



City of **Perth**

Urgent Business Reports

Ordinary Council Meeting

26 March 2024

Notice of Meeting

To the Lord Mayor and Councillors

The next Ordinary Council Meeting will be held on Tuesday, 26 March 2024 in the Council Chamber, Level 9, 27 St Georges Terrace, Perth commencing at 5:00pm.

Michelle Reynolds

Chief Executive Officer

25 March 2024

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20. Urgent Business

20.1 City of Perth Draft Business Plan - East Perth Primary School

Responsible Officer	Steve Holden – General Manager Commercial Services
Voting Requirements	Simple Majority
Attachments	Attachment 20.1A – City of Perth Proposed Draft Business Plan - East Perth Primary School ↓ Attachment 20.1B – Summary – Chevron Hilton Hotel Agreement Act 1960 (CHHA Act) ↓

Purpose

To present the draft Business Plan for a Major Land Transaction, being the transfer of approx. 1.6 hectares of freehold land owned by the City of Perth to the State Government to facilitate the proposed development of the East Perth (Inner - City) Primary School.

Recommendation

That Council:

1. RECEIVES the draft Business Plan prepared in response to the State Government request for the City of Perth to, amongst other things, transfer approximately 1.6 hectares of land owned in freehold by the City of Perth, referred to in the Business Plan as Parcels B & C, to the State Government to facilitate the development of the proposed East Perth (Inner City) Primary School as **Attachment A**.
2. DECLINES TO ENTER into a major land transaction under Section 3.59(3) of the *Local Government Act 1995* in respect of the land referred to in item 1 above on the terms and conditions currently proposed by the State Government.
3. DOES NOT PROCEED to advertise for public comment the draft Business Plan in accordance with Section 3.59(4) of the *Local Government Act 1995*.
4. AUTHORISES the CEO to continue engaging with the State Government to negotiate satisfactory terms for the Major Land Transaction, with such terms to ensure that Objective 3 of the Guiding Principles set out on pages 12 and 13 of the Business Plan are met.
5. NOTE that any revised terms will be submitted to the Council for consideration.

Background

1. The City of Perth (the City) owns approximately 2.6ha of land held in freehold title on Nelson Crescent, East Perth. The City developed the land as an open-air car park for 871 bays and referred to it as the Queens Garden Car Park No. 4A (QGCP).
2. Due to the surrounding road configuration the total land area is comprised in 3 parcels that for identification purposes have been labelled:

Parcel A 10,091sqm

Parcel B 8,367sqm

Parcel C 7,544sqm



3. The *Chevron Hilton Hotel Agreement Act 1960* (CHHA Act) required the City purchase the land from private owners and established a carpark in accordance with Clause 35 of the CHHA Act. The carpark has been in operation for over 50 years.
4. On 19 April 2023, the State Government (State) announced plans to build a new public primary school in East Perth by 2028, which would cater for a maximum of 800 students on full completion.
5. The site selected by the State is part of the QGCP, has an area of approximately 1.6ha and is further described as Parcels B & C.

Proposal

6. The State has proposed that, to facilitate the delivery of the Inner- City Primary School, the City should transfer its freehold interest in Parcels B & C free of cost.
7. In return the State proposes to “unlock” the development potential and associated value of the remaining land owned by the City (Parcel A), which the State has estimated to be valued at \$27 million. This would be done through the repeal of the CHHA Act and the termination of the underlying Agreement, which requires the provision of public car parking on the land.

Business Plan Assessment

8. In accordance with section 3.59 of the *Local Government Act 1995*, an assessment of the proposal has been undertaken by ACIL Allen on behalf of the City. A summary against each of the six criteria established by the Act is provided in the table below, with a more detailed examination of the State's proposal and its implications for the City presented in the draft Business Plan:

Criteria	Summary Findings
<p>Its expected effect on the provision of facilities and services by the local government.</p> <p>Section 3.59 (3)(a) of the <i>Local Government Act 1995</i></p>	<p>The proposed Major Land Transaction reduces the City's capacity to provide parking services within its boundaries through the removal of 1.6ha of the Queen's Gardens Carpark.</p> <p>The land transfer would remove the majority of the future development potential of the site through the transfer of freehold title to the State Government for the development of a public primary school.</p> <p>The transaction would also result in a financial cost of \$29.9 million to the City over 30 years, negatively impacting its financial capacity to provide facilities and services to the community. The City would be required to address the impacts in its Long Term Financial Plan.</p>
<p>Its expected effect on other persons providing facilities and services in the district</p> <p>Section 3.59 (3)(b) of the <i>Local Government Act 1995</i></p>	<p>Trinity College is the only school within the City's boundaries that provides private primary education for Years 4 to 6.</p> <p>Other entities directly impacted would include the WACA, Gloucester Park, Main Roads and small businesses operating in the east end of the City that use the carparking facility. Commuters also use the carpark to travel to the Perth CBD via the CAT bus system.</p> <p>Other operators of carparking services may realise a benefit through the reduction in the overall supply of car bays in close proximity to the Perth CBD.</p>
<p>Its expected financial effect on the local government.</p> <p>Section 3.59 (3)(c) of the <i>Local Government Act 1995</i></p>	<p>When compared to the financial return to the City as a carpark, the State's offer would represent a financial cost to the City of \$29.9 million over a 30 year period.</p>

	<p>When compared to the potential “highest and best use” of the site the total potential financial cost of the State’s proposal is \$104.6 million over 30 years.</p>
<p>It expected effect on matters referred to in the local government’s current plan prepared under Section 5.56.</p> <p>Section 3.59 (3)(d) of the <i>Local Government Act 1995</i></p>	<p>The delivery of a public primary school in East Perth is considered a priority initiative within the City of Perth’s Local Planning Strategy.</p> <p>The proposal however, would constrain the City’s ability to reach its 2036 population target of 55,000 residents as defined in the Strategic Community Plan 2022-2032. This significant site has been earmarked by both the City and the State Government as a mixed use residential/ commercial precinct as evidenced by the Hillside Design Guidelines (DevelopmentWA, 2011), within the Riverside Project Area.</p> <p>The City’s ability to realise its population growth target in the East Perth precinct may be impacted as there are few large scale development sites remaining.</p>
<p>The ability of the local government to manage the undertaking or the performance of the transaction.</p> <p>Section 3.59 (3)(e) of the <i>Local Government Act 1995</i></p>	<p>The draft Business Plan has been prepared based on a hypothetical scenario, with no heads of agreement or memorandum of understanding offered by the State. Notwithstanding, the draft Business Plan has been prepared assuming key terms of the proposal which have been conveyed to the City in formal correspondence would in time be formalised in such an agreement.</p> <p>The Major Land Transaction cannot be formally put for consideration and endorsement until such a document is presented to the City by the State.</p> <p>Once a document of this nature is established the City has the capacity and capabilities to manage the disposal of the land contemplated by the proposal.</p>
<p>Any other matter prescribed for the purposes of this subsection.</p> <p>Section 3.59 (3)(f) of the <i>Local Government Act 1995</i></p>	<p>The City should decline the proposed Major Land Transaction under the current terms offered. The City is not responsible for providing schools infrastructure, and must take a broader perspective when considering the use of scarce land within its boundaries.</p>

	Appropriate compensation must incorporate the current and future use of the land to the City and its ratepayers, the opportunity cost of curtailing the future development potential of the land, and the value provided to the State Government in assisting it meet its statutory requirements to provide school education.
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Consultation

9. Stakeholder engagement has been limited to State Government Ministers and officers, Elected Members, City of Perth employees and the City’s nominated consultants.

Decision Implications

10. The draft Business Plan has been informed by the terms and conditions proposed by the State in formal correspondence. Such plans are usually submitted for endorsement when the terms are acceptable and accompanied by a deed or other formal arrangement agreed by the City.
11. Subject to Council endorsement of the recommendations, it is the City’s intention to continue negotiating with the State to, amongst other issues, agree acceptable compensation for the land be it by a monetary amount or land exchange, and the repeal of the CHHA.
12. If Council **does not** support the recommendation:
- a. The draft Business Plan will require further development and be re-submitted.
 - b. Should Council determine that the Business Plan be advertised, it will be released for a period of six weeks following which all submissions will be collated and provided to Council for final consideration, as required under the *Local Government Act 1995*.

