

Please note: These minutes are yet to be confirmed as a true record of proceedings

**CITY OF BUSSELTON**

**MINUTES OF THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 25 MAY 2022**

**TABLE OF CONTENTS**

<b>ITEM NO.</b>	<b>SUBJECT</b>	<b>PAGE NO.</b>
<b>1.</b>	<b>DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS.....</b>	<b>2</b>
<b>2.</b>	<b>ATTENDANCE .....</b>	<b>2</b>
<b>3.</b>	<b>PUBLIC QUESTION TIME.....</b>	<b>2</b>
<b>4.</b>	<b>DISCLOSURE OF INTERESTS .....</b>	<b>2</b>
<b>5.</b>	<b>CONFIRMATION AND RECEIPT OF MINUTES .....</b>	<b>3</b>
	5.1 Minutes of the Policy and Legislation Committee Meeting held 27 April 2022.....	3
<b>6.</b>	<b>REPORTS .....</b>	<b>4</b>
	6.1 AMENDED 2022 COMMITTEE MEETING DATES .....	4
	6.2 HOLIDAY HOMES AMENDMENT LOCAL LAW .....	7
<b>7.</b>	<b>GENERAL DISCUSSION ITEMS .....</b>	<b>31</b>
<b>8.</b>	<b>NEXT MEETING DATE .....</b>	<b>31</b>
<b>9.</b>	<b>CLOSURE .....</b>	<b>32</b>

## MINUTES

MINUTES OF THE POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 25 MAY 2022 AT 10.30AM.

### 1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 10:39am.

### 2. ATTENDANCE

#### Presiding Member:

Cr Ross Paine

#### Members:

Cr Anne Ryan  
Cr Kate Cox  
Cr Jodie Richards  
Cr Sue Riccelli (*Deputy*)

#### Officers:

Mr Paul Needham, Director Planning and Development Services  
Ms Sarah Pierson, Manager Governance and Corporate Services  
Ms Rachel Runco, Manager Regulatory Services  
Mr Ian McDowell, Ranger and Emergency Services Coordinator  
Ms Sharon McTaggart, Senior Ranger  
Ms Joanna Wilkinson, Strategic Planner  
Ms Briony McGinty, Legal Officer  
Ms Jo Barrett-Lennard, Governance Officer

#### Apologies:

Cr Phill Cronin

### 3. PUBLIC QUESTION TIME

Nil

### 4. DISCLOSURE OF INTERESTS

Nil

**5. CONFIRMATION AND RECEIPT OF MINUTES**

5.1 Minutes of the Policy and Legislation Committee Meeting held 27 April 2022

**COMMITTEE DECISION**

**PL2205/450** Moved Councillor J Richards, seconded Councillor K Cox

**That the Minutes of the Policy and Legislation Committee Meeting held 27 April 2022 be confirmed as a true and correct record.**

**CARRIED 5/0**

## 6. REPORTS

### 6.1 AMENDED 2022 COMMITTEE MEETING DATES

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>SUBJECT INDEX</b>	Committee Meetings
<b>BUSINESS UNIT</b>	Governance Services
<b>REPORTING OFFICER</b>	Governance Coordinator - Emma Heys
<b>AUTHORISING OFFICER</b>	Manager Governance and Corporate Services - Sarah Pierson
<b>NATURE OF DECISION</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Nil

#### COMMITTEE DECISION

**PL2205/451** Moved Councillor K Cox, seconded Councillor S Riccelli

**That the Committee adopts the following amended dates for the Policy and Legislation Committee Meetings for the remainder of the 2022 calendar year:**

- **6<sup>th</sup> July;**
- **7<sup>th</sup> September; and**
- **2<sup>nd</sup> November.**

**CARRIED 5/0**

#### OFFICER RECOMMENDATION

That the Committee adopts the following amended dates for the Policy and Legislation Committee Meetings for the remainder of the 2022 calendar year:

- 6<sup>th</sup> July;
- 7<sup>th</sup> September; and
- 2<sup>nd</sup> November.

#### EXECUTIVE SUMMARY

This report presents an amended meeting schedule for the Policy and Legislation Committee for the period July to December 2022 for the Policy and Legislation Committee's endorsement.

#### BACKGROUND

At its Ordinary Meeting of Council 27 April 2022 (C2204/084) Council agreed to trial moving from two to one Ordinary Meetings of Council per month and subsequently adopted an alternative meeting schedule for the Ordinary Meetings of Council for the period July through to December 2022. Council will now hold one Community Access Session per month and one Ordinary Meeting of Council per month.

The change to meeting schedules is to assist in streamlining the City's decision making practices and reduce both the administrative functions associated with meeting processes and the in person demands on Councillors.

As part of the change to meeting schedules, Council's committee meeting schedules will also be amended, with the Finance Committee continuing to be held monthly, on the first Wednesday of each month and the Policy and Legislation Committee being held bi-monthly on the first Wednesday of each month, with other committees on the alternative month.

#### **OFFICER COMMENT**

Under its terms of reference, the Committee must meet at least six times per year. In September 2021, the terms of reference for the Committee were reviewed and endorsed by Council (C2109/201), including the addition of clause 7.1(a) which clarified that the Committee is delegated the power to schedule and endorse the dates, times and locations of the meetings held by the Committee.

