Policy and Legislation Committee Agenda

26 May 2021

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CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 26 MAY 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, 26 May 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

CHIEF EXECUTIVE OFFICER

21 May 2021

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 26 MAY 2021

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1. DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS

2. ATTENDANCE

Apologies

3. PUBLIC QUESTION TIME

4. DISCLOSURE OF INTERESTS

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 28 April 2021

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 28 April 2021 be confirmed as a true and correct record.

6. REPORTS

6.1 HOLIDAY HOME REGULATORY FRAMEWORK REVIEW

STRATEGIC GOAL	4. ECONOMY Diverse, resilient, prosperous
STRATEGIC OBJECTIVE	4.1 An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice.
SUBJECT INDEX	Local Planning Scheme 21 Amendments
BUSINESS UNIT	Strategic Planning
REPORTING OFFICER	Planning Officer - Joanna Wilkinson
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 Local Planning Policy 4.1 Attachment B Local Law Attachment C Government Response to 2019 Parliamentary Inquiry Attachment D Holiday Home Clusters Attachment E Option 1 - Exclusion Area Attachment F Option 2 - Exclusion Area

OFFICER RECOMMENDATION

That the Council supports a review of the City's regulatory framework for holiday homes, as follows:

1. Indicates that, subject to further consultation, it intends to implement the following opportunities for change:

(a) Revise standards for the size and design of properties, relative to maximum permissible occupancy numbers, by:

(i) Initially in local planning policy, and subsequently in the Scheme, introduce a maximum occupant restriction for Multiple Dwellings, to be no more than four occupants.

(ii) Initially in local planning policy, and subsequently in the Scheme, introduce further occupant restrictions based on lot size, as follows:

The maximum number of occupants under the 'Holiday Home (Single House)' or 'Holiday Home (Grouped Dwelling)' use classes in the Residential zone is:

i. 10 occupants for lots greater than 350m²; or

ii. 7 occupants for lots 260m² - 350m²; or

iii. 4 occupants for lots less than 260m².

(b) Revise and introduce new requirements and expectations for managers, by:

(i) Reducing the amount of time in which a manager must respond to any contact relating to the holiday home, from 24 hours to 12 hours.

(ii) Introducing a new clause requiring managers to reside within a 30 minute travel time from the holiday home.

(iii) Strengthening and clarifying the conditions of registration, so that the contact details of the manager are shown on a sign that can be visible from the street.

(iv) Strengthening and clarifying the conditions of registration, so that the manager is required to resolve complaints and ensure compliance at the premises.

(c) Introducing requirements and expectations for occupants and their guests, by revising the standard conditions of registration, so that a code of conduct is required that sets out expectations for the management of occupants and the guests of occupants, and requiring managers to communicate the code to the hirer, obtain their acknowledgement, and ensuring the code is clearly displayed within the holiday home.

(d) Introducing requirements for the management of dogs, by introducing conditions of registration that do not allow dogs to be left unattended at holiday homes.

(e) Developing a Council Policy to set out how the City intends to implement the Local Law, and to provide guidance to officers and stakeholders.

2. Undertakes consultation with the community and industry stakeholders regarding the opportunities for change, and any other opportunities that may be identified through consultation.

3. Develops a Directions Paper to assist with consultation.

4. After consultation, will consider a further report setting out:

(a) the outcomes of the consultation process; and

(b) more detailed recommendations about what opportunities should be pursued, and how these opportunities should be implemented.

EXECUTIVE SUMMARY

In 2012, three interrelated key instruments were introduced by Council to regulate holiday homes – these included a local law, provisions in the local planning scheme, and a local planning policy. The local planning policy has since been reviewed and amended, however the local law has remained unchanged, and the Scheme provisions were carried over in 2014, without substantiative change, into *Local Planning Scheme No. 21*.

Over time, issues relating to holiday homes have arisen that may not be sufficiently addressed through the current regulatory framework. The purpose of this report is to initiate a review of the three key instruments, with an aim to work toward a framework that provides more effective regulation.

It is recommended that the Council supports consultation on a range of opportunities for change. It is envisaged that, following the consultation process, the Council would consider whether (and what) formal changes should be made – which would entail development of more detailed proposals and further consultation.

BACKGROUND

Holiday homes have been part of the landscape and lifestyle and lifestyle in Busselton, Dunsborough, Yallingup, Eagle Bay, and many other places in Western Australia for many decades. However the scale and character of holiday homes has changed over time, principally due to a significantly increased population in the Perth metropolitan area (the City's main tourism market), greater mobility and affordability in interstate and international travel (other than over the last 18 months or so), and the emergence of online booking platforms such as Airbnb. This review also coincides in with the statutory review of the City's Holiday Homes Local Law.

Current Regulatory Approach

In effect, the three key regulatory instruments operate in the following manner:

1. *Local Planning Scheme No. 21* (the Scheme) - any proposed holiday home must be granted development approval prior to use. The number of occupants is capped depending on whether the proposal is for a grouped/multiple dwelling or a single house, and holiday homes are prohibited in some zones (further details are provided under the heading 'Statutory Environment').
2. *Local Planning Policy 4.1 Holiday Homes* (LPP 4.1) - provides guidance for the assessment of a development application, with due regard given to location, utility servicing, car parking, dwelling design, and bushfire management (Attachment A).
3. *Holiday Homes Local Law 2012* (Local Law) - once development approval is granted, ongoing operation of the land use must include preliminary registration and a regular renewal of the registration, the nomination of manager and acting manager, and adherence to conditions relating to the orderly and proper use of the holiday home (Attachment B).

These instruments took several years to develop and become operational and, with the exception of LPP 4.1, have not been changed since they were introduced.

Development of the Regulatory Framework

The City's current regulatory framework emerged from work that began as early as 2002. This was via Amendment No. 46 (Amd 46) to *Town Planning Scheme No. 20* (TPS 20). The proposal was delayed, though, for a variety of reasons, including a broader State Government review into the issue. By 2009, the Western Australian Planning Commission (WAPC) had developed *Planning Bulletin 99: Holiday Homes Guidelines* (PB 99), and the Minister for Planning directed the Council to modify and readvertise Amd 46 in a manner consistent with PB 99.

After 2002, there was a noticeable shift in the nature of holiday homes, from a cultural and lifestyle option to an increasingly commercial enterprise. By 2010 it was estimated that there were approximately 500 properties in the district being used as holiday homes, making them an important part of the local tourism industry and economy. Holiday homes at that time were, in most respects, unregulated, and in some instances they were having significant impacts on the character and amenity of residential areas.

It was recognised by Council that a scheme amendment alone would not be sufficient to provide effective regulation. In 2010 some draft general principles, for inclusion in a local law and local planning policy, were endorsed by Council for public consultation (C1001/053). It was in that environment, in late 2012, that the Local Law was made, Amd 46 to TPS 20 (in modified form, as directed by the Minister for Planning) was approved, and the holiday homes local planning policy provisions were introduced into the broader *Local Planning Policy 7 – Commercial and Industrial Development Policy* (now LPP 4.1). By mid-2013, there were around 500 registered holiday homes in the District.

At different points in the journey from 2002 to 2012, the Council had taken positions that holiday homes should remain unregulated; should be prohibited entirely; to finally adopting a position that they should be regulated, but not prohibited.

Since the introduction of the current framework, the Local Law has remain unchanged, and the Scheme provisions were carried over in 2014, without substantiative change, from scheme No. 20 to scheme No. 21. LPP 4.1 has been revised three times, in the following manner:

- 2015 - the word "preferred" was removed from the two areas in which holiday homes could be considered for approval, although both areas were retained. Dunsborough Lakes was incorporated into the area in which holiday homes could be considered in the Residential zone.
- 2018 - the two areas in which holiday homes could be considered for approval were removed, effectively removing all restrictions in the Residential zone; more comprehensive bushfire provisions were introduced; and revised formatting, 'deemed-to-comply' and 'performance criteria' were introduced.
- 2020 - the majority of bushfire provisions were removed and reference to the newly created *Bushfire Local Planning Policy* was introduced.

Related to the regulatory framework, a further Council decision (implemented at the start of the 2018/19 financial year) was the introduction of a five per cent increase in the 'rate in the dollar' for rating purposes (triggered by registration), with a transition to a ten percent higher 'rate in the dollar' in the 2019/20 financial year (which meant that holiday homes were rated at the same rate level as most other tourism accommodation).

Current Experience in the City of Busselton

In March 2021, there were 983 registered holiday homes in the District, and it is estimated that approximately 50 properties were being let for the purpose of short-term accommodation, without planning and/or registration approval. As resources permit, these properties are subject of compliance activity.

In April, registration renewal letters were sent out for the 2021/22 financial year, and by mid-May there were:

- 596 registered holiday homes until June 2022;
- 375 registrations pending renewal (until June 2022);
- 63 registration applications received, pending development approval or clearance of the conditions of approval.

After renewal letters were sent out in April, 23 registrations were cancelled because of:

- Difficulties in finding cleaning staff;
- Concerns about illegal activity;
- Returning the property to the long-term rental market.

Further cancellations have occurred due to changes in property ownership, although new owners may apply for registration without also needing to reapply for development approval.

Issues and Concerns

Following their emergence during the late 2000s, and the rapid rise in popularity of online booking platforms such as *AirBnB, Stayz* and *Booking.com*, there were concerns that an increasing number of holiday homes were being advertised without having first obtained development or registration approval. In early 2019, a trial (three month) full time officer position was created to identify unapproved holiday homes, and to pursue compliance action. This was found to be an effective means of addressing this issue, and the position was retained on a permanent part-time basis.

Unauthorised holiday homes are detected through a quarterly report provided by *BnBGuard*, which cross references properties that have been granted approval, against properties that are being advertised by 13 online booking platforms. *BnBGuard* is able to detect properties that are being advertised but are not approved, and provide in most cases the exact address (online advertisements will show an approximate location only).

With a single officer dedicated to monitoring approval of holiday homes, a better understanding has emerged of current issues and/or concerns raised by the community. The following is a summary of complaints received in 2020, and for January – April 2021.

	Complaints received	No. properties	Properties with multiple complaints
2020	53	47	6
2021 (Jan – April)	24	22	2

Typically, the nature of these complaints include:

- Listings of properties that don't have development and/or registration approval.
- Location of holiday homes in residential areas, with concerns around residential amenity (noise, behavior, nuisance), safety and security, waste management, car parking.
- The number of people that are present at a property at any one time, whether they be the occupants or guests of occupants, i.e. 'party houses'.
- The number of vehicles parked at a property at any one time, being greater than the number of car parking bays available (including boats, campervans etc.).
- Dogs that have been left unattended in an unfamiliar environment, and become distressed (barking and whining). In some instances this includes multiple dogs.
- Lack of ability for a complainant to directly contact the manager, meaning that the reason for complaint may have passed by the time contact is made.

These issues were consistent with those raised by other local governments during the 2019 State Parliamentary inquiry into short term accommodation, which is discussed in further detail below. It is also considered that there is an under-reporting of complaints to the City.

Approaches Adopted in Other Local Government Jurisdictions

Approximately 20 local governments in Western Australia have been considered, and it is evident that the adopted approaches vary greatly. The least regulatory is where there are no formal provisions in place, for example in Subiaco and Mandurah.

Many local governments have minimal provisions in their local planning scheme, including:

- a land use definition; and/or
- permissibility set out in the zoning table.

Across the various local governments, holiday homes are generally a discretionary (or discretionary subject to advertising) use in the Residential, Rural Residential, Centre, and Rural zones. Throughout all the local governments reviewed, the only zone in which holiday homes are a 'P' (permitted) use is the Tourism zone; they are always prohibited in Industrial zones.

Further guidance on the assessment of development applications is often set out in a local planning policy. The policies reviewed provide guidance on some or all of the following matters:

- Preferred areas in which a holiday home can be located.
- Requirements around manager/responsible person contact details, including the display of these details on a sign which is visible from the street.
- Requirement for a manager to respond to complaints within a set time period, and to reside within a reasonable distance of the subject property.
- Use of ancillary accommodation.
- Car parking.
- Utility servicing (water, effluent).
- Waste management.
- Lot size and dwelling design, including maximum number of people per bedroom, and outdoor living and screening.
- Bushfire provisions.
- Strata company requirements.
- Management plan, including details such as:
    - how bookings are made (marketing and advertising);
    - manager details (contact phone number);
    - duties of manager;
    - complaints procedure;
    - code of conduct for guests;
    - control of noise and other disturbances;
    - control of anti-social behavior;
    - security of occupants, guests of occupants, and neighbours;
    - car parking for occupants and guests of occupants, including maximum number of vehicles.

In some instances, local governments have opted to include some of the provisions listed above as development standards in the local planning scheme (e.g. Augusta-Margaret River, Exmouth).

Fremantle and Wanneroo have developed local laws but do not have a local planning policy. These two local laws do not contain any significant provisions that are different from the Busselton Local Law.

The Shire of Noosa in Queensland is currently advertising a draft local law which would require occupants to comply with several ‘conditions of behaviour’, collectively called a code of conduct. This would make the manager responsible for ensuring compliance with the code of conduct, and responding to complaints within 30 minutes of receiving the complaint.

It is apparent from the review that, while the means of regulating holiday homes may vary, the matters to be addressed by the local government and landowner are fairly consistent.

State Government Policy Position

In 2019, the State Parliamentary Legislative Assembly Economics and Industry Standing Committee conducted an inquiry titled *Levelling the Playing Field: Managing the impact of the rapid increase of Short-Term Rentals in Western Australia* (the 2019 Inquiry).

This was prompted by "a groundswell of public agitation from the South West of the State, voicing concerns about the emergence of online accommodation platforms." The 2019 Inquiry resulted in a record number of submissions from around the State.

The Committee made 10 recommendations. The State Government provided a response to the recommendations on 12 February 2020, and relevant to this review, committed to address the registration of holiday homes (Recommendation 7) at a macro level, by undertaking the following action:

> *The establishment of an inter-agency working group, to develop legislative or regulatory mechanisms to require the display for a valid registration number for short-term rentals [holiday homes] advertised on online booking platforms.*

The full list of recommendations and the extended State Government response can be found at Attachment C.

At the time of writing this report, none of the recommendations from the 2019 Inquiry have been actioned to the extent that there has been any change to the existing state-level regulatory framework. Should they be actioned, it is considered there will be no significant impact on the City's regulation of holiday homes, except that compliance should be a simpler process.

This review is mindful of the 2019 Inquiry, and does not seek to pre-empt the outcomes of the Government response. Instead, it aims to explore options that will complement State-level regulatory controls.

OFFICER COMMENT

Through research and informal discussion with a range of stakeholders, as well as a discussion with the Policy and Legislation Committee, a range of 'opportunities for change' have been identified that the Council may wish to consider:

1. Exclude some residential areas from holiday home use.
2. Revise standards for the size or design of properties relative to maximum permissible occupancy numbers.
3. Change requirements and expectations for holiday home managers.
4. Change requirements and expectations for occupants and the guests of occupants.
5. Introduce controls on dogs being brought to holiday homes.
6. Temporary development approvals.
7. Develop a Council Policy to set out how the City intends to implement the Local Law.

Each of these is outlined and discussed below.

1. Exclude some residential areas from holiday home use.

Following the introduction of the current regulatory framework, there was an interim period when landowners who had been using their property as a holiday home were able, regardless of location, to apply for development approval. That interim period ended in mid-2013, and between then and 2018, holiday homes were generally not permitted on Residential-zoned land south of Bussell Highway or west of Cape Naturaliste Road.

The residential area restrictions were removed in 2018, and since then there have been a small number of approvals in the previously restricted area. An exception to this is Dunsborough Lakes, which became a 'permitted' area in 2015, and a higher number of approvals have been granted. Attachment D provides a visual demonstration of holiday homes across the District that have been granted development approval, and that are currently registered.

An opportunity exists to exclude some residential areas from holiday home use. There are several reasons why this might be introduced:

a) PB 99 outlines that holiday homes are appropriate in areas associated with high tourism amenity. In the City of Busselton, this includes areas in close proximity to key tourist attractions such as beaches, town centres, or rural areas.

a) PB 99 also discusses the potential conflict between holiday homes and the amenity of long-term residential dwellings. Conflict can occur as a result of issues such as noise, behavior, nuisance, safety and security, waste management, car parking.

b) The 'local sense of community' can be eroded by the occurrence of too many holiday homes, and as a result of:

- lack of neighbourhood support network during times of emergency or crisis, and passive surveillance for increased security and safety;
- visitor disregard for the safety and security of children (or elderly) living in the street, and dangers associated with outdoor play, walking/cycling in areas without footpaths etc;
- excessive noise/partying and visitor lack of understanding about the lifestyle of nearby residents, particularly those who are shift workers (or even just having to work the following day);
- a sense that one's own home is not a place of sanctuary/relaxation because of the impact from nearby holiday homes.

c) Housing availability and affordability can be affected by holiday homes. The 2019 Inquiry reported that there is some evidence of this occurring in the South West, however it found that "the impact of short-term letting on WA's long-term rental market seems minimal". That may have changed in the last 12 months, but may not be an issue that will persist in the long-term.

The opportunities for change include:

Opportunity 1.1:

Introduce areas of exclusion. Potential areas of exclusion are shown at Attachments E and F.

Opportunity 1.1 could be implemented by:

- Modifying the Scheme Zoning Table, which could clearly define a holiday home as an 'X' (prohibited) use in relevant zones, meaning that no discretion in a prohibited area could be exercised; and
- Introducing an 'Additional Use' right for those areas where holiday homes are otherwise an 'X' use (effectively 'excluding' some areas and 'including' others); or
- Reintroduce area designations through the LPP, meaning that a discretion to approve holiday homes in non-preferred areas could still exist.

If new exclusion areas were introduced through the Scheme, the (already) approved holiday homes in non-permitted areas would become 'non-conforming' uses. Provided that a registration remained current, then the non-conforming use right would also remain current.

Officers do not recommend support for Opportunity 1.1, for the following reasons:

a) This may result in a greater concentration of holiday homes within some areas;

b) The relationship between total number of approvals and management of individual sites is not clearly defined, i.e. a greater number of holiday homes does not necessarily result in a greater number of poorly managed properties;

c) The difficulty in defining permitted/not permitted areas with a simple, understandable boundary;

d) A perception around lack of fairness in that some areas may be excluded from holiday homes and not others;

e) Conversely, a perception around lack of fairness in that 'economic opportunity' may be permitted in some areas and not others;

f) A lack of certainty for investors who have purchased a property with the intent to apply for holiday home use.

Nonetheless, Council may decide to support this opportunity for change.

2. Revise standards for the size or design of properties relative to maximum permissible occupancy numbers.

This mechanism is currently applied through the Scheme and LPP, with restrictions applied through land use definitions (limiting occupancy numbers based on dwelling type), and dwelling design (limiting occupancy numbers through the total number of bedrooms, and area of personal use within a bedroom).

An opportunity exists to strengthen these standards by revising land use definitions, and by introducing a new standard relating to the lot size.

Reasons for doing this might include:

a) Grouped and multiple dwellings are primarily located in urban areas, on smaller lots and with fewer car parking spaces. Currently there is not a large stock of multiple dwellings in the City (permitted only in Centre zones), however this is becoming a more frequent type of development proposal. By capping the occupancy numbers through land use definitions, this is one additional means of restricting the number of occupants and guests of occupants who visit these sites.

b) Currently, the LPP requires a 350m² exclusive use area for a holiday home that is a single house. 350m² equates to R25 density or less, and therefore this provision doesn't take into account areas that are coded R30 (minimum area 260m²) or greater. It is proposed that this point is clarified and strengthened through introduction into the Scheme, and by introducing maximum occupancy numbers depending on lot size. Furthermore, given nature of complaints that arise in the Residential zone (noise, parking, security etc), the maximum number of occupants could be capped at 10 in the Residential zone – currently, a maximum of 12 occupants may be approved. The provision is based on lot size rather than residential coding because a lot coded at a higher density may not have been subdivided into the minimum allowable lot size.

The opportunities for change include:

Opportunity 2.1:

Initially in the local planning policy, and subsequently in the Scheme, introduce a maximum occupant restriction for Multiple Dwellings, to be no more than four occupants.

Opportunity 2.2:

Initially in the local planning policy, and subsequently in the Scheme, introduce further occupant restrictions based on lot size, as follows:

> The maximum number of occupants under the 'Holiday Home (Single House)' or 'Holiday Home (Grouped Dwelling) use classes in the Residential zone is:
>
> (a) 10 occupants for lots greater than 350m²; or
>
> (b) 7 occupants for lots 260m² - 350m²; or
>
> (c) 4 occupants for lots less than 260m².

Officers recommend support for Opportunities 2.1 and 2.2.

3. Change requirements and expectations for holiday home managers.

The Local Law requires that a manager and acting manager must be nominated, and if an occupant or guest of the occupant breaches a condition of registration, then the manager must terminate the occupant's tenancy. The manager must be contactable at all times, and in any event within 24 hours.

In the instances where managers have provided their contact details to neighbours, then any complaints can be directed to the manager. Where no contact details are available, complaints about holiday homes are directed to the City, and in turn the City informs the manager.

Many other local governments require a manager to be contactable within 12 hours, and to reside within close proximity to the holiday home (this varies between a 10 minute and 30 minute drive). Some also require that a manager's details are to be displayed to the public on a sign that is visible from the street.

Opportunities exist to improve the requirements and expectations of managers, and particularly response times, through the Local Law, which in some cases may require an amendment to the Local Law.

The opportunities for change include:

Opportunity 3.1:

Reduce the amount of time in which a manager must respond to any contact relating to the holiday home, from 24 hours to 12 hours.

Opportunity 3.2:

Introduce a new clause requiring managers to reside within a 30 minute travel time from the holiday home.

Opportunity 3.3:

Strengthen and clarify the conditions of registration, so that the contact details of the manager are shown on a sign that can be visible from the street.

Opportunity 3.4:

Strengthen and clarify the conditions of registration, so that the manager is required to resolve complaints and ensure compliance at the premises.

Officers recommend support for Opportunities 3.1 – 3.4.

4. Change requirements and expectations for occupants and their guests.

The Local Law includes conditions of registration that can cover matters such as the maximum number of occupants and their guests; and the provision of parking.

