proposal are contained in the attached document titled “Partnership for Support” provided by the Foundation.

The proposal outlines a request for the City of Fremantle to provide partnership support for the Foundation’s core operations as a means of assisting the Foundation to grow its capacity to “provide real impact in the community”.

The proposal also highlights the history of the Fremantle Foundation, having now been in existence for eight years and having distributed \$1.6 million over that time to the Fremantle, Perth and WA community. As an example, since 2013 the Impact100 Fremantle initiative has provided over \$700 000 to charities to deliver support in the local community, with PCYC in Hilton most recently awarded this grant.

In its proposal the Fremantle Foundation demonstrated alignment with council’s Strategic Community Plan and that any investment in the Foundation’s core operating costs results in exponential funds generated for distribution in support of the community.

Fremantle Foundation is proposing an initial one year partnership with an associated financial contribution by council of \$40 000. Additionally, the proposal by the Foundation seeks a further two year agreement for financial support.

As outlined in the Fremantle Foundation's presentation "Partnership for Support":

Further benefits to the City of Fremantle from having a thriving Fremantle Foundation include:

- Increased financial support for Fremantle community, reducing the ongoing need for external (outside of Fremantle) funding.
- Cost savings through resource sharing (via projects such as Fremantle's Vital Signs).
- Leveraging donor opportunities that may not otherwise be possible, increasing the community investment in the City of Fremantle (such as 20 Lives 20 Homes).

Throughout Australia's 38 community foundations there are strong examples of local councils supporting their growth and development.

With the Fremantle Foundation 10 year anniversary approaching in late 2020, a partnership with the City of Fremantle will help us to take an important step forward in our growth and development."

## **FINANCIAL IMPLICATIONS**

An amount of \$40 000 is included in the 2018/2019 adopted budget for this purpose.

Consideration of financial contribution by council over the next two financial years will require consideration as part of council's annual budget process. Subject to council's resolution on this matter, officers will include an amount for consideration in the draft budget of \$40 000 in the 2019/2020 and 2020/2021 financial years for contribution to the Fremantle Foundation.

## **LEGAL IMPLICATIONS**

Nil

## **CONSULTATION**

Officers have communicated and liaised with representatives of the Fremantle Foundation in regard to preparation and scheduling of their proposal to council for a financial contribution.

## **OFFICER COMMENT**

Officers recommend that the proposal by the Fremantle Foundation for a financial contribution of \$40 000 in 2018/2019 in support of their work on behalf of the Fremantle community be supported by council.

Officers are also aware of the benefits more broadly of a local Foundation and that this model of local government partnering with such entities, whilst quite common on the East coast, is a demonstration of City of Fremantle leading the way in WA to seek new and innovative means of supporting its community.

In addition to the benefits to the community outlined in the proposal by the Fremantle Foundation, officers are also confident that the ongoing work of the Foundation provides research and data that can be accessed and used by council to assist its own planning and strategic decision making in regard to the community.

Subject to approval of this proposal officers will work with the Fremantle Foundation to further build the working relationship, including ensuring appropriate acknowledgment of the City's financial contribution.

## **VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required

## **OFFICER'S RECOMMENDATION**

**Council:**

- 1. Approves the release of the contribution to the Fremantle Foundation of \$40,000 quarantined for that purpose in the adopted 2018/2019 budget as a result of receipt by council of a satisfactory proposal by the Foundation.**
- 2. Approves the inclusion for consideration in future draft budgets in 2019/2020 and 2020/2021 of an amount of \$40,000 as a financial contribution forming a partnership with the Fremantle Foundation.**

## **FPOL1901-6 DADAA LEASE - PORTION OF PRINCESS MAY PARK**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Manager Economic Development and Marketing  
**Decision Making Authority:** Council  
**Agenda Attachments:** Nil

### **SUMMARY**

The City has a lease with DADAA Limited for the Old Boys School, 92 Adelaide Street, Fremantle.

DADAA are currently finalising their development application for the last stage of fit out, which will include air conditioning.. Due to heritage considerations, the air conditioning plant will need to be located on the side of the building which is outside the lease area. This requires the City of Fremantle to lease a 19.5m<sup>2</sup> portion of Princess May Park to DADAA to facilitate the air conditioning plant.