Strategic, Legislative and Policy Implications

Strategy	
Strategic Pillar (Objective)	Liveable
Related Documents (Issue Specific Strategies and Plans):	A community that is safe, socially cohesive, inclusive and activated

Legislation, Delegation of Authority and Policy	
Legislation:	<p>Section 3.59 of the <i>Local Government Act 1995</i>. States a local government is to prepare a Business Plan before it enters into a major land transaction.</p> <p><i>Regulation 10 of the Local Government Act (Functions and General Regulations 1996)</i>. Defines content required for the preparation of Business Plan for a Major land transaction.</p>

Authority of Council/CEO:	The decision of Section 3.59 has not been delegated.
Policy:	Nil.

Financial Implications

13. Refer attached “Proposed East Perth Primary School Business Plan”, Section 4 Financial and Operational Analysis.

Further Information

14. Nil.

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Proposed East Perth Primary School Business Plan

Assessment against Section 3.59 of the
Local Government Act 1995

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Our purpose is to help clients make informed decisions about complex economic and public policy issues.

Our vision is to be Australia's most trusted economics, policy and strategy advisory firm. We are committed and passionate about providing rigorous independent advice that contributes to a better world.

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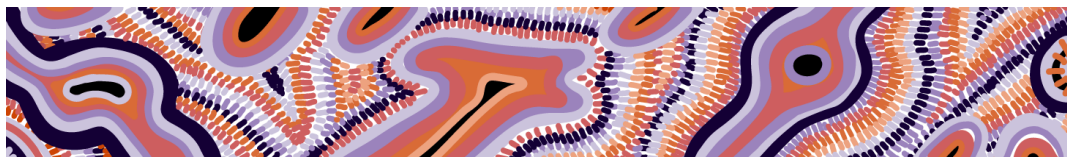
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ACIL Allen acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land and its waters. We pay our respects to Elders, past and present, and to the youth, for the future. We extend this to all Aboriginal and Torres Strait Islander peoples reading this report.



Goomup, by Jarni McGuire

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List of acronyms

\$m	Million Australian Dollars
%	Per cent
ha	Hectares
m ²	Square metre
BCR	Benefit Cost Ratio
CBA	Cost Benefit Analysis
CBD	Central Business District
CHHA Act	<i>The Chevron-Hilton Hotel Agreement Act 1960</i>
CPI	Consumer Price Index
CPP	City of Perth Parking
EPPS	East Perth Primary School
EPRA	East Perth Redevelopment Authority
GRV	Gross Rental; Value
JLL	Jones Lang LaSalle
LGA	Local Government Authority
LIA	Local Intake Area
LTFP	Long Term Financial Plan
MLT	Major Land Transaction
PRP	Preston Rowe Patterson
Section 3.59	Section 3.59 of the <i>Local Government Act 1995</i>
The City	The City of Perth (as an organisation)
The city	The Perth city (as a city of Western Australia)
WA	Western Australia
WACA Ground	The Western Australian Cricket Association Ground
WAPC	Western Australian Planning Commission

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Proposed East Perth Primary
School Business Plan
Assessment against s3.59 of
the *Local Government Act 1995*

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Request for submissions

In April 2023, the State Government announced plans to build a new inner city primary school in East Perth by 2028 to take enrolment pressures off nearby primary schools and meet the forecasted population growth in central Perth. At the same time, the State announced that its preferred site for the school was City of Perth freehold owned land at 42 – 62 Nelson Crescent East Perth, currently used as an open air, 871 bay car park referred to as the Queens Gardens Car Park. The site is currently subject to the *Chevron-Hilton Hotel Agreement Act 1960* (CHHA Act) which requires the provision of a car park on the site.

The State Government has proposed that the City transfer two thirds of the freehold land to the State for the construction of the primary school, with the City retaining one third of land (for ease of use, these are referred to as parcels A, B and C). The State has proposed that, in consideration for the City transferring two of the parcels (Parcel B and C), the development potential and associated value of the third parcel (Parcel A) will be “unlocked” by the repeal of the CHHA Act and the termination, by consent, of the underlying Agreement.

