



Ordinary Council Meeting

# Minutes

**CONFIRMED**

Wednesday 16 August 2023

## MINUTES

**Minutes of a meeting of the Busselton City Council held in the Council Chambers, Administration Building, Southern Drive, Busselton, on Wednesday 16 August 2023 at 5:30pm.**

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## 1. OFFICIAL OPENING

The Presiding Member opened the meeting at 5:30pm.

The Presiding Member welcomed Councillors, staff, guests and members of the public to the Ordinary Council Meeting of 16 August 2023.

The Presiding Member acknowledged the Wadandi and Bibbulmun people as the traditional custodians of this region and paid respects to Elders past and present.

This meeting was audio recorded for minute taking purposes and live streamed on the City of Busselton YouTube channel. This recording will be available for three months after the meeting date.

Pastor Joe O'Donovan from Hope Church Busselton read a prayer as part of the opening of this meeting.

## 2. ATTENDANCE

PRESIDING MEMBER	MEMBERS
Cr Grant Henley	Cr Paul Carter
	Cr Jodie Richards
	Cr Kate Cox
	Cr Anne Ryan
	Cr Phill Cronin
	Cr Ross Paine

OFFICERS	
Mr Oliver Darby	Acting Chief Executive Officer
Mr Paul Needham	Director, Planning and Development Services
Ms Sarah Pierson	Acting Director, Finance and Corporate Services
Ms Maxine Palmer	Acting Director, Community and Commercial Services
Ms Jo Barrett-Lennard	Governance Officer

LEAVE OF ABSENCE	
Cr Sue Riccelli	C2303/016
Cr Mikayla Love	C2305/077

APPLICATION FOR LEAVE OF ABSENCE	
Nil	

**MEDIA**

Busselton- Dunsborough Times	
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**PUBLIC**

45	
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**3. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)**

The Presiding Member congratulated the Matildas on their win against France in the World Cup, and wished the team well in their game against England.

The Presiding Member confirmed that Council agendas were available on the City website, and that other formats are available on request.

The Presiding Member noted that Public Agenda Presentation bookings were for a five minute presentation to Council by members of the public, with the opportunity for questions and responses after each presentation. He also noted that Party with an Interest presentations were limited to five minutes, as per the [Meetings, Information Sessions and Decision Making Policy](#).

**4. DISCLOSURES OF INTEREST****DISCLOSURES OF FINANCIAL INTEREST**

The Presiding Member noted that a disclosure of financial interest had been received from Cr Kate Cox in relation to Agenda Item 13.1 'Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area'.

The Presiding Member advised that, in accordance with regulation 22(2)(b) of the *Local Government (Model Code of Conduct) Regulations 2021*, this disclosure would be read out immediately before these items were discussed.

**DISCLOSURES OF IMPARTIALITY INTEREST**

Nil

## 5. CONFIRMATION AND RECEIPT OF MINUTES

### 5.1. Ordinary Council Meeting 26 July 2023

#### COUNCIL DECISION

**C2308/73** Moved Cr Anne Ryan, seconded Cr Paul Carter

That the Minutes of the Ordinary Council Meeting 26 July 2023 be confirmed as a true and correct record.

**CARRIED 7 / 0**

### 5.2. Special Council Meeting 26 July 2023

#### COUNCIL DECISION

**C2308/74** Moved Cr Phill Cronin, seconded Cr Kate Cox

That the Minutes of the Special Council Meeting 26 July 2023 be confirmed as a true and correct record.

**CARRIED 7 / 0**

## 6. PUBLIC QUESTION TIME

Public question time allows members of the public to participate in local government by asking questions of the Council in relation to issues affecting the City.

### 6.1. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

The following questions were taken on notice at the 26 July 2023 Ordinary Council Meeting.

Below is a summary of the question and response provided by the CEO.

**Mr Keith Sims**

#### Question

I received a letter from the Office of the Minister for Local Government in relation to the upcoming elections. The letter states that 'all offices of the City Councillors will be vacated and elections to be held for those offices'. Will all the offices be made vacant for all nine positions?

#### Response

**Response provided 1 August 2023**

**(Mr Tony Nottle, Chief Executive Officer)**

The City has been advised there will be four ordinary vacancies and the Mayoral position. Since receiving the resignation of Cr Henley, another two year vacancy will be added. Correspondence received from the Minister of Local Government office on 1 August 2023 states:

*"...the orders published in the Government Gazette on 30 June 2023, and the summary published on the DLGSC website are all correct – going forward, the City will have eight council members and one directly-elected Mayor, and there will not be a spill of continuing incumbent council members at the upcoming ordinary elections. The City will typically have four councillor positions coming up for election at each ordinary election.*

*Accordingly, the upcoming ordinary elections will be for a Mayor, and for four councillor positions. However, I also understand that Mayor Henley has advised of his intention to resign his position of councillor, which would have expired in 2025. Accordingly it may be possible for that extraordinary vacancy to also be filled at the ordinary election in accordance with the relevant provisions of the Local Government Act 1995."*

## 6.2. QUESTION TIME FOR PUBLIC

### 6.2.1 Mr Keith Sims

#### Question

In reference to the proposed Amendment 56 to Local Planning Scheme 21 Special Character Area, listed at item 11.2 on the current agenda, the report states the following: *"discretionary decision making is at the core of good planning practice and rightly allows for individual context to be taken into consideration"*. Why aren't all discretionary decisions taken by a peer group in the Planning Department, rather than a single person, and the discussions recorded, thus ensuring the community and neighbourhood are consulted?

#### Response

**(Mayor Grant Henley)**

We will take this question on notice.

### 6.2.2 Ms Helena Nicholson

#### Question

In regards to item 11.3 on the current agenda, Proposed Amendment to the Local Planning Scheme 55 for Abbey South Precinct, can the City of Busselton include better environmental protection (namely preventing the clearing of mature peppermint trees) within the structure plan that is being considered this evening and therefore ensuring that future development applications are required to be more bespoke and fit in with the environment, rather than just clearing and dissecting the land?

#### Response

**(Mr Paul Needham, Director Planning and Development Services)**

A structure plan is a guide to future subdivision and zoning, it isn't for detailed development control. In reality, our capacity to make changes to the structure plan to have greater control over those elements are very limited. In cases where there is vegetation that must be retained, the approach of officers has been to have that vegetation in land that has public ownership.

#### Question

In the report for item 11.3, there is a list of related plans and policies. Why is State Planning Policy 2.4 'Raw Materials' not listed nor adhered to, given the lack of fill within the City of Busselton?

#### Response

**(Mayor Grant Henley)**

The officer's report contains plans and policies that are most relevant to the proposal, and the policy you are referring to pertains to the extraction of basic raw material, not the need to include fill.

#### Response

**(Mr Paul Needham, Director Planning and Development Services)**

The policy is focused primarily on the extraction of basic raw materials, and does cover uses of basic raw materials. The Mayor is correct, we have identified those that are most relevant to this application, and State Planning Policy 2.4 is not relevant. There is a need for basic raw materials in this proposed development, although the need for basic raw materials is low relative to the number of lots that have been created.



**Question**

Why are officer recommendations for the urban density conflicting with the densities desired by the landowners and developers [at Abbey South]?

**Response**

**(Mr Paul Needham, Director Planning and Development Services)**

The two are not necessarily conflicting, officers make recommendations on the basis of 'what is the best and most reasonable planning outcome'.

**6.2.3 Mr Bill Kilner**

**Question**

In regards to item 11.3 on the current agenda, Proposed Amendment to the Local Planning Scheme 55 for Abbey South Precinct, is it true that the developers are each developing their own parcel of land?

**Response**

**(Mayor Grant Henley)**

Ownership of the land is not unified, however the requirement was to put together a consolidated structure plan for the whole area, which will guide development over the entirety. The structure plan will overlay the whole area, and how the different property owners develop that land internally is a matter for them in the future.

**Question**

Why does the Council not wait until Vasse East, Vasse South, Ambergate and other state owned land parcels are developed and built on before creating this structure plan and rezoning Abbey South?

**Response**

**(Mayor Grant Henley)**

I'm not aware of any developable land owned by the state that has been identified by the WA Planning Commission, only that in private ownership.

**Response**

**(Mr Paul Needham, Director Planning and Development Services)**

There is very little public land in the City of Busselton that would be suitable for urban development. The sites given as examples are all in private ownership.

**Question**

I have been speaking with other planners who have stated there are other parcels of land that can be developed, why are we not developing those?

**Response**

**(Mayor Grant Henley)**

We will take this question on notice.

**Question**

Regarding infill for the [Abbey South] site, estimates indicate 800,000 cubic tonnes of sand needs to be brought into the site from Scott River, and will be brought in by 25m trucks. There is a statement about the movement of the trucks and that the community must be consulted about the movement of those trucks. Why has no-one in Abbey been consulted?

**Response****(Mayor Grant Henley)**

This is different to extractive industry, which has trucks moving along roads that require restricted access vehicle permits, or where truck movements are created on rural roads. If the trucks come from Scott River, where the extraction is done outside the City of Busselton, then we have no control over that through the development application process. I am also not aware of any trigger through the structure planning process that we have that prevents vehicles using roads to bring in material.

We can provide you with a further response in writing.

## 7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS

### 7.1. PETITIONS

The Presiding Member consented to a member moving a motion in relation to an item of urgent business being a petition as it cannot wait inclusion in the Agenda of the next Council Meeting. The petition is in relation to item 11.3 on the published agenda.

The motion was moved and carried.

#### **COUNCIL DECISION**

**C2308/75** Moved Cr Jodie Richards, seconded Cr Anne Ryan

**That the Council accepts the petition as urgent business on the basis that it practically cannot wait inclusion in the next Council Meeting. The petition will be considered at item 7.1.**

**CARRIED 7 / 0**

#### 7.1.1. **Petition - Abbey South Precinct**

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.1 Provide opportunities for the community to engage with Council and contribute to decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Governance Officer - Jo Barrett-Lennard
<b>Authorised By:</b>	Chief Executive Officer - Tony Nottle
<b>Nature of Decision:</b>	Noting: The item is simply for information purposes and noting.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Petition - Abbey South Redacted [7.1.1.1 - 42 pages]

#### **COUNCIL DECISION**

**C2308/76** Moved Cr Kate Cox, seconded Cr Jodie Richards

**That the Council receive the petition.**

**CARRIED 7 / 0**

#### **OFFICER RECOMMENDATION**

That the Council receive the petition.

A petition with 428 signatures (Attachment 1) was received from the Petitioners on 10 August 2023 requesting as follows:

*"We, the undersigned, do respectfully request that the Council:*

*Adhere to the Western Australian Planning Commission Statement of Planning Policy No. 6.1 (SPP 6.1) Leeuwin Naturaliste Ridge Policy. Specifically because SPP 6.1 states: "LUS 3.30 Rural landscapes and coastal reserve buffers between Abbey and Vasse, and Dunsborough and Abbey will be maintained to avoid urban sprawl and to create distinct communities." and "LUS 3.32 The environmental and recreational values of the Wetland Amenity Area will be protected while facilitating tourism development that responds to the natural and social values of the locality" and therefore:*

- *Oppose the rezoning of Abbey South Precinct from Conservation to Rural, to Urban and oppose Amendment 55 to Local Planning Scheme No. 21: and*
- *Not approve the proposed Structure Plan, which would allow development of approx. 400 homes on the site. (Lots 4, 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway); and*
- *Consider alternative and more suitable (development ready) land parcels in the district for urban development to accommodate projected population growth; and*
- *Demonstrate how, if the development does ahead, the traffic impacts will be addressed and managed; and*
- *Protect the Abbey wetlands and its biodiversity, and prevent adverse impact on the Geographe catchment."*

Consideration of Proposed Abbey South Structure Plan and Associated Amendment No. 55 to Local Planning Scheme No. 21 - Consideration for Final Approval is the subject of Item 11.3 on the agenda for the 16 August 2023 Ordinary Council meeting. The Petition, which relate to this item was received after publication of the Agenda for the Ordinary Council Meeting 16 August 2023, and is therefore put to Council for consideration as an item of Urgent Business.

The requirements for a petition to be heard by Council is set out by Standing Order 6.9 of the City of Busselton *Standing Orders Local Law 2018*. The Petition meets all of the requirements.

Pursuant to Standing Order 6.9(3), the Council has the following options:

- (a) receive the petition;
- (b) reject the petition;
- (c) receive the petition and refer it to the CEO to prepare a report to Council / Committee;
- (d) receive the petition and refer it to the CEO for action.

Due to the matters raised in the Petition being considered at Item 11.3, it is recommended that the Petition be received by the Council.

## **7.2. PRESENTATIONS BY PARTIES WITH AN INTEREST**

Cr Cox left the meeting at 5:58pm, and returned to the meeting at 6:16pm.

Ms Sue Schlueter spoke in relation to Item 11.2 'Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area'. Ms Schleuter spoke in support of Cr Cronin's alternative recommendation.

Mr Peter Kyle spoke in relation to Item 11.2 'Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area'. Mr Kyle spoke in support of Cr Cronin's alternative recommendation.

Mr Don Best spoke in relation to Item 11.2 'Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area'. Mr Best spoke in support of Cr Cronin's alternative recommendation.

Ms Helena Nicholson spoke in relation to Item 11.3 'Proposed Abbey South Structure Plan and Associated Amendment No. 55 to Local Planning Scheme 21'. Ms Nicholson spoke in support of Cr Cox's alternative recommendation.

Mr Cameron Leckey spoke in relation to Item 11.3 'Proposed Abbey South Structure Plan and Associated Amendment No. 55 to Local Planning Scheme 21'. Mr Leckey spoke in support of Cr Ryans's alternative recommendation.

## **7.3. DEPUTATIONS**

Nil

## **8. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)**

Nil

## 9. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY

The Presiding Member advised that Item 11.2 'Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area' and Item 11.3 'Proposed Abbey South Structure Plan and Associated Amendments' would be brought forward.

These items were considered ahead of the Adoption by Exception Resolution En Bloc.

### ADOPTION BY EXCEPTION RESOLUTION EN BLOC

#### **COUNCIL DECISION**

**C2308/77** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Committee Recommendations for items 10.1, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9 and 10.10, and Officer Recommendations for items 11.1, 11.4, 12.1, 12.2, 15.1 and 15.2 be carried en bloc.**

Item	Report
10.1	Policy and Legislation Committee - 26/07/2023 - Dogs Local Law
10.3	Policy and Legislation Committee - 26/07/2023 - Review of the Policy and Legislation Committee
10.4	Policy and Legislation Committee - 26/07/2023 - Rescission of Council Policy 'Swearing In of Elected Members'
10.5	Policy and Legislation Committee - 26/07/2023 - Review of Council Policy 'Fees, Allowances and Expenses for Elected Members'
10.6	Policy and Legislation Committee - 26/07/2023 - Review of Council Policy 'Designation of Senior Employee and Acting CEO'
10.7	Policy and Legislation Committee - 26/07/2023 - Review of Council Policy 'Closed Circuit Television Systems'
10.8	Finance Committee - 09/08/2023 - Financial Activity Statements - Year to Date 30 June 2023
10.9	Finance Committee - 09/08/2023 - List of Payment Made - June 2023
10.10	Finance Committee - 09/08/2023 - Rate Exemption - Lamp Inc.
11.1	Amendment 54 to Local Planning Scheme 21 Lot 2883 Puzey Road, Wilyabrup
11.4	Application for Development Approval (DA 21/0822) - Proposed Extractive (Sand) - Lot 4205 Gale Road Kloorup
12.1	Naming Port Geographe Coves and Parks
12.2	RFT 10/23 Arboriculture Services
15.1	Councillors Information Bulletin

15.2	Council Policy - Appointment of Acting Chief Executive Officer
<b>CARRIED 7 / 0</b>	
<b>EN BLOC</b>	

## 10. REPORTS OF COMMITTEE

### 10.1 Policy and Legislation Committee - 26/07/2023 - Dogs Local Law

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Legal Officer - Briony McGinty
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Marked Up 2023 15.05 Dogs Local Law [6.1.1 - 18 pages] 2. Clean 2023 15.05 Dogs Local Law [6.1.2 - 18 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

#### COUNCIL DECISION

**C2308/78** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council:**

1. Commences the law-making process for the *City of Busselton Dogs Local Law 2023*; the purpose and effect of the local law being as follows:
 

**Purpose:** To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.

**Effect:** To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.
2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:
  - (a) Giving local public notice of the Proposed Local Law; and
  - (b) Giving a copy of the Proposed Local Law and public notice to the Minister for Local Government.
3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the Proposed Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in



accordance with section 3.12(4) of the Act.

**CARRIED 7 / 0**

**EN BLOC**

#### **OFFICER RECOMMENDATION**

That the Council:

1. Commences the law-making process for the *City of Busselton Dogs Local Law 2023*; the purpose and effect of the local law being as follows:  
  
Purpose: To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.  
  
Effect: To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.
2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:
  - (a) Giving local public notice of the Proposed Local Law; and
  - (b) Giving a copy of the Proposed Local Law and public notice to the Minister for Local Government.
3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the Proposed Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

#### **EXECUTIVE SUMMARY**

Under the *Local Government Act 1995* (the Act) local governments are required to carry out periodic reviews of their local laws to determine whether they should be repealed or amended. The City's existing *City of Busselton Dogs Local Law 2014* (Current Local Law) was last amended in 2015 and requires review. An internal assessment has identified areas in which improvements could be made. It is recommended that Council initiates the law-making process and authorises the CEO to give local public notice of the proposed *City of Busselton Dogs Local Law 2023* (Proposed Local Law).

#### **STRATEGIC CONTEXT**

The provision of appropriate local laws in relation to dogs supports the good governance of the district.

## BACKGROUND

The *Dog Act 1976* (the Dog Act) provides for the control, registration, ownership and keeping of dogs. Under the Dog Act, local governments may make local laws providing for, amongst other things:

- a) establishment and maintenance of dog management facilities,
- b) detention, care and release or disposal of dogs seized,
- c) licensing, use and inspection of approved kennel establishments; and
- d) requirements that premises where dogs are kept must be fenced in a manner capable of confining the dog.

Significant amendments to the Dog Act and associated regulations came into effect in 2013. Those amendments included the capacity for local governments to determine dog exercise and dog prohibited areas via Council resolution (rather than through an amendment to its local law). As a result, several provisions in the City's then "Dog by-laws" became obsolete. In 2014 the City adopted the Current Local Law to be consistent with the new Dog Act.

Section 3.16 of the Act requires that a local government should review its local laws every 8 years to determine whether they should be repealed or amended. The Current Local Law was gazetted in 2014 and was further amended in 2015. The Current Local Law is based on the WALGA model and has operated well since its inception. However, City officers have conducted an internal review which has resulted in proposed changes. Those changes have been incorporated into the Proposed Local Law which is presented to Council for consideration.

## OFFICER COMMENT

State legislation provides for a three tiered system for regulating the care for and control of dogs, as outlined below:

### Dog Act

Under the Dog Act local governments are provided with legislative controls in relation to matters such as:

- a) registration and identification of dogs;
- b) power to seize dogs;
- c) dogs to wear collars and registration tags;
- d) declaring of and dealing with dangerous dogs; and
- e) what constitutes a dog nuisance and how to deal with such a nuisance.

### Local Laws

The Dog Act also extends to local governments the power to regulate, by way of a local law, matters such as:

- a) impounding of dogs;
- b) number of dogs that can be kept;
- c) establishment of approved kennels;
- d) manner in which dogs are to be confined by the occupier of a premises; and

- e) creation of offences for non-compliance with certain provisions of a local law.

### Council resolutions

Local governments can determine dog exercise areas and areas where dogs are prohibited by an absolute majority decision after giving 28 days' notice of its intention to do so.

This report only deals with the local law-making power.

The City's Current Local Law is based on the WALGA model and is consistent with those of many other local governments. However, in reviewing the Current Local Law several changes have been identified as appropriate, to achieve a more contemporary local law. The changes can be seen in the "marked-up" version at Attachment A. For administrative ease, it is proposed to repeal the Current Local Law and replace it with the Proposed Local Law (rather than present an amendment local law), found at Attachment B.

The Proposed Local Law is divided into parts, described further below:

### Part 1

The preliminary section deals with matters of a more technical nature including the official title of the local law, the commencement date, the area to which the local law shall apply, repealing the Current Local Law and defining terminology used in the local law.

### Part 2

This section deals with the impounding of dogs. It provides for fees, charges and costs to be imposed and determined by Council in relation to the seizure and impounding, release and/or destruction and disposal of a dog and the times at which an authorised person (previously referred to as "pound keeper") has to be in attendance at the animal management facility (previously referred to as "pound").

### Part 3

This section requires from an occupier of a premises on which a dog is kept to cause the relevant portion of such premises to be fenced in a manner capable of confining the dog. It also limits the number of dogs which may be kept on any premises (other than an approved kennel establishment), to 2 dogs and the young of those dogs under the age of 3 months. The Proposed Local Law also includes a provision where, if located in an area zoned rural, then the limit of dogs which may be kept without a permit under section 26(3) of the Dog Act increases to 4. This is consistent with the WALGA template (with minor wording changes). The purpose of this change is to remove the necessity for owners of rural premises to apply for a permit for the keeping of 3 or 4 dogs, which, based on the experience of City rangers, will likely be granted in any event due to the size of the property.

#### Part 4

This section regulates the process for obtaining and transferring a license for an approved kennel establishment and its cancellation. It requires an applicant to give notice of the proposed use of the premises as a kennel establishment (notice to be given in a newspaper circulating in the district and to owners and occupiers of adjoining premises). It also provides for payment of fees in relation to applying for and issuing of a license for an approved kennel establishment.

#### Part 5

Under this section a dog must not excrete on a public place or on privately owned land without the consent of the occupier of such land. It also requires from a person in control of such a dog to immediately remove excreta, failing which such a person commits an offence.

#### Part 6

This section of the Proposed Local Law deals with enforcement. A range of modified penalties (specified in Schedule 3 of the local law) are created and persons responsible for enforcing the Proposed Local Law are authorised to issue infringement notices. The modified penalties for offences have not been updated since the Current Local Law's inception in 2014. Given the maximum modified penalty that can be imposed in a local law is \$500 per offence, the new general modified penalty of \$200 per offence is seen as appropriate (and in line with other local governments). A higher penalty applies for failing to provide means for effectively confining a dog that has been declared dangerous, given the potential consequences of such a failure.

#### Schedules

Schedule 1 of the Proposed Local Law consists of a template application for a licence for an approved kennel establishment. Schedule 2 contains draft conditions which could be imposed on a licence for an approved kennel establishment. Under Schedule 3 the offences in respect of which modified penalties apply, are specified.

#### **Statutory Environment**

##### ***Dog Act 1976***

Section 51 of the Dog Act specifies the dog related matters in relation to which local governments may make local laws.

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

Section 3.16 of the Act requires that every 8 years a local law should be reviewed to determine whether it should be repealed or amended.

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

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

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

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

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

**Purpose:** To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.

**Effect:** To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.

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

### ***Parliamentary Scrutiny***

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has an adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament has appointed the Joint Standing Committee on Delegated Legislation (JSC) which is a committee of State politicians from both houses of the Western Australian Parliament, to undertake an overseeing role on its behalf, which includes the power to scrutinise and recommend the disallowance of local laws to the Parliament. After gazettal, a copy of the Local Law will be sent to the JSC who will examine the local law and determine whether it complies with the abovementioned criteria.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:  
Not applicable.

Policy:  
Not applicable.

### **Financial Implications**

Costs associated with the advertising and gazettal of the Proposed Local Law will come from the legal budget. These costs are unlikely to exceed \$2,000. The increase in penalties is unlikely to materially impact the City's financial position.

### **External Stakeholder Consultation**

Should Council resolve to commence the process of making the Proposed Local Law, public submissions will be invited as part of the statutory consultation process prescribed under section 3.12(3) of the Act. The submission period must run for a minimum period of 6 weeks after which the Council, having considered any submissions received, may resolve to adopt the Proposed Local Law or a law which is not significantly different.

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework. No risks of a medium or greater level have been identified.

### **Options**

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

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

### **CONCLUSION**

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

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

Milestone	Completion Date
Advertising of Proposed Local Law for public consultation commenced	August 2023
Report to Council on results of public consultation	October 2023

## 10.2 Policy and Legislation Committee – 26/07/2023 - Delegation of Power to Dispose of Residential Property by Lease

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Senior Leasing and Property Officer - Ann Strang
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Absolute Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Proposed DA 1 - 22C Disposition of Residential Property by Lease [6.2.1 - 1 page]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

### **COUNCIL DECISION**

**C2308/79** Moved Cr Anne Ryan, seconded Cr Kate Cox

**That the Council adopts the instrument of delegation at Attachment 1.**

**CARRIED 7 / 0**

**BY ABSOLUTE MAJORITY**

### **OFFICER RECOMMENDATION**

That the Council adopts the instrument of delegation at Attachment 1.

### **EXECUTIVE SUMMARY**

This report proposes that Council adopt a new delegation for the disposal of residential property by lease to a person.

### **STRATEGIC CONTEXT**

The provision of housing by lease supports the strategic priority of providing diverse and affordable housing options for our community. Appropriate delegation of authority for the function of leasing of residential property is important for providing good governance and efficient decision making.

## BACKGROUND

The City of Busselton currently has an interest in more than 50 residential premises. These include:

- 28 units known as Winderlup Villas at 6 Marine Terrace and 21 West Street, Busselton operated by the City under a Joint Venture Agreement with the Housing Authority to provide community housing to eligible seniors;
- 14 units known as Kweelam Court at 26 Harris Road, Busselton, operated under a Joint Venture Agreement with the Housing Authority to provide community housing to eligible seniors;
- 7 units known as Winderlup Court at 21 West Street, Busselton for seniors; and
- a house located 78 Vasse Highway, Bovell.

The existing delegations for disposal of property do not specifically deal with the disposal of residential property by lease. Historically officers have relied on a previous signing delegation to dispose of residential property by lease. The purpose of this report is to provide a clear delegation of authority to the CEO to lease residential property to a person.

## OFFICER COMMENT

Delegations of authority are an integral part of the City's governance functions. Delegations of authority are an effective and efficient means of carrying out the functions or discharging the duties of the local government, by allowing decisions of Council to be made (with or without conditions) by the Chief Executive Officer, who in turn can delegate to other staff where appropriate.

The existing delegations do not specifically deal with the disposal of residential property by lease. The purpose of the new delegation, which is attached to this report as Attachment 1, is to clarify that the CEO can dispose of residential property by lease. Adoption of the delegation will maintain administrative efficiency when dealing with leases of residential property.

## Statutory Environment

Section 5.42 of the Local Government Act 1995 (LG Act) provides the Council with the ability to delegate powers and duties to its chief Executive Officer. Some powers and duties cannot be delegated in accordance with Section 5.43 of the Act, such as matters that require an Absolute Majority decision of Council. Council has the right to impose conditions on any delegation it grants.

Section 5.43(d) of the LG Act states that a local government cannot delegate to a CEO the power of acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of that paragraph.

Section 5.46 of the LG Act requires that all delegations be contained within a Register. The Local Government (Administration) Regulations 1996 require that where a decision has been made under delegated authority, records of that decision must be kept in accordance with the Regulations.



**Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

**Financial Implications**

Not Applicable

**External Stakeholder Consultation**

Not Applicable

**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. not accept the delegation; or
2. request further amendments are made to the delegation.

**CONCLUSION**

It is recommended that Council adopt the delegation as per the Recommendation.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Amend Delegation of Authority Register to include new delegation	August 2023

### 10.3 Policy and Legislation Committee – 26/07/2023 - Review of the Policy and Legislation Committee

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Policy and Legislation Committee Terms of Reference Proposed Edits [6.3.1 - 3 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

#### COUNCIL DECISION

**C2308/80** Moved Cr Paul Carter, seconded Cr Phill Cronin

#### **That the Council**

1. notes the outcome of the evaluation of the Policy and Legislation Committee's (the Committee) effectiveness, in accordance with clause 8 of the Committee's Terms of Reference;
2. acknowledge that while the Committee is operating effectively, increased information and training for members would further improve its effectiveness and requests the CEO consider how this can be actioned;
3. Endorses the amendments proposed to the Committee's Terms of Reference as per Attachment 1.

**CARRIED 7 / 0**

**EN BLOC**

## **OFFICER RECOMMENDATION**

That the Council

1. notes the outcome of the evaluation of the Policy and Legislation Committee's (the Committee) effectiveness, in accordance with clause 8 of the Committee's Terms of Reference;
2. acknowledge that while the Committee is operating effectively, increased information and training for members would further improve its effectiveness and requests the CEO consider how this can be actioned;
3. Endorses the amendments proposed to the Committee's Terms of Reference as per Attachment 1.

## **EXECUTIVE SUMMARY**

Under its Terms of Reference, the Policy and Legislation Committee (the Committee), at a meeting prior to the ordinary Local Government Elections, shall undertake a review to evaluate its effectiveness. Committee Members and City officers have reviewed the effectiveness of the Committee and this report presents the outcomes of that review for the Committee's consideration.

## **STRATEGIC CONTEXT**

Regular review of Committees and their functioning aids in good governance.

## **BACKGROUND**

Following the 2021 Council elections, and in accordance with clause 2.2 of the City of Busselton Standing Orders Local Law 2018, Council resolved to (re-)establish the Committee and adopted its Terms of Reference (ToR), which states:

### **8. EVALUATION OF COMMITTEE'S EFFECTIVENESS**

- 8.1. *At the meeting of the Committee prior to the ordinary Council elections, the Committee shall undertake review to evaluate its effectiveness, and as a guide the following should be determined:*
  - a. *are the Committee's purpose and objectives being met?*
  - b. *should the purpose and objectives be amended?*
  - c. *is the Committee functioning effectively and as per the requirements of the Act?*
  - d. *are the Committee members regularly attending meetings?*
  - e. *review the Terms of Reference, including membership.*

With Council elections to be held in October this year, officers initiated the review process.

## OFFICER COMMENT

In order to facilitate the review a survey link was opened to the Committee and Deputy Committee Members of the Committee from Friday 18th April until Monday 1st May 2023. Each Member was asked to respond to the following questions and provide comments where appropriate or required:

- a. Do you feel the Committee's purpose and objectives are being met? – Yes / No / Partly.
- b. In your opinion, is the Committee functioning effectively? If no, how could this be improved?

In addition to the questions asked of Committee Members, City officers assessed the following questions through a review of attendance and minutes:

- a. Is the Committee functioning as per the functions of the Act?
- b. Are committee members' regularly attending meetings?

The table below sets out the collated responses:

Question	Collated Response
Do you feel the Committee's purpose and objectives are being met?	4 responses Yes 1 response No <ul style="list-style-type: none"> <li>Concerns were raised about the need for free flowing and constructive discussion and that this can be hampered where members have not taken the time to consider and understand the subject.</li> </ul>
In your opinion, is the Committee functioning effectively?	3 responses Yes 2 response Partly
If no, how could this be improved?	Ensure discussion remains strategic and doesn't stray into operational detail and that participation of members is improved through the chair.
Is the Committee functioning as per the functions of the Act?	Yes, the Committee has been established in accordance with the Act and meets all requirements of the Act
Are committee members' regularly attending meetings?	Yes

Based on the responses provided, it is recommended that the Committee is generally operating effectively.

The suggestions for improvement relate to the effective running of the meeting, noting this is a meeting at which more informal discussion does tend to take place.

Other Committee reviews have recommended additional training for members of the Committees and it is felt that this may also assist with respect to the functioning of this Committee. Officers therefore recommend this be carried through as a recommendation for the review of this Committee.

With respect to the ToR the following amendments are proposed (Attachment A):

- Amendment to point 3.4 to provide for appointment of new members at either the next ordinary or a special council meeting post the election. With changes to the election process (preferential voting) flexibility is required;
- Removal of the delegation to schedule and endorse dates, times and locations of meetings held by the Committee. Officers do not believe this requires a delegation.
- Amendment of point 8 evaluation of the committee's effectiveness to provide for one single Committee review report to be presented to Council as opposed to each Committee evaluating their own effectiveness. For many years officers have undertaken a review of the committees and their terms of reference (ToR) (along with working groups) and provided a report to Council with Council then determining which Committees are to continue and any changes to ToR's. This has worked efficiently and has provided Council with the opportunity to review their Committee structure. It is therefore recommended that this process be used;
- Replacement of 'shall' with 'will'.

### **Statutory Environment**

The Policy and Legislation Committee has been established in accordance with section 5.8 of the *Local Government Act 1995*.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

### **Financial Implications**

Not applicable.

### **External Stakeholder Consultation**

In accordance with the Terms of Reference, the Committee and Deputy Committee Members of the Policy and Legislation Committee were consulted in undertaking the review into the Committee's effectiveness.

### **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 evaluate the effectiveness of the Committee differently and / or make different of further amendments to the ToR.

### **CONCLUSION**

An evaluation of the Committee's effectiveness is required under the Committee's ToR. This report presents an evaluation for the Committee's endorsement and recommendation to Council.

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

<b>Milestone</b>	<b>Completion Date</b>
Terms of Reference Updated	30 September 2023

#### 10.4 Policy and Legislation Committee – 26/07/2023 - Rescission of Council Policy 'Swearing In of Elected Members'

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. swearing-in-of-elected-members [6.4.1 - 2 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

#### **COUNCIL DECISION**

**C2308/81** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council rescind Council Policy 'Swearing in of Elected Members' (Attachment 1), effective immediately.**

**CARRIED 7 / 0**

**EN BLOC**

#### **OFFICER RECOMMENDATION**

That the Council rescind Council Policy 'Swearing in of Elected Members' (Attachment 1), effective immediately.

