

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 28 AUGUST 2018

#### TABLE OF CONTENTS

ITEM NO.	SUBJECT	PAGE NO.
1.	DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS.....	2
2.	ATTENDANCE .....	2
3.	PUBLIC QUESTION TIME.....	2
4.	DISCLOSURE OF INTERESTS .....	2
5.	CONFIRMATION OF MINUTES .....	2
5.1	Minutes of the Policy and Legislation Committee Meeting held 24 July 2018 .....	2
6.	REPORTS .....	3
6.1	REVIEW OF COUNCIL POLICY WASTE MANAGEMENT FACILITY AND PLANT RESERVE - MANAGEMENT OF END OF YEAR POSITION.....	3
6.6	REVIEW OF COUNCIL POLICY - RAILS TO TRAILS.....	6
6.2	BUSSELTON & DUNSBOROUGH CENTRES FACADE REFURBISHMENT SUBSIDY PROGRAMME.....	9
6.3	STANDING ORDERS LOCAL LAW AMENDMENT.....	15
6.4	PROPOSED REPLACEMENT OF THE CURRENT ENFORCEMENT AND PROSECUTIONS POLICY WITH A PROPOSED COMPLIANCE POLICY.....	20
6.5	REVIEW OF COUNCIL POLICY - CITY PROMOTION - FEDERAL GOVERNMENT PARTNERSHIPS.....	25
7.	GENERAL DISCUSSION ITEMS .....	31
7.1	PENDING REVIEW OF COUNCIL POLICY FEES ALLOWANCES AND EXPENSES FOR ELECTED MEMBERS .....	31
8.	NEXT MEETING DATE .....	32
9.	CLOSURE .....	32

## MINUTES

MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 28 AUGUST 2018 AT 2.00 PM.

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

The Presiding Member opened the meeting at 2.04 pm

### 2. ATTENDANCE

#### Presiding Member:

Cr Grant Henley Mayor

#### Members:

Cr Rob Bennett  
Cr Kelly Hick  
Cr Lyndon Miles  
Cr Robert Reekie Deputy Member

#### Officers:

Mr Mike Archer, Chief Executive Officer (from 2.36 pm until 2.38 pm)  
Mr Oliver Darby, Director, Engineering and Works Services (left at 2.28 pm)  
Mr Paul Needham, Director, Planning and Development Services (left at 3.36 pm)  
Mr Tony Nottle, Director, Finance and Corporate Services  
Ms Sarah Pierson, Manager, Governance and Corporate Services  
Mr Martyn Cavanagh, Manager Legal and Property Services (left at 3.36 pm)  
Ms Joanna Wilkinson, Planning Officer (left at 3.13 pm)  
Miss Kate Dudley, Administration Officer, Governance

#### Apologies:

Cr Ross Paine

### 3. PUBLIC QUESTION TIME

Nil

### 4. DISCLOSURE OF INTERESTS

Nil

### 5. CONFIRMATION OF MINUTES

#### 5.1 Minutes of the Policy and Legislation Committee Meeting held 24 July 2018

#### COMMITTEE DECISION



**PL1808/202** Moved Councillor R Bennett, seconded Councillor K Hick

That the Minutes of the Policy and Legislation Committee Meeting held 24 July 2018 be confirmed as a true and correct record.

**CARRIED 5/0**

## 6. REPORTS

### 6.1 REVIEW OF COUNCIL POLICY WASTE MANAGEMENT FACILITY AND PLANT RESERVE - MANAGEMENT OF END OF YEAR POSITION

<b>SUBJECT INDEX:</b>	Council Policies
<b>STRATEGIC OBJECTIVE:</b>	Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations.
<b>BUSINESS UNIT:</b>	Finance and Corporate Services
<b>ACTIVITY UNIT:</b>	Governance
<b>REPORTING OFFICER:</b>	Manager Financial Services - Kim Dolzadelli
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Proposed Policy Waste Management Facility and Plant Reserve 
	Attachment B Current Policy Waste Management Facility and Plant Reserve - Management of end of year position 

## PRÉCIS

This report presents a revised 'Waste Management Facility and Plant Reserve' policy (Attachment A) (the Policy) for Council approval, with the current policy having been amended as part of the City's overall review of its Council policies, having regard to the recommendations of the Governance System Review (GSR) carried out by Mr John Woodhouse in 2017.

The Policy, which has been moved into the new policy template and refined to remove operational level detail, is considered to be of continuing relevance and importance and is therefore recommended for Council approval.

## BACKGROUND

A policy in relation to the long term funding of waste management activities for the district was originally adopted in March 2013, with the policy establishing a commitment that any waste related surplus/deficit would be transferred to or from the Waste Management Facility and Plant Reserve. It was recognised that waste management would increasingly require effective long term planning, and that the ability to retain surplus funds from waste management fees, charges and activities was important to pay for future costs, therefore reducing the burden on future ratepayers. The policy was reviewed in March 2015 with changes made to recognise that, as per the Long Term Financial Plan (LTFP), funding for new and replacement plant and equipment required by waste services would be funded by the reserve.

The long term funding of waste management remains an issue of strategic significance and the City's LTFP continues to provide for the waste management funding and expenditure to be reconciled to and from the reserve. Retention of a policy maintaining this as a strategic direction is therefore recommended.

## STATUTORY ENVIRONMENT

In accordance with Section 2.7(2)(b) of the *Local Government Act 1995* 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.

## RELEVANT PLANS AND POLICIES

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the Governance Systems Review. Included in the scope of the review was the City's policy and procedure framework with the following recommendations made:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
  - a. *Should deal with higher level objectives and strategies;*
  - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
  - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*
3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures, and a Council policy template developed. The Policy adheres to this framework and template.

## FINANCIAL IMPLICATIONS

Adoption of the Policy presents no additional financial implications.

### Long-term Financial Plan Implications

Adoption of the Policy presents no additional long term financial plan implications.

## STRATEGIC COMMUNITY OBJECTIVES

The proposed policy links to Key Goal Area 3 – Environment, and Key Goal Area 6 - Leadership, of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:

3.2: Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations;

6.4: Assets are well maintained and responsibly managed.

## RISK ASSESSMENT

There are no risks identified of a medium or greater level associated with the Officers recommendation with the policy simply reiterating and maintaining Council's current position for the long term funding of waste management.

## CONSULTATION

No specific consultation was undertaken or considered necessary in relation to the review of the Policy.

**OFFICER COMMENT**

As outlined in the Background section of this report, the purpose of the Policy is to set out a strategic direction from Council for the long term funding of waste management activities within the district and, where identified, regionally.