Figure ES 1 Proposed East Perth Primary School development site (schematic), 42 - 62 Nelson Crescent East Perth



Source: WA Government

As the City of Perth operates in accordance with the requirements of the *Local Government Act 1995* and the associated Regulations, the State's proposal constitutes a Major Land Transaction under sub-section 3.59 of the *Local Government Act 1995*. The City of Perth is therefore required to complete a business plan to assess the merits of the transaction as proposed by the State.

Under s3.59, a business plan is to include an overall assessment of a major trading undertaking and is to include details of:

- its expected effect on the provision of facilities and services by the local government;

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- its expected effect on other persons providing facilities and services in the district;
- its expected financial effect on the local government;
- its expected effect on matters referred to in the local government's current plan prepared under section 5.56;
- the ability of the local government to manage the undertaking or the performance of the transaction; and
- any other matter prescribed for the purposes of this subsection.

It is important to note, this Business Plan has been prepared based on a hypothetical scenario, with no heads of agreement or memorandum of understanding offered by the State Government for review and response by the City. Notwithstanding, this Business Plan has been prepared assuming key terms of the proposal which have been conveyed to the City in formal correspondence would in time be formalised in such an agreement.

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Assessment of the Proposed East Perth Primary School

In accordance with Section 3.59 of the Local Government Act 1995, an assessment of the proposed East Perth Primary School has been undertaken. A summary of the assessment against each of the six criteria established by the Act is provided below. Supporting information and analysis used to inform this summary assessment is provided in Part II of this document.

Expected effect on the provision of facilities and services by the local government

The proposed Major Land Transaction would have direct and indirect impacts on the City of Perth's provision of facilities and services.

If progressed, the proposed Major Land Transaction would reduce the capacity of the City of Perth to provide parking services within its boundaries through the removal of the Queens Gardens Car Park from the City's parking business portfolio.

The land transfer would remove the future development potential of a majority of the land subject to the Major Land Transaction, through transfer of freehold title to the State Government for the development of a public primary school.

On an indirect basis, ACIL Allen's estimates that the Major Land Transaction would result in a financial cost of \$29.0 million to the City over 30 years. This in turn could be expected to negatively impact on the City's financial capacity to provide facilities and services to the community, as the City would be required to take action to address the impacts on its Long Term Financial Plan.

Further details are provided in **Section 2.1, Section 4 and Section 5.**

Expected effect on other persons providing facilities and services in the district

There is one existing primary school within the City of Perth's boundaries: Trinity College, which provides private school education and related services for students in Year 4 to Year 6. Other schools within the City's boundaries include Mercedes College and St George Anglican Grammar School, which are both Year 7 to Year 12 secondary schools.

There are a range of other primary schools, public and private, in the areas surrounding the City of Perth.

Beyond the development of the East Perth Primary School, the closure of the Queens Gardens Car Park may adversely impact on ratepayers (residents and businesses) within the East Perth precinct through the removal of a substantial number of car parking bays. Commuters also use the Car Park and travel to the Perth CBD via the CAT bus system. Entities who would be expected to be directly impacted include the WACA, Gloucester Park / West Australian Trotting Association, Main Roads

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WA, and small businesses operating in the east end of the city. The closure of the Car Park may also impact the activation of the Perth Girls School new civic precinct site.

Other operators of car parking services within the City of Perth's boundaries may realise a benefit through a reduction in the overall supply of car bays within proximity to the Perth CBD. All things being equal this would result in higher prices and therefore improved financial returns for these operators.

Further details are provided in **Section 2 and Section 1.1**.

Expected financial effect on the local government

In undertaking its due diligence, the City must ensure that the State's proposal is financially responsible. Early in the due diligence process, an objective was set to ensure there was no net cost, or loss of value, incurred by the City's ratepayers as a result of delivering the inner city primary school development.

Overall, ACIL Allen found that the State's proposal would result in a financial cost to the City of Perth and its ratepayers. When compared to the Status Quo scenario (whereby the site is maintained as an operating car park), the State's proposal would represent a financial cost of \$29.0 million to the City. This cost is based on conservative projections of the value of future net cash flow to the City from the Queens Gardens Car Park, which is partially offset by the value of land transactions and future developments associated with the State's proposal.

However, when the State's proposal is compared to the potential "highest and best use" of the site, the total potential financial cost of the State's proposal to the City at \$104.6 million over 30 years.