This report recommends that Council approve a lease with DADAA Inc for a portion of Reserve 594 (Princess May Park) on the following terms;

- a) Lease area: 19.5m<sup>2</sup>
- b) Lease commencement date: 1 February 2019
- c) Lease term: Eight years and eight months effective 1 February 2019 expiring 30 September 2027.
- d) Further term: Ten years commencing 1 October 2027 expiring 30 September 2037.
- e) Rent: Peppercorn
- f) Permitted use: Air condition plant and associated uses.
- g) Condition precedent;
  - i. The lease will be subject to the lessee obtaining development approval for the installation of the air conditioning to 92 Adelaide Street, Fremantle.
  - ii. The lease will be subject to approval by the Minister for Lands.
- h) Special conditions;
  - i. The Leased area will be maintained solely by the Lessee.
  - ii. All equipment installed in the leased area will be the sole responsibility of the lessee to service, maintenance and/or replace for the term of the lease.
  - iii. At the termination of the lease, all equipment installed by the lessee will be removed by the lessee from the leased area unless otherwise agreed by the lessor.

## **BACKGROUND**

Following the Council Resolution of 15 April 2015, the City called for proposals for tenants for the Old Boys School, 92 Adelaide Street Fremantle. 13 submissions were received and assessed by the selection panel. The application from DADAA Inc, in partnership with Fremantle Foundation and the Department of Health, was assessed as the preferred proposal.

The City entered into a Lease with DADAA for the Old Boys School, 92 Adelaide Street, Fremantle for a term of eleven years effective 1 October 2016 and a further term of ten years effective 30 September 2027.

DADAA pay a rent of \$40,810.31per annum plus GST with annual rent reviews occurring to Consumer Price Index and market reviews every five years.

The City completed restoration works on the building in early 2017. DADAA's proposed development application will include the installation of air conditioning and fit out to the gallery, media room, café and courtyard. The value of these works is estimated at \$1,300,000.

## **FINANCIAL IMPLICATIONS**

As the new leased area can only be used in conjunction to the existing lease the rent for the 19.5m2 will be a peppercorn arrangement.

## **LEGAL IMPLICATIONS**

Princess May Park, including the three buildings that occupy the land is vested to the City under a Management Order from the Minister for Lands. The permitted use of the land is recorded as "preservation of heritage buildings, community purposes and parks, and that part the reserve comprising Lot 501 on deposited plan 76769 only, may also be used for commercial purposes". The final part of the description relates to Clancy's Fish Pub.

The City is entitled to lease or licence any portion of the land, for a total of 21 years, in line with the permitted use of the land and subject to Ministerial approval.

The lease will be drafted in line with the Local Government Act 1995 and Commercial Tenancy (Retail Shops) Agreements Act 1985.

The lease is subject to Ministerial for Lands approval as a requirement under the Management Order terms.

## **CONSULTATION**

Nil

## **OFFICER COMMENT**

DADAA provide multiple programs from the Old Boys School including;

- Inclusive cultural events access program
- Artist and cultural worker residency program
- Arts access program for school aged children
- Community studios and production facilities
- Academic research residency program and access library
- Community access band facilities and access program
- WA State Arts and Disability/Arts and Health and CACD administration centre
- Support, admin access and accommodation for emergent to small arts companies

Their remaining fit out will provide the opportunity for their remaining proposed programs and activation;

- Open access community print studio
- Digital access/production studio and app development program
- Community access cinema and outdoor screen facility
- Community access galleries
- Public café and courtyard with inclusive workforce
- Cultural facilities including captioning and audio description service

In conjunction with DADAA's use of the premises spaces are sublet for use by the Piano School, Fremantle Foundation and Circus WA. The building is also hired for use by individuals and groups and used for festivals (such as Fringe).

As opposed to varying DADAA's existing leased area it is recommended a separate lease is entered into for the 19.5m<sup>2</sup> with a lease term that runs in conjunction with the existing lease for 92 Adelaide Street, Fremantle.

The lease will be subject to development application approval (to be approved by the Heritage Council) and the permitted use of the lease is subject to approval by the Minister for Lands. Given these conditions will be condition precedents to the lease, it's appropriate it is a separate agreement to the current lease.

