



Belmont Trust

Agenda

Tuesday 16 May 2023

BELMONT
CITY OF OPPORTUNITY



Notice of Meeting

A Special Meeting of the **Belmont Trust** will be held in the Council Chamber of the **City of Belmont Civic Centre**, 215 Wright Street, Cloverdale, on **Tuesday 16 May 2023**, commencing at 6.30pm.

John Christie
Chief Executive Officer

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CITY OF BELMONT

Belmont Trust

Agenda

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Attachments Index

Attachment 6.1.1 – Item 6.1 refers

Purpose of the Belmont Trust

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

I Official Opening

The Presiding Member will read aloud the Acknowledgement of Country.

Acknowledgement of Country

Before I begin, I would like to acknowledge the Whadjuk Noongar people as the Traditional Owners of this land and pay my respects to Elders past, present and emerging.

I further acknowledge their cultural heritage, beliefs, connection and relationship with this land which continues today.

2 Apologies and leave of absence

Cr M Bass (apology)	East Ward
Cr G Sekulla (leave of absence)	West Ward
Cr D Sessions (apology)	West Ward
Cr J Davis (apology)	South Ward

3 Declarations of interest that might cause a conflict

Councillors/Staff are reminded of the requirements of s5.65 of the *Local Government Act 1995*, to disclose any interest during the meeting when the matter is discussed, and also of the requirement to disclose an interest affecting impartiality under the City's Code of Conduct.

3.1 Financial interests

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

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

3.2 Disclosure of interest that may affect impartiality

Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member/employee is also encouraged to disclose the nature of the interest. The member/employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member/employee declares that their impartiality will not be affected then they may participate in the decision-making process.

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

4 Confirmation of Minutes

4.1 Special Belmont Trust Meeting held 21 February 2023

Officer Recommendation
That the Minutes of the Special Belmont Trust Meeting held on 21 February 2023 be confirmed as a true and accurate record.

5 Public question time

5.1 Responses to questions taken on notice

5.1.1 Ms L Hollands, Redcliffe

The following question was taken on notice at the 21 February 2023 Special Meeting of the Belmont Trust. Ms Hollands was provided with a response on 8 March 2023. The response from the City is recorded accordingly:

1. There is an independent person who sits on the Belmont Trust Committee, who is it, who appoints them and what qualifications do they have?

Response

The independent Advisory Trustee is Mr Malcolm Lee QC who was appointed by the Council in 2006. Mr Lee is a retired Federal Court Judge, and his practice in WA extended into the area of trusts, and the equitable jurisdiction of the Courts.

5.2 Questions from members of the public

6 General business

6.1 Belmont Trust 2023-2024 Budget and Delegations

Voting Requirement	:	Absolute Majority
Subject Index	:	132/001 - Minutes and Agendas of Trustees
Location/Property Index	:	Lot 5 Stoneham Street, Lot 642 Great Eastern Highway
Application Index	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	City of Belmont
Responsible Division	:	Corporate and Governance

Trust role

In addition to its role as local government, the City has duties to act as Trustee of the Trust property in relation to the Belmont Trust. When making decisions in relation to the Trust property the City must be mindful of its duties as Trustee of the Belmont Trust.

Purpose of report

To present the 2023-2024 Belmont Trust budget for consideration, and formally delegate the Chief Executive Officer to perform certain functions for the Belmont Trust as the Trust Officer.

Summary and key issues

To consider the 2023-2024 Belmont Trust Land budget in the lead up to the formal adoption of the City of Belmont budget at the Ordinary Council Meeting on 27 June 2023, for which the Belmont Trust is a component.

It is also appropriate to implement an annual delegation process for the Trustees to delegate the Chief Executive Officer to deal with the day to day administrative business of the Trust.

Officer Recommendation

That the Belmont Trust:

1. Adopt the Belmont Trust Budget 2023-2024 as indicated within this report and for inclusion in the City of Belmont Budget 2023-2024, scheduled for adoption in June 2023; and
2. Appoint the Chief Executive Officer as Trust Officer to make administrative decisions on the day-to-day business of the Belmont Trust in accordance with the Belmont Trust Delegations (Attachment 6.1.1).

An absolute majority of Council is required

Location



Consultation

Legal advice has been sought regarding the appointment of a Trust Officer to manage the day to day matters.

Strategic Community Plan implications

In accordance with the 2020 – 2040 Strategic Community Plan:

Goal 5: Responsible Belmont

Strategy: 5.1 Support collaboration and partnerships to deliver key outcomes for our City

Policy implications

There are no policy implications associated with this report.

