

## **Policy and Legislation Committee Agenda**

28 April 2021

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city@busselton.wa.gov.au

## **CITY OF BUSSELTON**

## MEETING NOTICE AND AGENDA - 28 APRIL 2021

## TO: THE MAYOR AND COUNCILLORS

**NOTICE** is given that a meeting of the Policy and Legislation Committee will be held in the Committee Room, Administration Building, Southern Drive, Busselton on Wednesday, 28 April 2021, commencing at 10.00am.

The attendance of Committee Members is respectfully requested.

## **DISCLAIMER**

Statements or decisions made at Committee meetings should not be relied on (or acted upon) by an applicant or any other person or entity until subsequent written notification has been given by or received from the City of Busselton. Without derogating from the generality of the above, approval of planning applications and building permits and acceptance of tenders and quotations will only become effective once written notice to that effect has been given to relevant parties. The City of Busselton expressly disclaims any liability for any loss arising from any person or body relying on any statement or decision made during a Committee meeting .

MIKE ARCHER

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**CHIEF EXECUTIVE OFFICER** 

23 April 2021

## **CITY OF BUSSELTON**

## AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 28 APRIL 2021

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- 1. <u>DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS</u>
- 2. <u>ATTENDANCE</u>

**Apologies** 

- 3. **PUBLIC QUESTION TIME**
- 4. <u>DISCLOSURE OF INTERESTS</u>
- 5. <u>CONFIRMATION AND RECEIPT OF MINUTES</u>
- 5.1 <u>Minutes of the Policy and Legislation Committee Meeting held 24 February 2021</u>

## **RECOMMENDATION**

That the Minutes of the Policy and Legislation Committee Meeting held 24 February 2021 be confirmed as a true and correct record.

## 6. REPORTS

6.1 PROPOSED SCHEME AMENDMENT NO. 49 (WESTERN RINGTAIL POSSUM HABITAT PROTECTION SPECIAL CONTROL AREA) & PROPOSED LOCAL PLANNING POLICY (LPP XX : WESTERN RINGTAIL POSSUM HABITAT PROTECTION AREA) - CONSIDERATION FOR INITIATION FOR ADVERTISING

**STRATEGIC GOAL** 3. ENVIRONMENT Valued, conserved and enjoyed

**STRATEGIC OBJECTIVE** 3.1 Development is managed sustainably and our environment

valued.

**SUBJECT INDEX** Local Planning Schemes and Amendments

**BUSINESS UNIT** Strategic Planning

**REPORTING OFFICER** Planning Officer - Joanna Wilkinson

**AUTHORISING OFFICER** Director, Planning and Development Services - Paul Needham

NATURE OF DECISION Legislative: to adopt legislative documents e.g. local laws, local

planning schemes, local planning policies

**VOTING REQUIREMENT** Simple Majority

ATTACHMENTS Attachment A Dunsborough - Existing Zoning ...

Attachment H WRP Working Group Directions Paper !!

## **OFFICER RECOMMENDATION**

That the Council resolves to:

- I. In pursuance of the *Planning and Development (Local Planning Schemes) Regulations* 2015, initiate Amendment No. 49 to the *City of Busselton Local Planning Scheme No. 21* for community consultation, for the purposes of:
  - 1. Amending Part 5 "Special Control Areas" by inserting new clause 5.15 as follows -
    - 5.15 WESTERN RINGTAIL POSSUM HABITAT PROTECTION AREA

#### **5.15.1 PURPOSE**

The purpose of this special control area is to designate an area that is known to include trees of the species WA Peppermint which provide core habitat for the critically endangered Western Ringtail Possum, and to assist in the protection and enhancement of this habitat.

## 5.15.2 OBJECTIVES

The objectives of this special control area are to -

- (a) Provide for site planning that maximises retention of existing mature and healthy WA Peppermint on affected sites, and protects the ongoing health of existing WA Peppermint trees on adjoining sites and road reserves.
- (b) Provide a framework so that the protection of Western Ringtail Possum habitat is given high regard in decision-making.

- (c) Provide measures to offset the removal of mature and healthy WA Peppermint, where removal is approved.
- (d) Support the continuing and ongoing consolidation and expansion of urban development, consistent with the aims of this Scheme, and the objectives of the zones which apply to any affected site.

#### 5.15.3 **DEFINITIONS**

For the purposes of clause 5.15, the meaning of terms used are as follows –

"LPP No. XX" refers to the City's Western Ringtail Possum Habitat Protection Area Policy (as amended).

"offset planting" means the planting of replacement WA Peppermint to offset the loss of such vegetation that has been approved for removal.

"removal" means the pruning, lopping, transplanting or root removal of WA Peppermint vegetation.

"WA Peppermint" means all vegetative parts of the tree species Agonis flexuosa including canopy, trunks, branches, and root system.

### 5.15.4 PROVISIONS

- (a) The following provisions apply to all land shown on the Scheme Map as being within the "Western Ringtail Possum Habitat Protection Area" special control area.
- (b) There shall be no removal of WA Peppermint without the prior development approval of the local government, where:
  - (i) a tree has a trunk diameter of 100mm or greater when measured at 1.4 metres above ground level (see LPP No. XX); or
  - (ii) removal exceeds a canopy area of  $50m^2$  in any 12 month period ( $50m^2$  is approx.  $7m \times 7m$ ); or
  - (iii) there is an impact on roots or canopy in a tree protection zone, as described in LPP No. XX.
- (c) In consideration of an application for development approval, the local government may vary site and development requirements to facilitate the preservation of WA Peppermint in accordance with clause 4.5 of the Scheme and the approved R-Code variations within LPP No. XX.
- (d) Development approval for the removal of the WA Peppermint may be granted where the local government is satisfied that the applicant has demonstrated that:
  - (i) it is not possible to avoid removal; and
  - (ii) all reasonable steps to minimise removal are being taken.

- (e) In granting development approval, the local government may apply conditions that require one or more of the following measures:
  - (i) Retention of WA Peppermint, whereby a tree protection plan shall be prepared in accordance with LPP No. XX;
  - (ii) Offset planting of WA Peppermint trees in accordance with guidelines and planting rates specified in LPP No. XX;
  - (iii) Payment in lieu of offset planting, in accordance with the rates specified in LPP No. XX;
  - (iv) A Notification, pursuant to Section 70A of the Transfer of Land Act 1893, to be placed on the Certificate(s) of Title advising that there is a presumption against removal of WA Peppermint without the prior development approval of the local government, in accordance with the relevant provisions of this Scheme.
- (f) Where the proposed removal has been assessed and approved under State or Federal environmental legislation, then the provisions of this special control area do not apply.
- (g) The removal of WA Peppermint that is dead, dying or poses a hazard to property or life, or is required to meet bushfire management requirements, is exempt from the requirements of sub-clauses 5.15.4 (b) (e). The local government may require that the person responsible for the removal demonstrate that it was necessary for this reason.
- Modifying clause 5.1.1 "Operation of Special Control Areas" by including a new area

   "Western Ringtail Possum Habitat Protection Area" after the Drive-Through
   Facility Control Area as listed.
- II. Amend the Scheme Map by identifying "Western Ringtail Possum Habitat Protection Area" as shown on the Scheme amendment map and illustrated at Attachments B, D and F
- III. Pursuant to Regulation 35 (2) of the *Planning and Development (Local Planning Schemes)*Regulations 2015 (the Regulations), determine that Amendment No. 49 is a standard amendment in accordance with r. 34 of the Regulations as it is an amendment that is consistent with a local planning strategy for the scheme that has been endorsed by the Commission.
- IV. Note that, as the Amendment is in the opinion of the Council consistent with Part V of the Planning and Development Act 2005 (Act) and Regulations made pursuant to the Act, upon preparation of necessary documentation, the Amendment be referred to the Environmental Protection Authority (EPA) as required by the Act, and on receipt of a response from the EPA indicating that the Amendment is not to be subject to formal environmental assessment, be advertised for a period of 42 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015. In the event that the EPA determines that the Amendment is to be subject to formal environmental assessment, this assessment is to be prepared prior to advertising of the Amendment.

V. Initiate for the purpose of public consultation a new Local Planning Policy – LPP XX: Western Ringtail Possum Habitat Protection Area, as set out at Attachment G, by advertising the Local Planning Policy in accordance with clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.

### **EXECUTIVE SUMMARY**

Council is asked to consider initiating Scheme Amendment No. 49 which proposes a new special control area 'Western Ringtail Possum Habitat Protection Area', and a new Local Planning Policy 'LPP XX: Western Ringtail Possum Habitat Protection Area' (LPP XX). Existing zoning is illustrated at Attachments A, C and E.

Amendment No. 49 and LPP XX will be bound together in practice, meaning that the policy will provide operational detail for the implementation of the Scheme amendment.

Amendment No. 49 and LPP XX are recommended to be adopted for the purposes of public advertising.

### **BACKGROUND**

During 2006/07 Councillors and staff, in conjunction with the Federal Department of Environment, Water, Heritage and Arts, began thinking about how the habitat of *Pseudocheirus occidentalis* or Western Ringtail Possum (WRP) in the district might better be protected. Between 2008 and 2010 various Council actions included specific items within the 2008/09 financial year budget, the 2008/09 Corporate Plan, and the 2010-2020 Strategic Plan. The first formal Council decision (C0905/186) to support these actions was made at its meeting of 27 May 2009:

That the Council requires the CEO to consider how protection can be provided for individual peppermint trees in the area designated as the core habitat for the Western Ringtail Possum as prescribed by the Federal Department of Environment, Water, Heritage and Arts. That this consideration be directed to the development of a policy and/or Town Planning Scheme amendment that would require where possible the retention of individual and/or groups of peppermint trees, particularly those that are not afforded protection under existing DEC controls. The Policy and/or Town Planning Scheme Amendment mechanism be reported back with the draft content as part of either the next scheduled Policy (Planning) Review of the Scheduled Town Planning Scheme Review.

A WRP Habitat Protection Plan was completed in November 2009 which highlighted a number of elements affecting WRP habitat, as well as draft Scheme provisions to protect the habitat. On 25 May 2011, Council resolved (C1105/170) to note the WRP Habitat Protection Plan and support its use as a background document to assist with further planning and management of issues relating to WRP habitat; and to amend Town Planning Scheme No. 20 (TPS 20) by introducing a WRP habitat protection special control area. This lead to a Council resolution (C1212/357) on 12 December 2012 to adopt Amendment No. 146 to TPS 20, which proposed the introduction of a WRP Habitat Protection Area.

On 30 July 2014, following assessment by the Western Australian Planning Commission (WAPC), the City received notification that Amendment No. 146 had been refused. The reasons for refusal were:

- (i) The WAPC does not support provisions which would effectively 'up-code' individual development sites, beyond that which could be achieved under the prescribed R-Code. Such an approach would be contrary to the expectations of the local community and inconsistent with orderly planning.
- (ii) The provisions have a primary focus on cash or planting offsets rather than mechanisms to ensure flexible application of development standards to achieve colocation of habitat trees and development on the same site.
- (iii) Provision 6(b) would appear to incentivise the removal of vegetation, contrary to the intent of the provisions.
- (iv) The modifications necessary to suitably amend the proposal would be time consuming, may warrant advertisement of the Amendment and as such would jeopardise the timely introduction of Scheme 21.
- (v) The proposal provisions are unnecessarily complex and would be subject to misinterpretation by the community.

Each of these reasons has been taken into consideration during the drafting of this Amendment, with more detail provided in the 'Officer Comment' section of this report.

During 2016/2017, the conservation status of WRP was elevated at both State and Federal level to Critically Endangered, and this provided impetus for Council to recommence measures relating to WRP habitat protection through the Scheme. At its meeting of 10 May 2017, the Council resolved (C1705/105):

That the Council support the formation by the CEO of a 'Western Ringtail Possum Working Group', with the membership and role of the Group to be as follows:

- 1. Membership Interested Councilors and relevant staff; and
- 2. Role
  - a) Researching and receiving briefings from stakeholders on WRP issues;
  - b) Forming a view on what the City's role and approach to WRP issues should be, both in terms of actions by the City itself, but also in terms of advocating for action at State and/or Federal level; and
  - c) Briefing and seeking Council support for the Group's findings and proposed direction.

Subsequently, the Western Ringtail Possum Working Group (WRPWG) was formed and discussions were held with key stakeholders, resulting in the development of a Directions Paper (Attachment G). The intent of this Directions Paper is to form the basis for a WRP habitat protection strategy, and relevant to this proposal, key findings of the Directions Paper included:

- 1. Habitat in and around the Busselton and Dunsborough urban areas is likely to be important to the future survival of the WRP as a species.
- 2. Whilst WRP do feed on other plant species, mature WA Peppermint trees (Agonis Flexuosa) are important for providing food and shelter for WRP.
- 3. The current approach to protection and enhancement of WRP habitat, both in City of Busselton managed reserves and private land, is clearly insufficient to protect against degradation through clearing and development in a way that will critically affect the chances of WRP surviving on the Busselton-Dunsborough coastal strip.

At its meeting on 10 April 2019, the Council resolved (C1904/068) to adopt the WRPWG Directions Paper for the purpose of community consultation. At the same meeting, Council also resolved to initiate Amendment No. 42 to the Scheme for the purpose of amending the Scheme text by inserting a new clause within 'Part 5 – Special Control Areas' that would, if approved by the WAPC, create a 'Western Ringtail Possum Habitat Protection Area'.

Proposed Amendment No. 42 was considered to be a 'complex' amendment, pursuant to r. 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), because it was not addressed by any local planning strategy. As a result, r. 37 (4) required that the WAPC examine the proposal and advise if any changes to the documents were required prior to public advertising. A request to advertise proposed Amendment No. 42 was lodged with the WAPC on 26 September 2019.

This led to a lengthy period of examination by Department of Planning, Lands and Heritage (DPLH) officers, on behalf of the WAPC, whereby various changes were discussed. During this time DPLH officers also requested that City officers draft a complementary local planning policy to provide operational detail for the implementation of the proposed Amendment. On 23 October 2020 the WAPC formally advised that Amendment No. 42 was suitable to be advertised.

During the time that DPLH were examining Amendment No. 42, the City of Busselton Local Planning Strategy 2019 (LPS) was endorsed by the WAPC (13 March 2020). Where previously it had been found that Amendment No. 42 was a 'complex' amendment because it hadn't been addressed by any local planning strategy, the LPS addresses the protection of WRP habitat as set out in the 'Relevant Plans and Policies' section below.

In part due to the change in the planning framework, and in part due to the substantial changes that have occurred to proposed Amendment No. 42 as a result of examination by DPLH, City officers believe it is prudent to discontinue with Amendment No. 42. Given that officers are in the early stages of drafting a new local planning scheme, it is apparent that Amendment No. 42 will, without any further action, simply 'fall away'. It is proposed that a new amendment, Amendment No. 49, be initiated by Council, for the purpose of public advertising. Amendment 49 responds to the current planning framework as a 'standard' amendment, and seeks to address the changes suggested during examination by DPLH.

Given that LPP XX has been prepared and also examined DPLH officers, it is also proposed that this LPP be initiated by Council and advertised concurrently with Amendment No. 49. Further details of the LPP and Amendment are outlined below.

## **OFFICER COMMENT**

The WRP is unique to and was once widespread across much of the south west of Western Australia. Since European settlement, land clearing and other environmental changes have led to the species now being largely restricted to areas of the south and west coasts between Australind and Albany. The most important habitats are near-coastal woodlands and forests located on the southern Swan Coastal Plain between Bunbury and Dunsborough, and the WA Peppermint tree has been identified as the principle habitat and food source for WRP. In particular, the core habitat for much of the remaining WRP population is the narrow band of WA Peppermint forest that extends in a broken chain from the eastern edge of the Dunsborough urban area to the southern edge of the Bunbury urban area, as well as older parts of Bunbury, Busselton and Dunsborough urban areas.

WRP are identified as Critically Endangered under both State and Commonwealth environmental legislation. Statutory controls set out under the State and Commonwealth framework provide a reasonable level of protection for WRP and WRP habitat in rural and natural areas, as well as in areas of new urban development, from extensive clearing.

In older urban areas, including areas that are experiencing pressures for redevelopment (zoned and considered necessary for increased density residential development, or identified for urban consolidation under the *Local Planning Strategy*), much of the habitat consists of individual or small stands of WA Peppermint trees, the clearing of which can currently occur without City, State or Commonwealth approval.

Whilst the clearing of individual trees or small stands of trees in these areas may not, in any one instance, have significant impact on WRP as a species, the cumulative impact of such clearing is significant. These areas represent a large proportion of the core habitat for the WRP, and their protection and enhancement as WRP habitat has been identified as vital to ensuring the long-term survival of the species.

Key recommendations arising from both the 2009 WRP Habitat Protection Plan and the 2019 Directions Paper are the protection of WRP habitat on private land, particularly in the urban areas of Busselton and Dunsborough.

Furthermore, the broader benefit of preserving or establishing an 'urban canopy' has emerged as an important principle to be considered in urban planning. This is reflected in recent State planning documents such as *State Planning Policy 7.3 Residential Design Codes* (R-Codes) Volume Two – Apartments, and the State Administrative Tribunal decision *Kemstone Investments Pty Ltd and City of Joondalup* [2020] WASAT 115. The SAT presiding member found that the applicant had not complied with the acceptable outcome to provide adequate deep soil area for two medium trees that would, in the long term, improve urban tree canopy.

It is considered that the need to preserve the localised habitat of the Critically Endangered WRP, provides a sound basis to warrant the introduction of new Scheme controls. Additionally, the introduction of controls to preserve this habitat is consistent with the broader planning principle to preserve and expand urban tree canopy.

The two key elements of this proposal are the introduction of Amendment No. 49 (the Amendment), and the introduction of LPP XX. Each of these is discussed below.

## Amendment No. 49

Through this Amendment, it is proposed to introduce a special control area (SCA) to overcome deficits in the current clearing controls.

The area included in the SCA has been based on the Significant Impact Guidelines for the Vulnerable Western Ringtail Possum (Pseudocheirus occidentalis) in the Southern Swan Coastal Plain, Western Australia (the Guidelines) which identifies important habitat and feeding areas, dividing the areas into the three key categories of 'Core Habitat', 'Primary Corridors' and 'Supporting Habitat'. Within the District, 'Core Habitat' and 'Primary Corridors' tend to be centralised around residential areas of Busselton and along the coast between Busselton and Dunsborough where, in most instances, there are currently no controls over the small-scale removal of vegetation.

Some areas indicated as important areas for WRP within the Guidelines have been excluded from the SCA. These include residential areas with density coding of R5 or less, and newer residential subdivisions. The reasons for exclusion are:

- Residential areas with a density coding of R5 or less are subject to existing Scheme provisions that necessitate a development application being submitted and approved prior to the clearing of vegetation.
- Newer residential subdivisions, for example Vasse, Dunsborough Lakes and Old Broadwater Farm, are generally devoid of well-established native trees on private land. If clearing approvals are required as part of the subdivision process then these are obtained from the necessary agencies. It is considered that there is no requirement at present for these areas to be included in the SCA, however this may be reviewed in the future when vegetation becomes better established.

While the WRP Habitat Protection Plan found that many species of native vegetation can provide habitat for WRP, the most significant type of WRP habitat vegetation within the District is the WA Peppermint tree (*Agonis flexuosa*). The proposed SCA aims to provide for site planning that will maximise the retention of existing mature and healthy WA Peppermint trees, and to protect the health of WA Peppermint trees on adjoining sites and road reserves. The Amendment would require development approval for any proposed removal of WA Peppermint vegetation where:

- (i) a tree has trunk diameter of 100mm or greater when measured at 1.4 metres above ground level; or
- (ii) removal exceeds a canopy area of 50m<sup>2</sup> in any 12 month period; or
- (iii) there is an impact on roots or canopy in a tree protection zone.