Further details are provided in **Section 4**.

Expected effect on matters referred to in the local government's current plan prepared under section 5.56 of the Local Government Act 1995

From a strategic perspective, the City must ensure that the State's proposal is consistent with its broader strategic goals such as those presented in the City of Perth's Strategic Community Plan 2022 – 2032 (the document prepared by Local Government Authorities to comply with section 5.56 of the *Local Government Act 1995*).

The delivery of a public primary school in East Perth is considered a priority initiative within the City of Perth's Local Planning Strategy (2023), which is an enabling but subservient document relative to the City's Strategic Community Plan 2022 – 2032.

Overall, the proposed Major Land Transaction would constrain the City's ability to reach its 2036 population target of 55,000 residents, as defined in the Strategic Community Plan 2022 – 2032. This is because the development of the Queens Gardens Car Park site as a mixed use residential/commercial precinct has been long foreshadowed by both the City of Perth and the State Government itself, as evidenced by the Hillside Design Guidelines (DevelopmentWA, 2011). Without this site, achieving the required population growth target in the East Perth neighbourhood will be increasingly difficult as there are few large scale development sites remaining following:

- the medium or high density potential of the Riverside project lands which were previously expected to deliver a significant amount of residential growth are now unlikely
- the WACA Ground Improvement Project, which retains the use of the grounds and surrounding areas for sporting and community use.

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Even though the City would retain Parcel A as part of the transaction, there are additional concerns that the development potential of this site would also be significantly constrained if a potential high rise development is seen to be in conflict with Operational Planning Policy 2.4 (WAPC, 2022).

Further details are provided in **Section 3**.

Ability of the local government to manage the undertaking or the performance of the transaction

As it stands, the City is unable to proceed with the Major Land Transaction as it has yet to be presented with a formal offer through a heads of agreement or memorandum of understanding. The Major Land Transaction cannot be formally put for consideration and endorsement until such a document is presented to the City by the State, as the party proposing the transaction.

Once a document of this nature is established, the City has the internal capacity and capabilities to manage the disposal of land contemplated by the proposed Major Land Transaction. Where internal capability does not exist, the City would be expected to retain external advisors (such as legal representatives) to progress the proposed Major Land Transaction.

Further details are provided in **Section 1.1, Section 1.3, and Section 1.3**.

Any other matter prescribed for the purposes of this subsection

There are a range of additional matters discussed throughout the body of this document.

In particular, **Section 5** provides a summary of the broader perspectives the City may consider when assessing the State's proposal in the context of competing objectives and priorities.

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Supporting Evidence



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State Government Proposal to the City of Perth 1

This section presents an overview of the State Government's proposal to build a new inner city public primary school at East Perth, and the City of Perth's approach to considering the proposal.

1.1 Assessing the State Government's Proposal

To inform the City of Perth's due diligence, ACIL Allen was engaged to provide an independent, objective and evidence-based assessment of the State Government's proposal. This has resulted in the development of this Business Plan for a Major Trading Undertaking, and the supporting evidence contained in the remainder of this document. To support the works the City has obtained various advices, including legal and valuation advice, which is summarised as relevant in the document.

To consider all aspects of the proposal made by the State in its totality to inform the City's position, three core objectives were developed and agreed upon by the City of Perth's administration team which have ultimately guided the development of this Business Plan. These are presented in **Table 1.1**.

Table 1.1 Business Plan – Guiding Objectives

Objective	Description
Objective 1 – A public primary school is built in the east end of the City of Perth	Subject to a detailed business case, the City of Perth supports in-principle a primary school in East Perth as it aligns with the recommendations within its Local Planning Strategy 2023, which identifies the need for a new public primary school to support the growing residential community.
Objective 2 – The City of Perth should maintain optionality and flexibility to meet its overall population target of 55,000 residents by 2036.	As the availability of land in the East Perth neighbourhood suitable for new residential development is limited, identifying and realising strategic land for growth in the number of dwellings in East Perth will be critical in meeting its long-term residential population objectives.
Objective 3 – Any major land transaction associated with the public primary school results in no net cost, or loss of value to the City's ratepayers	The City of Perth has a responsibility to manage its operations in a responsible, transparent and sustainable manner for the benefit of its residents, ratepayers and stakeholders, consistent with its Long Term Financial Plan.

