LGRCEU (WA)

IN UNITY

Versus

City of Swan

December 12, 2024

LGRCEU (WA) WINS ARBITRATION DECISION FOR MEMBERS AT CITY

After nearly ***18 months*** of struggle and negotiation with the City of Swan for fair deal the LGRCEU(WA) has won a better deal for members through Arbitration in the Western Australin Industrial Relations Commission in matter 125 of 2024(copy of decision attached to this notice).

The City's final offer prior to prior to arbitration was 4.0% from 1 July 2023; 3.5% from 1 July 2024 and 3.25% from 1 July 2025

The LGRCEU(WA) members and union final position prior to arbitration was 5% from 1 July 2023; 55.05 from 1 July 2024 and 5.0% from 1 July 2025.

After hearing witness evidence and submission from all parties Senior Commission Consentino rules that the members receive:

- **5.0% FROM 1 JULY 2023**
- **4.5% FROM 1 JULY 2024**
- **4.0%FROM 1 JULY 2025**

The city spent a considerable amount of ratepayers' money engaging Legal Counsel to fight the union and its members and lost.

November 27, 2024, was a great day for our members at Swan.

Andrew Johnson
General Secretary
IN UNITY

COMMISSION TO MAKE ORDERS AS TO TERMS OF THE CITY OF SWAN PARKS, FACILITIES AND ENGINEERING INDUSTRIAL AGREEMENT 2023

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	:	2024 WAIRC 00989
CORAM	:	SENIOR COMMISSIONER R COSENTINO
HEARD	:	MONDAY, 4 NOVEMBER 2024
DELIVERED	:	WEDNESDAY, 27 NOVEMBER 2024
FILE NO.	:	APPL 125 OF 2024
BETWEEN	:	CITY OF SWAN, LOCAL GOVERNMENT, RACING AND CEMETERIES EMPLOYEES UNION (WA), WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES Applicants AND (NOT APPLICABLE) Respondent

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CatchWords	:	Industrial Law (WA) – *City of Swan Parks, Facilities and Engineering Industrial Agreement 2023* – Application for Commission to make orders as to specified matters under s 42G – Salary increases – maintaining real wages - competitive rates of pay - employer capacity to pay - Performance payment – level increment progression - Summer and winter rosters – workplace health and safety in pre-sunrise light - Orders issued
Legislation	:	*Industrial Relations Act 1979* (WA) *Work Health and Safety Act 2020* (WA) *Fair Work Act 2009* (Cth)
Result	:	Orders issued

Representation:

Counsel:

First Applicant	:	Ms J Flinn of counsel
Second Applicant	:	Mr A Johnson
Third Applicant	:	Mr R Knox

Solicitor:

First Applicant	:	MinterEllison

Case(s) referred to in reasons:

Western Australian Police Union of Workers v Commissioner of Police [2021] WAIRC 00047; (2021) 101 WAIG 293

Re Tramways Employees (Melbourne) Award 1949 [1951] CthArbRp 528; (1951) 72 CAR. 26

Fire and Emergency Services Authority of Western Australia and Anor v (Not Applicable) [2007] WAIRC 00469; (2007) 87 WAIG 1283

Reasons for Decision

Contents

1 The **City** of Swan, the Local Government, Racing and Cemeteries Employees Union (WA) (**LGRCEU**) and the Western Australian Municipal, Administrative, Clerical and Services Union of Employees (**WASU**) have reached agreement on all but three provisions of a proposed industrial agreement to apply to its workforce engaged in the City's construction and maintenance business unit. The construction and maintenance business unit includes the parks, horticulture and maintenance, engineering maintenance, building maintenance and engineering construction teams. This cohort of the City's workforce is referred to as the 'Parks, Engineering and Facilities' employees, or **PEF**. The proposed industrial agreement is called 'City of Swan Parks, Facilities and Engineering Industrial **Agreement** 2023'.

2 The three matters that are not agreed about the Agreement are:

1. **Matter 1:** the annual percentage increase to the annual salary to be paid to PEF employees
2. **Matter 2:** the conditions attached to payment following the annual performance development review process

3. **Matter 3:** the introduction into the Agreement of express reference to summer and winter rosters or the introduction into the Agreement of a single year-round 6:30 a.m. start time.

3 The parties have applied to the Commission under s 42G of the *Industrial Relations Act 1979 (WA)* (**IR Act**) for the Commission to register a new industrial agreement in the terms the parties themselves agreed, together with any other provisions as ordered by the Commission about the three matters that the parties have not agreed.

Section 42G principles

4 Section 42G says:

> (1) This section applies where —
>
> (a) negotiating parties have reached agreement on some, but not all, of the provisions of a proposed agreement; and
>
> (b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and
>
> (c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.
>
> (2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.
>
> (3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).
>
> (4) In deciding the terms of an order the Commission may have regard to any matter it considers relevant.
>
> (5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.
>
> (6) Despite section 49, no appeal lies from an order referred to in subsection (2).

5 In s 42G proceedings, there is no onus in the usual sense. The parties put their respective cases and the Commission decides the matter in accordance with equity and good conscience: ***Western Australian Police Union of Workers v Commissioner of Police*** [2021] WAIRC 00047; (2021) 101 WAIG 293 (***WA Police Union of Workers v Commissioner of Police***) at [14].

6 However, the assessment of the competing proposals advanced by each party requires that there be a firm evidentiary basis to justify any orders the Commission makes. Though the Commission is not bound by the rules of evidence, this does not mean the Commission is able to act without any evidence. This has been a longstanding principle of industrial arbitration. In ***Re Tramways Employees (Melbourne) Award 1949*** [1951] CthArbRp 528; (1951) 72 CAR. 26, the Commonwealth Court of Conciliation and Arbitration stated at 27 - 28:

> Although the Court is not bound by rules of evidence, this had never been held to mean that the Court would act without evidence. If a tribunal were to so act, obvious injustices and insecurities could result. ...
>
> The industrial system has been functioning for so long that even an inexperienced advocate should know that an industrial claim is not to be had for the asking, but is necessarily dependent upon the quality of the relevant evidence produced...

7 In determining a dispute under s 42G, the Commission:

a. has a broad discretion to reach a conclusion based on the evidence before it;

b. can and should consider a range of elements including the IR Act’s objects set out in s 6, and any other matter it considers relevant;

c. is subject to the requirements of s 26; and

d. is not bound to take into account the Statement of Principles made under s 50A(1)(d)(i) of the IR Act:

Fire and Emergency Services Authority of Western Australia and Anor v (Not Applicable) [2007] WAIRC 00469; (2007) 87 WAIG 1283 at [377]; *WA Police Union of Workers v Commissioner of Police* at [37], [61].

Outline of parties' agreed position

8 I was provided with the draft Agreement setting out the matters the parties agree on.

9 The terms of the Agreement largely represent a roll-over of the *City of Swan Parks, Facilities and Engineering Enterprise Agreement 2019* (**2019 Agreement**), being an enterprise agreement made under the *Fair Work Act 2009* (Cth) (**Fair Work Act**), and applying from 1 January 2023 as a new state instrument under s 80BB of the IR Act. Changes have been made to reflect the fact that the Agreement is made under the IR Act, rather than the Fair Work Act. Aside from the three matters the subject of the arbitration, the Agreement involves the following substantive changes from the 2019 Agreement:

a. The Agreement is to be read wholly in conjunction with the *Municipal Employees (Western Australia) Award 2021* (**ME Award**), rather than the National Employment Standards. The Agreement prevails over the Award to the extent of any inconsistency: cl 3.

b. The 2019 Agreement expressly incorporated a number of provisions of the *Local Government Industry Award 2020* [MA000112] (**LGIA**) made under the Fair Work Act but the Agreement does not contain a list of incorporated provisions of either the LGIA or the ME Award.

c. There is a new provision for maintaining the salary of an employee transitioning from night work who is unable to work 76 hours across a fortnight due to break requirements: cl 22.5.

10 It is estimated that the Agreement will apply to 150 employees on registration: cl 1.3.

11 The Agreement will operate from the date of its registration and have a nominal expiry date of 30 June 2026: cl 2. It is agreed that pay increases arbitrated in these proceedings will take effect on 1 July 2023, 1 July 2024 and 1 July 2025.

12 The annual salaries depend on an employee's classification level. There are six classification levels as set out in the first two columns of Schedule 1 to the Agreement and reproduced below:

Classification	Positions
PEF 1	• Trainees
PEF 2	• General Hand/Engineering Maintenance • General Hand/Horticulture • General Hand/Mowing
PEF 3	• General Hand/Engineering Construction • General Hand/Weed Control • General Hand/Drainage Construction • General Hand/Bush Regeneration • Water Truck Operator • General Hand/Arborist

	• Tree Watering/Planting Parks • Team Leader Engineering Maintenance • Team Leader Mowing (1-2 team members) • Tractor Operator/Parks Maintenance
PEF 4	• Arborist (Cert III or above) • Team Leader Mowing (3 or more team members) • Horticulturalist (Cert III or above) • Backhoe Operator Engineering Maintenance and Construction • Skid Steer Operator • Front End Loader – Engineering Construction • Team Leader Drainage Maintenance • Team Leader Concrete • Playground Maintainer (no qualification) • Irrigation Maintainer (no qualification)
	• Front End Loader Driver • Sweeper Operator
PEF 5	• Team Leader Weed Control • Team Leader Arborist • Team Leader Bush Regeneration • Irrigation Maintainer (Cert III) • Low Loader/Semi Operator • Leading Hand Engineering Construction • Excavator Operator
PEF 6	• Team Leader (Construction Roads and Drainage) • Selected technical experts (Grader Operator, Trades/technician, Greens Keeper, Curator) • Playground Maintainer (welding or trades qualification) • Irrigation Maintainer (Cert IV) • Electrician, Plumber, Carpenter, Painter

13 There is a minimum salary and a maximum salary for each classification, with the maximum salary for any classification being below the minimum salary for the next higher classification.