The Policy maintains the current policy position that all revenues derived from waste management fees and charges are to be retained in the Waste Management Facility and Plant Reserve (WMFPR) for the purpose of undertaking all facets of waste management, with a consolidated position of the City's waste management activities to be calculated at year end and any surplus to be transferred to the WMFPR or any deficit to be transferred from the WMFPR.

The Policy has been amended in accordance with the recommendations of the GSR, with operational detail in relation to the management of the reserve removed, specifically the listing of expenditure and revenue items transferred to and from the reserve. The Policy instead states that all revenue derived from waste management fees and charges will be retained in the WMFPR and that the reserve will be used for all facets of waste management.

**CONCLUSION**

The Policy updates the current 'Waste Management Facility and Plant – Management of end of year position' policy and in doing so maintains Council's commitment to its current approach of sustainably managing the long term funding requirements for waste management.

**OPTIONS**

Council could decide not to adopt the Policy and instead choose to take a different position / approach in relation to waste management funding and operation of the Waste Management Facility and Plant Reserve. Council could also require further amendments to be to the Policy.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The new policy will be effective as of its adoption by Council.

**OFFICER RECOMMENDATION**

That the Council adopts the revised Waste Management Facility and Plant Reserve policy as per Attachment A, to replace the current policy (Attachment B).

**COMMITTEE RECOMMENDATION****PL1808/203**



Moved Councillor K Hick, seconded Councillor R Bennett

That the Council adopts the revised Waste Management Facility and Plant Reserve policy as per Attachment A, with part of the last sentence in 2.1 being reworded, the capital letters on waste management in 5.1 and revenues in 5.2 being corrected. 5.4 being removed, to replace the current policy (Attachment B).

**CARRIED 5/0**

Reason: The Committee was in agreement that the above changes would improve the policy scope.

## 6.6 REVIEW OF COUNCIL POLICY - RAILS TO TRAILS

<b>SUBJECT INDEX:</b>	Policies
<b>STRATEGIC OBJECTIVE:</b>	Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Governance Services
<b>REPORTING OFFICER:</b>	Manager Governance and Corporate Services - Sarah Pierson
<b>AUTHORISING OFFICER:</b>	Director, Engineering and Works Services - Oliver Darby
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Proposed Policy - Rails to Trails  Attachment B Current Policy - Rails to Trails 

Note: In order to accommodate the officers in attendance the Committee agreed to deal with items 6.6, on the agenda as the next items of business.

### PRÉCIS

This report presents a revised 'Rails to Trails' policy (Attachment A) (the Policy) for Council approval, with the current policy having been amended as part of the City's overall review of its Council policies, having regard to the recommendations of the Governance System Review carried out by Mr John Woodhouse in 2017.

The Policy, which has been moved into the new policy template and refined, is considered to be of continuing relevance and importance and is therefore recommended for Council approval.

### BACKGROUND

'Rails to Trail's refers to land that formerly formed part of the government railway network in the district being part of the lines:

- Boyanup to Busselton
- Busselton to Flinders Bay
- Wonnerup to Nannup

A policy in relation to the preservation, management and development of Rails to Trails was originally adopted in August 2009, with the aim of establishing the Council's commitment to the Rails to Trails as a strategic transport corridor, for recreation and for its heritage and environmental values. Since then the Rails to Trails policy has been reviewed twice, most recently in April 2016, with only very minor changes made such as updating Shire to City.

Support for the ongoing retention, promotion and development of the Rails to Trails continues to be demonstrated in the City's long term financial planning, with the Long Term Financial Plan containing municipal funds of \$51,500 per annum compounding by CPI on an annual basis. Most recently the trail has been constructed up to Cockrill Place (Vasse) from the Busselton Foreshore. In addition there has been significant progress towards the planning of the Marybrook Rail head. Retention of a 'Rails to Trails' policy is therefore recommended.

### STATUTORY ENVIRONMENT

In accordance with Section 2.7(2)(b) of the *Local Government Act 1995* 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.

## RELEVANT PLANS AND POLICIES

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the Governance Systems Review. Included in the scope of the review was the City's policy and procedure framework with the following recommendations made:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
  - a. *Should deal with higher level objectives and strategies;*
  - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
  - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*
3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures, and a Council policy template developed. The proposed revised policy adheres to this framework and template.

## FINANCIAL IMPLICATIONS

Adoption of the Policy has no additional financial implications. There is approximately \$248,000 on budget in the 2018/19 financial year (including Grant Funds from Lottery West). These funds are to continue the progress of the trail towards the Marybrook Rail Head.

### Long-term Financial Plan Implications

Adoption of the Policy has no additional long term financial plan implications.

## STRATEGIC COMMUNITY OBJECTIVES

The Policy links to Key Goal Area 3 – Environment, Key Goal Area 4 – Economy, and Key Goal Area 5 – Transport, of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:

- a. 3.2: Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations;
- b. 4.3: Events and unique tourism experiences that attract visitors and investment; and
- c. 5.3: Cycleways that connect our communities and provide alternative transport choices.

## RISK ASSESSMENT

There are no risks identified of a medium or greater level associated with the Officers recommendation with the Policy simply reiterating and maintaining Council's current support for the preservation, management and, where possible, ongoing development of the Rails to Trails.

**CONSULTATION**

No specific consultation was undertaken in relation to the review of the Policy however the City regularly liaises with the Shire of Augusta-Margaret River in relation to the project.

**OFFICER COMMENT**

The purpose of the Policy is to recognise the significance of the Rails to Trails and to outline Council's commitment to the retention and management of the land as a strategic transport corridor, for recreation and for its heritage and environmental values.

The Policy sets out Council's position in relation to management and development of the land, including that the land be retained as Crown land and managed (by the City where capable) for the primary purpose of 'recreation trail', be promoted, developed and managed as a walk-cycle recreation trail suitable for hiking and for riding of bicycles designed for trails, and be designed to retain its heritage characteristics and character while also being made suitable for expected traffic and usage.

The Policy also recognises the need to integrate with other recreational heritage trails within the district and the broader region and to work cooperatively with neighbouring local governments, landowners and government agencies. The Policy does not however commit the Council to any specific development plans for the Rails to Trails, and hence such planning will continue to be considered through and within financial and operational planning parameters.

**CONCLUSION**

The Policy updates the current Rails to Trails policy and in doing so maintains the City's support for its preservation and management as a recreational trail.

**OPTIONS**

Council could decide not to adopt the Policy and instead choose to take a different position / approach in relation to Rails to Trails. Council could also require further amendments to be to the Policy.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The Policy will be effective as of its adoption by Council.

**COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION**





**PL1808/204** Moved Councillor K Hick, seconded Councillor L Miles

That the Council adopts the revised Rails to Trails policy as per Attachment A, to replace the current policy (Attachment B).

**CARRIED 5/0**

2.28 pm At this time the Director of Engineering and Works Services left the meeting .

## 6.2 BUSSELTON & DUNSBOROUGH CENTRES FACADE REFURBISHMENT SUBSIDY PROGRAMME

<b>SUBJECT INDEX:</b>	City Centre Facade Refurbishment Subsidy Programme
<b>STRATEGIC OBJECTIVE:</b>	Creative urban design that produces vibrant, mixed-use town centres and public spaces.
<b>BUSINESS UNIT:</b>	Statutory Planning
<b>ACTIVITY UNIT:</b>	Statutory Planning
<b>REPORTING OFFICER:</b>	Planning Officer - Joanna Wilkinson
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Busselton & Dunsborough Centres Facade Refurbishment Subsidy Programme  Attachment B Application Location Plans  Attachment C Baked Busselton Proposed Works  Attachment D Shadowz Proposed Works 

2.36 pm At this time the Chief Executive Officer entered the meeting.

### PRÉCIS

The Council is asked to consider two applications received for the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme in accordance with the programme guidelines adopted. Both applications have been assessed against the objectives and assessment criteria of the programme, and are recommended for approval.

### BACKGROUND

Council resolved on 13 March 2013 to trial a programme for the 2013/14 and 2014/15 financial years, by allocating \$20,000 in the 2013/14 financial year and \$50,000 in the 2014/15 financial year towards a façade refurbishment subsidy programme. On 29 January 2014 Council adopted the Busselton City Centre Façade Refurbishment Subsidy Programme and on 10 December 2014 resolved to add a portion of the Dunsborough Town Centre to the 'eligible area.' Prior to the 2016/17 subsidy programme rounds, Council resolved to amend the criteria to add in 'design works' and alfresco associated works to the eligible criteria list. The amended programme, now called the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme, is provided as **Attachment A**.

The City recently invited expressions of interest in the 2017/2018 funding round, which closed on 18 May 2018. Two complete applications have been received and are the subject of this report. The applications include one proposal located within the Busselton Town Centre and one within the Dunsborough Town Centre. Location plans of these applications are provided as **Attachment B**.

The applications to be considered are as follows:

2.38 pm At this time the Chief Executive Officer left the meeting.

### 1. Baked Busselton – Lot 1 (91 - 93) Queen Street Busselton

The applicant proposes to refurbish the existing façade of the building at the corner of Queen and Prince Streets by repainting walls, roof, door and window frames, partially applying a new cladding surface to the fascia, and the addition of a new door. The applicant also proposes to fix a timber bar table to the truncated corner of the building, and introduce an alfresco seating area at the corner of Prince and Queen Streets. The applicant has concurrently applied for development approval and an outdoor eating permit. **Attachment C** details the proposed works.

## **2. Shadowz Functional Art – Lot 1 (237) Naturaliste Terrace Dunsborough**

The applicant proposes to renew the prominent corner site of Naturaliste Terrace and Hannay Lane by replacing the shopfront doors and façade windows to each street, installing a roof parapet wall, and upgrading the existing awning. In order to create a consistent standard within the streetscape, the roof parapet wall and awning upgrades will also be carried out to the adjoining café and clothing shop. The applicant also proposes to paint a mural on the façade facing Hannay Lane. **Attachment D** details the proposed works.

### **STATUTORY ENVIRONMENT**

The Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme and application for subsidy funding is consistent with the *Local Government Act 1995* and the *Local Government (Functions and General) Regulations 1996*.

### **RELEVANT PLANS AND POLICIES**

The Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme guides assessment of applications received for subsidy funding. It provides clarification and transparency to the public on what will be considered acceptable for an application.

The programme specifies ‘eligible areas’ and ‘eligible works’ which will be considered for funding.

In determining applications, the following assessment criteria are to be taken into consideration:

- Compliance with the City’s Local Planning Scheme and the Building Code of Australia;
- Consistency with the objectives and recommendations of the Busselton City Centre Urban Design Policy;
- The degree to which the applicant is financially contributing to the project;
- The extent to which the project contributes to the visual improvement of the façade, and is visible from the public domain;
- Integration of proposed works with the streetscape, adjoining buildings and degree to which the project contributes to the established character of the street; and
- The degree to which the proposed works promote interaction with the streetscape, including the provisions of frontages which are inviting, provide points of interest for pedestrians and allow for an efficient use of space, are functional, attractive and pedestrian friendly.

### **FINANCIAL IMPLICATIONS**

A budget of \$50,000 for the subsidy programme is provided for in the City budget for the 2018/2019 financial year.

### **LONG-TERM FINANCIAL PLAN IMPLICATIONS**

There are no long term financial plan implications associated with the Officer’s recommendation.

### **STRATEGIC COMMUNITY OBJECTIVES**

The officer’s recommendation primarily aligns with the following Key Goal Area/s and Community Objective/s of the City of Busselton’s Strategic Community Plan 2017:

Key Goal Area 2 - PLACE AND SPACES: Vibrant, attractive, affordable

2.3 Creative urban design that produces vibrant, mixed-use town centres and public spaces.

## RISK ASSESSMENT

1. An assessment of the potential implications of implementing the Officer's Recommendation has been undertaken using the City's risk assessment framework. Risks are only identified where the individual risk, once controls are identified, is medium or greater. No such risks have been identified.

## CONSULTATION

Expressions of interest were sought for the programme from 18 April to 18 May 2018 via a letter sent to all relevant property owners, and advertising in the newspaper was conducted. City officers also conducted door knocking and consulted business owners throughout the eligible Busselton and Dunsborough localities.

## OFFICER COMMENT

The following applications are to be assessed against the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme. All applications are within the eligible areas of the programme which the City has identified as a priority for upgrades. The programme identifies works which will be considered as eligible for funding and excludes works such as general maintenance, which should be occurring regularly without the programme as 'ineligible' for subsidy funding.

The following provides an assessment of the works and consistency with the programme guidelines.