#### **EXECUTIVE SUMMARY**

This report recommends the rescission of Council Policy 'Swearing in of Elected Members' (the Policy), with the Policy having been reviewed as part of the City's periodic review of its Council policies. The matters set out in the Policy are largely requirements under the *Local Government Act 1995* (the Act); hence the recommendation for rescission.

## STRATEGIC CONTEXT

Regular review of City's policies reflects good governance.

## BACKGROUND

The Policy was initially adopted in March 2010 and last reviewed in September 2019, where the title was changed from 'Convening of the Council Following an Ordinary Election' to 'Swearing in of Elected Members', and the Policy aligned to the City's new (at that time) Policy Framework and policy template.

The purpose of the Policy is to outline guidelines for the official swearing in ceremony of newly elected members as part of a special Council meeting.

## OFFICER COMMENT

Officers propose that the Policy be rescinded as the swearing in of elected members is a requirement under the Act, as is the election of the Mayor (statutorily now by popular vote) and Deputy Mayor.

Persons successfully elected or re-elected cannot participate in the transaction of business until they have made the Elected Member declaration, in accordance with Section 2.29 of the Act. The current policy stipulates that this will occur Monday following the election, however changes to the election process may require this to be later, in the event of the count not being concluded or a recount being required. In any event, it will occur at a special Council meeting at the earliest practicable opportunity following the election, as will the election of the Deputy Mayor.

While it is proposed that the election of members to Council Committees and working groups continues to occur at this first special Council meeting, removal of a policy provision does provide for increased flexibility and allows the CEO, in consultation with the council of the day, to make changes as appropriate to the circumstances at the time of each election.

Similarly, the holding of function for newly Elected Members and their immediate family members to mark the occasion can also be reviewed in the lead up to each election. Although it is certainly recommended that this practice be continued in recognition of the momentous achievement of being elected to serve the community.

## Statutory Environment

In accordance with Section 2.7(2)(b) of the Local Government Act 1995 it is the role of the Council to determine the local government's policies. The Council does this on the recommendation of a Committee it has established in accordance with Section 5.8 of that Act.

A number of sections of the Act are relevant to the proposed policy, including:

- Section 2.29 which provides for the declaration of elected members before acting in the office;



- Section 5.8 of the Local Government Act 1995 provides for the establishment of committees; and
- Schedule 2.3, Division 1 of the Local Government Act 1995 provides for when and how mayors, presidents, deputy mayors and deputy presidents are elected by the Council.

**Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

**Financial Implications**

Not Applicable

**External Stakeholder Consultation**

Not Applicable

**Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

No risks of a medium or greater level have been identified.

**Options**

As an alternative to the proposed recommendation the Council could decide to retain the Policy, in which case officers will further review and present amendments to the next Policy and Legislation Committee meeting.

**CONCLUSION**

This report recommends that Council Policy Swearing in of Elected Members is rescinded as part of the City's ongoing review of its policies, with the Policy provisions largely covered by the Act or being of an operational nature.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Milestone	Completion Date
Policy removed from the City's website	2 August 2023

## 10.5 Policy and Legislation Committee – 26/07/2023 - Review of Council Policy 'Fees, Allowances and Expenses for Elected Members'

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Proposed Policy - Elected Member fees allowances and expenses for Elected Members [6.5.1 - 5 pages]</li> <li>2. Current Policy - Fees, allowances and expenses for Elected Members [6.5.2 - 6 pages]</li> <li>3. Track Changes Edits [6.5.3 - 7 pages]</li> </ol>

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

### COUNCIL DECISION

**C2308/82** Moved Cr Paul Carter, seconded Cr Phill Cronin

That the Council adopts the amended Council Policy 'Elected Member Fees, Allowances and Expenses' (Attachment 1), to replace the current policy titled 'Fees, Allowances and Expenses for Elected Members' (Attachment 2), inclusive of Committee amendments so that the following points read as follows, with subsequent renumbering as required:

- 5.5 As per Section 5.99 of the Act, Elected Members will be paid an annual attendance fee in lieu of fees for attending meetings referred to in Section 5.98(1) of the Act. Elected Members will be paid an annual fee within the relevant band set out in the Determination, as set each year by Council through the adoption of its budget.
- 5.8 Any equipment provided in accordance with this policy must be returned to the City at the expiry of an Elected Members term. After having served a minimum of 24 months, an Elected Member may on retiring choose to keep the equipment, subject to it being cleared by the City's IT department.
- 5.18 Spouse/ partner attendance on City sanctioned activities must be approved by the Mayor and CEO and will be at the Elected Member's expense. *(new)*
- 5.19 The City will also meet the following expenses:
  - a. cost of laundry for Elected Member for greater than 5 nights;

- b. reimbursement of taxi fares or other public transport where these directly relate to the activity and no other transport is provided;
- c. reimbursement of a daily sustenance allowance per day, in accordance with the Public Service Award 1992;
- d. specific conference / event related meals.

**5.27 In addition to their entitlements as an Elected Member under this Policy, the Mayor is eligible for a Mayoral allowance in accordance with the Act. The Mayor will be paid an allowance within the relevant Band set out in the Determination, as set each year by Council through adoption of its budget. (previously 5.26)**

**CARRIED 7 / 0**

**EN BLOC**

### **OFFICER RECOMMENDATION**

That the Council adopts the amended Council Policy 'Elected Member Fees, Allowances and Expenses' (Attachment 1), to replace the current policy titled 'Fees, Allowances and Expenses for Elected Members' (Attachment 2).

### **EXECUTIVE SUMMARY**

This report presents an amended Council Policy 'Elected Member Fees, Allowances and Expenses' (the Policy) (Attachment 1). The Policy has been reviewed as part of the City's ongoing policy review cycle and amended to reflect current provisions, with minor amendments and edits to improve readability.

### **STRATEGIC CONTEXT**

The provision of fees, allowances and the reimbursement of expenses incurred while carrying out role functions ensures that elected members are appropriately remunerated for their work and aids in good governance. Regular review of policies also reflects good governance.

### **BACKGROUND**

It is the function of the Policy and Legislation Committee to consider new and review existing Council policies. The City's Policy Framework sets out an ongoing cycle of policy review, with the aim of determining the ongoing strategic importance and applicability of Council policies.

The purpose of the Policy is to set out the fees, allowances, expense reimbursements and equipment that Elected Members are entitled to, such that they can effectively carry out their role. The Policy was last reviewed in its entirety in 2017, with further amendments made in 2018 in relation to childcare expenses for briefing sessions and workshops and travel reimbursements for 'flagship' events, and in 2019 in relation corporate attire provisions.

## OFFICER COMMENT

The broad intention of the Policy is to provide a reimbursement framework which allows Elected Members to meet their commitments and effectively perform their role. Officers consider that the current policy achieves this intent, with the only substantive amendments proposed as follows:

1. The inclusion of a policy position with respect to Elected Member fees, ICT allowances and the Mayoral allowance, reflective of the current practice of remuneration being equal to the maximum payable under the relevant Salaries and Allowances Tribunal Determination (point 5.5, 5.9 and 5.26).
2. Amendment to the clause which covers the retention of City provided equipment to be more specific about what associated equipment is provided with a portable device and to ensure that any equipment retained by members is wiped prior to its retention, to protect City information and networks.
3. Clarity with respect to the making of accommodation and (where required) flight arrangements for an Elected Member required to travel overnight on City sanctioned activities; with the City to arrange these in the first instance (in consultation with the Elected Member), and reimbursement of reasonable costs to be provided in the event this is not possible. This reflects current practice.
4. A change from 2 nights to 5 nights for the payment of laundry costs when Elected Members are away on City sanctioned activities (point 5.18). Elected members generally only require laundry on longer trips.

Other minor amendments are recommended to improve the structure and readability of the Policy, for instance insertion of new point 5.3 in lieu of the same point being repeated under each subheading, and the combining of points within the travel expenses section to streamline the Policy content. It is recommended that the title be amended to provide for policies with respect to Elected Members to be grouped / located together in the City's policy listing.

### **Statutory Environment**

In accordance with Section 2.7(2)(b) of the Local Government Act 1995 (the Act) it is the role of the Council to determine the local government's policies. The Council does this on the recommendation of a Committee it has established in accordance with Section 5.8 of that Act.

Section 5.98(1) and 5.98(2A) of the Act entitles Council members to a fee for attending a council, committee or other prescribed meeting. Section 5.99 of the Act allows a local government to decide that instead of paying a fee referred to in Section 5.98(1), it will instead pay an annual fee determined by the Salaries and Allowances Tribunal Act 1975 or a fee set by the local government within the range for annual fees determined by the Salaries and Allowances Tribunal (SAT).

Section 5.98(5) entitles the mayor or president of a local government to be paid, in addition, an annual allowance determined for mayors or presidents or as set by the local government within the range determined by the SAT.

Section 5.98A allows a local government to pay the deputy mayor or deputy president an allowance, currently 25% as determined by the SAT.

Section 5.98(2)(b) of the Act and Regulation 32 of the *Local Government (Administration) Regulations 1996* provides that a Council member may be reimbursed for an expense of a kind prescribed where it has been approved by the local government and where it is incurred in performing a function in his or her capacity as a council member with the express authority of the local government. All reimbursements are to be in accordance with the determination made by the SAT.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

### **Financial Implications**

Not Applicable.

### **External Stakeholder Consultation**

Not Applicable.

### **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. Decide to retain the Policy in its current form.
2. Decide to make additional amendments.

### **CONCLUSION**

This report recommends that Council adopt the amended Council policy 'Elected Member Fees, Allowances and Expenses,' to replace the current policy.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Milestone	Completion Date
Policy placed on the City’s website	2 August 2023

## 10.6 Policy and Legislation Committee – 26/07/2023 - Review of Council Policy 'Designation of Senior Employee and Acting CEO'

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Office of the Chief Executive Officer
<b>Reporting Officer:</b>	Chief Executive Officer - Tony Nottle
<b>Authorised By:</b>	Chief Executive Officer - Tony Nottle
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Proposed Council Policy [6.6.1 - 2 pages]</li> <li>2. Current Council Policy [6.6.2 - 2 pages]</li> <li>3. Tracked Changes Proposed Council Policy [6.6.3 - 2 pages]</li> </ol>

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

### COUNCIL DECISION

**C2308/83** Moved Cr Paul Carter, seconded Cr Phill Cronin

#### That the Council:

- a) rescind the current Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 2), and
- b) request the CEO to bring a new Council Policy 'Acting CEO' to the Ordinary Council Meeting being held 16 August 2023.

**CARRIED 7 / 0**

**EN BLOC**

### OFFICER RECOMMENDATION

That the Council adopts the amended Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 1), to replace the current policy (Attachment 2).

## EXECUTIVE SUMMARY

This report presents an amended Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 1) (the Policy). The Policy has been reviewed as the result of a recent organisational review and realignment of structure, in addition to being due for review as part of the City's ongoing policy review cycle.

## STRATEGIC CONTEXT

The Designation of Senior Employees, while optional, forms part of the City's overall governance arrangements and provides Council oversight for the appointment and termination of executive positions of the City. Policy provisions with respect to the appointment of an Acting CEO ensures that Section 5.36 of the Act is met, while allowing the CEO flexibility to appoint an Acting CEO for shorter periods of leave.

## BACKGROUND

It is the role of the Council broadly to govern the local government's affairs; and be responsible for the performance of the local government's functions, through (predominantly) overseeing the allocation of the local government's finances and resources and determining the local government's policies.

Under Section 5.41 of the *Local Government Act 1995* (the Act), the role of the CEO is to manage the day-to-day operations of the local government and to be responsible for the employment, management supervision, direction and dismissal of other employees. This however is subject to Section 5.37 of the Act in relation to Senior Employees.

Section 5.37(1) of the the Act provides for a local government to designate employees or persons belonging to a class of employees to be Senior Employees. Section 5.37(2) of the Act requires the CEO to inform the Council of each proposal to employ or dismiss a Senior Employee. The Council has had a policy covering the designation of Senior Employees since at least 2015.

Further, Section 5.36 of the Act establishes that a person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position. While the CEO has responsibility under their contract of employment for all staffing matters, including the appointment of an Acting CEO for periods of leave, it was identified during a review of the City's governance system that the lack of a formal policy position was a gap in the City's policy framework.

In June 2018 the Council therefore adopted a policy covering both the designation of Senior Employees and the appointment of an Acting CEO. The current policy was adopted in 2019 with minor amendments to identify the importance of succession planning for the position of CEO.



## **OFFICER COMMENT**

The CEO has recently completed an organisational review, resulting in a realignment of the organisation's structure and adjustments to two of the City's Senior Employee positions, with the previous Director Community and Commercial Position replaced by the Director Business and Economic and Development position, and the position of Director Finance and Corporate Services to be Director Corporate and Strategic Performance moving forward. The Policy has therefore been updated to make these new positions Senior Employees.

Council is asked to adopt the amended policy, continuing to provide for the appointment of persons employed as Senior Employees to be appointed as Acting Chief Executive Officer during periods of Leave by the Chief Executive Officer or by Council, such that the continuous and efficient execution of the City's functions is maintained.

### **Statutory Environment**

In accordance with Section 2.7(2)(b) of the *Local Government Act 1995* (the Act) it is the role of the Council to determine the local government's policies. The Council does this on the recommendation of a Committee it has established in accordance with Section 5.8 of that Act.

As detailed in the background section of this report section 5.36 and 5.37 of the Act sets out requirements in relation to the appointment of a CEO and any designated Senior Employees.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

### **Financial Implications**

Not Applicable.

### **External Stakeholder Consultation**

Not Applicable.

### **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. Decide not to designate any Senior Employees, noting it is optional under the Act;
2. Decide not to designate the new positions as Senior Employees, noting under the current structure of the Policy they would not be able to act as CEO;
3. Decide to make additional amendments to the policy

### **CONCLUSION**

This report recommends that Council adopt the amended Council policy 'Designation of Senior Employees and Acting CEO,' to replace the current policy.

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

<b>Milestone</b>	<b>Completion Date</b>
Policy placed on the City's website	23 August 2023

## 10.7 Policy and Legislation Committee – 26/07/2023 - Review of Council Policy 'Closed Circuit Television Systems'

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Manager Information Services - Tim Allingham
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Proposed Council Policy Closed Circuit Television Systems [6.7.1 - 2 pages]</li> <li>2. Current Council Policy Closed Circuit Television Systems [6.7.2 - 2 pages]</li> <li>3. Track Changes Version [6.7.3 - 2 pages]</li> </ol>

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

The committee recommendation was moved and carried.

### COUNCIL DECISION

**C2308/84** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council adopts the amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1) to replace the current policy (Attachment 2).**

**CARRIED 7 / 0**

**EN BLOC**

### OFFICER RECOMMENDATION

That the Council adopts the amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1) to replace the current policy (Attachment 2).

## EXECUTIVE SUMMARY

This report presents an amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1). The Policy has been reviewed as part of the City's ongoing policy review cycle. Officers recommend it replace the current policy (Attachment 2).

## STRATEGIC CONTEXT

The City's use of CCTV footage helps to facilitate a safe community and to the protection of City assets. Regular review of City policies reflects good governance.

## BACKGROUND

It is the function of the Policy and Legislation Committee to consider new and review existing Council policies. The City's Policy Framework sets out an ongoing cycle of policy review, with the aim of determining the ongoing strategic importance and applicability of Council policies.

A policy in relation to Closed Circuit Television Systems was first implemented in October 2013, with a further review in June 2018.

## OFFICER COMMENT

The Policy has been reviewed and is considered of ongoing relevance and strategic importance.

It has been updated with wording simplifications, and the following:

- Moved the clarification as to why the City uses CCTV systems from the scope section to the policy statement section.

*The reason why the City uses CCTV is not relevant to the scope of the policy, however this information is important to the overall meaning of the policy and therefore needs to be included.*

- Removed the categorisation of locations.

*Categorisation of the locations of CCTV cameras is not used operationally. The Surveillance Devices Act 1998, referenced in section 6, specifies that CCTV cameras may not be used to record private activities. All the City's CCTV cameras are located in public areas or City staff areas. This complies with this act.*

### **6.Regulation of use, installation and maintenance of optical surveillance devices**

- (1) Subject to subsections (2) and (3), a person shall not install, use, or maintain, or cause to be installed, used, or maintained, an optical surveillance device —
- (a) to record visually or observe a private activity to which that person is not a party; or
  - (b) to record visually a private activity to which that person is a party.

- The City's CCTV systems will be added to Cam-Map WA (operated by the WA Police Force).

*This system provides the local Police with an overview of the locations of all registered CCTV cameras to help them gather evidence and solve crimes. It does not provide access to any footage on the CCTV cameras or systems themselves.*

*The information on Cam-Map WA is not available to the public.*

- Clarification that, in addition to footage being available to the Police, the CEO can authorise the release of footage.

*There may be instances where the release of CCTV footage may be appropriate even though the Police have not requested it. In these cases, the CEO may authorise the release.*

- Recorded data will be managed according to the City's Recordkeeping Plan and State Records Act.

*Retention of footage of incidents (100.2) is to be retained for 7 years (and then it becomes eligible for destruction).*

*Retention of normal footage (100.5) is required for 31 days – our systems currently provide around 45 days.*

### **Statutory Environment**

In accordance with section 2.7(2)(b) of the Local Government Act 1995 (the Act), it is the role of the Council to determine the local government policies. The Council does this on recommendation of a Committee it has established in accordance with section 5.8 of the Act.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Community Development Plan 2022-2027

Policy:

[Closed Circuit Television Systems](#)

### **Financial Implications**

Not Applicable

### **External Stakeholder Consultation**

Not Applicable

### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

No risks of a medium or greater level have been identified.

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Choose not to adopt the amended Policy, or
2. Adopt the Policy with further amendments.

### **CONCLUSION**

Officers are recommending the adoption of the amended Council policy: Closed Circuit Television Systems, to replace the current policy of the same name.

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

Milestone	Completion Date
Policy taking effect	Immediately
Policy placed on City's website	Within 7 days

**10.8                    Finance Committee – 09/08/2023 - Financial Activity Statements - Year to Date 30 June 2023**

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making. 4.5 Responsibly manage ratepayer funds to provide for community needs now and in the future.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Manager Financial Services - Paul Sheridan
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies. Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Absolute Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Investment Report - June 2023 [6.2.1 - 1 page] 2. Loan Schedule - June 2023 [6.2.2 - 1 page] 3. Financial Activity Statement - June 2023 [6.2.3 - 18 pages]

This item was considered by the Finance Committee at its meeting on 9 August 2023, the recommendations from which have been considered by Council.

The committee recommendation was moved and carried.

**COUNCIL DECISION**

**C2307/85** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council receives the statutory financial activity statement reports for the period ending 30 June 2023, pursuant to Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996*.**

**CARRIED 7 / 0**

**EN BLOC**

**OFFICER RECOMMENDATION**

That the Council receives the statutory financial activity statement reports for the period ending 30 June 2023, pursuant to Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996*.

## EXECUTIVE SUMMARY

Pursuant to Section 6.4 of the *Local Government Act 1995* (the Act) and Regulation 34(4) of the *Local Government (Financial Management) Regulations 1996* (the Regulations), a local government is to prepare, on a monthly basis, a statement of financial activity that reports on the City's financial performance in relation to its adopted / amended budget.

This report has been compiled to fulfil the statutory reporting requirements of the Act and associated Regulations, whilst also providing the Council with an overview of the City's financial performance on a year to date basis, for the period ending 30 June 2023.

## STRATEGIC CONTEXT

Provision of the financial activity statements, while a statutory requirement, also supports open and accountable governance.

## BACKGROUND

The Regulations detail the form and manner in which financial activity statements are to be presented to the Council on a monthly basis, and are to include the following:

- Annual budget estimates
- Budget estimates to the end of the month in which the statement relates
- Actual amounts of revenue and expenditure to the end of the month in which the statement relates
- Material variances between budget estimates and actual revenue/expenditure (including an explanation of any material variances)
- The net current assets at the end of the month to which the statement relates (including an explanation of the composition of the net current position)

Additionally, and pursuant to Regulation 34(5) of the Regulations, a local government is required to adopt a material variance reporting threshold in each financial year. At its meeting on 3<sup>rd</sup> August 2022, the Council adopted (C2208/198) the following material variance reporting threshold for the 2022/23 financial year:

*That pursuant to Regulation 34(5) of the Local Government (Financial Management) Regulations, the Council adopts a material variance reporting threshold with respect to financial activity statement reporting for the 2022/23 financial year as follows:*

- *Variances equal to or greater than 10% of the year to date budget amount as detailed in the Income Statement by Nature and Type/Statement of Financial Activity report, however variances due to timing differences and/or seasonal adjustments are to be reported only if not to do so would present an incomplete picture of the financial performance for a particular period; and*
- *Reporting of variances only applies for amounts greater than \$50,000.*



## OFFICER COMMENT

In order to fulfil statutory reporting requirements and to provide the Council with a synopsis of the City's overall financial performance on a year to date basis, the following financial reports are attached hereto:

### Statement of Financial Activity

This report provides details of the City's operating revenues and expenditures on a year to date basis, by nature and type (i.e. description). The report has been further extrapolated to include details of non-cash adjustments and capital revenues and expenditures, to identify the City's net current position; which reconciles with that reflected in the associated Net Current Position report.

### Net Current Position

This report provides details of the composition of the net current asset position on a full year basis, and reconciles with the net current position as per the Statement of Financial Activity.

### Capital Acquisition Report

This report provides full year budget performance (by line item) in respect of the following capital expenditure activities:

- Land and Buildings
- Plant and Equipment
- Furniture and Equipment
- Infrastructure

### Reserve Movements Report

This report provides summary details of transfers to and from reserve funds, and associated interest earnings on reserve funds, on a full year basis.

Additional reports and/or charts can be provided as required to further supplement the information comprised within the statutory financial reports.

### Comments on Financial Activity to 30 June 2023

The Statement of Financial Activity (FAS) for the year to date (YTD) shows an overall Net Current Position of \$1.95M as opposed to the YTD budget of \$432K.

The following table summarises the major YTD variances that appear on the face of the FAS, which, in accordance with Council's adopted material variance reporting threshold, collectively make up the above difference. Each numbered item in this lead table is explained further in the report.

Description	2022/23 Actual YTD \$	2022/23 Amended Budget YTD \$	2022/23 Amended Budget \$	2022/23 YTD Bud Variance %	2022/23 YTD Bud Variance \$	Change in Variance Current Month \$
<b>Revenue from Ordinary Activities</b>				<b>11.32%</b>	<b>9,445,699</b>	<b>265,644</b>
1. Operating Grants, Subsidies and Contributions	8,006,230	3,432,638	3,432,638	133.24%	4,573,592	3,413,635
2. Fees & Charges	22,417,681	19,894,021	19,894,021	12.69%	2,523,660	(3,134,323)
3. Other Revenue	609,996	351,906	351,906	73.34%	258,090	57,519
4. Interest Earnings	4,374,036	2,019,250	2,019,250	116.62%	2,354,786	250,008
<b>Expenses from Ordinary Activities</b>				<b>3.65%</b>	<b>3,511,782</b>	<b>14,970,730</b>
5. Insurance Expenses	(869,528)	(652,369)	(652,369)	(33.29%)	(217,159)	16,544
6. Other Expenditure	(5,841,548)	(7,627,766)	(7,627,766)	23.42%	1,786,218	3,836,054
7. Non-Operating Grants, Subsidies and Contributions	23,460,464	33,439,826	33,439,826	(29.84%)	(9,979,362)	(21,281,519)
<b>Capital Revenue &amp; (Expenditure)</b>			<i>Net</i>	<b>(8.00%)</b>	<b>(3,240,573)</b>	<b>(22,513,979)</b>
8. Land & Buildings	(12,105,402)	(41,671,124)	(41,671,124)	70.95%	29,565,722	26,003,674
Plant & Equipment	(1,968,598)	(4,773,534)	(4,773,534)	58.76%	2,804,936	3,185,831
Furniture & Equipment	(880,755)	(1,152,956)	(1,152,956)	23.61%	272,201	421,184
Infrastructure	(15,187,791)	(24,396,525)	(24,396,525)	37.75%	9,208,734	5,393,317
9. Proceeds from Sale of Assets	604,455	460,652	460,652	31.22%	143,803	203,644
10. Proceeds from New Loans	6,500,000	6,750,000	6,750,000	100.00%	(250,000)	(6,750,000)
11. Advances to Community Groups	0	(250,000)	(250,000)	100.00%	250,000	250,000
12. Transfer to Restricted Assets	(39,871,154)	0	0	(100.00%)	(39,871,154)	(11,267,232)
13. Transfer from Restricted Assets	30,882,623	13,038,048	13,038,048	136.87%	17,844,575	(2,605,185)
14. Transfer to Reserves	(28,923,963)	(24,746,495)	(24,746,495)	(16.88%)	(4,177,468)	(3,303,246)
15. Transfer from Reserves	21,969,123	40,835,585	40,835,585	(46.20%)	(18,866,462)	(33,833,529)

### Revenue from Ordinary Activities

In total, revenue from Ordinary Activities is 10.3% or \$8.6M ahead of budget YTD. The material variance items contained within this category, on the face of the FAS, are explained below.

## 1. Operating Grants, Subsidies and Contributions

Ahead of YTD budget by \$4.6M, or 133.2%, mainly due to the items listed in the table below:

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Office of the CEO</u></b>		<b>30,000</b>	<b>185</b>	<b>29,815</b>	<b>16144.3%</b>	<b>30,000</b>
1000	Office of the CEO	30,000	185	29,815	16144.3%	30,000
Actuals represent recognition of grant funding from the Department of Primary Industries & Regional Development for the Southwest Cities Focus program. The grant was spent on the development of an Investment Prospectus report and spatial map by a consultant.						
<b><u>Finance and Corporate Services</u></b>		<b>4,066,067</b>	<b>1,495,423</b>	<b>2,570,645</b>	<b>171.9%</b>	<b>2,292,882</b>
1030	Human Resources	42,852	-	42,852	100.0%	2,149
The actuals relate primarily to Workcover wages reimbursement from LGIS. This is not something that can be reliably estimated, hence there is no budget figure for the year.						
1033	Financial Services	185,594	762,687	(577,092)	(75.7%)	185,594
The variance to budget relates to mainly to the PACP Coastal Grants Project, where only \$105K of the \$600K budgeted grant was recognised based on work done. There is also a further \$88K due to Insurance Reimbursements, for which the total budget for the year is an estimate based on prior years, with monthly timing difficult to forecast accurately due to not knowing in advance when insurance claims will need to be made.						
1034	General Purpose Funding	3,595,936	563,576	3,032,360	538.1%	2,840,895
The annual Financial Assistance Grants from the state government are received each year in 4 instalments. At the time of setting the budget, estimates were made based on prior years receipts, incremented by projected LGCI. Final FAGS distributions, finalised after the budget was set, were higher than initially forecast. Also, the entire FAGS distribution for the 23/24 financial year of \$2.8M was prepaid in June. This has been set aside in reserve for use in the 23/24 financial year.						
1036	Information Technology	12,751	2,052	10,699	521.4%	(2,029)
Trainee subsidies received that were not fully budgeted for as it was not known at the time of setting the budget the extent to which trainees would or could be available.						
1038	Records	14,624	-	14,624	100.0%	-
Actuals relate to Parenting Leave Reimbursements which were not budgeted for. These are offset by the actual wages paid to the employee while on parental leave.						
1041	Land and Property Leasing	171,492	123,315	48,177	39.1%	(18,098)
When the budget was created there were no allocations for utility charge reimbursements for certain properties (i.e. the amounts the tenants of the Microbrewery, Interpretive Centre and UWO pay the City to reimburse the City for utility charges were budgeted as \$0). YTD the City has received revenue for reimbursements across those properties which explains most of the exceedance.						
<b><u>Community and Commercial Services</u></b>		<b>560,607</b>	<b>396,698</b>	<b>163,909</b>	<b>41.3%</b>	<b>(178,824)</b>
1002	Events and Cultural	53,975	42,607	11,368	26.7%	12,676
Variance relates to an unbudgeted grant for the Saltwater opening production, funded by Dept Local Government, Sport and Cultural Industries.						
1005	Library Services	73,833	44,682	29,151	65.2%	1,858
\$14k is for unbudgeted parenting leave payments, offset in expenses, and \$15k is unbudgeted grant funding contribution towards the Storytime Way program.						

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
1007	Airport Operations	75,810	62,637	13,173	21.0%	70,876
The amended budget of \$59k was originally for the DOT / RADS SAAFMF, \$50k of which we didn't receive due to delays and Fed Govt screener accreditation grant scheme. We received \$50k from MRBTA into this account which is for the BMRA Marketing & Business case fund, and \$21,100 from the Fed Govt screener accreditation grant scheme - this was greater than expected but the grant scheme is based on reimbursement for training and we had additional training costs due to recruitment of new screeners and some reimbursement for utilities.						
1011	Leisure Centres	133,048	17,757	115,291	649.3%	53,632
\$7K relates to unbudgeted Parenting Leave Reimbursements (offset in parental leave wages), \$24K relates to a grant for a JobSkills Trainee that was not budgeted for (also offset by slightly higher wages), and the remainder is in relation to unbudgeted child care grants from the federal government.						
<b>Planning and Development Services</b>		<b>1,142,372</b>	<b>1,166,954</b>	<b>(24,581)</b>	<b>(2.1%)</b>	<b>(161,834)</b>
1043	Planning and Development Directorate Admin	20,008	-	20,008	100.0%	-
This is a final recoup of the Healthy Estuaries grant that was not budgeted.						
1048	Statutory Planning	14,716	4,361	10,356	237.5%	(2,248)
The variance relates to unbudgeted Parenting Leave Reimbursements. These are offset by the actual wages paid to the employee while on parental leave.						
1049	Strategic Planning Management	15,200	-	15,200	100.0%	-
This is the final grant payment as part of the Coastal Adaptation Strategy. It was expected in the 21/22 year, and was therefore not budgeted for in this FY.						
1054/56	Emergency Management	1,013,187	1,081,026	(67,839)	(6.3%)	(84,949)
The variance is related to the BMO position being fully City funded, whereas within the budget it had been assumed 2/3 <sup>rd</sup> of the costs would be City or AMR funded as per the previous financial year.						
<b>Engineering and Works Services</b>		<b>1,769,846</b>	<b>1,115,209</b>	<b>654,637</b>	<b>58.7%</b>	<b>(105,028)</b>
1015	Operations and Works Management	188,623	71,461	117,162	164.0%	33,194
Actuals and budget relate to Workers Compensation Insurance Reimbursements, which are difficult to predict with any degree of accuracy, and are usually based on historical trends.						
1016	Construction and Maintenance	307,918	-	307,918	100.0%	191,044
Actuals relate to unbudgeted insurance recoveries for Gale Road bridge repairs and maintenance, and reimbursements from RAC for the charging station costs in Busselton and Dunsborough.						
1017	Parks & Gardens	129,671	42,638	87,033	204.1%	(8,780)
Positive variance to budget relates mainly to the Southwest Catchments Council's grants in the Environmental Management area, of \$65K. The rest relates to unbudgeted insurance recoveries, plus an additional amount received from Main Roads for verge maintenance.						
1019	Facilities Maintenance	114,857	-	114,857	100.0%	5,335
The positive variance is due to the allocation of utilities reimbursements from tenants, which were budgeted in a different area. A review of that budget indicates that we are expecting to recover more than expected by year end overall, due to higher actual utility costs.						

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
1020	Engineering Technical Management	14,549	56,323	(41,774)	(74.2%)	(32,173)
The variance in revenue relates to a reduced number of Tourist Information and Directional Signage applications received, as well as non-recognition of coastal protection grants as the inspection and monitoring works have not yet been done.						
1025	Fleet Management	101,786	117,990	(16,204)	(13.7%)	(98,281)
Due to the ATO cutting the excise rate, the fuel rebates have come in less than budget this year.						
1055	Rural Verge and Firebreak Maintenance	72,335	-	72,335	100.0%	72,335
A storm damage claim from the 21/22 financial year was finally accepted and paid in June, that wasn't budgeted for.						

## 2. Fees & Charges

Ahead of YTD budget by \$2.5M, or 12.7%, mainly due to the items listed in the table below:

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Finance and Corporate Services</u></b>		<b>1,086,156</b>	<b>1,375,306</b>	<b>(289,149)</b>	<b>(21.0%)</b>	<b>(432,247)</b>
1034	General Purpose Funding	75,834	87,000	(11,166)	(12.8%)	1,650
Lower than expected property information and settlement/search requests.						
1041	Land and Property Leasing	333,578	640,849	(307,271)	(47.9%)	(451,362)
The variance is primarily as a result of the year end adjustment to the Lease Receivables per AASB 16 amounting to \$238K. The remainder of the variance is due to lease revenue being significantly lower for the Goose Café (rent concession granted by Council during rebuild), Old Tennis Club Building (delays with entering into a lease with new tenant) and Peel Terrace Building (delays with entering into a lease with new tenant after CQU vacated).						
1042	Aged and Community Housing	540,001	517,207	22,794	4.4%	5,303
Income fluctuates depending on financial status of tenants and is difficult to predict accurately.						
<b><u>Community and Commercial Services</u></b>		<b>9,512,375</b>	<b>7,508,949</b>	<b>2,003,426</b>	<b>26.7%</b>	<b>(2,851,568)</b>
1001	Community & Commercial Directorate Administration	1,746,751	1,313,120	433,631	33.0%	(22,798)
Significantly ahead of budget YTD due to much higher levels of caravan park visitations than originally forecast.						
1002	Events and Cultural	509	14,660	(14,151)	(96.5%)	(11,910)
The original BPACC budget projected venue bookings in 2022-23, but there were none due to delays with construction. This is somewhat offset by the fact that there was also minimal operational expenses.						

