

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

CITY OF BUSSELTON

MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 27 MAY 2020

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MINUTES

**MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM,
ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 27 MAY 2020 AT 10.30AM.**

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 10.34am.

2. ATTENDANCE

Presiding Member:

Cr Ross Paine

Members:

Cr Grant Henley
Cr Kelly Hick
Cr Lyndon Miles
Cr Kate Cox

Officers:

Mr Tony Nottle, Director, Finance and Corporate Services
Mrs Naomi Searle, Director, Community and Commercial Services
Ms Sarah Pierson, Manager, Governance and Corporate Services
Mr Daniell Abrahamse, Manager, Engineering and Technical Services
Mr Martyn Cavanagh, Manager, Legal and Property Services
Mr Ronald Wildschut, Development Control Coordinator
Ms Melissa Egan, Governance Officer

Apologies:

Nil

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 29 April 2020

COMMITTEE DECISION





PL2005/308 Moved Councillor G Henley, seconded Councillor K Cox

That the Minutes of the Policy and Legislation Committee Meeting held 29 April 2020 be confirmed as true and correct.

CARRIED 5/0

6. REPORTS

6.1 RESCISSION OF COUNCIL POLICY 074: MARKETS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Commercial Services
REPORTING OFFICER	Manager, Commercial Services - Jennifer May
AUTHORISING OFFICER	Director, Community and Commercial Services - Naomi Searle
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Current Council Policy 074: Markets   Attachment B Council Policy Events  

OFFICER RECOMMENDATION

That the Council rescinds Council Policy 074: Markets (Attachment A), effective immediately.

COMMITTEE RECOMMENDATION

PL2005/309 Moved Councillor G Henley, seconded Councillor L Miles

That this item be deferred to the next Policy and Legislation Committee meeting to allow officers to consider the addition of relevant detail from the Council Policy 074: Markets into the Council Policy Events.

CARRIED 5/0

Reasons: The Committee felt it was important that Council retained some strategic direction and oversight in relation to the operation of markets, with the deferral enabling officers to further consider the content of the Markets Policy and the addition of any relevant detail from the Markets Policy into the Events Policy.

EXECUTIVE SUMMARY

This report recommends the rescission of Council policy 074: Markets (the Policy) (Attachment A), with the Policy having been reviewed as part of the City's overall review of its Council policies. It is recommended the Policy be rescinded, and its contents and objectives carried over into an Operational Practice. This will allow the City to respond more readily to changes in market locations or respond to any new market requests, particularly as we enter into a COVID-19 recovery phase.

BACKGROUND

The objective of the Policy is to ensure that markets held on City owned or managed land (City Land) do not adversely impact on local business and are successful, sustainable and appropriately accessible to the public. The Policy outlines market locations and frequencies and sets out the requirement for markets to be approved under the City's Events Policy and event approval process.

The Policy was reviewed in 2013, in response to an increase in the number of requests to hold new markets in various locations across the district. The Policy was again reviewed in November 2014 with minor amendments made to market locations in the district and to provide for alternative venues for markets in Busselton.

The Council policy 'Events' (Attachment B) was reviewed, amended and endorsed by Council at its meeting on 12 February 2020 (C2002/034). While, as per the Policy, markets have always been processed as an 'event', as part of the review, the definition of "Event" was expanded to expressly include "Markets" in the scope of the policy. Outside of this, however, no specific references / limitations were incorporated into the Events policy.

OFFICER COMMENT

Markets are well established and function successfully within the City of Busselton. Given that, officers consider that the objectives of the Policy are capable of being managed administratively under the direction of the CEO. The contents of the Policy can be translated to an Operational Practice which can be adjusted as required to meet changing demands and circumstances. This ability to more readily respond is particularly important as we enter a COVID-19 recovery phase, with well managed outdoor markets a possible sustainable alternative to traditional retail.

In the event that Council would prefer to maintain high level strategic guidance in relation to markets, officers would recommend that an additional clause is added to the Events Council policy, outlining maximum market numbers / locations. Officers do not believe a stand-alone Council policy in relation to markets is necessary.

Statutory Environment

In accordance with section 2.7(2)(b) of the Act, it is the role of the Council to determine the local government's policies. The Council does this on recommendation of a committee it has established in accordance with section 5.8 of the Act.

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the Governance Services Review carried out in 2017. The framework sets out the intent of Council policies, as opposed to operational documents such as staff management practices and operational practices.

The Council policy 'Events' is relevant as outlined.

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 proposed recommendation, the Council could:

1. Choose to rescind the Policy and direct the CEO to incorporate maximum market numbers / locations into the Events Council policy, or
2. Choose to retain the Policy and request it be translated into the new policy framework.

CONCLUSION

As the contents and objectives of the Policy are now contained in the recently endorsed Council policy Events and associated Operational Practices, it is recommended the Policy be rescinded.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be rescinded and removed from the website within one week of Council's endorsement.

Last updated 12/11/2014

074	Markets	V4 Current
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1. PREAMBLE / POLICY STATEMENT

The Policy will be used to guide applicants of the general approval process for all types of markets conducted on public land under the management of the City of Busselton. The City of Busselton will assess applications for the conduct of markets in accordance with legislative requirements under the City's Events Policy.

2. OBJECTIVE

The aim of the Policy is to ensure that markets that are held on City owned or managed land, do not adversely impact on local businesses, but are successful, sustainable, and appropriately accessible to the public. The City of Busselton is therefore committed to ensuring that the conduct of markets on such land is managed and controlled to protect and enhance the wellbeing of the community.

3. POLICY CONTENT

- (a) All market organisers must be licensed under the Trading in Public Places Local Law.
 - (b) All market organisers must be approved to conduct a market under the City of Busselton's Events Policy.
 - (c) All stall holders wishing to operate at a market must be registered with the market license holders.
 - (d) Council authorises a maximum of:
 - i) one (1) market on each Sunday only in Busselton, to be held at Signal Park, Busselton Foreshore;
 - ii) one (1) market each week only, to be held at the Busselton Cultural Precinct;
 - iii) one (1) market each fortnight on the second and fourth Saturday only of every month, to be held at the Busselton Community Garden, Roe Terrace Busselton, for local produce and artisan goods only, with a maximum of 20 market stalls;
 - iv) one (1) market each fortnight on the first, third and fifth Saturday only of every month in Vasse, to be held at Vasse Hall/Oval;
 - v) one (1) market each fortnight on the second and fourth Saturday of every month only, to be held at Lions Park Dunsborough for local produce and artisan goods only, subject to the development and implementation of a traffic management plan approved by the City of Busselton;
 - (e) Community and charitable organisations will be given preference to conduct markets at the above listed venues. Additional markets and other activities may be permitted with Council approval.
2. Prior to the completion of the Busselton Foreshore 'active core' redevelopment, earmarks the following alternate venues for markets in Busselton;
- a. Churchill Park, subject to scheduled local sporting arrangements; and
 - b. Carpark on the corner of Kent and Cammilleri Streets.

History

Council Resolution	Date	Information
C1411/282	12 November, 2014	Version 4
C1306/169	26 June, 2013	Version 3



1. PURPOSE

- 1.1. The purpose of this Policy is to articulate the strategic importance of Events to the City of Busselton and to set out a framework for the attraction and promotion of Events. This Policy also sets out the City's position with respect to the attendance of Councillors and the CEO at Events in accordance with Section 5.90A of the Act.

2. SCOPE

- 2.1. This Policy is applicable to Events within the City of Busselton District and more broadly to Events across the South West region of WA.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995</i>
District	City of Busselton local government area
Event	<p>An organised occurrence hosted by a person or organisation on public or private land where people assemble at a given time for a given purpose and which generally involves one or more of the following:</p> <ul style="list-style-type: none"> • Preparation or sale of food; • Sale or consumption of alcohol; • Erection of infrastructure and / or signage; • Generation of additional noise; • Use / installation of electrical equipment; • Changes / interruptions to traffic flow; • Additional parking requirements; • Crowd control measures <p>Includes:</p> <ul style="list-style-type: none"> • Concerts and music festivals; • Sporting events; • Conferences; • Exhibitions, expos and fairs; • Functions (e.g. community or business events); Markets; and • Any other activity in accordance with 5.90A(1)(e)
Partner	Spouse, de-facto or other partner as approved
Policy	This City of Busselton Council policy entitled "Events"

4. STRATEGIC CONTEXT

- 4.1. This policy links to Key Goal Area 4 – Economy and Key Goal Area 6 – Leadership of the City’s Strategic Community Plan 2017 and specifically the following Community Objectives
 - a. 4.3: Events and unique tourism experiences that attract visitors and investment.
 - b. 6.1: Governance systems, processes and practices are responsible, ethical and transparent.

5. POLICY STATEMENT

- 5.1. The City has adopted the brand ‘Events Capital WA’, with the attraction, development and promotion of Events recognised by Council as a key strategic and competitive advantage for the development of a robust and prosperous economy and tourism industry, and an important contributor to the creation of vibrant places and an inclusive community
- 5.2. The City will actively engage with and assist Event organisers to support the development of a diverse year round calendar of Events, across the District.
- 5.3. The attraction, development, and approval of Events will be in accordance with the following objectives:
 - a. generation of direct and indirect economic benefits to the community;
 - b. generation of social benefit, vibrancy, and promotion of cultural diversity and inclusion;
 - c. creation of a calendar of Events which brings visitors to the District year round and provides broad activation across the District; and
 - d. positive promotion of the District and the South West region of WA.
- 5.4. Events are categorised for their strategic importance as follows:
 - a. Hallmark – an international or nationally recognised Event that creates significant economic benefit and typically attracts 5,000 plus participants / visitors;
 - b. Major – an Event which attracts visitors nationally and from outside of the region, showcases regional facilities and attractions, creates economic benefit and typically has between 2,000 and 5,000 participants / visitors;
 - c. Regional – an Event that attracts visitors to the region from within the State and from within the region, helps to build the City’s Events Capital WA brand and has the potential to become a future Major or Hallmark Event;
 - d. Community – an Event which celebrates aspects of community life, has strong social / community benefit; more limited economic benefit, and is generally run by the community.
- 5.5. While Events are considered a positive contributor, the potential for Events to impact adversely on community safety, amenity and the environment is recognised. In order to manage risk, environmental and amenity impacts, Events held within the District must, subject to paragraph 5.6, be approved by the City prior to taking place. The event application process is outlined in the Events Application Operational Practice.
- 5.6. An Event approval is not required at venues which have an appropriate development approval under the City’s town planning scheme and / or an approval in accordance with environmental health legislation.
- 5.7. Event applications will be assessed against the objectives outlined in paragraph 5.3 and the following criteria (or criteria similar):
 - a. the nature, size and suitability of the Event;
 - b. the location of the Event, its suitability and whether it meets the City’s objectives of broad activation;
 - c. the period of time the Event will operate;
 - d. the amenity of the Event and the likely impacts on residents;

6.1 Attachment B Council Policy Events

- e. any conflicts with other Events or community use at or around the location;
 - f. the relevant experience of the operator and their capacity to manage key risks such as fire safety.
- 5.8. The following specific Event location criteria will also be applied to assist in protection of sensitive areas, and to ensure the equitable use of the location by Event organisers and the general community:
- a. Meelup Regional Park:
 - i. Maximum of four trail based Events per calendar year, that is an Event that involves participants walking, running or cycling on trails or roads within the park; and
 - ii. Maximum of four site based Events per calendar year, that is an Event that involves use of a beach and / or adjacent picnic and car park area; and
 - iii. Maximum of one trail based and one site based Event per month.
 - b. Yallingup and Smith Beach:
 - i. Maximum of one international or national Event per year;
 - ii. Maximum of four other major Events per year, of up to four days each;
 - iii. Maximum of one minor Event per year, of up to four days;
 - iv. Maximum of eight club Events (run by local board riding clubs) per year
- 5.9. Fees upon application are payable as per the City of Busselton's Schedule of Fees and Charges.

Events Sponsorship

- 5.10. The City has an events sponsorship programme that is funded through a combination of municipal funds and funds derived from the industrial / commercial differential rate. The Marketing and Events Reference Group (MERG) makes recommendations to Council with respect to the allocation of funds towards Events.
- 5.11. Event sponsorship can be provided as cash or in-kind contributions, with sponsorship agreements entered into with Event organisers on either a single or multi-year basis.
- 5.12. Event sponsorship requests will be assessed against the objectives outlined in paragraph 5.3.
- 5.13. Events sponsored by the City will be evaluated to determine future funding levels.

Event Attendance

- 5.14. Councillor and CEO representation at Events is valued as a means of reinforcing the City's strategic positioning as the 'Events Capital WA', and to ensure Events are properly assessed for their benefit and ongoing relevance.
- 5.15. Invitations / tickets to Events may be provided to the City by Event organisers. Where attendance at these Events is approved in accordance with this Policy, the requirement to disclose a financial interest under the Act will not apply.
- 5.16. An invitation provided or addressed personally to a Councillor or to the CEO (for instance via a personal email account) will not be captured by this Policy, and the requirement to disclose a financial interest where the amount exceeds the amount prescribed under the *Local Government (Administration) Regulation 20A* will apply.
- 5.17. In addition to invitations / tickets provided by Event organisers, the CEO, in consultation with the Mayor, may purchase tickets for the purposes of City representation at an Event. The City will generally only purchase tickets for Hallmark and Major Events where attendance is demonstrated, through reference to the criteria in paragraph 5.18, as being in the City's interest.