### 1. Baked Busselton – Lot 1 (91 - 93) Queen Street Busselton

The applicant has applied for a subsidy contribution for the works summarised below:

<b>Works Proposed</b>	<b>Quotation (ex GST)</b>	<b>Eligible or Ineligible Works</b>	<b>Amount (ex GST)</b>
Supply and cut cladding of fascia	\$2,800	Eligible works	\$2,800
Reframing of timbers for fascia	\$2,350	Eligible works	\$2,350
Reclad fascia (installation)	\$3,200	Eligible works	\$3,200
Glass double door	\$2,209	Eligible works	\$2,209
Installation of glass door	\$6,991	Eligible works	\$6,991
Alfresco furniture and umbrellas	\$3,299	Eligible works	\$3,299
<i>Total Expenditure (ex GST)</i>			<i>\$20,849</i>
<i>Potential subsidy contribution (50% of total expenditure (ex GST) above (after) the first \$5,000)</i>			<i>\$7,924</i>

The works proposed meet the assessment criteria of the programme as they will:

- Comply with the City of Busselton Local Planning Scheme No. 21; and
- Visually improve the streetscape via increased glazing and renewed fascia; and
- Enhance the physical quality of the built environment through sensitive use of spaces (alfresco dining).

The majority of the existing Prince Street frontage is bulky with a mix of brickwork and opaque windows. The addition of an extra set of transparent double doors will reduce building bulk and provide a more interactive frontage that is inviting, attractive, and pedestrian friendly.

It is noted that the existing customer entrance to the service area does not comply with disability access requirements in the Building Code of Australia. One of the City's registered Building Surveyors has confirmed that there is reasonable justification to maintain the existing steps into the building, and the applicant had provided a short and long term management plan addressing disability access.

It is recommended that subsidy funding of up to \$7,924 be provided.

## 2. Shadowz Functional Art – Lot 1 (237) Naturaliste Terrace Dunsborough

The applicant has applied for a subsidy contribution for the works summarised below:

Works Proposed	Quotation (ex GST)	Eligible or Ineligible Works	Amount (ex GST)
Preliminary design work	\$2,820	Eligible works	\$2,820
<i>Total Expenditure (ex GST)</i>			<i>\$2,820</i>
<i>Potential subsidy contribution (up to 50% of agreed scope of works)</i>			<i>\$1,410</i>
Steelwork	\$8,500	Eligible works	\$8,500
Windows/Doors	\$16,500	Eligible works	\$16,500
Electrical/Light fittings	\$3,000	Eligible works	\$3,000
Carpentry	\$4,500	Eligible works	\$4,500
New soffit to 3 shops	\$5,100	Eligible works	\$5,100
Demolition, materials, labour, scaffolding, waste management, sundry charges	\$20,732	Eligible works	\$20,732
Materials and labour for external mural	\$4,027	Eligible works	\$4,027
<i>Total Expenditure (ex GST)</i>			<i>\$62,359</i>
<i>Potential subsidy contribution (50% of total expenditure (ex GST) above (after) the first \$5,000)</i>			<i>\$20,000</i>

The works proposed meet the assessment criteria of the programme as they will:

- Comply with the City of Busselton Local Planning Scheme No. 21; and
- Visually improve the façade of a prominent corner site; and
- Integrate with adjoining buildings via the roof parapet wall and upgraded awning, thereby contributing to the overall character of the streetscape; and
- Promote visual interest within the streetscape for pedestrians through the creation of a mural on the wall of the Hannay Lane façade.

Good design responds to the context and character of a site, and provides amenity and legibility within the existing urban area. This proposal responds to the context of the site by increasing visual interest on a prominent corner. Installation of urban art contributes to legibility by creating a recognisable intersection and landmark, and contributes to a recognisable route.

Amenity will be improved through the replacement of the existing awning, thereby creating a comfortable environment for pedestrians with protection from sun and rain.

It is recommended that subsidy funding of up to \$1,410 for preliminary design work and \$20,000 for eligible works be provided.

## **CONCLUSION**

It is considered by officers that elements of both proposals comply with criteria set out in the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme. It is recommended that the subsidy funding of \$7,924, \$1,410 and \$20,000, respectively, be supported.

## **OPTIONS**

The Council could:

1. Resolve to provide subsidy funding for the works associated with one application only.
2. Resolve to not provide subsidy funding for any works.

If any Councillor is minded to either of the above options Officers can assist on the drafting of a suitable alternative motion.

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

The officer recommendation if supported will require the applicant to enter into a legal agreement with the City to complete the works and arrange for the subsidy funding to be paid prior to the end of the 2018/19 financial year.

## **OFFICER RECOMMENDATION**

That the Council resolve:

1. That the application to upgrade the façade and provide alfresco seating at Lot 1 (91 - 93) Queen Street Busselton is consistent with the objectives and assessment criteria of the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme and to contribute \$7,924 towards the works.
2. That the preliminary design work associated with the proposed façade upgrade at Lot 1 (237) Naturaliste Terrace Dunsborough is consistent with the objectives and assessment criteria of the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme and to contribute \$1,410 towards the works.
3. That the application to upgrade the façade at Lot 1 (237) Naturaliste Terrace Dunsborough is consistent with the objectives and assessment criteria of the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme and to contribute \$20,000 towards the works.
4. To enter into a legal agreement with the owners of the property in the successful application in Resolution 1, 2 and 3 to provide for the payment of funds once the works are completed to the City's satisfaction and final costs substantiated. The legal agreement shall include the requirements for appropriate recognition of the City's contribution to the City's satisfaction.

**COMMITTEE RECOMMENDATION****PL1808/205**

Moved Councillor G Henley, seconded Councillor R Reekie



That the Council resolve:

1. That the application to upgrade the façade and provide alfresco seating at Lot 1 (91 - 93) Queen Street Busselton is consistent with the objectives and assessment criteria of the Busselton and Dunsborough Centres Façade Refurbishment Subsidy Programme and to contribute \$7,924 towards the works.
2. To enter into a legal agreement with the owners of the property in the successful application in Resolution 1, 2 and 3 to provide for the payment of funds once the works are completed to the City's satisfaction and final costs substantiated. The legal agreement shall include the requirements for appropriate recognition of the City's contribution to the City's satisfaction.
3. That the application to upgrade the façade at Lot 1 (237) Naturaliste Terrace Dunsborough to contribute \$1,410 towards the works is deferred for further consideration.
4. That the application to upgrade the façade at Lot 1 (237) Naturaliste Terrace Dunsborough to contribute \$20,000 towards the works is deferred for further consideration

**CARRIED 5/0**

Reason: The Committee was in agreement that proposals for lot 1 (237) Naturaliste Terrace Dunsborough should be deferred pending further information.

### 6.3 STANDING ORDERS LOCAL LAW AMENDMENT

<b>SUBJECT INDEX:</b>	Local Laws
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Legal Services
<b>REPORTING OFFICER:</b>	Legal Officer - Briony McGinty
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Amendment Local Law  Attachment B Current Standing Orders 

3.13 pm At this time the Planning Officer left the meeting.