An opportunity exists to strengthen and clarify the requirements and expectations for the management of occupants and their guests, in the form of a management plan. Management plans are a control measure used by a number of other local governments, and they are used by the City when issuing conditions of development approval for other types of land uses. A management plan could include matters that relate to:

- Manager contact details, duties, obligations, and complaints procedure;
- Maximum number of occupants and guests;
- Code of conduct for guests;
- Control of noise, light spill and other disturbances;
- Control of anti-social behavior;
- Security of occupants, guests of occupants, and neighbours;
- Car parking for occupants and guests of occupants, including maximum number of vehicles;
- Management of waste.

An alternate or complementary opportunity exists to strengthen and clarify the requirements and expectations for the management of occupants and their guests, in the form of a code of conduct. The Noosa Shire Council is currently advertising a draft local law which would require occupants to comply with several ‘conditions of behaviour’, collectively called a code of conduct.

The code of conduct would outline minimum behavioural standards for guests to maintain the residential amenity of surrounding permanent residents. If implemented, it would be the manager's responsibility to make occupants aware of the code of conduct, and to have a copy available within the premises. The manager would be responsible for enforcement. A code of conduct could include matters that relate to:

- The parking of vehicles within the premises boundary, in designated bays, and not causing a nuisance or inconvenience to adjoining properties.
- The use of the premises, including all outdoor areas, in a way that does not detrimentally affect neighbouring properties through noise, nuisance, unacceptable behaviour, overlooking or light spill.
- Sleeping or camping on the premises in a tent, caravan, campervan or similar.
- Management of pets so they don't cause a nuisance (including a noise nuisance).
- Disposal of waste.

It is considered by officers that the Local Law is the preferred means of introducing this type of change, as it would then become part of the registration/renewal process, subject to regular opportunity for review, rather than being reviewed once only at development approval stage.

Options for the implementation of this change include:

Opportunity 4.1:

Revise the standard conditions of registration, so that a management plan is required that sets out expectations for the management of the property.

Opportunity 4.2:

Revise the standard conditions of registration, so that a code of conduct is required that sets out expectations for the management of occupants and the guests of occupants.

Officers recommend support for Opportunity 4.2, but not Opportunity 4.1, for the following reasons:

a) A code of conduct provides a set of acceptable standards that would be applicable regardless of location; a management plan would require some elements to be included that would be specific to individual sites.

b) The checking of management plans, during the process of annual registration renewal, would result in a significant impact on officer workloads, and could result in inconsistent approaches that could create uncertainty for all parties.

c) Some of the matters that would be included in a management plan, could also be resolved in other ways. For example, the expectations and requirements of managers as outlined in Opportunities 3.1 – 3.4 above; or, by revising the standard conditions of registration to limit the maximum number of vehicles that can be parked at a property.

d) Other matters that would be included in a management plan, could also be dealt with, equally as effectively, through a code of conduct.

e) A clear expectation would be set that requires managers to display, receive acknowledgement from occupants, and enforce a code of conduct.

f) Overall, it is considered that a more consistent approach would be achieved through the use of a code of conduct rather than a management plan.

5. Introduce controls on dogs being brought to holiday homes.

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

While it may be investigated as an opportunity for change, officers do not support the banning of all dogs from holiday homes.

The Local Law currently contains measures that could prohibit dogs from being left unattended, however it could be amended to:

Opportunity 5.1:

Strengthen and clarify the conditions of registration that do not allow dogs to be left unattended at holiday homes.

Opportunity 5.2:

Prohibit dogs from holiday homes.

Officers recommend support for Opportunity 5.1 but not Opportunity 5.2.

6. Temporary development approvals.

Usually, a development approval 'runs with the life of the land' – it is granted in perpetuity. A temporary development approval may be applied as a condition of approval, where it limits the period for which the approval is granted. This can be applied to a broad range of land uses where there is some uncertainty around future planning objectives – or if there is seen to be a need for future change.

The Shire of Augusta-Margaret River have adopted this approach. When renewals are considered, the granting of an approval is based solely on the number and nature of complaints that have been received for a property (rather than a full assessment that considers changes in the planning framework). This limited approach is based on particular development standards in the scheme, has allowed the Shire to develop a stream-lined process, and planning officers have advised that this is mostly carried out by administration officers. Generally renewals are not refused, even where the planning framework has changed in the interim period.

The opportunities for change include:

Opportunity 6.1:

Introduce a development requirement into the Scheme.

Opportunity 6.2:

Introduce a 'performance criteria' provision into the LPP.

Opportunities 6.1 and 6.2 could be applied:

a) To all new applications, enabling Council to be responsive, over time, to changes in the planning framework; or

b) To those applications that propose more than a set number of occupants (for example, 9 or more occupants); or

c) Selectively, where submissions have been received that express concerns on amenity grounds.

Officers do not recommend support for Opportunity 6.1 or 6.2, for the following reasons:

a) A re-assessment may be complex if the state planning framework has changed, resulting in additional time for assessments and workloads for staff.

b) The sheer number of new holiday home applications each year (which is considerably higher than Augusta-Margaret River) would result in a substantial cumulative workload over a number of years.

c) The Shire of Augusta-Margaret River rarely refuse renewals, raising a question about the effectiveness of using temporary development approvals as a tool to "manage the management" of a property (rather than via a Local Law).

d) There is a degree of uncertainty for investors, particularly if there are changes in the state planning framework (resulting in full reassessment when renewal is required).

Nonetheless, Council may decide to support one or both of these opportunities for change.

7. Council Policy to set out how the City intends to implement the Local Law

The final opportunity for change proposed by officers is the introduction of a Council Policy, to provide guidance to staff and stakeholders in setting out how the City intends to implement the Local Law.

The introduction of a Council Policy could provide for more transparency and consistency in decision-making, and ensure that the direction taken by the City is in line with community vision, aspirations and expectations.

Opportunity 7.1:

Develop a Council Policy to set out how the City intends to implement the Local Law, and to provide guidance to Councillors, officers and stakeholders.

Officers recommend support for Opportunity 7.1.

Process to Complete the Review

Due to the integrated nature of the regulatory framework, officers consider that these opportunities for change may not be as effective if introduced in isolation, and it is recommended that a combination of measures are necessary. It is also recommended that the opportunities supported by Council should be tested through stakeholder and community consultation. Details of advertising and consultation are outlined in the 'Stakeholder Consultation' section below.

It is proposed that Council consider the outcomes of consultation, prior to the initiation of any formal changes, which would in turn be advertised under the requirements of the *Local Government Act 1995,* or the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Statutory Environment

***Local Government Act 1995* (LG Act)**

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

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

The local laws are all made under the head of power contained in section 3.5 of the LG Act.

***Holiday Homes Local Law 2012* (Local Law)**

The purpose of the Local Law is to require the registration of all holiday homes, the nomination of a manager and acting manager, and to ensure the adherence to conditions relating to the orderly and proper use of the holiday home.

***Planning and Development Act 2005* (PD Act) and associated Regulations**

The PD Act outlines the relevant considerations when preparing and amending local planning schemes.

The *Planning and Development (Local Planning Schemes) Regulations 2015* identify three different types of Scheme amendments (regulation 34), and set out the procedure for amending a local planning policy (Schedule 2, Part 2, clause 5).

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

Table 1 - Zoning Table indicates, subject to the provisions of the Scheme, the uses permitted in the Scheme area in the various zones. The permissibility of uses is determined by cross-reference between the list of uses classes on the left hand size of the Zoning Table and the list of zones at the top of the Zoning Table. The symbols used in the cross reference of the Zoning Table have the following meanings:

'D' means the use is not permitted unless the local government has exercised its discretion by granting development approval;

'A' means the use is not permitted unless the local government has exercised its discretion after advertising in accordance with the Regulations;

'X' means the use is not permitted by the Scheme.

Table 1 – Zoning Table currently applies to holiday homes in the following manner:

Zone / Use Class	Residential	Regional Centre	Centre	Local Centre	Service Commercial	Tourism	Light Industry	General Industry	Rural	Viticulture / Tourism	Rural Residential	Rural Landscape	Conservation	Bushland Protection
Holiday Home (Multiple/Grouped Dwelling)	A	A	A	A	X	X	X	X	X	X	X	X	X	X
Holiday Home (Single House)	D*	D*	D*	D*	X	X	X	X	D*	D*	D*	D*	D*	D*

* provides reference to Clause 4.18.5 of the Scheme, which includes the following provisions:

> *Notwithstanding the requirements of Table 1, a 'Holiday Home (Single House)' which proposes to accommodate 9 or more people will be considered under the 'A' symbol and will require public advertising pursuant to Clause 64 of the Deemed Provisions.*

In regard to the non-permissibility of holiday homes in the Tourism zone, the reason for this is because the holiday home land use can be applied to a residential dwelling, however a residential dwelling is not a permitted use in the Tourism zone.

Schedule 1 provides the following land use terms:

> *"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 not include a bed and breakfast, chalet, 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, guesthouse, rural tourist accommodation or tourist accommodation.)*

Relevant Plans and Policies

***Leeuwin Naturaliste Sub-regional Strategy* (LNSRS)**

The LNSRS is an overarching strategic land use planning document outlining the WAPC's approach to future planning and development in the City of Busselton and the Shire of Augusta Margaret River over the next 20 years.

Several key planning issues are identified as being evident in the sub-region, and under the sub-heading 'Settlement', the following key planning issue is stated:

> *The influence of 'holiday homes' on local community cohesion and development.*

***Local Planning Policy 4.1 Holiday Homes* (LPP 4.1)**

LPP 4.1 provides guidance for the assessment of a development application, with due regard given to location, utility servicing, car parking, dwelling design, and bushfire management.

Financial Implications

There are no significant financial implications associated with the Officer Recommendation.

Stakeholder Consultation

It is envisaged that the main stakeholder groups with an interest in this matter will be holiday home owners, managers and management agencies, guests, neighbours, and the community in general.

If the Council resolves to initiate a review of the holiday home regulatory framework, then the Directions Paper would be prepared and made available for public viewing. To facilitate consultation, the following actions will be undertaken:

- Targeted emails to holiday home owners, managers, and management agencies.
- Notices in the local newspaper, and through the Bay to Bay newsletter, and the City's social media pages.
- On public notice boards in the administration building and libraries.
- A notice on the City's website, including a portal to be created using the City's *YourSay* platform for the online lodgment of submissions.
- In-person information sessions for the general community in Busselton and Dunsborough, and separately with industry stakeholder groups.
- Online information sessions for stakeholders who are not able to attend other sessions in person.

Risk Assessment

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

Options

As an alternative to the proposed recommendation the Council could:

1. Resolve to seek further information before making a decision.
2. Resolve to support the opportunities for change subject to identified modification(s).
3. Resolve to decline the review of the key instruments which form the City's interrelated regulatory framework for holiday homes.

CONCLUSION

As a result of this background research, a number of opportunities for change have been drafted, and it is proposed that the Directions Paper and particularly the opportunities for change be advertised to stakeholders and the community, in order to inform Council direction for the future management of holiday homes.

This will, in turn, form the basis of amendments to each of the key instruments that make up the holiday homes regulatory framework.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the officer recommendation will occur over the following time period, following the date of the Council resolution:

a) Mid-July – finalisation of Directions Paper;

b) Mid-August to late September – stakeholder consultation;

c) End of 2021 – report back to Council.

Local Planning Policy No. 4.1
HOLIDAY HOMES

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 the development of Holiday Homes across the whole of the City.

2. PURPOSE

The purpose of this Policy is to –

2.1 Provide clear guidance regarding the assessment of applications for development approval for Holiday Homes; and

2.2 Identify circumstances in which Holiday Homes will be supported, and circumstances in which Holiday Homes may be supported, given more detailed consideration.

3. INTERPRETATION

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

"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.

3.2 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 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: 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 350m^2 exclusively for the use of the dwelling; or 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).	A Holiday Home satisfies the Performance Criteria provisions if: 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.

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HOLIDAY HOMES

4.2 UTILITY SERVICING	
Deemed-to-Comply	**Performance Criteria**
A Holiday Home satisfies the Deemed-to-Comply 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 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 sewerage, or there is an approved on-site effluent disposal system with adequate capacity for the proposed number of occupants. *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.*	A Holiday Home satisfies the Performance Criteria provisions if: P2.1 The City is satisfied that the Holiday Home will have an adequate supply of potable water; and P2.2 The City is satisfied that the Holiday Home will be provided with an adequate refuse collection service; and P2.3 The City is satisfied that the Holiday Homes will be provided with an adequate on-site effluent disposal system (and 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 CAR PARKING	
Deemed-to-Comply	**Performance Criteria**
A Holiday Home satisfies the Deemed-to-Comply provisions if: C3.1 The Holiday Home will have constructed on-site car parking bays, consistent with the size and manoeuvrability criteria set out in the *Residential Design Codes of Western Australia*, but with no more than any of two bays arranged one behind the other (i.e. tandem bays are permitted, with two bays one behind another, but not with a third bay behind another two), in accordance with the following rates:	A Holiday Home satisfies Performance Criteria provisions if: P3.1 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 P3.2 Where a Holiday Home is located in the 'Business' Zone, the City is satisfied that the Holiday Home will not have a noticeable effect on the availability of public car parking within the locality.

Maximum number of occupants	Minimum number of car parking bays required
1-3	1
4-6	2
7-8	3
9-10	4
11-12	5

Local Planning Policy No. 4.1
HOLIDAY HOMES

4.4 DWELLING DESIGN	
Deemed-to-Comply	**Performance Criteria**
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; and C4.4 Bedrooms in a Holiday Home are provided in accordance with the following rates: Maximum number of occupants: Minimum number of bedrooms required 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 number of occupants: Minimum number of bathrooms/toilets required 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: 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.*

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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
Previous Adoption	**DATE**	27/03/2019	**Resolution #**	C1903/053

** 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.*

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LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

LOCAL GOVERNMENT ACT 1995

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HOLIDAY HOMES LOCAL LAW 2012

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LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

PART 1—PRELIMINARY

Under the powers conferred on it by the *Local Government Act 1995*, the Council of the City of Busselton resolved on 28 March 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

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

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

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

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

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

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

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

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

local government means the City;

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

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

month means calendar month;

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

owner—

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

(b) in relation to any other holiday home, means the person who is the owner of the holiday home;

premises, in relation to a holiday home, means—

(a) if the holiday home is a single house situated on a single lot, all of the land that comprises that lot; or

(b) if the holiday home is a grouped dwelling, all of the land that is set aside for the exclusive use by the owner of that grouped dwelling;

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

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 1994*, that applies to, or in respect of, the use of a holiday home; and

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

PART 2— REGISTRATION

Division 1 — Applying for registration

2.1 Registration required

(1) A person must not use a dwelling, or allow a dwelling to be used, as a holiday home—

(a) unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home;

(b) unless the dwelling is registered as a holiday home under this local law; and

(c) other than in accordance with—

(i) the conditions of the registration; and

(ii) the provisions of this local law.

(2) Registration does not affect the obligations of an owner or a manager, or any other person, to comply with a relevant law.

2.2 Application for registration

(1) An application for registration of a holiday home must—

(a) be in writing;

(b) be in the form determined by the CEO;

(c) be made by, or on behalf of, the owner of the holiday home;

(d) be signed by the owner of the holiday home;

(e) nominate a natural person, who may or may not be the owner, to be the proposed manager of the holiday home;

(f) nominate a natural person, who may or may not be the owner, to be the proposed acting manager of the holiday home;

(g) contain the details specified in clause 2.3; and

(h) be forwarded to the CEO, together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

(2) The CEO or an authorised person may require an applicant to give local public notice of the application for registration.

(3) The local government may refuse to consider an application for registration which is not in accordance with subclause (1).

2.3 Application details

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

(a) a site plan of the premises;

(b) a floor plan of the holiday home;

(c) the location and title details of the holiday home;

(d) the number of bedrooms proposed to be used at any time for short stay accommodation;

(e) the maximum number of occupants to be accommodated at any time in the holiday home;

(f) the details of any proposed on-site parking bays on the premises;

(g) the name, address and contact details of the owner of the holiday home and his or her phone number at which he or she may be contacted;

(h) in relation to each of the proposed manager and the proposed acting manager—

(i) confirmation that he or she accepted appointment by the owner as manager (which may be contingent on the Council's approval of the application for registration); and

(ii) his or her name, address and contact details, including the phone number at which he or she may be contacted at any time of the day or night;

(i) an undertaking from the proposed manager of the holiday home that he or she—

(i) is to have the day-to-day management of the holiday home; and

(ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home;

(j) an undertaking from the proposed acting manager of the holiday home that, while undertaking the functions of the manager, he or she—

(i) is to have the day-to-day management of the holiday home; and

(ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home; and

(k) any other information requested by the CEO or an authorised person that is reasonably related to the application for registration.

2.4 Determining an application

(1) The Council may—

(a) approve an application for registration unconditionally or subject to conditions; or

(b) refuse to approve an application for registration.

(2) If the Council approves an application for registration, it is to issue to the applicant a certificate of registration in the form prescribed in Schedule 1 or in a similar form as determined by the Council from time to time.

(3) If the Council refuses to approve an application for registration, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on registration, or which are to be taken to be imposed on registration, that clause does not limit the power of the Council to impose other conditions on registration under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for registration may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

2.5 Relevant considerations in determining an application for registration

(1) In determining an application for registration, the Council is to have regard to—

(a) the conditions of any planning approval that has been granted under the Local Planning Scheme to use the dwelling as a holiday home;

(b) the provisions of this local law;

(c) any relevant policy of the City; and

(d) any other matter that the Council reasonably considers to be relevant in the circumstances of the case.

(2) The Council must refuse to approve an application for registration if there is no current planning approval under the Local Planning Scheme to use the dwelling or the premises as a holiday home.

(3) The Council may refuse to approve an application for registration on any one or more of the following grounds—

(a) that the owner, the proposed manager or the proposed acting manager has committed a breach of any provision of this local law or of any other relevant law;

(b) that the owner, the proposed manager or the proposed acting manager is not a fit and proper person in relation to the proposed holiday home; or

(c) any other ground that the Council may reasonably consider to be relevant in the circumstances of the case, including a ground arising from the Council's consideration of the factors set out in clause 2.5(1).

Division 2—Conditions

2.6 Conditions which may be imposed

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

(a) the payment of a fee imposed by the Council under sections 6.16 to 6.19 of the Act;

(b) the commencement and duration of registration;

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

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.

2.10 Renewal of registration

(1) The owner or manager may apply in writing to the CEO in writing before the expiry of a registration for the renewal of the registration.

(2) Subject to subclause (3), the provisions of Divisions 1 and 2 of this Part, and any other provisions of this local law relevant to the registration which is sought to be renewed, apply, with appropriate modifications, to an application for renewal of the registration.

(3) The Council may waive, in a particular case or in one or more classes of cases, any of the requirements applying to an application for renewal of a registration.

2.11 Acting manager

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

(a) if the manager gives the City prior written notice of the period during which the acting manager is to undertake the functions of the manager; and

(b) during the period specified in that notice—but not exceeding 30 days in any calendar year unless otherwise determined in writing by the Council.

(2) The provisions of this local law that apply to the manager are to be taken to apply to the acting manager while he or she is undertaking the functions of the manager.

2.12 Replacement of manager

(1) This clause applies where—

(a) the owner is not also the manager of a registered holiday home; and

(b) the owner wishes to replace the manager either—

(i) with a new manager; or

(ii) by personally taking over the role of manager.

(2) An application to replace a manager must–

(a) be made before the expiry of the registration;

(b) be made in writing;

(c) be signed by the owner and, if applicable, the proposed new manager;

(d) include the details as are required under clause 2.3(h);

(e) include the undertaking described in clause 2.3(i);

(f) provide such information as the CEO or an authorised person may reasonably require to enable the application to be determined; and

(g) be forwarded to the CEO, together with the fee imposed by the Council under sections 6.16-6.19 of the Act.

(3) The Council may—

(a) approve an application to replace a manager, unconditionally or subject to conditions; or

(b) refuse to approve an application to replace a manager,.

(4) Where the Council approves an application to replace a manager,, the replacement is to be effected by—

(a) an endorsement on the certificate of registration signed by the CEO or an authorised person; or

(b) the CEO or an authorised person issuing to the transferee a fresh certificate of registration.

2.13 Production of certificate of registration

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

2.14 Cancellation

(1) A registration is taken to have been cancelled if, and on the date that—

(a) the owner whose name appears on the certificate of registration ceases to be the owner of the holiday home; or

(b) the manager whose name appears on the certificate of registration ceases to be the manager of the holiday home—unless an application to replace that manager has been approved by the Council under clause 2.12.

(2) A registration may be cancelled by the Council if—

(a) the owner, manager or an attendant has not complied with—

(i) a condition of the registration;

(ii) a provision of this local law; or

(iii) any relevant law; or

(b) the Council is satisfied, on the basis of complaints or other evidence of excessive noise, antisocial behaviour or other nuisances, that the continuing operation of the holiday home is not in the best interests of the City.

(3) If a registration is cancelled, the CEO must give the owner and the manager written notice of the cancellation.

(4) Cancellation under subclause (2) takes effect when the written notice is given to the owner and manager.

(5) If a registration is cancelled—

(a) the owner must return the certificate of registration to the CEO within 14 days of being given the written notice of cancellation; and

(b) the City is not required to refund any part of a fee paid in respect of the cancelled registration.

PART 3—OBLIGATIONS ON OWNERS AND MANAGERS

3.1 Requirement to give notice of any change

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

(a) the details submitted with the application for registration and any application for renewal of registration or for replacement of a manager; or

(b) any condition imposed or varied under clauses 2.6, 2.7, 2.8 and 2.11.

3.2 Breach of a condition by an attendant

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

(a) a condition of registration;

(b) this local law; or

(c) a relevant law.

(2) Within 24 hours of—

(a) the CEO or an authorised person giving written notice to the manager of a breach;

(b) the manager becoming aware of a breach; or

(c) the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that—

(d) the occupant's tenancy is terminated; and

(e) the occupant vacates the holiday home.

3.3 Register of occupants

The manager must—

(a) maintain a register comprising details—

(i) each hirer's name, address, contact details and, if applicable, length of the stay in the holiday home; and

(ii) of each other occupant's name; and

(b) give the CEO or an authorised person such access to the register as may reasonably be required by the CEO or the authorised person for the purpose of administering or enforcing this local law.