6.1 Attachment B Council Policy Events

- 5.18. In determining approval for attendance at Events under Section 5.90A(2)(c), Council (or the CEO under delegation) will consider criteria such as the following:
- who is providing the ticket to the Event;
 - the location of the Event;
 - whether the Event is sponsored by the City;
 - the relevance of the Event to the City's adopted policy objectives under paragraph 5.3;
 - the role of the Council member or CEO when attending the Event (participant, presenter, observer) and the value of their contribution;
 - the cost to attend the Event and / or the public value of attendance if the ticket is being provided at no cost to the Local Government;
 - the number of invitations / tickets received; and
 - the benefits or importance of Council and / or CEO representation at the event.
- 5.19. A list of established pre-authorised Events and attendees is provided at Attachment A. The attendees are authorised in order of priority, subject to the number of available invitations / tickets. Where there are insufficient invitations / tickets available for all pre-authorised attendees to attend, the CEO (in liaison with the Mayor) will determine final attendance.
- 5.20. It is considered appropriate for a Councillor or CEO's Partner to accompany them to an Event held outside of normal business hours. While the City will not generally pay for such attendance, invitations / tickets received by the City may be provided for this purpose where they are available.
- 5.21. The Mayor can delegate any approved attendance to an Event to the Deputy Mayor or another Council member.
- 5.22. This policy does not apply where a Councillor or the CEO attends an Event at their own cost and in a personal capacity.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
6.2. Events Strategy
6.3. Events Application Operational Practice





7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	12 February 2020	Resolution #	C2002/034
Previous Adoption	DATE	14/09/2016	Resolution #	C1609/232

Attachment A – Pre-authorised Events

Event	Event Organiser OR DATE	Attendee
Hallmark Events		
Ironman WA	Ironman Oceania	Mayor CEO Deputy Mayor All Councillors
Cinefest Oz	Geographe French Australian Festivals Inc.	Mayor CEO Deputy Mayor All Councillors
Busselton Festival of Triathlon (Ironman 70.3)	Triathlon Western Australia	Mayor CEO Deputy Mayor All Councillors
Gourmet Escape	IMG Culinary	Mayor CEO Deputy Mayor All Councillors
Busselton Jetty Swim	Busselton Allsports Inc.	Mayor CEO Deputy Mayor All Councillors
Jazz by the Bay	Jazz by the Bay Association	Mayor CEO Deputy Mayor All Councillors
Forest Rally	West Australian Car Club (Inc)	Mayor CEO Deputy Mayor All Councillors
Major Events		
Cabin Fever	Creative Corner	Mayor CEO Deputy Mayor All Councillors
X-Adventure Dunsborough	Rapid Ascent Pty Ltd	Mayor CEO Deputy Mayor All Councillors

6.2 AMENDMENT TO COUNCIL POLICY: COMPLIANCE

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Legal and Property Services
REPORTING OFFICER	Manager Legal and Property Services - Martyn Cavanagh
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Compliance Policy (current)   Attachment B Compliance Policy (proposed)  

10:55am: At this time, Mrs Searle left the meeting.

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION

PL2005/310 Moved Councillor K Hick, seconded Councillor K Cox

That the Council agree to amend the Compliance Policy by adopting the amended Compliance Policy at Attachment B.

CARRIED 5/0

EXECUTIVE SUMMARY

Council's Compliance Policy that was adopted in September 2018 (the Policy) refers to Prosecution Guidelines that were made in 2005 and have been replaced with new Prosecution Guidelines. This Report recommends amending the Policy to refer to the current Guidelines.

BACKGROUND

In late August 2018, a report to Council (the Report) recommended that Council replace its Enforcement and Prosecutions Policy with a new Compliance Policy. Council adopted the recommendations of the Report, thereby adopting the Policy with effect from 12 September 2018.

The Policy makes reference to "The Director of Public Prosecutions' 'Statement of Prosecution Policy and Guidelines 2005' " ("the 2005 Guidelines").

At the time the Report was being prepared for and submitted to Council, the Director of Public Prosecutions was finalising replacement guidelines for the 2005 Guidelines. Those replacement guidelines were made under Section 24(1) of the *Director of Public Prosecutions Act 1991*. The replacement guidelines were published in the Gazette of 31 August 2018 and became operative on 1 September 2018.

OFFICER COMMENT

City officers have considered the Statement of Prosecution Policy and Guidelines 2018 ("the 2018 Guidelines"), as they relate to considering the 'prima facie case' and 'public interest' aspects of a prospective prosecution action.

City officers recommend that Council replace, in the Policy, the reference to the 2005 Guidelines with a reference to the 2018 Guidelines.

Underpinning the Policy is recognition of the importance of voluntary compliance by citizens with regulatory laws. City officers can contribute to voluntary compliance by providing information (distinct from 'advice') about the nature of regulatory laws. Regulatory laws set 'minimum' standards of behaviour in a community. Regulatory laws do not confer a positive 'right' to do what is not prohibited.

City officers also recommend minor amendments of form to the Policy, as indicated in the draft amended Compliance Policy (at Attachment B).

Statutory Environment

The enforcement of regulatory prohibitions is a necessary part of providing for 'good government' by maintaining acceptable standards of behaviour in the community.

Council is the governing body of a local government and is responsible under s 2.7 of the *Local Government Act 1995* for the performance of local government functions, including by determining the local government's policies.

Relevant Plans and Policies

Council adopted the Ranger and Emergency Services Approach to Regulatory Functions Policy in 2018. The CEO has made Operational Guidelines that support the City's administration in implementing the Ranger's Policy.

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

No such risks have been identified.

Options

No reasonable alternative to the proposed recommendation has been identified.

CONCLUSION

It is recommended that Council adopt the amended Compliance Policy at Attachment B.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The amended Compliance Policy will be effective as of the making by Council of a resolution to adopt it.



1. PURPOSE

- 1.1. The City applies a range of regulatory powers in providing for the good governance of the people in the District of Busselton. This includes enforcing laws that provide for offences.
- 1.2. The City's Compliance Policy is directed at –
 - a. supporting widespread understanding of minimum standards of conduct, and conduct that may render a person liable to prosecution;
 - b. applying legislation in accordance with the principles of timeliness, fairness, consistency and proportionality;
 - c. promoting a high level of voluntary compliance with the requirements of legislation, in particular by property owners;
 - d. supporting the Separation of Powers doctrine, under which the City's role is to take action to enforce laws and the court's role is to determine questions of fact and culpability;
 - e. taking enforcement action against persons who commit offences;
 - f. deterring persons from committing offences and protecting the community; and
 - g. promoting public confidence in the City's administration and exercise of regulatory powers.

2. SCOPE

- 2.1. This Policy is applicable to all offence (criminal law) provisions of legislation that the City has jurisdiction to enforce.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council Policy entitled "Compliance Policy"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 - Leadership of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:
 - a. 6.1: Governance systems, process and practices that are responsible, ethical and transparent

5. POLICY STATEMENT

- 5.1. The City respects the fundamental value under our legal and political system of the inherent right of each citizen to freedom of action.

6.2 Attachment A Compliance Policy (current)

- 5.2. The City's role is to provide for good governance. This necessitates establishing and enforcing laws (rules) that necessarily impact on the freedom of the individual, where this is considered to be for the greater good of the community.
- 5.3. The City has the responsibility for taking action to ensure that regulatory (offence) laws are complied with. In carrying out this function, the City expressly acknowledges and respects the presumption of innocence in law, under which all citizens are presumed innocent until proven guilty in a competent court.
- 5.4. Where the City has information that indicates a potential contravention by a person of a regulatory law, the first principles to apply are as follows:
 - a. Information about alleged unlawful behaviour may come to the attention of City officers in a number of ways. In the first instance, City officers are to consider whether the information has sufficient substance to warrant further investigation and consideration and undertake any additional preliminary enquiries as may be considered appropriate;
 - b. Where there is sufficient information to form a preliminary view that a person has engaged in unlawful behaviour, City officers are to consider whether reasonable endeavours to communicate with the person, for the purpose of educating and achieving voluntary compliance, will be sufficient and appropriate to resolve the matter. This may include issuing a statutory notice requiring action to be taken by the person.
- 5.5. Where City officers form the view that education and negotiation to achieve voluntary compliance is not, or is unlikely to be, either sufficient or appropriate to properly resolve the matter, then consideration is to be given to whether to issue a letter of warning, issue an infringement notice, undertake prosecution action or refer the matter to another jurisdiction.
- 5.6. The consideration of the alternative courses of action under sub-clause 5.5 is entirely independent of any action taken to carry out remedial work where a statutory notice has been issued but not complied with, including the recovery by the City of costs of carrying out that work. In each case:
 - a. City officers are to consider the relative merits of the alternative courses of action; and
 - b. City officers are to provide information where reasonably possible to promote the objectives of education and future voluntary compliance.
- 5.7. Where the legislation provides for an offence relating to property, City officers are to ensure that the potential liability of any property owner is given consideration. Property includes land, vehicles and animals. Property owners have a primary and continuing responsibility for ensuring that their property is lawfully held, used and maintained.
- 5.8. The City's compliance actions are to be applied, having regard to the circumstances of each case and the resources available to the City, in accordance with the principles of timeliness, fairness, consistency and proportionality. The City's compliance actions are to be directed at promoting public confidence in the City's administration. Accordingly:
 - a. Prosecution action is not a 'last resort'; and
 - b. Prosecution action is to be undertaken whenever the circumstances warrant that action being taken.

6.2 Attachment A Compliance Policy (current)

- 5.9. Prior to commencing a prosecution, the City is to determine that the prosecution is in the 'public interest'. This requires the proper consideration of whether there are reasonable prospects of conviction, whether there are any relevant factors that support or do not support the taking of prosecution action, the relative merits of those factors, and not taking into account any irrelevant factors. Regard is to be given to the factors identified in the Director of Public Prosecutions' **'Statement of Prosecution Policy and Guidelines 2005'**.
- 5.10. Given the basis on which a prosecution is to be commenced, once a decision to prosecute has been made and a prosecution action has commenced, the prosecution action should only be discontinued where there is a sound persuasive basis for doing so.
- 5.11. Where the City prosecutes a person and the court convicts that person, the City is to give consideration to whether there is benefit in publishing notice of that conviction. Public notice of a conviction may serve to promote the general deterrent effect of prosecution action. Public notice of a conviction may also maintain community confidence that laws made for regulatory purposes will be actively and effectively applied.
- 5.12. Where the City has determined that it is in the public interest to take prosecution action in any matter, the CEO is to inform the Council of that decision at the next reasonable opportunity. The CEO is also to inform Council upon prosecution action being commenced in court and if, in any case, the prosecution action is withdrawn. Information in respect of prosecution decisions and actions is to be provided to Council on a confidential basis.
- 5.13. The CEO may make appropriate Staff Management Procedures relating to the processes to be followed, types of considerations to be taken into account and standards to be applied in order to deliver outcomes in accordance with the principles in this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995
6.2. Planning and Development Act 2005
6.3. Building Act 2011
6.4. Public Health Act 2016
6.5. Dog Act 1976 and Cat Act 2011
6.6. Bush Fires Act 1954
6.7. Criminal Procedure Act 2003
6.8. Council Policy 016 – Ranger & Emergency Services Approach to Regulatory Functions
6.9. Director Of Public Prosecutions - Statement of Prosecution Policy and Guidelines 2005

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	12September 2018	Resolution #	C1809/182
Previous Adoption	DATE		Resolution #	



1. PURPOSE

- 1.1. The City applies a range of regulatory powers in providing for the good governance of the people in the District of Busselton. This includes enforcing laws that provide for offences.
- 1.2. The City's Compliance Policy is directed at –
 - a. supporting widespread understanding of minimum standards of conduct, and conduct that may render a person liable to prosecution;
 - b. applying legislation in accordance with the principles of timeliness, fairness, consistency and proportionality;
 - c. promoting a high level of voluntary compliance with the requirements of legislation, in particular by property owners;
 - d. supporting the Separation of Powers doctrine, under which the City's role is to take action to enforce laws and the court's role is to determine questions of fact and culpability;
 - e. taking enforcement action against persons who commit offences;
 - f. deterring persons from committing offences and protecting the community; and
 - g. promoting public confidence in the City's administration and exercise of regulatory powers.

2. SCOPE

- 2.1. This Policy is applicable to all offence (criminal law) provisions of legislation that the City has jurisdiction to enforce.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council Policy entitled "Compliance Policy"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 - Leadership of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:
 - a. 6.1: Governance systems, process and practices that are responsible, ethical and transparent.

5. POLICY STATEMENT

- 5.1. The City respects the fundamental value under our legal and political system of the inherent right of each citizen to freedom of action.