In accordance with regulation 12 of the *Local Government (Administration) Regulations 1996*, if a committee meeting is open to the public or proposed to be open to the public, the local government must give public notice of the dates, times and place at which the committee meetings are to be held in the next 12 months. Once endorsed by the Committee, the meeting dates will be publicly advertised.

Officers are proposing that Policy and Legislation Committee (the Committee) meetings be held bi-monthly, on the first Wednesday of each month, with Council's other committee to be held on the alternative months.

It is proposed that the Committee meetings for 6<sup>th</sup> July, 7<sup>th</sup> September and 2<sup>nd</sup> November 2022 be held at 1.30pm, in the Wannerup Committee Room, at the City of Busselton Administration Building.

#### **Statutory Environment**

The Council of the City of Busselton has established a standing committee known as the Policy and Legislation Committee, pursuant to section 5.8 of the *Local Government Act 1995*.

The Policy and Legislation Committee is established for the purpose of assisting Council to fulfil its role under section 2.7(2)(b) of the *Local Government Act 1995*, namely to determine the local government's policies and its legislative function in accordance with Division 2 of Part 3 of the *Local Government Act 1995*.

#### **Relevant Plans and Policies**

There are no relevant plans or policies to consider in relation to this matter.

#### **Financial Implications**

There are no financial implications associated with the officer recommendation.

#### **Stakeholder Consultation**

No external stakeholder consultation was required or undertaken in relation to this matter.

#### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

**Options**

As an alternative to the officer recommendation, the Committee could propose different dates or times for its meetings to be held.

**CONCLUSION**

Following the adoption of an amended Council meeting schedule, the Committee are being asked to endorse an amended schedule of Policy and Legislation Committee meeting dates for the period July to December 2022.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The amended meeting schedule will be advertised within one week of the committee's endorsement.

10:44am At this time, Mr Needham and Ms Wilkinson entered the meeting.

## 6.2 HOLIDAY HOMES AMENDMENT LOCAL LAW

<b>STRATEGIC THEME</b>	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
<b>STRATEGIC PRIORITY</b>	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>SUBJECT INDEX</b>	Local Laws
<b>BUSINESS UNIT</b>	Corporate Services
<b>REPORTING OFFICER</b>	Legal Officer - Briony McGinty
<b>AUTHORISING OFFICER</b>	Director Finance and Corporate Services - Tony Nottle
<b>NATURE OF DECISION</b>	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies
<b>VOTING REQUIREMENT</b>	Simple Majority
<b>ATTACHMENTS</b>	Attachment A <a href="#">Current Consolidated Holiday Homes Local Law 2012</a> Attachment B <a href="#">Holiday Homes Amendment Local Law 2022</a>

### COMMITTEE RECOMMENDATION

**PL2205/452** Moved Councillor K Cox, seconded Councillor J Richards

That the Council:

1. Commences the law-making process for the City of Busselton Holiday Homes Amendment Local Law 2022; the purpose and effect of the local law being as follows:
 

**Purpose:** To regulate the registration and management of holiday homes within the district.

**Effect:** To control the use of holiday homes by reducing the time within which a manager must respond to issues.
2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the Local Government Act 1995, by:
  - (a) Giving local public notice of the Amendment Local Law; and
  - (b) Giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.
3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

**CARRIED 5/0**

**OFFICER RECOMMENDATION**

That the Council:

1. Commences the law-making process for the City of Busselton Holiday Homes Amendment Local Law 2022; the purpose and effect of the local law being as follows:  
  
Purpose: To regulate the registration and management of holiday homes within the district.  
  
Effect: To control the use of holiday homes by reducing the time within which a manager must respond to issues.
2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the Local Government Act 1995, by:
  - (a) Giving local public notice of the Amendment Local Law; and
  - (b) Giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.
3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

**EXECUTIVE SUMMARY**

In 2012, three interrelated key instruments were introduced by Council to regulate holiday homes – these included provisions in the local planning scheme, a local planning policy, and a local law. The local law has remained unchanged since 2012.

Throughout 2021/22 a full review of the regulatory framework covering holiday homes was conducted, resulting in several opportunities for change. On 23 March 2022, Council resolved to adopt a staged approach for proposed changes to the regulation of holiday homes. With regard to the *City of Busselton Holiday Homes Local Law 2012* (Local Law), Council resolved that amendments should be presented to Council for consideration as part of Stage 2.

In accordance with that resolution, an amendment to the Local Law has been prepared (Amendment Local Law) for consideration by the Council. It is recommended that the Council initiates the law-making process and authorises the CEO to give local public notice of the Amendment Local Law.

**BACKGROUND**

The Local Law was first gazetted in April 2012 and further amended in November 2012 (to address issues raised by the JSC during its scrutiny of the Local Law, relating to clauses which attempted to regulate the use of waste receptacles). It was introduced as part of a suite of changes to the holiday home regulatory framework which also included a local planning policy and local planning scheme amendments. The Local Law created an annual registration system for those properties which had received development approval. This report only relates to the Local Law.

The Local Law, when introduced, was the second of its type in Western Australia, and largely followed a local law introduced by the City of Fremantle. The only other WA local government known to officers to have a local law dealing with holiday homes is the City of Wanneroo who introduced a local law in 2017.