3.4 Contacting the manager

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

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

PART 4—OBJECTIONS AND REVIEWS

4.1 Objection and review rights

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

PART 5—ENFORCEMENT

5.1 Offences and penalties

(1) A person who breaches a provision of this local law commits an offence.

(2) A person who commits an offence is liable—

(a) to a penalty of $5,000; and

(b) if the offence is of a continuing nature, a further penalty of $500 in respect of each day or part of a day during which the offence has continued.

5.2 Prescribed offences

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of clause 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

5.3 Form of notices

(1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is set out in Schedule 1 of the Regulations.

(2) The form of the infringement notice given under section 9.16 of the Act is set out in Form 2 in Schedule 1 of the Regulations.

(3) The form of the notice referred to in section 9.20 of the Act is that set out in Form 3 in Schedule 1 of the Regulations.

Schedule 1

CERTIFICATE OF REGISTRATION

[Clause 2.4(2)]

City of Busselton

HOLIDAY HOMES LOCAL LAW 2012

CERTIFICATE OF REGISTRATION

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

This certifies that the dwelling at.....

(address of holiday home)

owned by.....

(name/s of owner/s)

managed by ..... and .....

(name of manager) (name of acting manager)

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

(a) the provisions of the *Holiday Homes Local Law 2012*;

(b) any other relevant law; and

(c) the conditions set out on the back of this certificate.

.....

Signature of CEO/CEO's delegate.

Notes:

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

CONDITIONS OF REGISTRATION

This registration is subject to the following conditions—

1.
2.
3. etc

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

Clause	Description	Modified penalty
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

This local law was made at the meeting of the Council of the City of Busselton held on 28 March 2012.

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

IAN WILLIAM STUBBS, Mayor.
MICHAEL STEPHEN LEE ARCHER, Chief Executive Officer.

On 19 April 2012.

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

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 State-level 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;
    c. 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.
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.
5. 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.
7. 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.

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.

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.

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.

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;
    c. 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.
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.
5. 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.
7. 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.

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

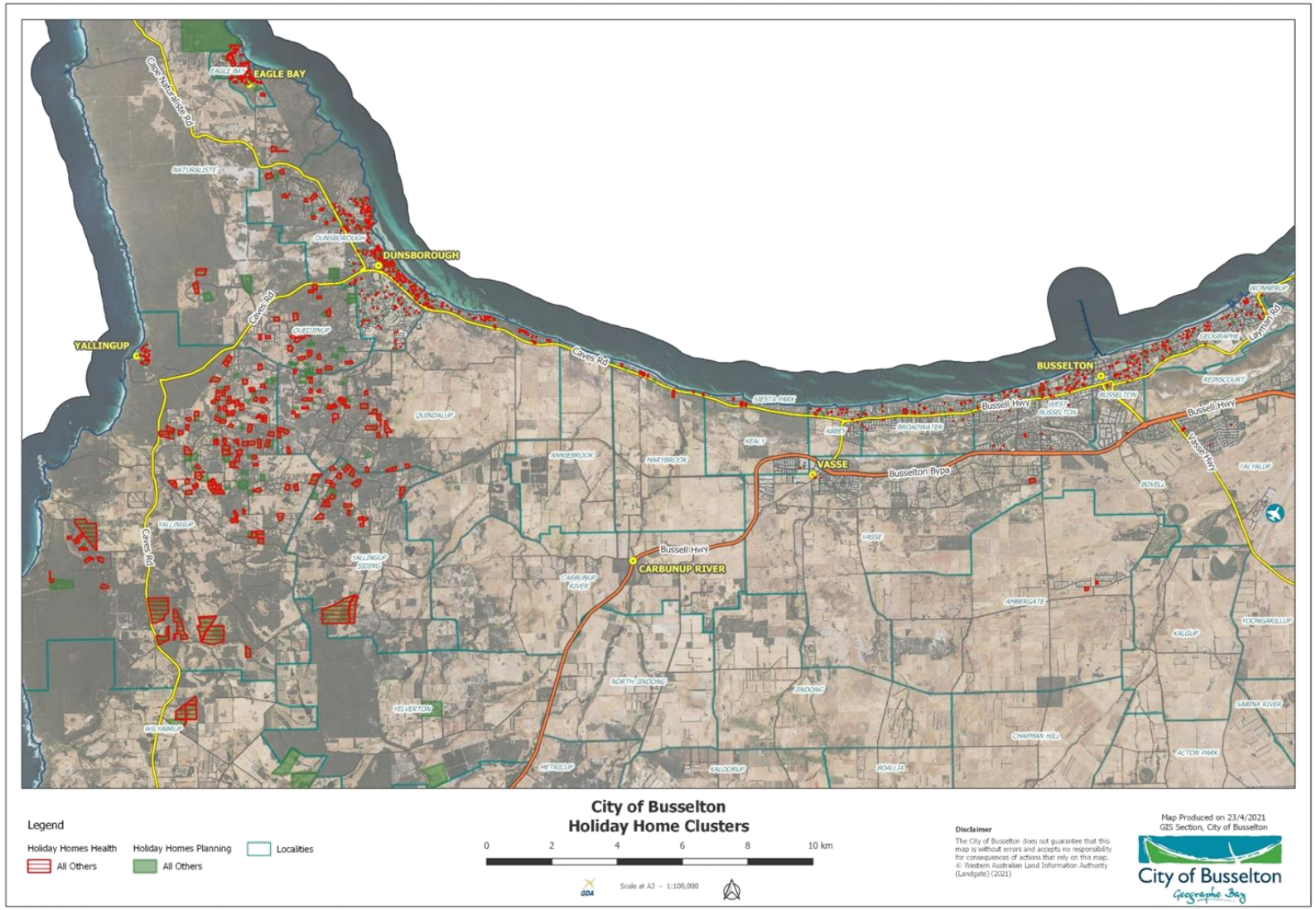
The Government supports the recommendation that a state-wide registration scheme be explored and developed. There is a clear need for a whole-of-government view on the appropriate regulatory and legislative framework that will meet the needs of this rapidly changing sector.

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

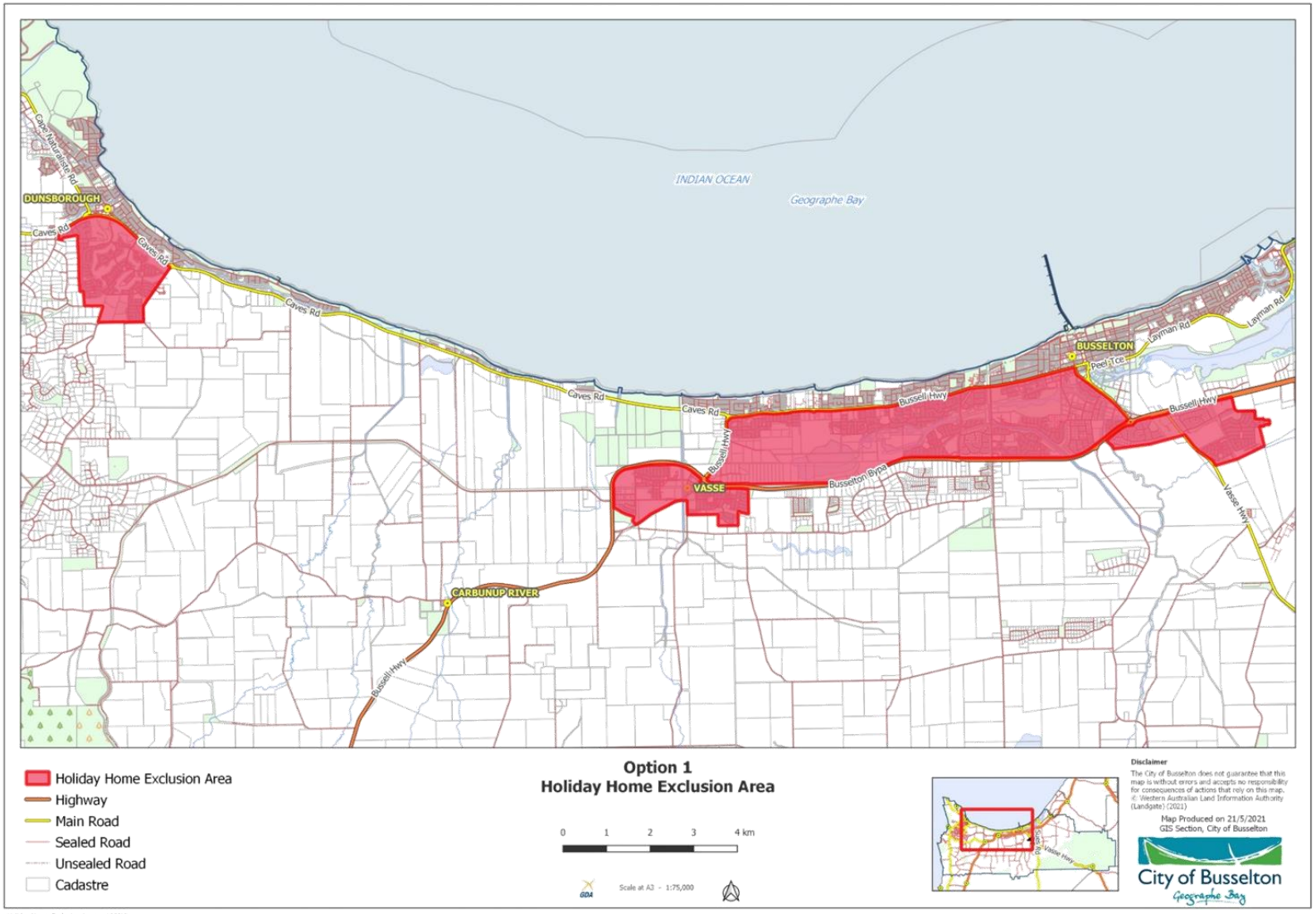
dog registration fees, fees for building approvals and swimming pool entrance fees. In some cases, local governments will recoup the entire cost of providing a service.

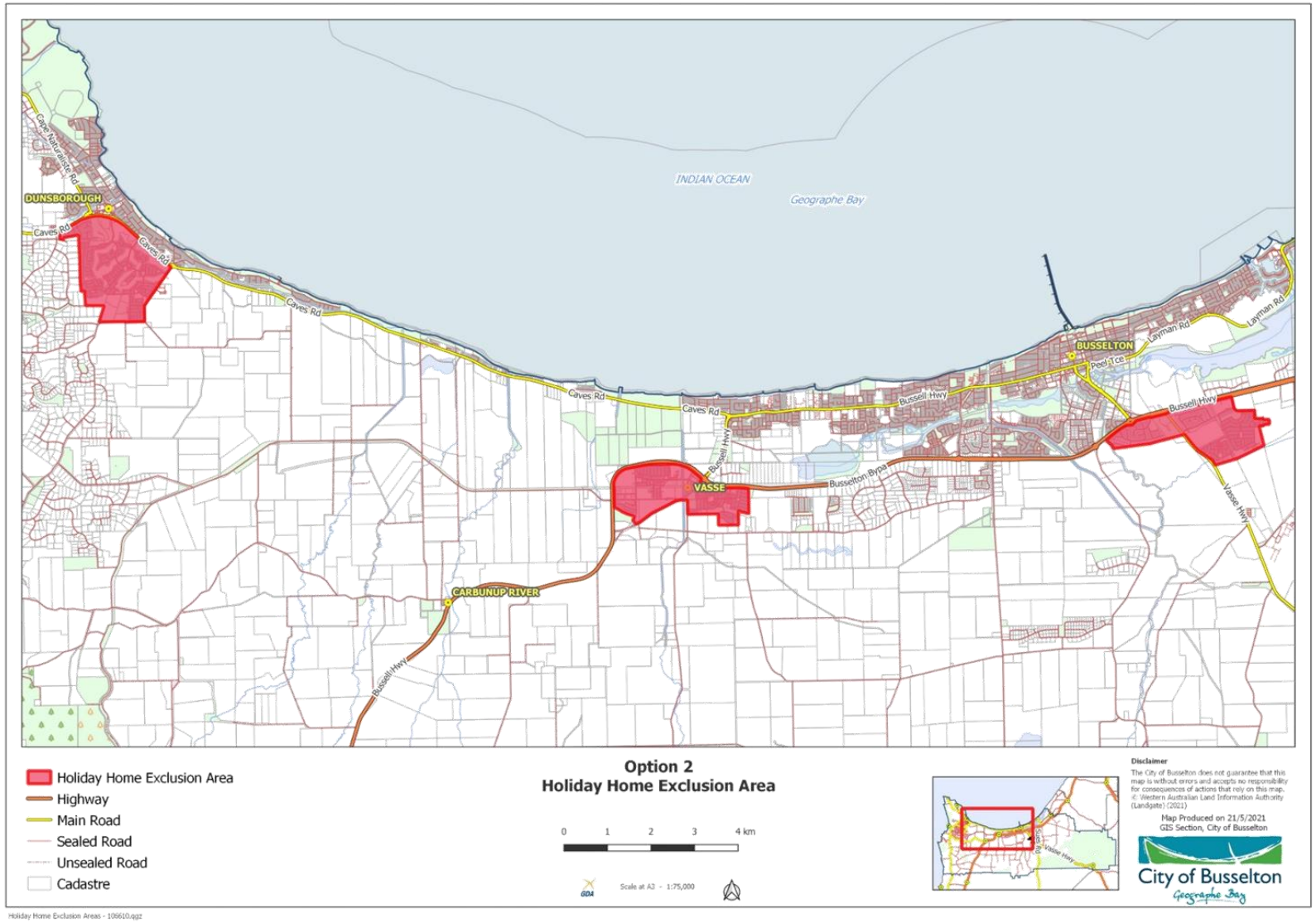
Currently, fees and charges are determined according to three methods:
1. By legislation, with an upper limit set by legislation;
2. By the local government; and
3. Fees determined by State Government legislation.

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.



Holiday Home Clusters - 104976.qgz


INDIAN OCEAN
Geographe Bay
DUNSBOROUGH
BUSSELTON
VASSE
CARBUNUP RIVER
Caves Rd
Bussell Hwy
Busselton Bypass
Vasse Hwy
Layman Rd
Peel Tce
Holiday Home Exclusion Area
Highway
Main Road
Sealed Road
Unsealed Road
Cadastre
Option 1
Holiday Home Exclusion Area
0 1 2 3 4 km
Scale at A3 - 1:75,000
Disclaimer
Map Produced on 21/5/2021
GIS Section, City of Busselton
City of Busselton
Geographe Bay
Holiday Home Exclusion Areas - 106610.qgz


INDIAN OCEAN
Geographe Bay
DUNSBOROUGH
BUSSELTON
VASSE
CARBUNUP RIVER
Caves Rd
Busselt Hwy
Busselton Bypass
Vasse Hwy
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City of Busselton
Geographe Bay
Holiday Home Exclusion Areas - 106610.qgz

6.2 REVIEW OF VARIOUS LOCAL LAWS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Local Laws
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Legal Officer - Briony McGinty
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies
VOTING REQUIREMENT	Absolute Majority
ATTACHMENTS	Attachment A Local Government Property Local Law 2010 Attachment B Busselton Regional Airport Local Law 2012 Attachment C Holiday Laws Local Law 2012 Attachment D Keeping and Control of Cats Local Law 2014

OFFICER RECOMMENDATION

That the Council:

1. **Resolves that the following local laws should continue in operation without repeal or amendment:**
   a. **Keeping and Control of Cats; and**
   b. **Busselton Regional Airport.**

2. **Directs the CEO to write to the Minister of Local Government and the Department of Local Government, Sport and Cultural Industries to request a review of the *Cat Act 2011*, so as to enable local governments to legislate for additional matters; and**

3. **Resolves that amendments are required to the following local laws and that a separate local law amendment should be initiated for each in accordance with section 3.12 of the *Local Government Act 1995*:**
   a. **Local Government Property; and**
   b. **Holiday Homes.**

EXECUTIVE SUMMARY

The *Local Government Act 1995* (LG Act) requires that local laws are reviewed every eight years. The following local laws are either currently or shortly due for review:

- Local Government Property Local Law 2010 (as amended) (Attachment A);
- Busselton Regional Airport Local Law 2012 (as amended) (Airport Local Law) (Attachment B);
- Holiday Homes Local Law 2012 (as amended) (Attachment C); and
- Keeping and Control of Cats Local Law 2014 (Cat Local Law) (Attachment D);

(collectively the Local Laws).

The purpose of this report is for Council to consider whether each of the Local Laws should be amended, repealed or continue in operation.

Officers recommend that amendments are made to the Local Government Property Local Law and Holiday Homes Local Law. There are no amendments that are recommended for the Cat Local Law and the Airport Local Law. However, further action in relation to the Cat Local Law is recommended to enable the City to legislate in the future for matters relating to wandering cats.

Where amendments have been identified as necessary, a further report will be presented to Council which recommends the proposed amendments specific to each local law. There will be further opportunity for community consultation and additional consideration at that point.

BACKGROUND

Section 3.16 of the LG Act requires that local laws are reviewed every eight years. The Local Laws were last reviewed as follows:

- Local Government Property Local Law – 22 March 2011
- Airport Local Law – 16 November 2012
- Holiday Homes Local Law – 16 November 2012
- Cat Local Law – 10 February 2014

The subject matter and background of each local law is dealt with under Officer Comment below.

The Local Law review was commenced on 5 February 2021 which involved public advertising in accordance with section 3.16(2) of the LG Act (as outlined under Stakeholder Consultation). Submissions were invited and are summarised under Officer Comment.

OFFICER COMMENT

Cat Local Law

The City was one of the first local governments in Western Australia to introduce a local law in relation to cats. The City identified that the control of cats was a significant issue for the district and in 2000 implemented a local law regulating cats. The local law had clauses which effectively prohibited wandering and stray cats and allowed City rangers to implement those prohibitions through infringement and impoundment powers ("wandering cat" clauses). Those clauses mirrored similar provisions contained in the *Dog Act 1976* under which dogs can only be in public places if on a leash.

In 2014, following the commencement of the operative provisions of the *Cat Act 2011* (Cat Act), the City adopted a new local law which removed matters dealt with under the Cat Act (such as registration and microchipping) and retained those matters not covered. It was policy neutral. The wandering cat clauses were retained.

Following the introduction of the Cat Local Law, the local law was scrutinised by the Joint Standing Committee on Delegated Legislation (JSC) and was not subject to any disallowance motion by Parliament. However, when another local government adopted a local law dealing with cats, using the City of Busselton's as a template, the JSC took issue with the clauses regarding wandering cats. As the period in which a motion of disallowance could be lodged against the Cat Local Law had passed, the only option of the JSC was to write to the Minister for Local Government to request the Governor to repeal those clauses relating to wandering cats.

The view of the JSC (and ultimately the Minister) was that, as the Cat Act did not include wandering cats within the list of matters for which a local law could be made, those clauses were not within power. The City wrote lengthy submissions to the then Minister for Local Government (and Minister for the Environment) regarding the appropriateness of the wandering cat clauses, having particular regard to the locality and the vulnerable status of the western ringtail possum. The City's position was that the LG Act (and the Cat Act) provided a sufficient head of power in which to enact the wandering cat clauses. Ultimately, the Governor chose to repeal those provisions of the Cat Local Law.

Since 2015, this has left the City with limited power to regulate wandering cats, and no ability to amend the local law in order to do so. All of the submissions regarding the Cat Local Law raised concerns with wandering cats, with particular emphasis on protection of native wildlife. All submissions wanted restrictions relating to wandering cats. Some submissions raised unique solutions such as requiring all cat owners to build cat enclosures, or encouraging the Department of Biodiversity, Conservation and Attractions to conduct feral cat control campaigns. However, none of these options (including the previous option of prohibiting wandering cats) are capable of introduction into a local law.

It has been six years since the unilateral repeal of the wandering cat provisions. Indications are that the community want these provisions to be re-introduced. Given there is no head of power under current legislation to introduce these measures, it is recommended that the City once again communicate its concerns to the relevant Minister. This could either take the form of advocating that wandering cat clauses are within power or, alternatively, advocating for legislative change at a State level which would either create consistent State-wide prohibitions on wandering cats, or at least allow districts to legislative themselves in such a fashion.

Local Government Property Local Law

The Local Government Property Local Law was introduced in 2010 and further amended in 2011. The local law replaced the outdated Reserves and Foreshores Local Law which covered a limited subject matter. The impetus for the new local law was to better regulate use of public spaces and largely adopted the WALGA model local law. The local law is consistent with many other local governments across the State.

During the public consultation phase, the City did not receive any submissions from the public in relation to the Local Government Property Local Law. However, given the local law covers a significant subject matter of broad and regular application, an extensive internal review has been conducted which has identified various matters which require attention.

Those which are recommended for detailed review and amendment are as follows:

<u>Flying of Drones (Schedule 2, clause 2.2)</u>

The City has no control over airspace, which, under the current legislation, is reserved for the Civil Aviation Safety Authority. Therefore, the City cannot regulate drone usage in the air. However, there is the capacity, if the City chooses, to regulate launching and/or landing of drones from local government property. There is presently some ambiguity around this capacity, therefore, it is recommended to strengthen and clarify those provisions to enable regulation.

<u>Exercise Classes on Reserves (clause 3.13 (1)(d))</u>

The review noted that permits for "boot camps etc." are currently only required on beaches or at City owned pools or recreation centres. The understanding of officers is that various other City facilities/venues are currently being used for these activities. It is therefore recommended that the City consider introducing provisions to extend the City's powers to regulate these types of activities on, for example, City managed ovals in order to respond to conflicts of use where appropriate.

Swimming Pool – increase to minimum age requirements (clause 5.1)

Currently, the local law restricts entry to children under 10 years old unless accompanied by a responsible person over the age of 12. It is recommended that the City consider amending the age requirements so that children under the age of 12 will not be permitted entry unless accompanied by a person over the age of 18. This is above the Minimum Entry Age requirements under the Code of Practice for swimming pools (being that a child under 10 must be accompanied by a person 16 years or older) but is in line with industry benchmarking and more recent understandings of best practice.