These criteria have been developed with the intention to allow the removal of small individual trees and/or pruning without requiring development approval, however it would capture the removal of a single mature tree or greater which may provide viable WRP habitat conditions. It is proposed that the maximum area of canopy cleared before a development application is required would be determined cumulative over a 12 month period. This would prevent multiple rounds of small scale clearing and/or pruning over a short period and is consistent with the timeframe set under the clearing regulations for large scale clearing.

In order to provide incentive for the retention of vegetation, the Amendment has been drafted so that some site and development requirements may be varied in accordance with the R-Codes (Volume 1) design element variations detailed in LPP XX, or for all non-residential zones in accordance with clause 4.5 of the Scheme. It should be noted that Amendment 42 was deliberately broad to allow for the variation of a range of design elements, however during their examination of the proposal DPLH officers suggested that the proposed variations to the R-Codes (Volume 1) be specified in a local planning policy. When drafting these variations, a factor considered was one of the reasons for refusal of Amendment No. 146 to TPS 20, i.e. because it proposed to effectively 'upcode' individual sites by providing density bonuses (R-Codes Volume 1, clause 5.1.1 Site area). This proposal does not include a variation to density controls, and the variations that are proposed within the LPP are discussed in further detail below.

While the protection of WRP habitat is the primary purpose of this proposal, it is acknowledged that retention of vegetation is not always possible. Therefore, the Amendment proposes that where a proponent is able to demonstrate that they are unable to retain WA Peppermint tree vegetation within the development site, they can either carry out offset planting within the site or on the adjoining road reserve. If that is not possible, a payment in lieu of offset planting may be required.

Furthermore, the Amendment also aims to support the continuing and ongoing consolidation and expansion of urban development, consistent with the *Local Planning Strategy*. This is achieved through acknowledging that sites should have the ability to be developed for the purpose for which they were created, and that there should be a partial exemption for sites that are previously undeveloped/vacant. Partial exemptions are discussed in further detail below.

Finally, the Amendment sets out the measures that may be required if development approval is granted for the removal of WRP habitat. LPP XX provides the operational detail for the implementation of these measures.

### **Draft Local Planning Policy XX**

The operational measures that are addressed within LPP XX include variations to R-Codes (Volume 1) development requirements, partial exemptions for vacant lots, offset planting requirements, payment in lieu calculations, and additional supporting information requirements. These are discussed below under appropriate sub-headings.

## <u>Variations to R-Code Development Requirements</u>

LPP XX clearly sets out the R-Codes (Volume 1) design elements and the deemed-to-comply variations that may be considered in order to facilitate the retention of WRP habitat. Part 7.3.1 of the R-Codes (Volume 1) sets out which of these design elements may be varied with local government consent; elements proposed within the LPP include 5.1.2 Street setback, 5.1.3 Lot boundary setbacks, and 5.2.1 Setbacks of garages and carports.

Part 7.3.2 of the R-Codes (Volume 1) provides that the local government may, with WAPC approval, amend other deemed-to-comply provisions by means of the local planning policy, where it can be demonstrated that the proposal:

- is warranted due to a specific need related to that particular locality or region;
- is consistent with the objectives and design principles of the R-Codes; and
- can be properly implemented and audited by the decision-maker as part of the ongoing building approval process.

It is proposed that the deemed-to-comply provisions of the following design elements, requiring WAPC approval, be varied in order to facilitate the retention of WRP habitat:

Design Element	R-Code Deemed-to-Comply	Proposed Deemed-to-Comply
5.3.3 Parking	C3.1 On-site car parking spaces required for a 2+ bedroom single house or grouped dwelling: 2	On-site car parking spaces required for a 2+ bedroom single house or grouped dwelling: 1
	C3.2 On-site visitor car parking spaces for grouped and multiple dwellings: 1 space for each 4 dwellings.	On-site visitor car parking spaces for grouped and multiple dwellings: 1 space for each 6 dwellings.
5.3.5 Vehicular Access	<ul> <li>C5.1 Access to on-site car parking spaces may be provided:</li> <li>where available, from a right-of-way;</li> <li>from a secondary street where no right-of-way exists;</li> <li>from the primary street frontage where no secondary street or right-of-way exists.</li> </ul>	All dwellings:  Access to on-site car parking spaces may be provided from a primary street where a secondary street exists.
	C5.5 Driveways for multiple and grouped dwellings where the number of dwellings is five or more, shall be:  • a minimum width of 4m; and  • designed to allow vehicles to pass in opposite directions at one or more points.	Grouped and multiple dwellings where the number of dwelling is five or more:  • driveways may be reduced to no less than 3m, and passing bays or similar are to be provided.

As discussed at the beginning of this section, the proposed variations are warranted due to specific need related to the locality/region. The proposed variations are not profoundly different from the current standards, and therefore the consistency with objectives and design principles of the R-Codes can be assessed on a case by case basis, at the time when development applications are submitted. Should the variations be approved by the WAPC as part of this proposal, and later by the local government as part of a development application, then implementation and audit processes would be consistent with current practices.

## Partial Exemption for Vacant Lots

The proposed partial exemption area will conform to the percentage of a site that is not required for open space (i.e. the developable area) as provided for in Part 5.1.4 of the R-Codes (Volume 1). It may be applied where the site of the proposal is zoned Residential and has not previously been developed, or if the site is vacant and WRP habitat vegetation exceeds the R-Code open space requirement (this latter measure allows for sites where demolition of building may occur prior to an application for a new building).

The LPP includes an appendix with an example calculation showing how the partial exemption may be applied.

## Offset Planting Requirement

The LPP requires that one tree should be planted for each 20m<sup>2</sup> of canopy removed. This calculation is based on the requirements set out in Table 3.3a of Part 3.3 of the R-Codes (Volume 2), where tree provision requirements aim to improve urban tree canopy in the long term.

The LPP also specifies an indicative pot size of 35 litres. A tree of this size will be approximately 1.5m tall at the time of planting, and is readily available from local suppliers. 35 litres is generally the pot size that will be purchased by the City when carrying out street tree planting.

Furthermore, guidelines have been provided in regard to the separation distance between offset plants and between buildings. This is a proactive measure to allow for the best conditions for long-term survival of the offset plant.

## Payment in Lieu Calculations

It is acknowledged that some sites may not have sufficient area to fulfil offset planting requirements, and therefore it is proposed that the balance be provided as a payment in lieu of offset planting.

A standard fee is prescribed, and an appendix to the LPP provides detail as to how the fee has been calculated. This calculation includes the actual contract and material costs, as well as administration and in-kind costs, associated with the City's 2019 street tree planting program.

This calculation demonstrates that the cost of planting one 35L tree is approximately \$200. Given the proposal that one offset tree should be required per 20m² of canopy removed, it is therefore proposed that the payment in lieu amount is set at \$10 per one square metre of canopy removed.

## <u>Additional Supporting Information Requirements</u>

The primary purpose of this proposal is to retain existing WRP habitat, and therefore a mechanism is included to ensure the survival of vegetation during construction. This mechanism is proposed through a tree protection plan, whereby the applicant would identify the tree protection zone (an area isolated from construction disturbance so the tree remains healthy) and accordingly put measures in place to protect this area.

A tree protection plan template is provided as an appendix to the LPP. This template has been drafted based on information derived from AS 4970 – 2009: Protection of trees on development sites.

## **Statutory Environment**

The key statutory documents relevant to this proposal are:

- Planning and Development Act 2005 and associated Regulations
- Local Planning Scheme No. 21
- Environmental Protection and Biodiversity Conservation Act 1999
- Environmental Protection Act 1986
- Biodiversity Conservation Act 2016

Each is discussed below under appropriate subheadings.

## Planning and Development Act 2005 (WA) ('PD Act') and associated Regulations

The PD Act outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been taken into account in preparing this Amendment.

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), which came into operational effect on 19 October 2015, identify three different levels of amendments – 'basic', 'standard' and 'complex'. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is considered to be a 'standard' amendment for the reason set out in the 'Officer Recommendation' section of this report.

Clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the Regulations, sets out the procedure for making a local planning policy.

## Local Planning Scheme No. 21 (the Scheme)

Under the PD Act, the clearing of vegetation generally falls within the definition of 'development' and requires approval unless specifically exempted by a planning scheme. In the City's Scheme, Part 6 sets out requirements for the development of land, and the clearing of vegetation is exempt from the requirement for development approval except where the development is located:

- in a Coastal Management, Wetland, Landscape Value, or Floodway area;
- in the Rural Residential, Conservation, Rural Landscape or Bushland Protection zones;
- on land coded R2, R2.5 or R5;
- on or over any land below the mean high water mark, or forming part of a watercourse;
- on a public road or unzoned land.

The Amendment would change the areas of land that are exempt from development approval for the clearing of vegetation.

#### Environmental Protection and Biodiversity Conservation Act 1999 (Cth) ('EPBC Act')

Under the EPBC Act, in 2018 the conservation status of the WRP was elevated from 'Endangered' to 'Critically Endangered'. The EPBC Act protects WRP habitat but is limited in its application to clearing controls which can have a "significant impact" on habitat environment. This term is not defined in the Act, however, the Significant Impact Guidelines for the Western Ringtail Possum (Pseudocheirus occidentalis) in the Southern Swan Coastal Plain, Western Australia (EPBC Act policy statement 3.10) does provide guidance on this matter. Most small-scale clearing in urban areas is not regulated under the EPBC Act.

### Environmental Protection Act 1986 (WA) ('EP Act') and associated Regulations

The EP Act provides a legal framework for the State Government to protect the environment and regulate pollution. It sets out a range of different processes for doing this, including (relevant to this proposal) environmental impact assessments for planning scheme amendments and development proposals with the potential to cause significant environmental impact; as well as a permit system regulating the clearing of native vegetation. The EP Act is supplemented by a number of environmental protection policies and subsidiary pieces of legislation, including the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (Clearing Regulations).

The Clearing Regulations have the effect that, unless specifically exempted, a permit is required for the clearing or disruption of native vegetation (including, in many instances, regrowth or "intentionally planted vegetation"). There are no exemptions provided within identified 'Environmentally Sensitively Areas' (ESA) pursuant to the EP Act. This includes 'Conservation Category Wetlands' and the associated buffers and vegetation containing 'Threatened Ecological Communities' or 'Declared Rare Flora'. Much of the City, including most of the urban area, however, is located outside an ESA. As such, clearing may be exempt from the need to obtain a permit, for purposes that include:

- development of approved buildings;
- establishment of fences;
- collection of firewood for personal use by a landowner; or
- fire and emergency management.

With the exception of the last of these, exempted clearing includes a maximum of 1.0 hectare per year per property and, as such, permits are not required for most (usually small scale) clearing of habitat within urban areas.

## Biodiversity Conservation Act 2016 (WA, 'BC Act')

The BC Act came into practical effect from 1 January 2019, replacing the *Wildlife Conservation Act* 1950. The BC Act introduces new provisions for important biodiversity conservation matters that were not recognised in the previous Act, such as new protections for habitat critical to the survival of a 'Threatened Species' (including habitat conservation notices). Orders necessary to use those powers, however, have not yet been developed. As such, like its predecessor, the BC Act at present "protects the animal, but not its home".

## **Relevant Plans and Policies**

The key policies relevant to this proposal are:

- City of Busselton Local Planning Strategy
- State Planning Policy 2 –Environment and Natural Resources Policy
- State Planning Policy 3.1 The Residential Design Codes of WA

Each is discussed below under appropriate subheadings.

## City of Busselton Local Planning Strategy (LPS)

The LPS broadly sets out the long-term planning direction for the whole of the district, and provides the strategic rationale for decisions related to the planning and development of the district. The LPS includes the following Themes and Strategies that are applicable to the Amendment.

Theme 4 'Environment, landscape and heritage' includes the following strategy:

d) Support the long-term survival of the District's Western Ringtail Possum Population, especially the population within urban areas.

Theme 5 'Implementation and review' includes the following strategy:

- d) Develop and implement integrated plans within 5 years of adoption of the strategy as follows
  - (iv) A Western Ringtail Possum habitat protection strategy, which provides for the long-term protection and enhancement of habitat, whilst also supporting the consolidation and expansion of urban development.

## State Planning Policy 2: Environment and Natural Resources Policy (SPP 2)

SPP 2 must be given due regard by the WAPC and local government in the making of all planning decisions. SPP 2 sets out that planning schemes and decision-making should:

- (ii) Actively seek opportunities for improved environmental outcomes including support for development which provides for environmental restoration and enhancement.
- (iii) Protect significant natural... features, including sites and features significant as habitats...
- (x) Support conservation, protection and management of native remnant vegetation where possible to enhance... biodiversity, fauna habitat, landscape, amenity values and ecosystem function.

SPP 2, Part 5.5 Biodiversity, sets out that planning strategies, schemes and decision-making should:

(i) Consider mechanisms to protect areas of high biodiversity and/or conservation value, including:

....

- (d) land containing Threatened Flora or Threatened Ecological Communities... or that which is habitat to Threatened Fauna.
- (ii) Seek to avoid or minimize any adverse impacts, directly or indirectly, on areas of high biodiversity or conservation value as a result of changes in land use or development.

...

(iv) Safeguard and enhance linkages between terrestrial aquatic habitats which have become isolated, including the re-establishment of habitat corridors.

## State Planning Policy 7.3: Residential Design Codes – Volumes 1 and 2 (R-Codes)

The Scheme adopts the standards for residential development established in the Residential Design Codes of Western Australia (R-Codes) subject to the modifications specified in Clause 4.3 of the Scheme. The incentive provisions referred to in this Amendment allow for consideration of discretions to the deemed-to-comply criteria of certain design elements of Volume 1 of the R-Codes.

## **Financial Implications**

Financial implications associated with the recommendations of this report relate to implementation of additional clearing controls, which would likely increase the City's planning assessment and enforcement workload.

### **Stakeholder Consultation**

#### **Consultation to Date**

Following Council's initiation of Amendment No. 42, DPLH officers (representing WAPC) were required to examine the proposal. As a result, DPLH officers suggested that City officers draft a complementary local planning policy to provide operational detail for the implementation of Amendment No. 42. The information exchanged during the examination period forms the basis of Amendment No. 49 and associated LPP XX.

## **Proposed Consultation**

If the Council resolves to initiate the Amendment and LPP XX, the relevant documentation associated with the Amendment would be referred to the Environmental Protection Authority (EPA) for consideration of the need for formal assessment under Part IV of the *Environmental Protection Act* 1986.

Should the EPA resolve that the Amendment does not require formal assessment, then the Amendment document and associated Local Planning Policy XX will be advertised concurrently and for 42 days in accordance with the *Planning and Development (Local Planning Schemes) Regulations* 2015 (the advertising period required for a standard amendment).

To facilitate advertising, the following actions will be undertaken:

- Targeted emails to landowners within the proposed Special Control Area;
- A notice on the City's website, and a portal to be created using the City's *YourSay* platform for the online lodgment of submissions;
- Notices in the local newspaper and via social media; and
- Information sessions with stakeholders and the community.

At its meeting on 10 April 2019, Council also resolved (C1904/068) to adopt the *Western Ringtail Possum Working Group Directions Paper* for the purpose of community consultation. That paper would also be advertised for 42 days alongside the Amendment and LPP.

## **Risk Assessment**

The implementation of the officer recommendation will involve initiating the Amendment and LPP XX for referral to the EPA and, upon response from the EPA, advertising for the purpose of public consultation. No risks of a medium or greater level have been identified.

## **Options**

As an alternative to the proposed recommendation, the Council could:

- 1. Resolve to seek further information before making a decision.
- 2. Resolve to initiate the Amendment and/or LPP XX subject to identified modification(s), to be explained.
- 3. Resolve to decline the initiation of the Amendment and LPP XX for advertising for reasons to be identified and explained.

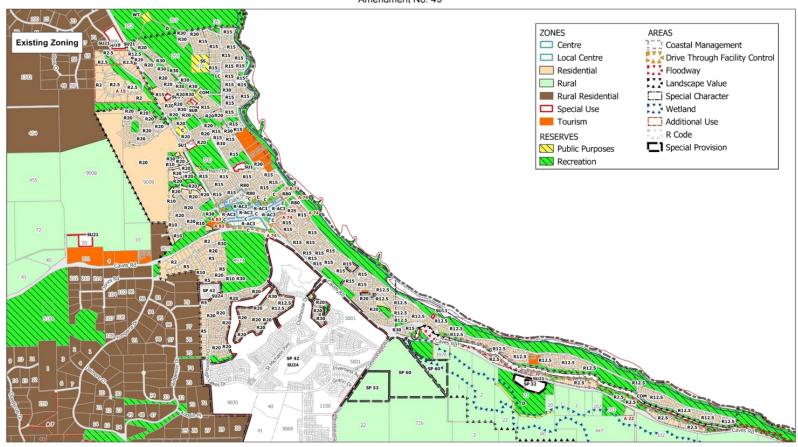
## **CONCLUSION**

The information contained within this report confirms that the Amendment and LPP XX are an appropriate outcome consistent with the orderly and proper planning of the City of Busselton and, as such, it is recommended that the Amendment and LPP XX be initiated for public consultation.

## TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the officer recommendation will include referring the Amendment to the Environmental Protection Authority, which will occur within one month of the date of the Council decision.