### PRÉCIS

The City's Standing Orders Local Law 2018 (**Standing Orders**) was published in the government gazette on 4 April 2018 and came into effect shortly thereafter. An amendment to the Standing Orders Local Law has been prepared (**Amendment Local Law**) for consideration by the Council. It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Amendment Local Law.

### BACKGROUND

Following gazettal of the Standing Orders, the Joint Standing Committee on Delegated Legislation (**JSC**) wrote to the City seeking an undertaking to amend certain provisions of the Standing Orders. On 25 July 2018 the Council resolved to provide the following undertaking to the JSC:

*"That the Council undertakes to the Joint Standing Committee on Delegated Legislation that:*

1. *within six months, the City will make the following amendments to the City of Busselton Standing Orders Local Law 2018:*

- (a) *Amend clause 6.7(6)(c) to read as follows:*

*the member of the public asks a question that is offensive or defamatory in nature or is one which, if asked by a member, would be in breach of these standing orders or any other law, provided that the presiding member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory, or does not breach these Standing Orders or any other law.*

- (a) *Amend clause 5.10(6) by deleting the words 'Local Government'.*
- (b) *Amend clause 8.16(1) by deleting the figure '16' and inserting '15' in its place.*
- (c) *Amend clause 10.18(2) by deleting the phrase ', the member'.*
- (d) *Amend clause 11.6(2) by deleting the figure '5.6' and inserting '5.10' in its place.*

2. *until the Local Law is amended in accordance with undertaking 1, the City will:*

- (a) *not enforce the Local Law in a manner contrary to undertaking 1.*

- (b) *where the Local Law is made publicly available, whether in hard copy or electronic form (including on the City's website), ensure that it is accompanied by a copy of these undertakings.*

As the City has undertaken to the JSC to amend the Standing Orders, it is also considered an opportunity to amend two other matters that have been identified by the City with regard to the Standing Orders. The two issues are the Order of Business and the timing of Notices of Motion. These issues are discussed further below under Officer Comment.

## **STATUTORY ENVIRONMENT**

Section 3.5 of the Act provides Council with the head of power for making a standing orders local law.

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has an adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament has appointed the JSC to undertake an advisory role on its behalf, which includes the power to scrutinise and recommend to the Parliament the disallowance of local laws to the Parliament.

Any correspondence received by the JSC is confidential and privileged. Disclosure of such information may be referred to the Legislative Council Procedure and Privileges Committee for investigation and possible penalty as contempt of Parliament.

## **RELEVANT PLANS AND POLICIES**

There are no plans or other policies relevant to this matter.

## **FINANCIAL IMPLICATIONS**

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

### **Long-term Financial Plan Implications**

The adoption of the Officer's recommendation has no long term financial plan implications.

## **STRATEGIC COMMUNITY OBJECTIVES**

This proposal aligns with Key Goal Area 6 of the *City of Busselton Strategic Community Plan 2017* as follows:

*6.1 Governance systems, processes and practices are responsible, ethical and transparent.*

## **RISK ASSESSMENT**

The Amendment Local Law will not involve a significant departure from current practices and is therefore considered low risk.

## CONSULTATION

Should Council resolve to commence the process of amending the Standing Orders the City is required to undertake the notice requirements under Section 3.12(3) of the Act.

## OFFICER COMMENT

### Undertaking to JSC

Clause 6.7 of the Standing Orders deals with the procedures for public question time during meetings. Sub-clause (6)(c) provides that:

*The presiding member may decide that a question is not to be responded to where –*

*.....*

- (c) the member of the public asks a question that is offensive or defamatory in nature or is one which, if asked by a member, would be in breach of these standing orders or any other law;*

The undertaking to the JSC requires that clause 6.7(6)(c) be amended so that the Presiding Member can only rule that the question will not be answered where she or he has first attempted to assist the member of the public to rephrase their question. The Presiding Member need only take “reasonable steps”. The purpose of this amendment is to ensure that members of the public have a genuine opportunity to participate in question time.

Minor drafting improvements (which were part of the undertaking to the JSC) have also been included in the Amendment Local Law.

### Order of Business

Improvements to the Order of Business under clause 5.2 have also been identified, for the purpose of grouping together ‘non-voting’ and ‘voting’ matters.

It would be more consistent for “Petitions, presentations and deputations” and “Questions by members of which due notice has been given (without discussion)” to immediately follow “public question time”, so that input from the public that does not require voting by Council is dealt with together. These three ‘non-voting’ items have now been grouped together.

Under regulation 7(2) of the *Local Government (Administration) Regulations 1996*, any matter that requires a decision of Council should be dealt with after “public question time”. The item “Applications for leave of absence” is a matter that must be voted on. Accordingly, the “Applications for leave of absence” item has been moved to after the “Confirmation of minutes” item, and these now form part of the voting matters that follow the non-voting matters.

### Notices of Motion

The Standing Orders currently provide that a member must provide a notice of motion at least 10 clear days before the meeting at which the motion is moved. It is generally expected and understood that this means a notice of motion should be provided, at a minimum, on the Friday before the Agenda Briefing Session in order for it to be included on the Council Agenda, which is also typically released on that Friday. However, it is open to interpretation that a notice of motion could arguably validly be provided (within the 10 days) on the Saturday. This would create both administrative and governance issues. If accepted, the notice of motion would need to be included on the Council Agenda as a “late item”. It could also not be included in the initial public advertising for the Council meeting due to publication deadlines.

It could still be included as an additional item in the follow up public advertisement, however, this would only be on the day of the Council meeting. These all serve to potentially impact upon the transparency of, and the public participation in, the potential notice of motion.

It is recommended that clause 5.8 (2) is amended to 12 clear days, which would make clear that a notice of motion must be provided by the Thursday prior to the release of the Council agenda on the Friday and the Agenda Briefing Session (thus allowing it to be included in the original published agenda, and advertised publicly).

## **CONCLUSION**

It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Amendment Local Law.

## **OPTIONS**

As the City has previously provided an undertaking to the JSC in relation to this matter it is not recommended to pursue other options with regard to those matters contained in the undertaking.

However, in relation to the other matters, the Council could choose to vary the provisions of the Amendment Local Law in any number of ways. This is, however, the form of local law recommended at this stage for the reasons stated in the report. There will be further opportunity for making changes to the Amendment Local Law following advertising and consultation, provided the changes are not significantly different from what is currently proposed. If any changes are of a significant nature the Amendment Local Law would need to be re-advertised.

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

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

**COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION****PL1808/206**

Moved Councillor K Hick, seconded Councillor G Henley

- (1) That the Council commences the law-making process, for the *City of Busselton Standing Orders Amendment Local Law 2018*, the purpose and effect of the local law being as follows:




Purpose: To clarify requirements in relation to public question time and to make minor drafting and operational amendments.

Effect: To ensure public question time is effective and to improve the operation of the Standing Orders.

- (2) That the Council authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act*, by –
- (i) giving Statewide public notice and local public notice of the Amendment Local Law; and
  - (ii) giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.
- (3) That the CEO, after the close of the public consultation period, submits a report to the Council on any submissions received on the Amendment Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

**CARRIED 5/0**

6.4 PROPOSED REPLACEMENT OF THE CURRENT ENFORCEMENT AND PROSECUTIONS POLICY  
WITH A PROPOSED COMPLIANCE POLICY

<b>SUBJECT INDEX:</b>	Legal
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Legal and Property Services
<b>ACTIVITY UNIT:</b>	Legal Services
<b>REPORTING OFFICER:</b>	Manager Legal and Property Services - Martyn Cavanagh
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Current Enforcement and Prosecutions Policy  Attachment B Proposed Compliance Policy  Attachment C Proposed amended Ranger and Emergency Services Approach to Regulatory Functions Policy 

## PRÉCIS

This report presents a revised policy in respect of the taking of compliance action for the enforcement of laws that provide for offences.

The revised policy has been amended to clarify the purposes and approach to compliance action, including by reference to fundamental principles governing the operation of criminal law. This provides a broader context to regulatory requirements for both the community and City officers.

Certain operational aspects have been removed from the current policy. These are more appropriately provided for in operational Staff Management Practices and guidelines.

## BACKGROUND

Council's current Enforcement and Prosecutions Policy (EPP) was adopted on 9 August 2017 and replaced the previous policy that had been in force since 2010. The 2010 policy was considered to be unnecessarily detailed, with much of the detail being operational in nature. A copy of the EPP is at Attachment A.

The EPP sets out a range of considerations that are relevant to the exercise of the prosecutorial function, with an emphasis on the fairness and transparency of action. While the EPP provides some high level guidance on principles to be applied in any particular case, it does not set out the overall objective or context of the purposes that the regulatory function is intended to achieve.

The EPP has been reviewed having regard to the recommendations made in the Governance Systems Review (GSR) undertaken by Mr John Woodhouse in late 2017. Those recommendations included that a Council policy should deal with higher level objectives and strategies.

A proposed Compliance Policy has been prepared to replace the EPP. A copy of the proposed Compliance Policy is at Attachment B.

## STATUTORY ENVIRONMENT

The City of Busselton is a body corporate with perpetual succession, the legal capacity of a natural person and a range of statutory powers provided under both the *Local Government Act 1995* (LGA) and other State Acts.

The general function of a local government is to provide for the 'good government' of persons in the district (section 3.1 of the LGA). This includes through making and enforcing laws that prohibit certain activities and provide for offences.

Council is the governing body of a local government, and is responsible under section 2.7 of the LGA for the performance of the local government functions, including by determining the local government's policies.

The adoption by Council of the proposed Compliance Policy would be in accordance with the Council's responsibilities referred to above. The enforcement of regulatory prohibitions is a necessary part of providing for 'good government' by maintaining standards of behaviour in the community.

### **RELEVANT PLANS AND POLICIES**

Council has adopted the Ranger and Emergency Services Approach to Regulatory Functions Policy (11 October 2017). This policy has an express purpose being to supplement the EPP.

The CEO has issued operational practice guidelines "Ranger and Emergency Services – Approach to Enforcement, Reviews and Appeals, Operational Practice and Procedure".

Both the Ranger and Emergency Services policy and guidelines referred to above are primarily directed at parking, traffic, dog/cat, fire management, litter and camping and related local government property management. They would remain consistent with the proposed Compliance Policy.

### **FINANCIAL IMPLICATIONS**

There are no negative financial implications arising from the revision of the policy.

#### **Long-term Financial Plan Implications**

Adoption of the proposed Compliance Policy will not give rise to any long term financial plan implications.

### **STRATEGIC COMMUNITY OBJECTIVES**

The Officer's recommendation aligns with and supports the Council's Strategic Community Plan 2017 as follows:

Key Goal Area 6: Leadership and Community Objective - 6.1 – Governance systems, process and practices are responsible, ethical and transparent.

### **RISK ASSESSMENT**

The proposed Compliance Policy does not materially change the City's position in relation to compliance action and introduces no additional risk or risks that are considered of a medium or greater level.

### **CONSULTATION**

No consultation was undertaken or considered necessary in relation to review of the EPP.

**OFFICER COMMENT**

The proposed Compliance Policy does not seek to materially change the City's position in relation to how compliance action is to be carried out. The proposed policy does seek to achieve two clarifications, in furtherance of the GSR recommendations referred to under 'Background' above.

The first clarification is to include a clear statement of the purposes that compliance action is to be directed at. These purposes derive from the essence of governing a community, which is to combine an appropriate level of order with freedom. This objective naturally gives rise to both a civic duty on citizens to voluntarily support and uphold the laws that are in force, and a regulatory duty on the local government as the body having the power to take action to enforce laws by bringing non-conforming citizens to account. Voluntary compliance by citizens will be supported where there is a high level of public confidence in the City's performance of its regulatory functions. The City can foster this public confidence by both promoting a high level of voluntary compliance, principally through education and leadership, and by effectively enforcing laws to protect the community and deter others from offending in appropriate cases.

The second clarification is to provide a more systematic approach to the consideration of public interest factors. 'Public interest' in this sense is about the weighing up of a range of competing potential considerations in each case and on merits. There is no formulaic approach to this. Rather, it is properly exercised from a position of informed understanding of the purpose of the regulatory requirement in each case, the function of the local government generally and the fundamental principles of criminal law relating to the 'presumption of innocence' and the burden of proof of 'beyond reasonable doubt'.

An appropriate guide for how to apply the principles is set out in the Director of Public Prosecutions publication 'Statement of Prosecution Policy and Guidelines 2005'. The Statement identifies a range of considerations that may be relevant to consider in any case. It also identifies matters that are not relevant, such as race, religious beliefs of the alleged offender and the possible political consequences of the exercise of the discretion.

The proposed Compliance Policy includes an express requirement on City officers to have regard to this Statement in exercising the City's regulatory functions.

The proposed Compliance Policy continues to provide for the consideration of alternative enforcement options, such as issuing infringement notices. It also continues to provide for Council to be informed of prosecution action being commenced, and extends this to informing Council in any exceptional case where prosecution action is withdrawn.

In relation to providing information to Council, it is intended that confidential emails would be used to notify Councillors when a decision has been made to initiate prosecution action as well as when prosecution action is actually commenced, briefly setting out the nature of the matter and the party to be prosecuted. Councillors would also be advised to direct any enquiries they receive to the Legal Services staff at the City for attention.

As the Ranger and Emergency Services Approach to Regulatory Functions Policy refers to the EPP, if Council adopts the proposed Compliance Policy then Council should also adopt an amendment to the Ranger and Emergency Services Approach to Regulatory Functions Policy by deleting the reference to "Prosecutions Policy" and substituting "Compliance Policy". An amended version of the Ranger and Emergency Services Policy is at Attachment C, noting at this stage the policy has not been otherwise reviewed to meet the recommendations of the GSR (including not having been transferred to the new Council Policy format). It is intended that a further review to this end will be undertaken in the coming months.

With respect to the implementation and application of the proposed policy, resourcing considerations need to be understood. Depending upon factors such as the nature of the evidence and the attitude of an alleged offender, compliance action can consume valuable City resources. The level of resources that is available will constrain the level to which prosecution action will be taken. The types of matters where prosecution action can be required include –

- (a) High risk matters, which may involve planning, building and health issues of significance;
- (b) Risk management matters, such as environmental and animal danger issues;
- (c) Standard business such as parking, caravans and camping issues; and
- (d) Reactive or incidental matters which are identified opportunistically rather than as a result of programmed approach.

The CEO will allocate resources as considered appropriate from and time to time, having regard to the nature and number of matters requiring investigation and action.

## **CONCLUSION**

It is recommended that Council adopt the proposed Compliance Policy at Attachment B to replace the existing EPP and adopt the minor amendment to the Ranger and Emergency Services Approach to Regulatory Functions Policy so as to maintain proper referencing between the policies.

## **OPTIONS**

The Council may not agree with the proposed Compliance Policy and may seek that the EPP remain in operation in its current format or for alternative changes to be made to it.

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

The EPP will be withdrawn, and the proposed Compliance Policy will be effective, as of the making of the decisions to withdraw and adopt or amend by Council.

## **OFFICER RECOMMENDATION**

That the Council:

1. withdraws the “015 Enforcement and Prosecutions” Policy as per Attachment A.
2. adopts the Compliance Policy as indicated within Attachment B.
3. adopts an amendment to the Council’s Policy ‘016 Ranger and Emergency Services Approach to Regulatory Functions’, by deleting the reference to “*Prosecutions Policy*” and substituting “Compliance Policy” as indicated in Attachment C.

**COMMITTEE RECOMMENDATION****PL1808/207**

Moved Councillor K Hick, seconded Councillor L Miles

That the Council:

1. withdraws the "015 Enforcement and Prosecutions" Policy as per Attachment A.
2. adopts the Compliance Policy as indicated within Attachment D, which includes Policy and Legislation Committee amendments.
3. adopts an amendment to the Council's Policy '016 Ranger and Emergency Services Approach to Regulatory Functions', by deleting the reference to "*Prosecutions Policy*" and substituting "Compliance Policy" as indicated in Attachment C.

**CARRIED 5/0**

Reason: The Committee was in agreement that the amendment to 5.4 would make the policy more readable.

## Attachment D

**COUNCIL POLICY**



**Council Policy Name:** Compliance Policy

**Responsible Directorate:** Finance and Corporate Services

**Version:** Proposed

**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; ~~and~~
  - f. deterring persons from committing offences and protecting the community; ~~and~~ and, e.g. promoting public confidence in the City's administration and exercise of regulatory powers.

Formatted: Font: (Default) Calibri, Font color: Auto

**2. SCOPE**

- 2.1. This ~~the~~ 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 ~~the~~ 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.

## Attachment D

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 following first principles are to apply 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.~~ ~~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.~~ ~~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. in each case,~~ City officers are to consider the relative merits of the alternative courses of action; ~~and;~~

~~b. in each case,~~ City officers are to provide information where reasonably possible to promote the objectives of education and future voluntary compliance.

~~5.7.~~ ~~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.~~ ~~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. a-~~ Prosecution action is not a 'last resort'; ~~and;~~

~~b. b-~~ Prosecution action is to be undertaken whenever the circumstances warrant that action being taken.

~~i.~~

Formatted: Font color: Auto

Formatted: Right: 0.5 cm, Space After: 0 pt, Add space between paragraphs of the same style, Line spacing: single

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt

Formatted

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Hanging: 0.5 cm

Formatted: Indent: Left: 2.25 cm, No bullets or numbering

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Right: 0.5 cm, Space After: 0 pt, Add space between paragraphs of the same style, Line spacing: single

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Hanging: 0.5 cm

Formatted: Font: (Default) +Body (Calibri), 12 pt, Font color: Black

Formatted: Normal, Indent: Left: 1.75 cm, No bullets or numbering

## Attachment D

~~5.9.~~ ~~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'**.

Formatted: Font color: Auto

Formatted: Right: 0.5 cm, Space After: 0 pt, Add space between paragraphs of the same style, Line spacing: single

Formatted: Font: +Body (Calibri), 12 pt

~~5.10.~~ ~~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.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

~~5.11.~~ ~~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.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font color: Auto

~~5.12.~~ ~~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.

Formatted: Indent Left: 2.25 cm, No bullets or numbering

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Right: 0.5 cm, Space After: 0 pt, Add space between paragraphs of the same style, Line spacing: single

~~5.12.~~ Information in respect of prosecution decisions and actions is to be provided to Council on a confidential basis.

~~5.13.~~ ~~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 ~~the~~ outcomes in accordance with the principles in this Policy.

Formatted: Font color: Auto

Formatted: Font: +Body (Calibri), 12 pt



## 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		Resolution #	
Previous Adoption	DATE		Resolution #	

**6.5      REVIEW OF COUNCIL POLICY - CITY PROMOTION - FEDERAL GOVERNMENT PARTNERSHIPS**

<b>SUBJECT INDEX:</b>	Policies
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Governance Services
<b>ACTIVITY UNIT:</b>	Governance Services
<b>REPORTING OFFICER:</b>	Administration Officer - Governance - Kate Dudley
<b>AUTHORISING OFFICER:</b>	Manager Governance and Corporate Services - Sarah Pierson
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A   Proposed Policy - City Promotion - Government Partnerships 
	Attachment B   Current Policy - City Promotion – Federal Government Partnerships 

3.36 pm      At this time the Director of Planning and Development Services and the Manager of Legal and Property Services left the meeting.

**PRÉCIS**

This report presents a revised 'City Promotion – Federal Government Partnerships' policy retitled City Promotion – Government Partnerships (Attachment A) (the Policy) for Council approval. The current policy has been amended as part of the City's overall review of its Council policies having regard to the recommendations of the Governance System Review carried out by Mr John Woodhouse in 2017.

The Policy, which has been moved into the new policy template and slightly broadened in terms of its intent, is considered to be of continuing relevance and importance and is therefore recommended for Council approval.

**BACKGROUND**

The Policy was originally adopted in December 2010 with the aim of identifying and supporting the strategic importance of building partnerships with State and Federal Governments, in order to maximise Government funding opportunities and deliver benefit to the City. While referencing both State and Federal Government, the policy was developed specifically with a focus on building Federal Government relationships and authorises for a delegation from the City of Busselton to visit Canberra annually or as the need arises.

The policy has been reviewed once, in April 2015, where minor changes were made to update "Shire" to "City" and "Shire President" to "Mayor".

**STATUTORY ENVIRONMENT**

In accordance with Section 2.7(2)(b) of the *Local Government Act 1995* (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 the Act.

**RELEVANT PLANS AND POLICIES**

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the Governance Systems Review. Included in the scope of the review was the City's policy and procedure framework with the following recommendations made:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
  - a. *Should deal with higher level objectives and strategies;*
  - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
  - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*
3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures, and a Council policy template developed. The Policy adheres to this framework and template.

## **FINANCIAL IMPLICATIONS**

Adoption of the Policy has no additional financial implications.

### **Long-term Financial Plan Implications**

Adoption of the Policy has no additional long term financial plan implications.

## **STRATEGIC COMMUNITY OBJECTIVES**

The 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, processes and practices are responsible, ethical and transparent.

## **RISK ASSESSMENT**

There are no risks identified of a medium or greater level associated with the Officers recommendation.

## **CONSULTATION**

No specific consultation was undertaken in relation to the review of the Policy.

## **OFFICER COMMENT**

The Policy continues to support the strategic importance of Council establishing partnerships with both Federal and State Governments for the purposes of maximising government funding opportunities which deliver benefit to the City of Busselton.

The Policy outlines a range of mechanisms for raising the profile of the City of Busselton's projects and development opportunities at both State and Federal Government levels, and hence the policy has been retitled to refer to Government partnerships collectively.

The Policy continues to authorise an annual visit to Canberra, or to other appropriate intra or interstate locations, by a City of Busselton delegation for this purpose, or for such a visit to be undertaken at short notice if an opportunity presents.

The additional reference to another 'appropriate intra or interstate location' is to cater for a possible opportunity presenting itself outside of Canberra, for instance at an event held in another location and attended by a relevant Federal Member.

The sending of a delegation to Canberra (or other location) is considered to present a very valuable opportunity and hence remains a key focus of the Policy. While the process of applying for grant funding is usually undertaken by written submission, the value of promoting projects and development opportunities directly with Government decision-makers cannot be underestimated. Promoting and presenting project portfolio's in person may serve to keep the projects being undertaken by the City at the forefront when significant grant funding opportunities are made available.

Finally paragraph 5.6 of the Policy has been amended to reflect that the delegation will be funded utilising funds established specifically for the purpose as opposed to the Councillors Conference and Training fund.

## **CONCLUSION**

The Policy updates the current City Promotion – Federal Government Partnerships policy and in doing so recognises the importance of and maintains support for raising the profile of the City of Busselton at both Federal and State levels.

## **OPTIONS**

Council could decide not to adopt the Policy and instead choose to take a different position / approach in relation to promotion of the City with other levels of government. Council could also require further amendments to be to the Policy.

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

The Policy will be effective as of its adoption by Council.

## **OFFICER RECOMMENDATION**

That the Council adopts the proposed City Promotion – Government Partnerships policy as per Attachment A, to replace the current policy (Attachment B).

## **COMMITTEE RECOMMENDATION**

**PL1808/208**

Moved Councillor L Miles, seconded Councillor K Hick

That the Council adopts the proposed City Promotion – Government Partnerships policy as per Attachment A, with an amendment to 5.2 to include "Members, Departments and key personnel" and a point 5.3 "that the City invest in joint lobbying through being members of associations such as Western Australian Local Government Association, Regional Capitals Alliance Western Australia and Capes Region Organisation of Councils" to replace the current policy (Attachment B).

**CARRIED 5/0**

Reason: The committee was in agreement that the Policy should not be limited to Minister visits only.

## **7. GENERAL DISCUSSION ITEMS**

### **7.1 PENDING REVIEW OF COUNCIL POLICY FEES ALLOWANCES AND EXPENSES FOR ELECTED MEMBERS**

It has been identified that the current Fees Allowances and Expenses for Elected Members policy (attached for reference, noting the policy has been transferred into the new template) does not reflect what officers understand to the intention with respect to childcare reimbursements, in that it does not currently provide for reimbursement of childcare expenses incurred while an Elected Member is attending briefing sessions (held on a Wednesday afternoon) or other organised briefing sessions / workshops. In order to correct this, the Policy will need to be amended and readopted.

By way of statutory background, section 5.98(2)(b) of the Local Government Act 1995 (the Act) and Regulation 32 of the Local Government (Administration) Regulations 1996 provides that a Council member may be reimbursed for an expense of a kind prescribed (of which childcare is one) where it has been approved by the local government and where it is incurred in performing a function in his or her capacity as a council member with the express authority of the local government. Section 5.98 (4) of the Act provides that the expense approved by a local government for reimbursement may be approved either generally or in a particular case. All reimbursements are to be in accordance with the determinations made by the Salaries and Allowances Tribunal.

The requirement to review the policy with respect to the reimbursement of childcare expenses also provides the opportunity to review other aspects of the policy that may benefit from some clarification. Officers have identified the following additional areas for discussion and potential amendments:

- Reimbursement of travel expenses and specifically clarification with respect to 'attendance at flagship events';
- Corporate attire expenses and clarification as to the per annum basis in relation to the \$750 reimbursement limit (i.e. election year or financial year);
- The setting of clearer timeframes for reimbursements such that reimbursements are (as far as possible) sought and paid for within a financial year and within an agreed set time of costs being incurred.

Prior to commencing a more thorough review of the policy feedback in relation to these items from the Policy and Legislation Committee is sought.

## **COMMITTEE DECISION**

That the Policy and Legislation Committee was in support of Officers drafting a proposed policy for the next meeting.

**8. NEXT MEETING DATE**

Tuesday, 25 September 2018

**9. CLOSURE**

The meeting closed at 5.57 pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 32 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON TUESDAY, 25 SEPTEMBER 2018.

DATE: \_\_\_\_\_

PRESIDING MEMBER: \_\_\_\_\_