Penalties (Schedule 1)

Penalties for breaches of this local law are currently at $200 (with the LG Act allowing for maximum infringements of up to $500). As part of any review, the City would consider updating penalties, given the current penalties were set 10 years ago.

Airport Local Law

The Airport Local Law was introduced in 2012 in particular response to amenity issues associated with unregulated flight training. The local law has been in operation since 2012 with little public comment. During the public consultation phase, only one submission from the public was received. This submission related to taxis and other forms of passenger transport vehicles. Under the local law, a person is exempt from obtaining a permit to operate a taxi at the airport. The submission advocated for also exempting other forms of passenger transport vehicles from the requirement to obtain a permit.

The current requirement to obtain a permit is to ensure that only accredited public operators operate from the Airport. It is understood that this is similar to arrangements at other airports. Therefore, officers do not recommend any changes to this provision, and for this local law to continue in effect without change.

Holiday Homes Local Law

The City has a two-tiered approach to the regulation of holiday homes. Development approval is required under Local Planning Scheme 21 (LPS 21) (which is not time limited) and registration is required under the Holiday Homes Local Law (which is subject to annual renewal). The City implemented the local law in 2012 as part of a broader response to concerns around a lack of regulation.

It is worth setting out, in broad terms, what kinds of matters can or should be regulated under a planning scheme, and what kinds of matters can or should be regulated under a local law. A planning scheme regulates 'development', as defined in the planning legislation. Development consists of both 'works' (i.e. physical construction or similar) and 'use' (i.e. the use to which land is being put). In regulating use, planning schemes can determine whether a particular use is appropriate in a given location, and can set expectations or requirements in terms of how a holiday home (or any form of development) is managed (e.g. numbers of occupants, operating hours).

A planning scheme, however, is not always able to effectively regulate management practices – such as the expectation that a holiday home will have a manager, where that manager needs to be located, and the timeframes in which that manager needs to respond to complaints. Those kinds of matters are more appropriately addressed via a local law. In the case of some kinds of development, there is often specific legislation which regulates 'management' of the development, a key example being the liquor licensing legislation for licensed premises. The general principle, though, is that a local law should not seek to regulate matters that would be better regulated through a planning scheme. That includes assessing whether a holiday home is appropriate on a particular site or area.

The more significant aspects of the current local law are as follows:

1. The local law requires all holiday homes (as defined in LPS 21) to be registered.
2. Registration can only occur where development approval has been granted.
3. A manager and acting manager must be nominated.
4. Conditions of registration can cover matters such as:
    a. Maximum number of occupants and attendants (which term includes guests);
    b. Provision of parking;
    c. Ensuring a responsive manager.
5. If a manager ceases to be the manager, then the registration is taken to be cancelled.
6. If an attendant breaches a condition of registration, then the manager must terminate the occupant's tenancy.
7. The manager must be contactable at all times and in any event within 24 hours.

As development approvals are generally in perpetuity, the local law provides the ability to cancel a registration under the local law in the case of persistent breaches. Similarly, there is also the ability to refuse to renew a registration where considered necessary. However, it is worth noting that the maximum infringement penalty that can be imposed under any local law is $500. Infringements under the current local law are set between $150 and $400. The maximum penalty that can be imposed by a court following a successful prosecution under any local law is $5,000. This makes enforcement options under the *Planning and Development Act 2005* more attractive (where maximum penalties are set at $200,000 for an individual and $1,000,000 for a company) compared to enforcement options under the local law.

The majority of submissions voiced opposition to holiday homes with particular emphasis on noise, parking, dogs and rubbish. Another area of concern was holiday homes being approved in unsuitable areas of the district. Residents were concerned with a loss of community character and changes to their daily lives such as the fear of allowing their children to play on the street due to increased traffic with no concern for local conditions. Issues with a lack of affordable housing and diminishing rental stock also formed a significant percentage of submissions.

There were a handful of submissions which were supportive of the rights of landowners to choose how they used their property, supportive of free-market principles regarding housing stock, and did not want to see any additional forms of regulation placed on property owners who wanted to rent their properties on a short-term commercial basis. They also viewed the lack of long-term rentals as a short-term problem.

A significant number of submissions raised issues with regard to holiday homes that cannot be considered solely within a review of the local law in isolation. The City has also commenced a broader policy review with regard to holiday homes. The submissions received through the local law review process have been collated and provided to strategic planning officers conducting the broader policy review. They will be considered as part of a review of the strategic and statutory planning environment.

In summary, these submissions related to:

1. Lack of affordable housing.
2. Diminishing long-term rental stock.
3. Need for reform at the State level.
4. Recommendations to introduce a State-wide registration scheme.
5. Application of the 10% differential rate to short-term rentals.
6. Waste management at holiday homes.
7. Permissibility of holiday homes linked to particular zones, with particular opposition to new housing estates areas.
8. Requirement to broadly advertise development applications for holiday homes.
9. Equal application of fire safety regulation.

A number of submissions raised issues which are already addressed in the local law. These were:

1. The local law should require online booking platform short term rentals to be registered.

   Comment: If the holiday home is being let for profit then registration is already required under the local law.

2. The local law should provide for a cap on numbers staying at the holiday home.

   Comment: The local law already provides for a cap on numbers (as does the development approval process). The cap can specify numbers of occupants staying at the property overnight as well as capping attendants (which terms includes visitors of occupants). However, to reduce numbers in a holiday homes registration below that provided for in the development approval process would be problematic.

It is also worth noting that, while these issues are already addressed by the local law, they may not be applied adequately through the conditions of registration imposed by the City. As part of the strategic planning review, officers will consider revising standard conditions of registration through internal administrative review processes rather than through an amendment to the local law.

Issues which were raised and can be considered as part of a more detailed amendment to the local law to be presented to Council are as follows:

1. Currently the local law provides that managers must respond to complaints within a reasonable time or at least within 24 hours. Given the nature of short term rentals, and the potential for immediate adverse impacts on adjacent neighbours, a shorter period in which a manager must respond was proposed.

   Comment: Any time period in which a manager is required to respond should be reasonable. Otherwise the JSC will not permit such an amendment. It is recommended that the City considers an amendment to the local law to provide for a shorter period in which a manager should respond to complaints. It is also suggested that the City considers the introduction of clauses requiring managers to reside within a certain distance to the holiday home.

2. The contact details of the manager should be visible or made available to neighbours.

   Comment: This is arguably already possible under the conditions of registration. However, the local law could be amended to strengthen and clarify those provisions. Consider amendment to the local law to include provision of manager's details clearly as a condition that can be imposed.

3. Ability to prohibit dogs from being left unattended at holiday homes.

   Comment: This is arguably already possible under the conditions of registration. However, the local law could be amended to strengthen and clarify those provisions. Consider amendment to the local law to include the ability to prohibit, as part of a condition of registration, the leaving of unattended dogs.

Officers recommend that a detailed review of this local law is undertaken and reported to Council in due course.

Statutory Environment

Local Government Act 1995

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

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

The Local Laws are all made under the head of power contained in section 3.5 of the LG Act, with the exception of the Cat Local Law, which is also made pursuant to the Cat Act.

The procedure for making local laws is set out in section 3.12 of the LG Act and regulation 3 of the *Local Government (Functions and General) Regulations 1996*.

Section 3.16 of the LG Act requires that every eight years a local law is to be reviewed to determine whether or not it considers that it should be repealed or amended.

Parliamentary Scrutiny

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

Parliament has appointed the JSC, which is a committee of State politicians from both Houses of the Western Australian Parliament, to undertake an overseeing role on its behalf. This includes the power to scrutinise and recommend the disallowance of local laws to the Parliament. After gazettal, local laws are sent to the JSC who examines the local law and determines whether or not it complies with abovementioned criteria.

Relevant Plans and Policies

The Commercial use of City Land and Facilities Policy links to and guides decision-making under the Local Government Property Local Law. There are no other plans or policies related to the Local Laws.

Financial Implications

There are no financial implications associated with the officer recommendation, with the costs of reviewing and amending the Local Government Property Local Law and the Holiday Homes Local Law provided for in the City's budget.

Stakeholder Consultation

The local law review was advertised publicly in accordance with section 3.16(2) of the LG Act. This involved consultation on social media, on the City's website, in the local paper, and on all public notice boards in the administration building and libraries. Submissions were received as outlined above in officer comment.

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 repeal or amend the Local Laws in any number of ways.

CONCLUSION

The Local Laws have been advertised broadly. Internal reviews have been conducted regarding the operation of the Local Laws. No issues which are capable of being remedied via a local law amendment have been identified with regard to the Airport Local Law and the Cat Local law. However, with regard to the Cat Local Law, it is recommended that the City write to the Minister for Local Government and the Department of Local Government, Sport and Cultural Industries requesting it reconsider the legislative framework with regard to wandering cats.

In relation to the Local Government Property Local Law and the Holiday Homes Local Law, various issues have been identified. Therefore, it is recommended that amended local laws be presented to Council to address the issues which have been identified through the general review process.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

In relation to the Cat Local Law, no action is required to the local law itself. The City will write to the Minister for Local Government and the relevant department within one month to seek amendments to legislation to allow the City to regulate wandering cats.

In relation to the Airport Local Law, no action is required.

In relation to the Holiday Homes Local Law, at the conclusion of the broader strategic planning review, an amended local law will be presented to Council with options for amendments, which will allow for any additional items not already identified to be included in any amendment.

In relation to the Property Local Law, an amendment local law will be presented to Council which addresses the issues identified in the review process within four months.

This is an un-official compilation of the *Shire of Busselton Local Government Property Local Law 2010* as it has effect on and after 5 April 2011.
See the Notes at the end for more details.

Shire of Busselton
Local Government Property Local Law 2010

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Local Government Act 1995

Shire of Busselton

Local Government Property Local Law 2010

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Local Government Act 1995

Shire of Busselton

Local Government Property Local Law 2010

Under the powers conferred on it by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Busselton resolved on 11 February 2010 to make the following local law.

Part 1 - Preliminary

1.1 Citation

This local law may be cited as the *Shire of Busselton Local Government Property Local Law 2010*.

1.2 Commencement

This local law commences on the 14th day after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies –

(a) throughout the district; and

(b) along the district's western and northern boundary, from the high water mark at ordinary spring tides, for a distance of 200 metres seawards towards the Indian Ocean, as approved by the Governor under section 3.6 of the Act per notice published in the *Government Gazette,* No. 149, on 18 August 2009, page 3243.

1.4 Repeal

The following local laws are repealed-

(a) *Local Law Relating to Poundage Fees*, published in the *Government Gazette* on 14 April 1939;

(b) *Local Law Relating to Caravan Parks and Camping Grounds*, published in the *Government Gazette* on 24 December 1975; and

(c) *Local Law Relating to Reserves and Foreshores*, published in the *Government Gazette* on 17 January 1986 and as amended and published in the Government Gazette on 20 July 1990, 24 December 1993 and 13 May 1994.

1.5 Definitions

In this local law -

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

"applicant" means a person who applies for a permit under clause 3.2;

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

"boat" means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

"building" means any building which is on local government property and includes a –

(a) hall or room;

(b) corridor, stairway or annexe of any hall or room; and

(c) jetty;

"CEO" means the chief executive officer of the Shire;

"commencement day" means the day on which this local law commences under clause 1.2;

"Council" means the council of the Shire;

"date of publication" means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

"determination" means a determination made under clause 2.1;

"district" means the district of the Shire;

"function" means an event or activity characterised by all or any of the following –

(a) formal organisation and preparation;

(b) its occurrence is generally advertised or notified in writing to particular persons;

(c) organisation by or on behalf of a club;

(d) payment of a fee to attend it; and

(e) systematic recurrence in relation to the day, time and place;

"indecent exposure" means the revealing to view of those parts of the body, especially the genitals, which by law and convention should be covered by clothing under the given circumstances;

"liquor" has the meaning given to it in section 3 of the *Liquor Control Act 1988*;

"local government property" means anything except a thoroughfare –

(a) which belongs to the Shire or in which the Shire has an interest;

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(b) of which the Shire is the management body under the Land Administration Act 1997; or

(c) which is an 'otherwise unvested facility' within section 3.53 of the Act.

"local public notice" has the same meaning as in section 1.7 of the Act;

"Manager" means the person for the time being employed by the Shire to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

"permit" means a permit issued under this local law;

"permit holder" means a person who holds a valid permit;

"person" does not include the Shire;

"pool area" means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

"Shire" means the Shire of Busselton;

"sign" includes a notice, flag, mark, structure or device approved by the CEO or an authorised person on which may be shown words, numbers, expressions or symbols;

"surf riding equipment" means any device or toy used to or assist a rider in moving in or across waves or the water surface, and includes surfboard, boogey board, windsurfer, wave ski, canoe, kite surfer, inflatable toy or similar device but not a boat;

"trading" means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of –

(a) offering them for sale or hire;

(b) inviting offers for their sale or hire;

(c) soliciting orders for them; or

(d) carrying out any other transaction in relation to them.

"Unclaimed Property Register" means the register kept by an attendant of any unclaimed belongings under Division 4 of Part 5 of this local law;

"vehicle" includes –

(a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and

(b) an animal being ridden or driven,

but excludes –

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(c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;

(d) a pram, a stroller or a similar device; and

(e) a boat.

"waste" includes matter –

(a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or

(b) prescribed by regulations under the *Waste Avoidance and Resource Recovery Act 2007* to be waste.

1.6 Interpretation

In this local law a reference to local government property includes a reference to any part of that local government property.

1.7 Overriding power to hire and agree

Despite anything to the contrary in this local law, the CEO or an authorised person, on behalf of the Shire may –

(a) hire local government property to any person; or

(b) enter into an agreement with any person regarding the use of any local government property.

Part 2 - Determinations in respect of local government property

Division 1 - Determinations

2.1 Determinations as to use of local government property

(1) The Council may make a determination in accordance with clause 2.2 –

(a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;

(b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;

(c) as to the matters in clauses 2.7(2) and 2.8(1); and

(d) as to any matter ancillary or necessary to give effect to a determination.

(2) The determinations in Schedule 2 –

(a) are to be taken to have been made in accordance with clause 2.2;

(b) may be amended or revoked in accordance with clause 2.6; and

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(c) have effect on the commencement day.

2.2 Procedure for making a determination

(1) The CEO or an authorised person is to give local public notice of the Council's intention to make a determination.

(2) The local public notice referred to in subclause (1) is to state that –

(a) the Council intends to make a determination, the purpose and effect of which is summarised in the notice;

(b) a copy of the proposed determination may be inspected and obtained from the Shire's offices; and

(c) submissions in writing about the proposed determination may be lodged with the CEO within 21 days after the date of publication.

(3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide –

(a) to give local public notice that the proposed determination has effect as a determination on and from the date of publication;

(b) to amend the proposed determination, in which case subclause (5) will apply; or

(c) not to continue with the proposed determination.

(4) If submissions are received in accordance with subclause (2)(c), the Council –

(a) is to consider those submissions; and

(b) is to decide –

(i) whether or not to amend the proposed determination; or

(ii) not to continue with the proposed determination.

(5) If the Council decides to amend the proposed determination, it is to give local public notice –

(a) of the effect of the amendments; and

(b) that the proposed determination has effect as a determination on and from the date of publication.

(6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.

(7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).

(8) A decision under subclause (3) or (4) is not to be delegated by the Council.

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2.3 Discretion to erect sign

The CEO or an authorised person may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

2.4 Determination to be complied with

A person must comply with a determination.

2.5 Register of determinations

(1) The CEO is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.

(2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6 Amendment or revocation of a determination

(1) The Council may amend or revoke a determination.

(2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.

(3) If the Council revokes a determination, the CEO is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

Division 2 - Activities which may be pursued or prohibited under a determination

2.7 Activities which may be pursued on specified local government property

(1) A determination may provide that specified local government property is set aside as an area on which a person may –

(a) take, ride or drive a vehicle, or a particular class of vehicle;

(b) fly or use a motorised model aeroplane;

(c) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;

(d) launch, beach or leave a boat;

(e) take or use a boat, or a particular class of boat;

(f) play or practice –

(i) golf or archery;

(ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or

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(iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the Shire, may cause injury or damage to a person or property;

(g) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and

(h) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –

(a) the days and times during which the activity may be pursued;

(b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;

(c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;

(d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;

(e) may specify that the activity can be pursued by a class of persons or all persons; and

(f) may distinguish between different classes of the activity.

2.8 Activities which may be prohibited on specified local government property

(1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—

(a) smoking on premises;

(b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;

(c) taking, riding or driving a vehicle on the property or a particular class of vehicle;

(d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;

(e) taking or using a boat, or a particular class of boat;

(f) the playing or practice of—

(i) golf, archery, pistol shooting or rifle shooting; or

(ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the Shire may cause injury or damage to a person or property;

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(g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and

(h) the traversing of sand dunes or land which in the opinion of the Shire has environmental value warranting such protection, either absolutely or except by paths provided for that purpose

(2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular –

(a) the days and times during which the activity is prohibited;

(b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;

(c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;

(d) that an activity is prohibited in respect of a class of persons or all persons; and

(e) may distinguish between different classes of the activity.

(3) In this clause –

"premises" means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3 - Transitional

2.9 Signs taken to be determinations

(1) Where a sign erected on local government property has been erected under a local law of the Shire that is repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

Part 3 - Permits

Division 1 - Preliminary

3.1 Application of Part

This Part does not apply to a person who uses or occupies local government property under a written agreement with the Shire to do so.

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Division 2 - Applying for a permit

3.2 Application for permit

(1) Where a person is required to obtain a permit under this local law, that person must apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law must -

(a) be in the form determined by the CEO;

(b) be signed by the applicant;

(c) provide the information required by the form; and

(d) be forwarded to the CEO together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

(3) The CEO or an authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The CEO or an authorised person may require an applicant to give local public notice of the application for a permit.

(5) The CEO or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

3.3 Decision on application for permit

(1) The CEO or an authorised person may –

(a) approve an application for a permit unconditionally or subject to any conditions; or

(b) refuse to approve an application for a permit.

(2) If the CEO or an authorised person approves an application for a permit, he or she is to issue to the applicant, a permit in the form determined by the Chief Executive Officer.

(3) If the CEO or an authorised person refuses to approve an application for a permit, he or she is to give written notice of that refusal to the applicant.

(4) The CEO or an authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the permit holder.

Division 3 - Conditions

3.4 Examples of conditions

(1) Examples of the conditions that the CEO or an authorised person may impose on a permit are conditions relating to -

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(a) the payment of a fee;

(b) compliance with a standard or a policy adopted by the Shire;

(c) the duration and commencement of the permit;

(d) the commencement of the permit being contingent on the happening of an event;

(e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;

(f) the approval of another application for a permit which may be required by the Shire under any written law;

(g) the area of the district to which the permit applies;

(h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and

(i) the obtaining of public risk insurance in an amount and on terms reasonably required by the CEO or an authorised person.

(2) Examples of the type and content of the conditions on which a permit to hire local government property may be issued include –

(a) when fees and charges are to be paid;

(b) payment of a bond against possible damage or cleaning expenses or both;

(c) restrictions on the erection of material or external decorations;

(d) rules about the use of furniture, plant and effects;

(e) limitations on the number of persons who may attend any function in or on local government property;

(f) the duration of the hire;

(g) the right of the CEO or an authorised person to cancel a booking during the course of an annual or seasonal booking, if the CEO or an authorised person sees fit;

(h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;

(i) whether or not the hire is for the exclusive use of the local government property;

(j) the obtaining of a policy of insurance in the names of both the CEO or an authorised person and the hirer, indemnifying the CEO or the authorised person in respect of any injury to any person or any

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damage to any property which may occur in connection with the hire of the local government property by the hirer; and

(k) the provision of an indemnity from the hirer, indemnifying the Shire in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

3.5 Imposing conditions under a policy

(1) In this clause –

"policy" means a Shire policy adopted by the Council under section 2.7 of the Act containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the CEO or an authorised person may approve an application subject to conditions by reference to a policy.

(3) The CEO or an authorised person must give to the permit holder a copy of the policy or, at the discretion of the CEO or the authorised person, the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

(4) An application for a permit is not to be taken to have been approved subject to the conditions contained in a policy until the CEO or an authorised person gives the permit holder a copy of the policy or the 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 deemed to be information within section 5.94(u)(i) of the Act.

3.6 Compliance with conditions

Where an application for a permit has been approved subject to conditions, the permit holder must comply with each of those conditions, as amended.

Division 4 - General

3.7 Agreement for building

Where a person applies for a permit to erect a building on local government property an authorised person, on behalf of the Shire, may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

3.8 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is –

(a) otherwise stated in this local law or in the permit; or

(b) cancelled under clause 3.12.

3.9 Renewal of permit

(1) A permit holder may apply to the CEO in writing prior to expiry of a permit for the renewal of the permit.

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(2) The provisions of this Part must apply to an application for the renewal of a permit as though it were an application for a permit.

3.10 Transfer of permit

(1) An application for the transfer of a valid permit is -

(a) to be made in writing;

(b) to be signed by the permit holder and the proposed transferee of the permit;

(c) to provide such information as the CEO or an authorised person may require to enable the application to be determined; and

(d) to be forwarded to the CEO together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

(2) The CEO or an authorised person may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the CEO or an authorised person approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO or the authorised person.

(4) Where the CEO or an authorised person approves the transfer of a permit, the Shire is not required to refund any part of any fee paid by the former permit holder.

3.11 Production of permit

A permit holder must produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

3.12 Cancellation of permit

(1) Subject to clause 9.1, a permit may be cancelled by the CEO or an authorised person if the permit holder has not complied with –

(a) a condition of the permit;

(b) a direction under clause 3.16(b); or

(c) a determination, or a provision of any written law, which may relate to the activity regulated by the permit.