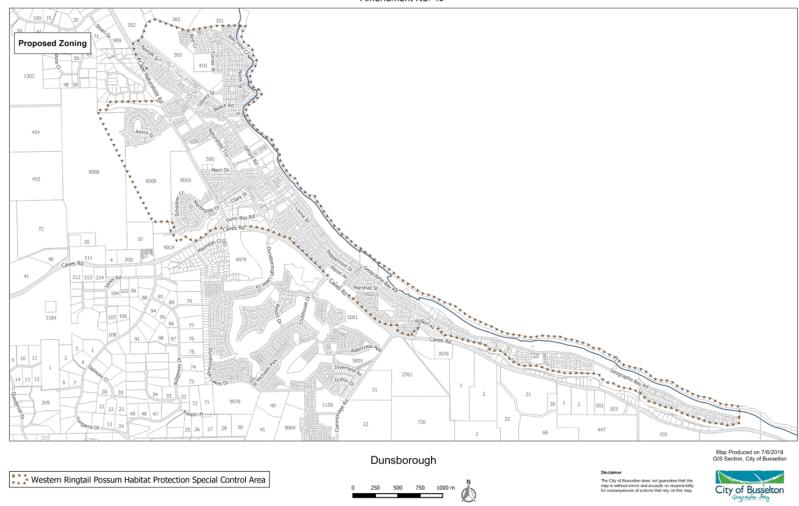
City of Busselton Local Planning Scheme No.21 Amendment No. 49



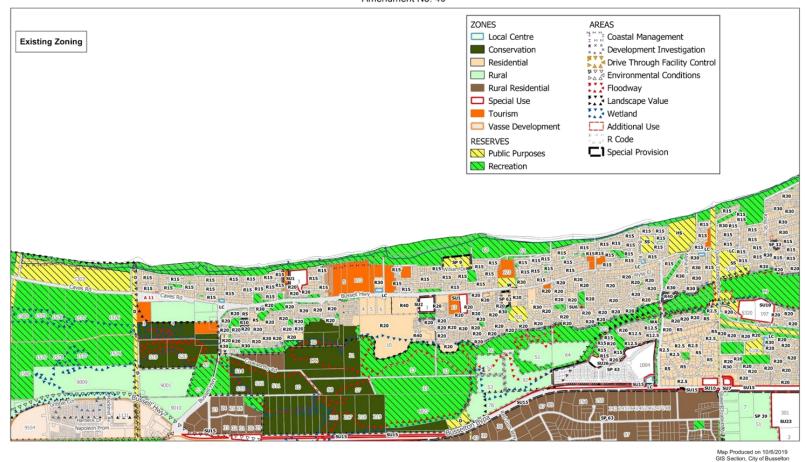
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City of Busselton Local Planning Scheme No.21 Amendment No. 49



City of Busselton Local Planning Scheme No.21 Amendment No. 49





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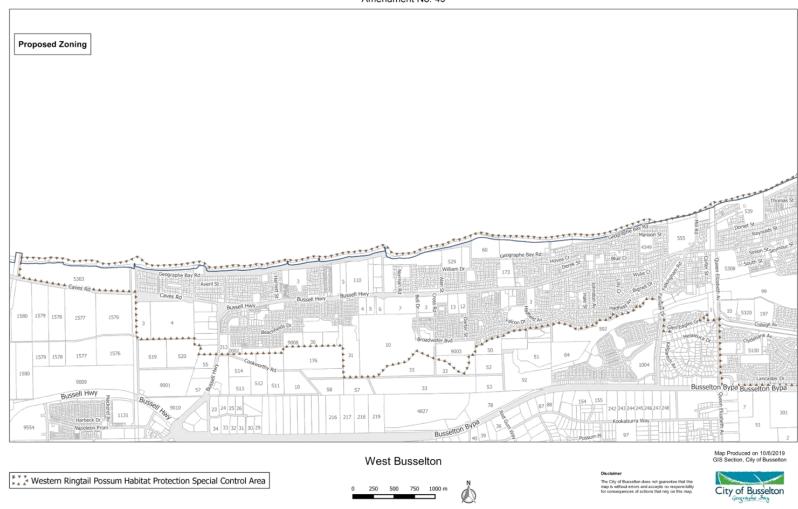
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City of Busselton Local Planning Scheme No.21 Amendment No. 49



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City of Busselton Local Planning Scheme No.21 Amendment No. 49

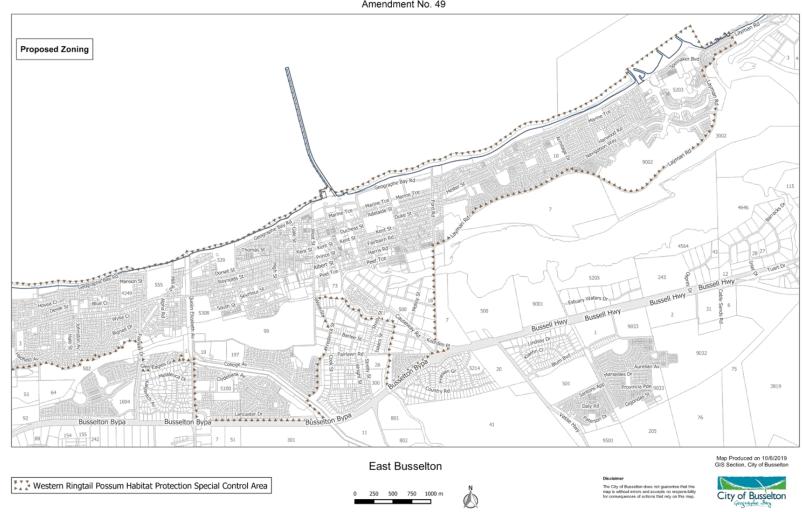




East Busselton



City of Busselton Local Planning Scheme No.21 Amendment No. 49



## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

#### 1. Head of Power and Scope

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes)* Regulations 2015, Schedule 2 (Deemed Provisions), Clause 4 and applies to any Removal of WA Peppermint within a "Western Ringtail Possum Habitat Protection" Special Control Area.

Where an the proposed Removal has been assessed and approved under State or Federal environmental legislation, then the provisions of the Special Control Area do not apply.

#### 2. Purpose

The purpose of this Local Planning Policy is to:

- 2.1. Assist and guide the City and landowners in the protection of Western Ringtail Possum (WRP) habitat and maintenance of habitat linkages; and
- 2.2. Provide a framework so that the retention of WRP habitat can be given high regard in decision-making; and
- 2.3. Provide guidance for development within private property to encourage the retention of WRP habitat or, where not possible to retain WRP habitat, to put in place requirements that result in a net benefit to WRP habitat over the long term.

## 3. Interpretation

Terms should be interpreted in the same way as they would be interpreted if they were contain or within the Scheme, other than those terms defined below:

**"AS 4970 – 2009"** means Australian Standard *AS 4970 – 2009 Protection of Trees on Development Sites* (as amended).

"Offset Planting" means the planting of replacement WA Peppermint to offset the loss of such vegetation that has been approved for Removal.

"Policy" means this Local Planning Policy, entitled 'Western Ringtail Possum Habitat Protection Area'

"R-Codes" means State Planning Policy 7.3 Residential Design Codes Volume 1 (2019) (as amended).

"Removal" means the pruning, lopping, transplanting or root removal of WA Peppermint vegetation.

"Responsible Person" means a person nominated by the applicant/owner who shall be the person responsible for the implementation of the Tree Protection Plan and the requirements contained within.

# City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

"Scheme" means City of Busselton Local Planning Scheme No. 21.

"Special Control Area" means the Western Ringtail Possum Habitat Protection Special Control Area, as shown on the Scheme map.

"Tree Protection Zone (TPZ)" means a specified area above and below ground and at a given distance from the trunk set aside for the protection of a tree's roots and canopy to provide for the health and stability of a tree to be retained where it is potentially subject to damage by development.

Note 1: To determine the TPZ, see Appendix 1.

"WA Peppermint" means all vegetative parts of the tree species Agonis flexuosa including canopy, trunks, branches, and root system.

### 4. Policy Statement

This Policy has been separated in the following sections:

- 4.1 Hierarchy of Protection Measures.
- 4.2 Variations to R-Code Development Requirements.
- 4.3 Partial Exemption for Vacant Lots.
- 4.4 Offset Planting Requirements:
  - a) On-site or adjoining verge planting requirements;
  - b) Payment in Lieu of Offset Planting.
- 4.5 Additional Supporting Information Requirements.

## Appendices:

- Appendix 1: Determining the Tree Protection Zone and Structural Root Zone
- Appendix 2: Example Calculations for a Partial Exemption to a Vacant Lot
- Appendix 3: Calculation of Payment In Lieu of Offset Planting
- Appendix 4: Tree Protection Plan (TPP) Template

## 4.1 Hierarchy of Protection Measures

In accordance with clause 5.15 of the Scheme, where the Removal of WA Peppermint on private property within the Special Control Area requires a development application, it will be assessed using the following hierarchy, on a sequential and preferential basis:

- (a) Avoidance in the first instance Removal of WA Peppermint should be avoided and should not encroach by more than 10% into a TPZ.
- (b) Minimisation and retention where it can be demonstrated to the satisfaction of the local

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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government that it is not possible to avoid the Removal of WA Peppermint, any development should be designed to minimise the amount of vegetation requiring Removal

Note 2: Generally the City will not support any works within the structural root zone (SRZ) of any WA Peppermint that is to be retained. To determine the SRZ, refer to AS 4970 – 2009.

(c) Offset Planting – where it can be demonstrated to the satisfaction of the local government that it is not possible to avoid the Removal of WA Peppermint, Offset Planting will be required via a condition of development approval.

In recognition of the normal development opportunity provided for a vacant lot, a partial exemption from the requirement for Offset Planting and/or a payment in lieu of Offset Planting may be applied as per section 4.3 of this Policy.

Note 3: Where a tree's canopy extends beyond the lot boundaries, the Removal of this canopy will be calculated together with the Removal of any canopy within the development site.

#### 4.2 Variations to R-Codes Development Requirements

In order to facilitate the retention of WA Peppermint the local government may vary the following R-Code development requirements:

Table 1: Variations to R-Code site and development requirements

Table 1: Variations to R-Code site and development requirements				
Design Element	Variation			
5.1.2 Street Setback 5.1.3 Lot Boundary Setbacks 5.2.1 Setbacks of Garages and Carports	A variation may be proposed, on a locational basis, in response to specific site conditions to address the hierarchy of protection measures at section 4.1.			
5.3.3 Parking	2 – 4 bedroom single house or grouped dwelling: Minimum number of one (1) onsite car parking space per dwelling.  All grouped and multiple dwellings: Minimum number of one (1) visitor car parking space for each six dwellings, or part thereof in excess of six dwellings, serviced by common access.			
5.3.5 Vehicular Access	All dwellings: Access to on-site car parking spaces may be provided from a			

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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primary street where a secondary street exists.
Grouped and multiple dwellings where the number of dwellings is five or more:  Driveways may be reduced to no less than 3m, and passing bays or similar are to be provided.

Supporting information should be provided to demonstrate how the proposed variation:

- (a) facilitates the retention of WA Peppermint on the site; and
- (b) achieves the objectives and relevant design principle(s) of the R-Codes.
- 4.3 Partial Exemption for Vacant Lots

A partial exemption from the requirement for Offset Planting, conforming to the R-Codes clause 5.1.4 Open Space requirement, may be applied where:

- (a) the site of the Removal is zoned Residential; and
- (b) the site has not previously been developed at the time that the development is proposed; or
- (c) the site is vacant and WA Peppermint exceeds the site's R-Codes Open Space requirement.

Table 2: Offset planting exemptions

R-Code	R-Codes Table 1: Open Space Requirement	Maximum % of site area that is exempt
R10	60%	40%
R15	50%	50%
R20	50%	50%
R30	45%	55%

Note 4: See Appendix 2 for an example of how to calculate a partial exemption for a vacant lot.

## 4.4 Offset Planting Requirement

a) On-site or adjoining verge planting requirements



## Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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Offset Planting should occur at the site of the development or within the adjacent road reserve, and in accordance with Table 3: Offset Planting guidelines.

Table 3: Offset Planting guidelines

Canopy Area Removed Offset Rate and Indicative Pot Size			
50m <sup>2</sup> - 70 m <sup>2</sup>	3 x 35L		
For every additional $20m^2$ of canopy removed, an additional 1 x 35L Offset Planting tree is required.			
Minimum separation between trees/retained trees	n any replacement	5m	
Minimum separation between repl	acement trees and any	5m	

Note: Where removal of canopy is less than 50m² (approx. 7m x 7m) in a 12 month period, then no Offset Planting is required; if removal of canopy exceeds 50m² then these provisions apply to all canopy removed except where Policy section 4.3 exemptions apply.

### b) Payment in Lieu of Offset Planting

Where the Removal of WA Peppermint is approved and there is insufficient area within and adjacent to the development site to fulfil Offset Planting requirements, and pursuant to sub-clause 5.15.4 (e) (iii) of the Scheme, the local government may require that the balance be provided as a payment in lieu of Offset Planting.

A standard fee for payment in lieu of Offset Planting is set at the rate of \$10 per square metre of canopy removed. The fee will be upgraded in line with the Consumer Price Index on 30 June and 30 December each year.

Table 4: Calculation rates for payment in lieu of Offset Planting

Payment in Lieu of Offset Planting		
Canopy Area Removed	Payment Rate	
1m²	\$10	
5m²	\$50	
10m²	\$100	
100m²	\$1,000	

#### Notes

- Where there is sufficient area within or adjacent to the site, Offset Planting should be carried out.
- Where removal of canopy is less than 50m² (approx. 7m x 7m) in a 12 month period, then no Offset Planting or payment in lieu of Offset Planting is required; if removal of canopy exceeds 50m² then these provisions apply to all canopy removed except where Policy section 4.3 exemptions apply.

# City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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The contract and material costs, as well as administration and in-kind costs, associated with undertaking Offset Planting are detailed in Appendix 3.

#### 4.5 Additional Supporting Information Requirements

- (a) All applications for development approval within a 'Western Ringtail Possum Habitat Protection Area' should include a site plan which indicates:
  - i. the location of the development; and
  - ii. the location of trunks and canopy area of all WA Peppermint on the subject site and within 6m of the property boundaries; and
  - iii. the TPZ of all WA Peppermint within the boundary of the subject site; and
  - iv. any WA Peppermint that is proposed to be retained or removed, including the extent of Removal.
- (b) Any application for development approval that proposes to retain WA Peppermint tree vegetation should include a Tree Protection Plan (TPP).

The TPP may be prepared by the owner of the site and/or other Responsible Person using the City's TPP template (see Appendix 4). Where development is proposed to extend into the TPZ (see Appendix 1) of WA Peppermint that is to be retained, a suitably qualified professional should prepare the TPP to demonstrate that the development will not have an adverse impact on the life and health of the tree.

## 5. Reference Documents

The following reference documents have been used in the preparation of this Policy:

Biodiversity Conservation Act 2016 (WA).

Biodiversity Conservation Regulations 2018 (WA).

City of Busselton. (2019). Western Ringtail Possum Working Group Draft Directions Paper. City of Busselton.

City of Busselton. (2019). Local Planning Strategy. City of Busselton.

Commonwealth of Australia. (2009). Significant Impact Guidelines for the Vulnerable Western Ringtail Possum (Pseudocheirus occidentalis) in the Southern Swan Coastal Plain, Western Australia (EPBC Act policy statement 3.10). Commonwealth of Australia.

Department of the Environment. (2018). *Pseudocheirus occidentalis* in Species Profile and Treats Database. Department of the Environment. Accessed 3 July 2018: <a href="http://www.environment.wa.gov.au/sprat">http://www.environment.wa.gov.au/sprat</a>



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Department of the Environment, Water, Heritage and the Arts. (2009). Background Paper to the EPBC Act Policy Statement 3.10: Significant Impact Guidelines for the Vulnerable Western Ringtail Possum (Pseudocheirus occidentalis) in the Southern Swan Coastal Plain, Western Australia. Commonwealth of Australia.

Department of Parks and Wildlife. (2017). Western Ringtail Possum (Pseudocheirus occidentalis) Recovery Plan: Wildlife Management Program No. 58. Western Australian Department of Parks and Wildlife.

Department of Planning, Lands and Heritage. (2019). *Leeuwin-Naturaliste Sub-regional Strategy*. Western Australian Planning Commission.

Environmental Protection Act 1986 (WA).

Environmental Protection and Biodiversity Conservation Act 1999 (Cth).

Minister of the Environment and Energy on behalf of Commonwealth of Australia. (2017). *Instrument Adopting a Recovery Plan.* 

NGH Environmental & Ecosystems Solutions. (2009). *Habitat Protection Plan Western Ringtail Possum (version 2)*. NGH Environmental.

Standards Australia. (2009). Protection of Trees on Development Sites (Incorporating Amendment No. 1). (AS4970 – 2009). Standards Australia.

Threatened Species Scientific Committee. (2018). Conservation Advice Pseudocheirus occidentalis Western Ringtail Possum. Department of the Environment and Energy.

#### 6. Review Details

Review Frequency		2 yearly			
Council Adoption	DATE		Resolution #		
Previous Adoption	DATE		Resolution #		

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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### Appendix 1: Determining the Tree Protection Zone and Structural Root Zone

#### 1. Tree Protection Zone (TPZ)

The TPZ is the principal means of protecting trees on development sites. The TPZ is a combination of the root area and crown requiring protection. It is an area isolated from construction disturbance, so that the tree remains healthy.

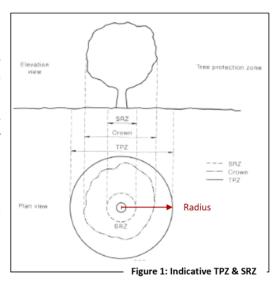
The TPZ incorporates the structural root zone (see Figure 1).

The radius of the TPZ is calculated for each tree by multiplying its Trunk Diameter x 12:

Trunk Diameter (TD) = circumference of the trunk (measured at 1.4m above ground level) divided by pi (3.14)

## $TPZ = TD \times 12$

Once calculated, the radius is measured from the centre of the stem at ground level. A TPZ should a minimum of 2m.



### 2. Structural Root Zone (SRZ)

The SRZ is the area required for tree stability. The SRZ only needs to be calculated when an encroachment into the TPZ of greater than 10% is proposed.

Generally the City will not support any works within the structural root zone (SRZ) of any WA Peppermint that is to be retained. To determine the SRZ, refer to AS 4970 – 2009.

Source: AS 4970 – 2009 Protection of trees on development sites, pp. 11 -14.

# City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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## Appendix 2: Example Calculations for a Partial Exemption to a Vacant Lot

Based on the images below, the following calculations provide an example of Offset Planting or payment in lieu of Offset Planting requirements that would apply to this site, 'Site X'.



Figure 2: Site X before and after clearing of WA Peppermint.

## Site X general information:

Lot Area	842m²
Density coding	R15
Max. exemption	421m² (= 50% or refer to Table 3)
Total canopy area	1077.5m <sup>2</sup>
Canopy actually retained	258m²

## Site X Offset Planting OR Payment in Lieu of Offset Planting calculations:

Site X – Calculating Cleared Canopy NOT Exempt:	
Total canopy area m <sup>2</sup> prior to Removal of vegetation	1077
Minus max. exemption area m <sup>2</sup>	- 421
Equals retainable canopy m <sup>2</sup>	= 656
Retainable canopy m <sup>2</sup>	656
Minus canopy actually retained m <sup>2</sup>	- 258
Equals cleared canopy m <sup>2</sup> NOT exempt	= 398

Offset Planting Requirement:	
Cleared canopy m² (not exempt)	398
Divided by 20 (refer to Table 3)	/ 20
Equals required number of Offset Planting trees	= 20

6.1 Attachment G

LPP XX WRP Habitat Protection Area



## Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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Payment in Lieu of Offset Planting Requirement:	
Cleared canopy m² (not exempt)	398
Multiplied by standard fee/m² (refer to Table 4)	x 10
Equals \$ payment in lieu of Offset Planting	= 3980

Where there is sufficient area within or adjacent to the site, Offset Planting should be carried out. Refer to Table 3 for Offset Planting guidelines.

# City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

#### Appendix 3: Indicative Calculation of Payment In Lieu of Offset Planting

The cash payment in lieu of Offset Planting of WA Peppermint shall not be less than the estimated cost to the local government of:

- a) the purchase of a 35L native tree that enhances Western Ringtail Possum habitat; and
- all associated costs to the local government, when undertaking the planting and maintenance for two years after establishment.

#### Contract and Material Costs:

Item	Cost
Cost of purchase – 35L tree	\$60
All-inclusive costing:	\$98
Dig hole	
Prepare soil with conditioner and terracotem (soil wetter)	
Stake and tie tree	
(Price range from contractor quotations 2019 Street Tree Program: \$63, \$94, \$113, \$122.	
Median price: \$98/tree)	
Follow-up formative pruning and white oil treatment if scale present (City of Busselton	\$8.30
Horticulture staff; \$43-50/hour)	
10 minutes per operation per tree per year	
Watering:	\$25
\$2.50 per watering	
Fortnightly occurrence	
• 10 waterings for first season (December-April) if not on street verge or irrigated area within	
a park.	
Total cost per tree	\$191.30

#### Administration and In-Kind Costs to the City of Busselton:

Action	Hours	Cost
		(\$50/hour)
Processing of street tree applications:	75 hours	\$3750
Validation of applications in terms of locality, species choice, allowable number of trees     Obtain 'Dial Before You Dig' information     Desktop review of the verge where the tree planting is requested		
Notify non-qualifying residents     Ordering of trees		
Prepare request for quotation, advertise and select contractor     Preparation of tree schedule and induction of contractor		
Manage the tree planting contract     Update database with tree planting information		
Respond to residents about the program and/or their street tree application		
Per tree costs (based on 400 trees)		\$9.38/tree

LPP XX WRP Habitat Protection Area

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

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CONTRACT AND MATERIAL COST:	\$191.30
ADMINISTRATIVE COST:	\$9.38
TOTAL COST/TREE	\$200.68

Standard fee for cash-in-lieu of Offset Planting: \$10/m² of canopy removed.

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

Appendix 4: Tree Protection Plan (TPP) Ten	nplate
--	--------

Property Address:	
Property Owner Name:	
Contact details: Ph	_ Email
Responsible Person:	
Contact details: Ph	Email

The provisions within this TPP are based upon the requirements of AS 4970 – 2009: Protection of trees on development sites (as amended)

This Tree Protection Plan should be available on site at all times during the construction phase of the development and shall be communicated to all contractors.

Tree Protection Zone Calculations

A TPZ is to be calculated for all WA Peppermint to be retained within the subject site and within the adjacent road reserve.

The <u>Tree Protection Zone</u> is the principle means of protecting trees on development sites. It is an area isolated from construction disturbance so that the tree remains healthy. Development may encroach into or make variations to the standard TPZ (refer to *AS4970 - 2009* for more details).