6.2 Attachment B Compliance Policy (proposed)

- 5.2. The City's role is to provide for good governance. This necessitates establishing and enforcing laws (rules) that necessarily impact on the freedom of the individual, where this is considered to be for the greater good of the community.
- 5.3. The City has the responsibility for taking action to ensure that regulatory (offence) laws are complied with. In carrying out this function, the City expressly acknowledges and respects the presumption of innocence in law, under which all citizens are presumed innocent until proven guilty in a competent court.
- 5.4. Where the City has information that indicates a potential contravention by a person of a regulatory law, the first principles to apply are as follows:
 - a. Information about alleged unlawful behaviour may come to the attention of City officers in a number of ways. In the first instance, City officers are to consider whether the information has sufficient substance to warrant further investigation and consideration and undertake any additional preliminary enquiries as may be considered appropriate;
 - b. Where there is sufficient information to form a preliminary view that a person has engaged in unlawful behaviour, City officers are to consider whether reasonable endeavours to communicate with the person, for the purpose of educating and achieving voluntary compliance, will be sufficient and appropriate to resolve the matter. This may include issuing a statutory notice requiring action to be taken by the person.
- 5.5. Where City officers form the view that education and negotiation to achieve voluntary compliance is not, or is unlikely to be, either sufficient or appropriate to properly resolve the matter, then consideration is to be given to whether to issue a letter of warning, issue an infringement notice, undertake prosecution action or refer the matter to another jurisdiction.
- 5.6. The consideration of the alternative courses of action under sub-clause 5.5 is entirely independent of any action taken to carry out remedial work where a statutory notice has been issued but not complied with, including the recovery by the City of costs of carrying out that work. In each case:
 - a. City officers are to consider the relative merits of the alternative courses of action; and
 - b. City officers are to provide information where reasonably possible to promote the objectives of education and future voluntary compliance.
- 5.7. Where the legislation provides for an offence relating to property, City officers are to ensure that the potential liability of any property owner is given consideration. Property includes land, vehicles and animals. Property owners have a primary and continuing responsibility for ensuring that their property is lawfully held, used and maintained.
- 5.8. The City's compliance actions are to be applied, having regard to the circumstances of each case and the resources available to the City, in accordance with the principles of timeliness, fairness, consistency and proportionality. The City's compliance actions are to be directed at promoting public confidence in the City's administration. Accordingly:
 - a. Prosecution action is not a 'last resort'; and
 - b. Prosecution action is to be undertaken whenever the circumstances warrant that action being taken.

6.2 Attachment B Compliance Policy (proposed)

- 5.9. Prior to commencing a prosecution, the City is to determine that the prosecution is in the 'public interest'. This requires the proper consideration of whether there are reasonable prospects of conviction, whether there are any relevant factors that support or do not support the taking of prosecution action, the relative merits of those factors, and not taking into account any irrelevant factors. Regard is to be given to the factors identified in the Director of Public Prosecutions' **'Statement of Prosecution Policy and Guidelines 2005-2018'**.
- 5.10. Given the basis on which a prosecution is to be commenced, once a decision to prosecute has been made and a prosecution action has commenced, the prosecution action should only be discontinued where there is a sound persuasive basis for doing so.
- 5.11. Where the City prosecutes a person and the court convicts that person, the City is to give consideration to whether there is benefit in publishing notice of that conviction. Public notice of a conviction may serve to promote the general deterrent effect of prosecution action. Public notice of a conviction may also maintain community confidence that laws made for regulatory purposes will be actively and effectively applied.
- 5.12. Where the City has determined that it is in the public interest to take prosecution action in any matter, the CEO is to inform the Council of that decision at the next reasonable opportunity. The CEO is also to inform Council upon prosecution action being commenced in court and if, in any case, the prosecution action is withdrawn. Information in respect of prosecution decisions and actions is to be provided to Council on a confidential basis.
- 5.13. The CEO may make appropriate Staff Management Procedures relating to the processes to be followed, types of considerations to be taken into account and standards to be applied in order to deliver outcomes in accordance with the principles in this Policy.







6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995
6.2. Planning and Development Act 2005
6.3. Building Act 2011
6.4. Public Health Act 2016
6.5. Dog Act 1976 and Cat Act 2011
6.6. Bush Fires Act 1954
6.7. Criminal Procedure Act 2003
6.8. ~~Council Policy 016~~ Ranger & Emergency Services Approach to Regulatory Functions, December 2018
6.9. Director Of Public Prosecutions - Statement of Prosecution Policy and Guidelines ~~2005~~2018

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	12September 2018	Resolution #	C1809/182
Previous Adoption	DATE		Resolution #	

6.3 AMENDMENT TO COUNCIL POLICY AND DELEGATION: PURCHASING

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Contract & Tendering Officer - Lisa McDonald
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Absolute Majority
ATTACHMENTS	Attachment A Purchasing Policy - Current Version  Attachment B Purchasing Policy - Amended (clean)  Attachment C Purchasing Policy - Amended (tracked)  Attachment D DA 1-07 - Current Version  Attachment E DA 1-07 - Amended (clean)  Attachment F DA 1-07 - Amended (tracked) 

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION

PL2005/311 Moved Councillor K Hick, seconded Councillor G Henley

That the Council:

1. **Adopts the amended Purchasing Policy as per Attachment B, replacing the current Purchasing Policy (shown as Attachment A); and**
2. **Adopts the amended Delegation DA 1-07 as per Attachment E, replacing the current delegation (shown as Attachment D).**

CARRIED 5/0

BY ABSOLUTE MAJORITY

EXECUTIVE SUMMARY

As a result of legislative amendments made by the State Government to the framework that regulates purchasing of goods and services by a local government, City officers are recommending minor amendments to Council's Purchasing Policy and Delegation Instrument DA 1-07 'Inviting, Rejecting and Accepting Tenders'.

BACKGROUND

As part of its response to the current State of Emergency (COVID-19) declared under the *Emergency Management Act 2005* (EM Act), the State government is effecting a range of legislative amendments.

One aspect of local government operations that has been impacted by these amendments is the 'purchasing' framework that regulates the purchase of goods and services by a local government.

The *Local Government (Administration) Amendment Regulations 2020* (Amendment Regulations) were published in the *Government Gazette* on Thursday 9 April 2020.

The key changes to the *Local Government (Functions and General) Regulations 1996* (FG Regulations), which came into effect on 10 April 2020, are:

1. to include a definition of a state of emergency declaration to reflect the EM Act (new FG Regulation 11(1A));
2. to increase the threshold value of contracts required to be advertised for public tender from \$150,000 to \$250,000 (amended FG Regulation 11(1));
3. in addition to exceptions previously provided for in the FG Regulations, tenders now do not have to be publicly invited if:
 - a. the supply of the goods or services is associated with a state of emergency (new FG Regulation 11(2)(aa)); or
 - b. the local government seeks to renew or extend a contract that is to expire within 3 months and the renewal or extension will be for no more than 12 months and the renewal or extension is entered into during the state of emergency (new FG Regulation 11(2)(ja)).

The increase of the tender threshold amount is not limited to a time of a state of emergency, and will continue to apply after the current State of Emergency is over.

There is also an amendment relating to indigenous-related purchasing contracts, and to the extension or renewal of current contracts in connection with the state of emergency.

Regulation 11A of the FG Regulations requires a local government to adopt a “purchasing policy” in relation to contracts where the consideration is expected to be less than \$150,000. It is understood that an amendment to this regulation is in the process of being implemented, to increase the amount to \$250,000. This would then integrate with the increase to the tender threshold amount.

Purchasing Policy

Council’s current Purchasing Policy (Attachment A) makes a number of references to a threshold of \$150,000. The Policy also refers to exceptions in Regulation 11(2) of the FG Regulations.

An amended Purchasing Policy (Attachment B) has increased these thresholds to \$250,000 and included reference to the new exceptions, in particular the ‘emergency’ exceptions.

Delegation DA 1-07

Delegation from Council to CEO of the power to determine whether exemption in Regulation 11(2)(aa) applies

The new exception to when tenders have to be publicly invited in Regulation 11(2)(aa) states that tenders do not have to be publicly invited if the supply of goods or services is associated with a state of emergency. A state of emergency has the meaning as given in the EM Act. Therefore a ‘test’ has to be applied. The local government must “consider that the goods or services are required for the purpose of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates”.

This report recommends that Council delegates to the Chief Executive Officer (CEO) the power to determine whether this exception applies.

Delegation of power to enter into contracts where Regulation 11(2) applies (subject to usual \$500,000 limit)

The current delegation instrument was adopted in August 2019 and replaced a delegation instrument having reference LG3J. The form of that previous instrument expressly provided for the delegation of the power to enter into a contract where an exception to the tender regulations applied.

In the course of Council adopting the delegations in the instrument DA 1-07, and as part of the simplification of the delegations register generally, the words relating to entering into contracts have been omitted.

In addition, the Amendment Regulations have introduced a new exception to when tenders must be invited.

This report recommends that Council adopt the amended delegation instrument DA 1-07 (Attachment E) to reflect the intention of Council that, in addition to delegating to the CEO the powers and duties to carry out tenders, it also delegates the powers and duties to apply exceptions to the tender requirements and to, in this instance, enter into contracts with a value not exceeding the pre-determined threshold specified in DA 1-07.

While the delegation instrument as it stands delegates Regulation 11, inclusive of sub part (2), for reasons explained in the officer comment section of this report, it is considered beneficial to, in this instance explicitly expand on this to ensure Council's intent is clear.

OFFICER COMMENT**Purchasing Policy**

The amended Purchasing Policy (Attachment B) provides for replacing references to "\$150,000" with references to "\$250,000" and also including reference to the new exceptions, including the 'emergency' exceptions. These amendments are required to ensure the Purchasing Policy aligns with the legislative changes discussed in the Background section of this report.

WALGA recently circulated various changes to their template purchasing policy to reflect the changes to the FG Regulations. City Officers have reviewed the WALGA template purchasing policy changes, and at this time do not recommend any additional changes to Council's Purchasing Policy. Further consideration can be given to the template in due course. However it is noted that in 2018, in response to the City of Busselton Governance Services Review by Mr John Woodhouse, the City revised its Purchasing Policy to move a considerable level of detail into CEO 'Operational Practices'. City officers are not anticipating the making of recommendations that would depart from this approach.

It is also noted that there is an emphasis in the WALGA template on 'best value for money'. City officers reviewed the Purchasing Policy at length in 2018 and recommended that Council base its policy on a 'most advantageous' test. This aligns with the legislative approach in respect of tenders [see FG Regulations 18, 20 and 24AH]. The 'best value for money' concept is understood to have its origins under the *State Supply Commission Act 1991*, and does not apply to local governments. City officers are not recommending any change to the Purchasing Policy in this regard.

Amendment to Delegation DA 1-07***Delegation from Council to CEO of the power to determine whether exemption in Regulation 11(2)(aa) applies***

The new exception to when tenders have to be publicly invited, inserted by Regulation 11(2)(aa), is enabled where a ‘test’ (set out in new Regulation 11(3)) is satisfied. This test is that the local government must “consider that the goods or services are required for the purpose of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates”.

While there may be an argument that “local government” in this regulation includes the CEO [see s 4 definition of “local government” in the *Interpretation Act 1984*, and see **Columbia Holdings Pty Ltd – v – City of Armadale [2012] WASC 422**], the safer course is to delegate this power to the CEO.

The current Delegation 1-07 refers generally to the whole of Regulation 11, and so this would include Regulation 11(2). Where a delegation instrument refers to a power under a regulation or section of an Act, and that regulation or section is amended, the delegation instrument applies only to the power as it was at the time the delegation instrument was made and does not automatically extend to the regulation or section as amended. Accordingly the delegation instrument DA 1-07 should be amended by Council to include the new exceptions under Regulation 11(2) which came in effect on 10 April 2020.

Delegation of power to enter into contracts where Regulation 11(2) applies (subject to usual \$500,000 limit)

Although Regulation 11(2) of the LG Regulations specify a number of exceptions to the requirement to invite tenders for procurement of goods and services, it does not expressly confer the power to the CEO to enter into contracts under circumstances where an exception applies. As the CEO currently under DA 1-07 has the power to accept tenders where the contract value does not exceed \$500,000, it is recommended that the power to enter into contracts under circumstances where an exception applies, is also delegated to the CEO, subject to abovementioned limit of \$500,000.

As outlined in the Background section of this report, the current delegation instrument DA 1-07 was adopted in late 2019 as part of simplification of the City’s delegation register. The opportunity exists to amend the delegation instrument DA 1-07 to better reflect the intention of Council, that is, in addition to the power to enter into contracts pursuant to a tender process, to more expressly delegate to the CEO the power to enter into contracts under circumstances where a tender exception applies, subject to a \$500,000 limitation.

Through consultation, the governance and legal business units have settled on the proposed amendments to DA 1-07 (Attachment E).

Summary

In summary, it is recommended that Delegation instrument DA 1-07 be amended by Council to delegate power to the CEO to:

- (a) Determine whether an exception under Regulation 11(2) as amended (which will include the new Regulation 11(2)(aa) of the FG Regulations) applies; and
- (b) Where an exception under Regulation 11(2) applies, negotiate and enter into contracts with suppliers where the contract value does not exceed \$500,000.