The permitted use of the lease will be for air conditioning plant and associated uses, with conditions included that all equipment is the responsibility of the lessee to maintain and/or replace for the term of the lease, and that all infrastructure installed by DADAA must be removed at the end of the lease unless otherwise agreed with the City.

The proposed location has been chosen to minimise visual impact and can be screened by products that are complimentary to the heritage building (details of which will be included in DADAA's development application). There will be no impact to existing vegetation or trees in this area.

Proposed leased area;



## VOTING AND OTHER SPECIAL REQUIREMENTS

Simple Majority Required

## OFFICER'S RECOMMENDATION

Council:

1. Approve a lease with DADAA Limited for a portion of Reserve 594 (Princess May Park) on the following terms;
  - a) Lease area: 19.5m<sup>2</sup>
  - b) Lease commencement date: 1 February 2019
  - c) Lease term: Eight years and eight months effective 1 February 2019 expiring 30 September 2027.
  - d) Further term: Ten years commencing 1 October 2027 expiring 30 September 2037.
  - e) Rent: Peppercorn
  - f) Permitted use: Air condition plant and associated uses.

- g) Condition precedent;**
  - i. The lease will be subject to the lessee obtaining development approval for the installation of the air conditioning to 92 Adelaide Street, Fremantle.**
  - ii. The lease will be subject to approval by the Minister for Lands.**
- h) Special conditions;**
  - i. The Leased area will be maintained solely by the Lessee.**
  - ii. All equipment installed in the leased area will be the sole responsibility of the lessee to service, maintenance and/or replace for the term of the lease.**
  - iii. At the termination of the lease, all equipment installed by the lessee will be removed by the lessee from the leased area unless otherwise agreed by the lessor.**

**FPOL1901-7 LOCAL GOVERNMENT ACT REVIEW - COUNCIL SUBMISSION TO THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION (WALGA) DISCUSSION PAPER PHASE 2**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Manager Governance  
**Decision Making Authority:** Council  
**Agenda Attachments:** WALGA Advocacy positions Local Government Act Review – Phase 2  
 Local Government Act Review - City of Fremantle consultation paper 2018 - Phase 2

**SUMMARY**

The purpose of this report is to formalise the City’s position in response to the Western Australia Local Government Association’s (WALGA’s) phase 2 discussion paper regarding the Minister for Local Government’s review of the *Local Government Act 1995*.

This report recommends that Council endorse the officers recommended response, to be submitted to WALGA, as a ‘Council endorsed submission’ before the deadline for submission on the 1 February 2019.

**BACKGROUND**

On 20 June 2017, the Minister for Local Government announced a review of the Local Government Act 1995. This is the first major review since the Act was introduced more than 20 years ago.

WALGA is conducting a comprehensive consultation process to provide Member Local Governments with as much opportunity as possible to contribute. This process will also assist WALGA to determine its advocacy position on whether proposed changes should be dealt with in Phase 1 or Phase 2.

While the process commenced in 2017, and the first phase amendments will be introduced to Parliament in late 2018/early 2019, the second phase of the review which includes preparing a new *Local Government Act* and the preparation of a Green Bill, which is scheduled to occur throughout 2019-20. This will comprise of a complete review of the *Local Government Act 1995* including policy development and consultation related to all areas of the Act together with a focus on the following subjects:

Agile	Smart	Inclusive
<ul style="list-style-type: none"> <li>• Beneficial Enterprises</li> <li>• Financial Management</li> <li>• Rates</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative Efficiencies</li> <li>• Local Laws</li> <li>• Council Meetings</li> <li>• Interventions</li> </ul>	<ul style="list-style-type: none"> <li>• Community Engagement</li> <li>• Integrated Planning and Reporting</li> <li>• Complaints Management</li> <li>• Elections</li> </ul>

## **FINANCIAL IMPLICATIONS**

There are no financial implications identified as a result of this report.

## **LEGAL IMPLICATIONS**

There are no legal implications identified as a result of this report.

## **CONSULTATION**

The consultation paper attached to this report was circulated to elected members seeking submissions in response to WALGA's discussion paper.