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
1003	Cultural Precinct	45,743	69,645	(23,901)	(34.3%)	(48,497)
<p>The Artgeo budget is under in commercial lease payments due to the extended occupancy of two studios usually available for lease which are being used for staff accommodation and the City's Art Collection whilst BPACC is being constructed. The art award was also not held in this financial year due to not having an art gallery therefore income from exhibition fees is also down.</p> <p>Retail sales were budget higher than previous years due to an expected launch of a retail product line but this has been postponed until Saltwater is up and running (with correlating expenses also reduced).</p>						
1007	Airport Operations	4,606,199	3,245,093	1,361,107	41.9%	(285,447)
Significantly ahead of budget YTD due to much higher levels of visitations than originally forecast, giving rise to increased passenger, landing and car parking fees at the airport.						
1008	Economic and Business Development	59,337	45,760	13,578	29.7%	(13,084)
Hire fees are over YTD and overall in this category it is forecast to be over budget by year end.						
1009	Community and Recreation Management	161,632	139,587	22,045	15.8%	(114,908)
The positive variance is attributed to higher than expected revenues from hires of the City's facilities.						
1011	Leisure Centres	2,810,541	2,606,012	204,529	7.8%	(2,305,566)
The positive variance is largely due to a spike in stadium hire, kiosk income, and swimming pool revenue above what was expected.						
<b><u>Planning and Development Services</u></b>		<b>2,661,816</b>	<b>2,411,712</b>	<b>250,104</b>	<b>10.4%</b>	<b>133,313</b>
1046	Building Services	691,488	711,882	(20,394)	(2.9%)	(8,116)
Fees income is determined by the volume and construction costs of building activity. Fee income is budgeted on a best estimate basis, but is inherently uncertain. Building activity has continued at elevated levels, but reduced slightly over the last few months.						
1048	Statutory Planning	917,367	740,566	176,801	23.9%	18,849
Fees income is determined by the volume and value of development activity. Fees income is budgeted on a best estimate basis, but is inherently uncertain. Development activity has continued at elevated levels so far in 22/23.						
1049	Strategic Planning Management	61,827	50,930	10,896	21.4%	(735)
The variance relates to an increase in fees from structure plans and rezoning proposals submitted.						
1051	Environmental Health Services	725,669	627,226	98,443	15.7%	125,781
Fee income varies over the months due to a combination of volume of services required, and bulk processing of some annual fees in May which has led to increased monthly fees in June towards the end of the financial year.						
1054	Ranger and Emergency Management	158,298	178,508	(20,210)	(11.3%)	(1,771)
Principally due to overdue animal registration fees.						
<b><u>Engineering and Works Services</u></b>		<b>9,160,427</b>	<b>8,598,054</b>	<b>562,373</b>	<b>6.5%</b>	<b>16,179</b>
1020	Engineering Technical Management	151,370	94,289	57,080	60.5%	(2,206)
The increase in revenue for the Engineering and Technical Management area can directly be attributed to the increase in development. This is specific to the increased number of Traffic Management Plans approved, as well as an increase in Sub-Division Supervision Fees.						



Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
1024	Waste and Fleet Management	9,006,513	8,496,378	510,135	6.0%	18,385
Positive variance due to increased revenue from additional rateable properties coming online, as well as Waste Facilities receiving volumes above the forecasted amounts.						

### 3. Other Revenue

Ahead of YTD budget by \$258K, or 73.3%, mainly due to the items listed in the table below:

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Finance &amp; Corporate Services</u></b>		<b>66,124</b>	<b>30,101</b>	<b>36,023</b>	<b>119.7%</b>	<b>(545)</b>
1034	General Purpose Funding	22,137	7,336	14,801	201.8%	-
Timing variance due to budget spread of the ESL admin fees received, and where they were previously allocated. The actual amount received is representative of prior year's ESL administration fees received.						
1037	Customer Service	40,007	20,931	19,076	91.1%	864
This account relates to Cemetery memorials, where there has been higher demand year to date, and the Sale of Number plates which has also had much higher demand than anticipated.						
<b><u>Community &amp; Commercial Services</u></b>		<b>50,057</b>	<b>5,232</b>	<b>44,825</b>	<b>856.8%</b>	<b>(2,300)</b>
1007	Airport Operations	37,930	2,000	35,930	1796.5%	71
The City is the airfield representative for ABP and on occasion will process fuel sales on their behalf. The funds are then paid onto ABP. There has been higher activity levels in this area than initially anticipated.						
<b><u>Planning &amp; Development Services</u></b>		<b>124,136</b>	<b>113,592</b>	<b>10,545</b>	<b>9.3%</b>	<b>36,029</b>
1053	Regulatory Compliance	67,258	-	67,258	100.0%	38,641
\$22K of this unbudgeted income relates to a Long Service Leave entitlement paid to the City from another Local Government entity, for an employee that had accumulated that entitlement at that other entity, and has now taken the leave. The remainder relates to the recognition of debts owed to the City as a result of successful non-compliance prosecutions.						
1054	Ranger & Emergency Management	40,413	102,408	(61,995)	(60.5%)	(900)
Main variances include:						
<ul style="list-style-type: none"> <li>Fire Prevention DFES – under \$18K: Change in allocation in budget – ESL commission is now allocated to Finance due to the administration of this funding sitting within the responsibilities of this business area.</li> <li>Parking Control – \$25K under: income dependent on number of parking offences. There had been a decrease in scheduled patrols due to staff absences, also fewer patrols and infringements in Dunsborough due to road works resulting in temporary reduction in parking bays.</li> <li>Animal Control – \$15K under: income dependent on number of animal control offences. There has been more of a focus on education, rather than an immediate issuance of infringements. Anecdotally, this emphasis on education has also seen lower actual infringement.</li> </ul>						

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b>Engineering &amp; Works Services</b>		<b>351,733</b>	<b>202,981</b>	<b>148,752</b>	<b>73.3%</b>	<b>6,389</b>
1017	Parks & Gardens	39,925	25,073	14,852	59.2%	24,230
Positive variance due to much higher than expected sales of water via the NCC Standpipe facility.						
1024	Waste Management	309,306	177,908	131,397	73.9%	(17,841)
Positive variance due to increased revenue from Waste Facilities receiving volumes above the forecasted amounts.						

#### 4. Interest Earnings

\$2.4M better than YTD budget due to much higher than expected interest rates, plus a higher than forecast cash on hand position in comparison to previous years. This is due mainly to the earlier than forecast application and receipt of the budgeted Saltwater construction project loans cash, and subsequent re-investment in term deposits (due to rising rates), until required for use in the project.

#### Expenses from Ordinary Activities

Expenditure from ordinary activities is \$3.5M, or 3.6%, less than expected when compared to the budget YTD. The expense line items on the face of the financial statement that have a YTD variance that meet the material reporting threshold are outlined below.

#### 5. Insurance Expenses

The full year budget for all insurance is \$1.32M, split \$652K in Insurance Expenses and \$672K in Employment Costs. Insurance costs that are categorised in the operational nature & type are \$217K over budget YTD. Apart from rising insurance costs globally, the biggest cause for this over spend is the significantly higher than expected asset values, which are used by the insurers in setting premiums, that arose from the organisation wide independent asset revaluation conducted in early 2022.

This is outlined in the table below:

Description	YTD Budget Expenses	YTD Actual Expenses	Variance to YTD Budget
3565 - Art Works Insurance	1,969	8,547	(6,578)
3566 - Building Insurance	140,111	308,288	(168,177)
3568 - Electronic Equipment Insurance	1,298	4,036	(2,738)
3569 - Insurance Excess	0	1,000	(1,000)
3570 - Machinery Breakdown Insurance	796	22,139	(21,343)
3571 - Marine Crafts Insurance	251	1,654	(1,403)
3572 - Motor Vehicle & Plant Insurance	40,127	102,598	(62,471)
3573 - Multi Risk Insurance	21,747	35,989	(14,242)
3575 - Public Liability Insurance	398,824	339,962	58,862



Description	YTD Budget Expenses	YTD Actual Expenses	Variance to YTD Budget
3576 - Other General Insurance Costs	45,948	29,547	16,401
3577 - Cyber Liability	1,298	15,769	(14,471)
<b>Total</b>	<b>652,369</b>	<b>869,528</b>	<b>(217,159)</b>

## 6. Other Expenditure

\$1.8M, or 23.4%, over the budget YTD. The main contributing items are listed below:

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Finance and Corporate Services</u></b>		<b>1,115,253</b>	<b>1,365,359</b>	<b>250,106</b>	<b>18.3%</b>	<b>174,561</b>
1028	Governance and Corporate Services	610,675	862,055	251,379	29.2%	161,350
<p>\$100k of the underspend relates to an incorrect allocation for the You Choose Program which was not run during the financial year. This has been carried over to 2023/2024. The remainder relates to reduced civic events catering and YTD underspends across merchandising and public relation accounts which sit within this cost centre. The Members of Council budget was also underspent in catering (linked to the revised meeting schedule) and conferences and training.</p>						
1030	Human Resources	35,774	23,404	(12,371)	(52.9%)	13,436
<p>The over spend relates to Long Service Leave contributions paid to other LG's (which although are unable to be accurately budgeted, are fully funded from the LSL Reserve).</p>						
1034	General Purpose Funding	104,365	114,210	9,845	8.6%	(982)
<p>The YTD underspend is related to the rating valuations received from Landgate being slightly less than forecast for the year.</p>						
<b><u>Community and Commercial Services</u></b>		<b>4,411,389</b>	<b>5,960,310</b>	<b>1,548,921</b>	<b>26.0%</b>	<b>3,625,816</b>
1002	Events & Cultural	88,123	245,229	157,107	64.1%	72,912
<p>The underspend relates mainly to marketing and event attraction activities for BPACC (Saltwater), operations. Spending in these areas has been delayed until there is increased certainty with event organisers to take bookings and the software system to handle payments is implemented. We are also waiting on the outcome of a conference bid and a large funding application which require contribution payments.</p>						
1004	Events	1,108,394	1,227,481	119,087	9.7%	156,899
<p>Many of the reserve funded events that weren't able to proceed will be carried over and re-listed in the 23/24 budget.</p>						
1007	Airport Operations	2,643,578	3,913,678	1,270,100	32.5%	2,874,038
<p>This significant underspend for the year is due to the projected contributions for the Airline Attraction program now not expected to be paid until 2023/24. These are reserve funded, so funds will remain in reserve until such time as the payments are made.</p>						
1008	Economic & Business Development	165,891	195,351	29,460	15.1%	178,196
<p>Cost centre variance can be attributed to the reduction in MRBTA Visitor Servicing by \$26k with the closure of Dunsborough Visitor centre and MRBTA not invoicing for cruise ship visitor servicing of \$5k.</p>						

Cost Centre Code	Cost Centre Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
1009	Community & Recreation Management	335,287	304,536	(30,751)	(10.1%)	296,089
The overspend is due to additional funding through the Community Assistance Program was awarded as a result of an underspend in the Youchoose program. Also there was an overspend of the Busselton Senior Citizen Centre annual grant due to it being under budgeted based on previous actuals, and not the actual grant agreement value.						
1011	Leisure Centres	39,857	52,531	12,674	24.1%	47,060
There were underspends in marketing and advertising across both centres, as there was a decrease in requirements to advertise programs in local newspapers due to a contra deal for radio adverts with Southern Cross Austereo in lieu of advertising signage displayed in the GLC stadium and pool areas.						
<b>Planning and Development Services</b>		<b>84,453</b>	<b>117,900</b>	<b>33,447</b>	<b>28.4%</b>	<b>28,025</b>
1045	Planning Administration Support	-	30,780	30,780	100.0%	-
Funds are for the Busselton & Dunsborough Centres Refurbishment Subsidy Programme. The City has not undertaken an EOI programme this financial year, as a result, no applications for funding assistance have been received.						
<b>Engineering and Works Services</b>		<b>139,393</b>	<b>99,040</b>	<b>(40,353)</b>	<b>(40.7%)</b>	<b>(7,572)</b>
1019	Facilities Maintenance	38,870	18,417	(20,453)	(111.1%)	205
The variance is due to slightly higher ESL levies being paid than was originally budgeted for, as well as the contribution the City pays to MRBTA for our share of the cleaning costs at Railway House, which although was budgeted as net-off against income, is allowed for in the overall operational budget.						
1024	Waste Management	72,536	52,152	(20,384)	(39.1%)	(9,803)
The over spend is due to water cost reimbursements paid to residents in relation to the Rendezvous issue.						

## 7. Non-Operating Grants, Subsidies & Contributions

The negative variance of \$10M is mainly due to the items in the table below. It should be noted that any negative variance in this area will approximately correlate to an offsetting positive underspend variance in a capital project tied to these funding sources. This can be seen in the section below that outlines the capital expenditure variances.

It should also be noted that during the June month all the various donated assets (POS, roads etc), are recognised in this section. The corresponding spend (non-cash), is included in the relevant asset category.

Revenue Code	Revenue Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b>Finance and Corporate Services</b>		<b>75,000</b>	<b>1,063,563</b>	<b>(988,563)</b>	<b>(92.9%)</b>	<b>(988,563)</b>
1029	Governance Services	75,000	-	75,000	100.0%	75,000
1033	Financial Services	-	999,563	(999,563)	(100.0%)	(999,563)
1041	Land and Property Leasing	-	64,000	(64,000)	(100.0%)	(64,000)

Revenue Code	Revenue Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Community and Commercial Services</u></b>		<b>2,762,895</b>	<b>1,352,333</b>	<b>1,410,562</b>	<b>104.3%</b>	<b>635,327</b>
1002	Events and Cultural	-	25,568	(25,568)	(100.0%)	(25,568)
1007	Airport Operations	2,206,322	1,326,765	879,557	66.3%	104,322
1009	Community and Recreation Services Management	556,573	-	556,573	100.0%	556,573
<b><u>Planning and Development Services</u></b>		<b>203,712</b>	<b>693,416</b>	<b>(489,704)</b>	<b>(70.6%)</b>	<b>(603,812)</b>
1043	Planning and Development Directorate	-	648,024	(648,024)	(100.0%)	(648,024)
1054/56	Ranger & Emergency Services	159,501	-	159,501	100.0%	-
<b><u>Engineering and Works Services</u></b>		<b>20,418,856</b>	<b>30,400,479</b>	<b>(9,981,623)</b>	<b>(32.8%)</b>	<b>(19,057,225)</b>
1014	Engineering and Works Directorate	4,648,335	1,158,876	3,489,459	301.1%	2,715,850
1016	Construction and Maintenance	3,315,408	10,110,276	(6,794,868)	(67.2%)	(7,280,711)
1018	Major Projects Management	11,862,190	18,341,682	(6,479,492)	(35.3%)	(15,991,682)
1019	Facilities Maintenance	402,929	548,815	(145,887)	(26.6%)	(428,815)
1020	Engineering Technical Management	45,900	90,830	(44,930)	(49.5%)	(60,830)

## 8. Capital Expenditure

YTD there is an underspend variance of 58%, or \$41.9M, in total capital expenditure, with YTD actual at \$30.1M against the YTD budget of \$72M. A portion of this positive underspend variance is offset by the negative variances in Non-Operating Grants, Contributions & Subsidies outlined above, with the remainder offset by the negative variances in Transfers From Reserves and Restricted Assets related to funds held aside for these projects. The attachments to this report include detailed listings of all capital expenditure (project) items, however the main areas of YTD variance are summarised as follows:

Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Land &amp; Buildings</u></b>		<b>12,105,402</b>	<b>42,221,124</b>	<b>30,115,722</b>	<b>71%</b>	<b>26,356,524</b>
12847	Purchase Sues Road(C)	-	500,000	500,000	100%	500,000
Officers were unable to reach final agreement for the purchase of the land in FY22/23. Consequently no deposit has been paid. The amount has been relisted for FY23/24.						

Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
12936	Property Services Administration(C)	-	50,000	50,000	100%	50,000
Budget is for the purpose of miscellaneous capital expenses associated with land transactions. No relevant land transactions occurred in FY22/23.						
Various	Aged Housing Capital Works	92,937	216,823	123,886	57%	106,623
The variance is due to the scale and number of refurbishments year to date being less than what has been allowed for in the budget. Refurbishments generally only occur if a tenant vacates. This means it is very difficult to accurately budget for the timing and quantum of this capital expenditure item.						
Various	BPACC (Saltwater)	10,387,320	36,172,302	25,784,982	71%	25,018,355
Budgets, and timing thereof, for large projects such as Saltwater are very hard to predict with accuracy. The variance of actuals to budget for the construction project is a multi-year timing issue, with predicted cash flows being misaligned due to the significant global supply chain delay issues. The budget for the 23/24 year has been set with carried over elements from the 22/23 year in mind.						
10016	Civic and Administration Centre Minor Upgrades(C)	(0)	35,000	35,000	100%	6,217
Due to contractor availability these funds were expended during the FY. Activities under this project have been included in the list of budget carry-over and re-lists for 23/24.						
10585	BMRA Hangars(C)	-	303,790	303,790	100%	-
This funding was originally to build three hangars however with price escalation, only 2 hangars are likely to be achieved. With current resourcing and lead times for construction the hangars will not be achieved in this financial year. This project will be carried-over & re-listed in next year's budget.						
10589	Airport Construction, Existing Terminal Upgrade(C)	392,407	496,254	103,847	21%	90,356
The terminal departures lounge expansion project has now been completed however the training/ office demountable project and ablution block projects that were projected to come out of this project code have not been completed and works are still to be done.						
10622	Bovell Construction of Change rooms(C)	84,663	72,394	(12,269)	(17%)	-
Project was completed in Dec. 2022, with an expected cost overrun of approximately \$12K.						
10642	Dunsborough Lakes Sporting Precinct-Pavilion/Changeroom F(C)	81,617	1,284,775	1,203,158	94%	(29,464)
The variance is attributable to the Pavilion being re-scoped with the project currently on hold. The City has recently been informed that it has not been successful in securing external State Government grant funding at this time. Existing funds will be carried over and included in 23/24 budget. LRCI phase 2 funding initially identified for this project has been reallocated toward the construction of the carpark and courts, a separate element of the overarching project. The reallocation was required due to the pavilion component being re-scoped and the grant life cycle expiring prior completion of a pavilion. The City has since been successful in securing further funding through the federal governments LRCI Program (phase 4) which has been identified for this project in the 2023/24 budget.						

Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
10688	Depot Washdown Facility Upgrades(C)	-	76,700	76,700	100%	-
The YTD variance related to infrastructure upgrades to the City's Barlee St. Depot vehicle and plant wash-down bay, whereby new equipment will be purchased to treat and improve post wash-down water quality. RFQ documentation went out to market however no submissions were received. Although there were follow ups with suppliers, this project was not commenced by year end and has been carried over and re-listed in the 23/24 budget.						
10788	GLC Building Improvements(C)	412,670	423,934	11,264	3%	(159,553)
Works for the year have been completed, with a minor underspend against budget.						
10972	Churchill Park Renew Sports Lights(C)	215,392	188,252	(27,140)	(14%)	-
This project is now complete with a \$27k budget overrun. City Officers have endeavoured to offset this overspend against an equivalent underspend or net over and under spends between projects of a like type.						
12428	Re-use shop Busselton Transfer Station(C)	16,899	550,000	533,101	97%	150,000
The high, over-budget tendered price has resulted in the City declining all tender submissions. During a recent briefing session when the councillors were informed of the project status, the direction was to seek a variation from the funding body around a reduced scope of works, involving a smaller footprint and an alternative shop/related infrastructure design. Officers are currently seeking information to present to the funding body's request around a detailed plan, budget and timeline for the modifications. The intention is to still deliver an operational Reuse shop, and the project has been carried over and re-listed in the 23/24 budget.						
12440	Energy Efficiency Initiatives (Various Buildings) (C)	55,068	133,234	78,166	59%	2,504
Although the budget was committed with plans to be expended by the end of the financial year, due to delays from Western Power this budget has been carried over to FY 23/24 along with associated funding.						
12457	Busselton Jetty Tourist Park Upgrade (C)	13,031	45,686	32,655	71%	-
The contractor is unlikely to complete/expend all allocated budget this FY, so a portion of the budget will need to be carried over to 23/24 and works will be planned for the low season.						
12791	Naturaliste Community Centre Fire Indicator Panel Renewal(C)	15,957	30,000	14,043	47%	1,717
Works are complete, with actual costs coming significantly less than anticipated. Unspent funds will remain in reserve.						
12792	Dunsborough Hall - Asbestos Management Allocation (C)	5,670	17,000	11,330	67%	1,417
Works for the year have been completed, with an underspend against budget.						
12793	Bunker Bay Ablution – Improvements(C)	6,720	17,000	10,280	60%	1,417
Works for the year have been completed, with an underspend against budget.						

Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
12795	Busselton Depot CCTV & Electronic Gate(C)	88,741	105,000	16,259	15%	(54,522)
Works for the year were almost complete, with remaining budget for unfinished works being carried over for completion in the next financial year.						
12796	Depot Training Room (C)	26,000	10,600	(15,400)	(145%)	883
These works were completed, however due to a) additional works required that were not identified until the old roof sheets were removed, b) price escalation of materials and c) increased labour costs the budget was overspent.						
12797	Dunsborough Hall Renewals(C)	9,560	26,746	17,186	64%	2,229
The scope of works was reduced after further consultation with user groups. Unspent funds will remain in reserve.						
12800	Old Courthouse and Jail Cells (C)	17,860	61,000	43,140	71%	5,083
There was some overlap between this project and project 12801 (see below), which will have an over spend.						
12801	Old Police Quarters - Roof Renewal(C)	75,644	60,000	(15,644)	(26%)	5,000
The budget is overspent due to the inclusion of certain elements that overlapped with project 12800 above.						
12804	Airport Terminal Building(C)	14,129	31,787	17,658	56%	7,485
Works for the year have been completed, with an underspend against budget.						
12868	Busselton Jetty Tourist Park - Cabin Replacement/Upgrade (C)	-	205,000	205,000	100%	205,000
Project was not progressed during 22/23 due to competing resources, cabin replacements rolled over into 23/24 FY.						
12869	Busselton Jetty Tourist Park - Renewal Works Park 1 Ablut(C)	17,604	46,120	28,516	62%	28,516
Works for the year have been completed, with an underspend against budget.						
12939	Administration Building- 2-16 Southern Drive(C)	-	15,000	15,000	100%	15,000
These works are being re listed due to supply issues of new zip boilers.						
12940	Depot Building-Busselton((C)	6,412	50,000	43,588	87%	43,588
Works for the year have been completed, with the underspend saving used in project 15088 for Busselton Depot Furniture & Equipment.						
12942	Asbestos Removal & Replacement(C)	14,166	33,000	18,834	57%	(8,456)
No further expenditure is expected, with any unspent funds remaining in reserve.						



Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
14836	RFDS relocation(C)	-	366,180	366,180	100%	366,180
At the time of construction of the 22/23 budget, the funding and scope of this project was based on location of the new RFDS facility in the Emergency services precinct of the Airport. During the year funding was received so a budget amendment was done to include the project in the budget. However, due to a change of scope (location of RFDS moved to the General Aviation precinct) and increased costs, with the City needing to supplement project funds, project variations needed to be compiled, submitted and approved. This was not able to be completed by year end, so the project was not able to commence. This budget (along with funding), has been carried over and re-listed in the 23/24 budget.						
<b><u>Plant &amp; Equipment</u></b>		<b>1,968,598</b>	<b>4,773,534</b>	<b>2,804,936</b>	<b>59%</b>	<b>3,185,831</b>
There is a significant underspend due to delays in delivery of plant and equipment currently on order. Supply chains are still recovering from the turmoil of the past three years and will be slow to return to a new normal. There are significant carryovers re-listed in the next budget.						
<b><u>Furniture &amp; Office Equipment</u></b>		<b>880,755</b>	<b>1,152,956</b>	<b>272,201</b>	<b>24%</b>	<b>421,184</b>
12876	ICT Services - Equipment & Software Purchases(C)	320,348	594,845	274,497	46%	383,852
About \$180K of the underspend has been carried over and re-listed in the 23/24 budget to cover the IT Equipment lease buy-out and 60 new laptops that were planned as part of the 22/23 budget.						
12878	Naturaliste Community Centre (NCC) - Purchase Office Furn(C)	-	20,000	20,000	100%	20,000
Procurement of the fitness equipment was not able to be actioned prior to year end. This item has been carried over and re-listed in the 23/24 budget.						
14729	Events Furniture & Equipment(C)	252,747	200,000	(52,747)	(26%)	(1,412)
The over spend relates to work invoice for the additional cost of \$50,000 to upgrade the power supply to the new electronic billboard. These extra works were approved by Council (C2208/210), to be funded from the Marketing & Area Promotions Reserve.						
14730	Geographe Leisure Centre Fitness Equipment(C)	-	18,160	18,160	100%	-
Equipment procurement did not proceed this financial year. These funds have remained in reserve, and the project has been re-listed in next years budget.						
14731	Cultural Planning Furniture & Equipment(C)	43,555	78,185	34,630	44%	12,415
The underspend in Cultural Planning is due to a number of projects that were not fully expensed, such as Sculpture by the Bay art prizes (CoB effectively purchases the winners art work), and the Ballarat Room digital interpretation. Unfinished elements of these projects will be carried over and re-listed in the 23/24 budget when they will be completed.						
15088	Busselton Depot Building Furniture & Equipment (C)	32,776	-	(32,776)	(100%)	(32,776)
Savings in project 12940 have been utilised here.						

Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
<b><u>Infrastructure</u></b>		<b>15,187,791</b>	<b>24,396,525</b>	<b>9,208,734</b>	<b>38%</b>	<b>5,393,317</b>
Various	Roads	5,841,495	8,810,900	2,969,405	34%	(162,677)
<p>The \$2.9M YTD variance includes:</p> <ul style="list-style-type: none"> <li>• \$873K Bussell Highway (11199) – Construction commenced 29MAY with forecast completion late July. Budget carried over into 2023/24 Budget.</li> <li>• \$521K Acton Park Road (12824) – Stage complete and under budget.</li> <li>• \$360K Payne Road (12005) – Project postponed until next financial year due to traffic management conflicts with bridge works on Kaloorup Road and reconstruction of North Jindong Road.</li> <li>• \$312K Queen Elizabeth Avenue (12838) – Works complete and under budget.</li> <li>• \$227K Chapman Hill Road (11989) – Project complete and under budget (fully grant funded).</li> <li>• \$239K Commonage Rd – Works complete and under budget.</li> <li>• \$117K Bussell Hwy (12851) – Stage 1 works complete and under budget.</li> <li>• \$102K Ludlow-Hithergreen Rd – Works complete and under budget.</li> <li>• \$80K Wilyabrup Road Resheet (11193) – Balance of works to be carried over into 2023/24 Budget.</li> <li>• \$50K Road Access Seal – Animal Care Facility (14817) – This project has been relisted in the 2023/24 Budget.</li> <li>• \$50K Nuttman Rd (12842) – This project has been relisted in the 2023/24 Budget due to contractor availability.</li> </ul>						
Various	Bridges	450,000	411,000	(39,000)	(9%)	411,000
<p>The budget for Bridge 3381 was not relisted into the 2022/23 Budget from the previous financial year. Works are externally funded. June is also the month where donated capital works on bridges by Main Roads is recognised, however due to issues formulating the 22/3 budget an estimate of these was not included.</p>						
Various	Car Parks	412,938	583,373	170,435	29%	(112,158)
<p>Variance is mainly due to \$133K for Hotel Site 2, with the main carpark complete, but the crossover and final completion won't occur until July due to hotel construction site constraints.</p>						
Various	Footpaths & Cycleways	642,740	1,272,130	629,390	49%	(184,852)
<p>The \$629K YTD variance includes:</p> <ul style="list-style-type: none"> <li>• \$111K Carey Street Footpath Construction (10742) – Stage complete and under budget.</li> <li>• \$100K Townscape Works Busselton (14814) – RFQ being evaluated and project to be relisted next financial year.</li> <li>• \$61K Causeway Road Shared Path (11986) – Construction commenced May with forecast completion in August.</li> <li>• \$70K Coastal Principled Shared Path (12816) – Budget has been carried over into the 2023/24 Budget to offset Causeway Road Shared Path expenditure.</li> <li>• \$58K Kaloorup Road (12818) – Works complete and under budget.</li> <li>• \$54K Busselton CBD Footpath Renewal (10741) – Balance of works to be carried over into next year.</li> <li>• \$45K Buayanup Drain Shared Path – Project complete and under budget.</li> <li>• \$41k Prince Regent Drive (12817) – Works complete and under budget.</li> <li>• \$31K Arnup Drive (10736) – Project complete and under budget.</li> </ul>						



Project Code	Project Code Description	Actual YTD \$	Amended Budget YTD \$	Variance YTD \$	Variance YTD %	Change in Variance Current Month \$
Various	Parks, Gardens & Reserves	4,468,361	6,358,273	1,889,912	30%	869,624
<p>This category comprises 60 projects with a combined budgeted value totalling \$6.36M.</p> <p>The \$1.7M YTD variance includes:</p> <ul style="list-style-type: none"> <li>\$594K Dunsborough Lakes Sporting Precinct (Stage 1)</li> <li>\$521K Rotary Park / War Memorial Relocation C (10831) - this project has been relisted in the 2023/24 Budget.</li> <li>\$150K Mitchell Park Landscape Upgrade Stage 2 (12846) - this project has been relisted in the 2023/24 Budget.</li> <li>\$117K Sport Oval Lighting - Vasse Ovals (12849) – works in progress, budget for Western Power scope carried into the 2023/24 Budget.</li> <li>\$178K Meelup Coastal Parking &amp; Landscaping (10613) – this project has been relisted in the 2023/24 Budget.</li> </ul>						
Various	Waste Services Capital Works	1,833,193	4,128,955	2,295,762	56%	4,000,086
<p>\$130K of the underspend variance is attributable to stage 2 of the lined landfill / cell development.</p> <p>A variation from the funding body around modified scope for the Reuse Shop was obtained, with \$275K now listed in the 23/24 budget.</p> <p>Other capital works amounting to \$2M associated with the Rendezvous rd. groundwater contamination were unutilised, but will be ongoing over the next few years.</p>						
Various	Jetty Infrastructure (C)	-	480,632	480,632	100%	23,386
<p>Actual expenditure previously shown related entirely to non-capital works, and has been re-allocated against operational maintenance. Both capital and operations are funded via the Jetty Reserve. Future budgets will be aligned more appropriately according to the nature of the expenditure.</p>						
Various	Drainage	359,379	704,984	345,605	49%	83,706
<p>The \$346K YTD variance includes:</p> <ul style="list-style-type: none"> <li>\$72K High View – Works complete and under budget.</li> <li>\$222K North Street – Project to be relisted into next financial year due to contractor availability and seasonal weather.</li> </ul>						
Various	Regional Airport & Industrial Park Infrastructure	1,179,683	1,646,278	466,595	28%	451,579
<p>The total variance is due to an overspend in the Airport Construction Stage 2 including the new carpark and airside operational improvements which are offset by budget allocations for Airport lighting and CCTV projects which have not been completed and will be carried over into the new FY.</p>						

## 9. Proceeds from Sale of Assets

\$144K better than forecast for the year due to the extremely high demand for second hand vehicles driving sale prices to unprecedented levels.

## 10. Proceeds from New Loans

There is a YTD variance of \$250K as there were no loan draw downs associated with the budget loans to community groups during the year.

**11. Advances to Community Groups**

There is a YTD variance of \$250K as there were no applications for self supporting loans by any community groups during the year.

**12. Transfer to Restricted Assets**

There is an YTD variance in transfers to Restricted Assets of \$40M because there is no budget at all for this item. The transfers are not possible to predict, and are fully reconciled only at year end.

At the time of budgeting it is not possible to predict what grants, contributions or developer bonds will be received, and in what timeframe, nor when they will be spent and hence potentially transferred to Restricted Assets (or unspent portions thereof).

Transfers to restricted assets are offset by the incoming receipt, be it a grant, contribution, subsidy or even loan proceeds, so the net impact on the Net Current Position is always nil (once full reconciliation has occurred at year end).

YTD, loans of \$12.8M were restricted for BPACC (following receipt of grant funds and the final tranche of borrowing), until utilized, as well as \$20.2M in various government grants, plus \$1.4M in Roadwork Bonds, \$633K in BJTP deposits, \$481K in developer contributions and \$4.5M in various other deposits and bonds.

**13. Transfer from Restricted Assets**

YTD, there has been \$30.9M transferred from Restricted Assets into the Municipal Account, compared to a YTD budget of \$13M. The transfers are usually not possible to predict, and are fully reconciled only at year end. The transfers YTD are attributable to \$5.4M of the BPACC loan funding utilised, \$19.1M of grant money for works completed and reconciled, \$1.5M of Roadwork Bonds returned, \$623K of BJTP deposits utilised or returned, and \$4.3M of various other bonds and deposits returned or utilised.

**14. Transfer to Reserves**

\$4.2M higher than forecast for the year due to significantly higher interest rates received on invested reserve funds during the year, as well as much higher than predicted revenues received for the Airport.

**15. Transfer from Reserves**

YTD, there has been \$18.9M less transferred from reserves than budgeted YTD, due to reconciliation of completed reserve funded works at year end revealing that 46.2% of all reserve funded works that were budgeted were not completed by year end.

## **Investment Report**

Pursuant to the Council's Investment Policy, a report is to be provided to the Council on a monthly basis, detailing the investment portfolio in terms of performance and counterparty percentage exposure of total portfolio. The report is also to provide details of investment income earned against budget, whilst confirming compliance of the portfolio with legislative and policy limits.

As at 30<sup>th</sup> June 2023 the value of the City's invested funds increased to \$112.7M from \$109M as at 31<sup>st</sup> May 2023. The increase is a result of grant funding and offset against recoups.