TPZ = Trunk Diameter x 12 (refer to Appendix 1 of LPP XX)

Note 1: Trunk diameter is measured at 1.4m above ground level.

Note 2: A TPZ should not be less than 2m

	Tree Protection Zone (TPZ) radius		Tree Protection Zone (TPZ) radius
Tree 1		Tree 2	
Tree 3		Tree 4	
Tree 5		Tree 6	

#### Site plan

A site plan is to be attached to this TPP which indicates the following:

SITE	PLAN CHECKLIST	✓
(a)	Location of proposed development;	

#### LPP XX WRP Habitat Protection Area

# City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

(b)	Location of all WA Peppermint on the subject site and within 6m of the property boundaries;	
(c)	The TPZ of all WA Peppermint to be retained on site;	
(d)	Location of protective fencing to be installed (see below);	
(e)	The locations for site compounds, office, car parking, equipment, material storage, machinery, access and/or servicing of development (where applicable); and	
(f)	Location of signage to be installed identifying the TPZ (see below).	

#### Protective Fencing

Prior to the commencement of any works, on site protective fencing shall be installed along the TP2
of all WA Peppermint to be retained. Details of materials to be used for protective fencing are to be
provided below:

provided below.		
	or similar should be attached to reduce the transport of dust, other particulate matter and liquids into the m construction activities.	
	ive fencing cannot be installed and other protective measures are to be used, these ordance with AS 4970 – 2009 as detailed below:	

#### Signage

Signage identifying the TPZ should be placed on the fencing to be installed along the TPZ and be visible from within the development site. An example sign can be found within the AS 4970 - 2009:

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft



#### Agreement of Owner & Responsible Persons

#### Construction Phase

The following activities are not permitted within the TPZ at any time during the construction of the development:

- (a) Machine excavation including trenching;
- (b) Excavation for silt fencing;
- (c) Cultivation;
- (d) Storage;
- (e) Preparation of chemicals, including preparation of cement products;
- (f) Parking of vehicles and plant;
- (g) Refuelling;
- (h) Dumping of waste;
- (i) Wash down and cleaning of equipment;
- (j) Placement of fill;
- (k) Lighting of fires;
- Soil level changes;
- (m) Temporary or permanent installation of utilities and signs; and
- (n) Physical damage to the tree.

#### LPP XX WRP Habitat Protection Area

## City of Busselton Local Planning Policy No. XX Western Ringtail Possum Habitat Protection Area

Version: Draft

#### Post Construction Phase

At the completion of the construction phase of the development the TPZ should be reinstated in a manner that will support the health and stability of the WA Peppermint.

By signing this TPP the Owner and Responsible Person agree to implement and comply with the provisions contained within.

Owner's Signature	Responsible Person's Signature
Date :	Date :
Date:	Date:

#### **CITY OF BUSSELTON**

## WESTERN RINGTAIL POSSUM WORKING GROUP DIRECTIONS PAPER

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#### CITY OF BUSSELTON WESTERN RINGTAIL POSSUM WORKING GROUP

#### March 2019

#### 1.0 Background

The Western Ringtail Possum, *Pseudocheirus occidentalis*, is a species unique and endemic to the south west of Western Australia. Both the range and numbers of Western Ringtail Possum have reduced dramatically since European settlement, largely as a result of land clearing and other environmental change.

The Western Ringtail Possum is the fauna emblem of the City of Busselton, and is reasonably common in parts of the City, especially the older and relatively well vegetated parts of the Busselton and Dunsborough urban areas. The urban areas of Busselton and Dunsborough, in fact, form a significant proportion of the remaining 'Core' habitat for the species.

The conservation status of the Western Ringtail Possum has been upgraded in recent years from 'Vulnerable, to 'Endangered' and, last year, to 'Critically Endangered' (CE) by the State and the Commonwealth. CE is the highest conservation status before species are considered to be 'Extinct in the Wild' or 'Extinct'.

There has been a substantial amount of research undertaken into Western Ringtail Possum and their habitat, and there are a number of issues that we do not yet fully understand. Habitat in the urban areas of Busselton and Dunsborough is, however, particularly important because Western Ringtail Possum exist at substantially higher densities here than in many natural/forest environments. It is understood a key reason for that is that urban gardens and parks are well fertilised, and in particular are watered through the summer, thereby increasing the carrying capacity of the landscape and mitigating the effects of the drying climate.

The State Department of Biodiversity, Conservation and Attractions (DBCA), together with the Federal Department of the Environment and Energy, and other stakeholders (such as local government authorities, community groups and environmental NGOs), have developed a Western Ringtail Possum Recovery Plan. The success of the recovery plan is likely to depend on a broad response, involving all levels of government, multiple agencies, the community and industry. Because of the importance of habitat in the City, the City will need to be involved.

In early 2017, the Council formally recognised that further work and discussion is necessary to determine what the City's role and approach should be. The Council did that through resolving, in May 2017, to support formation of a 'Western Ringtail Possum Working Group' (WRPWG). The WRPWG was to consist of interested Councillors and relevant staff. The role of the WRPWG was identified as being —

#### **WRP Working Group Directions Paper**

- a) Researching and receiving briefings from stakeholders on Western Ringtail Possum issues:
- Forming a view on what the City's role and approach to Western Ringtail Possum issues should be, both in terms of actions by the City itself, but also in terms of advocating for action at State and/or Federal level; and
- c) Briefing and seeking Council support for the WRPWG's findings and proposed direction.

The membership of the WRPWG is and has been as follows -

- Councillor Rob Bennett (Chair);
- Councillor Ross Paine (Deputy Chair)
- Councillor Terry Best (until October 2017);
- Councillor Coralie Tarbotton (from October 2017);
- Paul Needham (Director, Planning & Development Services);
- Greg Simpson (Coordinator, Environmental Management); and
- Will Oldfield (Senior Environmental / Natural Resource Management Officer).

The WRPWG has received briefings from representatives of the following agencies and groups in undertaking its work -

- Federal Department of the Environment and Energy;
- State Department of Biodiversity, Conservation and Attractions;
- State Department of Planning, Lands and Heritage;
- South West Catchments Council;
- GeoCatch (Geographe Catchment Council) Western Ringtail Possum Action Group (WRAG);
- Nature Conservation Margaret River Region (formerly Cape to Cape Catchments Council):
- Busselton-Dunsborough Environment Centre;
- Busselton Naturalists' Club;
- Fostering and Assistance for Wildlife Needing Aid (FAWNA); and
- Western Ringtail Possums R'us.

The City also has a representative on the DBCA coordinated Western Ringtail Possum Recovery Team.

#### 2.0 Key findings

The WRPWG's key findings are as follows -

- Habitat in and around the Busselton and Dunsborough urban areas is likely to be important to the future survival of Western Ringtail Possum as a species.
- Whilst Western Ringtail Possum do feed on other species, mature WA Peppermint trees (Agonis flexuosa) are important for providing food and shelter for Western Ringtail Possum.

- 3. The current approach to protection and enhancement of Western Ringtail Possum habitat (in City of Busselton managed reserves and private land) is clearly insufficient to be confident that it will not be significantly degraded through clearing and development in a way that will critically affect the chances of Western Ringtail Possum surviving on the Busselton Dunsborough coastal strip.
- 4. Whilst many in the community appreciate and value Western Ringtail Possum in the urban environment, Western Ringtail Possum can be perceived as problematic by some residents, and their conservation status and the importance of their urban habitat is underappreciated by some in the community. For example, there would be significant conservation benefits in further community engagement, especially in relation to: dog and cat management; and approaches to garden, street and reserve vegetation management.
- 5. There is a lot of excellent work being done by agencies and volunteers / volunteer organisations; work which should be given greater recognition and appreciation, and which needs to continue, but the level and nature of current effort is insufficient to ensure the future survival of Western Ringtail Possum as a species.
- 6. There appears to be a broad understanding of the factors leading to the decline of Western Ringtail Possum, but there needs to be continued research investment, and especially further research into Western Ringtail Possum populations within the context of the diverse range of ecosystems and habitats utilised by this species.
- 7. The WRPWG is supportive of the Western Ringtail Possum Recovery Plan, but there is a need for greater impetus, resources and strategic focus at all levels of government to ensure the survival of Western Ringtail Possum as a species beyond the short to medium term.

#### 3.0 Proposed direction

The WRPWG has identified a number of initiatives that, together, could significantly assist in supporting the long-term survival of the Western Ringtail Possum. Those initiatives include both actions that the City can conceivably take itself, actions that could occur in partnership with other agencies and / or groups, as well as actions that would require State and /or Federal Government leadership or support. The initiatives have been split into seven key categories, as follows —

- Habitat protection;
- 2. Habitat enhancement & expansion;
- 3. Community engagement & education;
- 4. Dog, cat & feral animal management;
- 5. Rehabilitation & new populations
- 6. Research & monitoring; and
- 7. Governance, funding & partnerships.

A description of each category, and the initiatives possible in each, is provided below.

#### 3.1 Habitat protection

Western Ringtail Possum habitat can be lost or degraded in a number of ways, including through clearing of vegetation, through fire management practices, as well as through climate change, especially the general drying of the climate in the south west of Western Australia in recent decades. The focus here is on vegetation clearing in urban areas.

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There are a range of controls on clearing at present, which may be summarised as follows -

- At the local level, there are controls on the clearing of vegetation in some areas through
  the City's town planning scheme (City of Busselton Local Planning Scheme No. 21),
  including in the identified Coastal Management Area, Wetland Area, Landscape Value
  Area, Floodway Area, or in certain low-density residential zones, but those controls do
  not apply in most of the urban area.
- At a State level, there are controls on the clearing of vegetation through the
   Environmental Protection (Clearing of Native Vegetation) Regulations 2004, although
   there are significant exemptions, which could often apply to clearing of individual trees
   or small stands of vegetation in most of the urban area.
- At a State level, larger scale clearing and /or larger scale development can be subject of
  environmental review by the Environmental Protection Authority, and environmental
  issues can also be considered by the Western Australian Planning Commission and
  Minister for Planning in considering new town planning schemes, town planning scheme
  amendments and structure plans.
- At a State level, through the Biodiversity Conservation Act 2016, there are requirements
  to manage the process of clearing where it may affect Western Ringtail Possum, but the
  controls do not currently protect habitat per se.
- At a Federal level, clearing or other actions that may affect matters of national environmental significance, including actions that may impact on Western Ringtail Possums or their habitat, can be subject of assessment pursuant to the Environmental Protection and Biodiversity Conservation Act 1999. The current approach to implementation of the Act with regard to Western Ringtail Possum is set out in the Significant impact guidelines for the vulnerable western ringtail possum (Pseudocheirus occidentalis) in the southern Swan Coastal Plain, Western Australia. The Guidelines do provide some protection for habitat in urban areas, but not for the smallest scale clearing, and the resources that have typically been available for enforcement and the consistency of their application has been insufficient to achieve sustained change.

The City has also attempted in the past to provide for better protection of urban habitat through Amendment 146 to the City's previous town planning scheme (Shire of Busselton District Town Planning Scheme No. 20). Amendment 146 was not, however, ultimately supported by the Western Australian Planning Commission and Minister for Planning. In addition, the recently introduced Biodiversity Conservation Act 2016 empowers the State Minister for Environment to make regulations that could provide additional protection for Western Ringtail Possum habitat, including urban habitat. The State's aims and direction in that regard, however, are not currently known.

It is clear that the most significant gap in terms of habitat protection is in relation to small-scale clearing in urban areas, where habitat can be progressively lost through clearing and related development through a 'death by a thousand cuts'. There would, however, appear to be opportunities to address that, either through amendment of the City's town planning scheme, appropriate regulations pursuant to the *Biodiversity Conservation Act 2016*, a combination of both, or perhaps some other mechanism.

Such mechanisms could increase habitat protection, both in terms of reducing the ability for habitat to be cleared without any approval, and also potentially in terms of what and whether clearing is in fact approved. As the City attempted to do through Amendment 146, incentives to encourage habitat

#### **WRP Working Group Directions Paper**

retention could also be considered – and such incentives could help to ameliorate the financial impact on individual landowners of increased restrictions on clearing.

It is nevertheless not considered reasonable or practicable to simply prohibit all clearing of Western Ringtail Possum habitat – protection of Western Ringtail Possum habitat needs to be considered in the context of other means of preserving the species, as well as needs to accommodate new infrastructure and housing to support a rapidly growing community. At present, where approval is required for clearing of habitat, there is generally a requirement to 'offset' that clearing with habitat enhancement elsewhere – commonly referred to as 'offset planting'.

Whilst clearing should nevertheless be kept to a minimum, current approaches to offset planting are not always satisfactory or optimal and could be improved. The most problematic issues with offset planting are the fact that mature vegetation cannot be effectively replaced by newly planted habitat for several decades, and the requirements for acceptable offset sites are focused on discrete, vegetated areas or reserves, and value is not placed on planting integrated into urban environments where existing habitats are being threatened

Four key opportunities have been identified to get better value out of offset planting-

- Develop a pro-active offset planting programme, which allows for recognition of offset planting undertaken prior to seeking environmental approvals, the pooling of resources, and the meeting of offset planting requirements through a 'cash-in-lieu' system;
- Increased offset ratios, as well as requiring planting of more mature stock (and working proactively with the nursery industry to ensure more mature stock is available);
- Increased recognition of offset planting integrated into urban areas to support important remnant habitat in those areas; and
- Investigation into transplanting of mature WA Peppermint trees (or other trees providing valuable habitat function) to determine if they could form part of future offset planting approaches (noting that this could be trialled using trees which have already been approved to be cleared, and where more conventional offset planting requirements are also already being applied).

Another area that may yield some benefit is looking at the development and application of the City's Bush Fire Notice ('Firebreak and Fuel Reduction Notice') by the City, pursuant to the *Bush Fires Act 1954*. The City's current notice requires that vegetation not overhang buildings, including houses and sheds, even in urban areas. That requirement has not been rigorously enforced; but was it to be rigorously enforced, it would significantly undermine the value of urban Western Ringtail Possum habitat. It is also not clear that the requirement is necessary from a bush fire hazard mitigation perspective in many parts of our urban areas.

In summary, the following initiatives are considered worthy of exploration in relation to habitat protection (with key levels of government needing to be involved identified in brackets) –

- I1: Introduce additional controls on the clearing of Western Ringtail Possum habitat in urban areas, including small-scale clearing. (Federal, State and Local)
- I2: Consider introduction of incentives to encourage retention of Western Ringtail Possum habitat in urban areas. (Federal, State and Local)
- 13: Develop a pro-active offset planting programme, which allows for recognition of offset
  planting undertaken prior to seeking environmental approvals, the pooling of resources,

- and the meeting of offset planting requirements through a 'cash-in-lieu' system. (Federal, State and Local)
- I4: Consider increased offset planting ratios for clearing of Western Ringtail Possum habitat and planting of more mature stock (and work proactively with the nursery industry to ensure more mature stock is available). (Federal, State and Local)
- 15: Increase recognition of offset planning for clearing of Western Ringtail Possum habitat that is integrated into urban areas, rather than being focused on larger-scale planting in reserves or 'natural areas'. (Federal and State)
- I6: Investigations into transplanting of mature WA Peppermint trees to determine if they
  could form part of future offset planting approaches. (Local)
- I7: Review Bush Fire Notice ('Firebreak and Fuel Reduction Notice') to consider and reduce the potential impact on Western Ringtail Possum habitat, especially in areas of relatively low bush fire hazard. (Local)

#### 3.2 Habitat enhancement & expansion

Because of climatic (i.e. the drying climate) and land tenure issues (i.e. a lack of suitable government controlled land in coastal or near-coastal locations), it is fairly difficult to enhance or expand Western Ringtail Possum habitat through the creation of new 'natural' habitat. Whether in the form of new 'natural' habitat, or through enhancing urban habitat, the long lead-time required to grow new mature WA Peppermint trees (20 years plus), also means that habitat enhancement and expansion cannot occur quickly, even where space can be found to do so.

The long lead-time required to create enhanced or expanded habitat means that it makes sense to undertake the process of doing so as quickly as possible. In simple terms, it makes sense to undertake as much planting as possible as soon as possible, so that it develops into useful habitat as soon as possible. The City does have street and park reserve planting programmes which are seeing a progressive increase in potential Western Ringtail Possum habitat, but those programmes could be substantially accelerated, including in the following ways —

- Increasing the annual budget allocation for street and reserve tree planting, potentially bringing forward to the next few years expenditure that might otherwise occur over the next couple of decades;
- Increasing the efficiency of the street tree planting programme, by planting trees on verges at higher densities (including verges where tree planting has already occurred, but at relatively low densities), and going ahead with planting of WA Peppermints unless the adjoining owner has objected (during the consultation period), rather than the current situation, where a tree is only planted where the adjoining owner has indicated their support, and has indicated their preference of tree species;
- Increasing the planting of WA Peppermint trees and understorey species in reserves that
  are in areas where there is good urban Western Ringtail Possum habitat, including
  foreshore reserves that may be suitable, and grassed areas of reserves where the grassed
  areas are not required for recreation purposes;
- Identifying reserves with higher quality Western Ringtail Possum habitat in rural areas, surveying for presence of Western Ringtail Possum, managing them as Western Ringtail Possum habitat and undertaking actions to link these areas. The Wadandi Track is a significant reserve that passes through a range of vegetation types and reserves that are relatively intact. There are, however, large areas reserves that are cleared and will

- require a large effort to undertake meaningful revegetation to form Western Ringtail Possum habitat, and
- As has already been recommended as an initiative under 'Habitat Protection', planting of
  more mature stock (and working proactively with the nursery industry to ensure more
  mature stock is available).

Most of these potential changes to street and park tree planting programmes would also improve the aesthetics and amenity of urban areas, and ameliorate 'urban heat island' effects that will become more acute with climate change and increased density of development.

There are some further actions that are considered could assist in habitat enhancement and expansion, including –

- Further research into why some WA Peppermints grow leaves palatable to Western Ringtail Possum and others do not and, if possible, planting programmes that result in palatable trees;
- Unless there is a clear reason not to do so (such as because of perceived security/visibility
  or fire risk), the dense planting of understorey shrubs and sedges, to provide protective
  cover for Western Ringtail Possum should they come to ground, around WA Peppermint
  trees on reserves, and changes to management practices in relation to existing trees in
  reserves;
- Increased investment in 'possum crossings' to assist Western Ringtail Possum in crossing roads: and
- Encouragement and incentives for the enhancement and expansion of Western Ringtail Possum habitat on private land.

Habitat enhancement also includes the removing of barriers and impediments to Western Ringtail Possum movement. Western Ringtail Possum are less prone to predation by other animals and road kill if they can move from one tree to another without having to come to ground. Connections between habitat trees can be made with large diameter ropes, or through slightly higher boundary fences. In many older parts of the district the Western Power grid can either be fatal to possums (if wires exposed) or provide a connection between habitat trees (if insulated). The following actions could enhance Western Ringtail Possum habitat by removing impediments to movement above the ground.

- Controls/guidelines on boundary fencing to encourage fencing that Western Ringtail
  Possum can use to travel through the urban environment this would generally mean
  fencing 2.1 metres (rather than 1.8 metres) high, or fixing of timber capping to the top of
  fencing to provide better grip for possum passage; to reduce the risk from dogs, and no
  'possum guards' or similar on fences.
- Increase connectivity between trees with large diameter rope within City reserves;
- Work with Western Power to reduce the possibility of electrocution and facilitate
  Western Ringtail Possum moving between habitat trees by increasing the height of the
  low voltage uninsulated wires of the above ground network and increasing the clearance
  for habitat trees to grow underneath.