As development approvals are generally granted in perpetuity, the annual registration system was seen as a way of generating ongoing management responsibility for owners, and allows the City to modify conditions of registration through an annual renewal process (although generally speaking, the conditions must be consistent with the relevant development approval).

The Local Law creates an ability to cancel registrations in the event of serious non-compliance. The registration process also provides the City with an ability to monitor how many properties are actively being operated as holiday homes.

Over time issues relating to holiday homes have arisen that may not be sufficiently addressed through the current framework. At its meeting of 9 June 2021 Council resolved to conduct a review, by proposing a number of potential changes, and to consult with the community about these changes. Consultation was carried out for a period of seven weeks between 13 August and 4 October 2021, comprising a number of community information sessions, static displays, an extensive online document library, and an online survey. 553 survey responses and a further 18 written submissions were received and each proposed change gained support from the majority of respondents.

The changes relevant to the Local Law (which have not already been addressed as part of Stage 1 through the updating of Conditions of Registration and introduction of a Code of Conduct) are:

- (a) Expectations around managers' response times.
- (b) Requirements for the management of unattended dogs.

These changes are discussed further below under Officer Comment.

#### **OFFICER COMMENT**

##### Reducing Manager Response Time from 24 hours to 12 hours

The requirement for managers to respond to contact relating to a holiday home is provided through clause 3.4 of the Local Law which states:

*"3.4 Contacting the manager*

*...*

- (2) The manager must respond within a reasonable time but in any event within 24 hours to any contact relating to the holiday home; ..."*

Clauses 2.3(i)(ii), 2.3(j)(ii) and 2.6(k)(ii) also supplement this requirement.

A revised response time of 12 hours was proposed during the consultation period because a dilemma arises around a response time that may be considered reasonable. 'Reasonable' may be almost immediate for a management agency with multiple staff, but this might not be the case if a sole person is appointed as manager.

The question of reasonableness also applies to the potential to criminalise behaviour (the time to respond to a complaint), which may be disproportionate to the purpose sought to be achieved. For example, it may not be reasonable to criminalise a slow response to a complaint about an excessive number of vehicles parked at a property. It may be considered reasonable to expect a quick response regarding an excessive number of noisy and disruptive holiday home occupants and guests during the night.

In instances where the 12 hour response time was not supported by respondents during the consultation period, generally it was because they preferred to see a shorter response time such as one or two hours. The nature of complaints from neighbours, alongside the feedback received during the regulatory review, indicate that neighbours want faster resolution of matters seriously impacting on their amenity and enjoyment of their property.

When the local law was first introduced, a 24 hour response time was considered reasonable and appropriate. Since then, there has been a rapid increase in the use of instantaneous communication such as smart phones and apps, allowing easier communication between parties. Requiring quicker response times to issues such as overflowing bins, barking dogs, and late night parties is seen as a proportionate response to the benefit of obtaining a holiday home approval.

Given the question of 'reasonableness', and the overwhelming support for a 12 hour response time, the proposed Amendment Local Law operates to revise the response time from 24 hours to 12 hours.

#### Prohibiting unattended dogs at holiday homes

Holiday homes are often regarded as a 'home away from home' and provide a flexible opportunity for occupants to travel with pets. However, dogs in particular can become distressed when left unattended, causing disturbance to neighbours. The *Dog Act 1976*, however, does not provide a workable means to address the matter.

Currently, registration can be cancelled if there is evidence of excessive noise or other nuisances. The conditions of registration specify that nuisance can include barking dogs. Consideration was given to whether to introduce a separate clause clearly requiring that dogs must not be left unattended. However, given there is already a broad power to impose conditions under clause 2.4(4), it was considered that this was not necessary and could also potentially be addressed through policy provisions (yet to be developed), having regard to the other broad power contained in clause 2.7.

#### Updated Infringements Penalties

Penalties for breaches of the Local Law are currently set at between \$150 and \$400. The Act allows for maximum infringements of up to \$500. Given the current penalties were set some 10 years ago, it is recommended that appropriate increases are made. If the City was to raise penalties in line with Perth CPI from when the local law was first introduced (and penalties last amended), this would represent an approximate \$50 increase in penalties.

### **Statutory Environment**

#### ***Local Government Act 1995***

Section 3.16 of the Act requires that within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended. The City developed and maintains a local law review program to ensure compliance with the requirements of Section 3.16.

Section 3.5 of the Act provides Council with the head of power for making local laws, which stipulates:

*A local government may make Local Laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.*

The procedure for making local laws is set out in sections 3.12 to 3.17 of the Act and regulation 3 of the *Local Government (Functions and General) Regulations 1996* (WA). The person presiding at a Council meeting is to give notice of the purpose and effect of a proposed local law by ensuring that:

- the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- the minutes of that Council meeting include the purpose and effect of the proposed local law.

The purpose and effect of the Amendment Local Law is as follows:

**Purpose: To regulate the registration and management of holiday homes within the district.**

**Effect: To control the use of holiday homes by reducing the time within which a manager must respond to issues.**

Local public notice is to be given by advertising the Amendment Local Law in accordance with the requirements of sections 3.12(3) of the Act. The submission period must run for a minimum period of six weeks after which Council, having considered any submissions received, may resolve to make the local law as proposed or make a local law that is not significantly different from what was proposed.

### ***Parliamentary Scrutiny***

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has an adverse effect on existing rights or ousts or modifies the rules of fairness.