The grey text boxes contain WALGA's phase 2 recommendations, amended to reflect Council's existing position.

The green text boxes contain the previously adopted position of Council made at the Ordinary Council Meeting held on 27 September 2017 for information.

The orange text boxes contain submissions by elected members.

The content of the grey text boxes forms the officer recommendations to this report for consideration by Council.

## **OFFICER COMMENT**

A Council endorsed response is needed by Friday 1 February 2019, to meet the WALGA prescribed deadline, so that an agenda item can be presented to the Zone Meetings leading up to the March 2019 State Council Meeting.

## **VOTING AND OTHER SPECIAL REQUIREMENTS**

Simple Majority Required

## **OFFICER'S RECOMMENDATION**

### **1. Council supports:**

- 1.1 the following general principles in response to the review of the *Local Government Act 1995*:**
  - a. Uphold the General Competence Principle currently embodied in the *Local Government Act 1995*.**
  - b. Provide for a flexible, principles-based legislative framework and**
  - c. Promote a size and scale compliance regime.**
- 1.2 an amendment to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).**

- 1.3 an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors.
- 1.4 an amendment to regulation 30(3) of the *Local Government Act 1995*, to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.
- 1.5 that a review to remove the fees and charges from section 6.16 of the *Local Government Act 1995*, and allow Council to be empowered to set fees and charges for Local Government services.
- 1.6 the deletion of section 6.20(2) of the *Local Government Act 1995*.
- 1.7 the review of section 6.28 of the *Local Government Act 1995* to examine the basis of rates.
- 1.8 the review of section 6.33 of the *Local Government Act 1995*, to be reviewed in contemplation of time-based differential rating, to encourage development of vacant land.
- 1.9 the creation of an exemption under Regulation 4 of the *Local Government (Financial Management) Regulations* relating to AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).
- 1.10 the review to remove fees and charges from section 6.61 of *the Local Government Act 1995*, and allow Council to be empowered to set fees and charges for Local Government services
- 1.11 the amendment to the *Local Government Act 1995* to clarify that Independent Living Units should only be exempt from rates where they qualify under the *Commonwealth Aged Care Act 1997*;
- 1.12 Either:
  - a) To amend the charitable organisations section of the *Local Government Act 1995* to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
  - b) To establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and

- 1.13 that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under section 6.26 of the *Local Government Act 1995*, be requested.
- 1.14 an amendment to rate equivalency payments made by LandCorp and other Government Trading Entities requiring them to be made to the relevant Local Governments instead of the State Government.
- 1.15 an amendment to section 6.56 of the *Local Government Act 1995* to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and service charges be recoverable and not be limited by reference to the 'cost of proceedings'.
- 1.16 resource projects covered by State Agreement Acts being liable for Local Government rates.
- 1.17 that section 3.53 of the *Local Government Act 1995* be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.
- 1.18 the proposal to allow electors of a Local Government affected by any boundary change or amalgamation proposal entitlement to petition the Minister for a binding poll under schedule 2.1 of the *Local Government Act 1995*.
- 1.19 that schedule 2.1 clause 2(1)(d) of the *Local Government Act 1995* be amended so that the prescribed number of electors required to put forward a proposal for change be increased from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.
- 1.20 the amendment of schedule 2.2 clause 3(1) of the *Local Government Act 1995* so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.
- 1.21 an agreement between State and Local Government to facilitate the transfer of accrued leave entitlements for staff between the two sectors of Government.
- 1.22 an amendment to section 9.13 of *the Local Government Act 1995* to introduce a definition for 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.
- 1.23 the below amendments to the *Local Government Act 1995*:
  - a) Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has

been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*.

- b) Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- c) Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:  
Abuse of process;
  - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
  - Unreasonably interfering with the operations of the Local Government in relation to complaint.