As at 30<sup>th</sup> June 2023 the 11AM (an intermediary account which offers immediate access to the funds compared to the term deposits) account balance is \$16.5M, being an increase of \$4.5M from 31<sup>st</sup> May 2023. The increase of \$4.5 to the 11am account is due to grant funds received.

During the month of June five term deposits totalling the amount of \$17.5M matured. These were re-invested for a further 310 days at 5.41% on average.

The official cash rate increased by 0.25% during the month of June 2023 to 4.10%. Further movement in the cash rate is currently uncertain. This will effect interest earnings for the City, and future borrowings also.

## **Borrowings Update**

During the month no new loans were drawn, with \$870K in principal and \$408K in interest paid on existing loans. The attached Loan Schedule outlines the status of all existing loans YTD.

## **Chief Executive Officer – Corporate Credit Card**

Details of transactions made on the Chief Executive Officer's corporate credit card during June 2023 are provided below to ensure there is appropriate oversight and awareness.

Date	Payee	Description	\$ Amount
8/06/2023	WEST AUSTRALIAN	DIGITAL SUBSCRIPTION	28.00
14/06/2023	SHELTER BREWING CO	COUNCIL DINNER	518.50
15/06/2023	LAMYSHOP	STATIONERY FOR CEO	58.87
16/06/2023	KITCHEN TAKEOVERS	CEO MORNING TEA- LG AUSTRALASIAN MANAGEMENT CHALLENGE 2023 TEAM	144.00
17/06/2023	COLES EXPRESS VASSE	CEO FUEL	250.99
21/06/2023	JETSTAR CREDIT	REFUND FOR OVERCHARGED CREDIT CARD FEE	-7.57
27/06/2023	WA LOCAL GOVERNMENT ASSOC.	WALGA CONVENTION REGISTRATION- MAYOR HENLEY	1,659.30
26/06/2023	WA LOCAL GOVERNMENT ASSOC.	WALGA CONVENTION 1 DAY REGISTRATION -CEO	648.00
27/06/2023	QANTAS- PER- KTA	FLIGHTS TO ATTEND NATIONAL ECONOMIC DEVELOPMENT CONFERENCE 22- 24 AUGUST 2023 IN KARRATHA- D.DOWDING	999.01
29/06/2023	JETSTAR BQB TO MEL	TOOWOOMBA NATIONAL REGIONAL ECONOMIC DEVELOPMENT SUMMIT 26- 27 JULY 2023- D.DOWDING- NAME CHANGE & RETURN FLIGHT PRICE DIFFERENCE	125.39

Date	Payee	Description	\$ Amount
30/06/2023	JETSTAR MEL-BNE	TOOWOOMBA NATIONAL REGIONAL ECONOMIC DEVELOPMENT SUMMIT 26 - 27 JULY 2023- D.DOWDING	241.68
30/06/2023	QANTAS- TWB TO MEL	TOOWOOMBA NATIONAL REGIONAL ECONOMIC DEVELOPMENT SUMMIT 26 - 27 JULY 2023- D.DOWDING	593.63
30/06/2023	MAILCHIMP	ELECTRONIC NEWSLETTER- PR	376.83
		<b>TOTAL</b>	<b>5,636.63</b>

### **Donations & Contributions Received**

During the month no non-infrastructure asset (bridges, roads, POS etc), donations or contributions were received.

### **Statutory Environment**

Section 6.4 of the Act and Regulation 34 of the Regulations detail the form and manner in which a local government is to prepare financial activity statements.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Annual Adopted Budget 2022-2023

[Strategic Community Plan 2021-2031](#)

[Corporate Business Plan 2022-2026](#)

[Long Term Financial Plan 2022/23 - 2031/32](#)

Policy:

There are no relevant policies for this report.

### **Financial Implications**

Any financial implications are detailed within the context of this report.

### **External Stakeholder Consultation**

Not applicable.

### **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**

The Statements of Financial Activity are presented in accordance with Section 6.4 of the Act and Regulation 34 of the Regulations and are to be received by Council. Council may wish to make additional resolutions as a result of having received these reports.

**CONCLUSION**

As at 30 June 2023, the City's net current position stands at \$1.95M, and cash reserve balances remain sufficient for their purposes.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Not Applicable.

## 10.9 Finance Committee – 09/08/2023 - List of Payments Made - June 2023

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making. 4.5 Responsibly manage ratepayer funds to provide for community needs now and in the future.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Manager Financial Services - Paul Sheridan
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Noting: The item is simply for information purposes and noting.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. List of Payments for Council June 2023 [6.1.1 - 12 pages]

This item was considered by the Finance Committee at its meeting on 9 August 2023, the recommendations from which have been considered by Council.

The committee recommendation was moved and carried.

### COUNCIL DECISION

**C2308/86** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council notes payment of voucher numbers for the month of June 2023 as follows:**

<b>CHEQUE PAYMENTS</b>	119693 - 119716	35,679.09
<b>ELECTRONIC FUNDS TRANSFER PAYMENTS</b>	95920 - 95948, 95951 - 96518, and 96523 - 96755	9,317,715.26
<b>TRUST ACCOUNT PAYMENTS</b>	EFT# 95949 - 95950 and 96519 - 96522	93,581.34
<b>PAYROLL PAYMENTS</b>	01.06.23 - 30.06.23	1,677,135.13
<b>INTERNAL PAYMENT VOUCHERS</b>	DD# 5314 - 5349	160,545.35
<b>TOTAL PAYMENTS</b>		<b>11,284,656.17</b>

**CARRIED 7 / 0**

**EN BLOC**

## **OFFICER RECOMMENDATION**

That the Council notes payment of voucher numbers for the month of June 2023 as follows:

CHEQUE PAYMENTS	119693 - 119716	35,679.09
ELECTRONIC FUNDS TRANSFER PAYMENTS	95920 - 95948, 95951 - 96518, and 96523 - 96755	9,317,715.26
TRUST ACCOUNT PAYMENTS	EFT# 95949 - 95950 and 96519 - 96522	93,581.34
PAYROLL PAYMENTS	01.06.23 - 30.06.23	1,677,135.13
INTERNAL PAYMENT VOUCHERS	DD# 5314 - 5349	160,545.35
TOTAL PAYMENTS		11,284,656.17

## **EXECUTIVE SUMMARY**

This report provides details of payments made from the City's bank accounts for the month of June 2023 for noting by the Council and recording in the Council Minutes.

## **STRATEGIC CONTEXT**

Provision of the list of payments, while a statutory requirement, also supports open and accountable governance.

## **BACKGROUND**

The *Local Government (Financial Management) Regulations 1996* (the Regulations) requires that, when the Council has delegated authority to the CEO to make payments from the City's bank accounts, a list of payments made is prepared each month for presentation to, and noting by, the Council.

## **OFFICER COMMENT**

In accordance with regular custom, the list of payments made for the month of June 2023 is presented for information.

## **Statutory Environment**

Section 6.10 of the *Local Government Act 1995* and more specifically Regulation 13 of the Regulations refer to the requirement for a listing of payments made each month to be presented to the Council.

## **Relevant Plans and Policies**

Not applicable.

## **Financial Implications**

Not applicable.

### **External Stakeholder Consultation**

Not applicable.

### **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**

Not applicable.

### **CONCLUSION**

The list of payments made for the month of June 2023 is presented for information.

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

Not applicable.



## 10.10 Finance Committee – 09/08/2023 - Rate Exemption - Lamp Inc.

<b>Strategic Theme:</b>	Key Theme 2: Lifestyle 2.2 Work with key partners to facilitate a safe, healthy and capable community.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Rates Coordinator - David Nicholson
<b>Authorised By:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Rate Exemption Application [6.3.1 - 4 pages]</li> <li>2. Rate Exemption Statutory Declaration [6.3.2 - 2 pages]</li> <li>3. Rate Exemption Application Covering Letter [6.3.3 - 1 page]</li> <li>4. Lamp Inc Constitution [6.3.4 - 22 pages]</li> <li>5. Lamp Inc Annual Report [6.3.5 - 26 pages]</li> <li>6. Lamp Inc 2021-22 Audited Financial Statements [6.3.6 - 22 pages]</li> </ol>

This item was considered by the Finance Committee at its meeting on 9 August 2023, the recommendations from which have been considered by Council.

The committee recommendation was moved and carried.

### COUNCIL DECISION

**C2308/87** Moved Cr Paul Carter, seconded Cr Phill Cronin

#### **That the Council:**

1. Grant rate exemption to Lamp Inc. for 224 Bussell Highway West Busselton, effective from the 27th of June 2023 application date, under section 6.26(2)(d) of the *Local Government Act 1995*;
2. Agree that this rate exemption is to continue where Lamp Inc. continue to own and use the property as stated in the application at Attachment A;
3. Continue to advocate, through the South West Zone of WALGA, for a review of Rating Exemptions; and
4. Continue to note in the City's Annual Report the annual total cost to the City of rating exemptions.

**CARRIED 7 / 0**

**EN BLOC**

## **OFFICER RECOMMENDATION**

That the Council:

1. Grant rate exemption to Lamp Inc. for 224 Bussell Highway West Busselton, effective from the 27th of June 2023 application date, under section 6.26(2)(d) of the *Local Government Act 1995*;
2. Agree that this rate exemption is to continue where Lamp Inc. continue to own and use the property as stated in the application at Attachment A;
3. Continue to advocate, through the South West Zone of WALGA, for a review of Rating Exemptions; and
4. Continue to note in the City's Annual Report the annual total cost to the City of rating exemptions.

## **EXECUTIVE SUMMARY**

A rate exemption application was received from Lamp Inc. in June 2023 for a property at 224 Bussell Highway, West Busselton (the Property), which was purchased on the 19th August 2022. Based on the application, this report recommends that the application for exemption be granted effectively from the 27th June 2023 in accordance with Section 6.26(2)(d) of the *Local Government Act 1995* (the Act).

## **STRATEGIC CONTEXT**

The granting of rate exemptions is done in accordance with the Act, therefore meeting good governance requirements. Rate exemptions for charitable purposes can also assist to facilitate a safe healthy and capable community.

## **BACKGROUND**

Lamp Inc. is a not-for-profit organisation that is a registered charity with the Australian Charities and Not-for-profits Commission. They purchased the Property to provide mental health services to the community. It is also to be used to provide counselling and support to individuals and their carers/families needing nonclinical help with managing mental health conditions. Lamp Inc. leases 226 Bussell Highway, West Busselton from the Department of Housing to provide similar services and which has been granted rate exemption.

The objects of Lamp Inc. as per their constitution are:

- To promote and maintain the social wellbeing, dignity and autonomy of people with a mental illness, their families, carers and significant others residing in Western Australia.
- To provide individualised support services, encompassing life-skills and lifestyle choice with an aim to improve the quality of life for consumers, their families, carers and significant others.
- To contribute to an increased understanding and acceptance of mental illness by providing education and information to the broader community.

- The property and income of the Association shall be applied solely towards the promotion of the objectives of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objectives.

### **Engagement with Western Australian Local Government Association (WALGA)**

With respect more broadly to rate exemptions for charitable organisations, following a Council resolution in May 2019, the Mayor raised this issue with the South West Zone of WALGA (SWZ) at its meeting, also in May 2019. The SWZ supported the City of Busselton's view unanimously and resolved as follows:

*That the SWZ:*

1. *Request that WALGA continue to lobby the State Government to consider the removal of rate exemptions for charitable organisations under the Local Government Act 1995 and that an alternative position may be implementing a rebate similar to the Pensioners and Seniors Rebate Scheme.*

In response to the SWZ's resolution, WALGA advised that the SWZ's position is consistent with the following long-held sector position that:

1. *There is a need to amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997; and*
2. *Either:*
  - a. *amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or*
  - b. *establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.*

WALGA also added to its submission to the State Government following the consultation on phase 2 of the review of the Act:

*Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.*

WALGA's advocacy position has not changed in relation to this issue and it continues to push for meaningful legislative change in this area. Until then, however, the current approach to rate exemptions due to charitable purpose remains in place.

### **OFFICER COMMENT**

In accordance with Section 6.26 (2) (g) of the Act, the land is not rateable if it is used exclusively for charitable purposes. Rate exemption applications need to be considered in two parts. The first part is to assess whether the use itself is "charitable" and the second part is to determine whether the property is being used "exclusively" for charitable purposes.

In considering the first part, is the operations of Lamp Incorporated considered to be a charitable use, legal opinions have been consistent in defining a charitable purpose as land used for:

1. The relief of poverty;
2. The advancement of education;
3. The advancement of religion; and
4. Other purposes beneficial to the community.

Most of the funding for the services provided by Lamp Inc. comes from NDIS and Mental Health Commission grants. Provision of the services to those suffering from mental health issues within the community would meet the “other purposes beneficial to the community” charitable definition.

In considering the second part i.e., ‘is the property being exclusively used for a charitable purpose’; this criterion is being met as Lamp Inc. owns the property and uses it exclusively to provide mental health services to the community

No physical inspection of the Property has been undertaken based on its known use and the provided statutory declaration (Attachment B), which is considered sufficient.

#### **Statutory Environment**

Section 6.26(2)(d) of the Act specifically states that land used exclusively for religious purposes is not rateable.

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

Not applicable.

#### **Financial Implications**

Granting rate exemption effective 27<sup>th</sup> June 2023 will result in a \$33.67 reduction to the 2022/23 rating income and a \$3,192.60 reduction to the 2023/24 rating income. In future years this represents a lost opportunity for rating income of approximately \$3,192 plus any budgeted increases where the Property continues to be owned and used by Lamp Inc. for the purposes as stated in the rate exemption application.

#### **External Stakeholder Consultation**

Not applicable.

#### **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 decline the rate exemption application on the basis that it considers the property to be rateable under the Act. This is not recommended based on the risks associated with declining the application, being that the applicant seeks an administrative review.

### **CONCLUSION**

It is considered that the services provided by Lamp Inc. from 224 Bussell Highway, West Busselton are charitable in nature and would be eligible for rate exemption under section 6.26(2)(d) of the Act.

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

<b>Milestone</b>	<b>Completion Date</b>
Rate Exemption granted	27 June 2023 (applied retrospectively)

## 11. PLANNING AND DEVELOPMENT SERVICES REPORTS

### 11.1. Amendment 54 to Local Planning Scheme 21 Lot 2883 Puzey Road, Wilyabrup

<b>Strategic Theme:</b>	Key Theme 2: Lifestyle 2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
<b>Directorate:</b>	Planning and Development Services
<b>Reporting Officer:</b>	Strategic Planning Coordinator – David Sands
<b>Authorised By:</b>	A/Director Planning and Development Services – Rachel Runco
<b>Nature of Decision:</b>	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Aerial Photograph [11.1.1 - 1 page]</li> <li>2. Scheme Amendment Map [11.1.2 - 1 page]</li> <li>3. Amendment report [11.1.3 - 18 pages]</li> <li>4. Strata Plan 54626 with notation [11.1.4 - 1 page]</li> <li>5. Amendment 54 Schedule of Submissions [11.1.5 - 2 pages]</li> </ol>

#### COUNCIL DECISION

**C2308/88** Moved Cr Paul Carter, seconded Cr Phill Cronin

That the Council:

1. In pursuance of the Planning and Development Act (Local Planning Schemes) Regulations 2015 (the Regulations) adopts Amendment 54 to the City of Busselton Local Planning Scheme 21 (the Scheme) for final approval, for the purposes of:

a) Inserting a new ‘Special Provision Area 76’ as follows:

No.	Particulars of Land	Zone	Special Provisions
SP76	Strata Lots 20, 21, 31, 37, 46 and 47 on Survey-Strata Plan 54626 (Lot 2883) Puzey Road, Wilyabrup	Viticulture and Tourism	For Lots 20, 21, 31, 37, 46 and 47, as shown on the current Strata Plan 54626 (approved on 24 December 2021), one Chalet per lot is permitted as unrestricted length of stay.

b) Amending the Scheme Map accordingly.

2. In accordance with Regulation 35 (2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 54 of the City of Busselton Local Planning Scheme No. 21 is a ‘complex amendment’ in accordance with r.34 of the Regulations as it is:

(a) an amendment that is not consistent with a Local Planning Strategy for the

**Scheme that has been endorsed by the Commission.**

3. Pursuant to r. 53 of the Regulations, endorses the Schedule of Submissions at Attachment 5, which has been prepared in response to the public consultation process.
4. Upon preparation of the necessary documentation, refers the adopted Amendment 54 to the WAPC for consideration and determination in accordance with the Planning and Development Act 2005.
5. Pursuant to r. 56 of the Regulations, should directions be given that modifications to Amendment 54 are required, direct these modifications to be undertaken accordingly, on behalf of the Council, unless they are considered by officers to significantly affect the purpose and intent of the Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination

**CARRIED 7 / 0**

**EN BLOC**

**OFFICER RECOMMENDATION**

That the Council:

1. In pursuance of the Planning and Development Act (Local Planning Schemes) Regulations 2015 (the Regulations) adopts Amendment 54 to the City of Busselton Local Planning Scheme 21 (the Scheme) for final approval, for the purposes of:

- a) Inserting a new 'Special Provision Area 76' as follows:

No.	Particulars of Land	Zone	Special Provisions
SP76	Strata Lots 20, 21, 31, 37, 46 and 47 on Survey-Strata Plan 54626 (Lot 2883) Puzey Road, Wilyabrup	Viticulture and Tourism	For Lots 20, 21, 31, 37, 46 and 47, as shown on the current Strata Plan 54626 (approved on 24 December 2021), one Chalet per lot is permitted as unrestricted length of stay.

- b) Amending the Scheme Map accordingly.

2. In accordance with Regulation 35 (2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 54 of the City of Busselton Local Planning Scheme No. 21 is a 'complex amendment' in accordance with r.34 of the Regulations as it is:

- (a) an amendment that is not consistent with a Local Planning Strategy for the Scheme that has been endorsed by the Commission.

3. Pursuant to r. 53 of the Regulations, endorses the Schedule of Submissions at Attachment 5, which has been prepared in response to the public consultation process.
4. Upon preparation of the necessary documentation, refers the adopted Amendment 54 to the WAPC for consideration and determination in accordance with the Planning and Development Act 2005.
5. Pursuant to r. 56 of the Regulations, should directions be given that modifications to Amendment 54 are required, direct these modifications to be undertaken accordingly, on behalf of the Council, unless they are considered by officers to significantly affect the purpose and intent of the Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination

## **EXECUTIVE SUMMARY**

Council adopted Amendment 54 (the Amendment) to Local Planning Scheme No. 21 (the Scheme) for advertising on the 21 December 2022 and the Western Australian Planning Commission (WAPC) required administrative modifications prior to advertising as the amendment was classified as 'Complex'.

The Amendment would allow land use planning controls relating to specific strata Lots 20, 21, 31, 37, 46 and 47 on Survey-Strata Plan 54626 (previously Loc 2883) Puzey Road, Wilyabrup (Attachment 1 – Aerial Photograph). The Amendment proposes to insert a new 'Special Provision' within the Scheme to allow certain lots to have buildings with 'unrestricted length of stay'. (Attachment 2 – Scheme Amendment map).

It is recommended that the Amendment be finally adopted without modification and forwarded to the Western Australian Planning Commission for assessment and referral to the Minister for Planning for final consideration.

## **STRATEGIC CONTEXT**

Adoption of the Amendment would align with Strategic Theme 2.8 and will assist in delivering additional long term housing stock whilst balancing the need to ensure delivery of tourism product. The Amendment is considered consistent with the City's overall land use strategy detailed within the Local Planning Strategy (LPS) and the Local Tourism Planning Strategy (LTPS).

## **BACKGROUND**

The Amendment relates to the subject land which comprises of Strata Plan 54626 previously referred to as Loc 2883 Puzey Road, Wilyabrup and is in the "Viticulture and Tourism" zone of Local Planning Scheme No.21 (LPS 21) (Attachment 3 - Amendment Report No. 54), (Attachment 4 - Strata Plan 54626).

The surrounding properties are predominately used for agriculture purposes (mainly viticulture) or rural industries including brewery and restaurant uses. Tourism land uses are also throughout the area, predominately short stay chalets. Bootleg Brewery is located to the south on the opposite side of Johnson Road.

The subject land is flat, triangular, and bounded by Puzey Road to the south-east. The southern edge of the subject land is located at the intersection of Johnston, Puzey and Wildberry Roads. There has



been a previous development approval for Chalets granted in 2006 by the City and a Survey-Strata Subdivision was applied for in 2007. While survey strata lots and common property accessway were created the development approval for Chalets was never implemented.

The Western Australian Planning Commission (WAPC) approved a strata subdivision on 1 September 2020 for the subject land, based on a revised development concept and strata management statement (for Strata 54626) which included long stay restriction as well as commercial and agricultural land use (refer Attachment 4). The strata management statement set out the following strata management rights for each Strata lot:

- an agricultural enterprise as the primary use for Lots 16 and 17 and a short stay tourist resort facility;
- A manager residence on Lot 1, 16 or 17; and
- A tourist commercial venture to be operated on Lots 20 and 21.

The strata management statement specifically refers to specific rights for lots 20, 21, 31, 37, 46 and 47, and are summarised as follows:

- Short stay tourist accommodation, as a right, on all lots;
- Lot 20 and 21 to have additional rights for commercial use, and to be designated to allow a residential dwelling rights for occupation all year round;
- Lots 46 and 47 to have additional rights for agricultural enterprise use and to be designated to allow for a residential dwelling rights for occupation all year round;
- Lot 46 and 47 to have the right for short stay accommodation and agricultural use;
- Lot 37 to have the right for short stay accommodation and residential use, and in addition specifies that the lot will contain buildings and infrastructure for residential use with unrestricted length of stay;
- All lots except 20,21,31,37,46 and 47 to have restriction on use of short stay accommodation only; and
- In addition to the above, Lots 31, 46 or 47, may be designated for use by a resident manager.

The amendment has been lodged by the proponent to formalise the above strata management rights for each strata lot into Local Planning Scheme No.21.

## **OFFICER COMMENT**

The amendment would insert Special Provisions within LPS 21 to allow for “unrestricted length of stay” consistent with various strata management rights prescribed under Strata 54626. The key consideration with this amendment is that the location of tourism lots with “unrestricted length of stay” have not been identified by the City’s strategic planning framework (LPS or LTPS). The amendment will however grant discrete long-stay accommodation privileges to facilitate the proponent progressing full development of the site. No issues were raised during the advertising period and the Environmental Protection Authority did not assess the amendment and provided no advice.

## **Unrestricted Length of Stay**

Strata Plan 54626 allows "unrestricted length of stay" for Lots 20, 21, 31, 37, 46, and 47. Officers agree this is an acceptable use for all lots, with the exception of Lot 31, however as the proposed use of Lot 31 will be for a resident manager for the remaining short stay lots, the City accepts that granting of "unrestricted length of stay" for this lot is appropriate.

The development of a “Chalet” which is a “D” use under LPS 21 is considered the appropriate uses for the short and extended stay for the “Viticulture and Tourism” zone. Within the strata management statement, the reference to residential dwellings is noted, however it is not considered appropriate to support “Grouped Dwelling” or “Holiday Home (grouped dwelling)” through this amendment, as this would require an additional use to be introduced. This is not considered an appropriate location as it would result in a quasi-suburban style development within a rural setting with further allowances for ancillary dwellings being possible. This amendment will not result in modification to the classification of Grouped Dwelling and Holiday Home (grouped dwelling) which will remain an “x” use they are currently for the “Viticulture and Tourism” and surrounding “Rural” zone within LPS 21.

Finally, it is concluded that the amount of development on lots 20, 21, 31, 37, 46 and 47 can be controlled through the proposed scheme amendment text, as amended by officers, which specifically refers to “one Chalet per lot”.

### **Manager Residence**

The City’s position is maintained that one manager residence is appropriate for the site. As three lots (31, 46 and 47) are given the strata management right to be a manager residence and are located on separate privately owned lots it will be difficult for the City to control how many managers are operating at the site, however, the differentiation between tenants and managers is ultimately an issue for the Strata Body to coordinate with future land use. In addition, the proposed amended text refers specifically to “one Chalet” for the strata lots (20, 21, 31, 37, 46 and 47) and therefore further control of management residences in this regard are considered redundant.

### **Statutory Environment**

The key statutory documents relevant to this proposal include the Planning and Development Act 2005, the Planning and Development (Local Planning Schemes) Regulations 2015, and the relevant objectives and provisions of the City of Busselton Local Planning Scheme No. 21. Each is discussed below under appropriate subheadings.

#### ***Planning and Development Act 2005***

The *Planning and Development Act 2005* outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been taken into account in preparing and processing this Amendment.

#### **Planning and Development (Local Planning Schemes) Regulations 2015**

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

#### **Local Planning Scheme No. 21**

The subject land is zoned ‘Viticulture and Tourism’ and the objectives of this zone are as follows:

- a. To provide for the maintenance or enhancement of specific local rural character.

- b. To provide for development and expansion of the viticultural, winemaking and associated industries, in addition to general rural pursuits, in a manner that does not cause adverse environmental impact.
- c. To facilitate the development of tourist facilities of a scale and nature appropriate in rural settings without prejudice to the scenic quality of land within this zone and without creating or increasing ribbon development on any road.
- d. To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses.
- e. To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.
- f. To maintain and enhance the environmental qualities of the landscape, vegetation, soils and waterways.

### **Relevant Plans and Policies**

#### **Local Planning Strategy**

The City's Local Planning Strategy 2019, (LPS) provides guidance on the consideration of unrestricted length of stay to support re-investment and updating of accommodation product and appropriate for new developments on Tourism zoned within the Busselton-Vasse Urban Area and the Dunsborough Urban Area. The LPS does not support 'unrestricted length of stay' in rural areas and states that strata title subdivision of tourism accommodation is not supported outside of the Busselton-Vasse Urban Area and the Dunsborough Urban Area.

#### **City of Busselton Local Tourism Planning Strategy 2011**

The Local Tourism Planning Strategy (LTPS) provides the long-term strategic land use planning and strategic direction for tourism development within the City of Busselton. Strategic tourism sites and precincts were identified as being of tourist significance or importance with the intention being to retain these sites for tourism use. Non-strategic tourism sites are also identified and are to be retained for tourism purposes with the possibility of an unrestricted length of stay component. The LTPS also considers areas of tourist zoned land where alternative zonings may be considered. The subject land is not included in any of the three categories under the LTPS.

#### **State Planning Policy 3.7: Planning in Bushfire Prone Areas**

The intent of SPP 3.7 is to implement effective, risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure. SPP 3.7 directs how land use should address bushfire risk management and applies to all land which has been designated as bushfire prone by the Office of Bushfire Risk Management.

The subject land has been designated as a Bushfire Prone Area and the considerations of SPP 3.7 were considered through the subdivision process through the preparation of a Bushfire Management Plan and implementation of subdivision conditions. In addition, the development application process will require a bushfire assessment to be undertaken of habitable buildings.

Further bushfire risk assessment for the Amendment is not considered necessary and the provisions of SPP 3.7 and associated guidelines have not been applied to this proposal.

**Financial Implications**

Not Applicable

**External Stakeholder Consultation**

The Amendment was advertised for 60 days, 15 May to 14 July. There were no public submissions, and three government agency submissions were received. There were no substantive matters raised with full details of the submissions received contained in the Schedule of Submissions provided at Attachment 5.

**Risk Assessment**

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 not adopt the Amendment for final approval and provide a reason for such a decision. It should be noted that under the relevant legislation there is no right of appeal against a council decision not to adopt an amendment for final approval; or
2. To seek further information before making a decision.

The Officer assessment has not revealed any substantive issue or reasonable grounds that would support either of the above options.

**CONCLUSION**

The Amendment provides for a small number of long-stay permissions associated with the Chalet land use for a survey strata development on the subject land which has already been provided approval by the WAPC and implemented through the subdivision process to create land title.

It is therefore recommended the Council provides a recommendation to the Western Australian Planning Commission to support the proposed Amendment.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Referral of Amendment 54 to the WAPC	Within one month of Council decision.

## 11.2. Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area

<b>Strategic Theme:</b>	Key Theme 2: Lifestyle 2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
<b>Directorate:</b>	Planning and Development Services
<b>Reporting Officer:</b>	Strategic Planning Officer - Justin Biggar
<b>Authorised By:</b>	Director Planning and Development Services - Paul Needham
<b>Nature of Decision:</b>	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Attachment A - Pennock vs City of Busselton Decision [ <b>11.2.1</b> - 11 pages] 2. Attachment B - Examples of Affected Properties [ <b>11.2.2</b> - 2 pages]

This item was brought forward by the Presiding Member and considered prior to the en bloc resolution.

DISCLOSURE OF INTEREST	
Date	16/08/2023
Meeting	Ordinary Council
Name/ Position	Cr Kate Cox
Item No./ Subject	11.2 Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area
Type of Interest	Financial Interest
Nature of Interest	My residence is located within the Quindalup Special Character Area.

Cr Cox left the meeting at 6:38pm, and returned at 6:41pm.

Prior to the meeting, Cr Cronin foreshadowed an alternative that was different to the officer recommendation. In accordance with clause 10.18(6) of the City of Busselton *Standing Orders Local Law 2018*, it was taken to be an alternative recommendation

The alternative recommendation was moved and carried.

### COUNCIL DECISION

**C2308/90** Moved Cr Phill Cronin, seconded Cr Anne Ryan

#### That the Council:

1. In pursuance of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) initiates Amendment 56 to the City of Busselton Local Planning

Scheme No. 21 (the Scheme) for community consultation for the purposes of:

- (a) Amending clause 5.7.3 to read as follows:
  - (i) *5.7.3 Where such objectives, provisions and/or controls are specified in Schedule 4 in relation to a designated Special Character Area, those objectives, provisions and/or controls act in conjunction with the other provisions of this Scheme relevant to that area.*
2. Pursuant to r.35(2) determine that Amendment 56 is a 'standard amendment' as it is:
  - (a) An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
  - (b) An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the Scheme area; and
  - (c) Any other amendment that is not a complex or basic amendment.
3. That as the amendment is in the opinion of Council, consistent with Part V of the *Planning and Development Act 2005* (the Act) and the Regulations made pursuant to the Act, that upon preparation of the necessary documentation, refer the amendment to the Environmental Protection Authority (EPA) and upon receipt of a response that the amendment is not subject to formal environmental assessment, advertise the proposal for a period of 42 days. Where the EPA determines the amendment is to be subject to formal environmental assessment, the assessment is to be prepared prior to advertising of the draft amendment.
4. Council note that the City will proceed within 12 months the following further stages for review of the Special Character Areas:
  - (a) Undertake a broader review of the Special Character Area framework which includes the related Scheme provisions and suite of local planning policies.
  - (b) As part of the review, the City will engage with the community to inform the preparation of revised planning controls consistent with the contemporary planning framework.
  - (c) Incorporate the findings of the stage 2 review within the planning framework.
5. Amend Delegation DA7 - 01 by adding the following as point 2 in the Conditions section (with subsequent points being renumbered accordingly) –

**Applications in Special Character Areas requiring the exercise of discretion**

All applications for development approval affecting land within the Special Character Areas, as identified in Schedule 4 of the Scheme, and which involve the exercise of discretion, must be brought to Council for determination, unless the application has been refused under delegated authority.

**CARRIED 6 / 0**

**BY ABSOLUTE MAJORITY**

Reasons: The recommendation will introduce a level of discretion that was removed by the *Pennock* decision, and initiate a comprehensive review of the Special Character Area framework and the Local Planning Policies of the Special Character Areas. By amending Delegation DA7-01 'Development Control', this will grant the Council the ultimate decision making authority, enhance transparency to the public and enable

well-informed decisions to be reached on any development applications necessitating a level of discretion

### **OFFICER RECOMMENDATION**

That the Council:

1. In pursuance of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) initiates Amendment 56 to the City of Busselton Local Planning Scheme No. 21 (the Scheme) for community consultation for the purposes of:
  - (a) Amending clause 5.7.3 to read as follows:
    - (i) *5.7.3 Where such objectives, provisions and/or controls are specified in Schedule 4 in relation to a designated Special Character Area, those objectives, provisions and/or controls act in conjunction with the other provisions of this Scheme relevant to that area.*
2. Pursuant to r.35(2) determine that Amendment 56 is a 'standard amendment' as it is:
  - (a) An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
  - (b) An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the Scheme area; and
  - (c) Any other amendment that is not a complex or basic amendment.
3. That as the amendment is in the opinion of Council, consistent with Part V of the *Planning and Development Act 2005* (the Act) and the Regulations made pursuant to the Act, that upon preparation of the necessary documentation, refer the amendment to the Environmental Protection Authority (EPA) and upon receipt of a response that the amendment is not subject to formal environmental assessment, advertise the proposal for a period of 42 days. Where the EPA determines the amendment is to be subject to formal environmental assessment, the assessment is to be prepared prior to advertising of the draft amendment.
4. Council note that the City will proceed with the following further stages for review of the Special Character Areas:
  - (a) Undertake a broader review of the Special Character Area framework which includes the related Scheme provisions and suite of local planning policies.
  - (b) As part of the review, the City will engage with the community to inform the preparation of revised planning controls consistent with the contemporary planning framework.
  - (c) Incorporate the findings of the stage 2 review within the planning framework.

### **EXECUTIVE SUMMARY**

As requested by Council at a briefing session on Special Character Areas 5 April 2023, City staff have forwarded for consideration Scheme Amendment 56. The proposed amendment seeks to reinstate discretion to vary development standards for Special Character Areas as identified in Schedule 4 of Local Planning Scheme No. 21 (the Scheme).