(2) On the cancellation of a permit, the permit holder -

(a) must return the permit as soon as practicable to the CEO; and

(b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5 - When a permit is required

3.13 Activities needing a permit

(1) A person must not without a permit –

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(a) subject to subclause (3), hire local government property;

(b) advertise anything by any means on local government property;

(c) erect, on local government property, a structure for public amusement or for any performance, whether for gain or otherwise;

(d) teach, coach or train, for profit, any person on a beach, in a pool area or in an indoor recreation facility which is local government property;

(e) carry on any trading on local government property unless the trading is conducted -

(i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on in accordance with the permit; or

(ii) by a person who has a licence or permit to carry on trading on local government property under any written law;

(f) unless an employee of the Shire in the course of her or his duties or on an area set aside for that purpose -

(i) drive or ride or take any vehicle on to local government property; or

(ii) park or stop any vehicle on local government property;

(g) conduct a function on local government property ;

(h) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;

(i) light a fire on local government property except in a facility provided for that purpose;

(j) parachute, hang glide, abseil or base jump from or on to local government property;

(k) erect a building or a refuelling site on local government property;

(l) make any excavation on or erect or remove any fence on local government property;

(m) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;

(n) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;

(o) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly, or

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(p) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property.

(2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.

(3) The CEO or an authorised person may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.14 Permit required to camp outside a facility

(1) In this clause –

"facility" has the meaning given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

(2) This clause does not apply to a facility operated by the Shire.

(3) A person must not without a permit -

(a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or

(b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.

(4) The maximum period for which the CEO or an authorised person may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

3.15 Permit required for possession and consumption of liquor

(1) A person must not, on local government property, consume any liquor or have in her or his possession or under her or his control any liquor, unless –

(a) that is permitted under the *Liquor Control Act 1988*; and

(b) a permit has been obtained for that purpose.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 6 - Responsibilities of permit holder

3.16 Responsibilities of permit holder

A holder of a permit must, in respect of local government property to which the permit relates -

(a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;

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(b) comply with a direction from the CEO or an authorised person to take the action specified in the direction for the purpose of maintaining public safety;

(c) leave the local government property in a clean and tidy condition after its use;

(d) report any damage or defacement of the local government property to the CEO or an authorised person; and

(e) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose.

Part 4 - Behaviour on all local government property

Division 1 - Behaviour on and interference with local government property

4.1 Behaviour which interferes with others

A person must not, in or on any local government property, behave in a way which -

(a) is likely to interfere with the enjoyment of a person who might use the property or who might otherwise lawfully be on the property; or

(b) interferes with the enjoyment of a person using, or otherwise lawfully on, the property.

4.2 Behaviour detrimental to property

(1) A person must not in or on local government property, behave in a way that is or might be detrimental to the property.

(2) In subclause (1) –

"detrimental to the property" includes –

(a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and

(b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

4.3 Fauna

(1) A person must not take, injure or kill any fauna that is on or above any local government property, unless that person is authorised to do so under a written law or by the CEO or an authorised person.

(2) In this clause –

"animal" means any living thing that is not a human being or plant; and

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"fauna" means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal –

(a) any class of animal or individual member;

(b) the eggs or larvae; or

(c) the carcass, skin, plumage or fur.

4.4 Flora

(1) Unless authorised to do so under a written law or with the written approval of the CEO or an authorised person, a person must not –

(a) remove, damage or interfere with any flora that is on or above any local government property; or

(b) plant or deposit any flora on local government property.

(2) In this clause –

"flora" means all vascular plants, seeds and other flora, whether living or dead.

4.5 Intoxicated persons not to enter local government property

A person must not enter or remain on local government property while under the influence of liquor or a prohibited drug.

4.6 No prohibited drugs

A person must not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

4.7 Refusal of entry and removal

(1) If the CEO or an authorised person considers that a person has behaved in a manner contrary to the provisions of this Part, the CEO or authorised person may –

(a) refuse to allow that person to enter local government property; and

(b) if the person is on local government property, direct the person to leave the local government property.

(2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.

(3) If a person fails to comply with subclause (2), the CEO or an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

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4.8 Animals

(1) A person must not—

(a) tether any animal to a tree, shrub, tree guard, wall or fence; or

(b) permit any animal to enter upon or into any local government property,

unless authorised by a permit.

(2) The CEO or an authorised person may, by the placement of an approved sign, prohibit dogs from being in a children's playground or in the vicinity of a children's playground.

(3) This clause does not apply to a guide dog used for the assistance of visually impaired persons and is subject to the provisions of section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*.

4.9 Waste

(1) A person must not deposit or discard waste on local government property except—

(a) in a place or receptacle set aside by the CEO or an authorised person for that purpose and subject to any conditions that may be specified on the receptacle or a sign, such as a condition in relation to the type of waste that may be deposited; or

(b) at the Busselton Waste Facility, Rendezvous Road Busselton and the Dunsborough Waste Facility, Vidler Road Dunsborough, and subject to directions issued from time to time by the CEO or an authorised person for the orderly and proper use of those waste facilities in relation to hours of business, separation of waste into designated receptacles, prohibition of the deposit of certain types of refuse or waste, and conduct of persons or persons in charge of vehicles while on the site.

4.10 Glass containers

Unless authorised by a permit or by the CEO or an authorised person, a person must not take a glass container—

(a) within 5m of the edge of a swimming pool on local government property;

(b) on to a children's playground; or

(c) within any area of local government property as indicated by a sign.

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Division 2 - Signs

4.11 Signs

(1) The CEO or an authorised person may erect a sign on local government property –

(a) specifying any conditions of use which apply to that property; or

(b) for any other purpose relevant to this local law, including giving notice of a breach of clause 4.4 and substituting a sign for flora that has been removed, damaged or interfered with contrary to clause 4.4.

(2) A person must comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is –

(a) not to be inconsistent with any provision of this local law or any determination; and

(b) to be for the purpose of giving notice of the effect of a provision of this local law.

Part 5 - Matters relating to particular local government property

Division 1 - Swimming pool areas

5.1 When entry must be refused

(1) A Manager or an authorised person must refuse admission to any person who –

(a) in her or his opinion is –

(i) under the age of 10 years and who is unaccompanied by a responsible person over the age of 12 years;

(ii) under the age of 10 years and who is accompanied by a responsible person over the age of 12 years where the responsible person is incapable of or not providing, adequate supervision of or care for that person;

(iii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or

(iv) under the influence of liquor or a prohibited drug; or

(b) is to be refused admission by the CEO or an authorised person for breaching a clause of this local law.

(2) If a person referred to in paragraph (a) or (b) of subclause (1) is in a pool area, a Manager or an authorised person must –

(a) direct the person to leave; and

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(b) if the person refuses or fails to leave, remove the person or arrange for the person to be removed, from the pool area.

5.2 Consumption of food or drink may be prohibited

A person must not consume any food or drink in an area where consumption is prohibited by a sign.

Division 2 - Beaches

5.3 Powers of authorised persons or surf life saving club members

(1) An authorised person employed by the Shire may perform all or any of the following functions in relation to a beach –

(a) patrol any beach;

(b) carry out any activity on any beach;

(c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;

(d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and

(e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.

(2) Subject to sub clause (3), the CEO may, where the power to appoint authorised persons has been delegated under section 5.42 of the Act, appoint under section 9.10 of the Act a member or members of a surf life saving club to perform all or any of the functions listed in subclause (1).

(3) A person appointed by the CEO under subclause (2) must have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorised.

(4) Under subclause (2), the CEO may appoint members generally, or in relation to particular times, days or months.

5.4 Authority of Shire employee to prevail

If the CEO has authorised a person under clause 5.3(1) and a member of a surf life saving club under clause **Error! Reference source not found.** in relation to the same beach, where they could perform a function referred to in clause 5.3(1) contemporaneously, the authority of an authorised person employed by the Shire under clause 5.3(1) is to prevail.

5.5 Persons to comply with signs and directions

A person must -

(a) not act in contravention of any sign erected on a beach under clause 5.3(1)(c);

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(b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained from the club permission to enter;

(c) comply with any direction given under clause 5.3(1)(c) or 5.3(1)(e); and

(d) not interfere with, obscure, obstruct, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

Division 3 - Fenced or closed property

5.6 No entry to fenced or closed local government property

A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorised to do so by the CEO or an authorised person.

Division 4 - Toilet blocks and change rooms

5.7 Only specified gender to use entry of toilet block or change room

(1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by –

(a) females, then a person of the male gender must not use that entry of the toilet block or change room;

(b) males, then a person of the female gender must not use that entry of the toilet block or change room; or

(c) families, then persons who are not immediate members of a family must not use that entry of the toilet block or change room where it is already being used by a different family.

(2) Clause 5.7(1)(a) and (b) does not apply to children under the age of 6 years when accompanied by a parent or guardian.

5.8 Hire of lockers

(1) A person may hire a locker in or near a changeroom for the purpose of safekeeping articles on the conditions that -

(a) it is the responsibility of the person hiring the locker to lock the locker once the articles to be stored are placed in the locker and to return the key to the attendant; and

(b) on receiving a receipt given in respect of the hire of the locker, an attendant is to hand to that person the key for the locker described in the receipt in order to remove the articles from the locker.

(2) A person must not store in any locker a firearm or offensive weapon or any article or substance that has been unlawfully acquired or which is a substance or article within the meaning of 'dangerous goods' under the *Dangerous Goods Safety Act 2004*.

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(3) An attendant or authorised person may open and inspect the contents of a locker at any time, where the attendant or authorised person reasonably suspects that a breach of this local law has occurred.

5.9 Unclaimed property in locker

(1) If an article in a locker is not claimed or collected within 48 hours after the date of hire, the article may be removed by an attendant or authorised person.

(2) An attendant or authorised person must record in the Unclaimed Property Register, with respect to each article removed from a locker –

(a) a description of the article removed;

(b) the time and date the article was removed; and

(c) the time and date recorded on the original receipt.

(3) An attendant or authorised person must ensure that an article removed from the locker is stored at the place determined by the CEO or an authorised person.

(4) An attendant or authorised person may deliver to a person an article recorded in the Unclaimed Property Register on receiving –

(a) satisfactory evidence of the person's right to obtain the article;

(b) an accurate description of the article being claimed; and

(c) payment of any outstanding fees or storage charges.

(5) A person who receives delivery of an article form the Unclaimed Property Register must, by way of acknowledging receipt of the article, write his or her name and address and sign his or her name in the Unclaimed Property Register.

5.10 Use of shower or bath facilities

A person may use a shower or bath facility in changerooms only on conditions that –

(a) the facilities must be used by the person only for the purpose of cleansing, bathing and washing themselves;

(b) use of the facilities must be restricted to a maximum period of 15 minutes or such lesser time as required by an attendant; or

(c) the facilities must not be used for the purpose of laundering or washing any clothing or other articles.

Part 6 - Fees for entry on to local government property

6.1 No unauthorised entry to function

(1) A person must not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except –

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(a) through the proper entrance for that purpose; and

(b) on payment of the fee chargeable for admission at the time.

(2) The CEO or an authorised person may exempt a person from compliance with subclause (1)(b).

Part 7 - Objections and Review

7.1 Objection and appeal rights

Division 1 of Part 9 of the Act applies to a decision under this local law to grant, renew, amend or cancel a permit or consent.

Part 8 - Miscellaneous

8.1 CEO and authorised person to be obeyed

A person on local government property must obey any lawful direction of the CEO or an authorised person and must not in any way obstruct or hinder the CEO or an authorised person in the execution of her or his duties.

8.2 Persons may be directed to leave local government property

The CEO or an authorised person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

8.3 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the CEO or an authorised person in any manner he or she thinks fit.

8.4 Decency of dress

Where an authorised person considers that the clothing of any person on local government property is not proper and adequate to prevent indecent exposure, the authorised person may order that person to put on adequate clothing and that person is to comply with the order immediately.

8.5 False or misleading statement

A person must not make a false or misleading statement in connection with an application for a permit under clause 3.2 under this local law.

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Part 9 - Enforcement

Division 1 - Notices

9.1 Definition

In this Division –

"costs" of the Shire include its administrative costs.

9.2 Damage to local government property

If a person unlawfully removes, damages or interferes with local government property, the CEO or an authorised person may, give the person a notice under this Division.

9.3 Breach of a permit

If a permit holder breaches a condition of the permit, or fails to comply with a direction under clause 3.16(b), the CEO or an authorised person may, give the person a notice under this Division.

9.4 Shire may undertake requirements of notice

(1) If a person fails to comply with a notice referred to in clause 9.2, the Shire may—

(a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference; and

(b) recover from the person, as a debt, the costs of doing so.

(2) If a person fails to comply with a notice referred to in clause 9.3, the Shire may—

(a) take whatever remedial action it considers appropriate to put the Shire in the position it would have been in if the breach or failure had not occurred; and

(b) recover from the person, as a debt, the costs of doing so.

9.5 Notice requirements

A notice under this Division must –

(a) be in writing;

(b) specify the reason for giving the notice, the work or action that is required to be undertaken and the time within which it is to be undertaken; and

(c) be given to the person referred to in clause 9.2 or 9.3, as the case may be.

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9.6 Offence to fail to comply with notice

A person who fails to comply with a notice given to him or her under this local law commits an offence.

9.7 Shire may undertake requirements of notice

If a person fails to comply with a notice given to him or her under this local law, the CEO or an authorised person may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs of doing so.

Division 2 - Offences and penalties

9.8 Offences and general penalty

(1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding $5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding $500 for each day or part of a day during which the offence has continued.

9.9 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is the amount specified adjacent to the clause in Schedule 1.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, the Shire should be satisfied that –

(a) commission of the prescribed offence is a relatively minor matter; and

(b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

9.10 Form of notices

(1) For the purposes of this local law –

(a) 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 that of Form 1 in Schedule 1 of the Regulations;

(b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

(c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

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(2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

9.11 Evidence of a determination

(1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.

(2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.

(3) Subclause (2) does not make valid a determination that has not been properly made.

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Schedule 1 – Prescribed offences

CLAUSE	DESCRIPTION	MODIFIED PENALTY $
2.4	Failure to comply with determination	$200
3.6	Failure to comply with conditions of permit	$200
3.13(1)	Failure to obtain a permit	$200
3.14(3)	Failure to obtain permit to camp outside a facility	$200
3.15(1)	Failure to obtain permit for liquor	$200
3.16	Failure of permit holder to comply with responsibilities	$200
4.2(1)	Behaviour detrimental to property	$200
4.3	Taking, Injuring, Killing any Fauna	$300
4.4	Removing, damaging, interfering, with any flora or planting or depositing any flora	$300
4.5	Under influence of liquor or prohibited drug	$200
4.7(2)	Failure to leave local government property	$200
4.8(1)	Tethering animal to tree etcetera or permitting animal to enter local government property	$200
4.9	Depositing or discarding waste on local government property	$200
4.10	Taking a glass container within 5m of pool, to a children's playground or within local government property as indicated by a sign	$200
4.11(2)	Failure to comply with sign on local government property	$200
5.2	Consuming food or drink in prohibited area	$200
5.5	Failure to comply with sign or direction on beach	$200
5.6	Unauthorised entry to fenced or closed local government property	$200
5.7	Gender not specified using entry of toilet block or change room	$200
6.1(1)	Unauthorised entry to function on local government property	$200
8.5	Making a false or misleading statement	$200
9.6	Failure to comply with notice	$200

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Schedule 2 - Determinations

The following determinations are to be taken to have been made by the Shire under clause 2.1.

Part 1 - Preliminary

1.1 Definitions

In these determinations unless the context otherwise requires –

"local law" means the *Local Government Property Local Law* made by the Shire.

1.2 Interpretation

Where a term is used but not defined in a determination and that term is defined in this local law then the term is to have the meaning given to it in this local law.

Part 2 - Application

2.1 Vehicles on local government property

(1) Unless under the authority of a permit or determination, a person must not take or cause a vehicle to be taken onto or driven on local government property unless –

(a) the local government property is clearly designated as a road, access way or car park;

(b) the vehicle is driven by a Shire employee, authorised person or contractor engaged by the Shire, who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;

(c) the person is driving an emergency vehicle in the course of his or her duties; or

(d) the vehicle is a motorised wheelchair.

(2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour, or in such a manner as to cause danger to any person.

2.2 Motorised model aeroplanes, toys or ships

A person must not use, launch or fly a motorised model aeroplane, toy, ship, glider or rocket that is propelled by mechanical, hydraulic, combustion or pyrotechnic means on or from local government property except where a permit or a determination specifies a particular local government property.

2.3 Children's playgrounds

(1) The Council may set aside a public reserve or any portion of a public reserve as a children's playground.

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(2) The Council may limit the ages of persons who are permitted to use a children's playground and the CEO or an authorised person may erect a sign under clause 2.3 of this local law to that effect on or in the immediate vicinity of the playground.

(3) A person over the age specified in that sign, other than a person having the charge of a child or children in the playground, must not use a playground or interfere with the use by children of the playground.

2.4 Launching and retrieval of boats

A person must not take onto, launch from, or retrieve a boat on local government property except where a permit or a determination specifies a particular local government property unless –

(a) the person is a Shire employee, authorised person or contractor engaged by the Shire and who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;

(b) the person is in charge of a boat engaged in rescue services or dealing with an emergency;

(c) the local government property is a boat ramp that is delineated by a sign to that effect.

2.5 Activities prohibited on local government property

(1) A person is prohibited from playing or practising archery, pistol or rifle shooting on local government property except on land which is reserved by the Shire for that purpose, or as otherwise provided by determination or permit.

(2) A person is prohibited from playing or practising golf, on local government property except on the Dunsborough and Districts Country Club, Reserve No. 34894.

(3) A person must not use or ride a bicycle or wheeled recreational device, skateboard, or sand board on any local government property except on an area specified by a sign erected on the local government property.

(4) A person must not use or take on to, a spear gun, hand spear, gidgie or similar device on any local government property.

2.6 Fish cleaning

A person must not shell, gut, scale or clean fish, shellfish or any other animal, or deposit or discard waste from any fish, shellfish or other animal on local government property.

2.7 Waste

A person must not deposit or discard waste on local government property except –

(a) in a place or receptacle set aside by the CEO or an authorised person for that purpose and subject to any conditions that may be specified on the receptacle or sign in relation to the type of waste that may be deposited or other conditions; or

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(b) at the Busselton Waste Facility, Rendezvous Road Busselton and the Dunsborough Waste Facility, Vidler Road Dunsborough, and subject to directions issued from time to time by the CEO or an authorised person for the orderly and proper use of those waste facilities in relation to hours of business, separation of waste into designated receptacles, prohibition of the deposit of certain types of refuse or waste, and conduct of persons or persons in charge of vehicles while on the site.

Dated 16 February 2010

The Common Seal of the Shire of Busselton was affixed by authority of a resolution of the Council in the presence of -

MATTHEW SMITH, A/Chief Executive Officer
IAN STUBBS, President

Notes

This is a compilation of the *Shire of Busselton Local Government Property Local Law 2010* and includes any amendments referred to in the following table.
Local laws and amendments come into operation on the 14th 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
Shire of Busselton Local Government Property Local Law 2010	*9 March 2010*
Shire of Busselton Local Government Property Amendment Local Law 2011	*22 March 2011*

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LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

BUSSELTON REGIONAL AIRPORT LOCAL LAW 2012

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

BUSSELTON REGIONAL AIRPORT LOCAL LAW 2012

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SCHEDULE 1—PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

BUSSELTON REGIONAL AIRPORT LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and under all other enabling powers, the Council of the City of Busselton resolved on 25 January 2012 to make this local law.

PART 1—PRELIMINARY

1.1 Citation

This is the *Busselton Regional Airport Local Law 2012.*

1.2 Commencement

This local law commences on the 14th day after the day on which it is published in the *Government Gazette.*

1.3 Application

This local law applies to and in respect of the Airport Land.

1.4 Definitions

In this local law—

Act means the *Local Government Act 1995*;

Air Navigation Laws means the *Air Navigation Act 1920* (Commonwealth), the *Air Navigation Regulations* (Commonwealth), the *Air Navigation Act 1937* (WA) and other laws relating to air navigation;

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air;

Airport means the Busselton Regional Airport;

Airport Land means the land, within the district, on which the Airport is located;

Airport Manager means the person employed or engaged by the City to control and manage the Airport;

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

CEO means the Chief Executive Officer of the City;

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

Local Government Property Local Law means the City's *Local Government Property Local Law 2010*, published in the *Government Gazette* on 9 March 2010;

movement, in relation to an aircraft, includes any action involving, or in relation to, the take-off or landing of an aircraft;

owner, in relation to an aircraft, includes a lessee, charterer and person for the time being in the possession or control of the aircraft;

permit means a permit under the Local Government Property Local Law;

permit holder means the holder of a permit;

prohibited chemical means any one or more of the following chemicals—

(a) Dieldrin;
(b) Aldrin;
(c) Chlordane;
(d) MCPA;
(e) 2,4-D;
(f) 2,4-DB;
(g) 2,4,5-T;

(h) Dicamba;
(i) Fenoprop (2, 4,5-TP);
(j) 4 CPA;
(k) Picoram;
(l) D.D.T. (dichlorodiphenyltrichloroethane); and
(m) any other chemical specified in a determination made under the Local Government Property Local Law;

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

taxi means a taxi operating under the *Taxi Act 1994*.

1.5 Application of Local Government Property Local Law

The *Local Government Property Local Law* applies to the Airport as if the Airport Land were ."local government property" for the purposes of that local law.

PART 2—AIRCRAFT

2.1 Rights of aircraft owners

Subject to clause 2.3, the owner of an aircraft may use the Airport, in accordance with the Air Navigation Laws, for—

(a) the landing, servicing and departure of the aircraft; and
(b) the embarkment and disembarkment of passengers and freight on and from the aircraft.

2.2 Requirement for a permit by flight training operators

(1) A flight training operator—

(a) must not, without a permit, use the Airport; and
(b) may use the Airport only in accordance with the terms and conditions of a permit.

(2) Subclause (1) does not apply to—

(a) the Royal Flying Doctor Service, or an employee or agent of the Royal Flying Doctor Service;
(b) a person who needs to land an aircraft at the Airport in an emergency;
(c) a person who uses the Airport under and in accordance with a written agreement with the City; and
(d) a person who has been exempted from subclause (1) by the Airport Manager.

(3) In this clause—

(a) **flight training operator** means an owner of an aircraft who uses the aircraft, or allows the aircraft to be used, for training purposes; and

Note: Under clause 1.4, an "owner", in relation to an aircraft, includes a lessee, charterer and person for the time being in possession or control of the aircraft.

(b) the **use of the Airport** by a flight training operator includes the use of the Airport for landing or taking off purposes.