The City has also identified an area where the State may wish to focus attention in terms of strategic land acquisition, that being the land between Abbey/Vasse and Dunsborough, and between Caves Road and the future Vasse-Dunsborough Link alignment. This area is in a near-coastal location, will require land acquisition and property severance to allow for the development of the Vasse-

Dunsborough Link, has good potential access to water, being at the terminus of a number of small rivers/creeks and rural drain networks, and could be developed into a corridor linking the Busselton and Dunsborough urban areas, allowing Western Ringtail Possum gene flow between habitat areas in the Geographe Bay coastal hinterland. Predator control would need to be part of such a program as predation by foxes is a significant factor in possum mortality in rural areas.

In summary, the following initiatives are considered worthy of exploration in relation to habitat enhancement and expansion (with key levels of government needing to be involved identified in brackets) –

- 18: Increasing the annual budget allocation for street and reserve tree planting, bringing forward to the next few years expenditure that might otherwise occur over the next couple of decades. (Local)
- 19: Increasing the efficiency of the street tree planting programme, by planting trees on verges at higher densities (including verges where tree planting has already occurred, but at relatively low densities), and going ahead with planting of WA Peppermints unless the adjoining owner has objected (during the consultation period), rather than the current situation, where a tree is only planted where the adjoining owner has indicated their support, and has indicated their preference of tree and understorey species. (Local)
- I10: Increasing the planting of WA Peppermint trees in reserves that are in areas where
  there is good urban Western Ringtail Possum habitat, including foreshore reserves that
  may be suitable, and grassed areas of reserves where the grass is not required for
  recreation purposes. (Local)
- I11: Identifying reserves with higher quality Western Ringtail Possum habitat in rural
  areas, undertaking actions to improve their habitat value and link them e.g. The Wadandi
  Track is a very significant reserve (100m wide) that passes through a range of vegetation
  types and reserves that are relatively intact. This could provide a strategic habitat corridor
  through the landscape.
- I12: Planting of more mature stock (and work proactively with the nursery industry to
  ensure more mature stock is available). Note: this is in part duplication of I4. (Local)
- I13: Further research into why some WA Peppermints grow leaves palatable to Western Ringtail Possum and others do not and, if possible, planting programmes that result in palatable trees. (State)
- I14: Unless there is a clear reason not to do so (such as because of perceived security/visibility or fire risk), the dense planting of understorey shrubs and sedges, to provide protective cover for Western Ringtail Possum should they come to ground, around WA Peppermint trees on reserves, and changes to management practices in relation to existing trees in reserves. (Local)
- I15: Increased investment in 'possum crossings' to assist Western Ringtail Possum in crossing roads. (Federal, State and Local)
- I16: Encouragement and incentives for the enhancement and expansion of Western Ringtail Possum habitat on private land. (Federal, State and Local)
- I17: Controls/guidelines on boundary fencing to encourage fencing that Western Ringtail
  Possum can use to travel through the urban environment this would generally mean
  fencing 2.1 metres (rather than 1.8 metres) high, to reduce the risk from dogs, and no
  'possum guards' or similar on fences. (Local)

- I18: Work with Western Power to reduce the possibility of electrocution and facilitate
  Western Ringtail Possum moving between habitat trees by increasing the height of the
  low voltage uninsulated wires of the above ground network and increasing the clearance
  for habitat trees to grow within. (State and Local)
- I19: Land acquisition The City has also identified an area where the State may wish to focus attention in terms of strategic land acquisition, that being the land between Abbey/Vasse and Dunsborough, and between Caves Road and the future Vasse-Dunsborough Link alignment. This area is in a near-coastal location, will require land acquisition and property severance to allow for the development of the Vasse-Dunsborough Link, has good potential access to water, being at the terminus of a number of small rivers/creeks and rural drain networks, and be developed into a corridor allowing for Western Ringtail Possum gene flow between the Busselton, Vasse and Dunsborough urban areas. There may be other strategic land acquisitions in rural and regional areas at some time in the future and the City would support these also being considered for the creation of Western Ringtail Possum habitat.

#### 3.3 Community engagement & education

The following community engagement activities are currently occurring and should be continued. The City may consider how it can increase its support to and involvement in these activities as a means of improving community engagement and education.

- Possum night stalks are a fun and informative activity that are attractive to young families
  to learn more about Western Ringtail Possums and then go searching for them in one of
  our local parks.
- Promotion of the annual street tree planting program and provision of free street trees to
  residents is a means of getting more habitat trees planted and is a tangible item that
  residents can receive for their rates by participating in the schemes.
- Installation of possum awareness road signage has been designed to remind drivers of possum hotspots and what the animal looks like when crossing the road.
- Investigation of other traffic calming devices/techniques that will improve driver behaviour in dense Western Ringtail Possum population areas
- Installation of possum interpretive signage in high public use areas.
- · Seasonal messages about possums in local and social media.
- Citizen science programs such as 'The Ringtail Tally', a monitoring exercise coordinated through Geocatch

#### 3.3.1 Possum friendly neighbourhoods

There are a number of existing information sources and programs, such as NatureVerge, that could be drawn together into a package that promotes Possum Friendly neighbourhoods. This package could be a means of enabling people to implement the many initiatives listed in this report by promoting practical on-ground actions such as: planting of habitat vegetation, improving fences, creation of enclosures for domestic dogs and cats, preventing Western Ringtail Possum accessing roof spaces, improving the habitat value and condition of existing vegetation.

#### 3.3.2 TV, radio and social media advertising

Community surveys have shown that the majority of the community are either indifferent or like Western Ringtail Possums. However, a small percentage of people believe that they are a pest and/or

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do not believe they are Critically Endangered. There are a range of reasons why people believe these things, however, it is evident that there needs to be a continued effort to change attitudes and behaviours towards Western Ringtail Possum. Many of the events put on to encourage community understanding of the animal are mostly attended by 'the converted'. In order to reach the less engaged, and at least encourage more informed discussion with peers about the plight of the Western Ringtail Possum, a TV, radio and social media campaign could be used to deliver the message. South West Catchments Council has run a successful campaign called 'Save the Crabs' which was believed to be successful in changing behaviour about the timing and use of fertilisers around the Peel/Harvey Estuary. TV advertising could contribute to spreading of the message about Western Ringtail Possum in a number of ways, including;

- Implementing coordinated awareness and education programs with government agencies and community organisations.
- Targeting a Western Ringtail Possum awareness campaign for the southwest region.
- Running a tourism campaign through the MRBTA to promote the uniqueness of the Western Ringtail Possum within the region.

#### 3.3.3 Summary

In summary, the following initiatives are considered worthy of exploration in relation to Community engagement and education (with key levels of government needing to be involved identified in brackets);

- I20: Continued involvement in and support for existing community engagement activities
  such as Possum night stalks, Geocatch Western Ringtail Possum tally, Nature Conservation
  Margaret River Citizen Science Western Ringtail Possum survey, promotion of the street
  tree planting program and free street trees to residents, installation of possum awareness
  road signage and possum interpretive signage in high public use areas, seasonal messages
  and interest articles about possums in the local newspaper and internet sites and citizen
  science programs. (State and Local)
- I21: Development and roll out of a Possum Friendly Neighbourhoods package that draws together existing information sources and programs and promotes practical on-ground actions that residents can take to improve Western Ringtail Possum survival. (State and Local)
- 122: TV, radio and social media helps to increase understanding and acceptance of Western Ringtail Possum in the wider community. These campaigns may be of a general information nature or serve to promote tourism or community involvement in the community awareness activities above. (State)

#### 3.4 Dog, cat & feral animal management

Decline in Western Ringtail Possum numbers in rural areas has largely been attributed to clearing and fox predation. Foxes are an effective predator and have been known to jump up, or climb trees, to catch Western Ringtail Possum. Conditions over the past 12 months have been favourable for foxes, such that numbers have increased, and have pushed into urban areas searching for food. The City has had a marked increase in the number of reports by residents of foxes taking their chickens and there have been many more observations of predation on possums in urban parklands and natural areas. Options for fox control in urban areas are limited. The City loans cage traps as an option for residents who want to catch a fox, however, the success rate is fairly low. The most effective means is using 1080 poison but this can only be done in rural areas, and under permit. The City may have best effect

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in controlling foxes by encouraging landowners in peri-urban and rural areas to undertake fox baiting programs.

Western Ringtail Possum that encounter domestic cats and dogs are often killed or severely injured. Under the existing dog and cat laws owners are required to keep their pets contained within their properties, or under their control. In public areas dogs must be restrained on a leash, except within dog exercise areas. Currently there is little the City can do to discourage dog and cat owners from allowing their dog or cat to wander. The onus for proving a cat or dog is substantially on those that are affected by the nuisance animals. Affected people often loan a cat trap, catch the offending animal on their own property and hand it to City of Busselton Rangers. Rangers then identify the animal, contact the owners and return the animal. At this point the owner is advised of their responsibilities.

The City can make its own local laws but is constrained by the State Dog and Cat Acts. However, local government can make local laws about (Cat Act 2011, Division 2 Local laws, Section 79, Clause (3) -

- (e) cats creating a nuisance;
- (f) specifying places where cats are prohibited absolutely; and
- (g) requiring that in specified areas a portion of the premises on which a cat is kept must be enclosed in a manner capable of confining cats.

The costs and complexities of such regulations could, however, require very careful consideration.

The City can also undertake its own trapping program in public areas to try to catch reported nuisance animals.

In summary, the following initiatives are considered worthy of exploration in relation to Dog, Cat and feral animal management (with key levels of government needing to be involved identified in brackets)

feral cats on larger private holdings in peri-urban areas. (Local)

123:Investigate and develop a control program that encourages the control of foxes and

- 124:Expand the fox and feral cat control programs on City reserve lands and actively
  promote control activities to adjoining land owners. (Local)
- I25:Consider modification of Local Laws in relation to the keeping of cats that place more responsibility on the pet owner to contain their pets on their property. (Local)
- I26:Implement targeted cat ownership awareness programme to reduce cat and Western Ringtail Possum fatal interactions. (Local)

#### 3.5 Rehabilitation & new populations

A protocol for the rehabilitation of possums (and all native fauna) found injured has been developed by the Western Ringtail Action Group, comprising local groups, DBCA and local vets. The protocol ensures injured animals can be diagnosed and put into appropriate care as quickly as possible. Local vets currently examine native animals and prescribe care requirements free of charge. Where an animal cannot be rehabilitated to a level where it can return to the wild it is euthanized, and where it can be rehabilitated they are then given to carers. Rehabilitation of injured animals can sometimes be a 24/7 activity and there are costs for consumables and equipment such as food and heat pads. It is important to recognise the voluntary effort in some way. The needs of carers are varied and many, and as such, dialogue with the groups concerned is required to determine appropriate and useful

#### **WRP Working Group Directions Paper**

forms of support. The following actions could help to support the work of carers, working to improve care of injured possums and success rates for possums released back into the wild.

- Liaise with agencies and care groups to determine appropriate and useful forms of support.
- · Support carer training programs.
- Promote and where appropriate, facilitate collaboration between agencies and community based organisations on possum related activities such as injury care and rehabilitation.

It is not considered, however, that local government should not play a significant role with the wildlife care matters. The effectiveness of animal care in ensuring the survival of the species is also unclear.

There may also be opportunity to establish or enhance new urban habitat elsewhere in the south west

In summary, the following initiatives are considered worthy of exploration in relation to Care, captive breeding & new populations (with key levels of government needing to be involved identified in brackets);

 127: Liaise with agencies and care groups to determine appropriate and useful forms of support. (State)

#### 3.6 Research & monitoring

While the City is not usually responsible for undertaking research it can, for example, facilitate the use of certain spaces for the carrying out of research and actively pursue implementation of the outcomes of research. One such example of implementation of research would be to understand the issue of palatability of vegetation. The effectiveness of revegetation effort may be improved significantly if a greater proportion of the vegetation being planted is palatable to possums.

There is a growing interest in citizen science surveys, such as the Western Ringtail Possum Tally. Possums are easy to spot and very accessible. Most people in Busselton and Dunsborough can participate from home. The more people involved, the better the results from the survey. Another outcome from such programs is greater community awareness and appreciation for the animal, which is a key objective of this plan. A baseline survey and long term monitoring program of the Western Ringtail Possum population would help to determine the success or otherwise of the plan.

In summary, the following initiatives are considered worthy of exploration in relation to Research & Monitoring (with key levels of government needing to be involved identified in brackets);

- 128:Review research undertaken on palatability and support propagation of palatable species for use in vegetation programmes. (State and Local)
- 129:Support and promote citizen science possum monitoring within the community (State and Local)
- I30:Undertake a base survey of possum populations and develop a monitoring programme for the periodic long term measurement of possum populations to gauge overall success of possum recovery and enhancement. (State and Local)

#### 3.7 Governance, funding & partnerships

The Federal Department of Environment and Energy is responsible for administration of the EPBC Act. However, there are very few resources based in WA and an inadequate number of compliance officers to assess applications and investigate reports. The change in status of the Western Ringtail Possum to

'Critically Endangered' and the consequent changes to the significant impact criteria mean there is an increased effort required to ensure developments do not impact on the species. If there are to be changes to the level of enforcement all levels of government need to be giving a consistent message, supporting one another and enforcing the newer more stringent criteria to protect the species.

Western Ringtail Possum are a Federally listed species and under the current funding arrangements through the Federal Government, funding is available for projects concerning Western Ringtail Possum. However, the funding pool is vastly inadequate for the number and value of projects put up under the National Landcare Program each year. With the assistance of the South West Catchments Council a very comprehensive application was prepared in 2017. All organisations working on Western Ringtail Possum in the Capes-Geographe region were involved. The combined value of the project was \$250,000. The project was competing with other projects on native species with higher status and although it was a competitive project could not be funded. Funding from the Federal and State Government would be vital to the success of this Western Ringtail Possum plan. A wide range of activities are proposed because this issue needs to be tackled on many fronts. Everyone has a role to play in the management of Western Ringtail Possum and therefore funding of multi-faceted, multi partnered projects is important. The City has a role to play in getting this message across to our federal and state politicians to ensure projects around Western Ringtail Possum are funded in future.

There are many organisations and agencies that have influence on Western Ringtail Possum directly or indirectly, or that could have, the following are just a few. Agencies include: Western Power, Water Corporation, DBCA, Tourism, Telecommunications companies, Main Roads, Planning Department and planning authorities. Business, community groups and other organisations include; Geocatch, Nature Conservation Margaret River, South West Catchments Council, Western Ringtail Possum groups, vetinarians, tour operators, landscapers, nurseries, World Wide Fund for Nature, Australian Conservation Foundation, research institutions and Universities.

These areas of work could be very significant in terms of supporting on-ground action, community behaviour change programs, enforcement and providing incentives that are consistent with this plan.

In summary, the following initiatives are considered worthy of exploration in relation to Governance, Funding & Partnerships (with key levels of government needing to be involved identified in brackets)

- I31: Collaborate with other stake holders on a wide range of activities to develop robust, multi-faceted projects that are competitive for the larger funding opportunities.
- I32: Seek federal and state political support for the implementation of this Western Ringtail Possum plan and the Western Ringtail Possum Recovery Plan to ensure Western Ringtail Possum projects are funded.
- I33: Build relationships with key stakeholders in the tourism industry for the purpose
  of conservation, awareness and visitations.

#### 6.2 PROPOSED COUNCIL POLICY: INVESTIGATION OF ALLEGED BREACHES OF BEHAVIOUR

**STRATEGIC GOAL** 6. LEADERSHIP Visionary, collaborative, accountable

**STRATEGIC OBJECTIVE** 6.1 Governance systems, process and practices are responsible,

ethical and transparent.

SUBJECT INDEXCouncil PoliciesBUSINESS UNITGovernance Services

**REPORTING OFFICER** Governance Coordinator - Emma Heys

**AUTHORISING OFFICER** Director Finance and Corporate Services - Tony Nottle

**NATURE OF DECISION** Executive: Substantial direction setting, including adopting budgets,

strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee

recommendations

**VOTING REQUIREMENT** Simple Majority

ATTACHMENTS Attachment A Council Policy: Investigation of Alleged Breaches of

Behaviour (Proposed) U

Attachment B Amended Complaints Form !! \*\*Line \*\*Li

#### **OFFICER RECOMMENDATION**

#### That the Council:

- 1. Adopt the proposed Council Policy: Investigations of Alleged Breaches of Behaviour (Attachment A) (the Policy); and
- 2. Approve the amended form in which complaints of alleged breaches of the Code may be received (Attachment B) (the Form).

#### **EXECUTIVE SUMMARY**

This report presents a proposed Council policy: Investigation of Alleged Breaches of Behaviour (Attachment A) (the Policy) for Council endorsement. This report also seeks Council approval of the amended form in which complaints of alleged breaches may be received (Attachment B) (the Form).

#### **BACKGROUND**

The Local Government (Model Code of Conduct) Regulations 2021 (Regulations) were gazetted and came into effect on Wednesday 3 February 2021. Local governments are required to adopt a Code of Conduct for Council Members, Committee Members and Candidates (the Code) within three months of gazettal (being 3 May 2021), as per Section 5.104 of the Local Government Act 1995 (the Act). Council will consider adoption of the Code of Conduct at its Council meeting of 28 April 2021.

Under Section 5.103 of the Act, the Regulations prescribe a Model Code which includes general principles and behaviours for Council Members, Committee Members and Candidates. Alleged breaches of Part 3 of the Code 'Behaviours' are subject to a complaints process, to be determined and managed by the local government. Officers have developed a Council Policy: Investigation of Complaints of Alleged Breaches of Behaviour (the Policy) to deal with alleged breaches of behaviours.

Under the Regulations, local governments are required approve a complaint form in which complaints may be received, which Council did on 24 February (C2102/032). Officers have amended the Form to align with the recently released WALGA template and are seeking Council's approval of the amended form.

#### **OFFICER COMMENT**

In accordance with Part 3 of the Code, a person may make a complaint alleging a breach of the behaviour(s) set out in the Code. The procedure for dealing with a complaint may be determined by the local government, to the extent that it is not provided for in the Code. The Policy has been developed to establish a clear investigation process. The Policy proposes to appoint an experienced third party/parties to investigate complaints in order to address potential conflicts of interest arising from the CEO or employees of the City being involved in investigating complaints. The Policy provides a set of guidelines for the investigation process and outlines how the findings are presented to Council.

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Officers believe a stand-alone policy that deals with the investigation of complaints is preferable and cleaner than including the process within the Code itself.

An amended form for receipt of complaints of alleged breaches has been modelled on the template form recently provided by WALGA (Attachment B). The amended form allows a complainant to detail the specific sections of the Code that are alleged to have been breached and to outline if, in accordance with paragraph 5.10 of the Policy, they would be willing to engage in mediation prior to formal investigation of the complaint.

#### **Statutory Environment**

Sections 5.103 and 5.104 of the *Local Government Act 1995* provides for regulations that prescribe a Model Code of Conduct and the requirement for local governments to adopt the model code.

Schedule 1, Division 3, clause 11(3) of the Regulations requires Council to authorise one or more persons to receive complaints and withdrawals of complaints, while clause 11(2)(a) requires the approval of a form for the receiving of complaints.

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

The officer recommendation aligns to the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates.

#### **Financial Implications**

There will be financial implications associated with the engagement of an investigator as outlined in the Policy. Funding this resource will require an allocation in the 2021/2022 budget. It is proposed that a figure of \$5,000 is allocated to start with and adjusted as required.

#### **Stakeholder Consultation**

The Western Australian Local Government Association (WALGA) have recently developed and released a Code of Conduct Behaviour Complaints Management Policy. The Policy largely aligns with WALGA's Policy, noting the City has proposed the appointment of an investigator in lieu of establishing a Complaints Committee in accordance with section 5.8 of the Act.

#### **Risk Assessment**

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

#### **Options**

As an alternative to the proposed recommendation the Council could choose to:

- 1. amend the Policy; or
- 2. not adopt a complaints policy and allow the City's appointed complaints officer to manage complaints noting the potential for conflicts of interest to arise.

#### **CONCLUSION**

Officers have developed a Council Policy: Investigation of Complaints of Alleged Breaches of Behaviour to deal with complaints of alleged breaches of behaviours.

#### TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be implemented and placed on the City's website within one week of adoption.