Statutory Environment

In accordance with Section 2.7(2)(b) of the Act, it is the role of the Council to determine the local government’s policies. The Council does this on the recommendation of a Committee it has established in accordance with section 5.8 of that Act.

Regulation 11A(1) of the LG Regulations requires a local government to implement a purchasing policy in relation to contracts for the supply of goods or services where the consideration under the contract is, or is expected to be, \$150,000 or less. Such a policy must, among other things, make provision in respect of:

- the form of quotations acceptable;
- the minimum number of oral and written quotations that must be obtained; and
- the recording and retention of purchasing records.

Section 3.57(1) of the Act requires a local government to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services. Section 3.57(2) provides that regulations may make provision about tenders.

Regulations 11 – 21A deal with matters relating to tenders, including when and how tenders have to be invited and requirements for assessing and accepting and/or rejecting tenders.

Section 3.18 of the Act provides for the City to do all things necessary or convenient for carrying out its functions. Entering into contracts for the purchase of goods and services is necessary for the City to perform its functions.

Under s 5.42 of the Act a local government may, by instrument in writing, delegate (by absolute majority) to the CEO the exercise of any of its powers or the discharge of any of its duties under the Act, subject to specified limitations.

Sections 58 (performance of functions by a delegate) and 59 (the effect of a delegation) of the *Interpretation Act 1984* apply, subject to subsection 3(1) of that Act, to delegations made under the LG Act.

Under s 5.43 of the Act, a local government cannot delegate the power to accept a tender which exceeds an amount determined by the local government for the purposes of this paragraph. Under DA 1-07 this threshold is currently \$500,000.

In relation to procurement of goods or services where the exceptions under Regulation 11(2) of the LG Regulations apply (that is where a local government is exempted from inviting tenders) the Act does not have a similar requirement - there is no requirement for a local government to determine, for purposes of a delegation to the CEO, an amount above which the CEO cannot enter into a contract under circumstances where an exception applies. It appears that this might have been an oversight when the relevant legislative provisions were drafted. WALGA recommend that a threshold be applied to procurement where a tender exception applies and the City has also contacted the Department of Local Government enquiring whether a relevant regulation may be appropriately made under s 5.43(i) of the Act. In the meantime, it would be prudent for Council to limit, for this type of procurement, the CEO's delegated power to enter into contracts to an amount not exceeding \$500,000 (effectively implementing an internal process similar to the process for accepting tenders).

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 Governance Service Review. The framework sets out the intent of Council policies, as opposed to operational documents such as Operational Practices.

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.

The officer recommendation reduces legal risk by properly identifying that the power to contract is being delegated, in addition to the performance of regulatory duties prior to a contract being entered into.

Options

As an alternative to the proposed recommendation the Council could:

1. Request further or different amendments be made to the Purchasing Policy; or
2. Request further or different amendments be made to Delegation DA 1-07.

CONCLUSION

Due to the legislative amendments made by the State Government to the purchasing of goods and services by a local government, minor amendments to Council's Purchasing Policy and Delegation Instrument DA 1-07 'Inviting, Rejecting and Accepting Tenders' are recommended.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The amended Purchasing Policy (Attachment B) and the amended delegation instrument DA 1-07 (Attachment D) will have effect into force immediately upon Council's endorsement of the officer recommendations.



1. PURPOSE

- 1.1. The City is committed to using efficient and effective purchasing procedures that are directed towards delivering the most advantageous purchases of goods and services by the City.
- 1.2. The City's purchasing policy is directed at satisfying the following objectives:
 - a. Achieving 'best value for money' with respect to all purchasing;
 - b. Ensuring that the City complies with all regulatory obligations;
 - c. Strengthening integrity and confidence in the purchasing system;
 - d. Ensuring that sustainable benefits, such as environmental, social and local economic factors are considered in the overall 'best value for money' assessment;
 - e. Mitigating probity risk, by establishing consistent and demonstrated administrative processes that promote transparency and fairness; and
 - f. Ensuring that purchasing activities are conducted in a consistent and efficient manner across the City.

2. SCOPE

- 2.1. This Policy is applicable to all purchases made by the City.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995 (WA).</i>
Formal RFQ	A request for quotation that contains pre-determined evaluation criteria to assess all value for money considerations, evaluated by a panel consisting of at least 2 City officers.
GST	The goods and services tax under the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Panel	A Panel of Pre-Qualified Suppliers established under the Regulations.
Policy	This City of Busselton Council policy entitled "Purchasing Policy".
PQS	A Request for Applications to Join a Panel of pre-qualified suppliers.
Regulations	<i>Local Government (Functions and General) Regulations 1996 (WA).</i>
WALGA	Western Australian Local Government Association.

4. STRATEGIC CONTEXT

- 4.1. This Policy is made in connection with the following Key Goal Areas of the City's Strategic Community Plan 2017:
- a. Key Goal Area 6 – Leadership – Governance systems, process and practices are responsible, ethical and transparent;
 - b. Key Goal Area 4 – Economy – An innovative and diversified economy that provides a variety of business and employment opportunities, and a community where local business is supported and in turn drives our economy.

5. POLICY STATEMENT

- 5.1. Purchasing is to be carried out to deliver the most advantageous outcome for the City.
- 5.2. Full accountability shall be taken by Councillors and employees for all purchasing decisions.
- 5.3. Purchasing is to be carried out in accordance with approved City budget provisions.
- 5.4. Purchasing is to be carried out on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently.
- 5.5. All processes, evaluations and decisions shall be transparent, free from bias, merit based and fully documented in accordance with applicable policies, practices and procedures, and audit requirements.
- 5.6. Any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed.

Most Advantageous Outcome

- 5.7. The most advantageous outcome of a purchasing process is to be determined by weighing up the considerations of price, risk and relevant qualitative factors.
- 5.8. Accordingly purchasing decisions should take into account factors other than price.
- 5.9. Qualitative and risk factors that may be considered include:
 - a. All relevant whole-of-life costs and benefits. This should include transaction costs associated with acquisition, delivery, distribution, as well as other costs such as holding costs, consumables, deployment, maintenance and disposal;
 - b. The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;
 - c. Financial viability and capacity to supply without risk of default. This relates to the competency of the prospective suppliers in terms of their organisational, managerial and technical capabilities and regulatory compliance history;
 - d. A sufficient element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable;
 - e. The safety requirements associated with both the product design and specification offered by suppliers and the evaluation of risk when considering purchasing goods and services from suppliers;
 - f. Purchasing of goods and services from suppliers that demonstrate sustainable benefits and good corporate social responsibility.

Purchasing Requirements

- 5.10. The requirements that must be complied with by the City, including purchasing thresholds and processes, are prescribed within the Regulations, this Policy and associated purchasing practises.
- 5.11. In determining the purchase value, the following considerations are to be taken into account:
- All values are exclusive of GST;
 - The actual or expected value of a contract over the full contract period, including all options.
- 5.12. The following quotation/tender purchase value thresholds apply:

Amount of Purchase	Requirements
Up to \$5,000	Purchase directly from a suitable supplier after obtaining at least one (1) oral or written quotation from that supplier.
\$5,001 - \$14,999	Obtain at least two (2) written quotations from suitable suppliers following a brief outlining of the specified requirement.
\$15,000 - \$49,999	Obtain at least three (3) written quotations from suppliers following a brief outlining of the specified requirement.
\$50,000 - \$149,999	A Formal RFQ process must be followed by officers at this level of purchase. Officers must obtain at least three (3) written quotations from suppliers.
Over \$150,000 Where circumstances warrant, City officers may conduct a tender process for projects which are below the \$150,000 threshold.	Conduct a public tender process in accordance with the Act and the Regulations, subject to the exceptions in Regulation 11(2)

- 5.13. The responsible City officer is expected to demonstrate due diligence in seeking quotations. The number of quotations obtained, the contract conditions and level of evaluation required should be determined by having regard to the type and nature of the purchase and the associated risk, and not purely the purchase value. For example the officer may determine that the process outlined for a higher purchase value is more appropriate than the process for the actual purchase value.

Exemptions to purchasing requirements – Purchase value less than \$150,000

- 5.14. From time to time there will be circumstances where it is not appropriate or not reasonably practicable to adhere to the requirements to obtain quotations as set out in this Policy. An example is where the City is satisfied and can evidence that there is only one source of supply for goods, services or works, having used genuine endeavours to determine that there is not a reasonable alternative source of supply.
- 5.15. In such circumstances, the Chief Executive Officer (or such other employee of the City to whom such power has been delegated) may waive the requirements to obtain quotations as set out in this Policy. The responsible City officer must document the waiver process in the manner required by the CEO.

Exceptions to purchase requirements – Purchase value \$150,000 or greater

5.16. Where the purchase value exceeds \$150,000, the Regulations provide for a range of exceptions to the requirement to publicly invite tenders. These are set out in regulation 11(2) of the Regulations.

5.17. The exceptions include:

- a. The supply of goods or services authorised as an emergency under s 6.6(1)(c) of the Act;
- b. The supply of goods or services obtained through the WALGA Preferred Supplier Program (see further information below);
- c. Where the City has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier;
- d. The goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA (subject to a maximum of \$250,000 and the City being satisfied as to 'value for money');
- e. Where the goods or services are to be supplied by an Australian Disability Enterprise; or
- f. Where the goods or services are to be supplied by a pre-qualified supplier under a Panel of Pre-Qualified Suppliers established by the City under the Regulations (see further information below).

Regulatory Compliance – Tenders

This part includes detail on the requirements of the Act and the Regulations for the public tender process. As these may change from time to time, it is the responsibility of the employee to inform themselves of the requirements of the relevant statutory requirements when conducting a tender process and not rely on this Policy alone.

Advertising Tenders

5.18. Requests for tenders must be advertised as a minimum in a state-wide publication and on the City's TenderLink portal and in addition, may be advertised locally. The tender must remain open for a minimum of at least 14 days after the date the tender is advertised.

Addendum to Tender

5.19. Clarifications, variations or adjustments to the tender documentation and the conditions of tender may be made by way of addendum after the tender has been publicly advertised but prior to the tender closing date.

Opening of Tenders

5.20. Tenders are to be opened in accordance with the advertised time and place and in the presence of at least two persons which can be either:

- a. Two employees of the City;
- b. One employee of the City and another person authorised by the Chief Executive Officer for that purpose;
- c. The details of all tenders received and opened shall be recorded in the Tender Register. There is no obligation to disclose or record tendered prices at the tender opening. Members of the public are entitled to be present.

Tender Evaluation

5.21. Tenders that have not been rejected shall be assessed by means of a written evaluation against the pre-determined criteria to determine which tender represents best value for money. The evaluation panel must contain a minimum of three members.

Tender Register

- 5.22. The City must maintain a tender register which is to include:
- a. a brief description of the goods and services required;
 - b. particulars of:
 - i. Any notice by which expressions of interests from prospective tenderers was sought;
 - ii. Any person who submitted an expression of interest;
 - iii. Any list of acceptable tenderers that was prepared under Regulation 23(4).
 - c. A copy of the notice of the invitation to tender;
 - d. The name of each tenderer whose tender has been opened;
 - e. The name of any successful tenderer.

Minor Variation prior to awarding a contract

- 5.23. Prior to awarding a contract to a preferred tenderer, the City may negotiate and agree on "minor variations" with the preferred tenderer.
- 5.24. Any amendments must be incorporated into the contract with the preferred tenderer for the supply of the varied requirement.
- 5.25. Any major variation will require a new and separate tender.
- 5.26. A minor variation has been determined by the City to mean a variation which does not materially alter the specification or structure provided for by the initial tender.

WALGA Preferred Suppliers Program

- 5.27. WALGA has a number of pre-qualified suppliers called WALGA preferred suppliers. The City can make purchases from WALGA preferred suppliers:
- a. For purchases up to \$150,000;
 - b. For purchases over \$150,000 in reliance on the exemption to the requirement for a public tender.
- Provided that:
- c. For purchases up to \$150,000 the purchasing requirements in section 5.10 - 5.13 of this Policy apply and for purchases over \$150,000 three quotes must be sought, subject in all cases to sections 5.14 and 5.15 of this Policy;

Panels of Pre-Qualified Suppliers

- 5.28. A Panel may only be established where it is determined that there is or will be a continuing need for particular goods or services to be supplied by pre-qualified suppliers.
- 5.29. When establishing a Panel, officers must consider the following:
- a. Is there a continuing need for the goods or services?
 - b. Will it be more efficient for the City to work collaboratively with a small group of suppliers to deliver a good or service on a regular basis?
 - c. Is it necessary for the City to have more than one supplier for a good or service (if one is sufficient then a Request for Tender may be appropriate)?
 - d. Is there another panel available for the City to access?