As a result of a Supreme Court decision (*Pennock v City of Busselton [2021] WASC 29*), the City has been unable to exercise discretion in the determination of applications where a variation to Schedule 4 is proposed. Prior to that decision, the City had long been of the view and practice that



discretion did exist. The current lack of discretion is having significant implications for landowners wishing to develop their properties and preventing the exercise of reasonable planning judgement, and in some instances creating significant uncertainty.

As discussed in greater detail below, discretionary decision making is a core component of the planning system that allows local government to appropriately balance certainty with flexibility by providing scope to address the individual merits of each planning application. In the interests of re-introducing discretion into the planning framework for Special Character Areas, the amendment is recommended to be adopted for the purposes of public advertising.

## STRATEGIC CONTEXT

In allowing the City to exercise discretion where appropriate, adoption of the proposed amendment aligns with Strategic Theme 2.8 and will facilitate functional redevelopment in the affected areas.

## BACKGROUND

The Scheme identifies five Special Character Areas, being Quindalup, Yallingup, Old Dunsborough, Adelaide Street and Eagle Bay. Clauses 5.7.1 – 5.7.3 operate in conjunction with Schedule 4 and the applicable local planning policies to establish baseline development standards that vary those that would otherwise apply given the applicable zoning. The standards commonly include controls on building height, setbacks and subdivision potential.

Originally, Special Character Areas were created through the various local planning policies attaching to each locality. Later, due to a desire to include these development standards in a higher order planning instrument, they were incorporated into the Scheme when District Town Planning Scheme No. 20 was gazetted. However, it was not intended that the provisions would operate as standards which were incapable of variation. This is evidenced by the City's application of the Schedule 4 controls from the period since the inclusion of Special Character Area provisions into the Scheme up until the *Pennock* decision – a period of approximately 20 years.

In 2018, the City granted development approval for a single house in the Yallingup Special Character Area with a portion of the roof at a height of 10.61m, varying the 10m building height requirement as contained in Schedule 4. Having considered the merits of the application, discretion was applied as per cl 4.5.1 of the Scheme which provides a 'global discretion' to vary the standards prescribed by the Scheme. The owners of a neighbouring property then sought judicial review of the City's decision in the Supreme Court. The application for judicial review was dismissed on the basis that it was 'out of time,' with Allanson J noting the City was reasonable in its exercise of discretion (see Attachment A).

However, commentary regarding whether the City had discretion to approve a building over 10m has consequences for the City given the comments made by Allanson J concerning the City's construction of the Scheme. In his opinion, Allanson J noted that while the City's construction was open and reasonable, it was not one with which he agreed. The bolded sentence in the quote below has the effect of overriding all clauses of the Scheme, including cl 4.5.1, which was considered to permit the exercise of discretion within Special Character Areas.

*"5.7.3 Where such objectives, provisions and/or controls are specified in Schedule 4 in relation to a designated Special Character Area, those objectives, provisions and/or controls act in conjunction with the other provisions of this Scheme relevant to that area*



***with the exception that the provisions of Schedule 4 will take precedence over any other provisions of this Scheme.”***

Accordingly, to reinstate discretion the amendment proposes to remove the wording in bold as contained above. Once removed, cl 4.5.1 (i.e. – application of discretion) would again apply when determining applications within a Special Character Area.

It is noted the proposed amendment does not alter the development standards applicable to each Special Character Area. In the assessment of any application, the development controls specific to each Special Character Area as contained in Schedule 4 and relevant policies will still take precedence over more general provisions contained elsewhere in the Scheme.

If the officer recommendation is supported, the process will need to be followed through to completion – being either the adoption or refusal of the amendment by the Minister for Planning. That is, once initiated by Council for advertising, the final determination on the amendment will be the decision of the Minister, not Council.

The proposed amendment is intended to form the first stage of a broader review of the Special Character Areas, the associated Scheme provisions and local planning policies. The amendment is intended to operate as an initial remedy to address the issue raised by the *Pennock* decision with the broader review to occur concurrently with the local planning scheme review process.

#### **OFFICER COMMENT**

The below section outlines the key considerations and circumstances that have informed the Officer Recommendation. First, the background discussions that have taken place since the formulation of the amendment, second, the importance of discretionary decision making to a modern planning framework is outlined, with a further discussion of the operational impacts of the loss of discretion. The third part provides comment on proposed changes to the use of discretion in the planning framework while the final section outlines the rationale for a broader review of the Special Character Areas which is recommended to occur concurrently with the preparation of the new Scheme.

#### **Background Consultation**

Initiation of Amendment 56 was considered by the Council at its meeting of 21 June 2023 however the matter was deferred to 16 August to allow affected residents additional time to provide input. During this time, further meetings were held between the CEO, Mayor and the respective resident groups and an external planning consultant report provided that offered an alternative perspective on interpretation of the Scheme, the Special Character Area framework and the future application of discretionary decision making.

While the officer recommendation remains unchanged, the consultant report prepared on behalf of residents has been considered and is reflected in a revised report that seeks to address the issues raised, particularly regarding the future application of discretion within the planning system.

#### **Discretionary decision making**

The intent of the Schedule 4 provisions is to protect the character of each identified Special Character Area through a number of conservative development controls, including such elements as building height and setbacks. As with any development standard within a Residential area, it is not

considered these controls were intended to be absolute but to be subject to discretionary decision making, as demonstrated by the past application of discretion by City officers and Council.

Discretionary decision making is at the core of good planning practice and rightly allows for individual contexts to be taken into consideration. For example, a development site may have constraints related to lot shape, easements or bush fire risk. In this instance, absolute controls can prohibit otherwise acceptable development that satisfies the outcome the control is intended to achieve. It is important that development controls be treated as a mechanism to achieve a desired outcome and not be conflated or confused with the outcome itself.

As the local planning framework currently applies following the *Pennock* decision, landowners with development plans that propose any type of variation, no matter how minor, have been advised not to lodge their application as the City cannot legally exercise discretion. While a 'wait and see' approach was originally adopted, it has become clear that reasonable development proposals are unable to be supported.

There are numerous examples of development (either as pre-application enquiries or development applications) impacted by the loss of discretion, resulting in either costly redesigns, applications being cancelled or put on hold, or simply not lodged, until such time as the planning framework is modified (see Attachment B). Further, the ambiguity in the drafting of Schedule 4 provisions and inconsistency with modern planning terminology has led to considerable uncertainty in what can and cannot be approved by City staff. The current situation creates additional workload, contributes to lengthy delays and the perception of unnecessary bureaucracy.

It was initially intended to leave cl 5.7.3 unchanged and address the discretion issue through the preparation of Local Planning Scheme No. 22. In drafting the new scheme, the City is required to adopt the wording and format of the 'Model provisions for local planning schemes,' as set out in the Regulations. The consistent advice received from the Department of Planning, Lands and Heritage (DPLH) throughout the drafting process is that clause 32 of the Model provisions ('Additional site and development requirements') is one appropriate mechanism to control development outcomes in Special Character Areas. It is important to note that clause 32 standards can be varied. An alternative would be via local planning policy wherein discretion would also exist.

That is, if the Special Character Areas are included in the clause 32 schedule, as has been advised by the DPLH is the most suitable option, the City will have discretion to vary standards where appropriate. While it is open to Council to delay reinstatement of discretion until gazettal of the new Scheme, it is considered the length and uncertainty of time frame in finalising the new planning scheme (two plus years) is detrimental to landowners entitled to have their applications assessed and determined in a timely manner consistent with previous applications.

Accordingly, it is considered important to reintroduce discretion for the effective day to day operation of the planning framework and for the current Scheme to best reflect accepted modern planning practice as established by the Regulations.

### **Proposed Changes to the Regulations – Use and Application of Discretion**

The Action Plan for Planning Reform, released by the Minister in 2019 incorporates various actions aimed at improving planning processes and outcomes. A review of the use and application of discretion forms one of these actions.

A recommendation contained in the review were for the Regulations to provide for the “*localised limitation of discretionary powers in specific scenarios or locations through the inclusion of appendices/schedules in the Model Provisions*”. In simple terms, the recommendation contemplates specific areas where planning controls would be ‘set’ by scheme provisions and would be unable to be varied – essentially the situation as it exists now under the City of Busselton scheme for Special Character Areas, post-Pennock.

It is unclear when or whether this reform work may be concluded and how it may relate to the Special Character Area. It is clear, however, that the general direction of the Government is to consolidate and make local planning schemes more consistent, and inflexible development controls in residential areas would be generally inconsistent with the state planning direction.

### **Broader review of the Special Character Area**

It is intended for a broader review of the Special Character Areas to occur concurrently with the preparation of Local Planning Scheme No 22. The review is anticipated towards the end of the year and to be addressed in the following stages:

1. Undertake a broader review of the Special Character Area framework which includes the related Scheme provisions and suite of local planning policies.
2. As part of the review, engage with the community to inform the preparation of revised planning controls consistent with the contemporary planning framework.
3. Incorporate the findings of the stage 2 review within the planning framework.

The review is an important step having regard to the layering of planning controls that has occurred over time since the introduction of the Special Character Areas. For example, Eagle Bay contains several statutory documents (structure plan, local planning policy and Scheme requirements) each inconsistent with the other. This creates a level of uncertainty and confusion for both City staff and the community in the expected design requirements for the area.

Through the review process, the City will be able to engage with affected residents to formulate a new suite of Scheme and policy requirements and establish appropriate parameters to guide the application of discretion where any variations are proposed.

### **Statutory Environment**

The key statutory documents relevant to this proposal include the *Planning and Development Act 2005*, the *Planning and Development (Local Planning Schemes) Regulations 2015* and the relevant objectives and provisions of the City of Busselton Local Planning Scheme No. 21. Each is discussed below under appropriate subheadings.

#### ***Planning and Development Act 2005***

The *Planning and Development Act 2005* (P&D Act) outlines the relevant considerations when preparing and amending local planning schemes and will inform the preparation of the new planning scheme. The relevant provisions of the Act have been taken into consideration in preparing and processing this Amendment.

***Planning and Development (Local Planning Schemes) Regulations 2015***

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), which came into operational effect on 19 October 2015, identify three different levels of amendments – basic, standard and complex. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is considered to be a ‘standard’ amendment for reasons outlined in the recommended council resolution.

**Local Planning Scheme No. 21**

As discussed in the Officer Comment section, due to the recent *Pennock* decision, a Scheme amendment is required to reintroduce discretion for the determination of applications within the Special Character Areas. It is noted a new scheme is currently being drafted as directed by the WAPC with LPS22 to be gazetted in 2025 based on the current time frame estimate. While the proposed amendment will provide a quick remedy to the *Pennock* decision outcome, the wider review to be undertaken concurrently with the Scheme review will offer opportunity to revisit the and revise the controls applied to the Special Character Areas.

**Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

- State Planning Policy 3.7 Planning in Bushfire Prone Areas
- State Planning Policy 7.3 Residential Design Codes Volume 1 (2023)
- Council Policy Partial Moratorium on Scheme Amendments
- [City of Busselton Local Planning Strategy 2019](#)

**State Planning Policy 3.7: Planning in Bushfire Prone Areas (SPP 3.7) and Guidelines for Planning in Bushfire Prone Areas**

SPP 3.7 directs how land use should address bushfire risk management in Western Australia. It applies to all land which has been designated as ‘bush fire prone’ by the Fire and Emergency Services Commissioner as highlighted on the ‘Map of Bush Fire Prone Areas.’ The accompanying Guidelines for Planning in Bushfire Prone Areas provide supporting information to assist in the interpretation of the objectives and policy measures outlined in SPP 3.7, providing advice on how bushfire risk is to be addressed when planning, designing or assessing a planning proposal within a designated bushfire prone area.

The portions of land that form the Special Character Areas predominantly fall within the bushfire prone area mapping. The ongoing review of the Special Character Areas and related suite of policy documents will need to take into consideration bush fire risk during their formulation.

## **State Planning Policy 7.3 Residential Design Codes Volume 1 (2023)**

The latest version of SPP 7.3, applicable from September 2023, provides design parameters for low and medium density residential development and builds upon the principles established in State Planning Policy 7.0 Design of the Built Environment. These policies continue the shift away from prescriptive controls and allow development to be assessed against performance criteria where required. The intent of the updated framework is to provide flexible design-centric policy settings that incentivise functional, sustainable and contextual dwelling design. The ability for local government to exercise discretion in assessing applications is a key element in the successful implementation of the policy.

### **Partial Moratorium on Scheme Amendments**

Council recently adopted the aforementioned policy establishing a moratorium on scheme amendments to ensure no substantive changes to the planning framework could occur that would potentially impact formulation of the new scheme. The policy sets out the limited range of circumstances in which 'standard amendments' would be permitted, including whether it is urgent from an operational standpoint and does not adversely affect the progression of the draft Local Planning Scheme No. 22.

Amendment 56 is considered to satisfy the criteria outlined in the policy for when a standard amendment can be progressed. Noting the lengthy time frame for the adoption of the new scheme (approximately 2025), it is considered leaving clause 5.7.3 unaltered would impact the effective operation of the planning framework and result in a local planning scheme that does not meet the expectation of a modern planning document.

### **Local Planning Strategy (LPS)**

The LPS sets the broad planning direction for the City of Busselton and provides the strategic rationale for decisions related to the progressive review and amendment of LPS21 and the current formulation of LPS22. The broader review of the Special Character Areas to be undertaken as stage 2 should ensure consistency with the LPS, particularly Theme 1, Objective C and Theme 4, Objective C, as per below:

- Theme 1, Objective C – *"The creation of compact, liveable and sustainable settlements that provide their residents with housing and lifestyle choice and affordability, a high quality of life, health and wellbeing and convenient access to high quality employment and services."*
- Theme 4, Objective C – *"Preserve and enhance the natural, rural and urban landscapes of the District."*

### **Financial Implications**

There are no direct financial implications associated with the officer recommendation.

### **External Stakeholder Consultation**

Initial consultation was undertaken with residents of the respective Special Characters Areas, both in person and via email correspondence throughout 2023 and prior.

On 1 February 2023, the respective resident groups were advised the scheme amendment would probably not be pursued with the issue of discretion to be addressed through the preparation of Scheme No. 22. Due to a request from Council for the amendment to be prepared, the original position subsequently changed and was conveyed to the key residents' groups during a meeting of April 24. The timing of the amendment (i.e., 21 June meeting) was further advised to residents' groups via email correspondence on 1 June 2023.

At the meeting of 21 June, Council resolved to defer the matter to the meeting of 16 August to allow additional time for resident groups to formulate a response to the proposed amendment prior to final decision. If Council resolves to initiate the Amendment, the relevant documentation will be referred to the EPA for formal assessment under Part IV of the *Environmental Protection Act 1986*. Where the EPA resolves that the Amendment does not require formal assessment, the document will be advertised for 42 days in accordance with clause 47 of the Regulations.

The wider review of the Special Character Areas will necessitate targeted consultation and workshops with affected landowners to formulate planning documents to guide development and achieve the desired outcome for each area.

### **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 decline the request to initiate the Amendment in its entirety, provide a reason for such a decision and note the City will proceed with a review of the Special Character Area framework by engaging with the community to inform the preparation of revised planning controls and suite of local planning policies; or
2. Resolve to seek further information before making a decision; or
3. Resolve to initiate the Amendment subject to modifications.

### **CONCLUSION**

Officers consider the proposal reflects contemporary planning practice and consistency with the objectives of the planning framework and therefore recommended Amendment 56 be initiated for public consultation.

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

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
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Commencement the advertising process as per the requirements of the Regulations	Within 28 days of Council Decision
Broader review of Special Character Areas provisions	concurrently with the overall Scheme review process

**11.3. Proposed Abbey South Structure Plan and Associated Amendment No. 55 to Local Planning Scheme No. 21 - Consideration for Final Approval**

<b>Strategic Theme:</b>	Key Theme 1: Environment 1.1 Ensure protection and enhancement of environmental values is a central consideration in land use planning Key Theme 2: Lifestyle 2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
<b>Directorate:</b>	Planning and Development Services
<b>Reporting Officer:</b>	Strategic Planning Officer – Noah Scott-McDonald
<b>Authorised By:</b>	A/Director Planning and Development Services – Rachel Runco
<b>Nature of Decision:</b>	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Aerial Photograph [11.3.1 - 1 page]</li> <li>2. Advertised Abbey South Structure Plan [11.3.2 - 467 pages]</li> <li>3. Advertised Scheme Amendment [11.3.3 - 18 pages]</li> <li>4. Schedule of Agency Submissions (3) [11.3.4 - 39 pages]</li> <li>5. Schedule of Public Submissions (3) [11.3.5 - 126 pages]</li> <li>6. CONFIDENTIAL REDACTED - CONFIDENTIAL Table of Submitter Names and Full Addresses (1) [11.3.6 - 3 pages]</li> <li>7. Schedule of Modifications [11.3.7 - 9 pages]</li> <li>8. Leeuwin Naturaliste Sub regional Strategy Plans (1) [11.3.8 - 1 page]</li> <li>9. Intersection Concepts and Technical Note [11.3.9 - 27 pages]</li> <li>10. Peer Review of Technical Note [11.3.10 - 5 pages]</li> <li>11. Further information to Technical Note [11.3.11 - 37 pages]</li> </ol>

This item was brought forward by the Presiding Member and considered prior to the en bloc resolution.

Prior to the meeting, Cr Cox foreshadowed a motion that was different to the officer recommendation. In accordance with clause 10.18(6) of the City of Busselton *Standing Orders Local Law 2018*, it was taken to be an alternative recommendation and moved first.

The motion was put, there was opposition and debate ensued. The alternative recommendation was carried.



## **COUNCIL DECISION**

**C2308/91** Moved Cr Kate Cox, seconded Cr Jodie Richards

**That the Council:**

- 1. Pursuant to Part 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), adopts the Abbey South Structure Plan at Attachment 2 for final approval, in accordance with the modifications proposed in the Schedule of Modifications at Attachment 7.**
- 2. Pursuant to r.50 of the Regulations, adopts Amendment No. 55 to Local Planning Scheme No. 21 for final approval, in accordance with the modifications proposed in the Schedule of Modifications shown at Attachment 7, for the purposes of:**

**(a) Inserting 'Special Provision Area No. 76' to read as follows –**

<b>No</b>	<b>Particulars of Land</b>	<b>Zone</b>	<b>Special Provisions</b>
<b>SP76</b>	<b>As identified on the Scheme map</b>	<b>Urban Development</b>	<ol style="list-style-type: none"> <li><b>1. A single structure plan is to be prepared for the entire Special Provision Area.</b></li> <li><b>2. In addition to the information to be included in a structure plan outlined in Clause 16 of the Deemed Provisions, the structure plan is to set out the following:</b> <ol style="list-style-type: none"> <li><b>i. A water management report that takes into consideration the land to the south and addresses all water-related matters relevant to the proposal.</b></li> <li><b>ii. Measures to manage risk from coastal inundation.</b></li> <li><b>iii. Open space requirements.</b></li> <li><b>iv. Measures to retain, manage, and enhance environmental values associated with the Special Provision Area including remnant vegetation, potential habitat for Commonwealth and State listed threatened fauna species, ecological linkages, and wetlands, within 'public open space', road reserves, and/or conservation areas (as identified on the Structure Plan). Such measures are required to also address linkages and connectivity with contiguous areas of similarly important remnant vegetation on land adjoining the special provision area as well as management</b></li> </ol> </li> </ol>

				<p>measures to ensure the habitat functions of these areas are maintained and, where possible, enhanced.</p> <p>v. The provision of vegetated buffers to ensure appropriate visual screening and separation of development from main roads adjoining the Special Provision Area.</p> <p>vi. Measures to provide for the safe and efficient movement of pedestrians and cyclists to, from, and within the Special Provision Area, including crossings of main roads adjoining the Special Provision Area.</p> <p>3. A Local Development Plan is to be prepared on Lots 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway to address:</p> <p>i. Location of car parking, pedestrian access, and vehicular/service access areas for development where adjacent or located on Lot 402;</p> <p>ii. Landscape values and visual management considerations.</p>
<p>3. Pursuant to r.53 and Part 4 of Schedule 2 of the Regulations, endorses the Schedules of Agency and Public Submissions at Attachments 4 and 5 respectively, which have been prepared in response to the public consultation process undertaken in relation to the Abbey South Structure Plan and associated Amendment No. 55.</p> <p>4. Advise the Western Australian Planning Commission that Amendment No. 55 is considered a 'standard' amendment pursuant to r.34 of the Regulations as it is:</p> <p>(a) an amendment that is consistent with a Local Planning Strategy for the Scheme that has been endorsed by the Commission; and</p> <p>(b) an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.</p> <p>5. Upon preparation of the necessary documentation, refers the adopted Amendment No. 55 to the Western Australian Planning Commission for consideration and determination in accordance with the Planning and Development Act 2005.</p> <p>6. Subject to the following changes to the Schedule of Modifications shown at Attachment 7:</p> <p>(i) Provide for a single row of R10 lots on the western boundary of Lot 4.</p> <p>(ii) Replace density range of R20-40 applicable to residential areas with a density range of R20-30.</p>				

- (iii) Replace the R60 density code (brown coloured residential area) with a density range of R20-30.
- (iv) Replace the R60 density code of the Local Centre with R40.
- (v) realign the access road/ share path that runs through the southern part of Lot 12 to be located parallel with the southern boundary, but sufficiently north of that boundary to enable retention of the mature vegetation along the boundary within the road reserve.
- (vi) Further clarify that the intersection of Caves Road is to be a small footprint roundabout of a 30m diameter which is capable of accommodating truck movements, similar to the Strelly and Barlee Street roundabout, and if this is not possible that a two stage t-intersection designed with minimal impact on vegetation is preferred.

**CARRIED 6 / 1**

**FOR: Cr Grant Henley, Cr Paul Carter, Cr Jodie Richards, Cr Kate Cox,  
Cr Phill Cronin and Cr Ross Paine**

**AGAINST: Cr Anne Ryan**

Reasons: A single row of R10 lots along the western boundary will provide a larger buffer between the lots and the adjacent caravan park, and the adjustment of density ranges will lower the overall density and will reduce traffic impacts.  
Realignment of the access road/ shared path will result in the creation of a road reserve, enabling the line of existing remnant vegetation to be retained. The smaller footprint of the roundabout will have minimal impact on existing vegetation.

#### **OFFICER RECOMMENDATION**

That the Council:

1. Pursuant to Part 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), adopts the Abbey South Structure Plan at Attachment 2 for final approval, in accordance with the modifications proposed in the Schedule of Modifications at Attachment 7.
2. Pursuant to r.50 of the Regulations, adopts Amendment No. 55 to Local Planning Scheme No. 21 for final approval, in accordance with the modifications proposed in the Schedule of Modifications shown at Attachment 7, for the purposes of:

(a) Inserting 'Special Provision Area No. 76' to read as follows –

No	Particulars of Land	Zone	Special Provisions
SP76	As identified on the Scheme map	Urban Development	<ol style="list-style-type: none"> <li>1. A single structure plan is to be prepared for the entire Special Provision Area.</li> <li>2. In addition to the information to be included in a structure plan outlined in Clause 16 of the Deemed Provisions, the structure plan is to set out the following: <ol style="list-style-type: none"> <li>i. A water management report that</li> </ol> </li> </ol>

			<p>takes into consideration the land to the south and addresses all water-related matters relevant to the proposal.</p> <ul style="list-style-type: none"> <li>ii. Measures to manage risk from coastal inundation.</li> <li>iii. Open space requirements.</li> <li>iv. Measures to retain, manage, and enhance environmental values associated with the Special Provision Area including remnant vegetation, potential habitat for Commonwealth and State listed threatened fauna species, ecological linkages, and wetlands, within 'public open space', road reserves, and/or conservation areas (as identified on the Structure Plan). Such measures are required to also address linkages and connectivity with contiguous areas of similarly important remnant vegetation on land adjoining the special provision area as well as management measures to ensure the habitat functions of these areas are maintained and, where possible, enhanced.</li> <li>v. The provision of vegetated buffers to ensure appropriate visual screening and separation of development from main roads adjoining the Special Provision Area.</li> <li>vi. Measures to provide for the safe and efficient movement of pedestrians and cyclists to, from, and within the Special Provision Area, including crossings of main roads adjoining the Special Provision Area.</li> </ul> <p>3. A Local Development Plan is to be prepared on Lots 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway to address:</p> <ul style="list-style-type: none"> <li>i. Location of car parking, pedestrian access, and vehicular/service access areas for development where adjacent or located on Lot 402;</li> <li>ii. Landscape values and visual management considerations.</li> </ul>
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3. Pursuant to r.53 and Part 4 of Schedule 2 of the Regulations, endorses the Schedules of Agency and Public Submissions at Attachments 4 and 5 respectively, which have been prepared in response to the public consultation process undertaken in relation to the Abbey South Structure Plan and associated Amendment No. 55.
4. Advise the Western Australian Planning Commission that Amendment No. 55 is considered a 'standard' amendment pursuant to r.34 of the Regulations as it is:
  - (a) an amendment that is consistent with a Local Planning Strategy for the Scheme that has been endorsed by the Commission; and
  - (b) an amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area.
5. Upon preparation of the necessary documentation, refers the adopted Amendment No. 55 to the Western Australian Planning Commission for consideration and determination in accordance with the Planning and Development Act 2005.

## EXECUTIVE SUMMARY

Council consideration is sought regarding the final adoption of Amendment No. 55 (the Amendment) to *Local Planning Scheme No. 21* (the Scheme), and the associated Abbey South Structure Plan (SP).

The Amendment and SP were adopted for advertising on 16 November 2022 and 30 January 2023, respectively. The purpose of the SP is to guide subdivision and development in the SP area (Refer to Attachment 1: Aerial Photograph). The purpose of the Amendment is to introduce an appropriate zone to guide the preparation of the SP and enable its implementation.

Council deferred consideration of the Amendment and SP at its meeting of 21 June 2023 to allow for the development of revised intersection designs and to consider incorporation of a new area of lower density housing (Residential R10).

The purpose of this report is to set out recommendations relating to the final adoption of the SP and the Amendment, following consideration of the submissions received through the advertising process. The proposals would then be further considered by the Western Australian Planning Commission (WAPC), and the Amendment would require final consideration by the Minister for Planning.

## STRATEGIC CONTEXT

The SP area is located on the south-western side of Caves Road opposite the Monaghan's Corner local centre at the Bussell Highway / Caves Road intersection in Abbey. It has an area of approximately 30.5 hectares and comprises Lots 4, 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway. The area is currently zoned 'Rural' and 'Conservation' in the Scheme.

The proposal seeks to facilitate the subdivision and development of the SP area in a manner that is consistent with the applicable State and local level strategic planning frameworks, namely the *City of Busselton Local Planning Strategy* (LPS) and the *Leeuwin-Naturaliste Sub-regional Strategy 2019* (LNSRS). Officers have also worked with the proponent prior to submission of the proposal which has resulted in the concurrent submission of an amendment and structure plan. Following Council initiation formal WAPC consent for the preparation of a structure plan has been obtained.

### ***Leeuwin-Naturaliste Sub-Regional Strategy and the City's Local Planning Strategy***

The LNSRS was approved by the WAPC in May 2019, and identified Abbey South as a Planning Investigation Area (PIA) (Attachment 8: LNSRS Strategy Plans). The primary purpose of the LNSRS is to manage and plan for growth in the sub-region and to inform a review of *State Planning Policy No. 6.1 Leeuwin-Naturaliste Ridge* (SPP 6.1). The scope of the document and the purpose is broadly defined as follows:

- An overarching plan for growth within the Leeuwin-Naturaliste area (i.e. Shire of Augusta Margaret-River and City of Busselton) which considers development pressures in the context of landscape and the environment.
- Protect agriculture and food production areas and acknowledge the cumulative development impacts within rural and landscape areas and focus development in the larger settlements in the context of the sub-region over a 20+ year period.
- Provide a local context and more detail for actions set out in the WAPC South West Regional Planning and Infrastructure Framework.

Previous Council decisions regarding the preparation of both the LPS and the LNSRS included in-principal support for the classification of Abbey South as an urban growth area. The previous rationale supported by Council in these decisions was that the area was a large tract of undeveloped land near the coast and one of the last of these areas within the Busselton-Vasse Urban area. In addition, development would 'round off' the full development of Abbey and consolidate residential land around the Monaghan's Corner Local Centre. Lastly, the area would be well serviced by schools, community infrastructure, public transport, and utilities particularly as the Vasse village centre consolidation.

The LNSRS, as originally adopted, identified that the PIA required further investigation to determine the suitability and appropriateness of the land for urban development. Key considerations were identified as follows:

- Biodiversity values (adjacent wetlands and floodway to the south).
- Provision of land for employment generating activities.
- Transition/interface with adjacent tourist uses (Caravan Park to the west, boutique uses to the east).

### **BACKGROUND**

In October and December 2021, the WAPC resolved to make a range of changes to the LNSRS, including the removal of the Abbey PIA. Abbey South SP location was instead designated as part 'Urban' and part 'Open Space Investigation,' with a requirement for the preparation of a single structure plan for the area.

The changes to the LNSRS were made without any formal consultation with the community or the City and, in the case of the decisions for Vasse North and Vasse South, were inconsistent with the position of the City, established via a series of resolutions of the Council relating to both the development of the LNSRS, as well as development of the City of Busselton Local Planning Strategy (LPS). The changes for Abbey South, however, were contrary with long-established City position. WAPC consideration of the changes to the LNSRS occurred behind closed doors, with the reports considered by the WAPC also being kept confidential. In obtaining a copy of one of those reports through a Freedom of Information (FOI) process the following text is noted:

*The Abbey PIA is well suited to more intensive forms of urban development...an opportunity exists for the Abbey PIA to respond to the looming land supply issues, and to ensure an adequate supply of affordable land, promoting a variety of housing choice remains available to the Busselton community as it continues to grow.*

It is noted that the LPS identifies that the determination of the LNSRS PIAs was to occur in conjunction with the preparation of 'Townsite Strategies' for Vasse and Dunsborough. This process was intended to occur prior to the SP and Amendment process, and would have considered, among several factors, physical boundaries, and the separation of settlements. The preparation of the Townsite Strategies was not supported by the WAPC, and the requirement was removed from the LNSRS.

Following the WAPC investigation of the PIAs, the LNSRS required the preparation of a consolidated structure plan for Abbey South which also required a concurrent scheme Amendment. The LNSRS reconfigures settlement boundaries and for the ongoing physical separation of settlements, as required in SPP 6.1. This is not considered an issue for Abbey South as the area is not visually prominent from the regional road network and requires limited landscape screening.

#### ***Submission of draft Structure Plan and Amendment 55 to Scheme 21***

In August 2022, the City received the proposed SP and Amendment (lodged for concurrent consideration) along with supporting technical reports from a planning consultant (Rise Urban) acting on behalf of the key landowners. With respect to the Open Space Investigation area, Rise Urban has provided an Assessment and Investigation Report with the SP documentation.

At its meeting of 16 November 2022 Council considered the proposal and resolved to adopt the Amendment for advertising, with modifications, and to seek approval from the WAPC to consent to a Structure Plan being prepared in accordance with the *Planning and Development (Local Planning Scheme) Regulations 2015* (LPS Regulations). That consent has been obtained from the WAPC. Council also noted that the City required further matters to be addressed with agreement of the applicant:

- a) Incorporating vegetated buffers within the Structure Plan area to ensure sufficient screening to Caves Road and Bussell Highway;
- b) Applying a range of R-Codes to Lots 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway, Abbey, to accommodate an increased diversity of development opportunities;
- c) Improving permeability of Lots 12 and 402 Caves Road and Lots 14 and 15 Bussell Highway, Abbey, through the modification to the proposed network of roads / paths / reserves; and
- d) Identification of a higher order cycle path through the Structure Plan area that connects to the City's existing and planned network.

Following resolution of the above matters, the SP was adopted for advertising on 30 January 2023 under delegation. The proposal was referred to the EPA which advised that assessment was not required under the *Environmental Protection Act 1986*. The EPA did provide written advice on environmental matters as included in Attachment 4.

A total of 104 written submissions were received (14 Agency and 90 Public). Late submissions were accepted for an additional week following the 42-day advertising period to allow for further community feedback.



### **Council Deferral**

Within the previous Council report on 21 June 2023 the following issues were raised regarding to the movement network:

- The ability of the road network and associated intersections to safely and efficiently accommodate the increase in traffic resulting from the development.
- The location and design of the intersections.
- Lack of pedestrian and cycling crossing facilities and the lack of footpaths. Desire for expanded foot path / cycle path network and safe crossings along / across major roads to link the development to surrounding area and amenities.
- Potential access impacts for properties fronting Caves Road.
- Potential tree removal required to accommodate road widening and the impact on Western Ringtail Possums (WRP).
- Vehicle speeds and lack of gaps in traffic during peak periods.
- Desire for Vasse - Dunsborough Link (VDL) to be constructed in support of the development.

Council deferred consideration of the Amendment and SP at its meeting of 21 June 2023 and considered that the intersections to Caves Road and Bussell Highway and lower density of R10 in certain locations required further investigation to allow for resolution of the following matters:

1. Consultation between the proponent, City of Busselton, and Main Roads Western Australia (MRWA) to:
  - a. Review the location of the intersection to Bussell Highway.
  - b. Develop a preliminary road layout concept for the Bussell Highway intersection which provides for full access.
  - c. Refine the intersection preliminary road layout concept for the Caves Roads intersection which:
    - i. Provides one access point onto Caves Road that limits vegetation removal;
    - ii. Limits the impacts to access and egress of lots on the northern side of Caves Road; and
    - iii. Provides for safe pedestrian crossing.
2. Incorporate areas of lower density (R10) by amendment of Attachment 7 (Schedule of Modifications) to:
  - a. Provide a transition between Urban areas and Public Open Space within the Open Space Investigation area/Conservation Zone; and
  - b. Include areas adjacent the Caravan Park to the west.