14 Salaries are inclusive of annual leave loading of 17.5%: cl 6.1.

15 By cl 38.1, the City will make superannuation contributions at a rate that is 1.75% above the standard superannuation guarantee percentage. The general superannuation guarantee percentage is 11% from 1 July 2023, 11.5% from 1 July 2024 and 12% from 1 July 2025.

16 Additionally, employees may sacrifice up to 5% of their ordinary time earnings as superannuation contributions and the City will match any such contributions: cl 38.2.

17 Full-time employees are required to work an average of 38 hours per week averaged over a 12-month period, with a rostered day off each fortnight. A standard workday is 9 hours except one day per fortnight which is 8.5 hours: cl 14.

18 The spread of ordinary hours is over a 12-hour period from 6.00 am to 6.00 pm Monday to Friday: cl 14.3. Overtime is payable at the rate of 150% for the first two hours Mondays to Fridays (excluding public holidays), Saturdays and Rostered Days Off, and 200% thereafter and for all work on Sundays: cl 22.

19 The Agreement contains a clause dealing with Workplace Safety and Inclement Weather: cl 7.

20 The Agreement is silent on casual loading, industry allowance and some other matters. The City submitted that the ME Award will apply in relation to 'Notice of Termination', casual loading, 'National Training Wage', 'Apprentices', 'Supported Wages' and 'Public Holidays': City's Closing Submissions at [8.1]. But the City did not concede the industry allowance in the ME Award applied.

21 The LGRCEU submitted that employees will be entitled to receive the industry allowance, currently $34.82 a week: LGRCEU's Closing Submissions at pg. 17.

22 I am without the benefit of argument as to whether or not the industry allowance will be payable in addition to the salaries. For the purpose of determining Matter 1 and Matter 2, I have assumed the industry allowance is payable.

The arbitration

23 The parties agreed that evidence-in-chief in this matter should be by witness statements filed prior to the date of the hearing, with any evidence-in-chief not contained in witness statements being restricted without the Commission's leave. The Commission made orders accordingly.

24 The parties' witness statements were tendered into evidence, and a number of witnesses were cross-examined on their evidence. The City raised objections to parts of the LGRCEU's witness statements on the grounds they constituted speculation, opinion, submission, secondary evidence of or comments on documents, and conclusionary remarks. I accepted the witness statements into evidence on the basis that such content would be weighed accordingly.

25 Parts of the LGRCEU's witness statements which set out employees' increases in their living costs were objected to because the underlying documents had not been disclosed, and therefore, the evidence could not be tested. Despite having prior notice of these objections, the LGRCEU did not produce any documents to substantiate the witnesses' secondary evidence of what the documents may have contained. This is regrettable. However, as I am not bound by the rules of evidence, and I consider it to be a matter of common knowledge that rental costs, bank interest rates and other costs of living have increased, I am willing to give the employees' evidence limited weight.

26 The City also objected to parts of the LGRCEU's evidence which related to the bargaining that preceded the making of this application, on the grounds such evidence is not relevant to the three matters to be decided by the Commission. I agree. I have not taken into account evidence of bargaining about issues or claims other than the three matters for determination in these proceedings.

Matter 1: salary increases

Outline of parties' positions

27 The City's position is that the salary increases should be:

Year 1 – 4.00% increase from 1 July 2023;

Year 2 – 3.50% increase from 1 July 2024; Year

3 – 3.25% increase from 1 July 2025.

28 The City submits that its proposed wage increases are fair and reasonable because:

(i) they are the same salary increases paid by the City to its other employees;

(ii) they will result in the Parks Employees being paid comparable salaries to employees performing the same or similar roles in other local governments that are comparable to the City;

(iii) they are consistent with salary increases agreed to by other comparable local governments, as reflected in the industrial agreements registered by the Commission since 1 January 2023;

(iv) they are at or above actual or forecast inflation (as measured by Perth CPI) across FY 23/24 – FY 25/26;

(v) they are in line with actual or forecast WA wage growth (for all industries in Western Australia) across FY 23/24 – FY 25/26;

(vi) the Year 1 increase is above actual wage growth (for the public sector) in FY 23/24 which is 3.1%;

(vii) they represent a cumulative wage increase of 10.75% against predicted wage growth of 11.5% for all industries in WA across the same financial years, noting that public sector wage growth in FY23/24 was 3.1% compared to all industry growth of 4.25%;

(viii) given the actual and/or forecast inflation rates, they represent real wage growth for the Parks Employees.

29 The City says the Unions' position on Matter 1, if accepted by the Commission, would lead to a cumulative wage increase of 15% across the life of the Agreement, well beyond predicted all industries wage growth of about 11.5% and outstripping forecast inflation.

30 The LGRCEU's and the WASU's (collectively, the **Unions**') common position is that the salary increases should be:

Year 1 – 5.0% increase from 1 July 2023

Year 2 – 5.0% increase from 1 July 2024

Year 3 – 5.0% increase from 1 July 2025

31 The LGRCEU points out that the workforce is relatively low paid, and the increases it seeks are necessary to alleviate cost of living pressures and financial hardship on its members: LGRCEU's Outline of Submissions at [25]-[26].

32 The LGRCEU submits that these increases are within what the City can afford to pay, having regard to costs of the claimed increases, the City's Total Operating Revenue in its Financial Statements and it forecast operating revenue set out in its Long Term Financial Plan 2022/23 – 2031/32 (**Long Term Financial Plan 2022/23 – 2031/32**). It says the cost impact of its claim on the City is negligible: LGRCEU's Outline of Submissions at [22].

33 The LGRCEU also submits that the claim is justified by reference to the rates of pay paid to the same or similar workforce cohorts of other Western Australian local governments. It says by comparison the wages currently paid by the City are 'toward the very low end' of the range for metropolitan councils: LGRCEU's Outline of Submissions at [22]-[23].

34 WASU submitted the increases the Unions seek are consistent with equity, good conscience and the substantial merits of this matter: WASU's Outline of Submissions at [10].

Evidence relevant to salary increases

35 The focus of the Unions' evidence on the issue of salary increases was the need for wage increases to meet the increasing costs of living faced by a relatively low paid workforce.

36 The focus of the City's evidence on the issue of salary increases was the comparability of the City's proposal with rates paid in the local government sector together with the budgeting constraints faced by the City which impacted on its ability to fund increases to employee costs.

Cost of living pressures

37 The current Level PEF 1 adult wage has a salary range starting at $62,887 with a maximum of $63,723 per annum inclusive of leave loading. At the top of the classifications, a level PEF 6 has a current salary range of $74,094 to $74,930 inclusive of leave loading. These are the rates payable under the 2019 Agreement plus an 'administrative' pay increase of 3.25% having effect from 1 July 2022: Exhibit 1.

38 According to the City's Employee Relations Business Partner, Shan Goh, 91 of the 154 current PEF employees are classified at level PEF 2-3. Another 37 are classified at level PEF 3. The majority of employees are on salaries of $66,539.10 per annum or less and 87% are on salaries of $68,150.97 or less: Exhibit 1, Exhibit 17 at [6]. Any individual employee's total remuneration may exceed these salaries, depending on overtime worked, allowances received, and so on. Even so, the PEF workforce's wages are modest. 'Low paid' is an appropriate description.

39 The LGRCEU relied on the Western Australian Council of Social Service's (**WACOSS**) 'Cost of Living 2023' report by Mr Graham Hansen and Ms Emily Hull (**WACOSS Report**) which outlined the cost pressures borne by families and communities particularly in the context of significant housing cost increases: Exhibit 14. For the purpose of the WACOSS modelling, a low-income household is a single parent family with a weekly income of $1,134.28 or a twoparent family with a weekly income of $1,596.81: Exhibit 14 at pg. 2. PEF employees' base weekly wages are between these two amounts.

40 The WACOSS Report indicates that in the period 2021/22 to 2022/23, weekly income for a single parent family increased by 4.16%, while its total household expenditure increased by 6.31%. The model single parent family's weekly income surpassed their basic living costs by just $1.40: pg. 6-8. At the same time, the model two-parent family's weekly income increased 2.12%, while weekly expenditure on basic living costs increased by 5.8%, predominantly caused by a substantial rise in weekly rental costs, followed by food and beverages. Weekly income surpassed basic living costs by $48.54 per week: pg. 9-10.

41 The WACOSS Report notes that housing costs have had a disproportionate impact on those living on the lowest incomes. It says that in Perth, the pressure of increasing rental costs 'has never been more apparent' with median rents rising 'drastically' since 2020 by 52.4%. For lowincome households, rental properties in Western Australia are extremely unaffordable: pg. 2627.