Source: City of Perth

The establishment of these objectives has not only guided the due diligence process, but also provides the critical evidence base from which the City can address the requirements of a business plan, as defined under sub-section 3.59 of the *Local Government Act 1995*. This provision requires a local government to develop a business plan before it commences a major trading undertaking or

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a major land transaction. The business plan is to include an overall assessment of the major trading undertaking or major land transaction and is to include details of:

- its expected effect on the provision of facilities and services by the local government;
- its expected effect on other persons providing facilities and services in the district;
- its expected financial effect on the local government;
- its expected effect on matters referred to in the local government's current plan prepared under section 5.56;
- the ability of the local government to manage the undertaking or the performance of the transaction; and
- any other matter prescribed for the purposes of this subsection.

The City of Perth administration's response to each of these six criteria has been presented in the Part I of this report. Part II of this report is dedicated to providing the factual evidence base from which the City can assess the State's proposal and address the six criteria that form the basis of the section 3.59 Business Plan.

Accordingly, this report has been structured into the following Parts and Sections:

Part I (previous part) provides the City of Perth administration's assessment of the State's proposal against each of the six criteria established by the Act, reflecting the supporting information and analysis provided in Part II of this document.

Part II provides the supporting evidence to inform the City's due diligence and complete a business plan for public comment.

- **Section 1 (this section) – State Government Proposal to the City of Perth:** provides the details of the State's proposal to the City of Perth of 11 May 2023, and a summary of the correspondence between the State and the City since that time.
- **Section 2 – Overview of the Queens Gardens site:** provides detail about the Queens Gardens Car Park as the initially preferred site for the State Government's proposal, including the history of the site, its current use, and the key legal and planning considerations relevant to the site.
- **Section 3 – Strategic Planning Considerations:** provides context on the 'need' for an inner city primary school to be located in East Perth, and the strategic considerations in relation to the choice of the site's location.
- **Section 4 – Financial and Operational Analysis:** assesses the proposal (and other development scenarios) in real cash flow and monetised social impact terms from the City of Perth's perspective.
- **Section 5 – Economic and Social Considerations:** presents the key economic and social considerations in relation to the proposal, including a discussion about the methodology used to assess the proposal from an economic and social perspective.

1.2 The Proposal

On 19 April 2023, the State Government announced plans to build a new inner city primary school to meet the forecasted population growth in central Perth. In making this announcement, the Minister for Education, the Hon Dr Tony Buti, announced that it would be progressing technical studies on the State's preferred site for the new primary school, the Queens Gardens Car Park (or 'the site') on Nelson Crescent in East Perth, to finalise its business case.

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The decision to build an inner city primary school – a decision of the State Government – is based on the forecast population growth in the City of Perth, and the need to ease the enrolment pressure on nearby Highgate Primary School.

Following this announcement, the Minister formally wrote to the City of Perth on 11 May 2023, as the freehold owner of the Queens Gardens Car Park site, requesting the City transfer Parcels B and C on the site, with Parcel A to be retained by the City (**Figure 1.1**).

Figure 1.1 Proposed East Perth Primary School development site (schematic)



Source: WA Government

In the letter, the Minister advised that in return for the City transferring freehold interest in Parcel B and C, the State would “unlock the development potential and associated value of the balance portion of land held by the City [Parcel A], through the repeal of the Chevron-Hilton Hotel Agreement Act 1960” (CHHA Act).

Further details on the CHHA Act and its interpretation are presented in Section 1.3 below.

To deliver on this arrangement, the Minister’s letter advised that the State would seek the “City’s written consent to terminate the underlying Chevron-Hilton Agreement”. As it stands, the State Government’s view is that the Agreement restricts the use of the site as a car park only. The Minister has stated previously that terminating the underlying Agreement “may create an estimated \$27 million for the City and its ratepayers”.

Further details on the financial considerations relating to the State’s proposal is presented in Section 4 of this report.

The letter concludes by noting that the Department of Education and Department of Planning, Lands and Heritage would be meeting with City representatives to discuss the details of the State’s proposal in more detail.