- 1.24 that section 5.28(1) (a) of the *Local Government Act 1995* be amended:
  - a. so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and
  - b. to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.
- 1.25 an amendment to regulation 11 to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.
- 1.26 an amendment to regulation 10 to clarify that a revocation or change to a previous decision does not apply to Council decisions that have already been implemented.
- 1.27 the amendment to the *Local Government (Administration) Regulations 1996* to consider allowing attendance at a meeting via technology from any location suitable to a Council, subject to local governments being provided with the ability to set ground rules in relation to the use of remote attendance by elected members and staff.
- 1.28 that suitable arrangements to determine a size and scale compliance regime should be prioritised.
- 1.29 that additional resources be provided to the Department of Local Government to ensure they are able to carry out this support function.
- 1.30 an amendment to sections 4.20 and 4.61 of the *Local Government Act 1995* to allow the Australian Electoral Commission (AEC) and or any other third party provider to conduct postal elections, providing that a pre-qualification outline be introduced to ensure the capacity to provide online voting and the quality of any service provided.

- 1.31 the Western Australian Local Government Association continuing to investigate online voting and other opportunities that may increase voter turnout.**
  - 1.32 an amendment to the *Local Government Act 1995* to require an Elected Member to take leave of absence when contesting a State or Federal election.**
- 2. Council does not support:**
- 2.1 the amendment to section 5.27 of *the Local Government Act 1995* so that Electors' General Meetings are not compulsory.**
  - 2.2 voting in Local Government elections remaining voluntary.**
  - 2.3 that an individual local government should be able to determine whether their Mayor or President is elected by Council or by the community.**
  - 2.4 that elections should continue to be conducted utilising the first-past-the-post (FPTP) method of voting.**

## **FPOL1901-8 METHOD FOR CONDUCTING THE 2019 LOCAL GOVERNMENT ELECTION AND OTHER POLLS**

**Meeting Date:** 23 January 2019  
**Responsible Officer:** Manager Governance  
**Decision Making Authority:** Council  
**Agenda Attachments:** Nil

### **SUMMARY**

The purpose of this report is to seek Councils endorsement to declare that the Electoral Commissioner will conduct the 2019 elections as a full postal election.

This report recommends that Council:

1. **Declare, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for:**
  - a. the conduct of the 2019 City of Fremantle ordinary election; and
  - b. the conduct of any other City of Fremantle elections or polls which may be required, up to but not including the 2021 ordinary election.
2. **Decide, in accordance with section 4.61 (2) of the *Local Government Act 1995* that the method of conducting the following will be as postal elections:**
  - a. the 2019 City of Fremantle ordinary election; and
  - b. any other City of Fremantle elections or polls, which may be required, up to but not including the 2021 ordinary election.

### **BACKGROUND**

At its meeting held 26 April 2017, Council declared the Western Australian Electoral Commission (WAEC) responsible for all elections in the City, and for the method of voting to be postal for the period 'up to but not including the 2019 election'.

The Western Australian Electoral Commissioner, David Kerslake, has written to the City offering to undertake the 2019 election as a full postal election. In order to accept the Commissioners offer, the Council is required to adopt a resolution, by absolute majority, declaring the Electoral Commissioner responsible for the conduct of the election by a postal ballot.

The recommendation provides for the WAEC to be responsible for the 2019 ordinary election and for any other election or poll that may arise prior to the 2021 ordinary election, this means that if any extraordinary vacancies should arise, the approvals are in place to proceed with an extraordinary election in the same format.

It is common practice by many local governments to conduct an election in this manner as the resources involved to conduct an election in-house can be more costly and have a greater impact on the City's resources and core business.

In a postal voting election, election packages are posted to all eligible electors on the City of Fremantle Electoral Roll approximately three weeks before Election Day. Electors vote and then return the completed ballot papers and elector certificates by post to the Returning Officer by 6:00pm on Election Day.

Since they were introduced in 1995, the number of local governments adopting postal elections has progressively increased. In 2013, 76 local governments held postal voting elections and in 2017, 85 local governments held postal voting elections.

Local governments or, by request, the Electoral Commissioner can conduct voting in-person elections, however, the Electoral Commissioner has previously declined to conduct voting in-person elections.

At an in-person election, electors vote at polling places within their district on polling day; Votes can also be posted or delivered in accordance with regulations.

## **FINANCIAL IMPLICATIONS**

The Western Australian Electoral Commissioner has estimated the cost for the 2019 election, if conducted as a postal ballot, as \$105,000 including GST.