42 Increases in the costs of energy, food and transport also disproportionately impact on the lowest income households.

43 In short, low-income households 'are struggling to cover the cost of essentials'. Page 22 of the report notes:

> Each week these households are faced with difficult decisions around which expenses they can cover. Often these households are unable to pay for bills, medication, or incidentals and unexpected costs, such as a health crisis, car failure or a fine, can thrust them into a downward financial spiral. (footnote omitted)

44 The cost of living increases referred to in the WACOSS Report are consistent with the Australian Bureau of Statistics (**ABS**) Consumer Price Index (**CPI**) data. The percentage change in All Groups CPI Perth for the 12 months to March 2023 was 5.8%. This was down from 7.6% in the previous March quarter and came down further to 3.4% in March 2024. The most recent ABS CPI release for September 2024 has the Perth CPI percentage change for the 12-month period at 3.8%. Perth CPI has increased 16.4% from September 2021 to September 2024.

45 The last negotiated wage increase under the 2019 Agreement was in July 2021, and PEF employee's wages have increased by only 3.25% in the period since.

46 To further illustrate that PEF employees are financially stressed, the LGRCEU relied on evidence of a City employee who is a single parent: Exhibit 18. That employee set out the financial pressures that they had to juggle, including significant rent hikes between July 2021 and June 2024, so that it ultimately became unaffordable to rent. Rent would have accounted for nearly half of their disposable income despite their rent being well below Perth median rent for a twobedroom home: Exhibit 16. The employee has moved with their child into their parent's home. The employee described having to tell their 7-year-old child that they cannot afford things like Netflix, internet, gaming consoles, sporting lessons and equipment: Exhibit 18 at [2], [10].

47 Another employee, a PEF level 3 Arborist, described having a home loan account which was due to switch from a fixed rate to a variable rate in October 2024. The current variable rate will mean that the employee's fortnightly loan repayments will increase significantly. In addition, the employee's costs in the form of strata levies and shire rates have increased: Exhibit 23 at [32][34].

48 Assuming this employee's annual wage is $67,375 inclusive of leave loading, being the maximum of the PEF 3 classification, the City's proposed wage increase of 4% is $2,695 per annum. It would take little in the way of increases in only the three types of living costs the employee referred to, to be going backwards financially.

<u>Market rates in local government</u>

49 The City's evidence was to the effect that it recognised the need for the wages it pays to its employees to be competitive. In June 2023, each of the City's Chief Executive Officer, Mr Stephen Cain, its Executive Director – Corporate, Mr David Trevaskis and its Acting Executive Director – Operations, Steven Jakowyna, endorsed and approved a recommendation for salary increases. The recommendation was made by the City's Manager – Human Resources, Mr Wayne Sissing. Mr Sissing's salary analysis (in Exhibit 17 at SG-3) in justification of his recommendations stated:

> In combination with the significant growth that the City will experience over the next 3-5 years, it is imperative to ensure that salaries in the Construction and Maintenance area is competitive not only with other local governments but also with general industry in the construction sector.

50 The City attempted to ascertain what competitive wage rates were. In May 2023, it asked 15 other local governments to share their comparable salaries as at 1 July 2022 with the City: Exhibit 17 at [9]-[10]. Of the responses it received, the City used the information provided by the cities of Busselton, Wanneroo, Perth, Belmont and Canning to produce a comparison schedule: Exhibit 17 at SG-2.1. The City's CEO regards the cities of Wanneroo, Armadale, Joondalup, Rockingham and Stirling are the best comparative benchmarks due to their similar operational scope and demographic profiles to the City: Exhibit 19 at [54].

51 There are difficulties with using the comparison at SG-2.1 as an indicator of market rates.

52 First, it is a comparison of rates applicable as of 1 July 2022. This is a date that is prior to the period for which the Agreement will operate. It says nothing about the current or future labour market.

53 Second, it is not clear how the City has determined the rate it used for comparison purposes. The amounts in the column headed 'Current – City of Swan as at 01/07/2022' does not align with either the minimum or the maximum rates in the schedule of wage rates provided to me as Exhibit 1, although they approximate the maximum rates which are inclusive of leave loading. Nor do the rates in the column '3.25% for Year 1 only' correspond with the rates in Exhibit 1.

54 Third, the City did not establish how it had equated the classifications provided by the other cities with the classifications under the Agreement.

55 Fourth, there is no apparent attempt to ascertain or quantify the value of other benefits or terms and conditions that apply at the other cities, including annual leave loading, service payments or industry allowances.

56 Fifth, there is no suggestion that the City made attempts to verify what it was told by other local governments were their 1 July 2022 rates of pay by reference to the industrial instruments that applied to them.

57 Sixth, there was barely any explanation as to why only five local governments were compared, and why this particular group was chosen, especially in light of Mr Cain's evidence about appropriate benchmarks.

58 In any event, the City viewed this comparison as showing that the City's starting point, that is, its current wage rates, were within the range of what was being paid by five other comparable local governments as at 1 July 2022. The comparison represents the City's wages as being above the rates paid by some of the small group of local governments at some levels and below the rates paid by some of the group at other levels. The City's PEF Level 1 rate exceeded the lowest paying local government's lowest rate by around $15,400 per annum and the City's PEF 6 wage was lower than the highest paying rate of any other local government by about $9,500 per annum.

59 The City's Manager of Construction and Maintenance, Matthew Southern, attempted to ascertain, at a high level, the average salaries in the Western Australian construction industry for positions of Labourer, Civil Labourer, Arborist, Horticulturalist, Backhoe Operator, Skid Steer Operator, Engineer, Trades and Services, Concreter, Welder, Loader, Plant Operator, Excavator Operator, Grader Operator, Carpenter, Plumber, Maintenance Electrician and Painter from searches on SEEK. He did this between January and April 2023: Exhibit 21 at [11]-[13]. While he noted down salary figures for these positions, he did not provide the source documents from which these figures were apparently derived, and so his evidence in this regard was unable to be tested. I can give it only limited weight. To the extent that I give weight to his figures, as shown in Exhibit 21 at MS-4, I view them as showing what Mr Southern considered were average salaries in Western Australia in early 2023, not as actual average salaries for those positions.

60 Therefore, I can conclude that Mr Southern considered the wages the City was paying as at 30 June 2022 for PEF Levels 1 to 3 were competitive with the rates in construction more generally. However, Mr Southern noted that the City's wages as at 30 June 2022 were below what he considered were average salaries in early 2023 for Arborists, Horticulturalists, Backhoe Operators, Skid Steer Operators, Engineering Trades and Services, Concreters, Welders (Trade), Loaders (Construction), Excavator Operators, Road Construction, Carpenters (non-government trades), Plumbers (non-government- trades) and electricians: Exhibit 21 at MS-4. This is so, even though Mr Southern also said his view was that the City's wages were competitive, having regard to the package of benefits the City provided.

61 Later, in the course of bargaining, in December 2023, Mr Sissing asked Mr Southern to provide a high level comparison of the City's wages offer against the LGIA rates, the ME Award rates, and the wages at 23 local governments: Exhibit 21 at [17]. Mr Southern did so, and the final version of his analysis was Exhibit 22. Exhibit 22 compared 15, rather than the 23 local governments listed in Mr Sissing's request.

62 The comparison Mr Southern performed is more useful than SG-2.1 because:

a. it compares wages over the two years covered by the Agreement: 2023/24 and 2024/25;

b. it uses the City's proposed salaries after removing the annual leave loading component for the purpose of the comparison;

c. it recognises some additional benefits such as superannuation contributions and service pay;

d. it compares a larger sample of local governments;

e. it includes all five local governments Mr Cain considered appropriate 'benchmarks'; and

f. it is based on wage data available on the Commission's website as of 12 February 2024.

63 Having said that, Mr Southern was unaware of the rates of pay for all classifications in all instances, and in some cases, the rates of pay for the 2024/25 year were not available. This effectively reduced the sample size.

64 I also note that of the local governments compared, eight, being the majority, had rates derived from agreements registered before 20 December 2022. That is, the rates had been negotiated almost two years ago.

65 Mr Southern's comparison shows that in the second year of the Agreement, the City of Swan's proposed wage increase of 3.5% (on top of the previous year increase of 4%) would put the City third out of eight local governments compared at Level PEF 2, fourth out of 11 local governments compared at PEF 3, sixth out of 11 local governments compared at PEF 4, seventh out of 11 local governments comparted at PEF 5 and the last of nine local governments compared at PEF 6. That is, it puts the City's proposed wages within the range, but at the mid to lower end of the range.

66 The City described its proposal as putting its wages paid in the 'top quartile' for local government: City's Reply Submissions at [9]. That is not what the wage comparison shows.

67 The LGRCEU provided the Commission with its own comparison of wages in local government outside workforce agreements and negotiated percentage wage increases: Exhibit 24 at AB-1. This comparison was not provided in order to establish market rates of pay or to justify the LGRCEU's position on Matter 1, but rather to challenge the utility of the comparisons the City was relying upon, and to give context to the City's comparisons.

68 The City is classified as a Band 1 local government: Exhibit 19 at [54]. The LGRCEU's comparison includes 24 Band 1 and Band 2 local governments in Western Australia. But, as the LGRCEU's Assistant Secretary Ms Ballantyne acknowledged, comparing wages rates is not straight forward, as local governments do not necessarily have the same classification structure or steps within classification levels: ts 116. The LGRCEU's comparison is rough. Ms Ballantyne was unable to say whether the rates referred to for the City included a component for the industry allowance (it would appear they do): ts 121. She could not confirm that the comparison treated all local governments consistently in relation to the inclusion or exclusion of leave loading in the rates of pay. Nor could she explain how it was decided that the classifications in the Agreement be aligned with the classification descriptions in the table: ts 116.