The next section provides a summary of the subsequent meetings and correspondence between the State and the City of Perth.

1.3 Subsequent Correspondence between the State and the City of Perth

At the 1 June 2023 meeting, the City requested information regarding the Department of Education’s site options assessment and final business case from which the Queens Gardens Car Park was selected as the preferred location for the inner city primary school. In this meeting (and subsequent meetings and correspondence), the Department advised that this process was considered to be Cabinet in Confidence, and therefore not able to be shared with the City.

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The Department did, however, agree to share their site selection criteria with the City, which outlined the selection criteria used to identify the site of the Queens Gardens Car Park as the “initially preferred site”. These criteria are detailed in **Table 1.2** below.

Table 1.2 Inner City Primary School – Site selection criteria

Selection criteria	Definition
Location	<ul style="list-style-type: none"> — Site located within proposed Local Intake Area (LIA) to provide enrolment required relief to Highgate Primary School. — Proximity of the site to the majority of where the demographic demand has been identified.
Land area to meet operational and curriculum requirements	<ul style="list-style-type: none"> — Preferred minimum 1.6 Ha.¹ — Land area to consider parking, drop off and open space requirements. — Sufficient area to deliver buildings required for up to 800 students - fewer than 6 storeys. — Sufficient area for outdoor play and physical education activities for up to 800 students. — Early childhood facilities on ground floor with access to secure outdoor space. — Sufficient site size for a junior AFL Oval or rectangular field and 2-3 hardcourts. — Consider additional available open public space in close proximity to the proposed development site.
Transport/Access	<ul style="list-style-type: none"> — Ease of access to the site from public transport, pedestrian and cycleway infrastructure — Suitably located within the proposed LIA to maximise walkability to school — Allows for optimised design for safe drop off and pick up. — Ability to access site from road transport infrastructure.
Sustainability	<ul style="list-style-type: none"> — Adaptability and resilience to climate change. — Ability to support sustainable transport options. — Orientation.
Cultural and Community Responsiveness	<ul style="list-style-type: none"> — Fosters a sense of place and belonging. — Opportunities for shared spaces that connect school with local community. — Considers the potential for future changes in volume and nature of residential dwellings within the Local Government Structure Plan. — Compatible land uses and non-conflicting land uses.

Source: Department of Education (WA)

On 17 August 2023, the Lord Mayor responded to the Minister’s 11 May 2023 letter. In this letter, the Lord Mayor reiterated the City’s in-principle support for an inner city primary school, and also outlined that it had commenced its own due diligence investigations and analysis to support the preparation of a business plan to Elected Members before the end of the 2023-24 financial year. To assist the City in its due diligence, the Lord Mayor requested additional analysis from the Department of Education that informed the site selection process.

Further details on the strategic planning considerations in relation to the State’s proposal is presented in Section 3 of this report.

¹ This differs from the minimum preferred land area under the State Government’s Operational Policy 2.4 – Planning for School Sites (WAPC, 2022). Under this policy the State’s preference is for primary school sites to be on a minimum of four hectares. It is noted a site of this size within the Perth inner city may not be available.

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In the Minister's response received on 14 September 2023, the Minister advised that the City did not require information on the sites investigated for a primary school on the basis that the "State Government is responsible for schools and has completed its business case work on the site selection", requesting instead that the City "should now proceed with its business plan and Major Land Transaction without delay".

In later correspondence from the Lord Mayor to the Minister for Education on 19 October 2023, the City reiterated that it would be completing its due diligence of the State's proposal in order to inform a business plan as required under sub-section 3.59 of the *Local Government Act 1995*. In this correspondence, the City reaffirmed its support for the development of an inner city primary school.

In a 21 November 2023 response, the Minister for Education attached a Cost Benefit Analysis that the Department of Education had completed on the State's proposal, to assist the City in its due diligence. The Minister noted in his letter that this information would be sufficient for the City to complete its due diligence and therefore a business plan, with a request that the City inform the State as to whether or not it wishes to proceed with the transaction by 22 March 2024.

Further clarification on the State's position was provided by the Minister in his letter to the Lord Mayor on 12 February 2024. This included revised estimates of the net impact of the State's proposal to the City of Perth, and the State's advice with respect to its interpretation of the CHHA Act. The Minister also confirmed that the State's proposal remained as stated in his initial correspondence from 11 May 2023.