Parliament has appointed the Joint Standing Committee on Delegated Legislation (JSC) which is a committee of State politicians from both houses of the Western Australian Parliament, to undertake an overseeing role on its behalf, which includes the power to scrutinise and recommend the disallowance of local laws to the Parliament.

After gazettal, a copy of the Amendment Local Law will be sent to the JSC who will examine the local law and determine whether or not it complies with abovementioned criteria.

### **Relevant Plans and Policies**

There is currently no policy guiding the application of the Local Law. However, a policy is currently being drafted and will be presented to Council when the results of the statutory consultation period for the Amendment Local Law are returned to Council.

### **Financial Implications**

Costs associated with the advertising and gazettal of the Amendment Local Law will come from the legal budget. These costs are unlikely to exceed \$2,000 and there are sufficient funds in the legal budget for this purpose.

In terms of the increase in modified penalties, the City is unlikely to see any significant increase in income, given the City's approach to its regulatory functions. Proposed increases are minor and based on a review of the City's existing amounts and a comparison of other local governments.

Making and implementing the Amendment Local Law should not have any other financial implications for the City.

### **Stakeholder Consultation**

Should Council resolve to commence the process of making the Amendment Local Law, public submissions will be invited as part of the statutory consultation process prescribed under section 3.12(3) of the Act.

The submission period must run for a minimum period of 6 weeks after which the Council, having considered any submissions received, may resolve to adopt the proposed local law or a law which is not significantly different.

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

### **Options**

As an alternative to the proposed recommendation the Council could choose to vary the provisions of the Local Law in any number of ways. However, for the reasons outlined in this report, the Amendment Local Law is the form of local law recommended at this stage.

There will be further opportunity for considering and making changes to the Amendment Local Law following the public consultation process outlined above, provided the changes are not significantly different from what is currently proposed. If any changes are of a significant nature the Amendment Local Law would need to be re-advertised.

### **CONCLUSION**

Since its gazettal the registration system created under the Local Law has provided another layer of oversight to the holiday home system. However, the issue of manager response times has been recognised, during the regulatory review, as in need of reconsideration. It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Amendment Local Law.

### **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Within two weeks of the Council decision to commence the law-making process, the Amendment Local Law will be advertised for public comment. The statutory consultation period is a minimum of six weeks and following the close of the advertising period a report will be submitted to the Council for further consideration which, depending on the number and nature of submissions received, could be within four months.

This is an un-official compilation of the *City of Busselton  
Holiday Homes Local Law 2012* as it has effect  
on and after 30 November 2012.  
See the Notes at the end for more details.

---

## **City of Busselton Holiday Homes Local Law 2012**

---

LEG190006

*Local Government Act 1995*

City of Busselton

**Holiday Homes Local Law 2012**

---

CONTENTS

---

<b>Part 1 - Preliminary</b> .....	<b>1</b>
1.1 Title.....	1
1.2 Commencement .....	1
1.3 Application .....	1
1.4 Terms used in this local law .....	1
<b>Part 2 - Registration</b> .....	<b>3</b>
2.1 Registration required .....	3
2.2 Application for registration.....	3
2.3 Application details .....	4
2.4 Determining an application.....	5
2.5 Relevant considerations in determining an application for registration .....	5
2.6 Conditions which may be imposed.....	6
2.7 Imposing conditions under a policy.....	7
2.8 Compliance with and variation of conditions.....	8
2.9 Registration period.....	8
2.10 Renewal of registration.....	8
2.11 Acting manager.....	8
2.12 Replacement of manager .....	9
2.13 Production of certificate of registration .....	10
2.14 Cancellation .....	10
<b>Part 3 - Obligations on owners and managers</b> .....	<b>10</b>
3.1 Requirement to give notice of any change .....	10
3.2 Breach of a condition by an attendant .....	11
3.3 Register of occupants.....	11
3.4 Contacting the manager .....	11
<b>Part 4 - Objections and reviews</b> .....	<b>12</b>

LEG190006

4.1	Objection and review rights.....	12
<b>Part 5 - Enforcement .....</b>		<b>12</b>
5.1	Offences and penalties .....	12
5.2	Prescribed offences.....	12
5.3	Form of notices .....	12
<b>Schedule 1 – Certificate of registration.....</b>		<b>13</b>
<b>Schedule 2 - Prescribed offences.....</b>		<b>14</b>

LEG190006

*Local Government Act 1995*

**City of Busselton**

**Holiday Homes Local Law 2012**

Under the powers conferred on it by the *Local Government Act 1995*, the Council of the City of Busselton resolved on [add day and month] 2012 to make this local law.

**Part 1 - Preliminary**

**1.1 Title**

This is the *City of Busselton Holiday Homes Local Law 2012*.

**1.2 Commencement**

This local law commences 3 months after the date of its publication in the *Government Gazette*.

**1.3 Application**

This local law applies throughout the district.