### **Deferral Item 1**

Consultation has occurred between the proponent, the City and MRWA in relation to the matters set out in item 1 above. MRWA did not accept the City's request to join the meetings on this proposal, however the proponent has provided the City with outcomes, and actions from meetings they had with MRWA.

The proponent has subsequently prepared an updated Technical Note that includes forecasts for traffic volumes adjacent the SP and explores intersection design options. The Technical Note includes additional traffic modelling and several intersection design options.



A preferred access arrangement has been identified and includes a roundabout on Caves Road which is discussed in the Officer Comment section below. Appropriate SP modifications are outlined in Attachment 7.

A roundabout intersection previously provided to Council has been further refined (and the footprint has been reduced) by MRWA. MRWA have advised that they will not fund any intersection construction, which is to be at the cost of the proponent.

### **Deferral Item 2**

City officers have further considered the appropriateness of a low density (R10) within the existing Conservation Zone to provide a transition and buffer to existing POS and adjacent the RAC Caravan Park to the west. Within the south-west of the SP area modifications are recommended to increase POS areas adjacent the floodway and provide an additional landscape buffer. It would however be appropriate to have R10 in a portion of the south-east corner to provide housing diversity and lower lot yield in an area which is furthest from the local centre (Monaghans Corner), the foreshore and public open space. Lower density as a 'buffer' or similar, though, is not necessary or appropriate.

Currently residential development areas proposed by the SP and the RAC Caravan Park are separated by a 20m road reserve. City officers have further recommended that additional landscape buffering be required in-between the 20m road reserve and the RAC Caravan Park. The use of the R10 coding, however, is not considered to improve this transition between the SP area and the caravan park in any significant way and, furthermore, bulk and scale of buildings of higher density development (R30 and above) could be more effective in screening residential development within the SP area. The new area of Residential R10 is shown in Figure 1 of Attachment 7.

### **OFFICER COMMENT**

The proposal was advertised for 42 days commencing on 4 February 2023 and ending on 17 March 2023. Key matters raised in agency submissions relate to water management, coastal inundation, environmental considerations, the traffic analysis and proposed intersections on Caves and Bussell Highway.

Public submissions raised concerns with the intersection designs, road safety, traffic congestion, clearing of vegetation and the potential loss of habitat (Western Ringtail Possums). Concerns were also raised with the proposed residential density as the future character and design was raised as a conflict with the surrounding areas (e.g. Abbey and Cambridge) particularly within the land proposed to be rezoned from 'Environmental Conservation' to 'Urban Development'. Further concerns to character and design were seen at odds with State Planning Policy No. 6.1. Leeuwin-Naturaliste Ridge (SPP 6.1). The key issues relevant to the proposal area outlined and discussed below.

### ***Main Roads WA, Traffic Analysis and Intersections***

During the advertising period MRWA raised concerns with the analysis and design supporting the proposed connections to Caves Road and Bussell Highway within the SP and Transport Impact Assessment prepared by the proponent. Officers highlighted many of the issues in the 21 June 2023 report to Council and the consideration of the proposal by Council was deferred at the meeting 21 June 2023 as an agreement for intersection connections had not been reached between MRWA, the proponent and the City. The proponent has prepared a Technical Note (Attachment 9) that addressed the reasons for deferral and includes updated forecasts for traffic volumes and refined intersection concept designs. This was also the basis for further discussions with MRWA. Further consultation has also occurred between MRWA, the proponent, and the City. Although MRWA

declined to meet directly with City officers, consultation has occurred with this agency at officer level and the proponent has provided meeting notes on the outcomes of meetings with MRWA.

Out of three feasible options discussed below the MRWA roundabout connection at Cuthbert Street and Caves Road is supported by City officers on the basis it is further refined to have less impact on surrounding vegetation by a smaller design footprint. This intersection will provide 'day one' access into the SP area and be the only point of connection on Caves Road. City officers also support the Bussell Highway connection option of the 'left out' on the basis that a left in also be provided.

### **Technical Note and Peer Review**

The Technical Note presents intersection design options for each main access point (Caves Road and Bussell Highway), as well as analysis and commentary on each option. Key issues considered for each option were functionality and safety for vehicles, land requirements (and vegetation removal), physical constraints (turning pockets, speed, existing driveways etc.), and impacts to property access.

The analysis utilised updated traffic volumes taken from the Monaghan's Roundabout that are 30% (AM peak) to 46% (PM Peak) higher than previously used. These volumes have been endorsed by MRWA for the purpose of intersection modelling and design review.

The Technical Note concludes that the proponent's preferred t-intersection access to Caves Road satisfies the required engineering standards and is the lowest impact option in terms of vegetation removal. It is noted that MRWA retain a preference for a roundabout design. Discussion on each access point is continued below.

City officers have conducted a further peer review of the proponent's Technical Note which is provided at Attachment 10 and additional information to clarify matters has been raised with the proponent which has resulted in further information being provided (Attachment 11).

### **Caves Road Access**

Three intersection design options were considered by the proponent within the technical note to provide access to Caves Road as follows:

- MRWA Roundabout (aligning with Cuthbert Street, Abbey).
- MRWA t-intersection (two-stage turn).
- proponent t-intersection (single movement turn).

The proponent's analysis undertaken considers the relative strengths and weaknesses of the above intersection design options at the point of full development of the SP, and accounting for continued 'background' growth in traffic volumes at the network level. The Technical Note indicates that all three options would provide for acceptable vehicle access. It is noted by City officers that the t-intersection options, particular the MRWA design which allows for 'two stage' right hand turns, will function within acceptable standards based on results of traffic modelling presented by the proponent.

Below is a summary of the findings from the technical note for each option. Officer comment is also provided reviewing the findings from the technical note for each option. It should be noted that the

officer comment is primarily focused on the preferred street environment and safety for road users, pedestrians, and cyclists.

#### Cuthbert Street Roundabout

The Technical Note outlines that the MRWA are advocating for a 50m wide 4-way roundabout at the intersection of Cuthbert Street that will need to accommodate Restricted Access Vehicles (RAV) 4s (27.5m long trucks) as Caves Road is a RAV 4 route. The Technical Note also outlines that the design would need to incorporate design features to reduce vehicle speeds to allow safe negotiation of the roundabout and to improve pedestrian and cyclist safety at crossing points. The concerns raised in the Technical Note in relation to the roundabout are that it requires clearing of more vegetation than the other options and it is less safe for pedestrians and cyclists. In relation to this last point, it is considered that, in the context, a roundabout can deliver a better outcome for pedestrians and cyclists, as these movements would be across rather than along Caves Road.

City officers broadly support a roundabout in the Cuthbert Street location on the basis that the design be refined to a smaller design footprint to reduce the impact on vegetation and more effectively slow traffic travelling along Caves Road. The roundabout design creates low speeds to approaching vehicles through the roundabout geometry (deflection) which slows approaching vehicles this allows for sufficient gaps for vehicles to enter Caves Road. In addition, being single lane, the roundabout provides opportunity for pedestrians and cyclists to cross Caves Road protected by raised medians and by the use of share paths. Lastly it is considered that RAV4 vehicle movement (in all directions) is unnecessary considering freight movement volumes are low and will utilise the VDL in the future. On this basis, the roundabout design is considered to create a street environment which is low speed and safe for pedestrian and cyclists. Officers consider the reduced speed through the roundabout to be safer than the higher through speeds (70 kph) associated with a t-intersection design.

It is expected that the traffic volumes on Cuthbert Street are low and would not significantly increase in the AM/PM weekly peak periods because of the new intersection. An increase to weekend traffic volume may also occur, although this would be more directly the result of traffic from the surrounding residential areas, particularly as Vasse becomes more developed, as opposed to development within the SP.

The proponent has raised that the cost is a constraint to the delivery of a roundabout intersection at Cuthbert Street based on preliminary investigation when compared with the 't-intersection' options and because of a redesign of the SP. In the scenario where the roundabout is constructed at Cuthbert Street, the maintenance of Caves Road in this location would be offset for several years and this would provide the basis for discussions regarding cost sharing with MRWA.

#### T-intersection Options

The Technical Note outlines that the MRWA t-intersection option would include use of median islands and filter lanes to channel traffic flow at the proposed Caves Road intersection and would result in a two-stage right turn entry and exit manoeuvre. The main objection raised in the Technical Note is that it would require significant vegetation removal. There is some concession in the Technical Note such that the localised widening with medians provides additional utility to the intersection. This is understood to mean that with the median islands there is the opportunity to provide a central refuge for pedestrians crossing the road.

The proponent t-intersection is for a simpler t-intersection that includes turning pockets and painted median. This would only allow for a single movement right turn exit from the SP area and includes a pedestrian crossing point further east along Caves Road, which could also be included with the previous two options. The technical note states that this is the safest form of intersection type but does not provide any justification for this statement.

The technical note indicates that the performance of a single movement t-intersection would function with a low Level of Service (LOS) D that includes average wait time of 30 seconds for right hand turn movements when exiting the SP area during peak periods. Further, the proponent t-intersection would likely fail by ~2048. It is likely that both t-intersection design options would rely more heavily on the provision of the access point on to Bussell Highway to provide egress during busy periods.

This option from a visual inspection of the plan provided does not address the requirement of vegetation clearance to provide adequate site lines on the western side of the intersection like the clearing requirements of the Main Roads t-intersection.

City officers are of the opinion that the proponent's t-intersection option is the least safe of the proposed intersections as it does not reduce vehicle speeds, will result in longer vehicle waiting times with increased driver frustration and risk taking and makes no provision at the intersection for safe pedestrian and cyclist movements. Therefore, schedule of modifications requires the *"provision of safe and efficient crossing facilities across main roads for pedestrians and cyclists, including median island refuges, at convenient intervals."* This would enable people to cross safely in two stages at mid-block locations adjacent the SP area.

#### North of Caves Road

All three options would be likely to impact vehicle access to a small number of adjoining properties on Caves Road. The technical note provides an estimate that between two and five properties would have access restrictions depending on the design implemented. It is expected that a service lane and or left-in \ left-out access would be considered as a design solution to provide ongoing access to properties at the detailed design stage. The specific properties impacted for the roundabout design option would depend on the final design however at the Cuthbert Street location the properties in the vicinity would lose the ability to turn right onto Caves Road or may be redirected through a service road to the existing round network. This would be resolved by consultation between the proponent and MRWA at the subdivision stage.

#### Vasse-Dunsborough Link

It is noted that Caves Road has sufficient capacity to accommodate average traffic volumes expected from development independent of the VDL. The location and design of intersections and pedestrian crossing points will be key to achieving safe and efficient access to the site. The City continues to support the progression of the VDL project in a timely manner, noting that once other regional road projects, such as the Bussell Highway and Bypass upgrades, are complete it is likely that the VDL will be a priority project. At the best estimate the VDL will be delivered within the next 15 years therefore the size of road infrastructure on Caves Road should be kept conservative and in the case of a roundabout at Cuthbert a smaller design footprint should be supported.

### **Bussell Highway Access**

Main Roads and the City consider that the best location for a full movement intersection connection to Bussell Highway would be to the south of the SP area (south of Amelia Park Lodge). If a full access intersection such as a roundabout was provided south of Amelia Park Lodge (outside the structure plan area) the delivery of this would require an amendment to the LNSRS to facilitate a further amendment to the SP. The benefit to this is it would negate the need for a major access (roundabout) point to Caves Road. Unfortunately, this location is outside the SP area and the area identified as urban/open space investigation within the LNSRS.

Accordingly, four intersection design options were considered to provide access to Bussell Highway as follows:

- Roundabout
- Full Movement. T Intersection
- Left-in / Left-out (LILO).
- Left out (LO).

#### **Roundabout**

A roundabout on Bussell Highway was not considered in any detail in the technical note but, if this were to be constructed prior to the SP intersection with Caves Road, it may then allow for the Caves Road intersection to be downgraded to a t-intersection. It is understood that a roundabout cannot fit within the current physical constraints of the SP area between Monaghan's Roundabout and Amelia Park Lodge. However, it is considered that the SP area should be increased to allow for an appropriately designed roundabout on Bussell Highway to be considered in more detail.

#### **Full Movement T intersection**

A full movement priority-controlled intersection on Bussell Highway cannot fit within the constraints of the SP area. MRWA has also agreed that this option is problematic. Further, even if the space were available, a full intersection onto Bussell Highway would be expected to fail by 2038 (5 years of operational life from full development) due to the expected growth in traffic volumes. Accordingly, this option is not supported.

#### **Left-in / Left-out (LILO)**

A LILO treatment on Bussell Highway would provide egress from the SP area during busy periods as an alternative to turning right across traffic on Caves Road. A LILO design can be accommodated however it would require the consolidation of some crossovers on Bussell Highway and has potential drainage issues associated with Skiff Way that would need to be resolved in next stages of planning. A LILO treatment on Bussell Highway can allow closure of the Skiff Way entry at Caves Road as desired by MRWA.

#### **Left out (LO)**

Like a LILO, a LO to Bussell Highway would function as a 'pressure relief valve' for the SP area. However, this option would not allow for the closure of Skiff Way entry at Caves Road, and results in the SP area being serviced by only one access point.

### **Proposed Modifications**

Considering the above it is recommended that the MRWA roundabout option at Cuthbert Street is supported on the basis that it be refined to a smaller design footprint to reduce the impact on vegetation and create a safe pedestrian and cyclist friendly street environment. A LILLO intersection design at Bussell Highway is also supported the design of which would also consolidate Skiff Way access to Bussell Highway. As Caves Road and the Bussell Highway are under the care and control of MRWA and the final decision and determination of the intersection treatments will be determined by the WAPC in future decisions noting that MRWA approval for intersection design is also required. The following is a summary of the modifications (Attachment 7) which have been developed in response to the above matters raised in submissions and since the Council deferral in June:

- a) A single full movement intersection providing access to Caves Road that:
  - i) Includes a roundabout design that aligns with and connects to Cuthbert Street.
  - ii) Provides safe access/egress for vehicles to the Structure Plan Area.
  - iii) Minimises loss of vegetation through the implementation of a small footprint design.
  - iv) Minimises disturbance to Western Ringtail Possum habitat and includes remedial works (Possum rope bridges and tree planting) where disturbance is unavoidable.
  - v) Minimises of impact to property access on northern side of Caves Road.
- b) Deletion of other vehicle access points to Caves Road and the appropriate reconfiguration of the internal road and path network.
- c) A restricted movement intersection (left-in / left-out) providing access to Bussell Highway, consolidated with the southern end of Skiff Way.
- d) The provision of safe and efficient crossing facilities across main roads for pedestrians and cyclists, including median island refuges, at convenient intervals.
- e) A path network that provides safe and direct access to public transport (bus stops).
- f) A higher order shared path on Caves Road adjacent the Structure Plan area.
- g) Extension of the higher order cycle path so that it connects to the Bauyanyup Drain Shared Path from the south-west corner of the site, with an alignment and / or design that mitigates the impacts of the floodway on the functioning of the path.
- h) Deletion of the 'Future pedestrian / cycle connection to Bauyanyup drain cycle path.' to be require delivery at subdivision stage.
- i) The requirement for all internal and external connecting path infrastructure (cycle and pedestrian) to be funded and constructed by the proponent as part of the subdivision works.

### ***Environmental Impact***

The SP area largely consists of cleared agricultural (pastoral) land, and the City has worked with the proponent to retain existing trees, and in some cases, to preserve habitat corridors. However, it is noted that there is a limit to the number of trees and wetland areas that can be retained within the SP area.

Submissions included broad concerns regarding the environmental impacts associated with the proposal including vegetation removal, habitat and wetland destruction, and displacement of fauna. Common matters raised include:

- a) Opposition to the loss of peppermint trees / Western Ringtail Possum (WRP) habitat, and the increased risk of vehicles hitting WRPs.
- b) Desire for the provision of vegetated buffers, habitat corridors and tree retention.
- c) Concerns regarding the loss of wetland areas, with a desire for their retention and conservation.
- d) Opposition to changing the 'Conservation' zone to 'Urban Development.'
- e) Heritage concerns.

It is noted that the Amendment introduces 'Special Provision 76', which requires that the proposal include measures to retain, manage, and enhance remnant vegetation, potential habitat for Commonwealth and State listed threatened fauna species, ecological linkages, and wetlands, within Public Open Space (POS), road reserves, and/or conservation areas.

The wetlands within the site are categorised as Multiple Use which do not typically require buffers or retention for ecological or conservation purposes with specific management objectives or requirements. The proposal attempts to retain much of the native vegetation and protect the hydrological functions of the features within the site. Buffer areas are incorporated within the area identified as 'Open Space Investigation Area' in the LNSRS and will be revegetated with native plant species to enhance their function as wildlife corridors. This may provide for improved water quality outcomes and assist in stormwater management, whilst also providing habitat.

For the protection of the floodway within the Open Space Investigation area, the use of an approximate 30m landscaped foreshore area adjacent the multiuse wetland is considered sufficient to allow for a soft transition to residential areas to the north and east. This is consistent with the requirements of draft Liveable Neighbourhoods which support up to a 30m foreshore area to the edge of the floodway for multiple use wetlands.

To further address issues raised in submissions, officers recommend modifications to the SP (Attachment 7) to further minimise environmental impacts associated with the proposal. These include:

- Provision of a single full movement intersection connecting to Caves Road to minimise the land requirements (and vegetation loss) associated with site access.
- Revegetation and implementation of Possum rope bridges where clearing is unavoidable.
- An approximate 30-metre-wide landscaped buffer around the floodway.
- A 10-metre-wide vegetated buffer to improve visual separation from Vasse North and the adjoining Caravan Park.
- The realignment of an internal road, running north to south adjacent to the eastern boundary, in such a manner that incorporates and preserves existing vegetation along the boundary fence line.

Officers have worked with MRWA and the proponent to minimise the environmental impact from road related vegetation clearing, including through removal of one of the proposed intersections connecting to Caves Road, at the northeast of the site. In further discussions with the proponent and the City, MRWA have further refined the roundabout intersection design concept to reduce the footprint and clearing required.



Officers do not support the areas of residential development proposed by the SP in-between the floodway area (on the peninsula) and near the floodway boundary, as it would result in hard development edges being introduced within a natural area. Further, the narrow shape of the 'peninsula' area would make it difficult to accommodate residential lots with compliant asset protection zones (APZs) within the lot boundaries and provide road and drainage services. In addition, maintaining the natural integration of the floodway with urban areas would also be problematic in this location as hard edges of development (such as retaining) would likely be required. Accordingly, a modification to the SP is proposed to limit development in this location to retain only the existing farm house within a single, relatively large lot, but with most of the land being reserved as POS and revegetated/rehabilitated.

It is noted that the Conservation zone generally reflects the floodway and flood fringe features on the southern portion of the SP area, along with the area identified as having an increased risk of acid sulphate soils occurring within 3m of the natural soil surface. Officers are of the understanding that the Conservation zone was introduced by City of Busselton Town Planning Scheme 20 and that the boundaries of the Conservation zone were revised following public consultation and, at the detailed level, were not based on detailed technical assessment.

Officers remain supportive of urban development within parts of the southern portion of the SP area. It is considered that SP76 of the Amendment and the SP modifications regarding the use of POS will achieve a suitable balance between protection and enhancement of natural features, enhanced areas of open space for public use, and urban development to provide for land supply.

With respect to submissions about the impacts (if any) on Aboriginal heritage sites. The referral documents note that a lodged Aboriginal Heritage Site (ID: 5337) slightly overlaps a western portion of the amendment area and is likely to be associated with the Bauyanyup Drain. The works associated would be required to meet legislative requirements and the WAPC being the determining authority for subdivision will provide further advice.

#### ***Abbey Planning Investigation Area and SPP 6.1***

Submissions raised concerns that the development of Abbey South, especially if considered in conjunction with the development of Vasse North, would directly contradict SPP 6.1. SPP 6.1 identifies the area of the proposal as landscape character unit 'western coastal' and landscape class predominately as 'travel route corridor.' Further SPP 6.1 designates the area as a 'wetland amenity area' that recommends:

- Rural landscape and coastal reserve buffers between Abbey, Vasse and Dunsborough will serve as a natural separation of settlements to avoid urban sprawl and create distinct communities.
- Subdivision development to complement the existing landscape character.
- Protection of the environmental and recreation values of the area.

These matters have informed the preparation of the LNSRS (as amended) and the LPS, both of which contemplate urban development for Abbey South. These strategies have been developed more recently than SPP 6.1, and thus provide contemporary direction in the context of modern planning requirements. As such, the LNSRS is considered to be the WAPC's most relevant planning position when considering the proposal.

It is noted that the Vasse North and Abbey South urban growth areas both have adjacent areas of 'Open Space Investigation.' Open Space Investigation areas are defined in the LNSRS as follows:



- Land that may be suitable for open space (nature/passive recreation) purposes but requires further investigation to determine its suitability and/or refine its area.
- Further investigation is to consider factors that may be relevant to the intended open space purpose, such as wetland buffer and flood management requirements. The final extent of land required for open space purposes is to be determined through the investigation process and informed by appropriate studies, and may be larger, smaller or the same size as the area designated as 'Open Space Investigation.'

The definition allows for a reduction in the size of the investigation area, and thus a reduction in the distance separating Vasse and Abbey. Urban development at Abbey South has been supported in principle by Council. However, considering the 2021 amendments to the LNSRS, two matters require further consideration as follows:

- Potential for residential development at Vasse North is concerning. Conceptual plans have been provided during public consultation by the Vasse JV which show intentions to develop Vasse North within the both the Urban area and the Open Space Investigation area. This includes large areas of low-lying areas designated as floodway and flood fringe. In addition, the plans identify the construction of a road network which links to the Abbey South area. Should this occur the Abbey and Vasse settlements would no longer be separate and there could be significant impact from a visual perspective, particularly from Bussell Highway, due to Vasse North being low lying with no existing vegetation to screen development. Based on this, the Vasse North is not considered suitable for development.
- Available guidance on the assessment of Open Space Investigation areas is limited. The LNSRS requires the 'investigation' to be undertaken during SP preparation, however, there is limited guidance on how this is to be undertaken particularly in the context of requirements already set out by the LPS Regulations and the planning framework. As a result, the investigation has been concurrently undertaken by the proponent, and it has concluded that the Open Space Investigation area is suitable for urban purposes, predominately residential development.

In considering the two matters above, officers conclude that the SP area is generally suitable for urban purposes, with some exceptions, as follows:

- There is no need by the City for district open space in this location which would amount to more significant open space requirements than are otherwise required through the planning framework.
- The northern and south-east corner of the Open Space Investigation area are suitable for urban development as they are well screened, well elevated (~3.0m AHD) and clear of vegetation except for narrow corridors and isolated pockets.
- Most of the vegetation can be protected within road reserves and POS.
- The areas around the floodway, within the south-west area of the Open Space Investigation area is not considered suitable for urban development as residential development has servicing and bushfire implications that are not easily resolved and will create hard development edges which do not enhance the natural features of the area in accordance with SP76.
- Increased buffer areas within POS are required within the southwestern portion of the Open Space Investigation area.

Proposed modifications to the SP are set out in Attachment 7 to reflect the view outlined above.

## **Coastal Management**

The LNSRS and SP76 require the consideration of measures to manage the risk from coastal inundation. This has been considered in the context of the City's *Coastal Hazard and Management Adaptation Plan* (CHMRAP) and the requirements of *State Planning Policy 2.6 State Coastal Planning Policy* (SPP 2.6). A key consideration of this proposal is the impact of coastal inundation (flooding) in an extreme weather event.

Identified in the CHMRAP as MU 11 (Abbey), the northern extent (approximately one third) of the proposal has been identified in the CHMRAP as being potentially impacted by coastal erosion within the next 100 years if the coast is not protected, and by inundation from a one-in-five hundred event. The CHMRAP identifies a protect response for coastal erosion through the future strategies of groynes, beach nourishment and a buried seawall. The CHMRAP identifies upgrades of the eastern bank of the Buayanyup drain to the approximate height of 3.5m – 4.0m AHD to be completed between 2043-2073. The SP proposes site works would allow for future development to a finished floor level (FFL) of 3.0m AHD.

As set out in the assessment of submission Department of Planning, Lands and Heritage – Coastal (DPLH) have raised that works associated with the Buayanyup drain should be undertaken and Amendment 55 modified to include the requirement for 3.0m (FFL). The CHMRAP, however, recommends that further modelling is undertaken to inform decisions about coastal inundation, but that in the absence of that, indicates that in areas where there is not a long-term, integrated coastal inundation protection strategy, that minimum FFLs for new development should be 3.4 AHD to accommodate coastal inundation hazard (note that figure includes 0.9m allowance for projected sea level rise).

The CHMRAP does recommend a long-term, integrated coastal inundation protection strategy for the Abbey area, consisting of foreshore works to raise and reinforce the coastal foreshore reserve, together with the raising and reinforcing of the eastern bank of the Buayanyup Drain. The CHMRAP recommends that occur in the medium-term, meaning that the minimum FFL for new development be set at approximately 2.7 AHD. At this point, however, the additional modelling recommended by the CHMRAP has not been undertaken – although it is underway – and there is no clear or detailed plan for implementation of a long-term, integrated coastal inundation protection strategy. Importantly, the costs associated with such a strategy are not known, and nor is there a funding strategy. On that basis, especially where greenfields (rather than infill) development is concerned, a conservative approach should be taken.

Whilst the coastal modelling project currently underway could provide a basis for a lower minimum FFL, at this stage it is considered that the minimum FFL should be set at 3.4 AHD.

## **Water and Drainage**

Several water and drainage issues were raised in submissions, in particular from relevant state agencies including the Department of Water and Environmental Regulation (DWER) and the Water Corporation. Key issues raised include the following:

- Local Water Management Strategy (LWMS) issues including:
  - Requirement to adequately demonstrate containment of the flows from a one in one-hundred-year storm event on site.
  - Potential cumulative impacts on adjacent floodway (should Vasse North development proceed).

- Storm water modelling assumptions and how this may affect proposed storm water infrastructure sizing.
- Modelling of 1–100-year flood events and wastewater upgrades.
- Lack of a secured water supply to irrigate POS.
- Alignment of higher order cycle path through floodway.
- The interface between the floodway and the development area.

Modifications are proposed to address water and drainage issues and are included in Attachment 7, in particular the requirement for reticulated POS and the provision of a turfed POS area of between 3,000m<sup>2</sup> and 5,000m<sup>2</sup> be able to accommodate unrestricted open space. Further, the requirement for the lots within the SP area to retain a 1 in 100-year event is not supported by City officers as it would place a significant, unenforceable, and potentially unachievable burden on individual lots.

Proposed modifications to modelling would allow this to be resolved and are supported and proponent has further advised that sensitivity testing is underway in consultation with DWER. A buffer adjacent the floodway area would allow for a natural interface (i.e., swales not constructed retained edges) and would be appropriately revegetated with native plant species to enhance its function as wildlife corridors in accordance with SP76 of the Amendment. Proposed modifications to the SP are set out in Attachment 7 to reflect the view outlined above.

### ***Housing Density and Character***

Several submissions expressed a desire for the proposal to be in keeping with the existing housing density and character of Abbey, and to a lesser extent, Cambridge Estate, and that the proposal does not align with the existing character of Abbey.

Matters raised include:

- Concerns that smaller lots sizes will attract holiday homes and / or rentals.
- Concerns about overcrowding and that the infrastructure and services of the local area cannot support the population associated with R40 and R60 densities.
- Concern about poor design outcomes associated with R30 – R40 including house frontages dominated by parked cars and garages.
- Some concerns about the R60 coded areas which were considered as broadly unsuitable for the area.
- Concerns about the ability of small lots to accommodate trees.
- Concerns about the impact of density on the environmental and as a contributing factor to climate change.
- General desire for the development to be above the ‘average’ with regard to sustainability, potentially including higher building standards / design guidelines, and the retention of existing trees on lots.

It is noted that the majority of the site was proposed to coded R20 – R40 which is a common coding for new residential areas and is broadly in keeping with the existing character of the locality, i.e., detached residential dwellings. Modifications are proposed in light of feedback to replace R20 – R40 with R20, and to introduce a new area of R10 at the expense of a portion of R20.

R40 may still be developed in specific areas, based on refined location criteria in accordance with the SP. R40 sites are to be located adjacent POS, at the end of street blocks, or where lots are serviced by rear laneways.

Lots coded R60 make up a small portion of the overall site area and are located exclusively within the Monaghan's Store walkable catchment, in accordance with the LPS, which states that the inclusion of 'housing choice' and 'urban consolidation' are to be considered. Further, as this is the last near-coastal land with significant development potential in the Busselton-Vasse Urban Area. It is seen as appropriate that as many people as reasonably possible should be able to be accommodated for.

A single submission sought to increase the density of an R60 lot to R80. Officers consider at R60 achieves the most appropriate balance between intensification (as per the LPS), the existing amenity and character of the area, and the access constraints associated with the lot in question. Accordingly, R80 is not supported.

The area currently identified as R10 is proposed to be modified to R2.5. The introduction of a 10 metre to 30-metre-wide buffer from the boundary of the floodway renders the area currently proposed as R10 Residential unsuitable for intensive development. A coding of Residential R2.5 provides an option to retain the existing dwelling.

A new area of R10 is proposed in response to submitter feedback and would provide a transition between Urban areas and Public Open Space within the Open Space Investigation area/Conservation Zone. The proposed area of R10 is shown in Figure 1 of Attachment 7.

It is noted that the Department of Planning, Lands and Heritage (DPLH) is currently in the process of implementing a new medium density housing code. This will assist to guide medium density R40 and R60 coded development towards improved design outcomes including single width car ports / garages, promotion of tree planting and retention, better water infiltration, and management of heat island effect. The provision of low to medium density development would provide for a range of lot sizes, design typologies, and price points which would provide opportunities for a range of potential buyers and investors.

Finally, the requirement for a street tree implementation plan has been included as a modification in Attachment 7, to ensure that the Streetscape Planting Strategy contained in the SP is enacted to the satisfaction of the City. This requirement, combined with the vegetated buffers that have been required along selected SP boundaries, would contribute to the minimisation of any perceived character impacts affecting existing residential areas.

### **Local Centre**

One submission requested an expansion of the allowable floorspace at Lot 402 Caves Road, to 1,000m<sup>2</sup>. This is more than double the floorspace of the existing 400m<sup>2</sup> of shop retail floorspace at the adjacent Monaghan's Corner local centre. An expansion of this size would potentially undermine the existing settlement / retail hierarchy and does not appear to sufficiently consider the sustainability and potential future expansion of Monaghan's Corner and the nearby Broadwater local centre.

To address this, the LPS includes an Activity Centre Framework which states that the approximate maximum potential size of the local centre is to be determined by more detailed planning processes and following retail sustainability analysis. As such, the SP limits retail floor space within the proposed SP area Local Centre zone to not more than 300m<sup>2</sup> gross floor area. Accordingly, any increase in floor space is not supported at the SP stage and should instead be considered at the LDP or Development Application stage and must be supported by a retail sustainability analysis.

With respect to the LDP requirements, further modifications are recommended to the amendment text of SP 76 to remove provisions referring to the requirement to prepare an LDP to address amenity of the surrounding locality. This has been recommended as LDP requirements within the structure plan are considered sufficient to warrant removal of this text.

### ***Infrastructure***

Several submissions raised broad concerns that local services and supporting infrastructure would not cope with the population increase associated with the development. This included impacts on schools, internet, hospitals, electricity, water, and impacts on the Abbey Foreshore, including:

- Parking.
- Boat ramp access.
- Impacts on the dunes and vegetation.
- Footpaths.
- Toilets (lack of).
- Increased rubbish.
- Illegal parking on the bike path.

Relevant service providers and Government agencies were consulted during the public advertising period and raised no significant issues with the proposal outside of roads and water (addressed previously). The Abbey Foreshore is located outside of the project area, and it is noted that the primary driver for the increased usage of the Abbey Foreshore is likely associated with the much larger and ongoing development of the residential areas of Vasse.

Finally, it is noted that the City is undertaking a separate project to select a new site and design for a regional recreational boating facility between Abbey and Dunsborough. This would provide additional capacity and reduce pressure on existing facilities.

### ***Bushfire***

The Department of Fire and Emergency Services (DFES) identified a few minor issues regarding vegetation classification, exclusions, and vehicular access. These are not considered to be significant and can be addressed through modifications (included in Attachment 7) to the Bushfire Management Plan (BMP).

### **Statutory Environment**

The key statutory documents relevant to this proposal include the *Planning and Development Act 2005* (the Act), the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and the relevant objectives and provisions of the City of Busselton *Local Planning Scheme No. 21* (LPS 21). Each is discussed below under appropriate subheadings.

#### ***Planning and Development Act 2005***

The Act outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been considered in preparing and processing this Amendment.

### ***Planning and Development (Local Planning Schemes) Regulations 2015***

The Regulations came into operational effect on 19 October 2015 and introduced deemed provisions for the preparation, advertising, and approval of structure plans. Local governments are to have 'due regard' to approved structure plans when making decisions relating to subdivision and development.

The Regulations identify three different levels of amendments – basic, standard, and complex. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is considered to be a 'standard' amendment.

### ***Local Planning Scheme No. 21***

LPS 21 sets out the aims for the Scheme area, and controls, regulates, and guides orderly and proper land use and development. A local planning scheme is to be read in conjunction with the Regulations.

At present LPS 21 zones most of the SP area, including the entirety of Lots 12, 402, 14 and 15 and the northern half of lot 4 as 'Rural'. The Rural zoned portion of the Structure Plan area is not affected by any special control areas or similar. The southern portion of Lot 4, along with the lower lying land to the south is zoned 'Conservation'. The Amendment proposes to rezone the area to the 'Urban Development' zone; thereby providing a head of power for the SP to proceed and be determined.