Accordingly, the key elements of the State's proposal are summarised in **Box 1.1** below.

Box 1.1 State Government Proposal – Key Elements

The State Government's proposal was detailed in the Minister for Education's letter to the Lord Mayor of the City of Perth on 11 May 2023. The following particulars are relevant considerations in the development of this Business Plan:

- City of Perth transfer freehold title and interest in Parcel B and Parcel C of the Queens Gardens Car Park site to the State, for nil consideration
- City of Perth to retain freehold title and interest in Parcel A
- The State will repeal the *Chevron-Hilton Agreement Act 1960*, and the associated underlying agreement, to clarify the development options of the site
- The State will build, own and operate the public primary school on an amalgamated site comprising Parcel B and Parcel C.

1.4 Interpretation of the *Chevron-Hilton Hotel Agreement Act 1960*

The State Government has proposed that the City transfer two thirds of the freehold land to the State for the construction of the primary school, with the City retaining one third of the land. The State has proposed that, in consideration for the City transferring two of the parcels, the development potential and associated value of the third parcel will be "unlocked" by the repeal of the CHHA Act and the termination, by consent, of the underlying Agreement.

The State's proposal appears to be based on their view that the site currently has limited development potential on the basis that the use of the site is constrained by the continuing obligation in clause 35 of the CHHA Act to provide public car parking on the site.

This is the foundation of the State's position that in "unlocking" the site through the repeal of the CHHA Act, the City can realise the inherent value in the remaining site (Parcel A). However, the City's position is that the premise of the State's proposal is flawed in that clause 35, while imposing

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a continuing obligation on the City to “provide a parking area for motor and other vehicles on the lands”, does not otherwise confine the use of the site exclusively for the provision of a car parking area or limit its use to an “at grade” parking area. As long as the obligation in clause 35 is met by the provision of a parking area, it is the City’s position that the site may otherwise be developed and value realised.

The means by which a parking area can be provided may change over time. Whereas the existing car park has used “at grade” parking across the whole of the site, the applicable planning framework (including the Hillside Design Guidelines (DevelopmentWA, 2011)) contemplate redevelopment with parking being provided over a smaller proportion of the site by a “sleeved” parking area that makes use of multi-storey parking through the basement and podium levels of new buildings.

While the CHHA Act is in force, it is not open to the City to sell the freehold of the Site to a third party. However, it may be possible to generate substantial revenue from the development of the site by granting a long term lease to a third party or entering into a joint venture or similar arrangement which still allowed for the City to continue to provide a ‘parking area’.

Furthermore, while the planning framework that applies to the site is not of immediate or direct assistance in the interpretation of clause 35, it does demonstrate two relevant matters.

- First, there is no other planning or land use impediment to the redevelopment of the site, provided that the obligation under clause 35 to provide a ‘parking area’ is observed.
- Second, the means by which a ‘parking area’ can be provided may change over time. Whereas the existing car park has used “at grade” parking across the whole of the site, the Planning Scheme and the Hillside Design Guidelines (DevelopmentWA, 2011) contemplate redevelopment with parking being provided over a smaller proportion of the site by a ‘sleeved’ parking area that makes use of multi-storey parking through the basement and podium levels of new buildings.

1.5 Obligations under the Local Government Act 1995

The State’s proposal to the City constitutes a Major Land Transaction under section 3.59(3) of the *Local Government Act 1995*. This requires the preparation of a business plan that incorporates details of various matters, including:

- the effect of the ‘Major Land Transaction’ on the provision of facilities and services by the local government; and
- the expected financial effect on the City.

If the City is minded to proceed with a Major Land Transaction, the City is required to consult with ratepayers and take into consideration any representations made before making a final decision.

While the City’s residents will benefit from a public primary school, as a matter of ‘good governance’ the City must satisfy itself in relation to the terms on which the land – one of the largest undeveloped sites in single ownership in the city – is to be transferred to the State, having regard to the matters covered in the business plan.

The City is ultimately accountable to its ratepayers for the prudent use of the City’s assets and finances and must comply with its statutory duties under the *Local Government Act 1995*.