6.3 Attachment A Purchasing Policy - Current Version

- 5.30. Panels may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel.
- 5.31. Requests for applications to join a panel of pre-qualified suppliers must be advertised through a State-wide public notice.
- 5.32. Prior to issuing a PQS, Officers must determine the criteria by which applications will be assessed and accepted which must be determined and communicated in the PQS.
- 5.33. Officers may assess applications using the discount principles of the City's Regional Price Preference Policy.
- 5.34. A Panel established by the City may be operated in a manner that applies the principles of the City's Regional Price Preference Policy when assessing quotations.
- 5.35. When establishing a Panel a PQS must set out how the City intends to purchase goods and services through the use of the Panel.
- 5.36. The City is to procure goods and services from a member of a Panel by either seeking written quotations from each panel member with respect to all purchases or alternatively all purchases above a specified threshold (if any).
- 5.37. Where the City has determined that written quotations will be sought from each Panel member above a specified threshold, goods and services may be procured below that threshold on the basis of the relative rankings of the Panel members.
- 5.38. Where Panel members are ranked, the City is to determine the rankings from time to time on the basis of written quotations obtained from the members of the panel.
- 5.39. The City will obtain written quotations through electronic means, principally through the use of its online procurement portal.
- 5.40. Written quotations from panel members are to be sought and assessed on the basis of criteria determined in accordance with the City's practices and procedures.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995.
- 6.2. Local Government (Functions and General) Regulations 1996.
- 6.3. Regional Price Preference Policy
- 6.4. Delegation LG3J – Tenders.
- 6.5. Delegation LG3K – Preliminary Selection of Tenderers.
- 6.6. Delegation LG3M - Establishment of panels of pre-qualified suppliers.

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	25/07/2018	Resolution #	C1807/144
Previously Adopted	DATE		Resolution #	



1. PURPOSE

- 1.1. The City is committed to using efficient and effective purchasing procedures that are directed towards delivering the most advantageous purchases of goods and services by the City.
- 1.2. The City's purchasing policy is directed at satisfying the following objectives:
 - a. Achieving 'best value for money' with respect to all purchasing;
 - b. Ensuring that the City complies with all regulatory obligations;
 - c. Strengthening integrity and confidence in the purchasing system;
 - d. Ensuring that sustainable benefits, such as environmental, social and local economic factors are considered in the overall 'best value for money' assessment;
 - e. Mitigating probity risk, by establishing consistent and demonstrated administrative processes that promote transparency and fairness; and
 - f. Ensuring that purchasing activities are conducted in a consistent and efficient manner across the City.

2. SCOPE

- 2.1. This Policy is applicable to all purchases made by the City.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995 (WA).</i>
Formal RFQ	A request for quotation that contains pre-determined evaluation criteria to assess all value for money considerations, evaluated by a panel consisting of at least 2 City officers.
GST	The goods and services tax under the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Panel	A Panel of Pre-Qualified Suppliers established under the Regulations.
Policy	This City of Busselton Council policy entitled "Purchasing Policy".
PQS	A Request for Applications to Join a Panel of pre-qualified suppliers.
Regulations	<i>Local Government (Functions and General) Regulations 1996 (WA).</i>
WALGA	Western Australian Local Government Association.

4. STRATEGIC CONTEXT

- 4.1. This Policy is made in connection with the following Key Goal Areas of the City's Strategic Community Plan 2017:
 - a. Key Goal Area 6 – Leadership – Governance systems, process and practices are responsible, ethical and transparent;

- b. Key Goal Area 4 – Economy – An innovative and diversified economy that provides a variety of business and employment opportunities, and a community where local business is supported and in turn drives our economy.

5. POLICY STATEMENT

- 5.1. Purchasing is to be carried out to deliver the most advantageous outcome for the City.
- 5.2. Full accountability shall be taken by Councillors and employees for all purchasing decisions.
- 5.3. Purchasing is to be carried out in accordance with approved City budget provisions.
- 5.4. Purchasing is to be carried out on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently.
- 5.5. All processes, evaluations and decisions shall be transparent, free from bias, merit based and fully documented in accordance with applicable policies, practices and procedures, and audit requirements.
- 5.6. Any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed.

Most Advantageous Outcome

- 5.7. The most advantageous outcome of a purchasing process is to be determined by weighing up the considerations of price, risk and relevant qualitative factors.
- 5.8. Accordingly purchasing decisions should take into account factors other than price.
- 5.9. Qualitative and risk factors that may be considered include:
 - a. All relevant whole-of-life costs and benefits. This should include transaction costs associated with acquisition, delivery, distribution, as well as other costs such as holding costs, consumables, deployment, maintenance and disposal;
 - b. The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;
 - c. Financial viability and capacity to supply without risk of default. This relates to the competency of the prospective suppliers in terms of their organisational, managerial and technical capabilities and regulatory compliance history;
 - d. A sufficient element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable;
 - e. The safety requirements associated with both the product design and specification offered by suppliers and the evaluation of risk when considering purchasing goods and services from suppliers;
 - f. Purchasing of goods and services from suppliers that demonstrate sustainable benefits and good corporate social responsibility.

Purchasing Requirements

- 5.10. The requirements that must be complied with by the City, including purchasing thresholds and processes, are prescribed within the Regulations, this Policy and associated purchasing practises.
- 5.11. In determining the purchase value, the following considerations are to be taken into account:
 - a. All values are exclusive of GST;
 - b. The actual or expected value of a contract over the full contract period, including all options.

5.12. The following quotation/tender purchase value thresholds apply:

Amount of Purchase	Requirements
Up to \$5,000	Purchase directly from a suitable supplier after obtaining at least one (1) oral or written quotation from that supplier.
\$5,001 - \$14,999	Obtain at least two (2) written quotations from suitable suppliers following a brief outlining of the specified requirement.
\$15,000 - \$49,999	Obtain at least three (3) written quotations from suppliers following a brief outlining of the specified requirement.
\$50,000 - \$249,999	A Formal RFQ process must be followed by officers at this level of purchase. Officers must obtain at least three (3) written quotations from suppliers.
\$250,000 and over Where circumstances warrant, City officers may conduct a tender process for projects which are below the \$150,000 threshold.	Conduct a public tender process in accordance with the Act and the Regulations, subject to the exceptions in Regulation 11(2)

5.13. The responsible City officer is expected to demonstrate due diligence in seeking quotations. The number of quotations obtained, the contract conditions and level of evaluation required should be determined by having regard to the type and nature of the purchase and the associated risk, and not purely the purchase value. For example the officer may determine that the process outlined for a higher purchase value is more appropriate than the process for the actual purchase value.

Exemptions to purchasing requirements – Purchase value less than \$250,000

5.14. From time to time there will be circumstances where it is not appropriate or not reasonably practicable to adhere to the requirements to obtain quotations as set out in this Policy. An example is where the City is satisfied and can evidence that there is only one source of supply for goods, services or works, having used genuine endeavours to determine that there is not a reasonable alternative source of supply.

5.15. In such circumstances, the Chief Executive Officer (or such other employee of the City to whom such power has been delegated) may waive the requirements to obtain quotations as set out in this Policy. The responsible City officer must document the waiver process in the manner required by the CEO.

Exceptions to purchase requirements – Purchase value \$250,000 or greater

5.16. Where the purchase value exceeds \$250,000, the Regulations provide for a range of exceptions to the requirement to publicly invite tenders. These are set out in regulation 11(2) of the Regulations.

5.17. The exceptions include:

- a. The supply of goods or services authorised as an emergency under s 6.6(1)(c) of the Act;
- b. The supply of goods or services is associated with a state of emergency;
- c. The supply of goods or services obtained through the WALGA Preferred Supplier Program (see further information below);
- d. Where the City has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier;
- e. The goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA or by Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (subject to a maximum of \$250,000 and the City being satisfied as to 'value for money');
- f. Where the goods or services are to be supplied by an Australian Disability Enterprise; or
- g. Where the goods or services are to be supplied by a pre-qualified supplier under a Panel of Pre-Qualified Suppliers established by the City under the Regulations (see further information below)
- h. Where the contract is a renewal or extension of the term of an original contract in certain circumstances related to a state of emergency.

Regulatory Compliance – Tenders

This part includes detail on the requirements of the Act and the Regulations for the public tender process. As these may change from time to time, it is the responsibility of the employee to inform themselves of the requirements of the relevant statutory requirements when conducting a tender process and not rely on this Policy alone.

Advertising Tenders

- 5.18. Requests for tenders must be advertised as a minimum in a state-wide publication and on the City's TenderLink portal and in addition, may be advertised locally. The tender must remain open for a minimum of at least 14 days after the date the tender is advertised.

Addendum to Tender

- 5.19. Clarifications, variations or adjustments to the tender documentation and the conditions of tender may be made by way of addendum after the tender has been publicly advertised but prior to the tender closing date.

Opening of Tenders

- 5.20. Tenders are to be opened in accordance with the advertised time and place and in the presence of at least two persons which can be either:
- a. Two employees of the City;
 - b. One employee of the City and another person authorised by the Chief Executive Officer for that purpose;
 - c. The details of all tenders received and opened shall be recorded in the Tender Register. There is no obligation to disclose or record tendered prices at the tender opening. Members of the public are entitled to be present.

Tender Evaluation

- 5.21. Tenders that have not been rejected shall be assessed by means of a written evaluation against the pre-determined criteria to determine which tender represents best value for money. The evaluation panel must contain a minimum of three members.

Tender Register

- 5.22. The City must maintain a tender register which is to include:
- a. a brief description of the goods and services required;
 - b. particulars of:
 - i. Any notice by which expressions of interests from prospective tenderers was sought;

6.3 Attachment B Purchasing Policy - Amended (clean)

- ii. Any person who submitted an expression of interest;
- iii. Any list of acceptable tenderers that was prepared under Regulation 23(4).
- c. A copy of the notice of the invitation to tender;
- d. The name of each tenderer whose tender has been opened;
- e. The name of any successful tenderer.

Minor Variation prior to awarding a contract

- 5.23. Prior to awarding a contract to a preferred tenderer, the City may negotiate and agree on "minor variations" with the preferred tenderer.
- 5.24. Any amendments must be incorporated into the contract with the preferred tenderer for the supply of the varied requirement.
- 5.25. Any major variation will require a new and separate tender.
- 5.26. A minor variation has been determined by the City to mean a variation which does not materially alter the specification or structure provided for by the initial tender.

WALGA Preferred Suppliers Program

- 5.27. WALGA has a number of pre-qualified suppliers called WALGA preferred suppliers. The City can make purchases from WALGA preferred suppliers:
- a. For purchases up to \$250,000;
 - b. For purchases over \$250,000 in reliance on the exemption to the requirement for a public tender.

Provided that:

- c. For purchases up to \$250,000 the purchasing requirements in section 5.10 - 5.13 of this Policy apply and for purchases over \$250,000 three quotes must be sought, subject in all cases to sections 5.14 and 5.15 of this Policy;

Panels of Pre-Qualified Suppliers

- 5.28. A Panel may only be established where it is determined that there is or will be a continuing need for particular goods or services to be supplied by pre-qualified suppliers.
- 5.29. When establishing a Panel, officers must consider the following:
- a. Is there a continuing need for the goods or services?
 - b. Will it be more efficient for the City to work collaboratively with a small group of suppliers to deliver a good or service on a regular basis?
 - c. Is it necessary for the City to have more than one supplier for a good or service (if one is sufficient then a Request for Tender may be appropriate)?
 - d. Is there another panel available for the City to access?
- 5.30. Panels may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel.
- 5.31. Requests for applications to join a panel of pre-qualified suppliers must be advertised through a State-wide public notice.
- 5.32. Prior to issuing a PQS, Officers must determine the criteria by which applications will be assessed and accepted which must be determined and communicated in the PQS.

- 5.33. Officers may assess applications using the discount principles of the City's Regional Price Preference Policy.
- 5.34. A Panel established by the City may be operated in a manner that applies the principles of the City's Regional Price Preference Policy when assessing quotations.
- 5.35. When establishing a Panel a PQS must set out how the City intends to purchase goods and services through the use of the Panel.
- 5.36. The City is to procure goods and services from a member of a Panel by either seeking written quotations from each panel member with respect to all purchases or alternatively all purchases above a specified threshold (if any).
- 5.37. Where the City has determined that written quotations will be sought from each Panel member above a specified threshold, goods and services may be procured below that threshold on the basis of the relative rankings of the Panel members.
- 5.38. Where Panel members are ranked, the City is to determine the rankings from time to time on the basis of written quotations obtained from the members of the panel.
- 5.39. The City will obtain written quotations through electronic means, principally through the use of its online procurement portal.
- 5.40. Written quotations from panel members are to be sought and assessed on the basis of criteria determined in accordance with the City's practices and procedures.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995.*
- 6.2. *Local Government (Functions and General) Regulations 1996.*
- 6.3. Council Policy Regional Price Preference
- 6.4. Delegation DA 1 – 07 Inviting, Rejecting and Accepting Tenders.
- 6.5. Delegation DA 1 – 08 Preliminary Selection of Tenderers.
- 6.6. Delegation DA 1 – 10 Establishment of panels of pre-qualified suppliers.