69 The amounts used in the comparison for the 'Swan Offer' row are not easy to marry up with the wage rates in Exhibit 1. Exhibit 1 uses annual and fortnightly rates. The LGRCEU's comparison uses weekly amounts. For example, the amount said to be the City's offer for 'Trades/Medium to Heavy Plant Operator' is $1363.01 to $1379.74 per week. Deducting the industry allowance of $34.82 per week would bring the figures down to $1,328.19 and $1,344.92 which is $2,656.38 to $2,689.84 a fortnight. This is lower than the City's proposed fortnightly rate of pay range for PEF 4 for 2024/25 as shown in Exhibit 1.

70 Without an explanation of the rates used in the LGRCEU's comparison, it is impossible to have any confidence in the comparison it makes of wage rates.

71 Nevertheless, if it is accepted that of the 24 local governments in the comparison, the lowest current rate paid for 'Trades/Medium to Heavy Plant Operator' as at 1 July 2024 is $1,233.48 to $1273.38 per week at the City of Wanneroo, and the highest is $1,428.18 to $1660.07 per week at the City of South Perth, the City's proposed rates for PEF 4 for 2024/25 are withing that range, at $1,363.01 to $1,379.74 per week.

72 Having said that, the rates of pay at the City of Wanneroo are derived from an expired agreement made in December 2021: [2021] FWCA 7087, while the City of South Perth's current agreement was registered in October 2024: [2024] WAIRC 911.

73 The second part of the LGRCEU's comparison table shows percentage wage increases in the Tier 1 and Tier 2 local governments were in the ranges 1.5% to 7.3% in 2023, 1.5% to 8% in 2024 and 3.5% to 4% for 2025. The lower percentage increases, with the exception of the City of South Perth, appear generally to be under older agreements, while the higher percentage increases are generally associated with agreements registered more recently.

74 The City prepared a similar comparison of only those agreements made and registered by local governments since 1 January 2023: Exhibit 8. Of 32 registered agreements, 23 have fixed minimum salary increases over the three years 2023 to 2025. Of those agreements, the average increase over those three years is 11.5%.

75 The City's proposed wage increases, at 10.75% over three years, are less than the average increases in recent registered agreements. Any comparability is diminished because the starting points are different. In the words of one of the witnesses, depending on what employees at other local governments have been getting or are getting 'you can't compare now with now', at least in relation to the raw percentage increases: ts 92.

76 Ultimately, I find the attempts to compare wages across local governments to be of little use. The evidence is not of a sufficient quality to enable me to conclude that the wage rates the City proposes will be competitive. The best available evidence, being Mr Southern's comparison, shows that the City's proposed wages will put it in the bottom half of the range of wages paid by a small handful of comparable local governments. Further, Mr Southern believes the starting point, that is, wages currently paid by the City, involves below average rates for the construction industry more generally for the majority of positions. Nor are the proposed percentage increases comparable to local governments in Western Australia overall. Accordingly, I am not convinced that the City's proposal will result in the City paying competitive wages.

<u>Budgetary constraints</u>

77 According to Mr Cain, the City employs 1,351 people in total: Exhibit 19 at [10]. The PEF workforce therefore represents about 11% of the City's total workforce.

78 Mr Trevaskis noted that labour costs are the City's largest current operating expense, representing 46.5% of the City's total budgeted operating expenditure in 2023/24 (at $97.5 million) and 46% ($106.9 million) in 2024/25: Exhibit 20 at [16]-[17].

79 Mr Trevaskis relates that the City's main source of operating revenue is rates, accounting for 55.9% of total revenue in 2023/24. Rate income is projected to be 54.6% of total operating income in 2024/25: Exhibit 20 at [18]-[19].

80 Mr Trevaskis did not provide a breakdown of the City's total employment costs showing what proportion related to the PEF employees. There was no evidence as to what the annual cost of salaries, penalty rates, superannuation or any other benefits under the 2019 Agreement was, nor what those costs were projected to be.

81 Despite lacking in this critical detail, Mr Trevaskis asserted that the cost difference between the salary increases and performance payment the City was proposing and that which the Unions were proposing was $1.3 million over the three years of the Agreement: Exhibit 20 at [25]; ts 43.

82 The City provided no details as to the assumptions it used in arriving at this figure, other than that it assumed the PEF cohort comprised approximately 160 employees: Exhibit 20 at [25] (Mr Cain gave the figure as 166: ts 33). It did not explain the method it used to arrive at the figure $1.3 million. It did not detail what proportion of this figure related to the increase to salaries and what proportion related to the performance pay arrangements. It did not detail which costs related to which years, although Mr Trevaskis noted that, on the City's proposal, the number of employees receiving the $800 performance payment would reduce to 10% over the three years of the Agreement, while the difference between the Unions' proposed salary increases and the City's proposed increases would increase over the years. This can only mean that the difference increases year on year.

83 Again, in answer to my question, Mr Trevaskis confirmed that the City's calculation was based on the actual wages paid to employees, including above-agreement rates. The City said that many PEF 6 employees are paid significantly above the rates in the current 2019 Agreement (plus the 3.25% administrative payment) for attraction and retention reasons: ts 53-54. This fact alone undermines the accuracy and reliability of the City's calculations as a representation of the cost of the Unions' claims.

84 In written closing submissions, the City attempted to fill the gaps by providing the 'total employee costs' in written submissions: at [5.6]-[5.7]. However, as this was not verified by any witness nor by any documents in evidence, and was untested, I place no reliance on the additional information in the written submissions.

85 Absent comprehensive detail as to the assumptions underlying Mr Trevaskis's estimate of $1.3 million and the ability to test the calculations, I give the City's cost evidence no weight.

86 The best I can conclude as to the cost difference between the Unions' proposed salary increases and the City's proposed salary increases is that it is a difference of 1% of total wage related costs in year one, above 1.5% in year two and above 1.75% in year three. I say 'above' to recognise the compounding effect of successive increases and movements through the bands.

87 Mr Trevaskis said the cost of the Unions' wage proposal is not accounted for in the City's budgets. In this regard, the City has completed its budgets for the 2023/24 and 2024/25 financial years but has not produced a budget for the third year of the Agreement.

88 Both Mr Trevaskis and Mr Cain asserted that any unbudgeted employee costs would have to be funded by either:

a. increasing the rates levied on ratepayers; or

b. not replacing employees who leave the City's employment (seven positions); or

c. employing less people than planned into new roles: Exhibit 19 at [30]; Exhibit 20 at [26].

89 The City says it is reluctant to increase rates and has historically increased rates at lower levels than other local governments because of the relative level of social disadvantage within the Swan community: Exhibit 19 at [18]. One of the City's Financial Principles is:

> Fees, charges and rates are determined upon an equitable basis. A key element of the financial strategy is to minimise the financial burden placed on ratepayers whilst also maintaining tight control of costs so as to achieve zero deficit year on year.

See also the Long Term Financial Plan 2024/25 to 2033/34 (Exhibit 20, DT-6) (**2024/25 – 2033/34 Long Term Financial Plan**) at pg. 15.

90 Mr Cain said that the City's relative level of disadvantage is reflected in its lower level of home ownership, with 40% of all households renting compared with a State average of 27% and lower median household income compared to the State average: Exhibit 19 at [18].

91 Mr Cain acknowledged that it follows that a larger proportion of its residential ratepayers are landlords, including state government agencies: ts 37. Nevertheless, the majority of its ratepayers are home-owners, with modest median household income. The City is therefore justified in its reticence to impose additional burdens on those households by rate increases.

92 I accept that rate increases to meet expense increases is not a realistic option. However, I find the City's assertions that unbudgeted employee costs must be funded by a reduction in employee numbers to be superficial. It clearly suits the City to make these statements. But the City failed to demonstrate that is the reality.

93 First, the City's rate revenue is projected to grow considerably by a combination of rate levy increases, the increasing number of rateable properties and increases in the rateable value of those properties.

94 The City's Long Term Financial Plan 2022/23 – 2031/32 describes the City as one of the fastest growing urban corridors in Australia: pg. 4. The Long Term Financial Plan 2024/25 – 2033/34 projects steady growth in operating revenue from 2024/25 through to 2033/2034 of $89.7 million over that period or about $8.97 million on average per annum: pg. 20.

95 Rate revenue forecasts are based on forecast increases in Perth CPI plus 1% for 2025/26 to 2027/28 then CPI. Rate revenue forecasts include projections for contributions arising from future subdivision approvals: pg. 19.

96 Revenue to the City is forecast to increase as follows:

	2023/24[1]	2024/25[2]	2025/26[2]	Total increase
Rate Revenue	5.2%	5.8%	4.2%	15.2%
All Operating Revenue	9.1%	10.2%	0.4%	19.7%

[1]From Long Term Financial Plan 2022/23 – 2031/32 at pg. 21.

[2]From Long Term Financial Plan 2024/25 – 2033/34 at pg. 21.

97 Rate revenue has and is projected to continue to increase faster than the Unions' proposed wage increases.

98 The Long Term Financial Plan 2024/25 – 2033/34 also forecasts operating profits in each year of between $15 million in 2024/25 to $3.7 million in 2026/27: pg. 20. Average forecast operating profit per annum is $8.2 million, giving the City a Basic Standard Operating Surplus Ratio.