Statutory environment

Trustee Act 1962

11. Corporation may act as trustee in some cases

- (1) Any trustee corporation may be appointed and may lawfully act as the sole trustee in respect of any trust, notwithstanding that the instrument creating the trust may provide for or direct the appointment of 2 or more trustees; and nothing in this subsection prevents any other corporation from acting as a trustee in accordance with any authority vested in it in that behalf, whether by its memorandum of association or otherwise, but a corporation shall not administer the estate of any deceased person unless expressly authorised to do so by any Act.
- (2) This section does not permit the appointment of a corporation as trustee if the instrument creating the trust forbids the appointment of the corporation.
- (3) This section extends to any trust or instrument and to any appointment of trustees, whether created or made before or after the commencement of this Act.

Local Government Act 1995

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —
 - (a) this Act other than those referred to in section 5.43; or
 - (b) the *Planning and Development Act 2005* section 214(2), (3) or (5).

* Absolute majority required.

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
 - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,are subject to any conditions imposed by the local government on its delegation to the CEO.
- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.

5.46. Register of, and records relevant to, delegations to CEO and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Background

The effect of the Declaration of Trust is that the City of Belmont holds the trust property ("the Trust Land") in trust for the purposes of public recreation and enjoyment. The City of Belmont is the sole trustee of the Trust Land.

As the sole trustee, the City of Belmont is responsible for making decisions about the Trust in its capacity as Trustee. This is a responsibility of the Council of the City of Belmont. The reason for this is that the Council is the overall decision-making body of the City of Belmont, and as a result must make decisions for the City of Belmont in its capacity as Trustee of the Trust Land.

The City of Belmont is the Trustee, and the Council can only make decisions on behalf of the City of Belmont in accordance with the *Local Government Act 1995*. On that basis the Council would need to meet in accordance with the Act to make decisions in its capacity as

Trustee. This means conducting meetings to deal with Trust matters in all respects in accordance with *the Local Government Act 1995*.

The Belmont Trust is not a separate legal entity, and it cannot own property in its own name. There is no separate organisation or body called the Belmont Trust, (this name simply describes the Trust Land and dealings associated with it) instead the Trust Land is held by the City of Belmont as Trustee. The City of Belmont must deal with and account for the Trust property, including its assets, liabilities, income, and expenditure in its capacity as Trustee.

Report

The City is to seek endorsement from the Belmont Trust for the funding required in relation to the management of the Trust Land, prior to formal adoption of the City of Belmont Budget.

The City maintains a reserve known as the Belmont Trust Reserve which is restricted in usage specifically for purposes associated with the Trust Land. These funds are utilised for the maintenance of the Trust Land and other identified needs.

When preparing the City's budget, in particular the Belmont Trust operating component, expenditure and income are transferred between the municipal budget and the Belmont Trust Reserve, resulting in a net impact of nil in the City's municipal budget.

The table below is an extract from the draft FY2024 Annual Budget scheduled for adoption by Council in June 2023. Belmont Trust expenditure and income is as follows:

1. Legal Costs: This is an indicative amount to cover required legal services for the management of the Belmont Trust (\$10,000).
2. Consultant: This is an indicative amount to cover the services of a consultant / consultants if required for the management of the Belmont Trust. Services – Other Consultants (\$10,000).
3. General Maintenance: This is the cost associated with the City's Parks, Leisure and Environment Department undertaking general mowing and maintenance (\$15,500).
4. Income Belmont Trust Reserve: This is the estimated interest from the term deposit (-\$70,880).

Account	Description	Budget 2022- 2023 \$	Estimated Actual 2022- 2023 \$	Proposed Budget 2023- 2024 \$	Comment 2023-2024 Budget
Expenditure					
921600-00-1270-000	Services - Legal	80,000	0	10,000	Contingency
921600-00-1271-000	Services - Other Consultants	100,000	28,311	10,000	Contingency
P14300	Belmont Trust - Gen Mtce	6,443	7,800	15,500	Parks and fencing maintenance
		186,443	36,111	35,500	
Income					
921600-00-4854-000	Interest income	-18,131	-69,446	-70,880	Interest - calculated @ 4.30%
		-18,131	-69,446	-70,880	

Belmont Trust Reserve Balance			
Opening balance - 1 July	1,615,026	1,615,026	1,648,361
Closing balance - 30 June	1,432,283	1,648,361	1,683,741

The Trustees make the general policy decisions for the Charitable Trust, and any major decision involving the expenditure of the Trust funds or decisions impacting on the Charitable Trust scheme. It is necessary for administrative decisions and day to day matters to be dealt with by an officer at the City. It is considered appropriate to formally delegate the day to day administrative decisions for the Trust to the Chief Executive Officer and also for the Chief Executive Officer to sub-delegate in accordance with s. 5.44 of the *Local Government Act 1995* to the Director Corporate and Governance.

Examples of decisions that are applicable under this delegation include to appoint a solicitor to provide advice on matters relating to the administration of the Trust, or to appoint a consultant to carry out work for the Trust, within the budget set by the Trustees.

Financial implications

The Belmont Trust Reserve is budgeted to have a balance of \$1,648,361 on 30 June 2023. Based on the 2023-2024 budget the balance is estimated to increase to \$1,683,741. If there are any unspent budgeted funds in 2022-2023 or 2023-2024 these will remain in the reserve.

There is no impact on the City of Belmont municipal budget as all funds are accessed from the Belmont Trust Reserve.

Environmental implications

There are no environmental implications associated with this report.

Social implications

There are no social implications associated with this report.

Attachment details

Attachment No and title	
1.	Proposed Delegation to CEO - Belmont Trust Meeting Report 16 May 2023 [6.1.1 - 8 pages]

Belmont Trust Delegations

Date of Publication 16 May 2023

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Introduction

Council is responsible for the overall government of the City's functions. The Chief Executive Officer is responsible for the day-to-day management of the administration of the City's functions amongst other functions such as advising Council.

Legislation applicable to local government may reserve specific powers and duties to the Council, the CEO or a defined authorised person or class of persons. Where legislation refers to a power or duty of the "local government" this is generally interpreted to mean the Council unless otherwise specified even if the power or duty is operational in nature.

The provisions of the *Local Government Act 1995* (the Act) and *Trustees Act 1962* are relevant for the delegations of the trustees included.

Delegation of authority, where allowed, allows for efficient and timely decision making by local governments. Conditions or limitations may be incorporated into delegations such as limiting the circumstances in which a delegation can be exercised or imposing financial or other limits to the delegated power.

The delegation of a power or duty does not preclude a delegator from exercising or performing that power or duty itself or by acting through any employee authorised, by job description or otherwise, to carry out a function as the agent of, and on behalf of, the local government in accordance with approved policies.

A person granted a delegation is not obliged to exercise the delegated power and may, if circumstances indicate, refer the decision back to the delegator. Legislation varies in how delegation of authority is provided for, including limitations, conditions and reporting or review requirements. Reviews of delegations, where required by law, are the responsibility of the delegator.

In some instances, it is most appropriate for a function to be exercised by the Trustees only and as such no delegation is made.

I Delegations by Local Government

The Act allows for the local government (Council) to delegate to the Chief Executive Officer (CEO) the exercise of any of its power or the discharge of any of its duties under the Act in order to effectively manage the day-to-day operations of the City.

s.11(1) of the *Trustees Act 1962* acknowledges that a corporation may act as a trustee where it is a body authorised to do so. The City of Belmont is formed under s2.5 of the *Local Government At 1995* (the Act), and under like legislation preceding it, and is created as a body corporate invested with perpetual succession and legal personality. The conditions around delegation of powers are to be in accordance with the Act, be precise, adopted by the Trustee and provide for oversight by the Trustee.

Delegations are required to be made by absolute majority resolution, in writing, and recorded in the Belmont Trust Meeting Minutes.

The Act also allows for the CEO to delegate any powers or discharge of any of the CEO's duties to another employee other than the power of delegation (s 5.44(4)). There is no power other than for the CEO to delegate a power.

All delegations must be in writing and the CEO is able to make the delegation or sub delegation subject to conditions or limitations. When an employee is acting in a position, they are deemed to be able to carry out the functions delegated to that position.

There is no express provision for a local government to delegate its functions under any other legislation. However, this does not prohibit the local government from "acting through" its officers for the purpose of legislation and the manner in which this can be achieved is detailed below.

The *Interpretation Act 1984* provides a standard basis on how terms across all Western Australian legislation can be interpreted such as computation of time. It also provides further information on how delegations work and provides a basis for allowing conditions or limitations to be made on the delegation; revocation of the delegation; the continuance of the delegation if a person is acting in the position to which the power is delegated.

II Matters which cannot be delegated

The following cannot be delegated by Council to the CEO under the Act (s 5.43)

- any power or duty that requires a decision of an absolute majority of the council
- accepting a tender which exceeds an amount determined by the local government
- acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government
- any of the local government's powers under
 - s 5.98 – Fees etc for council members
 - s 5.98A – Allowance for deputy mayor or deputy president
 - s 5.99 Annual fee for council members in lieu of fees for attending meetings
 - s 5.99A Allowances for council members in lieu of reimbursement of expenses
 - s 5.100 Payment for certain committee members
- borrowing money on behalf of the local government
- hearing or determining an objection of a kind referred to in s 9.5
- the power under s 9.49A(4) to authorise a person to sign documents on behalf of the local government
- any power or duty that requires the approval of the Minister or the Governor
- such other powers or duties as may be prescribed.

III Acting Through

Section 5.45 of the Act introduces the concept of "acting through." In relation to delegations, s 5.45 of the Act states that nothing prevents a "local government from

performing any of its functions by acting through a person other than the CEO” or “a CEO from performing any of his or her functions by acting through another person.”

While the Act does not specifically define the meaning of the term “acting through, it cites a key difference between a delegation and “acting through” in that a delegate exercises the delegated decision-making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the “acting through” concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority.

For administrative purposes, a person may sign a letter in his or her own name on behalf of the CEO while, with delegated powers, the person would sign a letter in his or her own name, in accordance with the delegated authority.

An appropriate method for a council of a local government to make a decision which will be implemented by its officers is for it to make a policy about particular functions that it performs. In that case there is no need for a delegation as it will be the role of the organisation to implement those policy decisions.

IV Register of Delegation

Section 5.46 of the Act requires the Chief Executive Officer (CEO) to maintain a register of delegations made to the CEO and to employees. The register must be reviewed at least once every financial year and the requirement for records to be kept on the exercise of the delegation is also included.

V Standard Conditions of Delegation

Individuals are responsible for ensuring that legislated requirements relating to the exercise of delegated power(s) are complied with.

Any person proposing to exercise a power under delegated authority shall comply with the following standard conditions of delegation:

1. Actual decisions relating to the matter delegated shall be made by the person nominated in the delegation. However, it is understood that other staff may carry out administrative and technical work relating to those decisions.
2. Compliance with all relevant legislative requirements, Local Laws, Council Policies, resolutions of Council and the Business Management System Procedures.
3. Delegated authority cannot be exercised where a Financial Interest or an Interest Affecting Impartiality is evident.

4. It is a statutory requirement to maintain a record of each decision made under delegated authority. Documents relating to delegated authority decisions shall, as a minimum, record:
 - a. Date the decision was exercised;
 - b. Name of the Officer exercising the decision;
 - c. Description of how the person exercised the power or discharged the duty, including where appropriate, any directions to staff to carry out work associated with the decision unless those directions are included in Policies, Management Procedures or the Delegation Register;
 - d. Notation of the people or class of people directly affected by the decision (other than Council or Committee members or employees of the City).

Any exercising of a power and discharging of a duty must be recorded on the Record of Exercise of Power – Delegation of Authority Form and registered in ECM Folder 11/005 at the time of exercising the delegation.

5. Instruction is provided for each delegation on record keeping requirements. All records relating to an exercise of delegation must be recorded in the main official record keeping system of the City, ECM.

LOCAL GOVERNMENT ACT 1995 DELEGATIONS

TI Trustees (Council) to CEO

TI.1 Trust Officer to act on behalf of the Belmont Trustees

Delegator: Power / Duty assigned in legislation to:	Belmont Trustee (Council)
Express Power to Delegate: Power that enables a delegation to be made	<i>Local Government Act 1995:</i> s 5.42 Delegation of some powers or duties to the CEO s 5.43 Limitations on delegations to the CEO
Express Power or Duty Delegated:	<i>Local Government Act 1995</i> s 5.41 Function of CEO <ul style="list-style-type: none"> perform functions as a Trust Officer to enable the day to day administration of the Belmont Trust
Delegate:	Chief Executive Officer
Function: This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.	<ol style="list-style-type: none"> Make day to day operational decisions for the Belmont Trust to carry out the administrative business for the trust, within current limits of authority set by Council and legislation. Instruct solicitors to obtain advice, where required on matters pertaining to the Belmont Trust Land and operation of the Charitable Trust.
Council Conditions on this Delegation:	Any person proposing to exercise a power under delegated authority shall comply with the Standard Conditions of Delegation and the following specific additional conditions for this delegation. Additional Condition Delegation does not extend to the disposition of any Trust property or equipment.
Express Power to Sub-Delegate:	<i>Local Government Act 1995:</i> s 5.44 CEO may delegate some powers and duties to other employees
Sub-Delegate/s: Appointed by CEO	Director Corporate and Governance



Additional CEO Conditions on this Sub-Delegation: Conditions on the original delegation also apply to the sub-delegations.	In addition to the Council conditions of delegation to the CEO the following are additional: <ul style="list-style-type: none"> • Nil
Compliance Links:	Operational Policy: BEXB32 Decision Making Policy – Decision Level 3
Record Keeping:	Records of exercise of delegated authority and associated contracts to be retained in ECM index: 11/005 and 132/003

Version Control:

1	New: Special Belmont Trust Meeting 16/5/2023 Item xx.

7 Urgent business approved by the Chair or by decision

8 Closure