**1.4 Terms used in this local law**

In this local law -

**Act** means the *Local Government Act 1995*;

**acting manager**, in relation to a holiday home, means the person who is the acting manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

**applicant** means an applicant for a registration;

**application fee** means the application fee for registration that is imposed by the Council under the Act;

**attendant** means a person who is –

(a) an occupant; or

(b) a guest;

**authorised person** means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

**CEO** means -

(a) the CEO of the City; and

LEG190006

- (b) any other employee of the City to whom the CEO has delegated his or her powers under this local law;

**certificate of registration** means a current and valid certificate issued under clause 2.4(2);

**City** means the City of Busselton;

**Council** means the council of the City;

**district** means the district of the City;

**dwelling** has the meaning given to it in the Local Planning Scheme;

**grouped dwelling** has the meaning given to it in the Local Planning Scheme;

**guest** means a person who is on the premises of a holiday home, for social purposes, at the invitation or with the permission of an occupant of the holiday home;

**hirer**, in relation to a holiday home, means the person who hires the holiday home or who is responsible for the payment for the accommodation of an occupant in the holiday home;

**holiday home** means a dwelling used, or intended to be used, to accommodate occupants for hire or reward (but does not include a 'Bed and Breakfast', 'Chalet Development', 'Guesthouse', 'Rural Tourist Accommodation' or 'Tourist Accommodation', as defined in Schedule 1 to the Local Planning Scheme);

**local government** means the City;

**Local Planning Scheme** means the City of Busselton District Town Planning Scheme No. 20, as amended from time to time;

**manager**, in relation to a holiday home, means the person who is the manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

**month** means calendar month;

**occupant** means a person who is accommodated in a holiday home for no more than a total of 3 months in any one 12-month period ;

**owner -**

- (a) in relation to a registered holiday home, means the person who is specified as the owner in the certificate of registration of the holiday home; and
- (b) in relation to any other holiday home, means the person who is the owner of the holiday home;

**premises**, in relation to a holiday home, means -

- (a) if the holiday home is a single house situated on a single lot, all of the land that comprises that lot; or
- (b) if the holiday home is a grouped dwelling, all of the land that is set aside for the exclusive use by the owner of that grouped dwelling;

**registered holiday home** means a dwelling registered under this local law as a holiday home;

LEG190006

**registration** means registration, under and for the purposes of this local law, of a dwelling as a holiday home;

**registration fee** means the fee for registration that is imposed by the City under the Act;

**Regulations** means the *Local Government (Functions and General) Regulations 1996*;

**relevant law** means a written law, as defined in the *Interpretation Act 1984*, that applies to, or in respect of, the use of a holiday home; and

**single house** has the meaning given to it in the Local Planning Scheme.

## Part 2 - Registration

### *Division 1 – Applying for registration*

#### 2.1 Registration required

- (1) A person must not use a dwelling, or allow a dwelling to be used, as a holiday home -
  - (a) unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home;
  - (b) unless the dwelling is registered as a holiday home under this local law; and
  - (c) other than in accordance with -
    - (i) the conditions of the registration; and
    - (ii) the provisions of this local law.
- (2) Registration does not affect the obligations of an owner or a manager, or any other person, to comply with a relevant law.

#### 2.2 Application for registration

- (1) An application for registration of a holiday home must -
  - (a) be in writing;
  - (b) be in the form determined by the CEO;
  - (c) be made by, or on behalf of, the owner of the holiday home;
  - (d) be signed by the owner of the holiday home;
  - (e) nominate a natural person, who may or may not be the owner, to be the proposed manager of the holiday home;
  - (f) nominate a natural person, who may or may not be the owner, to be the proposed acting manager of the holiday home;
  - (g) contain the details specified in clause 2.3; and
  - (h) be forwarded to the CEO, together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

LEG190006

- (2) The CEO or an authorised person may require an applicant to give local public notice of the application for registration.
- (3) The local government may refuse to consider an application for registration which is not in accordance with subclause (1).

### 2.3 Application details

The details that must be included in an application for registration of a holiday home are -

- (a) a site plan of the premises;
- (b) a floor plan of the holiday home;
- (c) the location and title details of the holiday home;
- (d) the number of bedrooms proposed to be used at any time for short stay accommodation;
- (e) the maximum number of occupants to be accommodated at any time in the holiday home;
- (f) the details of any proposed on-site parking bays on the premises;
- (g) the name, address and contact details of the owner of the holiday home and his or her phone number at which he or she may be contacted;
- (h) in relation to each of the proposed manager and the proposed acting manager –
  - (i) confirmation that he or she accepted appointment by the owner as manager (which may be contingent on the Council's approval of the application for registration); and
  - (ii) his or her name, address and contact details, including the phone number at which he or she may be contacted at any time of the day or night;
- (i) an undertaking from the proposed manager of the holiday home that he or she –
  - (i) is to have the day-to-day management of the holiday home; and
  - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home;
- (j) an undertaking from the proposed acting manager of the holiday home that, while undertaking the functions of the manager, he or she –
  - (i) is to have the day-to-day management of the holiday home; and
  - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home; and
- (k) any other information requested by the CEO or an authorised person that is reasonably related to the application for registration.

