



## Ordinary Council Meeting

**14<sup>th</sup> September 2011**

### INFRASTRUCTURE SERVICES

#### ATTACHMENTS

---

ITEM NO	SUBJECT	PAGE
12.3.1	<b>WEST BAY VALLEY ESTATE OUTSTANDING DEVELOPER CONTRIBUTIONS - SETTLEMENT OFFER</b>	
	Attachment 1 - Letter of Offer from TME on behalf of Augusta Land Trust	1-5

---





# Thompson McRobert Edgeloe Group

Our Ref: 06277E

The Chief Executive Officer  
Sire of Augusta Margaret River  
PO Box 61  
MARGARET RIVER WA 6285

Attention: Mr G Evershed

Dear Gary,

**RE: WESTBAY VALLEY ESTATE – STAGE 1C  
CLEARANCES**

Thank you for taking the time to meet recently with TME and our Client's representative, Mr Don Ellis of Augusta Land Trust. The purpose of the meeting was to discuss the status of our Client's subdivision at Hillview Road in Augusta (Westbay Valley Estate). In particular, we sought to explore:

- Options for satisfying Council's requirements to sign off the various WAPC conditions in respect of Stage 1C of the Estate;
- A cooperative approach to resolution of stormwater issues that have become evident in an existing portion of the Estate, and;
- Possible avenues for relief from land tax and rating pressures that are impacting on our Client's capacity to manage the project budgets.

**Introduction:**

The purpose of this letter is to formally seek Council's support for a proposal that will allow our Client to move forward and obtain titles for Stage 1C, while at the same time facilitating corrective stormwater drainage works in Investigator Avenue.

The matter of land tax and rates is impacting on our Client to the extent that the project cashflow is under constant pressure. However, this letter does not address these specific matters in any detail. If the more pressing matter of clearances for 1C can be resolved, then consideration of the land tax and rates issues can be dealt with at another time.

The most pressing matter weighing on our Client is clearing the Stage 1C conditions so that titles can be produced, and pre-sales converted into actual sales. There is

## Bunbury

26 Wittenoom Street  
Bunbury WA 6230

Postal Address:  
PO Box 733  
Bunbury WA 6231

Phone: (08) 9791 4411  
Fax: (08) 9791 4412  
www.tme.net.au

## Perth

TME Brown  
Suite 4 / 47 Monash Avenue  
Como WA 6152

Postal Address:  
PO Box 4000  
Victoria Park WA 6979

Phone: (08) 9368 2615  
Fax: (08) 9367 7409  
www.tmebrown.net.au

## Margaret River

Unit 1 / 34 Station Road  
Margaret River WA 6285

Postal Address:  
PO Box 875  
Margaret River WA 6285

Phone: (08) 9757 3256  
Fax: (08) 9757 3932  
www.tme.net.au

## Great Southern

Postal Address:  
PO Box 114  
Woodanilling WA 6316

Phone: (08) 9823 1009  
Mobile: 0418 954 873  
www.tme.net.au

## Denmark

Shop 1, 7 South Coast Hwy  
Denmark WA 6333

Postal Address:  
PO Box 887  
Denmark WA 6333

Phone: (08) 9848 3611  
Fax: (08) 9848 3700  
www.tme.net.au

one lot under contract to a purchaser who has stated their intention to build immediately, and there is interest in several other lots.

**Background:**

Westbay Valley Estate is situated on the western edge of the existing Augusta townsite, next to the LIA. The first stage of the subdivision was released in 2005. Since that time some 57 lots have been created, and approximately 30 homes have been built and occupied. Westbay Valley Estate delivers an affordable housing option for Augusta.

The physical construction works for Stage 1C were completed more than two years ago. The timing of course was unfortunate, in that completion of the works coincided with the global downturn. At that time, our Client had expended his entire construction budget. For understandable reasons, he elected not to expend the balance of the Stage 1C budget (payment of bonds, headworks fees and so on) during the market downturn. So the titles have not been sought or created. Our Client advises that there is now enough interest in the marketplace to warrant the final expenditure to create the titles.

However, a number of external factors have added to the cost of completing Stage 1C. There have also been general financial pressures on our Client's overall budget.

The Infrastructure Contributions Policy applicable to this location (Augusta Planning Area 6) was adopted by Council in 2010. Up until that time, we had been working to some assumed figures. The final per-lot contribution adopted by Council was \$1,500. This figure is in excess of the amount adopted in our Client's original budget, which has had two impacts. Firstly, the contributions required in respect of the 13 lots to be created as Stage 1C are outside of the budget. Secondly, there is also a back payment (a make-up payment) of \$30,248 for the 57 lots that were created many years ago.

A localised stormwater issue became evident last year. The groundwater was observed to be higher than previously anticipated. This problem manifested itself in the existing lots in Investigator Avenue (created and handed over to Council several years ago as part of Stage 1A), and also in the yet to be created Stage 1C Lots. Council quite correctly asked our Client to carry out corrective works in respect of Stage 1C as a precursor to creation of the titles. This work was carried out at a cost of more than \$46,000. The expenditure was clearly a legitimate expense to be borne by our Client, but was an unexpected load on an already stretched budget.

Similar works are required in Investigator Avenue. Some of the existing residents are experiencing "nuisance" type issues with their domestic drainage systems, and they are agitating via their elected members to have the situation corrected. However, the works will need to be carried out in an existing Council owned road reserve. Technically, our Client could simply dismiss this issue and leave it to Council. Of course, this approach would not be in the best interest of Council or the Estate. As a matter of goodwill, our Client is quite prepared to carry out the corrective works – but he simply cannot afford to do so at the moment given the other pressures on his budget. The quoted value for the corrective works in Investigator Avenue is just over \$50,000.

Council's Engineering Department has stipulated that completion of the corrective works in Investigator Avenue will be a precursor to release of the Stage 1C titles. We are of the opinion that this position would be found to be incorrect, and it could probably be successfully challenged. But for now, suffice it to say that both Council and our Client would like to see the works carried out.

In summary, my understanding of Council's current position is that the following payments need to be made (either as contributions to Council, or as funding of works) before clearances for Stage 1C will be issued:

Item:	Currently Required:	Budgeted:
Maintenance Bond:	\$ 16,699.00	\$ 16,699.00
Supervision Fee:	\$ 7,347.56	\$ 7,347.56
Stage 1C Contribution:	\$ 19,500.00	\$ 13,065.00
Contributions Back Payment:	\$ 30,248.00	
Investigator Ave. Drainage:	\$ 50,000.00	
	<u>\$107,095.56</u>	<u>\$ 37,111.56</u>

Basically, there is insufficient funding left "in the kitty" to satisfy Council's current requirements for clearance of the Stage 1C conditions. Council could elect to push for the full current requirement as listed above. However, the likely end result will be that our Client will either abandon Stage 1C and future works, or the whole thing may degenerate into a protracted dispute. Neither of these two outcomes could be considered desirable.

**Primary Option:**

In order to avoid disputes, and provide a dignified pathway forward for Augusta Land Trust and Council, we respectfully submit the following thoughts for Council's consideration,

The most pressing issue "on the ground" is the Investigator Avenue drainage – especially in respect of the handful of existing residents. Our Client is anxious to fund the corrective works and have them carried out as soon as possible, but is unable to do so given the available funds.

We would like to suggest that the requirements for clearance of the Stage 1C subdivision conditions be restructured along the following lines:

**Maintenance Bond:**

We propose that Council forgoes the usual maintenance bond. The roads and pathways have been in place for more than two years and are quite sound. The kerbs and pathways have had time to "mature", and they were put to test by the crew that retro-fitted the drainage pipework. The existing works stood up very well to that activity.

Council's Engineering Department has indicated that in this instance, it would support the proposal to forego the maintenance bond.

**Contributions and Fees:**

We submit for your consideration the proposition that Council acquires one of the Westbay Valley Estate lots in lieu of cash payments for the various fees and contributions. This proposal would allow Augusta Land Trust to divert sufficient funds to carry out the corrective works in Investigator Avenue.

The value of the lot would be greater than the amount owed by our Client. As such, there would need to be a cash adjustment payable to Augusta Land Trust for the difference. Since Council's

budget for the 2011 / 2012 financial year has already been established, it was suggested that any cash adjustment would need to be deferred until the following financial year.

Our Client has reviewed this alternative and has confirmed that Lot 18 (Street Number 6) Meridian Street is unencumbered and can be made available for this purpose.

In exchange for the above relaxations, our Client would direct the freed-up budget amount to construction of the Investigator Avenue drainage works, and would organize for the works to be carried out as soon as possible. We already have a quotation from a local contractor to carry out these works, and the contractor is happy to commence when the ground conditions are appropriate.

We believe this suggested strategy achieves a resolution of the Investigator Avenue drainage matter (ultimately at our Client's expense instead of Council's) while securing Council's long term position with regards to contributions to external works. It is our submission that the proposal achieves a win-win outcome that the Westbay Valley community would support and appreciate.

**Alternative Option:**

An alternative proposal was tabled for consideration during our meeting, namely that Council gives consideration to deferring recovery of the per-lot Augusta Planning Area 6 contributions until the next lot release. The proposal is that both the Stage 1C contributions and the "catch-up" payment of earlier contributions be held over until further stages are developed. In support of this proposition, we noted that the most pressing item of external infrastructure, namely the pathway link to town, has now been built. Council ultimately needs to recover the component of expenditure that it "tipped in" to these recent works. However our Client cannot afford to pay these contributions while at the same time funding the Investigator Avenue drainage works. In lieu of a contribution at this time, the proposal is that our Client would amortise the outstanding contributions (and "catch-up" payment) across the balance of the estate. i.e. the contributions for Stage 1D onwards would be increased above \$1,500 per lot to acknowledge the full back-payments that would be owed. There may need to be some form of annotation on the balance of title to ensure that this outstanding obligation is clearly understood by our Client (or any other party that might take an interest in the land in the future).

In exchange for the above relaxations, our Client would direct the freed-up budget amount to construction of the Investigator Avenue drainage works. Once again this suggested strategy achieves a resolution of the Investigator Avenue drainage matter (ultimately at our Client's expense instead of Council's).

However, it was noted during our meeting that there is a small element of risk in adopting the above proposal. In the unlikely event that the future stages of the subdivision do not proceed, Council would never recover the component of the pathway cost that it funded. We feel that the risk is small, but it is present nonetheless.

**Conclusion:**

We take this opportunity to thank you once again for your time and effort in assisting to reach a workable outcome for Augusta Land Trust and for Council. We would be grateful if you could review these proposals, and submit one or both to Council with your support, for their consideration and determination.

In the meantime, please do not hesitate to contact the undersigned should you require any further information to assist with your deliberations.

Yours faithfully

**THOMPSON McROBERT EDGELOE GROUP PTY LTD**



**S BRAKE**

**MANAGER – MARGARET RIVER REGIONAL OFFICE**

**August 24<sup>th</sup> 2011**