(4) For the avoidance of doubt, the conditions that may be imposed on a permit include, in addition to the examples listed in Part 3 of the *Local Government Property Local Law*, conditions in respect of the use of the Airport such as—

(a) when the use may occur; and
(b) type of aircraft.

2.3 Closure of Airport

The Airport Manager or an authorised person may close all or part of the Airport if he or she considers that it is necessary to do so for safety or other operational reasons.

PART 3—CONDUCT OF BUSINESS

The Local Government Property Local Law prohibits or restricts the carrying out of various activities, including business activities, on local government property (which includes the Airport). Among the activities that cannot be carried out without a permit are—

(a) advertising;
(b) trading; and
(c) the conduct of functions (see clause 3.13(1)).

3.1 Hire vehicles

Subject to, and without limiting the generality of, the *Local Government Property Local Law*, a person must not without a permit—

(a) hire out self-drive vehicles; or
(b) solicit, or conduct the business of, the hiring out of self-drive vehicles.

3.2 Taxis

A person may operate a taxi without the need for a permit under the *Local Government Property Local Law*.

PART 4—ENTRY RESTRICTIONS

4.1 General restrictions

Other than with the written approval of the Airport Manager or an authorised person, a person must not enter or remain on the Airport Land unless that person—

(a) is authorised to do so under this local law;

(b) is carrying out activities under and in accordance with a permit or a written agreement with the City;

(c) is a passenger, or intending passenger, in an aircraft lawfully using the Airport; or

(d) is a person greeting or seeing off a passenger, or intending passenger, in an aircraft lawfully using the Airport.

4.2 Temporary prohibitions or restrictions on access

(1) For safety or other operational reasons, the Airport Manager or the CEO may, on a temporary basis, by written notice set aside any part or parts of the Airport in which access is to be prohibited either absolutely or subject to exceptions as specified in the notice, by reference, for example, to–

(a) a person, or class of persons;

(b) a vehicle, or class of vehicles;

(c) an aircraft, or class of aircraft; or

(d) goods, or class of goods.

(2) A prohibition or exception under subclause (1) may be subject to terms and conditions and, in that case, the terms and conditions are also to be specified in the notice.

(3) A copy of the notice under this clause is to be placed on a noticeboard exhibited to the public at the City's offices.

(4) A person must comply with a notice.

4.3 Signs

The Airport Manager is to ensure that appropriate signs are erected to give notice of the effect of a determination (under the *Local Government Property Local Law*) or a written notice (under clause 4.2).

4.4 Animals

(1) This clause does not apply where—

(a) a blind person brings a guide dog accompanying that person to the Airport; or

(b) a person brings to the Airport an animal, or has the possession and control at the Airport of an animal, that is, is to be, or has been, air freighted to or from the Airport—provided that person exercises effective control over the animal at all times.

(2) A person must not, without the prior written approval of the Airport Manager or an authorised person—

(a) bring an animal to the Airport;

(b) permit an animal to stray into the Airport; or

(c) have an animal in his or her possession or control at the Airport.

(3) Where there is a breach of subclause (2), or where an animal is otherwise found at the Airport, the Airport Manager or an authorised person—

(a) may, using all reasonable means, capture and remove the animal from the Airport; and

(b) may, where the Airport Manager or authorised person considers that the animal is or may be a danger to persons or property, destroy the animal.

4.5 Chemicals

(1) A person must not, without the written approval of the Airport Manager or an authorised person, bring or permit to be brought onto the Airport a prohibited chemical.

(2) For the purpose of determining whether there has been a breach of subclause (1), the Airport Manager or an authorised person may direct any person to provide a sample, or allow a sample to be taken, of any container or other thing within the possession or control of that person.

(3) A person must comply with a direction under subclause (2).

4.6 Inappropriate behaviour

In addition to the requirements under Part 4 of the *Local Government Property Local Law*, a person—

(a) must comply with a request or direction from the Airport Manager or an authorised person; and

(b) must not use any building, structure or facility for any purpose other than that for which it was provided or intended.

Notes—

1. *Under Part 4 of the Local Government Property Local Law, the CEO or an authorised person has power to direct a person who fails to comply with the requirements of that Act to leave and, if that person fails to leave, the CEO or authorised person may remove the person or arrange for the person to be removed.*

2. *The behaviour regulated by Part 4 includes—*
   (a) behaviour that interferes or is likely to interfere with others (clause 4.1);
   (b) behaviour that is detrimental to property (clause 4.2);
   (c) damage to fauna or flora (clauses 4.3 and 4.4); and
   (d) being under the influence of liquor or taking a prohibited drug (clauses 4.5 and 4.6).

PART 5—OBJECTIONS AND REVIEW

5.1 Objection and review rights

Division 1 of Part 9 of the Act applies to a decision under this local law to grant, renew, amend or cancel a permit or other authorisation.

PART 6—ENFORCEMENT

Division 1—Notices

6.1 Definition

In this Division—

"costs" of the City include its administrative costs.

6.2 Damage to Airport property

If a person unlawfully removes, damages or interferes with property within the Airport that is owned by, or within the care, control or management of the City, the Airport Manager or an authorised person may, at his or her option—

(a) replace the property, or reinstate the property to the state it was in before the removal, damage or interference, and recover, from that person, as a debt, the costs of doing so; or

(b) give the person a notice under this Division.

6.3 Breach of a permit

If a permit holder breaches a condition of the permit, or fails to comply with a direction under clause 3.16(b) of the *Local Government Property Local Law*, the Airport Manager or an authorised person may, at his or her option, either—

(a) take whatever remedial action he or she considers to be appropriate to put the City in the position it would have been in if the breach or failure had not occurred, and to recover from the permit holder, as a debt, the costs of doing so; or

(b) give the permit holder a notice under this Division.

6.4 Notice requirements

A notice under this Division must—

(a) be in writing;

(b) specify the reason for giving the notice, the work or action that is required to be undertaken and the time within which it is to be undertaken; and

(c) be given to the person referred to in clause 6.2 or 6.3, as the case may be.

6.5 Offence to fail to comply with notice

A person who fails to comply with a notice given to him or her under this local law commits an offence.

6.6 City may undertake requirements of notice

If a person fails to comply with a notice given to him or her under this local law, the Airport Manager or an authorised person may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs of doing so.

Division 2—Offences and penalties

6.7 Offences and general penalty

(1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding $5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding $500 for each day or part of a day during which the offence has continued.

6.8 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is the amount specified adjacent to the clause in Schedule 1.

(3) Before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person must be satisfied that—

(a) the commission of the prescribed offence is a relatively minor matter; and

(b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

6.9 Form of notices

For the purposes of this local law—

(a) 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 that of Form 1 in Schedule 1 of the Regulations;

(b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

(c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1

PRESCRIBED OFFENCES

[clause 6.8]

Clause	Description	Modified Penalty $
2.2(1)(a)	Using Airport without a permit	$400
2.2(1)(b)	Non-compliance with terms or conditions of a permit	$300
3.1	Hire/operate/solicit self drive vehicles	$200
4.1	Entering or remaining on Airport Land	$300
4.2	Failure to comply with a notice	$300
4.4(2)	Bringing an animal onto Airport Land	$200
4.6	Inappropriate behaviour	$300
6.5	Failure to comply with a notice	$300

Dated: 14 February 2012.

The common seal of the City of Busselton was affixed by authority of a Council resolution in the presence of—

IAN W. STUBBS, Mayor.
MICHAEL S. L. ARCHER, Chief Executive Officer.

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

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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

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

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

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

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

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

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

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

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

local government means the City;

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

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

month means calendar month;

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

owner -

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

(b) in relation to any other holiday home, means the person who is the owner of the holiday home;

premises, in relation to a holiday home, means -

(a) if the holiday home is a single house situated on a single lot, all of the land that comprises that lot; or

(b) if the holiday home is a grouped dwelling, all of the land that is set aside for the exclusive use by the owner of that grouped dwelling;

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

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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 -

(a) unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home;

(b) unless the dwelling is registered as a holiday home under this local law; and

(c) other than in accordance with -

(i) the conditions of the registration; and

(ii) the provisions of this local law.

(2) Registration does not affect the obligations of an owner or a manager, or any other person, to comply with a relevant law.

2.2 Application for registration

(1) An application for registration of a holiday home must -

(a) be in writing;

(b) be in the form determined by the CEO;

(c) be made by, or on behalf of, the owner of the holiday home;

(d) be signed by the owner of the holiday home;

(e) nominate a natural person, who may or may not be the owner, to be the proposed manager of the holiday home;

(f) nominate a natural person, who may or may not be the owner, to be the proposed acting manager of the holiday home;

(g) contain the details specified in clause 2.3; and

(h) be forwarded to the CEO, together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.

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(2) The CEO or an authorised person may require an applicant to give local public notice of the application for registration.

(3) The local government may refuse to consider an application for registration which is not in accordance with subclause (1).

2.3 Application details

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

(a) a site plan of the premises;

(b) a floor plan of the holiday home;

(c) the location and title details of the holiday home;

(d) the number of bedrooms proposed to be used at any time for short stay accommodation;

(e) the maximum number of occupants to be accommodated at any time in the holiday home;

(f) the details of any proposed on-site parking bays on the premises;

(g) the name, address and contact details of the owner of the holiday home and his or her phone number at which he or she may be contacted;

(h) in relation to each of the proposed manager and the proposed acting manager –

(i) confirmation that he or she accepted appointment by the owner as manager (which may be contingent on the Council's approval of the application for registration); and

(ii) his or her name, address and contact details, including the phone number at which he or she may be contacted at any time of the day or night;

(i) an undertaking from the proposed manager of the holiday home that he or she –

(i) is to have the day-to-day management of the holiday home; and

(ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home;

(j) an undertaking from the proposed acting manager of the holiday home that, while undertaking the functions of the manager, he or she –

(i) is to have the day-to-day management of the holiday home; and

(ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home; and

(k) any other information requested by the CEO or an authorised person that is reasonably related to the application for registration.

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2.4 Determining an application

(1) The Council may –

(a) approve an application for registration unconditionally or subject to conditions; or

(b) refuse to approve an application for registration.

(2) If the Council approves an application for registration, it is to issue to the applicant a certificate of registration in the form prescribed in Schedule 1 or in a similar form as determined by the Council from time to time.

(3) If the Council refuses to approve an application for registration, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on registration, or which are to be taken to be imposed on registration, that clause does not limit the power of the Council to impose other conditions on registration under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for registration may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

2.5 Relevant considerations in determining an application for registration

(1) In determining an application for registration, the Council is to have regard to –

(a) the conditions of any planning approval that has been granted under the Local Planning Scheme to use the dwelling as a holiday home;

(b) the provisions of this local law;

(c) any relevant policy of the City; and

(d) any other matter that the Council reasonably considers to be relevant in the circumstances of the case.

(2) The Council must refuse to approve an application for registration if there is no current planning approval under the Local Planning Scheme to use the dwelling or the premises as a holiday home.

(3) The Council may refuse to approve an application for registration on any one or more of the following grounds –

(a) that the owner, the proposed manager or the proposed acting manager has committed a breach of any provision of this local law or of any other relevant law;

(b) that the owner, the proposed manager or the proposed acting manager is not a fit and proper person in relation to the proposed holiday home; or

(c) any other ground that the Council may reasonably consider to be relevant in the circumstances of the case, including a ground arising from the Council's consideration of the factors set out in clause 2.5(1).

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Division 2 - Conditions

2.6 Conditions which may be imposed

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

(a) the payment of a fee imposed by the Council under sections 6.16 to 6.19 of the Act;

(b) the commencement and duration of registration;

(c) the grant of any other approval, in respect of the holiday home, that –

(i) is required under any written law; or

(ii) that may be required by the City under any written law;

(d) the maximum number of occupants who may be on the premises at any time;

(e) the maximum number of attendants who may be on the premises during specified times;

(f) the number of on-site parking bays at the premises for the exclusive use of attendants;

(g) the maximum number of vehicles that may be parked on the premises at any time;

(h) the location and number of bedrooms to be used by the occupants;

(i) measures to ensure effective communication to attendants of –

(i) the conditions of registration; and

(ii) emergency management procedures to apply during an emergency or potential emergency such as a fire emergency or during a natural disaster such as a flood, cyclone or earthquake;

(j) the provision to the CEO or an authorised person, by the owner or the manager, of details of any proposed change, or any change, to –

(i) the owner, the manager or the acting manager ; or

(ii) the contact details (including the phone and email contacts) of the owner, the manager or the acting manager;

(k) ensuring that each of the manager, and the acting manager while undertaking the functions of the manager –

(i) is contactable by telephone, at any time of the day or night, using his or her contact details provided to the City; and

(ii) will respond, within a reasonable time but in any event within 24 hours to any contact relating to the holiday home; and

(l) tenancy agreements with occupants that would enable the manager to comply with his or her obligations under clause 3.2.

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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 –

(a) if the manager gives the City prior written notice of the period during which the acting manager is to undertake the functions of the manager; and

(b) during the period specified in that notice – but not exceeding 30 days in any calendar year unless otherwise determined in writing by the Council.

(2) The provisions of this local law that apply to the manager are to be taken to apply to the acting manager while he or she is undertaking the functions of the manager.

2.12 Replacement of manager

(1) This clause applies where –

(a) the owner is not also the manager of a registered holiday home; and

(b) the owner wishes to replace the manager either –

(i) with a new manager; or

(ii) by personally taking over the role of manager.

(2) An application to replace a manager must–

(a) be made before the expiry of the registration;

(b) be made in writing;

(c) be signed by the owner and, if applicable, the proposed new manager;

(d) include the details as are required under clause 2.3(h);

(e) include the undertaking described in clause 2.3(i);

(f) provide such information as the CEO or an authorised person may reasonably require to enable the application to be determined; and

(g) be forwarded to the CEO, together with the fee imposed by the Council under sections 6.16-6.19 of the Act.

(3) The Council may –

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(a) approve an application to replace a manager, unconditionally or subject to conditions; or

(b) refuse to approve an application to replace a manager,.

(4) Where the Council approves an application to replace a manager,, the replacement is to be effected by –

(a) an endorsement on the certificate of registration signed by the CEO or an authorised person; or

(b) the CEO or an authorised person issuing to the transferee a fresh certificate of registration.

2.13 Production of certificate of registration

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

2.14 Cancellation

(1) A registration is taken to have been cancelled if, and on the date that –

(a) the owner whose name appears on the certificate of registration ceases to be the owner of the holiday home; or

(b) the manager whose name appears on the certificate of registration ceases to be the manager of the holiday home – unless an application to replace that manager has been approved by the Council under clause 2.12.

(2) A registration may be cancelled by the Council if –

(a) the owner, manager or an attendant has not complied with –

(i) a condition of the registration;

(ii) a provision of this local law; or

(iii) any relevant law; or

(b) the Council is satisfied, on the basis of complaints or other evidence of excessive noise, antisocial behaviour or other nuisances, that the continuing operation of the holiday home is not in the best interests of the City.

(3) If a registration is cancelled, the CEO must give the owner and the manager written notice of the cancellation.

(4) Cancellation under subclause (2) takes effect when the written notice is given to the owner and manager.

(5) If a registration is cancelled –

(a) the owner must return the certificate of registration to the CEO within 14 days of being given the written notice of cancellation; and

(b) the City is not required to refund any part of a fee paid in respect of the cancelled registration.

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Part 3 - Obligations on owners and managers

3.1 Requirement to give notice of any change

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

(a) the details submitted with the application for registration and any application for renewal of registration or for replacement of a manager; or

(b) any condition imposed or varied under clauses 2.6, 2.7, 2.8 and 2.11.

3.2 Breach of a condition by an attendant

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

(a) a condition of registration;

(b) this local law; or

(c) a relevant law.

(2) Within 24 hours of –

(a) the CEO or an authorised person giving written notice to the manager of a breach;

(b) the manager becoming aware of a breach; or

(c) the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that –

(d) the occupant's tenancy is terminated; and

(e) the occupant vacates the holiday home.

3.3 Register of occupants

The manager must –

(a) maintain a register comprising details –

(i) each hirer's name, address, contact details and, if applicable, length of the stay in the holiday home; and

(ii) of each other occupant's name; and

(b) give the CEO or an authorised person such access to the register as may reasonably be required by the CEO or the authorised person for the purpose of administering or enforcing this local law.

3.4 Contacting the manager

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

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

Part 4 - Objections and reviews

4.1 Objection and review rights

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

Part 5 - Enforcement

5.1 Offences and penalties

(1) A person who breaches a provision of this local law commits an offence.

(2) A person who commits an offence is liable -

(a) to a penalty of $5,000; and

(b) if the offence is of a continuing nature, a further penalty of $500 in respect of each day or part of a day during which the offence has continued.

5.2 Prescribed offences

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of clause 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

5.3 Form of notices

(1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is set out in Schedule 1 of the Regulations.

(2) The form of the infringement notice given under section 9.16 of the Act is set out in Form 2 in Schedule 1 of the Regulations.

(3) The form of the notice referred to in section 9.20 of the Act is that set out in Form 3 in Schedule 1 of the Regulations.

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

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

CERTIFICATE OF REGISTRATION

Date…/…./….

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

owned by_____
(name/s of owner/s)

managed by_____ and _____
(name of manager) (name of acting manager)

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

(a) the provisions of the *Holiday Homes Local Law 2012*;

(b) any other relevant law; and

(c) the conditions set out on the back of this certificate.

_____
Signature of CEO/CEO's delegate

Notes:

1. *An application for registration of a holiday home cannot be approved unless planning approval has been granted under the City of Busselton District Town Planning Scheme No. 20 to use the dwelling as a holiday home.*

2. *Registration of a holiday home does not affect the rights and obligations of an owner or occupier under the by-laws of a strata company, including any requirement to obtain approval, or to comply with any restrictions, in connection with the use of a dwelling as a holiday home.*

CONDITIONS OF REGISTRATION

This registration is subject to the following conditions -

1.

2.

3. etc

LEG190006

Schedule 2 - Prescribed offences

[Clause 5.2]

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

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

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

IAN WILLIAM STUBBS,
Mayor

MICHAEL STEPHEN LEE ARCHER,
Chief Executive Officer

Notes

This is a compilation of the *City of Busselton Holiday Homes Local Law 2012* and includes any amendments referred to in the following table.
Local laws and amendments come into operation on the 14th 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

This is an un-official compilation of the *City of Busselton Keeping and Control of Cats Local Law 2014* as it has effect on and after 7 August 2015.
See the Notes at the end for more details.

City of Busselton
Keeping and Control of Cats Local Law 2014

LEG190003

Document Set ID: 2587424
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Local Government Act 1995
Cat Act 2011

CITY OF BUSSELTON
KEEPING AND CONTROL OF CATS LOCAL LAW 2014

Under the powers conferred by the *Cat Act 2011* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Busselton resolved on 29 January 2014 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Busselton Keeping and Control of Cats Local Law 2014.*

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette.*

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Local Law relating to the Keeping and Welfare of Cats*, published in the *Government Gazette* on 16 March 2001 is repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Cat Act 2011*;

Applicant means the occupier of the premises who makes an application for a permit under this local law;

Authorised Person means a person authorised by the local government to perform the functions conferred on an authorised person under this local law;

cat means an animal of the species *felis catus* or a hybrid of that species;

cattery means any premises where more than 2 cats are boarded, housed or trained temporarily, usually for profit, and where the occupier of the premises is not the ordinary keeper of the cats;

CEO means the Chief Executive Officer of the local government;

Council means the Council of the local government;

district means the district of the local government;

effective control in relation to a cat means any of the following methods -

(a) held by a person who is capable of controlling the cat;
(b) securely tethered;
(c) secured in a cage; or
(d) any other means of preventing escape.

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keeper in relation to a cat means any of the following persons—

(a) the owner of the cat as defined in the Act;

(b) a person by whom the cat is ordinarily kept;

(c) a person who has or appears to have immediate custody or control of the cat;

(d) a person who keeps the cat, or has the cat in her or his possession for the time being;

(e) a person who occupies any premises in which a cat is ordinarily kept or ordinarily permitted to live;

(f) a permit holder of a permit which relates to the cat;

(g) the holder of an exemption issued in relation to the cat;

local government means the City of Busselton;

nuisance means behaviour that includes where a cat—

(a) excretes or urinates on premises being premises where the cat is not normally resident;

(b) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;

(c) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land;

(d) interference which causes material damage to land or other property on the land affected by the interference; or

(e) is, or is likely to be, injurious or dangerous to the health of any person or domestic or Australian indigenous animal.

permit means a permit issued by the local government under clause 3.6;

permit holder means a person who holds a valid permit under clause 3.6;

premises includes the following —

(a) land (whether or not vacant);

(b) the whole or part of a building or structure (whether of a permanent or temporary nature); and

(c) a vehicle.

RSPCA means the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia;

Schedule means a schedule to this local law; and

Scheme means a town planning scheme of the local government made by it under the *Planning and Development Act 2005* and its antecedents;

PART 3—PERMITS FOR KEEPING CATS

3.1 Interpretation

In this Part, and for the purposes of applying the definition of "cattery" in Part 3—

cat does not include a cat less than 3 months old.

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3.2 Cats for which permit is required

(1) Subject to subclause (2) a person is required to have a permit –

(a) to keep 3 or more cats on any premises;

(b) to use any premises as a cattery.

(2) A permit is not required under subclause (1) if the premises concerned are—

(a) a refuge of the RSPCA or any other animal welfare organisation;

(b) an animal pound which has been approved by the local government;

(c) a veterinary surgery;

(d) a pet shop; or

(e) a premises with 2 or less cats.

3.3 Application for permit

An application for a permit under clause 3.2 shall be—

(a) be made by an occupier of premises in relation to those premises;

(b) in a form approved by the local government, describing and specifying the number of cats to be kept on the premises;

(c) accompanied by the plans of the premises to which the application relates to the specification and satisfaction of the local government;

(d) accompanied by the consent in writing of the owner of the premises, where the occupier is not the owner of the premises to which the application relates;

(e) accompanied by the application fee for the permit determined by the local government from time to time.

3.4 Refusal to determine application

The local government may refuse to determine an application for a permit if it is not made in accordance with clause 3.3.

3.5 Factors relevant to determination of application

(1) In determining an application for a permit the local government may regard to—

(a) the physical suitability of the premises for the proposed use;

(b) the suitability of the zoning of the premises under any Scheme which applies to the premises for the use;

(c) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;

(d) the structural suitability of any enclosure in which any cat is to be kept;

(e) the likelihood of a cat causing a nuisance, inconvenience or annoyance to the occupiers of adjoining land;

(f) the likely effect on the amenity of the surrounding area of the proposed use;

(g) the likely effect on the local environment, including any pollution or other environment damage which may be caused by the use;

(h) any submissions received under subclause (2) within the time specified in subclause (2); and

(i) such other factors which the Local government may consider to be relevant in the circumstances of the particular case.

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(2) The local government may require an applicant to—
(a) consult with adjoining landowners; and
(b) advise the adjoining landowners that they may make submissions to the local government on the application for the permit within 14 days of receiving that advice, before determining the application for the permit.

3.6 Decision on application

(1) The local government may—
(a) approve an application for a permit in which case it shall approve it subject to the conditions in clause 3.7 and may approve it subject to any other conditions it considers fit; or
(b) refuse to approve an application for a permit.

(2) If the local government approves an application under subclause (1), then it shall issue to the applicant a permit in the form determined by the CEO.

(3) If the local government refuses to approve an application under subclause (1), then it is to advise the applicant accordingly in writing.

3.7 Conditions

(1) Every permit is issued subject to the following conditions—
(a) each cat kept on the premises to which the permit relates shall be registered under the Act;
(b) each cat shall be contained on the premises unless under the control of a person;
(c) the permit holder will provide adequate space for the exercise of the cats;
(d) the premises shall be maintained in good order and in a clean and sanitary condition; and
(e) those conditions contained in Schedule 1.

(2) In addition to the conditions subject to which a permit is to be issued under this clause, a permit may be issued subject to other conditions, as the local government considers appropriate.

(3) The permit holder who fails to comply with a condition of a permit commits an offence.

3.8 Duration of permit

Unless otherwise specified, in a condition on a permit, a permit commences on the date of issue and is valid for a period of 12 months from the date of issue unless and until—
(a) it is revoked; or
(b) the permit holder ceases to reside at the premises to which the permit relates.

3.9 Revocation

The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of a permit.

3.10 Permit not transferable

A permit is not transferable either in relation to the permit holder or the premises.

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PART 4—MISCELLANEOUS

4.1 Giving of a notice

A notice given under this local law may be given to a person—

(a) personally;

(b) by registered mail addressed to the person; or

(c) by leaving it for the person at her or his address.

PART 5—OBJECTIONS AND APPEALS

5.1 Objection and appeal rights

Any person who is aggrieved by the conditions imposed in relation to a permit, the revocation of a permit, or by the refusal of the local government to grant a permit may object to or appeal against the decision under Division 1 of Part 9 of the *Local Government Act 1995*.

PART 6—OFFENCES, DEFENCE AND PENALTIES

6.1 Offences

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, on conviction to a penalty not exceeding $5 000, and if the offence is of a continuing nature, to an additional penalty not exceeding $500 for each day or part of a day during which the offence has continued.

6.2 Prescribed offences

An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 84 of the Act. The amount appearing directly opposite each such offence is the modified penalty in relation to that offence.

6.3 Forms

(1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in Division 4 of Part 4 of the Act.

(2) An infringement notice given under section 62 of the Act is to be in the form of Form 6 of Schedule 1 of the *Cat Regulations 2012*.

(3) A notice sent under section 65 of the Act withdrawing an infringement notice is to be in the form of Form 7 of Schedule 1 of the *Cat Regulations 2012*.

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SCHEDULE 1

ADDITIONAL CONDITIONS APPLICABLE TO PARTICULAR PERMITS

A. Permit to keep 3 or more cats

Additional conditions

(1) The written consent to the application for a permit of the adjoining multiple dwellings has been obtained;

(2) Without the consent of the local government, the permit holder will not substitute or replace any cat once that cat:—

(a) dies;

(b) is permanently removed from the premises.

B. Permit to use premises as a cattery

Additional conditions

(1) All building enclosures must be structurally sound, have impervious flooring, be well lit and ventilated and otherwise comply with all legislative requirements.

(2) There is to be a feed room, wash area, isolation cages and maternity section.

(3) Materials used in structures are to be approved by the local government.

(4) The internal surfaces of walls are, where possible, to be smooth, free from cracks, crevices and other defects.

(5) All fixtures, fittings and appliances are to be capable of being easily cleaned, resistant to corrosion and constructed to prevent the harbourage of vermin.

(6) Wash basin with the minimum of cold water to be available.

(7) The maximum number of cats to be kept on the premises stated on the permit is not to be exceeded.

(8) An entry book is to be kept recording in respect of each cat the—

(a) date of admission;

(b) date of departure;

(c) breed, age, colour and sex; and

(d) the name and residential address of the keeper;

(9) The entry book is to be made available for inspection on the request of an authorised person.

(10) Enclosures are to be thoroughly cleaned each day and disinfected at least once a week to minimise disease.

(11) No sick or ailing cat to be kept on the premises.

(12) Any other matter which in the opinion of the local government is deemed necessary for the health and wellbeing of any cat, or person, or adjoining premises or the amenity of the area (or any part thereof).

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SCHEDULE 2

City of Busselton

Keeping and Control of Cats Local Law 2014

MODIFIED PENALTIES

Item Number	Clause Number	Nature Of Offence	Modified Penalty
3	3.2 (1)	Keeping of 3 or more cats/cattery on premises without permit	$250
4	3.7(3)	Failure to comply with a condition of a permit	$250

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Dated 29 January 2014

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

This is a compilation of the *City of Busselton Keeping of Cats Local Law 2014* and includes any amendments referred to in the following table.
Local laws and amendments come into operation on the 14th 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 Keeping and Control of Cats Local Law 2014	*10 February 2014*
Local Government Amendment Cats Local Law 2015	*24 July 2015*

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6.3 PROPOSED COUNCIL POLICY: MANAGEMENT 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 INDEX	Council Policies
BUSINESS UNIT	Governance 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 Proposed Council policy: Management of Complaints of Alleged Breaches of Behaviour Attachment B Amended Complaints Form

OFFICER RECOMMENDATION

That the Council:

1. **Adopt the proposed Council Policy: Management 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: Management 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 adopted the Code 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: Management of Complaints of Alleged Breaches of Behaviour (the Policy) to deal with alleged breaches of behaviours.

Officers presented a proposed council policy: 'Investigation of Complaints of Alleged Breaches of Behaviour' to the Policy and Legislation Committee at its meeting of 28 April 2021. Committee members requested the item be deferred to allow officers undertake further review of the policy and return it for consideration to the meeting of the 26 May 2021.

Under the Regulations, local governments are required to approve a complaint form in which complaints may be received, which Council did on 24 February 2021 (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 process for the management of complaints of alleged breaches of behaviour. 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.

Officers believe a stand-alone policy that deals with the overall management 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: Management 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.

Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour
Responsible Directorate: Finance and Corporate Services **Version:** DRAFT

1. PURPOSE

1.1. The purpose of this Policy is to outline the City's approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates

2. SCOPE

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

2.2. 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;
b. 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.

3. DEFINITIONS

Term	Meaning
Investigator	an impartial third party, appointed by the CEO, with the skills and knowledge to investigate complaints in accordance with this Policy.
Policy	this City of Busselton Council policy titled "Management 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 Code provides for requirements relating to the behaviour of council members, committee members and candidates.

5.2. The Code sets out requirements for:

a. making a complaint;
b. dealing with a complaint;
c. dismissal of a complaint; and

d. withdrawal of a complaint.

5.3. This Policy further outlines how the City will deal with a complaint; specifically 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.

Investigating a complaint

5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour.

5.5. A complaint cannot be submitted anonymously.

5.6. The City's complaints officer, within 14 days of receiving a complaint:
a. will contact the complainant acknowledging that the complaint has been received;
b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
d. will 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. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.

5.7. 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.

5.8. 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.

5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.

5.10. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

5.11. Before making an assessment 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. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.

5.12. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.

5.13. The Investigator's assessment 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.

5.14. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's complaints officer.

5.15. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.

5.16. 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.

5.17. 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 Investigator's report to the City's complaints officer and included in the report to Council.

5.18. The Investigator may recommend to the council to dismiss a complaint in accordance with paragraph 14 of the Code.

5.19. If the Investigator assesses that the behaviour is an offence under the City's *Standing Orders Local Law*, the complaint should be referred back to the City's complaints officer.

5.20. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's complaints officer, but subject to any consultation with the person to whom the complaint relates.

Council finding

5.21. The City's complaints officer must provide a confidential report to the council at the next ordinary meeting after receipt of the Investigator's assessment. The report is to include:
   a. a copy of the complaint;
   b. 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.

5.22. 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, decide 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

5.23. An action 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.

5.24. 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 breached the Code knowingly or carelessly;

d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

5.25. The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the council has reached an outcome in respect of the complaint.

Compliance with plan requirement

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

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 Adoption	**DATE**		**Resolution #**	

City of Busselton
Geographe Bay

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 Part 3 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. *The Complaints Officer may contact you to clarify or ask for more information.*
☐	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 Part 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 tony.nottle@busselton.wa.gov.au

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

Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates

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) concerned:
City of Busselton

Name of the council member, committee member, candidate alleged 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	☐

State the full details of the alleged breach. Attached any supporting evidence to this complaint form:
Date of the alleged breach:
/ /20

Which of the behaviours prescribed in Part 3 of the City of Busselton's Code of Conduct do you allege this person has breached?	
Personal integrity 9.1 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	☐
9.2 A council member or committee member —	
(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 10.1 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 11.1 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	☐
(c) must not repeatedly disrupt the meeting; 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	☐
(f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.	☐

List any additional information you have provided as part of this complaint:

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.

Please contact the City's Complaints Officer if you would like more information.

Would you agree to participate in an mediation process as per point 5.09 of the Management of Complaints of Alleged Breaches of Behaviour Council Policy?	**YES**	☐
	NO	☐

Signed:

Complainant's signature: .....

Date of signing: / /20

Received by Authorised Officer

Authorised Officers' Name: _____
Given Name(s) **Family Name**

Authorised Officers' Signature: .....

Date received: / /20

7. GENERAL DISCUSSION ITEMS

7.1 CARETAKER POLICY

The 2021 Local Government Elections are to be held on 16 October 2021. Given the timing of the upcoming elections, Councillors have requested a discussion be held on the City's position on a caretaker council policy.

Officers have researched the caretaker policies of several other local governments, including City of Joondalup, City of Perth and the WALGA template. Copies of these example council policies are attached for information.

Elections Caretaker Policy

City Policy

Responsible Directorate: Governance and Strategy

Objective: To establish protocols for the purposes of preventing actual and perceived advantage or disadvantage to a candidate in the City of Joondalup local government elections.

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1. Application:

This policy applies to Elected Members, local government election candidates and employees and specifically applies during a Caretaker Period to:

(a) decisions made by Council
(b) decisions made under delegated authority
(c) promotional materials published by the City
(d) discretionary community consultation
(e) attendance and participation at events and functions held by the City or other organisations
(f) use of the City's resources
(g) access to information held by the City.

While local government election candidates, that are not sitting Elected Members, cannot be compelled to comply with this policy, such candidates will be made aware of it and encouraged to cooperate with its implementation.

2. Definitions:

'Caretaker Period' means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until 6.00pm on Election Day.

'Election Day' means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election. For the purposes of this policy, 'Election Day' generally excludes an Extraordinary Election Day unless otherwise specified in this policy.

'**Electoral Material**' means any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

(a) an advertisement in a newspaper announcing the holding of a meeting (section 4.87(3) of the *Local Government Act 1995*)
(b) any materials exempted under regulation 78 of the *Local Government (Elections) Regulations 1997*

or

(c) any materials produced by the City relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

'Events and Functions' means gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the City and / or its stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including gatherings coordinated or facilitated by the City or an external entity.

'Extraordinary Circumstances' means a circumstance that requires Council to make or announce a Major Policy Decision during the Caretaker Period because, in the Chief Executive Officer's opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

(a) incur or increase legal, financial and/or reputational risk

or

(b) cause detriment to the strategic objectives of the City.

'Major Policy Decision' means any decision:

(a) relating to the employment, remuneration or termination of the Chief Executive Officer or any other designated senior employee, other than a decision to appoint an Acting Chief Executive Officer, or suspend the current Chief Executive Officer (in accordance with the terms of their Contract of Employment), pending the Election Day result

(b) relating to the City entering into a sponsorship arrangement with a total City contribution that would constitute Significant Expenditure, unless Council has resolved "in principle" support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget

(c) relating to the City entering into a commercial enterprise as defined by section 3.59 of the *Local Government Act 1995*

(d) that would commit the City to Significant Expenditure or actions that, in the Chief Executive Officer's opinion, are significant to the City's operations, strategic objectives and / or will have significant impact on the community

(e) to prepare a report, initiated by an Elected Member or Council on a matter that, in the Chief Executive Officer's opinion, may be perceived as or is actually an election campaign issue

(f) initiated through a Notice of Motion by an Elected Member, where the effect of that motion will change the status quo or, in the Chief Executive Officer's opinion, may be relevant to the circumstances described in sub-clauses (a) to (e) above

(g) that adopts a new policy, service or service level or significantly amends an existing policy, service or service level, unless the decision is necessary to comply with legislation

(h) that initiates or adopts a new *Local Planning Scheme*, amendment to a *Local Planning Scheme* or Planning Policy, unless in the Chief Executive Officer's opinion, is required for the orderly and proper land use planning within the district,

but does not include any decision necessary in response to an emergency, either declared by the State or Federal Government or by the City in accordance with section 6.8(1)(c) of the *Local Government Act 1995*.

'Public Consultation' means a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

'Significant Expenditure' means expenditure that exceeds $250,000 (excluding GST) and that has not been budgeted for in the City's Annual Budget.

3. Statement:

The purpose of this policy is to avoid Council making major decisions prior to a local government election which would bind an incoming Council; prevent the use of public resources in ways seen to be advantageous to, or promoting, Elected Members who are seeking re-election or new candidates; and to ensure the City and employees act impartially in relation to local government election candidates.

This policy is to be applied in conjunction with all other relevant legislation, local laws, delegations, policies, procedures and processes of the City and provides guidance to ensure the continuation of ordinary business for the City in a responsible and transparent manner that ensures local government elections are conducted in an ethical, fair and equitable manner and are publicly perceived as such.

4. Decision making:

The Chief Executive Officer will ensure that:

(a) Elected Members and employees are advised in writing of the impending Caretaker Period and policy requirements at least 30-days prior to the commencement of a Caretaker Period

(b) candidates are provided with a copy of this policy following their nomination for election, to ensure their awareness and the equitable access requirements that apply during a Caretaker Period.

4.1. Scheduling Major Policy Decisions

(1) During a Caretaker Period, unless Extraordinary Circumstances apply, the Chief Executive Officer will reasonably ensure that:

(a) a Council Agenda, Committee Agenda or Briefing Session Agenda, does not include reports that constitute Major Policy Decisions

(b) Elected Member forums, workshops or Strategy Sessions, do not list for discussion matters that relate to Major Policy Decisions.

(2) The Chief Executive Officer shall reasonably ensure that, unless Extraordinary Circumstances apply, Major Policy Decisions are either:

(a) considered by Council prior to the Caretaker Period

or

(b) scheduled for determination by the incoming Council.

(3) The Chief Executive Officer shall reasonably ensure that, unless Extraordinary Circumstances apply, delegated authority from Council to the Chief Executive Officer or a Committee is not exercised where the exercise of that delegated authority relates to a Major Policy Decision or an election campaign issue.

4.2. Extraordinary Circumstances

(1) Where, during a Caretaker Period, the Chief Executive Officer determines that Extraordinary Circumstances apply, the Chief Executive Officer may submit a report on a Major Policy Decision for Council's consideration.

(2) Where, during a Caretaker Period, the Chief Executive Officer determines that Extraordinary Circumstances apply, the Chief Executive Officer may include matters relating to a Major Policy Decision for Elected Member discussion at Elected Member forums, workshops or Strategy Sessions.

4.3. Chief Executive Officer employment

This policy prohibits Major Policy Decisions relating to the employment, remuneration or termination of the Chief Executive Officer during a Caretaker Period.

Council is however required to fulfil its obligations as the Chief Executive Officer's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period Council may consider and determine:

(a) Chief Executive Officer's leave applications

(b) appoint an Acting Chief Executive Officer, where necessary

(c) suspend the current Chief Executive Officer, where appropriate and in accordance with the terms of their contract.

5. Caretaker Period Protocols - Elected Members:

Part 5 of this policy, inclusive of its sub-clauses, applies to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

5.1. Access to information and advice

All Elected Members are to avoid using or accessing City information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy.

All Elected Member requests for information and advice from the City will be reviewed by the Chief Executive Officer and where the subject of the information or advice is considered as being related to an election campaign issue, the Chief Executive Officer will have absolute discretion to determine if the information or advice is / is not provided, including where information is provided to one candidate, if that information is also to be provided to all candidates (including candidates who are not current Elected Members).

5.2. Media and publicity

All Elected Member requests for media advice or assistance during a Caretaker Period, including Elected Members who have nominated for re-election, will be referred to the Chief Executive Officer for review.

The Chief Executive Officer will only authorise Elected Member access to media advice or assistance where, in the Chief Executive Officer's opinion, the subject matter is relevant to the City's objectives or operations and is not related to an election campaign purpose or issue or to the Elected Member's candidacy or the candidacy of another person.

5.3. Elected Member business cards and City printed materials

Elected Members must ensure that City issued business cards and printed materials are only used for purposes associated with their role as an Elected Member, in accordance with section 3.10 of the *Local Government Act 1995*.

Elected Members are prohibited from using City business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

5.4. Elected Member participation in events and functions

During a Caretaker Period Elected Members may continue to fulfil their role through attendance at events and functions hosted by external bodies, or at announcements made by external bodies.

5.5. Council delegates to external organisations

At any time, including times outside of a Caretaker Period, Elected Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

5.6. Elected Member addresses / speeches

Excluding the Mayor and Deputy Mayor, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Elected Members who have nominated for re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the City, unless expressly authorised by the Chief Executive Officer.

In any case, the Mayor, Deputy Mayor and Elected Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

5.7. Elected Member misuse of local government resources

An Elected Member who uses City resources for the purpose of persuading electors to vote in a particular way is in breach of regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007*.

This prohibition on misuse of local government resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, local government resources includes, but is not limited to employee time or expertise; City provided equipment; stationery; hospitality; images; communications; services; and reimbursements and allowances provided by the City.

6. Caretaker Period Protocols – Candidates:

Part 6 of this policy, inclusive of its sub-clauses, apply to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Candidates, including Elected Members who have nominated for re-election, shall be provided with equitable access to the City's public information.

The Chief Executive Officer shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Elected Members nominating for re-election, may access information and assistance regarding the City's operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as an Elected Member and limited to matters currently relevant to the City.

All election process enquiries from candidates, including Elected Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the Chief Executive Officer.

6.1. Candidate Requests on behalf of electors, residents or ratepayers

Candidates, including Elected Members who have nominated for re-election, may advise the Chief Executive Officer where they have received elector, resident or ratepayer requests for advice, information or responses to matters relevant to the City.

Responses will not be provided to the candidate on the basis that the provision of responses to enquiries from electors, residents or ratepayers regarding the operations of the local government is an administrative function (refer regulation 9 of the *Local Government (Rules of Conduct) Regulations 2007*).

Candidates requests made on behalf of an elector, resident or ratepayer, will be responded to by the City directly to the requesting elector, resident or ratepayer.

6.2. Candidate Campaign Electoral Material

Candidates, including Elected Members who have nominated for re-election, are prohibited from using the City's official crest, logo or marketing material, including photographs in any campaign Electoral Material.

6.3. Candidate attendance at Meetings

For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Briefing Session, Council meeting or Committee meeting.

7. City publicity, promotional and civic activities

Part 7 of this policy, inclusive of its sub-clauses, apply to a Caretaker Period relevant to Election Days and Extraordinary Election Days.

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

(a) promoting City services and activities, where such promotion does not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations

(b) conducting the Election and promoting elector participation in the Election.

All other, publicity and promotional activities of City initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Major Policy Decisions, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

The Chief Executive Officer may determine if Exceptional Circumstances apply and if a Major Policy Decision announcement is necessary during a Caretaker Period.

7.1. Civic events and functions

The City will avoid the scheduling of Civic Events and Functions during a Caretaker Period, so as to avoid any actual or perceived electoral advantage that may be provided to Elected Members who have nominated for re-election. The Chief Executive Officer may approve an event or function to occur during a Caretaker Period, where it forms part of the City's annual Schedule of events or functions.

Elected Member dinners as detailed in the *Elected Member's Entitlements Policy* will not be scheduled during a Caretaker Period.

7.2. City publications and communications

All City publications and communications distributed during a Caretaker Period must not include content that:

(a) may actually, or be perceived to, persuade voting in an election

(b) is specific to a candidate or candidates, to the exclusion of other candidates

or

(c) draws focus to or promotes a matter which is a Major Policy Decision or which is an electoral campaign issue.

All City publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the Chief Executive Officer prior to publication or distribution.

7.3. City website and social media content

(1) Website and social media content regarding Elected Members will be limited to Elected Member names, contact details, membership of committees and Council appointments as City delegates on external committees and organisations.

(2) Historical website and social media content, published prior to a Caretaker Period, and which does not comply with this policy will not be removed.

(3) New website or social media content which relates to Major Policy Decisions or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.

(4) Content posted by the public, candidates or Elected Members on the City's social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

7.4. Public Consultation

Unless public consultation is mandated under a written law or Exceptional Circumstances apply, public consultation relevant to Major Policy Decisions or potentially contentious election campaign issues, will not be initiated so that the consultation period is conducted immediately prior to, throughout or concluding during, a Caretaker Period.

7.5. City employees

During the Caretaker period no City employee may make any public statement that relates to an election issue unless the statements have been approved by the Chief Executive Officer.