6.2 Attachment A

Council Policy: Investigation of Alleged Breaches of Behaviour (Proposed)

#### **Council Policy**



Council Policy Investigation of Complaints of Alleged Breaches of

Name: Behaviour

Responsible Finance and Corporate Services Version: DRAFT

Directorate:

#### 1. PURPOSE

1.1. The purpose of this Policy is to prescribe the processes for the investigation of complaints relating to breaches of the behaviour requirements in Division 3 of the City Of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

#### 2. SCOPE

2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Division 3 of the Code, and should be read in conjunction with the Code.

#### 3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council policy titled "Investigation of Complaints of Alleged
	Breaches of Behaviour"

#### 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 Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.

#### 5. POLICY STATEMENT

- 5.1. The *Local Government (Model Code of Conduct) Regulations 2021* and the Code provides for the requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The purpose of the Code is to guide the decisions, actions and behaviours of council members, committee members, and of candidates running for election as a council member.
- 5.3. The Code sets out the requirements for:
  - a. the process for making a complaint;
  - b. dealing with a complaint;
  - c. the dismissal of a complaint; and
  - d. the withdrawal of a complaint.
- 5.4. This Policy outlines the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

#### Appointment of investigator

5.5. The Chief Executive Officer (CEO) is to appoint a person with relevant skills and knowledge who is not an employee of the City, to investigate one or more complaints of breach of behaviour and to report on the

## Council Policy: Investigation of Alleged Breaches of Behaviour (Proposed)

outcome of any investigation to the CEO for provision to the council in accordance with due process and consistently with the provisions of this Policy.

#### Investigating a complaint

5.6. A complaint must be submitted by the complainant – a complaint cannot be submitted anonymously.

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- 5.7. The City's complaints officer, within 14 days of receiving a complaint:
  - a. must contact the complainant acknowledging that the complaint has been received;
  - b. as part of the acknowledgment process, must provide the complainant with a copy of this Policy and the Code;
  - must outline the process that will be followed and possible outcomes and the application of confidentiality;
  - d. must provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
  - e. must send to the investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.8. Complaints are to be dealt with and considered in the order in which they are received by the City's complaints officer. If more than one complaint is received that relates to the same alleged behaviour, the City's complaints officer may determine to progress those complaints concurrently.
- 5.9. A complaint relating to a candidate is only to be referred to an investigator if and when the candidate is elected as a council member, but in any event the complaint must be lodged within one month of the occurrence of the alleged breach of behaviour.
- 5.10. In investigating the complaint, the investigator may request the City's complaints officer to search for any relevant records in the City's record management system.
- 5.11. The investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the consideration or determination of the complaint.
- 5.12. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise before the determination of the complaint, the complainant must lodge a withdrawal of complaint in accordance with the Code, with the City's complaints officer.
- 5.13. Before making a determination in relation to a complaint, the investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint and to provide their own comments and evidence for consideration. They must do this within 14 days of formally being notified of the complaint.
- 5.14. After considering a complaint, the investigator must make a determination as to whether or not the alleged behaviour breach has occurred.
- 5.15. The determination must be made within 21 days:
  - a. from receiving a complaint from the City's complaints officer; or
  - b. from receiving a copy of the response to the allegations by the person to whom the complaint relates; whichever is the later.
- 5.16. Having made a determination on the alleged behaviour breach, the investigator must, within 14 days of making the determination, provide a report to the City's complaints officer.

#### 6.2 Attachment A

## Council Policy: Investigation of Alleged Breaches of Behaviour (Proposed)

- 5.17. If the investigator makes a determination that the alleged breach has occurred, the report must make a recommendation if further action is required.
- 5.18. In making a recommendation of further action, the investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.19. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the investigators report to the City's Complaints Officer and included in the report to Council.
- 5.20. The investigator may recommend to the council to dismiss a complaint in accordance with paragraph 3.16 of the Code.
- 5.21. If the investigator concludes that the behaviour is an offence under the City's Standing Orders Local Law, the complaint should not be dealt with further as a breach of behaviour, but should be referred back to the City's complaints officer.
- 5.22. The investigator's deliberations and determination are to be confidential and reported only to the City's complaints officer, but subject to any consultation with the person to whom the complaint relates.

#### **Council finding**

- 5.23. The City's complaints officer must provide a confidential report to the council at the next ordinary meeting, including:
  - a. a copy of the complaint;
  - the report of the investigator together with the evidence received and any submissions or other communications from parties;
  - c. a recommendation on the question whether or not a breach of behaviour has occurred;
  - d. a recommendation as to whether any and if so what further action is required; and
  - e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.
- 5.24. Based on the investigator's report, the evidence and any further comments or submissions by the parties, the council may:
  - a. dismiss the complaint in accordance with paragraph 3.16 of the Code; or
  - b. find the alleged breach has occurred and decide no further action is required; or
  - c. find the alleged breach has occurred and that further action is required and consider the adoption of the action plan; or
  - d. find that the alleged breach has not occurred.

#### **Action plans**

- 5.25. An action plan should be designed to provide the member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives. The plan should outline:
  - a. the behaviour/s of concern;
  - b. the actions to be taken to address the behaviour/s;
  - c. who is responsible for the actions; and
  - d. an agreed timeframe for the actions to be completed.
- 5.26. In deciding whether to implement an action plan, Council should consider:
  - a. the nature and seriousness of the breach(es);
  - b. any submission made by the person to whom the complaint relates;
  - c. whether the person to whom the complaint relates has breached the Code knowingly or carelessly;
  - d. whether the person to whom the complaint relates has breached the Code on previous occasions;

6.2 Attachment A

## Council Policy: Investigation of Alleged Breaches of Behaviour (Proposed)

- e. the need to protect the public through general deterrence and maintaining public confidence in Local Government; and
- f. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

#### Confidentiality of complaints

5.27. The fact of a complaint having been made and the details of a complaint and the processes undertaken in connection with a complaint, including the referral to an investigator, are confidential matters and should not be disclosed unless and until the council has made a formal finding of breach in respect of the complaint.

#### Compliance with plan requirement

5.28. The City's complaints officer is to monitor the actions in timeframes set out in an Action Plan.

#### Complaints that are inappropriate under this Policy

- 5.29. A breach of the Rules of Conduct in the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:
  - a. complaints made with the intent of addressing personal grievances or disagreements;
  - complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
  - c. minor breaches under section 5.105(1) of the Act;
  - d. serious breaches under section 5.114 of the Act; and
  - e. allegations of corruption.

#### Cost in the complaints process

- 5.30. No fee is charged to lodge a complaint under this Policy;
- 5.31. The investigator, or a mediator, appointed pursuant to this Policy may charge the City a fee to cover the costs of dealing with the complaint whether or not a breach is ultimately found.
- 5.32. Any fee charged by an investigator, or a mediator, is to be based on the time spent in connection with the complaint and may be established in advance on a quotation or otherwise in accordance with the City's purchasing policies.

#### 6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995
- 6.2. Local Government (Model Code of Conduct) Regulations 2021
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

#### 7. REVIEW DETAILS

Review Frequency		3 yearly		
Council	DATE		Resolution #	
Adoption				

6.2 Attachment B

#### **Amended Complaints Form**



#### **Behaviour Complaint**

Please read the City of Busselton's Council Policy: Investigation of Complaints of Alleged Breaches of Behaviour before submitting a complaint. This Policy details:

- How the City of Busselton will process and determine a Behaviour Complaint; and
- · How confidentiality of the complaint will be handled.

To make a valid Behaviour Complaint:

The allegation must relate to a breach of the behaviour standards in <u>Division 3</u> of the City of Busselton's Code of Conduct for Council Members, Committee Members and Candidates.
Complete all sections of the Behaviour Complaint Form attached, including any additional information that will support assessment of the complaint. <i>The Complaints Officer may contact you to clarify or ask for more information.</i>
The completed Behaviour Complaint Form MUST be lodged with the City of Busselton's Complaints Officer within one (1) month of the alleged behaviour breach.

#### **Rules of Conduct Complaint**

A Rules of Conduct Complaint refers to a breach of the Rules of Conduct outlined in Division 4 of the City of Busselton's Code of Conduct for Council Members and Candidates, including Council Members when acting as a Committee Member. This type of complaint is determined by the Local Government Standards Panel, administered through the Department of Local Government, Sport and Cultural Industries. Further information about Rules of Conduct Complaints may be obtained from:

- Department of Local Government, Sport and Cultural Industries: (08) 6552 7300 or www.dlgsc.wa.gov.au; OR
- The City of Busselton's Rules of Conduct Complaints Officer: (08) 9781 0486 or tony.nottle@busselton.wa.gov.au

#### Need Advice?

If you require advice in making a Behaviour Complaint, please contact the City of Busselton's Complaints Officer on (08) 9781 0486 or <a href="mailto:top:ontology.nottle@busselton.wa.gov.au">top:ontology.nottle@busselton.wa.gov.au</a>

#### 6.2

#### Complaint About Alleged Breach Form -Code of conduct for council members, committee members and candidates

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**Amended Complaints Form** 

Schedule 1, Division 3 of the Local Government (Model Code of Conduct) Regulations 2021

#### NOTE:

A complaint about an alleged breach must be made –

- a. in writing in the form approved by the local government (this form);
- b. to an authorised person; and
- c. within one month after the occurrence of the alleged breach.

Name of the person who is making the complaint:	
Name:	
Given Name(s)	Family Name
Contact details of the person making the complaint:	
Address:	
Email:	
Contact Number:	
Name of the local government (city, town, shire) conc	erned:
City of Busselton	
Name of the council member, committee member, ca	ndidate alleged to have committed the breach.
Name of the council member, committee member, ca	indicate dileged to have committed the breach.
Name:	
Given Name(s)	Family Name
Select the position that the person was fulfilling at the	time the person committed the alleged breach:
Council Member of the City of Busselton	
Committee Member of the City of Busselton	
Candidate for election at the City of Busselton	П
Canada Con Ciccion at the City of Bussellon	

6.2 Attachment B

#### Amended Complaints Form

Which of the behaviours prescribed in Division 3 of the City of Busselton's Code of Conduct do you allege this person has breached?  Personal integrity 3.2 A council member, committee member or candidate —  (a) must ensure that their use of social media and other forms of communication complies with this code; and  (b) must only publish material that is factually correct  (a) must not be impaired by alcohol or drugs in the performance of their official duties; and  (b) must comply with all policies, procedures and resolutions of the local government.  (a) must not be impaired by alcohol or drugs in the performance of their official duties; and  (b) must comply with others  3.4 A council member, committee member or candidate —  (a) must not bully or harass another person in any way; and  (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and  (c) must not use offensive or derogatory language when referring to another person; and  (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and  (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties, and  (e) must not impute dishonest or unethical motives to another council member, committee member or candidate —  (a) must not act in an abusive or threatening manner towards another person; and —  (b) must not act in an abusive or threatening manner towards another person; and —  (c) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and —  (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and —  (e) must comply with any requirements of a local l	Jia	e the full details of the alleged breach. Attached any supporting evidence to this complaint	
Which of the behaviours prescribed in Division 3 of the City of Busselton's Code of Conduct do you allege this person has breached?  Personal integrity 3.2 A council member, committee member or candidate —  (a) must ensure that their use of social media and other forms of communication complies with this code; and  (b) must only publish material that is factually correct  (a) must not be impaired by alcohol or drugs in the performance of their official duties; and  (b) must comply with all policies, procedures and resolutions of the local government.  Relationship with others 3.4 A council member, committee member or candidate —  (a) must not bully or harass another person in any way; and  (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and  (c) must not use offensive or derogatory language when referring to another person; and  (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and  (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.  Council or committee meetings 3.5 When attending a council or committee meeting, a council member, committee member or candidate —  (a) must not act in an abusive or threatening manner towards another person; and  (b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and  (d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings, and  (e) must comply with any direction given by the person presiding at the meeting; and			
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6.2 Attachment B

Amended Complaints Form

List any additional information	on you have provided as	part of this complaint:		Ī		
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Council Policy: Investigation of Complaints of Alleged Breaches of Behaviour requires that the complainant and the person to whom the complaint relates be offered the opportunity to participate in a mediation process, that if agreed to by BOTH parties, will be undertaken before the complaint is dealt with.						
The objective is to support both parties to reach a mutually satisfactory outcome that resolves the issues and restores the relationship between them. An outcome may be that as the complainant, you will have absolute discretion to withdraw or continue with this complaint.						
	•	mara information				
Please contact the City's Complain	its Officer if you would like i	nore injormation.				
Would you agree to participat	YES					
Investigation of Alleged Breac	hes of Behaviour Counci	l Policy?	NO			
Signed:						
Complainant's signature:						
<b>-</b>						
Date of signing:	/	/20				
Received by Authorised Offic	er					
Theceived by Mainerisea Offic						
Authorised Officers' Name:  Given Name(s)  Family Name						
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Date received:	,	/20				
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## 6.3 <u>SOUTH WEST DESIGN REVIEW PANEL AND PROPOSED LOCAL PLANNING POLICY - DESIGN REVIEW</u>

STRATEGIC GOAL 2. PLACE AND SPACES Vibrant, attractive, affordable

**STRATEGIC OBJECTIVE** 2.3 Creative urban design that produces vibrant, mixed-use town

centres and public spaces.

**SUBJECT INDEX BUSINESS UNIT**Local Planning Policy
Development Services

**REPORTING OFFICER** Manager Development Services - Lee Reddell

**AUTHORISING OFFICER** Director, Planning and Development Services - Paul Needham

NATURE OF DECISION Legislative: adoption of "legislative documents" such as local laws,

local planning schemes and local planning policies

**VOTING REQUIREMENT** Simple Majority

ATTACHMENTS Attachment A Draft Design Review Policy 🗓 溢

#### **OFFICER RECOMMENDATION**

#### That the Council:

- 1. Resolves to initiate for the purposes of public consultation a new Local Planning Policy 'Design Review' (Attachment A) by advertising the proposed policy in accordance with clause 4 of Part 2 of Schedule 2 Deemed Provisions for Local Planning Schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.
- 2. Authorises the Chief Executive Officer to enter a memorandum of understanding with other participating South West local governments for the operation and management of a South West Joint Design Review Panel.
- 3. Consider allocating appropriate funding in the 2021/22 financial year budget to enable the establishment and operation of a South West Design Review Panel.

#### **EXECUTIVE SUMMARY**

Design Review Panels (DRPs) are groups of independent experts who advise on the design quality of a project or development proposal. DRPs have been operating in Australia for over 20 years and 80% of Perth's metropolitan local governments have established a DRP, which are now reinforced through the State Government's Design WA initiative. Officers have been working with other local authorities within the South West region to establish a South West Design Review Panel (SWDRP). A Memorandum of Understanding (MOU) and Terms of Reference (TOR) have been prepared by the participating local governments.

At this point in time, there is commitment from the following local governments:

- City of Bunbury
- Shire of Augusta Margaret River
- Shire of Harvey
- Shire of Collie

For design review to occur through the development assessment process, a Local Planning Policy (LPP) is required to:

- 1. Establish a 'head of power', in creating a relationship between the development assessment and design review process;
- 2. Outline the types of applications that will trigger design review; and
- 3. Address fees and charges.

#### **BACKGROUND**

City officers have been in ongoing discussions with other South West local government planners to gauge support for a shared DRP. The advantages of a SWDRP are lower costs and a larger pool of experts to draw from, thus improving the potential pool of expertise and lowering the risk of conflict of interest.

In order for the SWDRP to function, an MOU has been drafted between the participating local governments. The MOU is an agreement between the parties to work together to establish and maintain a DRP. The MOU states that participating local governments will contribute equally to funding an Expression of Interest (EOI) process and ongoing member recruitment costs, after which the DRP will operate on a 'user pays' basis, where costs incurred presenting an item (such as panel member sitting fees) will be borne by the local government presenting an item.

Further operational guidance will be provided by way of the TOR document which sets out the role and stature of the DRP, governance, member appointment and responsibilities, remuneration, and meeting procedures. Importantly, the TOR refer to an LPP to establish the types of applications that will require design review, as well as a process around fees and charges. An LPP is advantageous as it can be tailored from place to place to recognise the differences in development scale and frequency between local authorities.

The Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations) provide that LPPs may be prepared by a local government in respect of any matter relating to planning and development regulated through a local planning scheme (Scheme).

The intention of an LPP is to provide guidance to applicants/developers and the community in regard to the decision-making process, as well as to the local government when exercising discretion under a Scheme. An LPP must be consistent with the intent of the relevant Scheme provisions and cannot vary development standards or requirements set out in a Scheme or impose other mandatory requirements upon development.

LPPs are given due regard in the assessment of development applications and are listed as a "consideration of application by local government" when making determination of a development application under Schedule 2, clause 67 of the Regulations.

#### **OFFICER COMMENT**

Design review is an independent and impartial evaluation process through which a panel of experts on the built environment assesses the design of a proposal. DRPs can be used for development applications, major public works, structure plans, local development plans and design related local planning policies.

DRPs often contain a wide range of experience that can cover architecture, heritage, urban design, landscape architecture and planning. Their focus is principally on pre-lodgement advice, so that the DRP can influence the drafting of plans before the applicant is committed through fully worked up drawings.

State Planning Policy 7.0 Design of The Built Environment (SPP7.0) sets out the objectives, measures, principles and processes which apply to the design and assessment of built environment proposals through the Western Australian planning system. It also provides the overarching framework for a range of supporting State Planning Policies that provide design quality guidance for specific types of planning and development proposals.

The WAPC's *Design Review Guide* works with SPP7.0 to assist local governments with the establishment and operation of DRPs and supports consistency in the design review processes already in operation across the State.

SPP7.0 states that planning authorities, including local government, should establish or arrange access to design review processes to review:

- complex planning proposals;
- proposals identified as benefitting from design review; or
- matters as set out in the Regulations or recommended in the Design Review Guide.

Of the 29 metropolitan local governments in Perth, 25 have established DRPs. There are no DPRs in regional WA at the present time. The SWDRP will be a first for the State. The Office for the Government Architect (OGA), the Department of Planning, Lands and Heritage and the South West Development Commission are all supportive of establishing the joint SWDRP.

#### **Proposed Local Planning Policy**

The LPP is proposed to achieve three things:

- 1. establish a 'head of power', in creating a relationship between the development assessment and design review process;
- 2. outline the types of applications that will require design review; and
- 3. outline process on fees and charges.

As outlined above, the operational aspects of the DRP are dealt with through the MOU and TOR. Council approval for these documents is not proposed for these documents given their operational nature but it is a recommendation of this agenda item that Council authorises the Chief Executive Officer to enter the MOU on behalf of the City for the operation and management of the SWDRP.

Under Part 3 of the Deemed Provisions of the Regulations, the City must have regard to an LPP in determining a development application, meaning the proposed LPP will provide a relationship between the development assessment and design review process.

Part 4.1(e) of the draft LPP establishes the DRP role in the development application process as follows:

e) The Design Review Panel performs an advisory function and the decision maker shall give due regard to the panel's advice. The Design Review Panel does not report on compliance with the Scheme or policies.

Part 4.2 of the draft LPP sets the threshold for the types of applications that are referred to the DRP. It is important to strike a balance on what matters require DRP review. The lower the threshold, the higher the number of meetings and therefore cost. Too high a threshold and matters which would have benefited from design review might be overlooked.

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The threshold included in the draft LPP is provided below:

#### 4.2 THRESHOLD

- a) The Design Review Process may apply to:
  - i) All applications that meet the mandatory or optional requirement for Development Assessment Panels applications, where there is a design element that may impact on the character, appearance or streetscape of an area; or
  - ii) Major development proposals where there is a design element that may have a significant impact on the character, appearance, or streetscape of an area at the discretion of the City; or
  - iii) Any other planning proposal (e.g. Scheme Amendment, Structure Plan, Precinct Plan, Local Planning Policy, Local Development Plan, Design Guidelines; or City project) relating to the design of development and places may be referred to the Design Review Panel at the discretion of the City.

Importantly, the above provides discretion for the Director of Planning and Development to require design review in instances where other criteria are not fully met but the proposal would benefit from design input. Outside of the development assessment process, the City can refer its own projects to the DRP at its discretion.

Normally, a proposal is reviewed three times by a DRP, but this is not mandatory. The draft LPP allows for three design reviews at no cost to the proponent, provided one of the reviews occurs before the lodgement of a development application. This is to incentivise early engagement with the panel, which increases opportunities for DRP feedback to be incorporated into a design at a lower cost to the proponent.

If no review is undertaken before lodgement, then only one review will be provided at no cost to the proponent. This may provide an incentive for the applicant to take on board the DRPs early feedback to avoid costs associated with a third review.

A Scheme Amendment may be appropriate at some point to introduce a trigger to require applicants of specified development to participate in the design review process, however this is not considered necessary at this time given the level of positive buy-in from applicants to the informal design review processes being undertaken on significant development within the City currently. Officers will liaise with the Department of Planning Lands and Heritage on this matter and seek to introduce a relevant provisions as part of the Scheme Review process if deemed necessary.

#### **Statutory Environment**

The key statutory environment is set out in the *Planning and Development Act 2005* and related subsidiary legislation, including the *City of Busselton Local Planning Scheme No. 21* (the Scheme) and the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), especially Schedule 2 (Deemed Provisions) of the Regulations, which form part of the Scheme.

Division 2, clause 4 sets out the procedure for making a local planning policy.

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

#### State Planning Policy 7.0 Design of the Built Environment (SPP7.0)

SPP7.0 states that planning authorities should establish or provide access to design review processes for complex planning proposals. This is set out in the WAPC's "Design Review Guide – Guidance for Local Governments to set up and operate a design review process".

#### **Financial Implications**

#### **Establishment and Maintenance Costs**

Estimates put establishment costs at \$5,000, covering advertising and circulating an Expression of Interest Campaign (EOI) and potential recruitment costs if administration staffing is outsourced. Costs for outsourcing administration support for the panel are likely to be \$7000 per annum. These estimates are based on costings from the City of Stirling.

Other options that are being explored are 'rotating' the hosting of the DRP such that administrative support can be undertaken with existing staffing arrangements. This would involve the Cities of Bunbury and Busselton and the Shire of Augusta Margaret River taking turns in hosting the DRP meetings and undertaking the administrative tasks, including preparing and circulating agendas, invites, taking minutes and formulating recommendations with the Panel Chair. This would reduce this workload to once quarterly, which is manageable within existing staffing arrangements and would negate the staffing cost. The Shire is also exploring for external funding assistance to cover the establishment costs.

The total establishment and maintenance costs when shared between the five participating local governments may be \$2,400 per year for the City, however these may be further reduced based on the above.

#### **Meeting Costs**

The TOR sets the remuneration of the Panel Members, which is at \$500 per meeting for the chair and \$400 per meeting for other members, inclusive of preparation time. Costings have been based on five panel members, but this may be adjusted down depending on the outcomes of the EOI process. Based on this approach, one meeting would cost \$2,100.

The estimated budget for operating the SWDRP would be \$33,070 annually based on 12 meetings per year. Under the terms of the draft MOU, the meeting costs would be divided equally between those local governments with matters to be considered at a particular meeting. This model is yet to be tested through an EOI process however so there may need to be changes to the model if there is insufficient interest based on offering only one fee per meeting, irrespective of the number of matters to be considered.

Based on the details above, a budget allocation of \$35,470 for the 2021/22 financial year will be requested through the budgeting process. The costs to run the DRP process are expected to fluctuate dependent on the level of development proposed on any given year and could be returned to general municipal funds at budget review if unlikely to be expended in the financial year. It is noted that development applications the subject of Design Review are likely to generate significant application fees which would off-set the cost of the review. City projects referred to DRP would need to account for referral costs in the project budget.

It should be noted that support to advertise the draft LPP does not commit Council to supporting any particular budget allocation or prevent Council from reconsidering the timing of a DRP process based on financial constraints. It is also possible that the City could pursue a full cost recovery methodology.

#### **Stakeholder Consultation**

Part 2, Division 2 of the Deemed Provisions requires that a local government undertake consultation before adopting or amending a local planning policy (although a minor amendment can be made without consultation). At least 21 days must be allowed for the making of submissions.

It is proposed that consultation will be for a period of four weeks and will be undertaken as follows:

- Notices in the local newspaper for four consecutive weeks, as well as on the City's website, including the subject and nature as well as objectives of the proposed LPP; and
- A portal is to be created using the City's YourSay platform for the online lodgement of submissions.

#### **Risk Assessment**

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

#### **Options**

As an alternative to the proposed recommendation, the Council could:

- Choose not to initiate the Policy recommended to be initiated as part of this report; and/or
- 2. Modify the Policy before initiation.

#### **CONCLUSION**

It is recommended that Council support the proposed initiation of the LPP as described in this report.

#### TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the officer recommendation would involve public consultation of the initiated Policy as outlined in the consultation section of this report above. It is expected that this will commence within one month of the Council decision. A subsequent report will be presented to the Council following public consultation outlining the nature of any submissions received in relation to the Policy and any necessary modifications to the Policy (where applicable).

#### **Draft Design Review Policy**

## Local Planning Policy No. XX Design Review



Version: Proposed

#### 1. Head of Power and Scope

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes)* Regulations 2015, Schedule 2 (Deemed Provisions), Clause 4 and applies to development across the whole of the City.

The South West Joint Design Review Panel will be established and operate consistent with the process outlined by the State Government Design Review Guide - Guidance for local governments (the Design Review Guide) as augmented by the adopted Terms of Reference.

#### 2. Purpose

The purpose of this policy is to:

- 2.1 Supplement the City's development assessment process and projects by providing design input from an independent panel of design experts; and
- 2.2 Ensure higher quality built form outcomes and an improved public realm through Design Review of development applications and City projects; and
- 2.3 Outline the types of applications of other planning documents that will require Design
- 2.4 Set out the weight afforded to the advice provided by a Design Review Panel; and
- 2.5 Establish process for fees and charges.

#### 3. Interpretation

Terms should be interpreted in the same way as they would be interpreted if they were contained or within the Scheme, other than those terms defined below:

"Design Review" means an independent and impartial evaluation process in which experts on the built environment assess the design of a proposal.

"Panel" means a selected panel of experts who undertake a design review of a proposal.

"Scheme" means City of Busselton Local Planning Scheme No. 21

#### 4. Policy Statement

#### 4.1 THE DESIGN REVIEW PROCESS

- The City will use the Panel to undertake design review for matters outlined at Part 4.2 of this policy;
- The establishment and operation of the panel is to occur in accordance with an adopted term of reference;
- The Panel shall assess proposals against the design principles of State Planning Policy 7.0 Design of the Built Environment (WAPC, 2019);
- The Panel performs an advisory function and the decision maker shall give due regard to the panel's advice. The Design Review Panel does not report on compliance with the Scheme or policies;

6.3 Attachment A

**Draft Design Review Policy** 

# Local Planning Policy No. XX Design Review



Version: Proposed

e) The City encourages proponents to undertake design review early in the design concept stage, prior to the submission of a development application. A number of referrals to the Panel may be required depending on the complexity of the proposal.

#### 4.2 THRESHOLD

- a) The Design Review Process may apply to:
  - All applications that meet the mandatory or optional requirement for Development Assessment Panels applications, where there is a design element that may impact on the character, appearance or streetscape of an area; or
  - Major development proposals where there is a design element that may have a significant impact on the character, appearance, or streetscape of an area at the discretion of the City; or
  - iii) Any other planning proposal (e.g. Scheme Amendment, Structure Plan, Precinct Plan, Local Planning Policy, Local Development Plan, Design Guidelines; or City project) relating to the design of development and places may be referred to the Design Review Panel at the discretion of the City.

The purpose of the panel is to provide independent, expert advice on the design quality of the proposed development to the applicant, City officers, Council and the decision maker, to encourage innovative, high-quality designs that meet the needs of all stakeholders and the community.

### 4.3 FEES AND CHARGES

- a) No charge will be incurred by the proponent for up to three design reviews, provided at least one of those occur prior to lodgement of a development application.
- b) The proponent shall reimburse the City for the sitting fees of Design Review Panel members for all subsequent Design Review Panel meetings.
- Fees are to be paid to the City in accordance with Council's adopted schedule of fees and charges.

#### 5. Review Details

Review Frequency		2 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE		Resolution #	

#### 7. GENERAL DISCUSSION ITEMS

#### 7.1 HOLIDAY HOMES REGULATION REVIEW

To assist in preparation of a subsequent, substantive report on a review of the City's approach to the regulation of holiday homes, the Committee is asked to: receive a briefing on some information relevant to that review; and provide informal feedback on opportunities for change that could be implemented through that review.

It is envisaged that the substantive report will be considered at the Committee's May meeting, and will identify:

- The City's current regulatory approach;
- The background to the development of that approach, and how the approach has developed over time;
- The experience with the current approach, and issues / concerns that have emerged over time;
- Approaches employed in other jurisdictions;
- State Government policy position;
- Opportunities for change; and
- Recommendations around the processes to complete the review and potential changes to the City's approach.

It is anticipated that the recommendations will involve complementary and integrated amendments to the City's town planning scheme, holiday homes local planning policy and *Holiday Homes Local Law*.

Some of the information officers intend to provide to Councillors at this meeting includes:

- City's current regulatory approach;
- Location and numbers of registered holiday homes;
- Residential vacancy rates in the City and comparable local government areas;
- Complaints relating to holiday homes;
- Current State Government policy position; and
- Opportunities for change to the City's current approach.

Some of the opportunities for change that officers intend to seek informal feedback from Committee members about are:

- Identification of areas where holiday homes may be permitted/not permitted or preferred/non-preferred;
- Revised standards for the size or design of properties relative to maximum permissible occupancy numbers;
- Time limited development approvals;
- Whether maximum permissible numbers can or should be reduced for approved holiday homes;
- Requirements / expectations for holiday homes managers;
- Management of dogs at holiday homes; and

• Complaints and compliance processes and communication.

It is also anticipated that, following the Committee discussion, some information would be provided on the City's website setting out that a review is underway, and providing some basic information about the review process.

Copies of the current holiday homes local planning policy and Holiday Homes Local Law are both attached, as is a copy of the State Government's response to findings of the 2019 Parliamentary Inquiry into short stay letting in WA.

#### 7.1 Attachment A

### **Local Planning Policy**

### **Local Planning Policy No. 4.1 HOLIDAY HOMES**



#### **HEAD OF POWER AND SCOPE**

This Policy has been adopted pursuant to Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 (Deemed Provisions), Clause 4 and applies to the development of Holiday Homes across the whole of the City.

#### **PURPOSE**

The purpose of this Policy is to -

- Provide clear guidance regarding the assessment of applications for development approval for Holiday Homes; and
- Identify circumstances in which Holiday Homes will be supported, and circumstances in which Holiday Homes may be supported, given more detailed consideration.

#### INTERPRETATION

The two terms defined below are critical to interpretation of this Policy -3.1

"Deemed-to-Comply" means a provision which, if satisfied, means that an application is deemed compliant with respect to the matters subject of that provision. The local government shall not refuse to grant approval to an application where the application satisfies all of the relevant Deemed-to-Comply provisions.

"Performance Criteria" means provisions to be used in the preparation, submission and assessment of development proposals for the purpose of determining their acceptability, where they do not meet the relevant Deemed-to-Comply provisions.

Note: applications that do not meet all of the 'deemed-to-comply' provisions would be assessed against the relevant 'performance criteria' (i.e. they would only be assessed against the latter in relation to those aspects to which they do not meet the former). So if the 'car parking' deemed-to-comply provisions are met, but the 'dwelling design' ones are not, dwelling design related issues would require assessment against the dwelling design performance criteria, but the car parking related issues would not require assessment against the car parking related performance criteria. Similarly, if the potable water elements of the 'utility servicing' deemed-to-comply provisions are met, but the refuse collection ones are not, it is only the refuse collection issues that need to be considered against the directly related performance criteria.

Other terms should be interpreted in the same way as they would be interpreted if they were contained within the City of Busselton Local Planning Scheme No. 21, other than those terms defined below -

"Bushfire Policy' means the Bushfire Local Planning Policy.

"Deemed-to-Comply" means a provision which, if satisfied, means that a Holiday Home is deemed compliant with respect to the matters subject of that provision. The local government shall not refuse to grant approval to an application where the application satisfies all of the relevant Deemed-to-Comply provisions.

"Holiday Home (Multiple/Grouped Dwelling)" means a grouped dwelling or multiple dwelling, which may also be used for short stay accommodation for hire or reward for no more than six people (but does

#### **Local Planning Policy**

# Local Planning Policy No. 4.1 HOLIDAY HOMES



not include a bed and breakfast, chalet development, guesthouse, rural tourist accommodation or tourist accommodation).

"Holiday Home (Single House)" means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for hire or reward for no more than 12 people (but does not include a bed and breakfast, chalet development, guesthouse, rural tourist accommodation or tourist accommodation).

"Holiday Home" means both a Holiday Home (Multiple/Grouped Dwelling) and/or a Holiday Home (Single House).

"Performance Criteria" means provisions to be used in the preparation, submission and assessment of development proposals for the purpose of determining their acceptability, where they do not meet the relevant Deemed-to-Comply provisions.

"Policy" means this Holiday Homes Local Planning Policy.

#### 4. POLICY STATEMENT

4.1 LOCATION				
Deemed-to-Comply	Performance Criteria			
A Holiday Home satisfies the Deemed-to-Comply provisions if:	A Holiday Home satisfies the Performance Criteria provisions if:			
C1.1 The Holiday Home is located within an existing, lawful dwelling (other than a dwelling approved as a second dwelling or rural worker's dwelling pursuant to clause 4.5 (f) or (g) of the Local Planning Scheme, or equivalent clause in previous schemes) in the Agriculture or Viticulture and Tourism Zone; or  C1.2 In all other Zones, the Holiday Home has direct frontage to a public road and/or public open space and has a minimum of 350m² exclusively for the use of the dwelling; or	P1.1  The City is satisfied that approval of the Holiday Home is not likely to have a significant impact on the amenity of adjoining and nearby residents and would not constitute the conversion of a second dwelling or rural worker's dwelling to a Holiday Home.			
C1.3 For a Holiday Home (Grouped/Multiple Dwelling), written support has been received by the local government from the majority of owners of properties in the complex or development within which the Holiday Home is to be located (excluding the owner of the site subject of the application, unless the applicant owns all of the properties in the complex or development).				

7.1 Attachment A

### Local Planning Policy

# Local Planning Policy No. 4.1 HOLIDAY HOMES



4.2 UTILITY SERVICING					
Deemed-to-Comply	Performance Criteria				
A Holiday Home satisfies the Deemed-to-Comply provisions if:	A Holiday Home satisfies the Performance Criteria provisions if:				
C2.1 The Holiday Home is connected to reticulated water, or provided with a 135,000 litre rainwater tank for the exclusive use of the Holiday Home; and	P2.1 The City is satisfied that the Holiday Home will have an adequate supply of potable water; and				
C2.2 The Holiday Home is located within the City's kerbside refuse collection area; and C2.3 The Holiday Home is connected to reticulated	P2.2 The City is satisfied that the Holiday Home will be provided with an adequate refuse collection service; and				
sewerage, or there is an approved on-site effluent disposal system with adequate capacity for the proposed number of occupants.	P2.3 The City is satisfied that the Holiday Homes will be provided with an adequate on-site effluent disposal system (and				
Note: in areas not serviced by reticulated sewerage, it should not be assumed that an existing on-site effluent disposal system approved for a single house will have sufficient capacity for the proposed number of occupants without the need for upgrading. Advice should be sought from the City's Environmental Health staff prior to lodging an application for development approval.	provision of such would be a condition of any approval, to be met prior to the commencement of the use if a suitable system is not already in place and approved).				

4.3 C	4.3 CAR PARKING						
Deemed-to-Comply			Performance Criteria				
A Hol	Deemed-tiday Home satisfies the sions if:  The Holiday Home will parking bays, consister manoeuvrability critering Design Codes of Wester more than any of two the other (i.e. tandem two bays one behind a	Deemed-to-Comply have constructed on-sit	tial o nd h	provis	iday Home satisfies Performance Criteria sions if:  The City is satisfied that the Holiday Home has a minimum of two constructed on-site car parking bays and, where additional car parking bays would be required to comply with C3.1 above, at least the equivalent number of cars could park on the site without the need for cars to park on the verge, in adjacent or nearby public car parking, or in visitor car parking bays within a unit complex or similar; or		
		required		P3.2	Where a Holiday Home is located in the 'Business' Zone, the City is satisfied that		
	1-3	1			the Holiday Home will not have a		
	4-6	2		noticeable effect on the availability of			
	7-8	3			public car parking within the locality.		
	9-10	4			•		
	11-12	5	i 1				

Policy and Legislation

# Local Planning Policy No. 4.1 HOLIDAY HOMES



### 4.4 DWELLING DESIGN Deemed-to-Comply

A Holiday Homes satisfies the Deemed-to-Comply provisions if:

- C4.1 The Holiday Home is an existing, lawful dwelling; or
- C4.2 If the Holiday Home is not an existing, lawful dwelling, the Holiday Home will meet all of the relevant design standards and requirements that would apply to a new dwelling on the land, including the requirements of the Local Planning Scheme (including the *Residential Design Codes of Western Australia*), all relevant Local Planning Policies, and all relevant Structure Plan, Activity Centre Plan and Local Development Plan provisions; and
- C4.3 The maximum number of occupants within a Holiday Home complies with the following standards:
  - (a) There is 5.5 square metres per occupant in each bedroom utilising beds; and
  - (b) There is 3.5 square metres per occupant in each bedroom utilising bunks; and
  - (c) There is sufficient bedroom space to accommodate the maximum number of occupants consistent with (a) and (b) above;
- C4.4 Bedrooms in a Holiday Home are provided in accordance with the following rates:

Maximum	Minimum number of	
number of	bedrooms required	
occupants		
1-2	1, or studio	
3-4	2	
5-8	3	
9-12	4	

C4.5 Bathrooms and toilets in a Holiday Home are provided in accordance with the following rates:

Maximum	Minimum number of	
number of	bathrooms/toilets required	
occupants		
1-6	1 bathroom and 1 toilet	
7-12	1 or 2 bathrooms and 2 toilets	

A Holiday Homes satisfies the Performance Criteria provisions if C4.1 or C4.2 is met, and C4.3 and C4.5 are met; and:

**Performance Criteria** 

P4.1 The City is satisfied that the dwelling design is appropriate to accommodate the proposed maximum number of occupants. In general, if C4.4 is not met, this would only be the case if there are a smaller number of relatively large bedrooms.

Note: the Local Planning Scheme establishes that the maximum number of occupants in a Holiday Home (Single House), regardless of the number or size of bedrooms, is 12, and the maximum number of occupants in a Holiday Home (Grouped/Multiple Dwelling) is six. The City has no discretion to approve Holiday Homes with maximum occupant numbers higher than those limits.

7.1 Attachment A

**Local Planning Policy** 

# Local Planning Policy No. 4.1 HOLIDAY HOMES



4.5 BUSHFIRE MANAGEMENT			
Deemed-to-Comply	Performance Criteria		
A Holiday Home satisfies the Deemed-to-Comply provisions if:  C5.1 The Holiday Home satisfies the provisions of the Bushfire Policy.	There are no performance criteria for this provision as development is required to satisfy the provisions of the Bushfire Policy.		

### 5. RELATED DOCUMENTATION / LEGISLATION

- 5.1 City of Busselton Local Planning Scheme No. 21
- 5.2 City of Busselton Holiday Homes Local Law

#### 6. REVIEW DETAILS

Review Frequency		2 yearly		
Council Adoption DATE		11/03/2020 Resolution # C2003/084		C2003/084
Previous	DATE	27/03/2019	Resolution #	C1903/053
Adoption				

<sup>\*</sup> Policy number changed from LPP 7C to LPP 4.1 on the 11th May 2020. The change is administrative only, no resolution by Council required.

7.1 Attachment B

Local Law

This is an un-official compilation of the *City of Busselton Holiday Homes Local Law 2012* as it has effect on and after 30 November 2012.

See the Notes at the end for more details.

## City of Busselton Holiday Homes Local Law 2012

7.1 Attachment B

Local Law

#### Local Government Act 1995

### City of Busselton

### **Holiday Homes Local Law 2012**

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#### Local Government Act 1995

#### City of Busselton

### **Holiday Homes Local Law 2012**

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

#### Part 1 - Preliminary

#### 1.1 Title

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

#### 1.2 Commencement

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

#### 1.3 Application

This local law applies throughout the district.

#### 1.4 Terms used in this local law

In this local law -

Act means the Local Government Act 1995;

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

applicant means an applicant for a registration;

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

attendant means a person who is -

- (a) an occupant; or
- (b) a guest;

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

#### CEO means -

(a) the CEO of the City; and

7.1

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

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

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

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

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

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

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

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

local government means the City;

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

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

month means calendar month;

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

#### owner -

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

premises, in relation to a holiday home, means -

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

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

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

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

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

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

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

#### Part 2 - Registration

#### Division 1 - Applying for registration

#### 2.1 Registration required

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

#### 2.2 Application for registration

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

#### 7.1 Attachment B

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

#### 2.3 Application details

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

(a) a site plan of the premises;

Local Law

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

#### 2.4 Determining an application

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

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

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

#### Division 2 - Conditions

#### 2.6 Conditions which may be imposed

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

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

#### 2.7 Imposing conditions under a policy

(1) In this clause –

**policy** means a policy of the City adopted by the Council containing conditions subject to which an application for registration may be approved under clause 2.4(1)(a).

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

#### 2.8 Compliance with and variation of conditions

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

vary a condition of registration.

- (3) A condition that has been varied under this clause takes effect when written notice of the variation has been given to the owner and the manager.
- (4) The owner, manager and each attendant must comply with a condition varied under this clause.

#### Division 3 - General

#### 2.9 Registration period

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

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

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#### 2.10 Renewal of registration

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

#### 2.11 Acting manager

(1) The acting manager is to undertake the functions of the manager only –

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

#### 2.12 Replacement of manager

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

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

#### 2.13 Production of certificate of registration

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

#### 2.14 Cancellation

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

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

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

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

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

### 3.2 Breach of a condition by an attendant

- (1) In this clause, **breach** means breach by an attendant of
  - (a) a condition of registration;
  - (b) this local law; or
  - (c) a relevant law.
- (2) Within 24 hours of
  - the CEO or an authorised person giving written notice to the manager of a breach;
  - (b) the manager becoming aware of a breach; or
  - the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that -

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

#### 3.3 Register of occupants

The manager must -

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

#### 3.4 Contacting the manager

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

28 April 2021

#### 7.1

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

#### Part 4 - Objections and reviews

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#### 4.1 Objection and review rights

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

#### Part 5 - Enforcement

#### 5.1 Offences and penalties

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

#### 5.2 Prescribed offences

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

#### 5.3 Form of notices

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

## $\begin{array}{c} \textbf{Schedule 1-Certificate of registration} \\ & [Clause \ 2.4(2)] \end{array}$

#### CITY OF BUSSELTON

#### **HOLIDAY HOMES LOCAL LAW 2012**

#### CERTIFICATE OF REGISTRATION

	CEI	CHIFICALE OF REGISTE	CATION
Date.	//		
This	certifies that the dwelling at		
This	certifies that the dwelling at	(address of holiday hom	e)
owne	d by(name/s of owner		
	(name/s of owner	/s)	
mana	ged by	and	
	(name of manage	r)	(name of acting manager)
_	gistered as a holiday home what with -	hich may be used to accom	amodate occupants for hire or reward in
(a)	the provisions of the Holiday I	Homes Local Law 2012;	
(b)	any other relevant law; and		
(c)	the conditions set out on the ba	ack of this certificate.	
Signa	ture of CEO/CEO's delegate		
Notes	:		
1.		e City of Busselton District	ot be approved unless planning approval Town Planning Scheme No. 20 to use the
2.	occupier under the by-laws	s of a strata company, includ	rights and obligations of an owner or ding any requirement to obtain approval, the use of a dwelling as a holiday home.

#### CONDITIONS OF REGISTRATION

This registration is subject to the following conditions -

1.

2.

3. etc

Local Law

7.1 Attachment B

Schedule 2 - Prescribed offences

[Clause 5.2]

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

Local Law

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

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

IAN WILLIAM STUBBS, Mayor

MICHAEL STEPHEN LEE ARCHER, Chief Executive Officer

#### Notes

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

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

#### Compilation Table

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

LEG190006

Document Set ID: 2185679 Version: 3, Version Date: 24/11/2020 7.1 Attachment C Government Response

## RESPONSE OF THE WESTERN AUSTRALIAN GOVERNMENT TO THE

## WESTERN AUSTRALIAN LEGISLATIVE ASSEMBLY ECONOMICS AND INDUSTRY STANDING COMMITTEE

#### IN RELATION TO

THE INQUIRY INTO THE REGULATION OF SHORT-STAY ACCOMMODATION IN WESTERN AUSTRALIA

Report 7 - Levelling the Playing Field. Managing the impact of the rapid increase of Short-Term Rentals in Western Australia

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#### **Executive Summary**

The Western Australian Government generally agrees with the Report and will consider developing and/or adopting policy to give effect to the intent of the recommendations, including forming an interdepartmental working group to address some of the recommendations.

The Western Australian Government thanks the Committee for undertaking the Inquiry, and welcomes its Report. The Government also acknowledges the important contributions made by the stakeholders who participated in the Inquiry, including local governments, major online accommodation platforms, industry associations, key social organisations, individual hosts, hotel and caravan park owners, and guest house and bed and breakfast owners.

In responding to the Committee's recommendations, the Western Australian Government acknowledges the complexity of the issues raised and the wide range of views on the topic across the State and within local government areas. The Government recognises the broader issues in relation to short-term rentals, including a lack of available data, perception of an 'uneven playing field', amenity issues for neighbours, and confusing regulatory requirements to name a few. In principle, the Government accepts that the existing Statelevel policy and guidance addressing short-term rentals are dated and inconsistent, and will look at rectifying this.

The recommendations of the Committee are outlined below:

#### Recommendation 1

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with Real Estate Institute of Western Australia (REIWA) to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- other legal obligations surrounding the use of properties as Short-Term Rentals.

#### Recommendation 2

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals:
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

#### Recommendation 3

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission (WAPC) to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations* 2015 and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

#### Recommendation 4

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

#### Recommendation 5

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

#### Recommendation 6

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

#### Recommendation 7

The interdepartmental working group should:

- 1. Establish the baseline requirements for a state-wide registration scheme, including:
  - a. the minimum information required for both hosted and unhosted premises;
  - b. the cycle of registration;
  - registration costs for the State register (separate from any additional local government fees, charges or costs);
  - d. the most appropriate agency to hold the register; and
  - e. the treatment of Traditional Accommodation providers.
- 2. Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for non-compliance.
- Determine the most appropriate mechanism to collect and manage the registration data.
- Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
- Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
- 6. Determine what information, if any, should be made publicly available.
- Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

#### **Recommendation 8**

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme. The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

#### **Recommendation 9**

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

#### **Recommendation 10**

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms. Local government authorities should be responsible for:

- · approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- · enforcing compliance with their local controls;
- · managing complaints about Short-Term Rentals; and
- setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

The Government's specific response to each of the recommendations follow.

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### Government's Response to the Recommendations

#### Recommendation 1

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with REIWA to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- · other legal obligations surrounding the use of properties as Short-Term Rentals.

#### Response

The Government agrees to the recommendation.

In using a property for a short-term rental, there are a range of approvals, public health and safety, insurance, taxation and amenity issues that both the consumer and service provider need to be aware of. It is important that there is an appropriate level of education and information available to ensure awareness of these requirements, and the Western Australian Government supports the development of an education program than can be tailored to local conditions.

The Real Estate and Business Agents and Sales Representatives Code of Conduct 2016 (the Code) provides that an agent or sales representative must exercise due care, diligence and skill. Additionally, the Code provides for the disclosure of material facts to any person materially affected. This would include the correct communication (advertising) of properties and their suitability for use as short-term rental properties.

The Department of Mines, Industry Regulation and Safety (DMIRS) will communicate with the industry, in liaison with REIWA reminding it of the Code requirements and how the Australian Consumer Law (WA) applies. DMIRS will also establish a communication strategy to the community (owners, purchasers etc) alerting them to matters that should be considered at the time of purchase and use of properties.

The Minister for Commerce notes that the Australian Consumer Law (WA) applies to the provision of all goods and services. In relation to the suppliers of short-term rentals, this includes the application of consumer guarantee provisions meaning that: services are provided with due care and skill, the accommodation is fit-for-purpose and that consumers are not misled or deceived in their transactions with suppliers. The Minister for Commerce will request DMIRS to work with other jurisdictions to propose that a national education campaign on consumer rights under the Australian Consumer Law (WA) in relation to short-term rentals be developed.

The Department of Fire and Emergency Services (DFES) proposes that it is actively consulted and engaged in the development of any education campaigns. These will be communicated to the community and appropriate related education initiatives:

educating short-term rental owners about what safety standards and signage they need to display in their property; and

 educating travellers about the risks of the local area, what to do in a bushfire or other emergency, and how to stay informed.

#### Recommendation 2

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals:
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

#### Response

The Government endorses the intent of the recommendation; however, the timeline is considered insufficient.

It is agreed that the land use definitions in *Planning Bulletin 99 – Holiday Homes Guidelines* and the model provisions in the *Planning and Development (Local Planning Schemes)* Regulations 2015 that relate to short-term rentals are dated, and do not accurately reflect how residential properties are currently being used for short-term letting in Western Australia

The inclusion of land use definitions in the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* encourages the consistent treatment of short-term rentals throughout Western Australia while retaining the ability of local governments to adjust their policy responses to local contexts.

On behalf of the Minister for Planning, the Department of Planning, Lands and Heritage (DPLH) will progress the update of the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend definitions. This review may or may not include those noted by the recommendation and additional definitions as deemed necessary. It is noted that there is a higher compliance burden on traditional bed and breakfasts, and any actions taken to harmonise land use definitions must be cognisant of the implications on traditional bed and breakfast businesses.

The model provisions in the *Planning and Development (Local Planning Schemes)* Regulations 2015 cannot be updated within the timeframe specified in the Report due to the drafting process and additional legislative steps required. A more accurate timeline would be November 2020.

As an interim measure, the proposed land use definitions will be incorporated into the draft WAPC Tourism Position Statement. It is expected that the WAPC will have a draft Tourism Position Statement for public consultation around mid-2020.

The Minister for Planning will also investigate the option of 'deeming' the definition of hosted accommodation and providing for this type of accommodation to be exempt from development approval, into all local planning schemes, in accordance with Section 257B of the *Planning and Development Act 2005*. This would ensure consistent provisions for hosted accommodation across the State.

#### 7.1 Attachment C

**Government Response** 

Consistent with the findings of the Report, the designation of land use permissibility for unhosted accommodation will be determined through each local planning scheme.

#### Recommendation 3

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

#### Response

The Government endorses the intent of the recommendation.

The WAPC will continue to draft policy (Tourism Position Statement and any other necessary guidance) that will align with any proposed amendments to land use definitions and provide greater guidance to local governments about ways to appropriately regulate short-term rentals. Additionally, the interdepartmental working group's work will be considered in the drafting of the policy position.

Once advertised, the draft Tourism Position Statement would be considered seriously entertained, as such, it would be applicable when considering planning applications. By releasing the policy ahead of amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) it provides an opportunity to test the application of definitions prior to incorporation into the Regulations.

#### Recommendation 4

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

#### Response

It should be noted that the development of model by-laws for strata is outside the scope of the Planning portfolio as it relates to the Minister for Lands. The Minister for Planning can only direct it's own agency to undertake work.

The Government does not support adopting the recommendation.

Landgate notes that strata companies have broad powers to make by-laws that best suit their individual needs. However, sufficient support will be provided to stakeholders by adopting Recommendation 5.

#### 7.1 Attachment C

#### **Government Response**

Providing model by-laws could lead owners and tenants to assume that the by-law is inherently valid. However, in certain circumstances, a model by-law could be found to be invalid by the State Administrative Tribunal.

A strata company does not need a legislative authority to provide for short-term rentals. However, upon proclamation of the amended *Strata Titles Act 1985*, by-laws will be established as secondary to any other legislation. As a result, by-laws will *always* have to conform to the planning legislation first and foremost.

The standard by-laws currently included in the *Strata Titles (General) Regulations 2019* (under development) enable owners to facilitate short-term rentals, unless another law prohibits or restricts them from doing so.

Support in understanding by-laws will be provided to stakeholders through updating Landgate's guidance material (consistent with Recommendation 5); an activity that is already accommodated in the Strata Reform Project plan.

#### Recommendation 5

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

#### Response

It should be noted that the Minister for Planning cannot direct Landgate, as this is the role and responsibility of the Minister for Lands.

The Government supports the recommendation.

This activity is planned to occur as part of Landgate's Strata Titles Act Reform project, due to conclude in 2020/21.

Upon proclamation of the amended *Strata Titles Act 1985*, Landgate will clarify in its guidance material that a short-term rental by-law would be a governance by-law for a scheme where the legislation allows.

If, as a result of the Committee's Report, the WAPC was to amend any planning policies that affect strata by laws, Landgate will update the strata titles guidance accordingly.

In clarifying guidance material, Landgate, as part of the Strata Titles Act Reform project, may update publications relating to the *Strata Titles Act 1985* including 'A Guide to Strata Titles' and the 'Strata Titles Practice Manual' to include discussion on Airbnb and the sharing economy, as well as how by-laws can be used by strata companies to better manage short-term rentals in their strata schemes.

#### Recommendation 6

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

#### Response

The Government supports the recommendation. State Government agencies have various responsibilities and interests in short-stay accommodation, including tourism sector development and destination marketing, housing affordability, planning and land use, consumer protection and safety, bushfire safety and supporting local governments to enforce their local laws, planning schemes and policies. Given the complexities of the policy responses required, the establishment of a working group to coordinate these is a logical step.

The Ministers for Commerce, Local Government, Planning and Tourism will nominate staff within their respective portfolios to be members of the interdepartmental working group.

The implementation of a register, its administration, enforcement, determination of any fee structures, collection of information and legal obligations on both booking platforms and individual property owners has potential policy and regulatory implications for the Department of Local Government, Sport and Cultural Industries (DLGSC), DMIRS, and DPLH. The working group will identify the lead government agency to have primary responsibility for the coordination of regulation for short-stay accommodation.

The interdepartmental working group may establish a small number of specific technical working groups to undertake relevant tasks associated with respective recommendations. These groups may consist of broader membership than the working group as relevant to the task (for example, it may be appropriate to seek input from the Western Australian Local Government Association (WALGA) given the impact on local government and the sector's position). Additionally, other government and non-government entities may be invited to assist with the development of certain policies as appropriate.

#### 7.1 Attachment C

#### **Government Response**

#### Recommendation 7

The interdepartmental working group should:

- Establish the baseline requirements for a state-wide registration scheme, including:
  - a. the minimum information required for both hosted and unhosted premises;
  - b. the cycle of registration;
  - registration costs for the State register (separate from any additional local government fees, charges or costs);
  - d. the most appropriate agency to hold the register; and
  - e. the treatment of Traditional Accommodation providers.
- Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for noncompliance.
- 3. Determine the most appropriate mechanism to collect and manage the registration data.
- 4. Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
- Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
- 6. Determine what information, if any, should be made publicly available.
- Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

#### Response

The Government generally supports the recommendation, including introduction of a mandatory registration process.

The dot points identified to establish the baseline requirements for the registration scheme are comprehensive and cover the key issues. The critical part of this process, is how these are to be applied. In implementing a registration scheme, this needs to be flexible and not too onerous, to encourage use by all parties. Any property registration system needs to be simple, low cost and user friendly.

Critical issues in implementing a state-wide registration scheme will be the relationship between local and State Government, what is the legal mechanism for the State, how data is collected and shared between the respective levels of government, and what is the role of online platforms.

The interdepartmental working group will work through the details of how the registration process would operate and be applied. In doing so, the interdepartmental working group will identify the costs to both State and local government, and industry, with the aim to find most cost-effective approach.

#### 7.1 Attachment C

#### **Government Response**

As noted in the response to Recommendation 6, other government and non-government entities may be invited to assist with the development of certain policies. In this regard, DFES will assist the interdepartmental working group to consider the development of a Short-Term Rental Accommodation Fire Safety Standard in the Western Australian context as New South Wales has done.

Working smarter and in partnership with local government is a key priority of the McGowan Government, as illustrated in the Services Priority Review and State Local Government Partnership Agreement signed in August 2017. It provides a framework for better alignment with government strategy and a forum to discuss investment, prioritisation and identification of collective opportunities to meet mutual outcomes. In addition, a State Local Government Working Group has been established to support the Partnership Group to drive a long-term agenda and culture of collaboration between State and local government. This mechanism could be considered as part of the development of this project.

#### Recommendation 8

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme.

The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

#### Response

The Government generally supports the recommendation, including the introduction of a mandatory registration system.

The most appropriate legislative and regulatory mechanisms will be investigated through the interdepartmental working group.

If a register is established and applied as a mandatory requirement as proposed in Recommendation 7, then it is appropriate that a valid registration number is displayed to highlight that due process has been followed, and that properties are legitimate short-term rentals.

In addition to addressing short-term rentals, the interdepartmental working group will also consider and provide advice on what is determined the most appropriate requirements for traditional accommodation providers.

The interdepartmental working group will consider existing registration processes of government and identify any existing systems or programmes, where possible, including online platforms that can be utilised for this purpose.

#### Recommendation 9

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

#### Response

The Government generally supports the recommendation, including the introduction of a mandatory registration system, and a mechanism for data to be collected.

It is unlikely online platforms will voluntarily include registration numbers on their listings in Western Australia. As such, the Government will investigate the potential to introduce legislation to require online booking platforms to list relevant information on their websites, and report data to the Government. It is likely that the Western Australian Government will introduce measures, similar to Tasmania in its *Short Stay Accommodation Act 2019*, to encourage compliance with short-term rental planning permit requirements.

The Government recognises that adequate privacy protections would need to be developed to enable the sharing of de-identified data.

#### Recommendation 10

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms. Local government authorities should be responsible for:

- approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- enforcing compliance with their local controls;
- · managing complaints about Short-Term Rentals; and
- · setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

#### Response

The Government supports the recommendation that a state-wide registration scheme be explored and developed. There is a clear need for a whole-of-government view on the appropriate regulatory and legislative framework that will meet the needs of this rapidly changing sector.

The responsibility of local government as outlined will need to be costed and appropriate cost recovery mechanisms put in place. In Western Australia, local governments can impose fees and charges on users of specific, often incidental, services. Examples include

#### 7.1 Attachment C Government Response

dog registration fees, fees for building approvals and swimming pool entrance fees. In some cases, local governments will recoup the entire cost of providing a service.

Currently, fees and charges are determined according to three methods:

- 1. By legislation, with an upper limit set by legislation;
- 2. By the local government; and
- 3. Fees determined by State Government legislation.

The lack of efficient indexation of fees and charges determined by State Government legislation and regulation is a long-standing issue for local government which makes service planning and delivery challenging. Supposedly cost reflective, they quickly lose relevance to their cost base if they are not periodically reviewed. This revenue leakage is recovered from rate revenue. This means all ratepayers end up subsidising the activities of some ratepayers. The State Local Government Partnership Agreement is exploring this further with the Economic Regulation Authority.

- 8. <u>NEXT MEETING DATE</u>
- 9. <u>CLOSURE</u>