### ***Special Provision Area No. 76***

Prior to public advertising, the Amendment was adopted with modifications to designate Special Provision Area No. 76 (SP76) over the site. SP76 transfers the intent of the LNSRS to LPS21 and supports the inclusion of buffer areas with the SP area and the retention and enhancement of native vegetation within POS and road reserves.

### **Relevant Plans and Policies**

The key plans and policies most relevant to the proposal include:

1. State Planning Policy 6.1 Leeuwin-Naturaliste Ridge (SPP 6.1)
2. Leeuwin-Naturaliste Sub-regional Strategy 2019 (LNSRS)
3. Liveable Neighbourhoods (2009)
4. City of Busselton Local Planning Strategy (2019) (LPS)
5. State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP 3.7)
6. State Planning Policy 2.9 Water Resources (SPP 2.9)
7. State Planning Policy 2.6 State Coastal Planning Policy (SPP 2.6)

Each is discussed under appropriate subheadings.

#### ***1. State Planning Policy 6.1 Leeuwin-Naturaliste Ridge***

*State Planning Policy 6.1 Leeuwin-Naturaliste Ridge* (SPP 6.1) provides the strategic planning framework for the Leeuwin-Naturaliste Region establishing the greater vision and guidance for land use distribution. The policy promotes sustainable development, conservation and land and resource management. The SP area is identified as a Wetland Amenity Area under SPP 6.1. Wetland Amenity Area Policies relevant to the proposal include:

- LUS 3.30 Rural landscape and coastal reserve buffers between Abbey and Vasse, and Dunsborough and Abbey will be maintained to avoid urban sprawl and to create distinct communities.
- LUS 3.33 The landscape separation of Abbey, Vasse and Dunsborough will be maintained.

## **2. *Leeuwin-Naturaliste Ridge Sub-Regional Strategy 2019***

The *Leeuwin-Naturaliste Ridge Sub-Regional Strategy* (LNSRS) is an overarching strategic land use planning document outlining the WAPC approach to future planning and development within the City of Busselton and Shire of Augusta-Margaret River for the next 20 years. The LPS identifies the majority of the Site as 'Urban' and the southern section of the Site as 'Open Space Investigation.' The degree to which the proposal aligns with the 'Open Space Investigation' area will be determined by the WAPC.

## **3. *Liveable Neighbourhoods (2009)***

Liveable Neighbourhoods is the primary policy for the design and assessment of structure plans and subdivision for new and infill urban areas. The policy promotes an urban structure of walkable neighbourhoods. Community facilities and services are accessed by walking, cycling and public transport through an efficient, interconnected movement network. Employment opportunities and economic sustainability are facilitated through a coherent hierarchy of activity centres. The SP has been designed to address certain principles of Liveable Neighbourhoods including the urban form, road hierarchy, public open space distribution and urban water management.

## **4. *City of Busselton Local Planning Strategy***

The City of Busselton LPS sets out the long-term planning direction for the City and provides an overarching, strategic rationale for decisions related to the planning and development of the District. The LPS identifies the Site as a PIA, subject to PIA Assessment via the WAPC process. The northeast corner of the Site is identified in the catchment of the Monaghan's Corner Local Centre and as being suitable for urban consolidation.

## **5. *State Planning Policy 3.7 Planning in Bushfire Prone Areas and Guidelines for Planning in Bushfire Prone Areas***

*State Planning Policy 3.7 Planning in Bushfire Prone Areas* (SPP 3.7) and the associated Guidelines assist in reducing the risk of bushfire to people, property, and infrastructure by encouraging a conservative approach to strategic planning, subdivision, development, and other planning proposals in bushfire prone areas. The proposal has due regard to SPP 3.7 and demonstrates that bushfire risk can be managed within the Site.

## **6. *State Planning Policy 2.9 Water Resources***

*State Planning Policy 2.9 Water Resources* (SPP 2.9) and the associated Water Resources Guidelines provide guidance for the implementation of integrated water resource management principles and protection, and management and consideration of water resources. The proposal has had due regard to SPP 2.9 and includes a Local Water Management Strategy (LWMS) that takes an integrated water cycle management approach and application of Water Sensitive Urban Design (WSUD) principles to provide improvements in the management of water.



## 7. State Planning Policy 2.6 State Coastal Planning Policy

State Planning Policy 2.6 State Coastal Planning Policy (SPP 2.6) and the associated Guidelines provide guidance for decision-making within the coastal zone including managing development and land use change; establishment of foreshore reserves; and to protect, conserve and enhance coastal values. The proposal has had due regard to SPP 2.6 and the City's CHRMAP.

### Financial Implications

There are no financial implications associated with the officer recommendation.

### External Stakeholder Consultation

The proposal was advertised for 42 days and closed on 17 March 2023. Late submissions were accepted for an additional week to allow for further community feedback. A total of 105 written submissions were received (13 Agency and 92 Public).

### Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

The following risks have been identified:

Risk Impact of Major Road Connections			
Category	Consequence	Likelihood	Rating
Environmental	Moderate	Possible	Medium
Reputation	Minor	Possible	Low
<b>Controls:</b> A 'small footprint' roundabout on Caves Road would mitigate the impacts associated with the connection of the structure plan area on the road network by: <ul style="list-style-type: none"> <li>Approach speed of vehicles, due to the designed deflection will slow traffic approaching the intersection.</li> <li>Vehicle masking risks are significantly lower.</li> <li>Gaps would be presented to allow vehicles to safely enter Caves Road in an easterly direction.</li> </ul>			

Risk Inundation			
Category	Consequence	Likelihood	Rating
Financial	Moderate	Possible	Medium
Reputation	Minor	Possible	Medium
<b>Controls:</b> There is inundation risk associated with the SP site due to proximity to waterways, the Buayanyup drain and the coast. The officer recommendation of a minimum FFL of 3.4 AHD aligns with the City's adopted CHRMAP recommendation that in areas where there is not a long-term, integrated coastal inundation protection strategy, that minimum FFLs for new development should be 3.4 AHD.			



### **Options**

As an alternative to the proposed recommendation the Council could:

1. Resolve to not adopt the SP and/or the Amendment for final approval (and provide a reason for such a decision).
2. Seek further information before making a decision.
3. Seek to make additional or different modifications.

### **CONCLUSION**

It is recommended that the Council adopt the SP and Amendment for final approval (subject to the recommended modifications) and forward them to the WAPC and Minister for Planning for consideration.

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

The officer recommendation will be implemented in full, or in stages as per the following table:

<b>Milestone</b>	<b>Completion Date</b>
Referral of the SP and Amendment to the WAPC	within one month of Council decision

#### 11.4. **Application for Development Approval (DA21/0822) - Proposed Extractive (Sand) - Lot 4205 Gale Road Kaloorup**

<b>Strategic Theme:</b>	<p>Key Theme 1: Environment</p> <p>1.1 Ensure protection and enhancement of environmental values is a central consideration in land use planning</p> <p>1.6 Promote and facilitate environmentally friendly responsible practices.</p> <p>Key Theme 3: Opportunity</p> <p>3.2 Facilitate an innovative and diversified economy that supports local enterprise, business, investment and employment growth.</p> <p>Key Theme 4: Leadership</p> <p>4.1 Provide opportunities for the community to engage with Council and contribute to decision making.</p>
<b>Directorate:</b>	Planning and Development Services
<b>Reporting Officer:</b>	Senior Planning Officer – Louise Hughes
<b>Authorised By:</b>	Director Planning and Development Services – Paul Needham
<b>Nature of Decision:</b>	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Excavation/Rehabilitation Plan [<b>11.4.1</b> - 98 pages]</li> <li>2. Water Management Plan [<b>11.4.2</b> - 22 pages]</li> <li>3. Planning History [<b>11.4.3</b> - 9 pages]</li> <li>4. Schedule of Submissions [<b>11.4.4</b> - 6 pages]</li> </ol>

#### **COUNCIL DECISION**

**C2308/92** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council:**

1. consider that application DA21/0822 submitted for development of Industry – Extractive (Sand) at Lot 4205 Gale Road Kaloorup is generally consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.
2. grants Development Approval for the proposal referred to in (1) above subject to the following conditions:

#### **GENERAL CONDITIONS**

1. The development hereby approved is permitted to operate for five years from the date of this Decision Notice. The site shall be fully rehabilitated in accordance with the approved development plans before the expiry date of this development approval.
2. The owner must ensure that the development is undertaken in accordance with the approved development plans, the following management plans and any plans

or details approved pursuant to other conditions of this approval:

- 2.1 Excavation – Rehabilitation Management Plan (Landform Research) dated 8 August 2023; and
- 2.2 Water Management Plan (Accendo Australia) dated August 2023.

Where there is a conflict between a provision contained within a condition of this development approval and a provision contained within one of the plans listed above, the requirements of the condition shall prevail.

**PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS:**

- 3. The owner must ensure that no material is extracted from the site or any other works undertaken until the following plans/details have been submitted to, and approved by, the City:
  - 3.1 A revised Water Management Plan to demonstrate Cell 1 being amended to remove the area to the east of the internal haul road and remove the reference to infiltration basins and holding areas.
  - 3.2 Satisfactory arrangements being made with the City of Busselton for the rehabilitation of that portion of Cell 1 which has already been extracted.
  - 3.3 Details of warning signage to be erected along the transport route. Signage shall include signs on both approaches to the pit along Gale Road 100m from the access.
  - 3.4 Details of entry signage to be erected within the lot boundary adjacent to the driveway and pit entrance visible to vehicles entering /exiting the site. Signage shall include the following details:
    - a). Approved operating hours as per condition 4;
    - b). Approved haulage hours including exclusion times during school bus times as per condition 5;
    - c). Site contact details;
    - d). Ultra high frequency (UHF) channel for operators and
    - e). Approved haulage route.
  - 3.5 A 3D Digital Terrain Model prepared by a licensed surveyor, to the specifications of the City for the whole of Lot 4205 Gale Road Kaloorup indicating the following in Australian Height Datum:
    - a) Existing ground levels;
    - b) Proposed maximum extraction depths to maintain a minimum 500mm above maximum seasonal groundwater table; and
    - c) Finished ground levels after rehabilitation to ensure 700mm above the maximum seasonal groundwater table has been achieved.
  - 3.6 Details for the upgrading of the existing crossover to ensure that adequate sightlines are achieved.
  - 3.7 The section of Gale Road between the proposed crossover for Lot 4205 and the Gale/Gibb/Carbunup Road South intersection to be upgraded in

accordance with the approved details to the satisfaction of the City (Advice note 11).

**3.8 The following bonds being provided to the City:**

- a) A road maintenance bond of \$10,000 (being an unconditional bank guarantee) to ensure that the surrounding road network is maintained to the satisfaction of the City for the term of the extractive industry. Those portions of public roads affected by the activities related to the approval shall be maintained to a standard acceptable to the City at the cost of the owner. The City may use the bond to maintain the affected public roads as it deems necessary.
- b) A dust bond of \$5,000, which shall be held against satisfactory compliance with the Dust Management Plan.
- c) Further to conditions 4.7(a)-(b) (bond conditions), the bonds are to be accompanied by an executed legal agreement with the City at the full cost of the owner. The legal agreement shall include:
  - i. The ability for the City to be able to use the bond, or part of the bond as appropriate, and any costs to the City including administrative costs of completing or rectifying any outstanding works on site in accordance with the conditions of this development approval and any further costs;
  - ii. Written authorisation from the owner of the land that the City may enter the site at any time and permit the City to complete or rectify any outstanding work to the satisfaction of the City;
  - iii. If at any time part of the bond is called upon, used or applied by the City in accordance with the legal agreement, the restoration of the bond to the full amount required by these conditions; and
  - iv. The ability to lodge a caveat over the site to secure the City's interest.

**PRIOR TO COMMENCEMENT OF EXTRACTION CONDITIONS:**

- 4. The owner must ensure that no material is extracted until information setting out how the plans and details required by Conditions 2, 3 and 4 have been implemented, and provided to the satisfaction of the City, and the City has subsequently issued a 'Permit to Commence', confirming that extraction can commence

**ON-GOING CONDITIONS:**

- 5. The owner must ensure that the plans, details and works undertaken to satisfy Conditions 1, 2, 3, 4, and 5 are subsequently implemented and maintained for

the life of the development and, in addition, the following conditions must be complied with:

- 5.1 The development hereby approved shall be limited to: the excavation or movement of sand from its natural state on the site, transportation of sand within or off the site, access ways, and rehabilitation works. At no time shall any blasting or screening works be carried out.
- 5.2 To ensure a minimum separation of at least 500mm between extraction cells and the maximum water table level, the maximum depth of the Extraction areas are as follows:
  - a. Cell 1 – maximum depth of 71.5m AHD
  - b. Cell 2 – maximum depth of 71.5m AHD
  - c. Cell 3 – maximum depth of 71.25m AHD
  - d. Cell 4 – maximum depth of 72m AHD
  - e. Cell 5 – maximum depth of 72m AHD.
- 5.3 All operations related to the extractive industry shall be carried out strictly in accordance with the approved Excavation – Rehabilitation Management Plan.
- 5.4 Trucks going to and from the development must not use the designated haulage route between 7.30am and 8.40am and between 3:30pm and 4:20pm on any given school day on a school bus route. Other times may be agreed in writing with the local government.
- 5.5 The approved Water Management Plan shall be implemented and carried out strictly in accordance with the approval details, including any notes placed thereon in red by the City.
- 5.6 Rehabilitation of extraction areas will consist of ensuring a 500mm separation to maximum groundwater levels, reinstating the topsoil and returning these areas to productive grazing pasture.
- 5.7 No more than 2 hectares of the approved pit areas shall be worked at any one time. This area shall then be rehabilitated in accordance with the approved Excavation – Rehabilitation Management Plan concurrently with the extraction of the following 2ha area.
- 5.8 Operating hours, including the transportation of materials, shall be restricted to the hours between:
  - 7.00am and 5.00pm Mondays to Fridays;
  - 7.00am and 1.00pm Saturdays for rehabilitation works only; and,
  - There shall be no operations on Sundays or public holidays.
- 5.9 The designated haulage route will be Gale Road westbound and onto Bussell Highway. The use of Jindong Treeton Road and the eastern portion of Gale Road is strictly prohibited.

**5.10 A maximum number of 40 truck movements (i.e. 20 trucks entering and 20 trucks exiting the site) shall be permitted on any operating day (i.e. Sundays and public holidays are not operating days). No truck movements are permitted on any other day.**

**5.11 Notwithstanding Conditions 5.9 and 5.10 above, should more than 40 truck movements per day and/or an alternative haulage route be proposed, a Traffic Management Plan is to be submitted to and approved in writing by the City; with the Plan being submitted to the City at least 7 working days prior to any haulage not consistent with the approval.**

***Note: The City will only approve additional movements or alternate routes where it is determined that an acceptable Traffic Management Plan has been provided. The City will not approve additional truck movements and/or an alternative haulage route for more than 20 working days in any calendar year. Any additional days will require a Modification to Development Approval to be submitted to, and approved by, the City.***

**5.12 The operator/owner shall ensure that annually and within the month following every anniversary of the issue by the City of the Permit to Commence certificate, a 3D Digital Terrain Model is prepared by a licensed surveyor for the whole of Lot 4205 Gale Road Kaloorup, indicating ground levels at the time of survey in Australian Height Datum.**

**5.13 The owner must submit to the City annually within three months of every anniversary of the issue of the Permit to Commence certificate a written report detailing the following to the satisfaction of the City:**

- a) A survey conducted by a licensed surveyor certifying:**
  - i. The extent/size and location of the area which has been extracted;**
  - ii. The extent/size and location of the area which has been rehabilitated;**
  - iii. The extent/size and location of the area which is currently under operation;**
- b) Details as to which conditions of this development approval have been complied with and how the conditions have been complied with; and**
- c) No extraction operations, including stockpiling or transportation of extracted material, are to be undertaken on the site at any time when an annual written report is due and has not been submitted to the City.**

**5.14 No development (including any extraction) may be carried out at any time when any bond that is required to be in force and effect under Condition 3.10 is not in full force and effect.**

**CARRIED 7 / 0**

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### **OFFICER RECOMMENDATION**

That the Council:

1. consider that application DA21/0822 submitted for development of Industry – Extractive (Sand) at Lot 4205 Gale Road Kaloorup is generally consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.
2. grants Development Approval for the proposal referred to in (1) above subject to the following conditions:

#### **GENERAL CONDITIONS**

2. The development hereby approved is permitted to operate for five years from the date of this Decision Notice. The site shall be fully rehabilitated in accordance with the approved development plans before the expiry date of this development approval.
3. The owner must ensure that the development is undertaken in accordance with the approved development plans, the following management plans and any plans or details approved pursuant to other conditions of this approval:
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  - 2.2 Water Management Plan (Accendo Australia) dated August 2023.

Where there is a conflict between a provision contained within a condition of this development approval and a provision contained within one of the plans listed above, the requirements of the condition shall prevail.

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  - 3.1 A revised Water Management Plan to demonstrate Cell 1 being amended to remove the area to the east of the internal haul road and remove the reference to infiltration basins and holding areas.
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  - h). Site contact details;
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- 3.7 The section of Gale Road between the proposed crossover for Lot 4205 and the Gale/Gibb/Carbunup Road South intersection to be upgraded in accordance with the approved details to the satisfaction of the City (Advice note 11).
- 3.8 The following bonds being provided to the City:
- d) A road maintenance bond of \$10,000 (being an unconditional bank guarantee) to ensure that the surrounding road network is maintained to the satisfaction of the City for the term of the extractive industry. Those portions of public roads affected by the activities related to the approval shall be maintained to a standard acceptable to the City at the cost of the owner. The City may use the bond to maintain the affected public roads as it deems necessary.
  - e) A dust bond of \$5,000, which shall be held against satisfactory compliance with the Dust Management Plan.
  - f) Further to conditions 4.7(a)-(b) (bond conditions), the bonds are to be accompanied by an executed legal agreement with the City at the full cost of the owner. The legal agreement shall include:
    - ii. The ability for the City to be able to use the bond, or part of the bond as appropriate, and any costs to the City including administrative costs of completing or rectifying any outstanding works on site in accordance with the conditions of this development approval and any further costs;



- iii. Written authorisation from the owner of the land that the City may enter the site at any time and permit the City to complete or rectify any outstanding work to the satisfaction of the City;
- iv. If at any time part of the bond is called upon, used or applied by the City in accordance with the legal agreement, the restoration of the bond to the full amount required by these conditions; and
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- 4. The owner must ensure that no material is extracted until information setting out how the plans and details required by Conditions 2, 3 and 4 have been implemented, and provided to the satisfaction of the City, and the City has subsequently issued a 'Permit to Commence', confirming that extraction can commence

ON-GOING CONDITIONS:

- 6. The owner must ensure that the plans, details and works undertaken to satisfy Conditions 1, 2, 3, 4, and 5 are subsequently implemented and maintained for the life of the development and, in addition, the following conditions must be complied with:
  - 5.1 The development hereby approved shall be limited to: the excavation or movement of sand from its natural state on the site, transportation of sand within or off the site, access ways, and rehabilitation works. At no time shall any blasting or screening works be carried out.
  - 5.2 To ensure a minimum separation of at least 500mm between extraction cells and the maximum water table level, the maximum depth of the Extraction areas are as follows:
    - f. Cell 1 – maximum depth of 71.5m AHD
    - g. Cell 2 – maximum depth of 71.5m AHD
    - h. Cell 3 – maximum depth of 71.25m AHD
    - i. Cell 4 – maximum depth of 72m AHD
    - j. Cell 5 – maximum depth of 72m AHD.
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  - 7.00am and 1.00pm Saturdays for rehabilitation works only; and,
  - There shall be no operations on Sundays or public holidays.
- 5.9 The designated haulage route will be Gale Road westbound and onto Bussell Highway. The use of Jindong Treeton Road and the eastern portion of Gale Road is strictly prohibited.
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- 5.11 Notwithstanding Conditions 5.9 and 5.10 above, should more than 40 truck movements per day and/or an alternative haulage route be proposed, a Traffic Management Plan is to be submitted to and approved in writing by the City; with the Plan being submitted to the City at least 7 working days prior to any haulage not consistent with the approval.

*Note: The City will only approve additional movements or alternate routes where it is determined that an acceptable Traffic Management Plan has been provided. The City will not approve additional truck movements and/or an alternative haulage route for more than 20 working days in any calendar year. Any additional days will require a Modification to Development Approval to be submitted to, and approved by, the City.*

- 5.12 The operator/owner shall ensure that annually and within the month following every anniversary of the issue by the City of the Permit to Commence certificate, a 3D Digital Terrain Model is prepared by a licensed surveyor for the whole of Lot 4205 Gale Road Kaloorup, indicating ground levels at the time of survey in Australian Height Datum.
- 5.13 The owner must submit to the City annually within three months of every anniversary of the issue of the Permit to Commence certificate a written report detailing the following to the satisfaction of the City:

- b) A survey conducted by a licensed surveyor certifying:
    - iv. The extent/size and location of the area which has been extracted;
    - v. The extent/size and location of the area which has been rehabilitated;
    - vi. The extent/size and location of the area which is currently under operation;
  - d) Details as to which conditions of this development approval have been complied with and how the conditions have been complied with; and
  - e) No extraction operations, including stockpiling or transportation of extracted material, are to be undertaken on the site at any time when an annual written report is due and has not been submitted to the City.
- 5.14 No development (including any extraction) may be carried out at any time when any bond that is required to be in force and effect under Condition 3.10 is not in full force and effect.

## EXECUTIVE SUMMARY

The City has received a development application for an 'Industry – Extractive' to extract approximately 255,000m<sup>3</sup> of sand from Lot 4205 Gale Road, Kaloorup 'the Site'. It is proposed to extract to a level of 0.5m from the maximum ground water level, commencing in the southern cell and moving in a northerly direction in stages of approximately 2ha. The site has undergone clearing of predominantly Peppermint trees in accordance with an approved clearing permit which has now expired. It is proposed that post extraction the land will be rehabilitated to pasture, with batter slopes of no less than 1:5 vertical to horizontal.

Due to the nature of the issues requiring consideration and raised during the referral process, the application is being presented to Council for determination, rather than being determined by City officers acting under delegated authority.

Having considered the application, including submissions received in relation to the application, it is considered that the application is generally consistent with the *City of Busselton Local Planning Scheme No. 21* (Scheme) and the broader, relevant planning framework including Local Planning Policy 5A – Extractive Industries (LPP5A).

It is therefore recommended that the application be approved, subject to conditions.

## STRATEGIC CONTEXT

In accordance with the City's Strategic Community Plan the application is considered in the context of ensuring protection and enhancement of environmental values is a central consideration in land use planning.

## BACKGROUND

Development approval was granted for a five year period on 13 April 2016 for the extraction of sand on the site, the approval included the extraction of sand in two areas on the lot. One area has been extracted and rehabilitated, whilst the other area had not been completed before the development approval had expired.

A development application was submitted on 6 May 2021, further information including management plans was received by the City on 16 September 2021. Numerous exchanges of correspondence and meetings have taken place between City officers and the applicant over the past two years in order to gather sufficient information such that the application could be supported by the City. The outstanding information required to assess the application was received on 28 April 2023 and the application was referred for advertising and to State Agencies.

Comments received from both Department of Water and Environmental Regulation (DWER) and Department of Primary Industries and Regional Development (DPIRD) advised that there was still insufficient detail to undertake a full assessment. A site meeting was held with City officers, DWER and the applicant to discuss the additional information required to facilitate assessment of the proposal and the updated document was submitted to the City on 19 July 2023.

The updated information was provided to both DWER and DPIRD on 19 July 2023 and comments received back from both agencies on 20 July 2023.

## OFFICER COMMENT

The proposed Extractive Industry is a discretionary land use in the Rural zone and consideration is therefore given to the potential impacts and whether they can be suitably mitigated.

The referral process highlighted a number of concerns relating to noise, dust, traffic management, groundwater, vegetation clearing and future agricultural use.

### Noise Management

The site is 113ha and the extraction is proposed on the north-western portion of the lot covering an area of approximately 11ha. The nearest sensitive receptor is located over 565m to the southwest which is in excess of the minimum 300m requirement for buffer distance as outlined in the Environmental Protection Authority's *Guidance for the Assessment of Environmental Factors Separation Distances between Industrial and Sensitive Land Uses* document.

The City's Local Planning Policy 2.3 *Extractive Industries* also requires a minimum setback of 500m from a sensitive land use and the proposal satisfies this requirement.

The proposal includes the following measures to control the impact of noise:

- setback distance
- operating machinery behind bunds and
- the maintenance of machinery in good order

These measures are considered to satisfactorily mitigate potential noise impacts. In addition, the application includes a complaints mechanism setting out the procedure for receiving and responding to complaints by the applicant.

Screening of sand is not proposed in the current proposal but is identified as something which may be undertaken in future. That would result in the need to modify any development approval in order that the impacts can be assessed at the relevant time; this is in addition to any requirements for a works approval as required by the Department of Water and Environmental Regulation.

Overall, it is considered that noise relating to the extraction of sand can be satisfactorily managed.

### **Dust Management**

The generation of dust can occur through the extraction, loading and transportation process all of which are impacted by climatic conditions.

The application incorporates several measures to mitigate the risk of dust generation and manage where required, adopting measures in accordance with the DEC (DWER) 2011 *Guideline for Managing the Impacts of Dust and Associated Contaminants from Land Development Sites, Contaminated Sites Remediation and other Related Activities* to manage impacts.

The risk assessment identifies the main risk of dust is from easterly winds on mornings especially in summer when the sand, hardstand and stockpiles are at their driest but that the risk is 'negligible'. Mitigation of any risk is provided by the following:

- 20m setback of the pit from the boundary
- Use of water carts to dampen material and haulage routes during dry weather
- the excavation pit is set behind screening bunds and
- The existence of tree buffers on adjoining lots. Tree buffers effectively reduce the speed of wind causing particles of sand to fall and reduce the distance they travel. Given the nearest sensitive receptor is located more than 500m away, the risk is considered to be low.

Monitoring of activities is a critical component of mitigation, as effective management can be undertaken where there is sighting of visible dust.

It is considered that the proposed measures and compliance with setback requirements will ensure that dust is managed and there is a suitable process to ensure any issues will be addressed and resolved.

### **Traffic management**

The application proposes to transport sand from the site along Gale Road to the east and west. The majority of movements are proposed to the west with only local destinations being accessed along the eastward route.

The assessment of the previous application concluded that the use of Gale Road to the west is most suitable, whilst to the east is not suitable and neither was the use of Gibb Road or Jindong Treeton Road. This has been reviewed as part of the assessment process and concluded that Gibb Road to the west provides the best access to Busselton and other routes and is therefore recommended.

In terms of volumes of trucks the application states in the Water Management Plan:

*'The number of trucks traversing the site will be variable but average up to 10 laden trucks per day. For large contracts there may be 20 per day and at other times less than 5 per day.'*

*'Given the highly variable nature of the campaigns, these calculations are estimates only, there may be periods in which these daily truck numbers are exceeded'*

The issue of truck movements was raised during the consultation process due to the potential to impact on residential amenity. The impact is in part mitigated through the restriction in operating hours to ensure that there are times where no movements occur to protect residential amenity, including weekends and public holidays.

This has to be balanced with the ability for the operator to respond to demand for the resource and meet contractual obligations. The reference to 10 laden trucks equates to 20 vehicle movements (ie entering and leaving the site) and the proposed maximum is therefore 40 movements per day, though it is anticipated this will not be a regular occurrence.

The location of the site is rural in nature and surrounded by rural lots and where there are dwellings, they are generally setback from Gale Road at a distance which will generally minimise impacts from truck movements. The suitability of the road has been assessed and concluded that utilising Gale Road to the west and then to Bussell Highway is suitable and the road is capable of accommodating this number of trucks.

In order to minimise transfer of material from the haul road onto Gale Road and minimise risk from a safety perspective, a condition of approval will require the crossover is sealed to the satisfaction of the City of Busselton prior to operations commencing.

## **Groundwater**

The site is known to be in an area where groundwater expresses at the surface or just below the surface. Provisions of the City's LPS21 and requirements of the Department of Water and Environmental Regulation's statutory framework require development to be undertaken so as to minimise the risk of negative impacts on groundwater, wetlands and watercourses (Buayanyup River).

The existing extraction has demonstrated the significance of ensuring that separation of a minimum of 500mm is maintained to prevent the potential for groundwater to express at the surface. The consultation process established that the initial data submitted in support of the application was not sufficient to fully determine the maximum groundwater level height; this data is critical in establishing the level to which extraction can occur without impacting on groundwater.

Where groundwater is expressed at surface during excavation there are a number of risks:

- Exposure of ground water table can lead to evaporation and also provides a pathway for contamination to enter the aquifer. Where ground water is exposed for long periods of time, concentration of salt through evaporation results in land degradation and a site can become unproductive for future agricultural uses. This can have a further effect on the resource enhancement wetland to the north and to the south east of the extraction area and the watercourse to the south east;
- It impacts the ability for the land to be rehabilitated. To successfully ensure the ongoing use of the land for agricultural purposes there needs to be adequate separation

to maximum groundwater level to ensure that pasture can be grown and not to create potential winter inundation over large parts of the lot.

To ensure that the separation to the groundwater table is achieved, DWER have provided advice that a minimum pit floor level should be conditioned for each cell. The pit floor height ranges between 71.5m AHD to 72m AHD.

Based on the recommendations of DWER, cell 1 has been reduced in area and is required to be rehabilitated due to existing exposed groundwater within the area from the previous extraction. In response to the concerns, the applicant updated the Water Management Plan to reflect these requirements.

It is considered that the proposal can be supported subject to conditions of approval requiring monitoring of maximum groundwater levels and extraction levels.

### **Vegetation clearing**

The north western part of the site previously benefited from an area of mature peppermint trees and the clearing of vegetation was a concern raised through the referral process at the time.

The applicant sought clearing approval from the Department of Water and Environmental Regulation for removal of the trees which was granted, conditional upon a revegetation condition. It is understood that the replanting has occurred and the condition been complied with.

### **Future agricultural use**

The application proposes that once extracted the site will be rehabilitated to pasture for future agricultural use. This is considered to be consistent with the existing use of the site and the Rural zoning of the land.

The operation involves removal of the sand from each cell and then the stockpiled topsoil is put back prior to seeding. The reduced sand profile increases proximity to ground water which aids grassland productivity by extending the growth period prior to the heat of summer.

### **Statutory Environment**

The key statutory environment is set out in the City of Busselton *Local Planning Scheme 21* (Scheme), the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations), Schedule 2 of which is the 'deemed provisions', which also functionally form part of the Scheme. The key aspects of the Scheme and Regulations relevant to consideration of the application are set out below.

### **Zoning**

The site is zoned 'Rural'. The objectives of the 'Rural' zone are as follows:

- a. To provide for the maintenance or enhancement of specific local rural character.
- b. To protect broad acre agricultural activities such as cropping and grazing and intensive uses such as viticulture and horticulture as primary uses, with other rural activities as

secondary uses in circumstances where they demonstrate compatibility with the primary use.

- c. To maintain and enhance the environmental qualities of the landscape, vegetation, soils and waterways, to protect sensitive areas especially the natural valley and watercourse systems from damage.
- d. To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses.
- e. To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.
- f. To provide for development and expansion of the viticultural, winemaking and associated tourism activities and other industries related to agricultural activities, in addition to general rural pursuits, in a manner that does not cause adverse environmental impact.
- g. To provide for the extraction of basic raw materials, where appropriate.

The proposal is considered to satisfy the objectives of the zone.

#### **Land-use and permissibility**

The proposed land uses is defined as follows:

*“Industry – Extractive” means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes –*

- (a) the processing of raw materials including crushing, screening, washing, blending or grading,*
- (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration.*

Industry - Extractive is identified as an ‘A’ or advertised use within the Rural zone.

#### **Matters to be considered**

Clause 67 of the deemed provisions within the Regulations sets out ‘matters to be considered’ by a local government in considering an application for development approval. The following matters are considered to be relevant to consideration of this application:

- (d) any environmental protection policy approved under the Environmental Protection Act 1986 section 31(d);*
- (g) any local planning policy for the Scheme area;*



- (m) *the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance;*
- (n) *the amenity of the locality including the following —*
  - (i) *environmental impacts of the development;*
  - (ii) *the character of the locality;*
  - (i) *social impacts of the development;*
- (o) *the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;*
- (p) *whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- (q) *the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;*
- (s) *the adequacy of —*
  - (i) *the proposed means of access to and egress from the site; and*
  - (ii) *arrangements for the loading, unloading, manoeuvring and parking of vehicles;*
- (t) *the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- (x) *the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*
- (y) *any submissions received on the application;...*

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

#### ***State Planning Policy 2.4 Basic Raw Materials***

*State Planning Policy 2.4 Basic Raw Materials* (SPP 2.4) and the associated Guidelines provide guidance to facilitate the responsible extraction and use of basic raw materials, taking into account the compatibility with surrounding land uses, avoids/minimises or mitigates any adverse impacts on the community, water resources and biodiversity values whilst ensuring the final intended land use is not compromised. The proposal has had due regard to SPP 2.4.