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previously Adopted	DATE	25/07/2018	Resolution #	C1807/144



1. PURPOSE

- 1.1. The City is committed to using efficient and effective purchasing procedures that are directed towards delivering the most advantageous purchases of goods and services by the City.
- 1.2. The City's purchasing policy is directed at satisfying the following objectives:
 - a. Achieving 'best value for money' with respect to all purchasing;
 - b. Ensuring that the City complies with all regulatory obligations;
 - c. Strengthening integrity and confidence in the purchasing system;
 - d. Ensuring that sustainable benefits, such as environmental, social and local economic factors are considered in the overall 'best value for money' assessment;
 - e. Mitigating probity risk, by establishing consistent and demonstrated administrative processes that promote transparency and fairness; and
 - f. Ensuring that purchasing activities are conducted in a consistent and efficient manner across the City.

2. SCOPE

- 2.1. This Policy is applicable to all purchases made by the City.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995 (WA)</i> .
Formal RFQ	A request for quotation that contains pre-determined evaluation criteria to assess all value for money considerations, evaluated by a panel consisting of at least 2 City officers.
GST	The goods and services tax under the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Panel	A Panel of Pre-Qualified Suppliers established under the Regulations.
Policy	This City of Busselton Council policy entitled "Purchasing Policy".
PQS	A Request for Applications to Join a Panel of pre-qualified suppliers.
Regulations	<i>Local Government (Functions and General) Regulations 1996 (WA)</i> .
WALGA	Western Australian Local Government Association.

4. STRATEGIC CONTEXT

- 4.1. This Policy is made in connection with the following Key Goal Areas of the City's Strategic Community Plan 2017:
- a. Key Goal Area 6 – Leadership – Governance systems, process and practices are responsible, ethical and transparent;
 - b. Key Goal Area 4 – Economy – An innovative and diversified economy that provides a variety of business and employment opportunities, and a community where local business is supported and in turn drives our economy.

5. POLICY STATEMENT

- 5.1. Purchasing is to be carried out to deliver the most advantageous outcome for the City.
- 5.2. Full accountability shall be taken by Councillors and employees for all purchasing decisions.
- 5.3. Purchasing is to be carried out in accordance with approved City budget provisions.
- 5.4. Purchasing is to be carried out on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently.
- 5.5. All processes, evaluations and decisions shall be transparent, free from bias, merit based and fully documented in accordance with applicable policies, practices and procedures, and audit requirements.
- 5.6. Any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed.

Most Advantageous Outcome

- 5.7. The most advantageous outcome of a purchasing process is to be determined by weighing up the considerations of price, risk and relevant qualitative factors.
- 5.8. Accordingly purchasing decisions should take into account factors other than price.
- 5.9. Qualitative and risk factors that may be considered include:
 - a. All relevant whole-of-life costs and benefits. This should include transaction costs associated with acquisition, delivery, distribution, as well as other costs such as holding costs, consumables, deployment, maintenance and disposal;
 - b. The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality;
 - c. Financial viability and capacity to supply without risk of default. This relates to the competency of the prospective suppliers in terms of their organisational, managerial and technical capabilities and regulatory compliance history;
 - d. A sufficient element of competition in the allocation of orders or the awarding of contracts. This is achieved by obtaining a sufficient number of competitive quotations wherever practicable;
 - e. The safety requirements associated with both the product design and specification offered by suppliers and the evaluation of risk when considering purchasing goods and services from suppliers;
 - f. Purchasing of goods and services from suppliers that demonstrate sustainable benefits and good corporate social responsibility.

Purchasing Requirements

5.10. The requirements that must be complied with by the City, including purchasing thresholds and processes, are prescribed within the Regulations, this Policy and associated purchasing practises.

5.11. In determining the purchase value, the following considerations are to be taken into account:

- a. All values are exclusive of GST;
- b. The actual or expected value of a contract over the full contract period, including all options.

5.12. The following quotation/tender purchase value thresholds apply:

Amount of Purchase	Requirements
Up to \$5,000	Purchase directly from a suitable supplier after obtaining at least one (1) oral or written quotation from that supplier.
\$5,001 - \$14,999	Obtain at least two (2) written quotations from suitable suppliers following a brief outlining of the specified requirement.
\$15,000 - \$49,999	Obtain at least three (3) written quotations from suppliers following a brief outlining of the specified requirement.
\$50,000 - \$1249,999	A Formal RFQ process must be followed by officers at this level of purchase. Officers must obtain at least three (3) written quotations from suppliers.
Over \$1250,000 and over Where circumstances warrant, City officers may conduct a tender process for projects which are below the \$150,000 threshold.	Conduct a public tender process in accordance with the Act and the Regulations, subject to the exceptions in Regulation 11(2)

5.13. The responsible City officer is expected to demonstrate due diligence in seeking quotations. The number of quotations obtained, the contract conditions and level of evaluation required should be determined by having regard to the type and nature of the purchase and the associated risk, and not purely the purchase value. For example the officer may determine that the process outlined for a higher purchase value is more appropriate than the process for the actual purchase value.

Exemptions to purchasing requirements – Purchase value less than \$1250,000

5.14. From time to time there will be circumstances where it is not appropriate or not reasonably practicable to adhere to the requirements to obtain quotations as set out in this Policy. An example is where the City is satisfied and can evidence that there is only one source of supply for goods, services or works, having used genuine endeavours to determine that there is not a reasonable alternative source of supply.

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- 5.15. In such circumstances, the Chief Executive Officer (or such other employee of the City to whom such power has been delegated) may waive the requirements to obtain quotations as set out in this Policy. The responsible City officer must document the waiver process in the manner required by the CEO.

Exceptions to purchase requirements – Purchase value \$1250,000 or greater

- 5.16. Where the purchase value exceeds \$1250,000, the Regulations provide for a range of exceptions to the requirement to publicly invite tenders. These are set out in regulation 11(2) of the Regulations.

- 5.17. The exceptions include:

- a. The supply of goods or services authorised as an emergency under s 6.6(1)(c) of the Act;
- ~~a.b.~~ The supply of goods or services is associated with a state of emergency;
- ~~b.c.~~ The supply of goods or services obtained through the WALGA Preferred Supplier Program (see further information below);
- ~~c.d.~~ Where the City has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier;
- ~~d.e.~~ The goods or services are to be supplied by a person registered on the Aboriginal Business Directory WA or by Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (subject to a maximum of \$250,000 and the City being satisfied as to 'value for money');
- ~~e.f.~~ Where the goods or services are to be supplied by an Australian Disability Enterprise; or
- ~~g.~~ Where the goods or services are to be supplied by a pre-qualified supplier under a Panel of Pre-Qualified Suppliers established by the City under the Regulations (see further information below);
- ~~f.h.~~ Where the contract is a renewal or extension of the term of an original contract in certain circumstances related to a state of emergency.

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Regulatory Compliance – Tenders

This part includes detail on the requirements of the Act and the Regulations for the public tender process. As these may change from time to time, it is the responsibility of the employee to inform themselves of the requirements of the relevant statutory requirements when conducting a tender process and not rely on this Policy alone.

Advertising Tenders

- 5.18. Requests for tenders must be advertised as a minimum in a state-wide publication and on the City's TenderLink portal and in addition, may be advertised locally. The tender must remain open for a minimum of at least 14 days after the date the tender is advertised.

Addendum to Tender

- 5.19. Clarifications, variations or adjustments to the tender documentation and the conditions of tender may be made by way of addendum after the tender has been publicly advertised but prior to the tender closing date.

Opening of Tenders

- 5.20. Tenders are to be opened in accordance with the advertised time and place and in the presence of at least two persons which can be either:
- a. Two employees of the City;
 - b. One employee of the City and another person authorised by the Chief Executive Officer for that purpose;
 - c. The details of all tenders received and opened shall be recorded in the Tender Register. There is no obligation to disclose or record tendered prices at the tender opening. Members of the public are entitled to be present.

Tender Evaluation

- 5.21. Tenders that have not been rejected shall be assessed by means of a written evaluation against the pre-determined criteria to determine which tender represents best value for money. The evaluation panel must contain a minimum of three members.

Tender Register

- 5.22. The City must maintain a tender register which is to include:
- a. a brief description of the goods and services required;
 - b. particulars of:
 - i. Any notice by which expressions of interests from prospective tenderers was sought;
 - ii. Any person who submitted an expression of interest;
 - iii. Any list of acceptable tenderers that was prepared under Regulation 23(4).
 - c. A copy of the notice of the invitation to tender;
 - d. The name of each tenderer whose tender has been opened;
 - e. The name of any successful tenderer.

Minor Variation prior to awarding a contract

- 5.23. Prior to awarding a contract to a preferred tenderer, the City may negotiate and agree on "minor variations" with the preferred tenderer.
- 5.24. Any amendments must be incorporated into the contract with the preferred tenderer for the supply of the varied requirement.
- 5.25. Any major variation will require a new and separate tender.
- 5.26. A minor variation has been determined by the City to mean a variation which does not materially alter the specification or structure provided for by the initial tender.

WALGA Preferred Suppliers Program

- 5.27. WALGA has a number of pre-qualified suppliers called WALGA preferred suppliers. The City can make purchases from WALGA preferred suppliers:
- a. For purchases up to \$1250,000;
 - b. For purchases over \$1250,000 in reliance on the exemption to the requirement for a public tender.
- Provided that:
- c. For purchases up to \$1250,000 the purchasing requirements in section 5.10 - 5.13 of this Policy apply and for purchases over \$1250,000 three quotes must be sought, subject in all cases to sections 5.14 and 5.15 of this Policy;

Panels of Pre-Qualified Suppliers

- 5.28. A Panel may only be established where it is determined that there is or will be a continuing need for particular goods or services to be supplied by pre-qualified suppliers.
- 5.29. When establishing a Panel, officers must consider the following:
- a. Is there a continuing need for the goods or services?
 - b. Will it be more efficient for the City to work collaboratively with a small group of suppliers to deliver a good or service on a regular basis?

- c. Is it necessary for the City to have more than one supplier for a good or service (if one is sufficient then a Request for Tender may be appropriate)?
 - d. Is there another panel available for the City to access?
- 5.30. Panels may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel.
- 5.31. Requests for applications to join a panel of pre-qualified suppliers must be advertised through a State-wide public notice.
- 5.32. Prior to issuing a PQS, Officers must determine the criteria by which applications will be assessed and accepted which must be determined and communicated in the PQS.
- 5.33. Officers may assess applications using the discount principles of the City's Regional Price Preference Policy.
- 5.34. A Panel established by the City may be operated in a manner that applies the principles of the City's Regional Price Preference Policy when assessing quotations.
- 5.35. When establishing a Panel a PQS must set out how the City intends to purchase goods and services through the use of the Panel.
- 5.36. The City is to procure goods and services from a member of a Panel by either seeking written quotations from each panel member with respect to all purchases or alternatively all purchases above a specified threshold (if any).
- 5.37. Where the City has determined that written quotations will be sought from each Panel member above a specified threshold, goods and services may be procured below that threshold on the basis of the relative rankings of the Panel members.
- 5.38. Where Panel members are ranked, the City is to determine the rankings from time to time on the basis of written quotations obtained from the members of the panel.
- 5.39. The City will obtain written quotations through electronic means, principally through the use of its online procurement portal.
- 5.40. Written quotations from panel members are to be sought and assessed on the basis of criteria determined in accordance with the City's practices and procedures.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995.
- 6.2. Local Government (Functions and General) Regulations 1996.
- 6.3. Council Policy Regional Price Preference Policy 2018
- 6.4. Delegation DA 1 – 07 (previously LG3J) – Tenders Inviting, Rejecting and Accepting Tenders.
- 6.5. Delegation DA 1 – 08 (previously LG3K) – Preliminary Selection of Tenderers.
- 6.6. Delegation DA 1 – 10 (previously LG3M) – Establishment of panels of pre-qualified suppliers.

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7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	<u>25/07/2018</u>	Resolution #	<u>C1807/144</u>
Previously Adopted	DATE	<u>25/07/2018</u>	Resolution #	<u>C1807/144</u>

DA 1 – 07	Inviting, Rejecting and Accepting Tenders
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.57 <i>Local Government (Functions and General) Regulations 1996</i> Regulations 11, 13, 14, 18, 20, 21A
FUNCTION	s.3.57 Tenders for providing goods or services Regulation 11 When tenders have to be publicly invited Regulation 13 Requirements when local government invites tenders not required to do so Regulation 14 Publicly inviting tenders, requirements for Regulation 18 Rejecting and accepting tenders Regulation 20 Variation of requirements before entry into contract Regulation 21A Varying a contract for the supply of goods or services
CONDITIONS	This delegation is subject to: (a) Complying with the requirements of the City of Busselton's Purchasing Policy as it relates to tendering; (b) Following any applicable staff management practices and operational procedures; and (c) Not accepting any tender or entering into any contract having a value exceeding \$500,000
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Tender Register
SUB DELEGATION	S1 – 07 Inviting, Rejecting and Accepting Tenders

RECORD KEEPING	ECM – GOVN001 'Authorised Delegation of Power/Authority'	
VERIFICATION	Initial Council Resolution C1103/179	Recent Council Resolution C1908/168
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	LG3J – Inviting Tenders and Rejecting and Accepting Tenders	

DA 1 – 07 Inviting, Rejecting and Accepting Tenders	
POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.57 <i>Power to enter into a contract for the purchase of goods and services</i> <i>Local Government (Functions and General) Regulations 1996</i> Regulations 11 (including the power to determine that a relevant exception under Regulation 11(2) applies), 13, 14, 18, 20, 21A
FUNCTION	s.3.57 Tenders for providing goods or services Regulation 11 When tenders have to be publicly invited Regulation 13 Requirements when local government invites tenders not required to do so Regulation 14 Publicly inviting tenders, requirements for Regulation 18 Rejecting and accepting tenders Regulation 20 Variation of requirements before entry into contract Regulation 21A Varying a contract for the supply of goods or services
CONDITIONS	This delegation is subject to: (a) Complying with the requirements of the City of Busselton's Purchasing Policy as it relates to tendering; (b) Following any applicable staff management practices and operational procedures; and (c) Not accepting any tender or entering into any contract, including a contract where Regulation 11(2) applies, which has a value exceeding \$500,000
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Tender Register
SUB DELEGATION	S1 – 07 Inviting, Rejecting and Accepting Tenders

RECORD KEEPING	ECM – GOVN001 'Authorised Delegation of Power/Authority'	
VERIFICATION	Initial Council Resolution C1103/179	Recent Council Resolution C1908/168
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	LG3J – Inviting Tenders and Rejecting and Accepting Tenders	







DA 1 – 07	Inviting, Rejecting and Accepting Tenders
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	Local Government Act 1995 s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	Local Government Act 1995 <i>s.3.18, s.3.57</i> <i>Power to enter into a contract for the purchase of goods and services s.3.57</i> Local Government (Functions and General) Regulations 1996 <i>Regulations 11 (including the power to determine that a relevant exception under Regulation 11(2) applies), 13, 14, 18, 20, 21A Regulations 11, 13, 14, 18, 20, 21A</i>
FUNCTION	<i>s.3.57 Tenders for providing goods or services</i> <i>Regulation 11 When tenders have to be publicly invited</i> <i>Regulation 13 Requirements when local government invites tenders not required to do so</i> <i>Regulation 14 Publicly inviting tenders, requirements for</i> <i>Regulation 18 Rejecting and accepting tenders</i> <i>Regulation 20 Variation of requirements before entry into contract</i> <i>Regulation 21A Varying a contract for the supply of goods or services</i>
CONDITIONS	This delegation is subject to: (a) Complying with the requirements of the City of Busselton's Purchasing Policy as it relates to tendering; (b) Following any applicable staff management practices and operational procedures; and (c) Not accepting any tender or entering into any contract, <i>including a contract where Regulation 11(2) applies, which has having a value exceeding \$500,000</i>
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Tender Register
SUB DELEGATION	S1 – 07 Inviting, Rejecting and Accepting Tenders

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RECORD KEEPING	ECM – GOVN001 'Authorised Delegation of Power/Authority'	
VERIFICATION	Initial Council Resolution C1103/179	Recent Council Resolution C1908/168
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	LG3J – Inviting Tenders and Rejecting and Accepting Tenders	

6.4 DELEGATION OF POWER TO DISPOSE OF PROPERTY AND LEASE AND LICENCE PREMISES

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Delegations
BUSINESS UNIT	Legal and Property Services
REPORTING OFFICER	Manager Legal and Property Services - Martyn Cavanagh
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A DA 1 - 22 Disposing of Property (Current)   Attachment B DA 1 - 22A Proposed   Attachment C DA 1 - 22B Proposed  

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION

PL2005/312 Moved Councillor K Hick, seconded Councillor K Cox

That the Council:

1. Rescind the instrument of delegation DA 1-22 (Attachment A);
2. Delegate powers and duties relating to disposing of property by sale, by adopting the proposed delegation instrument at Attachment B; and
3. Delegate powers and duties relating to leasing and licensing of land and buildings, by adopting the proposed delegation instrument at Attachment C.

CARRIED 5/0

EXECUTIVE SUMMARY

Current delegation instrument DA 1–22 Disposing of Property deals with both land and non-land. It is directed at things that must be done before property is disposed of and it also refers to licensing (distinct from leasing) of land and buildings.

City officers recommend that the current delegation be rescinded and replaced with two distinct delegations that deal separately with, respectively, the sale of property (DA 1–22A: Attachment B) and the leasing/licensing of land/buildings (DA 1–22B: Attachment C).

BACKGROUND

Council has in force two delegations that apply respectively to ‘acquisition of property’, DA 1-21, formerly LG3B and ‘disposition of property’, DA 1–22, formerly LG3C.

Prior to these delegations, Council had in force a single delegation LG3K that had been in force since 2008.

In 2017, Council resolved to separate the delegation relating to ‘acquisition’ from the delegation relating to ‘disposal’ (C1706/151). This was to provide better distinction and clarity of the extent of the powers being delegated.

The delegation of powers relating to dispositions is instrument DA 1-22 (Attachment A). It provides for two distinct cases through the conditions imposed in the delegation: disposal by sale (whether land or otherwise), and leases/licences of property (land and/or buildings) in certain circumstances.

The express provision for leases/licences arises in connection with the City managing a large portfolio of land and buildings for the benefit of community and not for profit organisations and their causes. There are close to 100 of these.

OFFICER COMMENT

While local governments have historically focussed on s3.58 of the *Local Government Act* (the Act) in connection with delegating powers of disposal, recent review and analysis by City officers has highlighted that s3.58 of the Act merely imposes certain obligations/restrictions on how or when property may be disposed of, rather than a power of disposal in itself. That is, s3.58 operates to impose statutory pre-conditions to the act of disposal.

That leads to the question of where the power to acquire or dispose of property is to be found in the Act. Section 5.43 of the Act expressly limits Council's powers of delegation, including the power to acquire or dispose of property in excess of a determined amount as set by Council. Clearly the Act intends that Council can delegate power up to the relevant limit.

The source of power to acquire or dispose of property lies in the understanding that a local government is a body corporate with perpetual succession and the legal capacity of a natural person (s 2.5(2) and (3) of the Act). A natural person has, under common law, the capacity (power) to own (hold) property. Necessarily, a person must be able to acquire and dispose of property. So a local government therefore has this same capacity.

The utilisation of this capacity is confirmed by s.3.18 of the Act, which is a conferral of power to do 'necessary or convenient' things for the purposes of conducting the affairs of the local government. These powers may be augmented by provisions of other Acts. For example, under the *Land Administration Act 1997*, a local government may be given a power to grant a lease in respect of managed land.

Accordingly, officers from the property and governance teams have conferred, and agree that a better form of delegation of the power to dispose of property is by reference to both the source power under the Act as well as to the preconditions that must be satisfied in respect of certain disposals.

The opportunity also exists to delineate more clearly between 'sale' and 'lease/licence' transactions in the instruments of delegation.

A proposed instrument of delegation for sale of property is at Attachment B. It provides for a general power to dispose of property (whether land or otherwise) by sale.

A proposed instrument of delegation for leasing or licensing of land and buildings is at Attachment C. It provides for a general power to lease or licence land and buildings in specified circumstances.

Disposition by sale

If the property is land, the land must be of a value that is not more than \$20,000, other than where (b) applies. If the property is land that has been put to public auction or put out to tender and not sold, the land must be of a value of not more than \$100,000.

If the property is property other than land, the property must be of a value that is not more than \$100,000.

Disposition by lease or licence

By far the most common type of disposition relating to land is a lease or licence of the land. Typically this occurs in connection with making land or buildings available to not for profit organisations. The issue of short term residential tenancies (as with the aged housing units) and some low value commercial arrangements such as periodic alfresco licences (associated with adjacent business premises) and short-term commercial leases of the health suites at the GLC are also common scenarios.

Council has an established Council policy: Leasing of City Premises. This applies to land and buildings either owned by the City or managed under a management order under the *Land Administration Act 1997*.

The terms of the current delegation purport to extend to the granting of licences. In the context of a 'disposition' within the meaning of that word in s 3.58 of the Act, the better view is that the granting of a licence is not a disposition as only a non-exclusive personal right is being given.

In the case of a lease or licence of land to a charitable, sporting or other not-for-profit body, it would be an exception to the requirements of s 3.58 of the Act and therefore within the exception provided for in Regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* (the Regulations).

In the case of a licence or a lease of 2 years or less that does not grant exclusive possession (be it in favour of a for, or not for, profit entity), Regulation 30(2)(e) of the Regulations provides an exemption to the requirement of s 3.58 of the Act.

The more important issue, for delegation purposes, is to provide for the power to enter into the lease or licence agreement. As with the power to sell property, this is found in s.3.18 of the Act.

Accordingly, a new delegation instrument is proposed to replace the current delegation in so far as it applies to leases and licences of land (Attachment C).

As with the current delegation, the delegation of powers and duties is to apply to land or buildings comprising sporting or community facilities and to land and new facilities under 100m² required for storage purposes.

In keeping with the recently endorsed Council policy: Leasing of City Premises in relation to the duration of a lease or licence, the new delegation proposes a maximum term of 10 years (generally leases are granted for an initial 5-year term with an option to renew for a further 5 years).

The current delegation provides for a maximum term of 5 years unless the lease is a renewal of a lease by a sporting group or community group of an existing building in which case the renewed term could be 10 years.

As with the current delegation, the value of the land and buildings being leased or licensed is not to exceed \$25,000 per annum.

These conditions mirror the conditions (limitations) of the previous delegation.

Statutory Environment

The officer recommendation supports the general function of a local government under the *Local Government Act 1995* to provide for the good government of persons in its district.

Under s.3.18 of the LG Act, the City can do all things necessary or convenient for carrying out its functions. Entering into contracts for the purchase of goods and services is necessary for the City to perform its functions.

While not a 'statutory' component of the legal framework, a 'licence' of property does not confer a 'proprietary' interest and differs from a lease that will generally confer a right to exclusive possession.

Under s 5.42 of the LG Act, a local government may, by instrument in writing, delegate (by absolute majority) to the CEO the exercise of any of its powers or the discharge of any of its duties under the Act, subject to specified limitations.

Sections 58 (performance of functions by a delegate) and 59 (the effect of the delegation) of the *Interpretation Act 1984* apply, subject to subsection 3(1) of that Act, to delegations made under the LG Act.

Under s 5.43(d) of the LG Act, a local government cannot delegate the power to dispose of property valued at an amount which exceeds the amount determined by the local government for the purposes of that paragraph.

Under s 50(1) of the *Interpretation Act 1984*, where a written law confers upon a person a power to do or enforce the doing of any act or thing, all such powers shall also be deemed to be conferred on the person as are reasonably necessary to enable him to do or enforce the doing of the act or thing. Delegation of a power to lease or licence will include the power to sign relevant agreements without a need to look for an express conferral of 'authority' to sign.

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 Governance Service Review. The framework sets out the intent of Council policies, as opposed to operational documents such as Operational Practices.

The officer recommendation supports the administration of Council policy: Leases of City Premises, adopted May 2020.

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 proposed recommendation, the Council could decide to retain the current delegation instrument DA 1-22 (Attachment A).

CONCLUSION

Adopting the officer's recommendation will result in the delegation of powers to dispose of property and enter into leases and licences being more transparent. This will facilitate the delegation of the leasing and licensing powers of the City to Directors to more efficiently implement the City's Leases of City Premises Policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

If Council resolves to rescind the current delegation DA 1–22 and adopt the proposed delegations DA 1–22A and DA 1–22B (Attachments B and C), then the CEO will be able to immediately delegate the powers to relevant officers.

DA 1 – 22 Disposition of Property	
POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.58 <i>Local Government (Functions and General) Regulations 1996</i> Regulations 30 (2a) and 30 (3)(a)
FUNCTION	s.3.58 Disposing of Property Regulation 30 Dispositions of property exclude from Act s3.58
CONDITIONS	<p>1. Disposal by Sale</p> <p>(a) The value of the land to be disposed of shall not exceed \$20,000 other than if paragraph (b) applies; or</p> <p>(b) Where the property is land valued at less than \$100,000 and has been put to public auction or put out to tender and not sold, the land may be disposed of in accordance with Regulation 30 (2a) of the <i>Local Government (Functions and General) Regulations 1996</i>; and</p> <p>(c) The value of property other than land to be disposed of shall not exceed \$100,000; and</p> <p>(d) Where the value of property other than land does not exceed \$20,000 the property may be disposed of in accordance with Regulation 30 (3)(a) of the <i>Local Government (Functions and General) Regulations 1996</i>.</p> <p>2. Disposal by way of Lease or Licence</p> <p>(a) Applies to land or buildings comprising established sporting or community facilities where any other part of the land or building has been leased or licensed by a local government before, subject to the following:</p> <p>(i) The maximum term of the lease or licence, including any right by a lessee to assign the lease or sublease the property or extend the term of the lease, shall not exceed 5 years unless the lease or licence is the renewal of a lease or licence by a sporting or community group of an existing building or land for a period of not more than 10 years;</p> <p>(ii) The value of the lease or licence does not exceed \$25,000 pa;</p> <p>(iii) The permitted use of the property must be consistent with:</p> <p>A. The designated purpose of the property; or</p> <p>B. The general or ancillary use of the property immediately prior to entering into the lease or licence; or</p>

	<p>C. If the property has recently be acquired, the intention for which the property has been acquired by the local government.</p> <p>(iv) This delegation does not include the power to allow assignment of a lease or sub-lease of the property subject to the abovementioned conditions.</p> <p>(b) In addition, this delegation applies to the first time a property is leased or licenced where the lease or licence is for the purpose of storage only or comprises an area of less than 100 square metres subject to the matters set out in paragraph 2 (a) (i) to (iv).</p> <p>3. Briefing and Reporting At least every six months and more frequently if required by the Mayor or CEO, City officers shall provide Councillors a summary and update of leases or licences entered into under this delegation.</p>
POLICY	Nil
REFERENCE DOCUMENTS	Nil

RECORD KEEPING	ECM – GOVN001 ‘Authorised Delegation of Power/Authority’	
VERIFICATION	Initial Council Resolution C1706/151	Recent Council Resolution C1807/142
RECENT ALTERATIONS	June 2018	
PREVIOUS DELEGATION REFERENCE	LG3C – Disposing of Property	

DA 1 – 22A	Disposition of Property: Other than by Lease
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.58 <i>Power to dispose of property, other than by lease;</i> <i>Requirements before disposing</i> <i>Local Government (Functions and General) Regulations 1996</i> Regulations 30 (2)(a)
FUNCTION	<u>s.3.58</u> <u>Requirements before disposing of property</u> <u>Regulation 30 (2)(a)</u> <u>Determination of insignificant benefit</u>
CONDITIONS	1. The value of the land to be disposed of shall not exceed \$20,000 other than if paragraph (2) applies; or 2. Where the property is land valued at less than \$100,000 and has been put to public auction or put out to tender and not sold, the land may be disposed of in accordance with Regulation 30 (2)(a) of the <i>Local Government (Functions and General) Regulations 1996</i> ; and 3. The value of property other than land to be disposed of shall not exceed \$100,000; and 4. Where the value of property other than land does not exceed \$20,000 the property may be disposed of in accordance with Regulation 30 (3)(a) of the <i>Local Government (Functions and General) Regulations 1996</i> .
POLICY	Nil
REFERENCE DOCUMENTS	Local Government (Functions and General) Regulations 1996 - Regulation 30
SUB DELEGATION	TBA


RECORD KEEPING	ECM – GOVN001 'Authorised Delegation of Power/Authority'	
VERIFICATION	Initial Council Resolution C1706/151	Recent Council Resolution C1908/168
RECENT ALTERATIONS	May 2020 – Rescission of DA 1 – 22: Adoption of DA 1 – 22A and DA 1 – 22B.	
PREVIOUS DELEGATION REFERENCES	DA 1 – 22 – Disposing of Property LG3C – Disposing of Property	

DA 1 – 22B Disposition of Property: Leasing and Licensing of Land and Buildings	
POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.58 <i>Power to lease and license land and buildings; Requirements before disposing</i>
FUNCTION	s.3.58 Requirements before disposing of property Leasing and licensing of land and buildings, including assignments of existing leases and licences and the renewal of a lease by a lessee, where – <ul style="list-style-type: none"> (a) The land and/or buildings are established sporting or community facilities (including on managed reserve land) and where any part of the land or building has been leased or licensed before by the City; or (b) The land and/or buildings are for the purpose of storage only and are of an area of not more than 100 square metres.
CONDITIONS	<ol style="list-style-type: none"> 1. The permitted use of the land or buildings must be consistent with: <ul style="list-style-type: none"> (a) The designated purpose of the property; or (b) The general or ancillary use of the land or buildings immediately prior to the entering into of a lease; or (c) If the land or building has recently been acquired or a new or amended management order has been made in respect of a managed reserve, the purpose for which the property has been acquired or is to be managed. 2. The value of the lease or licence (inclusive of all options or rights to renew or extend, but not including any provisions for holding over on a month by month basis) must not exceed \$25,000). 3. The maximum term of the lease or licence, including any right by a lessee to assign the lease or licence or to sublease or sublicense the land and/or buildings shall not exceed 10 years (inclusive of all options or rights to renew or extend, but not including any provisions for holding over on a month by month basis). 4. At least every six months and more frequently if required by the Mayor or CEO, City officers shall provide Councillors a summary and update of leases or licences entered into under this delegation.
POLICY	Nil

REFERENCE DOCUMENTS	Local Government (Functions and General) Regulations 1996 – Regulation 30
SUB DELEGATION	TBA

RECORD KEEPING	ECM – GOVN001 ‘Authorised Delegation of Power/Authority’	
VERIFICATION	Initial Council Resolution C1706/151	Recent Council Resolution C1908/168
RECENT ALTERATIONS	May 2019 – Rescission of DA 1 – 22; Adoption of DA 1 – 22A and DA 1 – 22B	
PREVIOUS DELEGATION REFERENCES	DA 1 – 22 Disposing of Property LG3C – Disposing of Property	

6.5 RESCISSION OF COUNCIL POLICY: 025 BUILDING CONTROL - STANDARD OF SITE CLASSIFICATION FOR SUBDIVISIONS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Development Control
REPORTING OFFICER	Development Control Coordinator - Ronald Wildschut
AUTHORISING OFFICER	Director, Engineering and Works Services - Oliver Darby
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Council Policy 025: Building Control Standard Site Classification Subdivision 

11.36am: At this time, Mr Cavanagh and Mr Nottle left the meeting.

11.36am: At this time, Mr Abrahamse and Mr Wildschut entered the meeting.

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION

PL2005/313 Moved Councillor K Hick, seconded Councillor L Miles

That the Council rescinds Council policy 'Building Control - Standard of Site Classification for Subdivisions' (Attachment A).

CARRIED 5/0

EXECUTIVE SUMMARY

This report recommends the rescission of Council policy 'Building Control – Standard of Site Classification for Subdivisions' (the 'Policy', Attachment A), with the Policy having been reviewed as part of the City's overall review of its Council policies, and the objectives of the Policy having been found to be achieved through alternative means.

BACKGROUND

The Policy outlines the parameters for the use of suitable fill-in subdivision development within the City of Busselton district. The Policy outlines the requirements of a site classification of 'A' to enable purchasers of lots within new subdivisions to build using minimum construction standards, without the need for individually engineered slabs and foundations.

The Policy further provides developers with the ability to, where they can demonstrate that achieving a site classification of 'A' is not practicable, seek City approval for a lesser site classification, through submission of certified designs for slabs and footings and the application of a Section 70A notification on the title of the subject lot/s.

OFFICER COMMENT

The requirement for lot site classification is addressed through the building licence application process. Further, the Australian Building Code requires “the foundation where the footing is to be located must be classified in accordance with AS 2870-2011 (Residential Slabs and Footings)”. City engineering officers monitor the standard of fill being imported into new subdivisions and review and approve the site classification, through the West Australian Planning Commission (WAPC) subdivision process.

The WAPC have standard conditions for subdivisions, with developers required to submit a pre-works geotechnical report, completed by a professional structural/geotechnical engineer. This report provides advice regarding the in situ ground conditions for the subdivision and recommendations on how to improve the ground conditions to achieve an acceptable site classification. City engineering officers then ensure that these recommendations are applied to the engineering designs submitted for that subdivision. At the completion of all subdivision works, and prior to clearances, a condition requiring the developer to submit a post-works geotechnical report has to be satisfied. This report will provide, among other details, a general site classification for the subdivision as a whole.

In reviewing the Policy, officers consider the objectives of the Policy are currently being met through this WAPC subdivision process and through the City’s building licence application process. As a result, officers recommend that the Policy be rescinded.

Statutory Environment

In accordance with section 2.7(2)(b) of the Act, it is the role of the Council to determine the local government’s policies. The Council does this on recommendation of a committee it has established in accordance with section 5.8 of the Act.

The subdivision process set out by the West Australian Planning Commission provides the framework within which the City can monitor and control the standard of controlled fill being imported and approve practicable site classification.

The City is also able to manage the required site classification at the building licence application stage. The Australian Building Code requires, for each individual lot, “the foundation where the footing is to be located must be classified in accordance with AS 2870-2011 (Residential Slabs and Footings)”.

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 Governance Service Review. The framework sets out the intent of Council policies, as opposed to operational documents such as Operational Practices.

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 proposed recommendation the Council could:

1. Retain the policy in its current form; or
2. Retain and make amendments to the Policy.

CONCLUSION

The Policy has been reviewed and it is recommended that it be rescinded, as general site classification for new subdivisions are addressed through the WAPC subdivision application and clearance process, and site specific classification is addressed at the building licence application stage as a requirement of the Australian Building Code.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be removed from the City's website within one week of Council's endorsement of the officer recommendation.

Last updated 13/04/2016

025	Building Control - Standard of Site Classification for Subdivisions	V4 Current
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1. PURPOSE

This policy is to ensure that uncontrolled fill is not used in subdivisions and ensures that fill and compaction is adequate. It helps to ensure that potential owners of lots are aware of site conditions.

2. SCOPE

This policy applies to new residential subdivisions within the City of Busselton.

3. POLICY CONTENT

New residential subdivisions within the City of Busselton are to be prepared and constructed to a standard where each lot within the subdivision reaches a site classification of 'A' (equivalent to a stable construction site) or a site classification as close to 'A' as practicable.

The objective of this policy is to enable purchasers of lots within new subdivisions to build using minimum residential construction standards, without the need for individually engineered footing and slab details. Where a new subdivision has not achieved a class 'A' status for every prospective dwelling site, the policy allows prospective purchasers to be informed of the cost implications and construction requirements for lots within the subdivision before making their decision to purchase.

Site classifications are defined in Australian Standard AS2870.1 - 1988 "Residential Slabs and Footings - Part 1: Construction" and range from 'A' which is stable, through 'S', 'M', 'H', 'E' and 'P', in increasing degree of instability or reactivity. Site classifications are to be certified by a practicing structural engineer in accordance with the provisions of AS2870.1 - 1988.

Conditions of subdivision will be recommended to the Department of Planning for new residential and special rural subdivisions as considered appropriate by the Chief Executive Officer to achieve the objectives of this policy. Conditions may include but are not limited to:

- A requirement to submit a geotechnical report and associated test results to Council with certification of the site classification of the existing un-subdivided property.
- A requirement to provide certification from a practicing structural engineer on completion of the subdivision confirming the site classification that has been achieved for each lot in the subdivision.

Where an applicant is able to demonstrate to the satisfaction of the Chief Executive Officer that achieving a site classification of 'A' is not practicable, then a lesser site classification may be approved.

Where a lesser site classification has been approved, the conditions of subdivision may include but are not limited to:

- A requirement to provide Council with engineer certified footing and slab construction details designed for site classifications that are applicable within the

Last updated 13/04/2016

subdivision. The details are to allow for both single and double-storey construction in a range of materials up to full brick. The details are to be provided on the basis that they will be made available by Council to members of the public as approved details for construction within the subdivision.

- A requirement for the developer to notify prospective purchasers of the site classifications within the subdivision and to provide a copy of engineered footing and slab details that are suitable as a minimum standard for the respective site classifications.

Where a site classification of "A" cannot be achieved, a section 70A notification will need to be placed on titles with the following wording:

Landfill has been placed on the lot, or the lot has been identified as requiring a Geotechnical Report which has been prepared and which provides a general site classification for the subdivision area. The nature of undertaking bulk earthworks and the variability of insitu soil conditions means the general classification cannot be guaranteed of individual lots. Further soil investigations will be required prior to housing design as the site classification may affect the design footings and the issue of a Building License for each individual lot. Determination of lot specific site classification for the purposes of footing and slab design remains the responsibility of the individual lot owner who should be aware that lot site classification may be different to the general site classification by the geotechnical consultant at the time of the subdivisional development.

Policy Background

Policy Reference No. - 025
Owner Unit – Engineering and Works Services
Originator – (Historical)
Policy approved by – Council
Date Approved – 13 April, 2016
Review Frequency – As required
Related Documents –
Background/History – Implemented 12 April 1995

History

Council Resolution	Date	Information
C1604/080	13 April, 2016	Update to City Terminology and inclusion of Section 70A notification requirement. Version 4
C1103/072	9 March, 2011	Reviewed by Council and adopted without content change in accordance with the policy template. Version 3
C0412/435	8 December, 2004	Re-resolved as a continuing policy of the Council - no change
C011/037	24 January, 2001	Minor amendments to policy. Version 2
(P95/0077)	12 April, 1995	Date of implementation.

Last updated 13/04/2016

C95/0148		Version 1
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11.38am: At this time, Mr Abrahamse and Mr Wildschut left the meeting.

7. GENERAL DISCUSSION ITEMS

Nil

8. NEXT MEETING DATE

Wednesday, 29 July 2020.

9. CLOSURE

The meeting closed at 11.39am.

THESE MINUTES CONSISTING OF PAGES 1 TO 66 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 29 JULY 2020.

DATE: _____ PRESIDING MEMBER: _____