LEG190006

**2.4 Determining an application**

- (1) The Council may –
  - (a) approve an application for registration unconditionally or subject to conditions; or
  - (b) refuse to approve an application for registration.
- (2) If the Council approves an application for registration, it is to issue to the applicant a certificate of registration in the form prescribed in Schedule 1 or in a similar form as determined by the Council from time to time.
- (3) If the Council refuses to approve an application for registration, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on registration, or which are to be taken to be imposed on registration, that clause does not limit the power of the Council to impose other conditions on registration under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for registration may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

**2.5 Relevant considerations in determining an application for registration**

- (1) In determining an application for registration, the Council is to have regard to –
  - (a) the conditions of any planning approval that has been granted under the Local Planning Scheme to use the dwelling as a holiday home;
  - (b) the provisions of this local law;
  - (c) any relevant policy of the City; and
  - (d) any other matter that the Council reasonably considers to be relevant in the circumstances of the case.
- (2) The Council must refuse to approve an application for registration if there is no current planning approval under the Local Planning Scheme to use the dwelling or the premises as a holiday home.
- (3) The Council may refuse to approve an application for registration on any one or more of the following grounds –
  - (a) that the owner, the proposed manager or the proposed acting manager has committed a breach of any provision of this local law or of any other relevant law;
  - (b) that the owner, the proposed manager or the proposed acting manager is not a fit and proper person in relation to the proposed holiday home; or
  - (c) any other ground that the Council may reasonably consider to be relevant in the circumstances of the case, including a ground arising from the Council's consideration of the factors set out in clause 2.5(1).

LEG190006

*Division 2 - Conditions*

**2.6 Conditions which may be imposed**

The Council may approve an application for registration subject to conditions relating to –

- (a) the payment of a fee imposed by the Council under sections 6.16 to 6.19 of the Act;
- (b) the commencement and duration of registration;
- (c) the grant of any other approval, in respect of the holiday home, that –
  - (i) is required under any written law; or
  - (ii) that may be required by the City under any written law;
- (d) the maximum number of occupants who may be on the premises at any time;
- (e) the maximum number of attendants who may be on the premises during specified times;
- (f) the number of on-site parking bays at the premises for the exclusive use of attendants;
- (g) the maximum number of vehicles that may be parked on the premises at any time;
- (h) the location and number of bedrooms to be used by the occupants;
- (i) measures to ensure effective communication to attendants of –
  - (i) the conditions of registration; and
  - (ii) emergency management procedures to apply during an emergency or potential emergency such as a fire emergency or during a natural disaster such as a flood, cyclone or earthquake;
- (j) the provision to the CEO or an authorised person, by the owner or the manager, of details of any proposed change, or any change, to –
  - (i) the owner, the manager or the acting manager ; or
  - (ii) the contact details (including the phone and email contacts) of the owner, the manager or the acting manager;
- (k) ensuring that each of the manager, and the acting manager while undertaking the functions of the manager –
  - (i) is contactable by telephone, at any time of the day or night, using his or her contact details provided to the City; and
  - (ii) will respond, within a reasonable time but in any event within 24 hours to any contact relating to the holiday home; and
- (l) tenancy agreements with occupants that would enable the manager to comply with his or her obligations under clause 3.2.

LEG190006

**2.7 Imposing conditions under a policy**

- (1) In this clause –  
**policy** means a policy of the City adopted by the Council containing conditions subject to which an application for registration may be approved under clause 2.4(1)(a).
- (2) Under clause 2.4(1)(a), the Council may approve an application subject to conditions by reference to a policy.
- (3) The City is to give to the applicant a copy of the policy, or that part of the policy which is relevant to the application for registration, with the certificate of registration.
- (4) An application for registration is to be taken not to have been approved subject to the conditions contained in a policy until the City gives the applicant a copy of the policy or that part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act apply to a policy and, for that purpose, a policy is taken to be information within section 5.94(u)(i) of the Act.

**2.8 Compliance with and variation of conditions**

- (1) Where an application for registration of a holiday home has been approved subject to conditions, or where registration is to be taken to be subject to conditions under this local law, the owner, manager and each attendant of the holiday home, must comply with each of those conditions.
- (2) The Council may, after -
  - (a) giving the owner or manager written notice of the proposed variation of a condition; and
  - (b) taking into account any submissions made by the owner to the CEO within 14 days of the notice under paragraph (a),vary a condition of registration.
- (3) A condition that has been varied under this clause takes effect when written notice of the variation has been given to the owner and the manager.
- (4) The owner, manager and each attendant must comply with a condition varied under this clause.

***Division 3 - General***

**2.9 Registration period**

A registration is valid for one year from the date on which the certificate of registration is issued, unless –

- (a) it is otherwise stated in this local law or on the certificate of registration; or
- (b) registration is cancelled under clause 2.14.

LEG190006

**2.10 Renewal of registration**

- (1) The owner or manager may apply in writing to the CEO in writing before the expiry of a registration for the renewal of the registration.
- (2) Subject to subclause (3), the provisions of Divisions 1 and 2 of this Part, and any other provisions of this local law relevant to the registration which is sought to be renewed, apply, with appropriate modifications, to an application for renewal of the registration.
- (3) The Council may waive, in a particular case or in one or more classes of cases, any of the requirements applying to an application for renewal of a registration.

**2.11 Acting manager**

- (1) The acting manager is to undertake the functions of the manager only –
  - (a) if the manager gives the City prior written notice of the period during which the acting manager is to undertake the functions of the manager; and
  - (b) during the period specified in that notice – but not exceeding 30 days in any calendar year unless otherwise determined in writing by the Council.
- (2) The provisions of this local law that apply to the manager are to be taken to apply to the acting manager while he or she is undertaking the functions of the manager.