Creation Date:	December 2018
Amendments:	N/A
Related Documentation:	• *Local Government Act 1995* • *Local Government (Elections) Regulations 1997* • *Local Government (Rules of Conduct) Regulations 2007*

City of Perth

Council Policy

CP 1.5 | Caretaker Period

Policy Objectives

1. To prevent the Council of the City of Perth from making major decisions prior to an election that would bind an incoming Council;
2. Prevent the use of public resources to promote, advantage or disadvantage council members seeking re-election or nominees seeking election; and
3. Recognise the requirement for the City of Perth administration to act impartially in relation to all candidates.

Policy Scope

The caretaker period will begin from the opening of nominations (44 days prior to the election day as per section 4.49(a) of the *Local Government Act 1995*) and ends upon declaration of the result of the election (as per section 4.77 of the *Local Government Act 1995*).

This Policy will apply for any election that is to elect four (4) or more council members.

This Policy applies to council members of the City of Perth and covers:

- decisions made by Council
- roles and responsibilities of the CEO and council members
- published materials
- functions and events
- public consultation and campaigns
- use of the City's resources
- access to information

Candidates are required to abide by the City of Perth Code of Conduct for Council Members, Committee Members and Candidates.

Policy Statement

Decisions Made by Council

The following decisions are considered major decisions and are not to be made during the caretaker period, unless considered an extraordinary circumstance by the CEO:

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- Decisions relating to the recruitment, performance or termination of the CEO.
- Decisions relating to entering the City into an arrangement that would constitute expenditure exceeding 0.5% of the City's annual budgeted revenue (GST inclusive) in the relevant financial year.
- Decisions relating to the allocation of grants, sponsorships, donations or other direct funding to organisations.
- Decisions relating to changes to the planning scheme, policies, and local laws.
- Changes to the documents within the Integrated Planning and Reporting Framework or its informing strategies.
- Decisions relating to entering into a major trading undertaking or a major land transaction as defined by section 3.59 of the *Local Government Act 1995*.
- Decisions that, in the CEO's opinion, will have a significant impact on the City of Perth or the community, or be publicly perceived as an election campaign issue.

Where an extraordinary circumstance exists, the CEO may permit a matter requiring a major decision to be submitted to the Council for determination during the caretaker period. Extraordinary circumstances include the following situations:

- Where the urgency of the issue is such that it cannot wait until after the election; or
- Where there is the possibility of legal and/or financial repercussions if a decision is deferred.

Where a major decision is put to Council during the caretaker period, a statement will be included in the report to detail why the matter has been presented to Council.

Roles and Responsibilities

The CEO

The CEO is responsible for implementing the caretaker provisions contained in this policy by:

- Ensuring, as far as practicable, that all council members and staff are aware of the Caretaker Policy and its provisions at least 30 days prior to the start of the caretaker period.
- Ensuring, as far as practicable, that any major decisions required by the Council are scheduled for Council resolution outside the caretaker period.
- Ensuring that all announcements regarding major decisions made by Council are not publicised during the caretaker period.

Council Members

Council members are required to comply with the provisions contained in this policy.

Published Materials

Candidates and council members are permitted to publish campaign material on their own behalf but cannot claim for that material to be originating from or authorised by the City (including the use of the logo or crest).

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During the caretaker period, the City's website, publications and social media will not make any references to the election apart from details of the election process itself and any information the City is required to publish in accordance with legislation.

Functions and Events

Events held by external bodies

Council members may continue to attend events and functions hosted by external bodies during the caretaker period.

Speaking at events

Excluding the Lord Mayor fulfilling their functions as prescribed by sections 2.8 and 2.9 of the *Local Government Act 1995* (or the Deputy Lord Mayor acting in the position of Lord Mayor, as per section 5.34), candidates will not be authorised to make speeches or addresses at events and functions organised or sponsored by the City during the caretaker period as far as is practicable.

Representation at external bodies

Council members appointed to external organisations as representatives of the City will not use their attendance at meetings of these organisations to promote their personal or other candidate's electoral campaigns.

Civic Events and Functions

Events and functions organised by the City and held during the caretaker period will be limited to only those that the CEO considers essential to the operation of the City.

Public Consultation and Campaigns

Only public consultation that is required by legislation to be undertaken during the caretaker period is permitted to occur.

The City will not run any campaigns related to election campaign issues during the caretaker period.

Use of the City's Resources

This policy reaffirms the rules of conduct in the *Local Government (Model Code of Conduct) Regulations 2021* in regard to the prohibition of the use of the resources of a local government for an electoral purpose.

Council members are not permitted to use City of Perth photography, business cards or facilities to promote candidates or their own candidacy.

Access to Information

All election process enquiries from candidates are to be made to the Returning Officer.

Where a candidate submits a request on behalf of a member of the public, that information will be provided directly to the requesting member of the public where possible.

City of Perth

Council Policy

Document Control

Other relevant/related documents

Legislation:	*Local Government Act 1995* – section 4.94(c) *Local Government (Model Code of Conduct) Regulations 2021*
City Policies:	
City Procedures and Processes:	

Document responsibilities

Custodian:	Alliance Manager Governance	Custodian Unit:	Governance	Decision Maker:	Council / CEO

Review management

Next review due:	April 2023	Document Management Ref:	EDRMS-1336483316-535

Document management

Version	Decision reference	Synopsis of changes
1.0	OCM 22/04/2008	Original
2.0	OCM 27/01/2010	Amended
3.0	OCM 27/04/2021	Amended

TEMPLATE
Electoral Caretaker Period Policy

*This WALGA template is a **guide only** for the purpose of assisting Local Governments and the templates may or may not be suitable in all circumstances. Local Governments should consider, develop and modify content to suit their individual requirements.*

***Remember** - Policy implementation is given effect through induction, ongoing training and operational procedures that ensure Council Members and Employees are sufficiently informed of their obligations, responsibilities and accountabilities.*

Policy Objective

This Policy establishes protocols for the purpose of avoiding actual and perceived advantage or disadvantage to a candidate in a Local Government Election, through the use of public resources or decisions made by the Council or administration on behalf of the <<Shire/ Town / City of XXX>> during the period immediately prior to an election.

Policy Scope

This policy applies to Council Members and Employees during a 'Caretaker Period' relevant to:

(a) Decisions made by the Council;
(b) Decisions made under delegated authority;
(c) Decisions made administratively;
(d) Promotional materials published by the <<Shire/ Town / City of XXX>>;
(e) Discretionary community consultation;
(f) Events and functions, held by the <<Shire/ Town / City of XXX>> or other organisations;
(g) Use of the <<Shire/ Town / City of XXX>>'s resources;
(h) Access to information held by the <<Shire/ Town / City of XXX>>.

Policy Statement

1 Definitions

'Caretaker Period' means the period of time prior to an Election Day, specifically being the period from the close of nominations (37 days prior to the Election Day in accordance with s.4.49(a) of the *Local Government Act 1995*) until 6.00pm on Election Day.

'CEO' means the Chief Executive Officer of the <<Shire/ Town / City of XXX>>.

'Election Day' means the day fixed under the *Local Government Act 1995* for the holding of any poll needed for an election, ≪including an extraordinary election to elect a new Mayor/President≫. For the purposes of this Policy, 'Election Day' meaning generally excludes an Extraordinary Election Day unless otherwise specified in this Policy.

WALGA NOTE – '*extraordinary election of Mayor / President*', only applies to Local Governments where the Mayor / President is elected by the electors of the District in accordance with s.2.11(1)(a) (i.e. not elected from among the Councillors).

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'Electoral Material' includes any advertisement, handbill, pamphlet, notice, letter, email, social media post or article that is intended or calculated to affect an Election Day result, but does not include:

(a) An advertisement in a newspaper announcing the holding of a meeting (s.4.87(3) of the *Local Government Act 1995*); or

(b) Any materials exempted under Regulation 78 of the *Local Government (Elections) Regulations 1997*; or

(c) Any materials produced by the <<Shire/ Town / City of XXX>> relating to the election process by way of information, education or publicity, or materials produced by or on behalf of the Returning Officer for the purposes of conducting an election.

'Events and Functions' including gatherings for the purpose of discussion, review, acknowledgement, communication, consultation, celebration or promotion, of any matter relevant to the <<Shire/ Town / City of XXX>> and / or its stakeholders and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners and receptions, including; gatherings coordinated or facilitated by the <<Shire/ Town / City of XXX>> or an external entity.

'Extraordinary Circumstances' including a circumstance that requires the Council to make or announce a Significant Local Government Decision during the Caretaker Period because, in the CEO's opinion, delaying the decision or announcement to occur after the Caretaker Period has reasonable potential to:

(a) incur or increase legal, financial and/or reputational risk; or

(b) cause detriment to the strategic objectives of the <<Shire/ Town / City of XXX>>.

'Significant Local Government Decision' includes any decision:

(a) Relating to the employment, remuneration or termination of the CEO or any other designated Senior Employee [s.5.37], other than a decision to appoint an Acting CEO, or suspend the current CEO (in accordance with the terms of their Contract of Employment), pending the Election Day result;

(b) Relating to the <<Shire/ Town / City of XXX>> entering into a sponsorship arrangement with a total <<Shire/ Town / City of XXX>> contribution that would constitute Significant Expenditure, unless the Council resolved "in principle" support for the sponsorship prior to the Caretaker Period taking effect and sufficient funds are allocated in the Annual Budget;

(c) Relating to the <<Shire/ Town / City of XXX>> entering into a commercial enterprise as defined by Section 3.59 of the *Local Government Act 1995*;

(d) That would commit the <<Shire/ Town / City of XXX>> to Significant Expenditure or actions that, in the CEO's opinion, are significant to the Local Government operations, strategic objectives and / or will have significant impact on the community,

(e) To prepare a report, initiated by the Administration, a Council Member, candidate or member of the public that, in the CEO's opinion, may be perceived as or is actually an election campaign issue;

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(f) Initiated through a Notice of Motion by a Council Member, where the effect of that motion will change the status quo or, in the CEO's opinion, may be relevant to the circumstances described in sub-clauses (a) to (e) above.

(g) That adopts a new, or significantly changes an existing, policy, service or service level that incurs Significant Expenditure, unless the decision is necessary to comply with legislation.

(h) That initiates or adopts a new Local Planning Scheme, amendment to a Local Planning Scheme or Planning Policy.

(i) Significant Local Government Decision does NOT include any decision necessary in response to an Emergency, either declared by the State or Federal Government or by the <<Shire President / Mayor>> in accordance with s.6.8(1)(c) of the *Local Government Act 1995*.

'Caretaker Protocol' means the practices or procedures prescribed in this Policy.

'Public Consultation' includes a process which involves an invitation to individuals, groups, organisations or the wider community to provide comment on a matter, proposed action or proposed policy which may be perceived as or is actually an electoral / campaign issue, but does not include statutory consultation / submission periods prescribed in a written law.

'Significant Expenditure' means expenditure that exceeds <<XX>>% of the City's annual budgeted operating revenue (exclusive of GST) in the relevant financial year or $<<XX,XXX>>, whichever is the greater value. (As at 20<<YY>>/20<<YY>> the estimated threshold is $<<XX,XXX>>).

2 Caretaker Period Protocols - Decision Making

The CEO will ensure that:

(a) At least 30-days prior to a Caretaker Period, the CEO will advise Council Members and employees in writing of the dates that the Caretaker Period commences and concludes.

(b) Candidates are provided with a copy of this Policy at the time of their nomination for election, to ensure their awareness of the protocols and equitable access requirements.

2.1 Scheduling Significant Local Government Decisions

1. During a Caretaker Period, unless Extraordinary Circumstances apply, the CEO will reasonably ensure that:

   (a) Council or Committee Agenda, do not include reports and / or recommendations that constitute Significant Local Government Decisions; and

   (b) Council Forums, Workshops or Briefings, do not list for discussions matters that relate to Significant Local Government Decisions.

2. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Significant Local Government Decisions are either:

(a) Considered by the Council prior to the Caretaker Period; or
(b) Scheduled for determination by the incoming Council.

3. The CEO shall reasonably ensure that, unless Extraordinary Circumstances apply, Delegated Authority from the Council to the CEO or a Committee is not exercised where the exercise of that delegated authority relates to a Significant Local Government Decision or an election campaign issue.

2.2 Council Reports Electoral Caretaker Period Policy Statement

2.2.1 Extraordinary Circumstances

1. **Council Reports**

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may submit a report on a Significant Local Government Decision for Council's consideration, subject to the report including:

(a) Details, if applicable, of options for what aspects of the decision are necessary to be made within the Caretaker Period and what aspects may be deferred until after the Caretaker Period.

(b) An Electoral Caretaker Period Policy Statement, which details why Extraordinary Circumstances apply.

2. **Council Forums, Workshops or Briefings**

Where, during a Caretaker Period, the CEO determines that Extraordinary Circumstances apply, the CEO may include matters relating to a Significant Local Government Decision for Council Member discussion at Council Forums, Workshops or Briefings.

The CEO is required to provide Council with advice as to why Exceptional Circumstance apply. Details of this advice is to be retained, with the Forum, Workshop or Briefing notes, as a Local Government record.

2.3 Managing CEO Employment

This Policy, prohibits Significant Local Government Decisions relating to the employment, remuneration or termination of the CEO during a Caretaker Period.

The Council is however required to fulfil its obligations as the CEO's employer regardless of a Caretaker Period. Therefore, during a Caretaker Period:

1. The Council may consider and determine:

(a) CEO's leave applications;
(b) appoint an Acting CEO, where necessary;
(c) suspend the current CEO, where appropriate and in accordance with the terms of their contract.

2. The Council may not initiate a new CEO recruitment process or initiate or undertake a CEO performance review process, during a Caretaker Period.

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2.4 Delegated Authority Decision Making in Extraordinary Circumstances

During a Caretaker Period, Employees who have Delegated Authority are required to consider if a proposed delegated authority decision may relate, or be subsidiary, to a Significant Local Government Decision or election campaign issue and if so, refer the matter to the CEO for review and consideration in accordance with clause 2.1(3) above.

3 Caretaker Period Protocols - Candidates

Candidates, including Council Members who have nominated for re-election, relevant to an Election Day or Extraordinary Election Day, shall be provided with equitable access to the <<Shire/ Town / City>>'s public information in accordance with s.5.94 of the *Local Government Act 1995*.

The CEO shall ensure that assistance and advice provided to candidates as part of the conduct of the election is provided equally to all candidates.

Council Members nominating for re-election, may access information and assistance regarding the <<Shire/ Town / City>>'s operations and Council matters during a Caretaker Period, but only to the extent necessary to perform their role as a Councillor and limited to matters currently relevant to the <<Shire/ Town / City>> [refer s.5.92 of *the Local Government Act 1995*].

All election process enquiries from Candidates, including Council Members who have nominated for re-election, will be directed to the Returning Officer, or where the matter is outside the responsibility of the Returning Officer, to the CEO.

3.1 Candidate Requests on behalf of Electors, Residents or Ratepayers

Where a Candidate, including Council Members who have nominated for re-election, requires the assistance of the Administration to respond to a request made by an Elector, Resident or Ratepayer, then the Administration will provide the response directly to the requesting Elector, Resident or Ratepayer and will also advise the candidate of the outcome.

3.2 Candidate Campaign Electoral Materials

Candidates, including Council Members who have nominated for re-election, should note thatthe <<Shire/ Town / City>>'s official crest or logo may not be used in campaign Electoral Materials without the express permission of the <<Shire/ Town / City>>.

3.3 Candidate attendance at Meetings

To ensure equitable access to information about Council's decision making during a Caretaker Period, the CEO shall ensure that Candidates, who are not sitting Council Members, are advised of Ordinary and Special Council Meetings (if open to the public) called and convened during a Caretaker Period; providing each Candidate with a copy of the meeting agenda at the time it is distributed to Council Members.

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For the purposes of transparency and the benefit of the public gallery, Candidates are requested to identify themselves as an election candidate prior to asking a question or making a statement at a Council or Committee meeting.

4 Council Member Caretaker Period Protocols

4.1 Access to Information and Advice

During a Caretaker Period all Council Members will scrupulously avoid using or accessing <<Shire/ Town / City>> information, resources or employee resources and expertise for the purpose of gaining electoral advantage or disadvantage relevant to their own candidacy or any other person's candidacy *[refer s.5.93 of the Local Government Act 1995]*.

During a Caretaker Period, all Council Member requests for information and advice from the <<Shire/ Town / City>> will be reviewed by the CEO and where the subject of the information or advice is considered as relating to an election campaign issue, the CEO will either make a determination, or refer the request for Council's determination, as to if the information or advice is / is not to be provided, including if information is provided to one candidate, or if that information is also to be provided to all candidates (i.e. including candidates who are not current Council Members).

4.2 Media and Publicity

During a Caretaker Period, all Council Member requests for media advice or assistance, including Council Members who have nominated for re-election, will be referred to the CEO for review.

The CEO will only authorise Council Member access to media advice or assistance where, in the CEO's opinion, the subject matter is relevant to the <<Shire/ Town / City>>'s objectives or operations and is not related to an election campaign purpose or issue or to the Council Member's candidacy or the candidacy of another person.

4.3 Council Member Business Cards, <<Shire/ Town / City>> Printed Materials

Council Members must ensure that <<Shire/ Town / City>> business cards and Local Government printed materials are only used for purposes associated with their role as a Councillor, in accordance with section 2.10 of the *Local Government Act 1995*.

Council Members are prohibited from using <<Shire/ Town / City>> business cards or printed materials at any time, including times outside a Caretaker Period, for any election campaign purpose, either in support of their own candidacy or the candidacy of another person.

4.4 Council Member Participation in Events and Functions

During a Caretaker Period Council Members may continue to fulfil their role through attendance at events and functions hosted by external bodies.

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4.5 Council Member Delegates to External Organisations

At any time, including times outside of a Caretaker Period, Council Members who are the Council's appointed delegate to an external organisation, must not use their attendance at an external organisation's meeting, event or function for any purpose associated with an election campaign purpose, including; recruiting campaign assistance or to promote their own candidacy or the candidacy of another person.

4.6 Council Member Addresses / Speeches

Excluding the <<Shire President / Mayor>> and <<Deputy Shire President / Mayor>>, when fulfilling their functions prescribed in sections 2.8 and 2.9 of the *Local Government Act 1995*, Council Members who have nominated for re-election, shall not be permitted to make speeches or addresses during a Caretaker Period at events or functions organised or sponsored by the <<Shire/ Town / City>>, unless expressly authorised by the CEO.

In any case, the <<Shire President / Mayor>>, <<Deputy Shire President / Mayor>> and Council Members are prohibited from using an official speech or address during a Caretaker Period to promote an election campaign purpose.

4.7 Council Member Misuse of Local Government Resources

A Council Member who uses <<Shire/ Town / City>> resources for the purpose of persuading electors to vote in a particular way is a "misuse of Local Government resources" breach in accordance with Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007*.

This prohibition on misuse of Local Government Resources for electoral purposes applies at all times and is not only applicable to a Caretaker Period.

For clarity, Local Government resources includes, but is not limited to: employee time or expertise, <<Shire/ Town / City>> provided equipment, information and communication technologies, stationery, hospitality, images, communications, services, reimbursements and allowances provided by the <<Shire/ Town / City>>.

5 <<Shire/ Town / City>> Publicity, Promotional and Civic Activities

Publicity campaigns and promotional activities during a Caretaker Period may be undertaken only for the purposes of:

(a) Promoting <<Shire/ Town / City>> services and activities, where such promotion do not relate to an electoral campaign issue and would otherwise be undertaken as part of normal operations; and,

(b) Conducting the Election and promoting Elector participation in the Election.

All other, publicity and promotional activities of <<Shire/ Town / City>> initiatives will be, where reasonably practicable, avoided during the Caretaker Period, including the announcement of Significant Local Government Decisions, made prior to the commencement of a Caretaker Period or proposed to be made after a Caretaker Period.

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The CEO may determine if Exceptional Circumstances apply and if a Significant Local Government Decision announcement is necessary during a Caretaker Period.

5.1 Civic Events and Functions

The <<Shire/ Town / City>> will avoid the scheduling of Civic Events and Functions during a Caretaker Period, which may give rise to any actual or perceived electoral advantage to Council Members who have nominated for re-election.

Where the <<Shire/ Town / City>> is required to schedule a Civic Event or Function during a Caretaker Period at which Council Members would usually be invited, then all Candidates will also be invited to attend and will be acknowledged as candidates immediately following any acknowledgement provided to Council Members. For example; Candidates will be introduced at the function immediately following the introduction of Council Members.

5.2 <<Shire/ Town / City>> Publications and Communications

All <<Shire/ Town / City>> publications and communications distributed during a Caretaker Period must not include content that:

(a) may actually, or be perceived to, persuade voting in an election; or
(b) is specific to a candidate or candidates, to the exclusion of other candidates;
(c) draws focus to or promotes a matter which is a Significant Local Government Decision or which is an electoral campaign issue.

All <<Shire/ Town / City>> publications and communications proposed to occur immediately prior to, throughout or during, a Caretaker Period must be reviewed and approved by the CEO prior to publication or distribution.

5.3 <<Shire/ Town / City>> Website and Social Media Content

1. During the Caretaker Period, this Policy applies to content proposed for publication on the <<Shire/ Town / City>>'s website and social media channels.

   Website and social media content regarding Council Members will be limited to: Council Member names, contact details, membership of committees and Council appointments as <<Shire/ Town / City>> Delegates on external committees and organisations however, all other biographical information related to a sitting Council Member who is also a candidate will be removed from public access for the duration of the Caretaker Period.

   The Candidate Election Profiles prescribed in s.4.49(b) of the Local Government Act 1995, may also be published on the <<Shire/ Town / City>>'s website and social media.

2. Website and social media content, published prior to a Caretaker Period, will not be subject to this Policy.

3. New website or social media content which relates to Significant Local Government Decisions or election campaign issues will not be published during a Caretaker Period, unless Exceptional Circumstances apply.

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4. Content posted by the public, candidates or Council Members on the <<Shire/ Town / City>>'s social media channels, which is perceived as candidate election campaign material or promotes a candidate or candidates will be removed.

5.4 Community Consultation

The <<Shire/ Town / City>> will undertake planned community consultation (discretionary and legislative) during a Caretaker Period, unless the consultation relates to a Significant Local Government Decision or potentially contentious election campaign issue.

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Reviewer:	[insert Position Title]			**Decision Maker:**	Council		
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Industry:							
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8. NEXT MEETING DATE

9. CLOSURE