99 On this basis alone, it is unclear why the Unions' wages proposal, even if unbudgeted, would require any increase in rates or reduction in staff numbers.

100 The City's financial strategies and principles include 'maintenance of cash reserves for future commitments' and 'maintaining/increasing funding for asset maintenance and renewal': Long Term Financial Plan 2024/25 – 2033/34 at pg. 15. Its surplus profit in any year is allocated to funding Capital growth, renewal, replacement and provision of new assets, and enhancing the long-term financial sustainability of the City: pg. 19.

101 In opening submissions, the City's Counsel told me to the effect that the City's operating surplus was not available to meet unbudgeted employee costs, because the difference in the City's revenue and its operating costs is budgeted to fund the City's Capital Works Programs: ts 21. In its written submissions, it asserted that all revenue 'is fully utilised, and there are no reserves or funds that the City has available to pay for unbudgeted amounts': at [5.9]. This is inaccurate. 102
I was referred to a table 'Capital Works Program' in the City's Long Term Financial Plan 2022/23 – 2031/32 at pg. 27. The more recent Long Term Financial Plance 2024/25 – 2033/34 describes the City's 'ambitious' Capital Works Program as involving $1.3651 billion expenditure and requiring borrowings of $112.4 million. The plan includes outlays for a DCP for the Bullsbrook and Henley Brook areas, acquisition and construction of new assets to meet service level requirements, works to upgrade and refurbish or replace existing facilities such as buildings, furniture, plant and equipment, road infrastructure, drainage infrastructure, pathways and cycleways, recreation, parks and other infrastructure.

103 Outlays for the Capital Works Program are projected to be in annual amounts of between $119 million and $276 million over the ten-year period. These outlays are met by:

a. Funding Sources: grants, asset sales, trade-ins, developer contributions and gifted assets, a portion of which is transferred to 'reserves'; and

b. Council Resources: reserves, rates, carried forward funds, loans and 'Council Resources'.

104 The City submitted that 'Council Resources' was the City's operating surplus. The City pointed out that the funding includes loaned funds. The City would not need to borrow funds if it had sufficient operating surplus to cover the funding for capital expenditure: ts 22.

105 There are no loaned funds for capital works in 2024/25. However, loans are included in subsequent years, in amounts of $10.2 million in 2025/26 and $31.3 million in 2026/27: Long Term Financial Plan 2024/25 – 2033/34 at pg. 25.

106 Mr Cain states that 'cutting new capital expenditure isn't an option, since these projects are mostly financed through obligatory development contributions and grants, which cannot be used for operational costs': Exhibit 19 at [32]. This statement is inconsistent with the submissions that Counsel made at the hearing, which identified several sources of funding for capital works. The implication from Counsel's submissions was not that capital expenditure would or could be cut. The City is already planning to borrow funds to meet that expenditure. The implication is that any reduction in funding from the City's reserves or operating surpluses would need supplemented by increasing the loan amounts.

107 The City's Annual Budget 2024/25 (**2024/25 Budget**) has a more detailed picture of the costs of and funding of capital works if only for the year 2024/25: Exhibit 20, DT-2 at pg. 14-16. The total costs of the Capital Works Program of $155,537,845 is shown as being funded from five groups of sources: 'Reserve Trust', 'Grants', 'Other revenues', 'In-Kind' and 'Municipal'. I understand that 'In-Kind' is a reference to developer contributions. The final column of the Capital Works Schedule shows the amount from funding sources carried forward after the total capital works costs are met. It shows the amount of $23.5 million would be carried forward after 2024/25 capital works outlays. This seems to be saying that not all sources of funding for capital works in the 2024/25 year would be utilised in that year.

108 I note though, that the Long Term Financial Plan 2024/25 – 2033/34 does not allocate any funds carried forward from the 2024/25 year to 2025/26 or any following years.

109 While Counsel told me that the operational surplus from the relevant years formed part of the 'council resources' which funded the Capital Works Programs, the evidence did not clearly establish this. As I understand Mr Trevaskis's and Mr Cain's evidence, 'council resources' includes grant funding, gifted assets, and depreciation: ts 38, 56.

110 I do not know, from the evidence before me, precisely what impact a reduction in operating surplus would mean for the City's planned Capital Works Programs and its funding. I accept it will have some impact, most likely being an increase in the amounts of loaned funds required, and the cost of servicing those loans. Even so, it is difficult to see how this will mean that the City must reduce the number of employees it currently has or is planning to employ.

111 First, because the Long Term Financial Plan 2024/25 – 2033/34 is not the City's budget. It does not commit the City to the forecast expenditure. Indeed, the Long Term Financial Plan 2024/25 – 2033/34 itself recognises at pg. 14 that it is:

> [T]o support the strategic planning process for the City of Swan. The plan is an informing strategy that outlines the City's approach to delivering infrastructure and services to the community in a financially sustainable and affordable manner for the next 10 years.
>
> This plan is set against economic uncertainty and will be reviewed every 12 months to reflect the prevailing economic conditions and changing community demands placed on the City.

112 Mr Trevaskis confirmed in his evidence that the Long Term Financial Plan is prepared on the basis that it will reflect a balanced budget or a zero deficit surplus at the end of the year. This means that all revenue is shown as fully utilised, and accordingly, an estimated operating surplus is allocated to future spending. But, importantly, this is revised annually: ts 55.

113 Second, the Capital Works Programs involves amounts in the hundreds of millions annually. The difference in employee costs this application is concerned with is insignificant in comparison.

114 Accordingly, I do not accept the City's evidence that allowing the Unions' claimed wage increases will necessitate increasing rates beyond what the City has planned, nor the loss of jobs nor a reduction in employee numbers. I accept that allowing the Unions' claimed wage increases will reduce the City's budgeted operating surplus in the years that budgets have been passed. The increased costs will have some impact on the City's reserves and how it plans to fund its Capital Works Programs in the future. It may, of course, mean that projections contained in the current Long Term Financial Plan are revised when the plan is next reviewed. But any impact is insignificant in the scheme of things.

Employee interests

115 As discussed under the heading 'Cost of living pressures' at [37] and following, employees have a strong interest in having wages that keep up with cost of living pressures. The City's proposed increases to do not satisfy that interest. The City's proposed increases would mean that employee's wages have gone backwards compared with CPI in the period from the last increase under the 2019 Agreement, to September 2024.

City's interests

116 The City's principal interest relevant to salary increases is to have wage rates that are competitive with local government in Western Australia and with the construction industry generally in Western Australia. I am not persuaded that the City's proposed increases satisfy this interest. Higher percentage increases would better satisfy this interest.

City's capacity to pay

117 Even though I do not know the precise cost to the City of the Unions' claims, given the modest amounts involved in the context of the City's overall financial position, I am comfortably satisfied that the City has the capacity to pay the wage increases sought by the Unions. More importantly, I am satisfied that the City has the capacity to pay the increases sought by the Unions without needing to impose any additional rates on ratepayers or reducing services to ratepayers and residents.

The state of the economy of Western Australia

118 The City relies on evidence concerning the state of Western Australia's economy, as represented in the WA Local Government Association's (**WALGA**) Economic Forecast and extracted from the Western Australia State Budget 2024-25 (Budget Paper No 3) – Economic & Fiscal Outlook: Exhibit 9.

119 Mr Trevaskis provided the Commission with WALGA's Economic Briefing dated June 2024 (**WALGA's Economic Briefing**): Exhibit 20 at DT-6A. It reports Western Australia's economy as being strong with public and private investment driving economic growth. It reports a tight labour market; WA's labour market being the tightest in Australia with an unemployment rate of 3.7%: pg. 6, 10.

120 According to WALGA's Economic Briefing, Perth CPI was 3.4% with housing costs driving up Perth CPI as rent had increased 9.9% for the year and new housing costs had increased 12.1%: pg. 8-9.

121 WALGA's Economic Briefing reports that the Local Government Cost Index (**LGCI**), which measures the changes in costs incurred by local governments, including employee costs, insurances, machinery, buildings and contracts, increased 3.3% in the last year and is forecast to ease to 3.1% in the year 2024/25. Employee costs make up 35% of the LGCI.: pg. 14-15.

122 From the sources the City referred to, annual average CPI and year end Wage Price Index (**WPI**) increases are reported and forecast to be:

	2022-2023 Actual	2023-2024 Estimated Actual	2024-2025 Budget year forecast	2025-2026 Forecast
Consumer Price Index[3]	5.0	4.0	3.0	2.5
Wage Price Index[4]	4.2	4.25	3.75	3.5
City's increases (administrative and proposed)	3.25	4	3.5	3.25

[3]From Exhibit 9.

[4]From WALGA's Economic Briefing at pg.7.

123 The City points out that the wage increases it proposes will result in real wage growth during the term of the Agreement: ts 19. It is true that the sum of its proposed increases, 10.75% over three years, exceeds actual and forecast CPI by 1.25%. However, the appropriate starting point is the time that employees last received a wage increase under the 2019 Agreement, namely 1 July 2022. CPI changes since that time exceed the City's proposed increases, including the 3.25% administrative increase. The City's proposed wage increases will not ensure real wages are maintained since the nominal expiry date of the 2019 Agreement.

124 Further, it is clear that the wage increases the City proposes are below the rate of increase in the WPI. The City points out that the WPI figures are state-wide not specifically for the public sector, and says that public sector wage growth or WPI is lower than the state average: ts 20. While that may be so, the City sees it as imperative that its wages be competitive with the construction industry generally. So, I see no reason to discount the relevance of the WPI data.

<u>Changes in productivity and other factors</u>

125 None of the parties relied on productivity changes as being relevant to my determination.

126 The City claimed that the wage increases it proposed were fair because they were consistent with the wage increases provided to other employees at the City, and that this was a relevant consideration: ts 15. I accept this may be a relevant consideration, but the evidence led about wage increases provided to the City's other employees did not substantiate the City's claim. Mr Cain's evidence was that in 2022/23 and 2023/24, the City offered its permanent employees a baseline wage increase of 3.25% and the opportunity to move 0.5% of the additional superannuation the City was paying into a general wage increase. According to Mr Cain, '[t]his offer was taken up by all employees not covered by the 2019 Agreement and Waste Enterprise Agreement': Exhibit 19 at [26]. This evidence does not say anything about wage increases for 2024/25 and 2025/26, nor wage increases for the employees covered by the 'Waste Enterprise Agreement'.

127 The City also relied on the other monetary benefits employees are entitled to under the Agreement, and in particular cl 38 of the Agreement which provides that the City will contribute superannuation in an amount exceeding the superannuation guarantee rate of contribution by 1.75%, in circumstances where the guaranteed rate is increasing by 0.5% per annum in two years of the Agreement: ts 20.

128 The 2019 Agreement contains the same benefit. Together with the increases in the superannuation guarantee charge amount, this will be a valuable benefit to employees. But I do not know anything about the circumstances which led to this provision being negotiated or agreed. It is possible that it was traded for other benefits in the past, including by foregoing increases to the base wage rate. If it was a new entitlement, it would be entirely appropriate to take it into account in determining Matter 1. However, in circumstances where it is an existing

entitlement, it is not a weighty factor, beyond its effect in making the City's wages competitive more generally. In this regard, I note from Mr Southern's comparison table, Exhibit 22, that at least two other local governments compared provide additional superannuation contributions to their employees.

Conclusion in relation to salary increases

129 Having regard to the relevant evidence and factors discussed above, I consider the Agreement should make provision for wage increases as follows:

a. 5% increase to current salaries from 1 July 2023 to 30 June 2024;

b. 4.5% increase applied from 1 July 2024 to 30 June 2025; and

c. 4% increase to be applied from 1 July 2025 to 30 June 2026.

130 This represents an increase of 13.5% in total over the three years of wage increases under the Agreement. This exceeds the Perth CPI changes, actual and forecast, over the same period. However, the administrative pay increase in the 2022/23 year was well below Perth CPI changes at that time. The increases I have determined are needed to compensate for the significant decline in real wages since the 2019 Agreement expired.

Matter 2: performance payment

Outline of parties' positions

131 The parties agree that the Agreement should include a clause that deals with annual performance reviews. They agree on part of what such a clause should say:

> **PERFORMANCE**
>
> Employees are required to work cooperatively with each other to deliver a high level of service that meets the City's quality standards and allows the Business Unit to improve the quality of life of the community. Performance will be measured annually through the City's [Performance Development Review (PDR)] Process, with feedback provided at regular intervals as required by a staff member's team leader or supervisor.
>
> Performance will be measured across five areas:
>
> - Health and Safety – how well the Employee contributes to the City's safety systems and their attitudes towards safety in the workplace.
> - Customer Service – the quality of service provided to the community, both in person and through programmed works.
> - REAL Values – demonstration of the City's Values whilst carrying out their duties.
> - Continuous Improvement and Innovation
> - Role specific requirements
>
> The specific targets of these goals will be determined in consultation with the relevant Employee and supervisor in line with industry standards.

132 The parties disagree about what the City is required to do, and what an employee is entitled to receive, when performance is measured and the performance objectives are achieved.

133 Under the 2019 Agreement, the position was that an employee who met performance objectives was entitled to receive a performance payment of $500, or a pro rata amount if a limited number of individual performance criteria were met. The performance payment was by way of increasing the employee's base salary by the performance pay amount, unless the employee's salary exceeded the maximum of the band for their classification by $1,000 or more, in which case, the payment was made as a bonus: ts 11.

134 The City proposes that the cap on the performance payment be increased from $500 to $800 but that it be paid only as an incremental salary increase within an employee's classification band.

That is, an employee will not be eligible to receive the performance pay if they are already at the maximum salary level for their classification, nor would they be eligible to receive performance pay in an amount that would take their salary above the maximum salary for their classification: ts 24-25.

135 The City's proposed performance pay clause is:

> A PDR increase (where applicable) will be determined as part of the PDR process annually.
>
> For employees who are paid below the maximum of their relevant band, a "Meets Performance Objective" outcome can result in an increase of up to $800 to their total salary.

136 The Unions say that all employees should be entitled to performance payment if they meet performance objectives.

137 The Unions say their proposal provides equity across the employees covered by the Agreement, and certainty as to the quantum of the benefit. They criticise the City's proposal as leading to inequity because those employees who have reached the maximum of their salary band are ineligible, even if they satisfy performance requirements. Further, they say the City's clause provides the City with too broad a discretion as to the amount of the salary increase, creating further potential for inequity: the WASU's Outline of Submissions at [12]-[14].

138 The LGRCEU submits that the City's position represents a reduction of the terms and conditions currently available for employees, whereby all employees are eligible for a $500 performance payment: the LGRCEU's Outline of Submissions at [27]. Employees have an expectation that they will continue to receive this benefit, not only based on the 2019 Agreement practices, but because of statements made by the City during bargaining for the Agreement: ts 71.

139 The Unions' claim for a universal $800 bonus payment is not sought to be justified by reference to productivity improvements, hardship or compensation for the conditions work is performed under.

140 The main reason why the City prefers to distinguish the treatment of those at the maximum salary band for their classification is that the outcome would otherwise lead to salary increases well above the maximum of their band and so render the salary bands in the Agreement ineffective. It would, the City says, mean that some employees will be paid more for their work than other employees in a higher classification: City's Outline of Submissions at [17]. In effect, the Unions' proposal distorts the relativities within the Agreement.

141 The Unions say that if an employee is at or above the maximum salary for their classification, the performance payment, or a portion of it, can and should be paid as a bonus rather than an increase to salary. This would address the City's concerns about distorting the classification structure: the LGRCEU's Reply Submission at [4].

142 The City says the $800 amount should be a cap or a limit, not a pre-determined amount, so that the payment does not result in any increase to salary exceeding the maximum salary for the relevant classification: City's Reply Submissions at [18].

143 The City also resists the Unions' flat $800 increase proposal on the basis that the cost to the City ($2,400 for each employee over the three years of the Agreement) will be a significant burden: City's Reply Submissions at [19].

Evidence relevant to performance payment: employees' and City's interests

144 As set out above, currently, under the 2019 Agreement, a performance payment of $500 is payable annually to an eligible employee, in accordance with the following provisions of Schedule 1:

> **Performance Payment**
>
> A performance payment as per the following will be paid to employees on an annual basis and applied at the same time as the annual base salary increases listed in clause 6 of this Agreement.

Performance criteria to be met to be eligible to a performance payment are:

- A completed performance and development review;
- All performance standards in the PDR template rated as "Meets Performance Objective" ;
- 100% of GEACs completed on time and quality;
- Zero Justifiable Complaints;
- Work Program Performance Objectives rated as "Meets Performance Objectives"; and •
Number of "Notification of Works and Hazard (NOW-HF)" forms completed as required.

Performance Payment Amount:

- An amount of $500.00 will be paid to an eligible employee. This amount can be paid pro rata if a limited number of performance criteria are rated as "Meets Performance Objectives" at the discretion of the City.
- The Performance Payment will be added to the employees' annual base salary <u>after</u> the annual base percentage increase has been applied.
- Where an employee's annual base salary exceeds the maximum of the salary band listed within this Schedule by $1000.00 or more, the Performance Payment of $500.00 or pro rata amount (as applicable) will be paid as a bonus and will not be added to the employee's annual salary.

145 Employees have not received a performance payment since 2021, because under the 2019 Agreement, payment was linked to the salary increases under the 2019 Agreement.

146 Mr Southern provided a breakdown of the number of employees who are at or above the maximum salary for their band as a result of past performance payment additions to salaries. His list shows that 90 of 154 employees are either at the maximum salary or above it: Exhibit 21 at [9]-[10].

147 Mr Southern expressed concern that the way the performance payment has been applied in the past has effectively made a nonsense of the Agreement's classification structure. An individual employee classified at one level could be receiving a salary within or exceeding the salary of another employee in a higher classification. This in turn erodes the incentive for employees to act in higher duties, train and seek promotion to positions in higher classifications. It dilutes career progression pathways: Exhibit 21 at [28]-[30].

148 The City's Corporate Business Plan 2024/25 – 2027/28 (Exhibit 20 at DT-4) recognises the importance of creating and maintaining career progression pathways and a performance focus. Under the heading 'Workforce capability planning' on pg. 68, it says:

> Given the current economic climate with increased costs of living and difficulty in talent attraction; our capability initiatives focus on engagement, value proposition and leadership development. As an example, our capability initiatives ensure staff have career pathways to prepare and sustain our workforce to achieve the City's strategic and community objectives into the future.

149 Currently, the difference between the minimum and maximum salaries at all levels is less than $840. The difference will increase slightly once increases to wages are applied. Even so, the salary bands only really allow for one meaningful step at each level.

150 All but a handful of employees who had performance reviews in 2019 to 2021 received performance pay: Exhibit 25. I infer that this large majority met performance objectives and will continue to do so. Both parties' cases proceeded on the basis that the vast majority, if not all, employees are expected to meet performance objectives. 151 The City says the additional costs of the Unions' proposal will be $217,443 over three years. This assertion, contained in written closing submissions (at [5.5]), was unsubstantiated by evidence and was unable to be tested. But even accepting this would be the cost, it is relatively modest and so would not be determinative of Matter 2.

152 Ms Ballantyne stated that when the LGRCEU negotiates classification structures with local governments, it endeavours to:

> [E]nsure we maintain the 100% relativity of the trade rate which traditionally was a level 4A. This needs to be maintained to ensure fairness within the classification structure for skilled and non-skilled employees: Exhibit 24 at [29].

153 I take this to mean that the LGRCEU also recognises the value and importance of maintaining relativity of wages within classification structures.

154 The City and LGRCEU were at odds about whether the LGRCEU had 'traded' the $800 performance payment for a higher increase to the base salaries. The LGRCEU was critical of the City for changing its position in relation to performance pay during negotiations. I do not consider it is necessary for me to make any findings about these things. Ultimately, the parties neither agreed the salary increases, nor the performance payment terms. What was offered, suggested or said in the course of negotiations in failed attempts to agree these matters is not a factor I consider relevant to the determination of Matter 2.

Conclusion in relation to performance and bonuses

155 I agree that making performance pay available as an increase to salary for all employees will quickly make the salary bands/pay increments in the Agreement meaningless. Any provision in the Agreement about performance pay should be designed to maintain, as much as possible, the benefits associated with having increments within classifications. Having career paths and incentives for progression is in both the City's and employees' interests. This is a stronger consideration than employees' interests in extending the benefit to all employees as an automatic bonus.

156 Further, as I have concluded that employees should receive pay increases that will likely mean that real wages are maintained over the three years of the Agreement, the need for a uniform performance payment to all employees to meet living costs is reduced. Employees at the maximum salary for their classification will benefit more from the percentage salary increases than those at the lower end of the bands.

157 An increment of $800 will result in many employees not already at the maximum of their band reaching it within a year (perhaps even retrospectively). The increments will then again become meaningless, and the performance payment provisions will become redundant.

158 It therefore makes more sense for the performance pay to remain at the current amount of $500. This would ensure that there would be at least two meaningful opportunities to step up within a classification level. None of the parties put forward this proposal. This might be a matter the parties can turn their minds to in future industrial agreement negotiations.

159 Overall, I consider the City's proposal concerning performance pay has more merit. Accordingly, the Agreement should make provision for performance pay of up to $800 per annum to be available only where an employee is below the maximum salary for their classification. The clause I propose be included in the Agreement is set out in Schedule 1.

Matter 3: summer and winter rosters

Outline of parties' positions

160 The City wants the Agreement to reflect what has been happening for a number of years, namely, that the City has a summer roster and a winter roster, with each roster having different start and finish times to deal with seasonal hazards. The City proposes the inclusion of the following subclause 14.6:

> The City operates a summer and winter roster to protect the safety of Employees, to limit exposure to the hazards of warmer summer afternoon temperatures and darker winter mornings. The City has

> an obligation to ensure that operational and service requirements are met and Employees will be consulted in good faith on start and finish times.

161 The Unions seek a cl 14.6 specifying that all employees' rostered days of work commence at 6:30 am all year.

162 WASU says the Unions' proposal gives employees certainty: WASU's Outline of Submissions at [17].

163 The LGRCEU says that employees are strongly opposed to varying start and finish times. It says the risks associated with working at 6:30 am in winter months are minor. It points out that improved lighting has been installed in the area where employees park and collect their machinery making the area safe for access and egress from the machinery: LGRCEU's Outline of Submissions at [31]-[34].

164 The City says the Unions' position does not provide the City with the flexibility it reasonably needs to eliminate or minimise workplace health and safety risks arising from the hazards of poor natural light in the mornings in winter and high afternoon temperatures in summer: City's Outline of Submissions at [25].

Evidence relevant to summer and winter rosters

<u>Employees' interests</u>

165 The City has historically operated summer and winter rosters for the PEF employees. Mr Southern said the winter roster usually starts in May and involves shifts commencing at 7:00 am finishing at 4:00 pm on all but one day in each fortnight, and 3:30 pm on one day a fortnight. The summer roster applies from about August, and involves 6:30 am starts, finishing at 3:30 pm on all but one day each fortnight, when the finish is 3:00 pm: ts 72; Exhibit 21 at [33]-[34].

166 Mr Southern said this practice predated his commencement in the role of Manager of Construction and Maintenance in May 2022. He noted that during the COVID-19 pandemic, the City did not adhere to the typical summer and winter roster system but instead had staggered start times beginning at 6:30 am, 6:45 am and 7:00 am in order to reduce the risk of exposure to the virus between employees. This approach was taken from May 2019 until March 2023: Exhibit 21 at [35]-[36].

167 This is consistent with what one of the City's employees, Mr Phillip Smith, told the Commission. He provided the Commission with a copy of his contract of employment dated 2013: Exhibit 23 at PS-1. Under the heading 'Hours of Work', it states:

> As Council operates a 9-day fortnight within the Operations area, your days of work will be five days one week and four days the second week, between Monday and Friday. On working days your hours of work will be 7.00am to 4.00pm, or as directed during the summer hour period, with half an hour for lunch.

168 Mr Smith confirmed in his oral evidence that summer and winter rosters had been operating for several years: ts 106.

169 Mr Southern explained the rationale for the seasonal adjustment to start and finish times as enabling employees to avoid working outside during the hottest part of the day in summer, and minimising risks involved in working without the benefit of good natural light on winter mornings: Exhibit 21 at [33]-[34].

170 According to Mr Southern, around 80% to 90% of the PEF employees start work in the morning at the City's depot on Great Eastern Highway in Middle Swan. The others, mainly irrigation maintainers, have commuter use vehicles and they will sometimes go directly from home to their first worksite: ts 72.

171 The depot has a number of separate buildings: a mechanical workshop for truck repairs, a small engines' workshop, two office buildings, a supervisors' outstation and a parking area for the heavy plant and equipment: ts 73.

172 The depot's thoroughfare surfaces are asphalt: ts 73. Lighting is installed in some areas, but I was not provided with any evidence of the location or quality of external or internal lighting sources, relative to the areas where morning work activities are carried out. In one email that was before me, there is reference to the impracticability of installing lighting across the whole depot: Exhibit 21 at MS-15. Mr Southern also said in cross-examination that new lighting had been installed but was insufficient to cover the whole yard: ts 68.

173 When employees start work at the depot, they are required to move from one of several car parks to the lunchroom, which is the muster point for all staff. From there they separate into their individual crews and have their pre-start meetings. They then go to their vehicles to perform prestart checks on the vehicles and refuel the vehicles if necessary: ts 73.

174 Employees usually leave the depot within 30 minutes of their start time to get to the locations where they will be carrying out maintenance, construction and horticultural activities. Those locations – parks, City facilities, road reserves and construction sites – might be within a short distance, five minutes or so, from the depot or could be a 15 to 20 minute drive from the depot: ts 73.

175 In terms of the mitigation of risks, it would appear that the later winter start times are designed to address the risks involved in the first half hour of work, that is, risks at the depot itself.

176 I accept that the activities undertaken at the depot in the first half hour of a shift are less hazardous in and of themselves, than on-site operational activities. However, Mr Southern said that poor natural light makes it more difficult to perform pre-starts, to avoid hazards, see safety signage, move safely around the depot and operate plant and machinery: Exhibit 21 at [34]. If pre-start checks are compromised by the lack of sufficient lighting, then this may have consequences for the operation of plant and equipment later in the day.

177 In response to the City's evidence about safety, Mr Smith's evidence was that he had not himself experienced issues moving around the depot in winter months as by the time the pre-start meetings are completed, there is clear daylight. He also noted that lighting at the depot has improved in recent times: Exhibit 23 at [46]-[50]; ts 108.

178 He said that to his knowledge there has only been one incident attributable to the lighting at the depot, which occurred approximately two years ago, and there have been no workplace hazard issues relating to the depot since the lighting was improved. The incident that he was referring to involved an employee tripping over something: ts 108.

179 Mr Smith's evidence does not assist the Union's resistance to later winter start times. First, to the extent that Mr Smith has not himself experienced any problems moving around the depot, it is not clear that he has ever attempted to move around the depot at the relevant times, that is, between 6:30 am and 7:00 am in the winter months. As indicated above, Mr Smith's contract indicates that his usual start time was 7:00 am. He suggested that he has had other contracts during his employment, but these were not in evidence. He agreed he had worked summer/winter rosters for many years before COVID-19, and also said that he had 2 ¼ years off work during or since the COVID-19 pandemic. He was at work in March 2023, and confirmed that he worked a winter roster with a start time of 7:00 am since May 2023: ts 107.

180 In short, there is no evidence Mr Smith has ever worked at the depot earlier than 7:00 am in winter months.

181 Similarly, when Mr Smith says there has been no workplace hazard issues at the depot 'since the improved lighting' that he is aware of, this must be viewed in light of the evidence that 7:00 am starts in winter months were in place in both years since the incident that Mr Smith referred to

as occurring approximately two years ago, that is, in winter 2023 and winter 2024. Mr Smith does not identify when the lighting was improved, but suggested it was after the trip incident.

182 In his answers to questions in cross-examination, Mr Southern said there have been hazards raised from staff around a lack of lighting in the early hours of the morning, although he could not give a number of such reports. He recalled one incident of a staff member tripping over a piece of equipment in the morning, in which lighting was said to be a partial contributing factor: ts 68.

183 According to the website timeanddate.com, daylight hours in Perth on 30 June 2024 were from 7:17 am, being the time of sunrise, to 5:22 pm, with dawn civil twilight commencing at 6:50 am. From 14 May 2024 until 11 August 2024, civil twilight commenced later than 6:30 am.

184 I can take it as a matter of common knowledge that in ordinary conditions, artificial sources of lighting are not needed for safe movement during civil twilight hours. For example, street lighting is generally off during civil twilight.

185 However, at times earlier than dawn civil twilight, visibility is restricted. It follows as a matter of common sense, that the risks involved in moving around areas and performing work without natural light are greater and artificial light sources are needed for visibility and safety.

186 Mr Smith said that the employees would prefer to have a 6:30 am start year-round for three main reasons.

187 First, in his view, an all year round start time will benefit employees in terms of before and after school and day care pickups for employees with children at school or in day care.

188 In this regard, Mr Smith does not have school age children himself but was referring to what an unknown number of other employees had conveyed to him. He explained that the issue was mainly about parents with primary school age children, who finish school at 3:00 pm. A 3:30 pm finish time was better than a 4:00 pm finish time: ts 110. However, it was not entirely clear how this was so. There was no evidence about the proximity of the depot to the primary schools or after-school care that any employees' children attended, or how long it would take to travel from the depot to the schools, or after school care. Nor was there evidence of the difference, if any, in the additional after school care costs for an extra half hour of care.

189 Further, Mr Southern said that some case-by-case exceptions are occasionally made to assist staff with caring responsibilities such as providing care to a child with a disability or a single parent on a short-term basis when alternative care cannot be arranged. He qualified this by saying such adjustments are difficult to accommodate because it usually requires co-ordination with the rest of the employee's crew: Exhibit 21 at [40].

190 Mr Smith did not regard this as an adequate way to deal with the issue, because it results in inconsistent treatment and, in turn, employee dissatisfaction: Exhibit 23 at [49]. There was no evidence of any employee being dissatisfied with the outcome of a request for adjustments for themselves, or the outcome of a request for adjustments by any other employee.

191 The other difficulty is that under the Unions' proposal, there would be a 6:30 am start for all employees, all year round. The Union did not explain how individual employees' family responsibilities would be better accommodated under its universal inflexible proposal, compared with the City's proposed approach which involves adjustments based on individual requests and consideration.

192 Mr Smith's second reason is that Fleet and Waste Services Employees start work at 5:30 am, the Mechanical Workshop start at 6:00 am and some residential mowing and horticultural crews are allowed to start at 6:30 a.m. all year round. These groups start work at the same depot as the PEF employees: Exhibit 23 at [44].

193 However, there was no evidence as to the nature of the work performed by these groups of employees or where their work was performed, to be able to make an appropriate comparison with PEF employees.

194 The third of Mr Smith's reason is that it is better for employees to have consistency and certainty in their start and finish times.

195 While clearly summer and winter rosters involve something other than year-round consistency, they involve only two rosters, and two changes, in any 12-month period. This is a relatively consistent work pattern, even compared with the staggered rosters during the COVID-19 pandemic.

196 As for the need for certainty, Mr Southern said that the City consults with employees at toolbox meetings, typically at least a month before the change to the roster: Exhibit 21 at [38]. An example of the minutes from a toolbox meeting was provided, with a foreshadowed change of working hours from 6 May to 12 August 2024: Exhibit 21 at MS-14. I do not know the date of the toolbox meeting, other than that it was apparently earlier than 15 April 2024. The City proposes that the Agreement include a commitment to consult with employees in relation to start and finish times.

197 Mr Smith said that the City had not consulted employees in relation to hours of work, but rather had just directed employees about the change in work times at the toolbox meetings: Exhibit 23 at [51]. I note, however, that the toolbox meeting minutes expressly invited feedback on the proposed hours. Mr Smith said that feedback was given and rejected.

<u>City's interests</u>

198 The sole interest which the City advanced in support of its claim for express reference to summer and winter rosters is its interest in maintaining a safe workplace and eliminating workplace hazards. The City has the primary duty of care under the *Work Health and Safety Act 2020* (WA) to ensure workers are not exposed to hazards that could create a risk to their health and safety. I have set out the relevant evidence concerning workplace health and safety in the previous section.

<u>Prevention of industrial disputes</u>

199 One of the objects of the IR Act is to promote goodwill in industry and enterprises within industry: s 6(a). It follows that agreements should be in terms which will prevent, rather than encourage, industrial disputes within an enterprise.

200 The parties have agreed that the spread of ordinary hours will be over a 12-hour period from 6:00 am to 6:00 pm: cl 14.3 of the Agreement. The Unions' proposal that there be a fixed start time of 6:30 am year-round would potentially be inconsistent with cl 14.3. This would create confusion, uncertainty and potential dispute.

201 This is a further factor weighing against the order sought by the Unions.

Conclusion in relation to summer and winter rosters

202 None of the parties suggested any other factors, under s 26(1) of the IR Act or otherwise, were relevant to my determination of Matter 3.

203 I am satisfied that the workplace health and safety considerations raised by the City provide a good justification for having a summer and winter roster. I am satisfied that a summer and winter roster, while being short of a single year-round consistent roster, nevertheless provides relatively limited disruption to employees, and relative certainty. While employees may prefer a single, earlier start and finish time, the preference is not such a strong factor of employee interest, that it outweighs everyone's interests in workplace health and safety.

204 The introduction into the Agreement of a clause expressly referring to summer and winter rosters will give employees greater certainty about their hours of work compared with the conditions that currently apply under the 2019 Agreement, which contains no restrictions on the number of rosters that the City can implement within the spread of hours.

205 It is appropriate that the City be obliged to give a minimum period of notice of the introduction of a seasonal roster change, and to consult with employees prior to giving effect to the change. The clause I propose be included in the Agreement is set out in Schedule 1.

Orders and disposition

206 For the above reasons, I propose to order that the *City of Swan Parks, Facilities and Engineering Industrial Agreement 2023* include:

a. Provision for a 5% increase to wages with effect from 1 July 2023.

b. Provision for a 4.5% increase to wages with effect from 1 July 2024.

c. Provision for a 4% increase to wages with effect from 1 July 2025.

d. A performance pay provision as set out in Schedule 1.

e. A summer and winter roster provision as set out in Schedule 1.

207 I will hear from the parties as to the form of orders and the next steps required for registration of the Agreement.

Schedule 1

Matter 2: Performance Pay

8.1 Employees are required to work cooperatively with each other to deliver a high level of service that meets the City's quality standards and allows the Business Unit to improve the quality of life of the community. Performance will be measured annually through the City's Performance Development Review (PDR) Process, with feedback provided at regular intervals as required by a staff member's team leader or supervisor.

8.2 Performance will be measured across five areas:

(a) Health and Safety – how well the Employee contributes to the City's safety systems and their attitudes towards safety in the workplace.

(b) Customer Service – the quality of service provided to the community, both in person and through programmed works.

(c) REAL Values – demonstration of the City's Values whilst carrying out their duties.

(d) Continuous Improvement and Innovation

(e) Role specific requirements

The specific targets of these goals will be determined in consultation with the relevant Employee and supervisor in line with industry standards.

8.3 An employee:

(a) who achieves a Meets Performance Objective outcome: and

(b) whose salary at the time of the PDR process is at least $800 below the maximum salary for their classification

will receive a salary increase of $800 with effect from the first pay period in October following the PDR process.

8.4 An employee:

(a) who achieves a Meets Performance Objective outcome; and

(b) whose salary at the time of the PDR process is less than $800 below the maximum salary for their classification

will receive a salary increase in the amount that is the difference between their current salary and the maximum salary for their classification with effect from the first pay period in October following the PDR process.

8.5 Where an employee achieves a Meets Performance Objective outcome on some but not all of the performance criteria, the City may in its absolute discretion grant a salary increase that is a proportion of $800 provided that the salary increase will not result in the employee's salary exceeding the maximum salary for their classification.

Matter 3 Summer and Winter Rosters

14.6 The City operates a summer and winter roster to limit exposure to the hazards associated with summer afternoon temperatures and darker winter mornings.

14.7 The City will give employees at least 4 weeks written notice of the date a new seasonal roster is to commence, and the start and finish times associated with the new seasonal roster.

14.8 The City must meet with employees to discuss the commencement of a new seasonal roster and give prompt and genuine consideration to any matters raised by employees about the new seasonal roster. The City will consider what, if any steps, it can reasonably take to avert or mitigate adverse effects of the change on individual employees who have family or caring responsibilities having regard to operational requirements.