The estimate has been based on the following assumptions:

- 22,800 electors
- response rate of approximately 50%
- 0 vacancies
- the count to be conducted at the offices of the City of Fremantle
- appointment of a local Returning Officer
- regular Australia Post delivery service to apply for the lodgement of election packages.

This does not include the following costs:

- Additional non-statutory advertising.
- Any legal expenses other than those that are determined to be borne by the WAEC in a Court of Disputed Returns.
- One local government staff member to work in a polling place on election day, and
- Any additional postage rate increase by Australia Post.

Under the *Local Government Act 1995*, the Commission is required to conduct local government elections on a full cost recovery and recent experience has demonstrated that the Commission final costs are within their estimate.

Provision will be made during the 2019/2020 budget preparations.

## **LEGAL IMPLICATIONS**

Section 4.61 of the *Local Government Act 1995* allows local governments to choose their preferred method of voting.

The election can be conducted as a:

- Postal election which is an election at which the method of casting votes is by posting or delivering them to an electoral officer on or before election day.
- Voting in-person election which is an election at which the principal method of casting votes is by voting in-person on election day but at which votes can also be cast in-person before election day, or posted or delivered, in accordance with regulations.

Section 4.20(1) of the *Local Government Act 1995* provides that by default the Chief Executive Officer is the returning officer of a local government for each election. The default method for conducting an election is by in-person voting.

Section 4.20(4) of the *Local Government Act 1995* states that a local government may, having first obtained the written agreement of the Electoral Commissioner, declare the Electoral Commissioner to be responsible for the conduct of an election, or all elections conducted within a particular period of time, and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the Returning Officer of the local government for the election or elections. An absolute majority is required.

Section 4.61(2) of the *Local Government Act 1995* states that the local government may decide to conduct an election as a postal election. An absolute majority is required.

Section 4.61(4) of the *Local Government Act 1995* states that a decision under subsection (2) has no effect unless it is made after the declaration under section 4.20(4) that the Electoral Commissioner is to be responsible for the conduct of the election or in conjunction with such a declaration.

## **CONSULTATION**

Nil

## **OFFICER COMMENT**

Postal elections encourage greater voter participation and are generally considered to be more representative of the community. Although the City is responsible for the coordination of the postal election, the process is less demanding on the City's resources than an in-person election.

One of the benefits of the Electoral Commission conducting the City's elections is that the process and the Returning Officer are largely independent of the City. This separation may improve the community's perception and confidence in the election process. In addition, postal voting is more convenient for electors and typically achieves a higher rate of voter participation.

Conducting elections as voting in-person elections presents a number of challenges, particularly on account of the role of the CEO who is also the Returning Officer. The requirements and expectations placed on the Chief Executive Officer in taking on this dual role can be both contentious and time consuming. In addition to dealing with complaints received during the election period, that dual role can lead to an unwelcome perception of conflict of interest and bias from the community.

It is the prerogative of Council to decide, as a matter of policy, to conduct elections by postal vote and to make a declaration that the elections are to be conducted by the Electoral Commission.

## **VOTING AND OTHER SPECIAL REQUIREMENTS**

Absolute Majority Required

## **OFFICER'S RECOMMENDATION**

**Council:**

- 1. Declare, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for:**
  - a. the conduct of the 2019 ordinary election; and**
  - b. the conduct of any other elections or polls which may be required, up to but not including the 2021 ordinary election; and**
  
- 2. Decide, in accordance with section 4.61 (2) of the *Local Government Act 1995* that the method of conducting the following will be as postal elections:**
  - a. the 2019 ordinary election; and**
  - b. any other elections or polls, which may be required, up to but not including the 2021 ordinary election.**

## **11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

A member may raise at a meeting such business of the City as they consider appropriate, in the form of a motion of which notice has been given to the CEO.

## **12. URGENT BUSINESS**

In cases of extreme urgency or other special circumstances, matters may, on a motion that is carried by the meeting, be raised without notice and decided by the meeting.

## **13. LATE ITEMS**

In cases where information is received after the finalisation of an agenda, matters may be raised and decided by the meeting. A written report will be provided for late items.

## **14. CONFIDENTIAL BUSINESS**

Members of the public may be asked to leave the meeting while confidential business is addressed.

## **15. CLOSURE**