**2.12 Replacement of manager**

- (1) This clause applies where –
  - (a) the owner is not also the manager of a registered holiday home; and
  - (b) the owner wishes to replace the manager either –
    - (i) with a new manager; or
    - (ii) by personally taking over the role of manager.
- (2) An application to replace a manager must–
  - (a) be made before the expiry of the registration;
  - (b) be made in writing;
  - (c) be signed by the owner and, if applicable, the proposed new manager;
  - (d) include the details as are required under clause 2.3(h);
  - (e) include the undertaking described in clause 2.3(i);
  - (f) provide such information as the CEO or an authorised person may reasonably require to enable the application to be determined; and
  - (g) be forwarded to the CEO, together with the fee imposed by the Council under sections 6.16-6.19 of the Act.
- (3) The Council may –

LEG190006

- (a) approve an application to replace a manager, unconditionally or subject to conditions; or
- (b) refuse to approve an application to replace a manager,.
- (4) Where the Council approves an application to replace a manager,, the replacement is to be effected by –
  - (a) an endorsement on the certificate of registration signed by the CEO or an authorised person; or
  - (b) the CEO or an authorised person issuing to the transferee a fresh certificate of registration.

**2.13 Production of certificate of registration**

The manager of a holiday home must produce to the CEO or an authorised person the certificate of registration of the holiday home immediately on being required to do so by the CEO or that authorised person.

**2.14 Cancellation**

- (1) A registration is taken to have been cancelled if, and on the date that –
  - (a) the owner whose name appears on the certificate of registration ceases to be the owner of the holiday home; or
  - (b) the manager whose name appears on the certificate of registration ceases to be the manager of the holiday home – unless an application to replace that manager has been approved by the Council under clause 2.12.
- (2) A registration may be cancelled by the Council if –
  - (a) the owner, manager or an attendant has not complied with –
    - (i) a condition of the registration;
    - (ii) a provision of this local law; or
    - (iii) any relevant law; or
  - (b) the Council is satisfied, on the basis of complaints or other evidence of excessive noise, antisocial behaviour or other nuisances, that the continuing operation of the holiday home is not in the best interests of the City.
- (3) If a registration is cancelled, the CEO must give the owner and the manager written notice of the cancellation.
- (4) Cancellation under subclause (2) takes effect when the written notice is given to the owner and manager.
- (5) If a registration is cancelled –
  - (a) the owner must return the certificate of registration to the CEO within 14 days of being given the written notice of cancellation; and
  - (b) the City is not required to refund any part of a fee paid in respect of the cancelled registration.

LEG190006

### **Part 3 - Obligations on owners and managers**

#### **3.1 Requirement to give notice of any change**

An owner and a manager must inform the CEO in writing, within 24 hours, of any change or proposed change that would affect the currency of –

- (a) the details submitted with the application for registration and any application for renewal of registration or for replacement of a manager; or
- (b) any condition imposed or varied under clauses 2.6, 2.7, 2.8 and 2.11.

#### **3.2 Breach of a condition by an attendant**

(1) In this clause, **breach** means breach by an attendant of –

- (a) a condition of registration;
- (b) this local law; or
- (c) a relevant law.

(2) Within 24 hours of –

- (a) the CEO or an authorised person giving written notice to the manager of a breach;
- (b) the manager becoming aware of a breach; or
- (c) the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that –

- (d) the occupant's tenancy is terminated; and
- (e) the occupant vacates the holiday home.

#### **3.3 Register of occupants**

The manager must –

- (a) maintain a register comprising details –
  - (i) each hirer's name, address, contact details and, if applicable, length of the stay in the holiday home; and
  - (ii) of each other occupant's name; and
- (b) give the CEO or an authorised person such access to the register as may reasonably be required by the CEO or the authorised person for the purpose of administering or enforcing this local law.

#### **3.4 Contacting the manager**

(1) The manager must be contactable at all reasonable times, using the contact details provided to the CEO or an authorised person.

LEG190006

- (2) The manager must respond within a reasonable time but in any event within 24 hours to any contact relating to the holiday home.

#### **Part 4 - Objections and reviews**

##### **4.1 Objection and review rights**

A person adversely affected by a decision made under Part 2 is entitled to object against, or to apply for a review of, the decision under the Act.

#### **Part 5 - Enforcement**

##### **5.1 Offences and penalties**

- (1) A person who breaches a provision of this local law commits an offence.
- (2) A person who commits an offence is liable -
  - (a) to a penalty of \$5,000; and
  - (b) if the offence is of a continuing nature, a further penalty of \$500 in respect of each day or part of a day during which the offence has continued.

##### **5.2 Prescribed offences**

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of clause 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

##### **5.3 Form of notices**

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is set out in Schedule 1 of the Regulations.
- (2) The form of the infringement notice given under section 9.16 of the Act is set out in Form 2 in Schedule 1 of the Regulations.
- (3) The form of the notice referred to in section 9.20 of the Act is that set out in Form 3 in Schedule 1 of the Regulations.

LEG190006

**Schedule 1 – Certificate of registration**  
[Clause 2.4(2)]

**CITY OF BUSSELTON**

**HOLIDAY HOMES LOCAL LAW 2012**

**CERTIFICATE OF REGISTRATION**

Date.../.../....

This certifies that the dwelling at \_\_\_\_\_  
(address of holiday home)

owned by \_\_\_\_\_  
(name/s of owner/s)

managed by \_\_\_\_\_ and \_\_\_\_\_  
(name of manager) (name of acting manager)

is registered as a holiday home which may be used to accommodate occupants for hire or reward in accordance with –

- (a) the provisions of the *Holiday Homes Local Law 2012*;
- (b) any other relevant law; and
- (c) the conditions set out on the back of this certificate.

\_\_\_\_\_  
Signature of CEO/CEO's delegate

*Notes:*

- 1. *An application for registration of a holiday home cannot be approved unless planning approval has been granted under the City of Busselton District Town Planning Scheme No. 20 to use the dwelling as a holiday home.*
- 2. *Registration of a holiday home does not affect the rights and obligations of an owner or occupier under the by-laws of a strata company, including any requirement to obtain approval, or to comply with any restrictions, in connection with the use of a dwelling as a holiday home.*

**CONDITIONS OF REGISTRATION**

This registration is subject to the following conditions -

- 1.
- 2.
- 3. etc

LEG190006

**Schedule 2 - Prescribed offences**

[Clause 5.2]

<b>Clause</b>	<b>Description</b>	<b>Modified penalty</b>
2.1(1)	Using, or allowing to be used, as a holiday home, a dwelling not registered as a holiday home	\$400.00
2.8(1)	Failure to comply with a condition of registration	\$300.00
2.8(3)	Failure to comply with a varied condition of registration	\$300.00
2.13	Failure to produce certificate of registration when required to do so	\$250.00
2.14(5)(a)	Failure to return the certificate of registration after registration cancelled	\$150.00
3.1	Failure to inform CEO of any change or proposed change affecting registration details	\$300.00
3.2(2)(d)	Failure to terminate occupant's tenancy for a breach	\$300.00
3.2(2)(e)	Failure to ensure occupant vacates the holiday home for breach of a condition of registration	\$300.00
3.3(a)	Failure to maintain a register	\$200.00
3.3(b)	Failure to give CEO or an authorised person access to the register	\$300.00
3.4(2)	Failure of a manager to respond, within the required time, to a contact	\$300.00

LEG190006

This local law was made at the meeting of the Council of the City of Busselton held on 19 April 2012.

The Common Seal of the City of Busselton was affixed in the presence of

IAN WILLIAM STUBBS,  
Mayor

MICHAEL STEPHEN LEE ARCHER,  
Chief Executive Officer

#### Notes

This is a compilation of the *City of Busselton Holiday Homes Local Law 2012* and includes any amendments referred to in the following table.

Local laws and amendments come into operation on the 14<sup>th</sup> day after the day of publication in the gazette unless a later day is specified: s 3.14 of the *Local Government Act 1995*.

#### Compilation Table

Citation	Gazettal date
<i>City of Busselton Holiday Homes Local Law 2012</i>	<i>30 April 2012</i>
<i>City of Busselton Holiday Homes Amendment Local Law 2012</i>	<i>16 November 2012</i>

LEG190006

**LOCAL GOVERNMENT ACT 1995**

CITY OF BUSSELTON

**HOLIDAY HOMES AMENDMENT LOCAL LAW 2022**

Under the powers conferred by the *Local Government Act 1995*, and all other powers enabling it, the Council of the City of Busselton resolved on ..... to make the following local law.

**1. Title**

This is the *City of Busselton Holiday Homes Amendment Local Law 2022*.

**2. Commencement**

This local law comes into operation 14 days after the day on which it is published in the *Government Gazette*.

**3. Principal local law**

This local law amends the *City of Busselton Holiday Homes Local Law 2012*, published in the *Government Gazette* on 30 April 2012.

**4. Clause 2.3 amended**

In clause 2.3(i)(ii) and 2.3(j)(ii), delete each reference to “24 hours” and insert:

12 hours

**5. Clause 2.6 amended**

In clause 2.6(k)(ii), delete “24 hours” and insert:

12 hours,

**6. Clause 3.4 amended**

In clause 3.4(2), delete “24 hours” and insert:

12 hours

**7. Schedule 2 amended**

In Schedule 2 –

(a) delete the modified penalty of “\$400.00” and insert:

\$450.00

(b) delete each modified penalty of “\$300.00” and insert:

\$350.00

(c) delete the modified penalty of “\$200.00” and insert:

\$250.00

Dated this                    of                    2022.

The Common Seal of the City of Busselton was affixed by authority of a resolution of the Council in the presence of—

\_\_\_\_\_  
GRANT DOUGLAS HENLEY, Mayor

\_\_\_\_\_  
MICHAEL STEPHEN LEE ARCHER, Chief Executive Officer

10:54am At this time Ms Wilkinson and Ms Pierson left the meeting.

10:55am At this time, Mr McDowell, Ms Runco and Ms McTaggart entered the meeting.

**7. GENERAL DISCUSSION ITEMS**

**7.1 CAT CONTROL ISSUES**

Mr Paul Needham, Director Planning and Development Services, and Mr Ian McDowell, Ranger and Emergency Services Coordinator, provided an update on provisions for domestic cat containment, and discussed cat registration and trends in the impounding of registered and feral cats.

**8. NEXT MEETING DATE**

Wednesday, 22 June 2022.

9. **CLOSURE**

The meeting closed at 11:51am.

THESE MINUTES CONSISTING OF PAGES 1 TO 32 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 22 JUNE 2022.

DATE: 22.6.2022 PRESIDING MEMBER: *Paine*