### **Local Planning Policy 5A - Extractive Industries**

Local Planning Policy 5A - Extractive Industries (LPP5A) provides guidance regarding the extraction of basic raw materials. The application site is located within Policy Area 3. The elements of LPP5A considered particularly relevant to assessment of the application are as follows:

1. 4.2.2.3 Policy Areas 2 and 3:  
Notwithstanding 6.2.1 and 6.2.2 above, the extraction of sand and limestone may be located less than 500m but generally no closer than 300m from a sensitive land use dependent upon the nature and scale of the operation and the content of a Dust and Noise Management Plan, including consideration of the requirement for dust and noise measuring equipment to be installed within the site for the duration of the extraction process. However, this will not apply to the extraction of basalt and other hard rock quarrying which requires greater setback distances (generally a minimum of 1000m) to a sensitive land use.
2. 4.2.2.5 Policy Areas 2 and 3:  
Where an extractive industry is approved within 1km of a residence or tourist accommodation or attraction, additional conditions to reduce amenity impact from noise and dust may be imposed, including operating times.
3. 4.2.5 Route Assessment and Transportation:  
The potential impacts of an extractive industry will be assessed against the Scheme and the following criteria:
  - a) The outcomes of the Schedule 1 – Traffic Impact Assessment and Road Upgrading Guidelines.
  - b) Any comments or recommendations from Main Roads WA.
  - c) The impacts of haulage traffic noise, vibration and amenity loss on surrounding areas.

The proposal has had due regard to LPP5A.

### **Financial Implications**

Not Applicable

### **External Stakeholder Consultation**

Clause 64 of the deemed provisions sets out circumstances in which an application for development approval must be advertised, and also sets out the means by which applications may be advertised.

The purpose of public consultation is to provide an opportunity for issues associated with a proposed development to be identified by those who potentially may be affected. A development application should not be approved or refused based on the number of submissions it receives, for or against, rather all applications must be determined on the merits of the particular proposal, including consideration of any relevant planning issues raised through consultation.

The application was open for submissions from 23 June to 14 July 2023. The application was advertised in the following manner:

1. Information regarding the application was posted on the City's website;

2. A portal was created using the City's YourSay platform for the online lodgement of submissions;
3. Letters were sent to all the land owners within 1km of the site; and
4. A notice was placed in a local newspaper on 23 June 2023.

Submissions were received from a total of 4 people. A schedule of submissions is provided as Attachment 4. The schedule identifies who submissions were received from and summarises the submissions. The submissions can generally be grouped as follows:

#### Objection

- Noise and dust impacts on residential amenity;
- Traffic management and impact amenity;
- Groundwater and impacts on adjoining Resource Enhancement Wetlands;
- Vegetation clearing of established Peppermint trees and their Western Ringtail Possum habitat.
- Future Agricultural use.

#### Support

- Nil

Where issues are raised which are not able to be considered, as they do not relate to the relevant planning framework, the comment provided (note comments have been grouped given the number of submissions received) indicates that, but does not provide further commentary or discussion. That does not necessarily suggest that the issues are not genuine issues of concern to the submitter or more broadly, but they are unfortunately not issues that can or should be addressed in the assessment of the application.

In addition to the above, the application was referred to DWER, DPIRD, Department of Biodiversity, Conservation and Attractions and the Department of Mines, Industry Regulation and Safety. The agencies' comments are provided as Attachment 4.

#### **Risk Assessment**

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

The following risks has been identified:

<b>Risk</b> Potential environmental damage resulting in damage to the City's reputation.			
Category	Consequence	Likelihood	Rating
Environmental Reputation	Moderate	Possible	High
<b>Context</b>			
The extraction of sand under the 2016 approval has resulted in the ground water table being intercepted which has required remediation by the operator. In view of this the risk of a reoccurrence is considered to be possible and the risk implications are high due to the proximity of the resource enhancement wetland and conservation category wetland to the north and south east of the subject site.			

The officer recommendation seeks to mitigate the identified risk relating to maximum groundwater level, by requiring extraction to be a minimum of 500mm above the maximum groundwater levels. This is considered to ensure that ground water will not be intercepted and the rehabilitation to pasture will be successful and facilitate ongoing agricultural use of the land.

### **Options**

As an alternative to the proposed recommendation the Council could refuse the application on the grounds that until further groundwater monitoring data is available it is not possible to determine with sufficient certainty, that the extraction will not intercept the water table and potentially harm the resource enhancement wetland, river and prevent successful rehabilitation to pasture.

### **CONCLUSION**

The application is considered to be generally consistent with the objectives of the Rural zone provisions of LPS21 and the broader statutory framework and sand is an essential resource for a wide variety of projects across the City and wider geographical area.

The high level of demand for sand resources is acknowledged and it is also recognised that on the subject site sand extraction has the potential for relatively significant impacts to the environment if not managed appropriately.

The application has been updated to address the environmental concerns that have been raised, particularly in relation to groundwater and the potential adverse impact on the adjoining river system and resource enhancement wetlands to ensure that the risks are minimised and capable of being managed. As a result the application is recommended for approval subject to conditions.

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

Milestone	Completion Date
Issue the Development Approval to the Applicant	Within two weeks of Council decision

## 12. ENGINEERING AND WORKS SERVICES REPORTS

### 12.1. Naming Port Geographe Coves and Parks

<b>Strategic Theme:</b>	Key Theme 2: Lifestyle 2.1 Recognise, respect and support community diversity and cultural heritage.
<b>Directorate:</b>	Engineering and Works Services
<b>Reporting Officer:</b>	Business Support Officer – Wendy Mekisic
<b>Authorised By:</b>	Director Engineering and Works - Oliver Darby
<b>Nature of Decision:</b>	Noting: The item is simply for information purposes and noting.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. MAP OF PORT GEOGRAPHE COVES AND PARKS [12.1.1 - 1 page] 2. NAMES AND COMMENTS [12.1.2 - 2 pages]

#### COUNCIL DECISION

**C2308/93** Moved Cr Paul Carter, seconded Cr Phill Cronin

That the Council:

1. Approve the suggested names in this report resulting from consultation with representatives of the Traditional Owners of the Port Geographe area.
2. Approve for the City Officer to submit an application with Landgate for using the names in the Port Geographe area.

**CARRIED 7 / 0**

**EN BLOC**

#### OFFICER RECOMMENDATION

That the Council:

1. Approve the proposed names in this report resulting from consultation with representatives of the Traditional Owners of the Port Geographe area.
2. Approve for the City Officer to submit an application with Landgate for using the names in the Port Geographe area.

## EXECUTIVE SUMMARY

The purpose of this report is to provide the Council with an update of the outcome from further consultation with representatives of local Wadandi families, the Traditional Owners of the Port Geographe area. The consultation was conducted during August / November 2022 in accordance with Council Decision C2207/192.

Council Policy “Naming of City Roads and Assets” and Landgate “Policies and Standards for Geographical Naming in Western Australia” were referred to as part of this consultation process.

The table below shows the names before the Consultation was undertaken, as well as the agreed names as a result of the consultation with the Traditional Owners and meetings with representatives from the Port Geographe Landowners Association.

Port Geographe Parks – before Consultation	Port Geographe Parks – result of Consultation
1. Spinnaker Park	<b>1. Koolangka Park</b>
2. Marina Park	<b>2. Kwondong Park</b>
3. Dolphin Park	<b>3. Kwilena Park</b>
4. Keel Park	4. Keel Park
5. Woodhenge Park	5. Woodhenge Park
6. Layman Park	6. Layman Park
7. Circle Park	7. Circle Park
8. Footbridge Park	<b>8. Balayi Park</b>
9. Burgee Park	9. Burgee Park
10. Tallwood Park	10. Tallwood Park
11. Pebble Park	11. Pebble Park
12. Seahorse Park	12. Seahorse Park
13. Portage Park	13. Portage Park
14. Cutter Park	14. Cutter Park
15. Transom Park	15. Transom Park
16 Geographe Beach Park	16 Geographe Beach Park

Landgate have supported the proposed names for the Port Geographe Marina area.

## STRATEGIC CONTEXT

Not applicable.

## BACKGROUND

This report provide feedback on further consultation that was undertaken by City Officers as a result of the following Council Resolution, C2207/192 -

*That the Council:*

1. *Request that the CEO undertake further consultation with the representatives of the Traditional Owners in relation to the proposal to name the various canals, coves and parks in the Port Geographe area; and*

2. *Subject to the outcomes of that consultation, seek feedback on the proposed list of names from Landgate in accordance with Landgate Policy 1.8.1; and*
3. *Provide a further report to Council by the end of the year on the proposed list of names for the various parks, canals and coves of the Port Geographe Area as per the Plan of Port Geographe Cove and Park Names, Item No 14.1 (27 July 2022).*

#### **OFFICER COMMENT**

City officers informed the representatives from the Port Geographe Landowners Association (PGLOA) of the outcome of the report presented to Council on 27 July 2022. The resolution requested consultation with traditional landowners in relation to the proposal to name the various canals, coves and parks in the Port Geographe area. Subsequently, City officers conducted consultation with Traditional Owners via mail, email and meetings.

A review of the 44 name suggestions received was undertaken by the City's Cultural Development Officer and the Business Support Officer. It was determined that many of the names presented were not in accordance with the naming theme for the Port Geographe Marina and Landgate Policies and Standards for Geographical Naming in Western Australia.

A meeting was held on 7 November 2022 with representatives from the PGLOA and City Officers to consider the list of names from the consultation process with representatives of the Traditional Owners of the Port Geographe area.

The secretary of the PGLOA subsequently advised the committee of the four alternative names for the Parks in the Port Geographe Marina area.

Park 1 - Koolangka Park – replacing Spinnaker – meaning children;  
Park 2 - Kwondong Park – replacing Marina – meaning wild peach;  
Park 3 - Kwilena Park – replacing Dolphin – meaning Dolphins often seen in the area; and  
Park 8 - Balayi Park – replacing Footbridge – meaning look out – bridge – provides a lovely view.

The names selected above have been verified as acceptable in accordance with Landgate requirements. Landgate has advised that they are supportive for the use of these names in the Port Geographe Marina.

#### **Statutory Environment**

The *Land Administration Act 1997* provides that the Minister for Lands (the Minister) has the authority for officially naming and un-naming all local parks and recreational reserves in Western Australia.

Through delegated authority, Landgate acts on the Minister's behalf to undertake administrative responsibilities, including the development of policies and procedures required for the formal approval of local parks and recreational reserve names.

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

The officer recommendation aligns to the following adopted plan or policy:

Policy:

[Naming of City Roads and Assets](#)

Landgate “Policies and Standards for Geographical Naming in Western Australia”.

### **Financial Implications**

The location of aluminium street signs will be placed on the canal walls and City standard park signage will be installed for the parks.

It is estimated that these signs will cost in the region of \$20,000 and can be funded from the Port Geographe project code 14901.

### **External Stakeholder Consultation**

The City’s Cultural Development Officer contacted ten representatives of the Traditional Owners the through direct mail, email and meetings. Feedback was received from five that agreed with the suggested names.

From this the City received various naming suggestions, many of the suggestions where not compliant with a nautical theme for naming the marina and did not meet Landgate guidelines. (Attachment B)

### **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**

If the names are not supported by Council the proposal will be rejected.

### **CONCLUSION**

It is recommended that Council endorse the names selected (listed below), resulting from the consultation process with the Traditional Owners of the Land, as alternative names for Parks within the Port Geographe Marina area: -

<b>Port Geographe Parks – Proposed Names</b>	
<b>1. Koolangka Park</b>	- replacing Spinnaker – meaning children
<b>2. Kwondong Park</b>	- replacing Marina – meaning wild peach
<b>3. Kwilena Park</b>	- replacing Dolphin – meaning Dolphins often seen in the area
4. Keel Park	
5. Woodhenge Park	
6. Layman Park	
7. Circle Park	
<b>8. Balayi Park</b>	- replacing Footbridge – meaning look out – bridge – provides a lovely view
9. Burgee Park	



10. Tallwood Park
11. Pebble Park
12. Seahorse Park
13. Portage Park
14. Cutter Park
15. Transom Park
16 Geographe Beach Park

The following are the names selected for the Canals and Coves endorsed.

<b>Port Geographe Canals - Proposed Names</b>
A. Grand Canal
B. Geographe Quay
C. Windjammer Canal
D. Helm Canal
E. Yardarm Canal
F. Leeward Canal
G. Foremast Canal
H. Fathom Canal
I. Mizzen Canal
J. Trysail Canal
K. Pearler Canal
<b>Coves</b>
L. Lagoon Cove
M. Galley Cove
O. Anchor Cove

Other names suggested from the consultation process may be put forward for consideration with the Developer for further developments within the Port Geographe Marina.

The City Officer to advise the PGLOA of the outcome of this report.

The City Officer put through a Naming Application with Landgate for the selected names to be approved for use in the Port Geographe Marina area.

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

The officer recommendation will be implemented in full, or in stages as per the following table:

<b>Milestone</b>	<b>Completion Date</b>
Application to Landgate to use the names.	October 2023
Signage to be installed.	December 2023

## 12.2. RFT10/23 Arboriculture Services

<b>Strategic Theme:</b>	Key Theme 2: Lifestyle 2.12 Provide well maintained community assets through robust asset management practices.
<b>Directorate:</b>	Engineering and Works Services
<b>Reporting Officer:</b>	Parks and Environment Technical Officer - Iain Ferry
<b>Authorised By:</b>	Director Engineering and Works - Oliver Darby
<b>Nature of Decision:</b>	Contractual: To enter into a contract e.g. a lease or the award of a tender etc.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. CONFIDENTIAL REDACTED - Signed RFT10/23 Tender Evaluation Report [12.2.1 - 27 pages]

### COUNCIL DECISION

**C2308/94** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council endorses the outcome of the evaluation panel's assessment of RFT10/23 Arboriculture Services and accepts the tender from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust trading as Arbor Guy as most advantageous.**

**CARRIED 7 / 0**

**EN BLOC**

### OFFICER RECOMMENDATION

That the Council endorses the outcome of the evaluation panel's assessment of RFT10/23 Arboriculture Services and accepts the tender from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust trading as Arbor Guy as most advantageous.

### EXECUTIVE SUMMARY

The City invited tenders under RFT 10/23 Arboriculture Services (the RFT) for the regular supply of arboriculture services for ongoing operating works under three separable portions:

- Urban;
- Rural and bushfire mitigation; and
- Consultancy services.

This report recommends that Council endorse the outcome of the evaluation panel's assessment and accept the tender submission from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust trading as Arbor Guy as most advantageous to the City.

## STRATEGIC CONTEXT

The nature of the works supports the enhancement of our natural areas and reserves, in alignment with Key Theme 1 of the City's Strategic Community Plan – Environment.

## BACKGROUND

The City of Busselton's Operations Services operating budget includes the requirement for ongoing arboriculture works to trees on City managed reserves as per policy Tree Management and Retentions on City Land. In addition, the City's Regulatory Services department deliver fire mitigation works and are actively seeking grant funding for this.

The current Arboriculture Services contract previously awarded under RFT07/19 expires 31<sup>st</sup> August 2023 with no further extension options.

## OFFICER COMMENT

On 13 June 2023, tenders were invited via VendorPanel and advertised in 'The West Australian' newspaper and on the City of Busselton website. Tenders closed at 2.00pm (AWST) on Thursday 6th July 2023 and the City received six tender submissions from the following tenderers:

- Guy Badger Family Trust t/as Arbor Guy (**Arbor Guy**)
- Norcape Tree and Contracting Service (**Norcape**)
- DAR Family Trust t/as BDA Tree (**BDA Tree**)
- Arbor Centre Group Pty Ltd (**Arbor Centre**)
- Rent A Fence Pty Ltd (**Rent A Fence**)
- A Team Tree Care (**A Team Tree Care**)

## Assessment Process

In accordance with the City's procurement practices and procedures, tender assessments were carried out by a tender evaluation panel comprising City officers with relevant skills and experience.

The tender assessment process included:

- Assessing tenders received against relevant compliance criteria. The compliance criteria were not point scored. Each submission was assessed on a Yes/No basis as to whether each criterion was satisfactorily met. The tender submissions received from Rent A Fence and A Team Tree Care were assessed as non-compliant.
- Assessing compliant tenders against the following qualitative criteria (weighted as indicated in the table below):

Criteria		Weighting
(a)	Price	40%
(b)	Relevant Experience	20%
(c)	Local Benefit	5%
(d)	Resources and Key Personnel	20%
(e)	Work Health and Safety ( <b>WHS</b> )	15%

The qualitative criteria were scored depending on the extent to which each tenderer was able to appropriately satisfy each criteria. The tendered prices were then assessed together with the weighted qualitative criteria and the tenders scored and ranked to determine the most advantageous outcome to the City, based on principles of best value for money. That is, although price was a consideration, the tender containing the lowest price will not necessarily be accepted by the City and nor will the tender ranked the highest on the qualitative criteria.

### **Summary of Assessment Outcomes**

The evaluation panel assessed the tenders for each of the separable portions the result of which are outlined below.

#### Urban

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (first on price and first on qualitative criteria). Arbor Guy provided details of extensive experience, and comprehensive resources and WHS processes. Online access to job management and WHS systems. Arbor Guy's tendered price was the lowest of the three tenderers.
- Norcape ranked second overall (second on price and third on qualitative criteria). Norcape provided relevant experience with smaller LGA's. Sufficient plant and crew to perform urban works. WHS criteria including ISO45001-OHS Management, policy, forms, sample traffic management plans and staff listed. Norcape's tendered price was ranked second.
- BDA Tree ranked third overall (third on price and second on qualitative criteria). BDA Tree provided details of good experience with South-West LGA's. Five well-experienced staff overseeing operators and subcontractors. GPS invoicing. Basic outline of WHS policy's and procedures. BDA Tree's tendered price was the highest.
- Arbor Centre did not submit a response to this separable portion.

All of the tenderers would be able to deliver the scope of services, however Arbor Guy's qualitative criteria ranked very highly. The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

#### Rural and bushfire mitigation

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (first on price and first on qualitative criteria). Arbor Guy provided details of extensive experience, and comprehensive resources and WHS processes. Online access to job management and WHS systems. Arbor Guy's tendered price was the lowest of the three tenderers.
- Norcape ranked second overall (second on price and second on qualitative criteria). Norcape provided relevant experience with smaller LGA's. Sufficient plant to perform most rural

works although small ground crew of 6-7 staff may struggle to deliver both rural and bushfire works simultaneously. Norcape's tendered price was ranked second.

- BDA Tree ranked third overall (third on price and third on qualitative criteria). BDA Tree provided details of good experience with South-West LGA's. Five well-experienced staff overseeing operators and subcontractors. No mulching head equipment listed. Basic outline of WHS policy's and procedures. GPS invoicing. BDA Tree's tendered price was the highest.
- Arbor Centre did not submit a response to this separable portion.

The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

#### Consultancy services

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (second on price and first on qualitative criteria). Arbor Guy provided details of a Diploma qualified (AQF5) General Manager. GIS capability (Konnnect) which can be utilised for large and small scale tree inventories. Arbor Guy's tendered price was ranked second for an annual estimate of services required.
- Norcape ranked second overall (first on price and third on qualitative criteria). Norcape provided details of advice and reports for Shire of Harvey / Port Hedland. ArbWest / Arb Australia membership. Diploma qualified. Norcape's tendered price was the lowest of the three tenderers for an annual estimate of services required.
- Arbor Centre Group Pty Ltd ranked third overall (third on price and second on qualitative criteria). Arboriculture consultancy is the core business of this Perth based consultancy firm. Graduate Certified (AQF 8). Wide range of surveys and reports provided to numerous LGAs, private companies and government agencies. Arbor Centre's tendered price was the highest for an annual estimate of services required.
- BDA Tree did not submit a response to this separable portion.

All of the tenderers would be able to deliver the project scope, however Arbor Guy's qualitative criteria ranked very highly. The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

#### Statutory Environment

The officer recommendation supports the general function of a local government under the *Local Government Act 1995 WA* (the Act) to provide for the good government of persons in its district. Section 3.57 of the Act requires a local government to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods and service.

Part 4 of the Regulations requires that tenders be publicly invited for contracts where the estimated cost of providing the required goods and/or service exceeds \$250,000.

The officer recommendation complies with the above-mentioned legislative requirements. The estimated expenditure is in excess of \$500,000, which is above the Chief Executive Officer's delegated authority for accepting tenders.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

[Asset Management Plan](#)

Policy:

[Purchasing](#)

[Regional Price Preference](#)

[Tree Management and Retention on City Land](#)

[Work Health & Safety](#)

### **Financial Implications**

The estimated total value of the requirements over the full contract term is \$500,000 per annum or \$2,500,000 over the total five-year term including extensions. This may increase by a further \$250,000 per annum if additional funding (subject to annual grant availability) for fire mitigation work is received.

The requirements will be funded from the 2023/24 endorsed budget as follows:

- Operation Services operational budget – cost centres 1016 and 1017.
- Regulatory Services operational budget.
- External funding through Regulatory Services Activity fund grant for fire mitigation works.

The Preferred Tenderer's pricing compared to the City's current tender (RFT07/19) is summarised below:

- Urban +7%
- Rural -5%
- Consultancy +5%

CPI over the same time period (June 2022 - June 2023) increased by 6%.

### **External Stakeholder Consultation**

Not Applicable

### **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 considering any controls already in place.

No risk of medium or greater level have been identified.

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Award the tender in full or in part to an alternative tenderer. In the view of the Officers this could result in the tender being awarded that is not most advantageous to the City.
2. Decline to accept any tender. Officers do not consider that this will represent the most advantageous outcome for the City. It will also result in significant delays to the contract award and the provision of arboriculture services to the City.

### **CONCLUSION**

The submission from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust t/as Arbor Guy is considered most advantageous to the City. Officers recommend that the City award the contract for supply of consultancy, urban, rural and bushfire mitigation to Fine Brand Pty Ltd as trustee for Guy Badger Family Trust t/as Arbor Guy.

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

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Commence contract	1 September 2023

### **13. COMMUNITY AND COMMERCIAL SERVICES REPORTS**

Nil



#### **14. FINANCE AND CORPORATE SERVICES REPORTS**

Nil

## 15. CHIEF EXECUTIVE OFFICERS REPORTS

### 15.1. Councillors Information Bulletin

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.4 Govern a professional organisation that is healthy, capable and engaged.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Executive Assistant to Council - Katie Banks
<b>Authorised By:</b>	Chief Executive Officer - Tony Nottle
<b>Nature of Decision:</b>	Noting: The item is simply for information purposes and noting.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. Current Active Tenders - August 2023 [<b>15.1.1</b> - 1 page]</li> <li>2. 28.06.23 Congratulations Ltr from Mayor to Hon R H Cook [<b>15.1.2</b> - 1 page]</li> <li>3. 10.07.23 Acknowledgment Ltr from Premier R H Cook [<b>15.1.3</b> - 1 page]</li> <li>4. 10.07.23 Councillor vacancy to remain unfilled - Approval Letter [<b>15.1.4</b> - 1 page]</li> <li>5. Current Running SAT Reviews [<b>15.1.5</b> - 4 pages]</li> <li>6. Dunsborough Precinct Structure Plan and Associated Amendment No.52 - Ltr from Mayor to WAPC [<b>15.1.6</b> - 3 pages]</li> <li>7. Dunsborough Precinct Structure Plan and Associated Amendment No.52 - Ltr from WAPC [<b>15.1.7</b> - 1 page]</li> <li>8. Council Action Status [<b>15.1.8</b> - 19 pages]</li> </ol>

#### COUNCIL DECISION

**C2308/95** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the items from the Councillors Information Bulletin be noted:**

- Minutes of Committee Meetings
- Minor Donations Program
- Current Active Tenders
- State Administrative Tribunal Reviews Update
- Council Resolution Status Update

**CARRIED 7 / 0**

**EN BLOC**

#### OFFICER RECOMMENDATION

**That the items from the Councillors Information Bulletin be noted:**

- Minutes of Committee Meetings
- Minor Donations Program
- Current Active Tenders

- State Administrative Tribunal Reviews Update
- Council Resolution Status Update

## EXECUTIVE SUMMARY

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence, but is presented in this bulletin for the information of the Council and the community.

## INFORMATION BULLETIN

### Minutes of Committee Meetings

Minutes of the following Committee Meetings listed in the table below are to be noted as received:

Committee	Meeting Date	Minutes
Finance Committee	19 July 2023	<a href="#">Minutes</a>
Policy and Legislation Committee	26 July 2023	<a href="#">Minutes</a>

### Minor Donations Program – July 2023

The Council allocates an annual budget allowance to the Minor Donations Program. This is provided such that eligible groups and individuals can apply for and receive sponsorship to assist them in the pursuit of endeavours that bring direct benefit to the broader community. Allocation of funds is delegated to the Chief Executive Officer, in accordance with the published guidelines and funding availability.

Nine applications were approved throughout July 2023 totalling \$5,257 as outlined below:

Recipient	Purpose	Amount
Be My Koorda Aboriginal Corporation	Be My Koorda Aboriginal Corporation is a locally based aboriginal support group for parents with children with Autism and ADHD. They ran a school holiday program in July. Funding was approved to cover the cost of their movies outing and lunch.	\$480.00
St John of God Social Outreach and Standby	St John of God Social Outreach and Standby are holding a free community event on 24 November 2023 to help people in the community who have been bereaved by suicide or who are currently supporting someone bereaved by suicide. The hire fee for the Undalup Room has been waived in support of this event.	\$567.00
Radiance Network South	Radiance Network South West are hosting the	\$660.00

West	annual 'Radiance Festival and Big Pram Walk' on 12 November 2023 to raise awareness of and show community support for peri-natal anxiety and depression. The cost of face painting and hire of PA equipment has been covered in support of this free community event.	
Isabella Duff	Selected to represent WA as part of the U16 Girls Hockey team competing at the School Sport Australia National Schools Championships in Adelaide – 12 to 19 August 2023. This donation will assist with covering the costs associated with attending the competition.	\$500.00
Layla Heslewood	Selected to represent WA as part of the 12s Girls Team competing at the School Sport Australia National Schools Championships in Hobart TAS – 30 July to 4 August 2023. This donation will assist with covering the costs associated with attending the competition.	\$500.00
Acton Park and Districts Community Hall	The Acton Park and Districts Community Hall is holding an event on 7 January 2024 to celebrate the Acton hall's rich 100-year history. Their donation request has been supported to cover the cost of a photographer and catering for the free community event.	\$1,000.00
Raphaela Raaber	Raphaela is holding an event at ArtGeo for the Artists for Sustainability Network - Incubator Event on 11 August 2023. This event is to show how art can contribute to fostering a sustainable transition and enabling artists to connect and sign up to become part of the network. This event is open to all community members with a maximum of 50 participants. This donation will be used to cover the cost of catering for the event.	\$350.00
Busselton Woodturners	The Busselton Woodturners are hosting their annual 'Weekend Workshop', hosting local and visiting members of the WA Woodturners Association. It is anticipated that the event will attract over 100 visiting woodturners to the City. This donation will be used to waive the cost of hiring Churchill Park Hall.	\$200.00
Jason Ey	Jason is organising an event, 'Raise a Tonne for Breast Cancer WA' on 28 October 2023 at the Busselton Foreshore Amphitheatre. The aim of this event is to raise funds and bring awareness to breast cancer. The event is open to anyone - they are to contribute a donation to deadlift a weight. It is anticipated that the event will attract around 1000 spectators throughout the day. This donation will be used to assist with covering the cost of advertising on the City's digital billboard	\$1,000.00

	and the hire of a PA system for the day.	
	<b>TOTAL</b>	<b>\$5,257.00</b>

Total budget remaining \$24,743.00.

#### **Current Active Tenders**

The Tender update for July 2023 is provided at Attachment 1.

#### **State Administrative Tribunal Reviews Update**

The Current State Administrative Tribunal Reviews is at Attachment 2.

#### **Correspondence: Letter of Congratulations to Premier Cook from Mayor and response**

Correspondence between the Mayor and Roger Cook MLA, Premier is provided at Attachments 3 and 4.

#### **Correspondence: Councillor vacancy remain unfilled**

Correspondence from the Electoral Commissioner regarding the vacancy on Council created following Mayor Henley's resignation effective 21 October 2023 is provided at Attachment 5.

#### **Correspondence: Update on the Housing Diversity Pipeline – Brown Street, Busselton**

Correspondence from the Director General, Department of Planning, Lands and Heritage regarding the completion of the Expression of Interest process for the first land releases under the Western Australian Government's Housing Diversity Pipeline is provided at Attachment 6.

#### **Correspondence: Dunsborough Precinct Structure Plan and Associated Amendment No.52**

Correspondence sent to the Western Australian Planning Commission regarding the Dunsborough Precinct Structure Plan and Associated Amendment No.52 is provided at Attachment 7. Attachment 8 is the response from David Caddy, Chairman, Western Australian Planning Commission.

#### **Council Resolution Status Update**

The current Council Resolution Status Review is provided at Attachment 8.

## 15.2. Council Policy - Appointment of Acting Chief Executive Officer

<b>Strategic Theme:</b>	Key Theme 4: Leadership 4.4 Govern a professional organisation that is healthy, capable and engaged.
<b>Directorate:</b>	Finance and Corporate Services
<b>Reporting Officer:</b>	Acting Director Finance and Corporate Services - Sarah Pierson
<b>Authorised By:</b>	Chief Executive Officer - Tony Nottle
<b>Nature of Decision:</b>	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
<b>Voting Requirements:</b>	Simple Majority
<b>Disclosures of Interest:</b>	No officers preparing this item have an interest to declare.
<b>Attachments:</b>	1. Proposed Council Policy Appointment of Acting Chief Executive Officer [15.2.1 - 2 pages]

### COUNCIL DECISION

**C2308/96** Moved Cr Paul Carter, seconded Cr Phill Cronin

**That the Council adopt the Council Policy 'Appointment of Acting Chief Executive Officer' as per Attachment 1.**

**CARRIED 7 / 0**

**EN BLOC**

### OFFICER RECOMMENDATION

That the Council adopt the Council Policy 'Appointment of Acting Chief Executive Officer' as per Attachment 1.

### **EXECUTIVE SUMMARY**

This report presents a new Council Policy 'Appointment of Acting Chief Executive Officer' (CEO) for Council adoption. At its July meeting the Policy and Legislation Committee resolved to recommend to Council that the current policy 'Designation of Senior Employees and Acting CEO' be rescinded, with the designation of senior employees no longer considered necessary, and that the CEO present a new Appointment of Acting CEO policy to the Council.

### **BACKGROUND**

Section 5.37(1) of the *Local Government Act 1995* (the Act) provides for a local government to designate employees or persons belonging to a class of employees to be Senior Employees. Section 5.37(2) of the Act requires the CEO to inform the Council of each proposal to employ or dismiss a Senior Employee. The Council has had a policy covering the designation of Senior Employees since at least 2015.

Further, Section 5.36 of the Act establishes that a person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position. In June 2018 the Council therefore adopted a policy covering both the designation of Senior Employees and the appointment of an Acting CEO.

The current policy was adopted in 2019 with minor amendments to identify the importance of succession planning and the acting of those employed in Senior Employee or Director positions as CEO.

At the Policy and Legislation Committee meeting held 26 July 2023 the Committee considered a review of the current policy designating senior employees, with the title of designated positions proposed for amendment to reflect a recent organisational review and structure alignment.

The Committee determined that the designation of senior employees, which is optional under the Act, is no longer necessary and that the CEO should be responsible for the appointment and termination of staff, including those currently designated as senior employees (Directors). In coming to this view, the Committee noted the potentially problematic nature of Council determining to reject an appointment without having been involved in the recruitment process. Similar problems may arise when rejecting a termination without involvement in the performance management or discipline process. The Committee therefore resolved to recommend to the Council that the policy be rescinded. They further requested that the CEO prepare and present to Council at its August meeting a policy covering the appointment of an acting CEO, to ensure those arrangements remain covered by policy.

#### **OFFICER COMMENT**

In accordance with the Committee recommendation, officers have prepared a new Council Policy 'Appointment of Acting Chief Executive Officer' (the Policy). The Policy supports the ongoing appointment of persons holding Director positions with the City, subject to the CEO's discretion based on performance, availability and operational requirements. Officers recommend that the Policy be adopted by Council, subject to Council accepting the Committee's recommendation, noting it is only a recommendation to Council, with Council to make the final decision.

If Council resolve not to accept the Committee's recommendation in relation to the designation of senior employees and opt to retain the current Designation of Senior Employees and Acting CEO policy, it is recommended that the Council resolve not to endorse the Policy (presented by this report).

#### **Statutory Environment**

In accordance with Section 2.7(2)(b) of the Local Government Act 1995 (the Act) it is the role of the Council to determine the local government's policies. The Council does this on the recommendation of a Committee it has established in accordance with Section 5.8 of that Act. As detailed in the background section of this report section 5.36 of the Act sets out requirements in relation to the appointment of a CEO.

### **Relevant Plans and Policies**

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

[Designation of Senior Employees and Acting CEO](#)

As outlined in the officer comment, the Policy and Legislation Committee have recommended to Council that this policy be rescinded.

### **Financial Implications**

Not Applicable

### **External Stakeholder Consultation**

Not Applicable

### **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, noting that the CEO has indicated he will continue to keep the Council informed of significant (such as appointments and termination related matters) in relation to the City's executive team.

### **Options**

As an alternative to the proposed recommendation the Council could:

1. Determine not to adopt the Policy
2. Determine to make amendments to the Policy.

### **CONCLUSION**

The Policy maintains strategic guidance in relation to the appointment of an Acting CEO, subject to the Council resolving to accept the Policy and Legislation Committee's recommendation in relation to the rescission of the current Designation of Senior Employee and Acting CEO policy.



**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
The Policy will be placed on the City's website	23 <sup>rd</sup> August 2023

**16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**17. URGENT BUSINESS**

Item 7.1 was considered as an item of Urgent Business.

**18. CONFIDENTIAL MATTERS**

Nil

**19. CLOSURE**

The meeting was closed at 7:04pm.

The minutes for the Ordinary Council Meeting held 26 July 2023 were confirmed as a true and correct record on 20 September 2023.

Date: 20 September 2023

Presiding Member:

