



Policy and Legislation Committee

Agenda

Wednesday 13 September 2023



Our Vision

Where environment, lifestyle and opportunity meet

Community Aspirations



KEY THEME 1

Environment

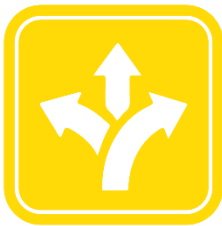
An environment that is valued, conserved and enjoyed by current and future generations.



KEY THEME 2

Lifestyle

A place that is relaxed, safe and friendly, with services and facilities that support positive lifestyles and wellbeing.



KEY THEME 3

Opportunity

A vibrant City with diverse opportunities and a prosperous economy.



KEY THEME 4

Leadership

A Council that connects with the community and is accountable in its decision making.

NOTICE OF MEETING

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday 13 September 2023, commencing at 10:00 am.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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



TONY NOTTLE

CHIEF EXECUTIVE OFFICER

8 September 2023

BEHAVIOUR PROTOCOLS

The City of Busselton values are:

- Listening
- Considered Decision Making
- Appreciation
- Respect
- Teamwork

In accordance with these values, the following outlines the behaviour expectations while attending a Council meeting, Community Access Session, or Public Agenda Presentation:

- Listen respectfully through the meeting or presentation
- Respect the Council process and comply with directions from the Presiding Member
- Use respectful language when addressing Council, staff, and other members of the public
- Behave in a manner that is respectful and non-confrontational
- Do not use offensive language or derogatory language towards others

The City values the diverse input of the community and seeks to ensure that all members of the community can attend a meeting and have their say.

Council members, Committee members and Candidates are bound by the City's Code of Conduct and agree to uphold the values of the City of Busselton and principles of good behaviour, maintaining and contributing to a harmonious, safe, and productive environment.

Anyone who does not behave in accordance with the above values and behaviours may be asked by the Presiding Member to leave the gallery.

CITY OF BUSSELTON

Agenda for the Policy and Legislation Committee to be held on Wednesday 13 September 2023

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1 OFFICIAL OPENING

The City of Busselton welcomes Councillors, staff, guests and members of the public to the Policy and Legislation Committee meeting of 13 September 2023.

The City of Busselton acknowledges the Wadandi and Bibbulmun people as the traditional custodians of this region and pay respects to Elders past and present.

Please note this meeting will be audio recorded for minute taking purposes.

2 ATTENDANCE

3 DISCLOSURES OF INTEREST

DISCLOSURES OF FINANCIAL INTEREST

A declaration under section 5.65 of the *Local Government Act 1995* requires that the nature of the interest must be disclosed. An elected member or employee who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration without the approval of the Council in accordance with the Act.

DISCLOSURES OF IMPARTIALITY INTEREST

Elected members and employees are required, in addition to declaring any financial interest, to declare an interest that might cause or perceive to cause a conflict. If the elected member or employee declares that their impartiality will not be affected then they may participate in the decision-making process.

4 PUBLIC QUESTION TIME

4.1 RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil

4.2 QUESTION TIME FOR PUBLIC

Public question time procedures and guidance

- The City will allocate a minimum of 15 minutes and a maximum of 30 minutes per Council meeting for public question time.
- Members of the public should register their intent to ask a question at a Council meeting by completing and submitting the [Public Question Time form](#) before 4pm the

day prior to the relevant meeting.

- Members of the public will be invited to ask their question in order of registration.
- Questions will be limited to three per person. Additional questions may be permitted by the Presiding Member where time permits.
- Where a person is not present to ask their submitted question it will be responded to administratively as general correspondence.
- Questions may be taken on notice, to be responded to at a later time by the CEO in accordance with clause 6.7 of the Standing Orders.
- Public question time is for the tabling of questions, not for members of the community to make statements. For context, the Presiding Member may allow a short preamble.
- Questions containing defamatory remarks or offensive language, or that question the competency or personal affairs of Elected Members or employees may be ruled inappropriate by the Presiding Member subject to the Presiding Member taking reasonable steps to assist the member of the public to rephrase the question.
- There will be no debate or discussion on the response provided.

For further information, please see the [Meetings, Information Sessions and Decision Making Processes Policy](#).

5 CONFIRMATION AND RECEIPT OF MINUTES

5.1 Policy and Legislation Committee 26 July 2023

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee 26 July 2023 be confirmed as a true and correct record.

6 REPORTS

6.1 Bush Fire Brigades Local Law

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Legal Officer - Briony McGinty
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
Nature of Decision:	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies.
Voting Requirements:	Absolute Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Marked-up Bush Fire Brigades Local Law [6.1.1 - 24 pages] 2. Clean Bush Fire Brigades Local Law [6.1.2 - 24 pages]

OFFICER RECOMMENDATION

That the Council:

1. Resolves to make the *City of Busselton Bushfire Brigades Local Law 2023* in accordance with section 3.12(4) of the *Local Government Act 1995*.
2. Authorises the Chief Executive Officer to carry out the processes required to make the *City of Busselton Bushfire Brigades Local Law 2023* in accordance with section 3.12(5) and section 3.12(6) of the *Local Government Act 1995*.

EXECUTIVE SUMMARY

The Bush Fire Advisory Committee (BFAC) and City Officers have identified a need for a new local law relating to bush fire brigades. This is supported by recent advice from Department of Fire and Emergency Services (DFES) and Western Australian Local Government Association (WALGA) regarding the requirement to establish brigades pursuant to a local law.

Council resolved on 21 June 2023 to initiate the law-making process for the *City of Busselton Bush Fire Brigades Local Law 2023* (Proposed Local Law). The matter is now brought back before Council to enable consideration of the submissions made, and to determine whether to make the Proposed Local Law in accordance with section 3.12(4) of the *Local Government Act 1995* (the Act).

STRATEGIC CONTEXT

The provision of appropriate local laws in relation to bush fire brigades within the City supports good governance of the district, whilst also recognising key partnerships that facilitate a safe community.

BACKGROUND

The City has operated a number of bushfire brigades over many years. The management of those brigades has occurred through a variety of policies as well as requirements under the *Bush Fires Act 1954* (BF Act). At the BFAC meeting on 13 December 2022 a motion was passed to review these

management policies. It was determined by officers upon review that a bush fire brigade local law could replace these policies.

In addition to this, local governments were contacted by both DFES and WALGA regarding the requirement to establish bushfire brigades pursuant to a local law. Separate advice from DFES and WALGA both confirmed that there are certain risks attached to bushfire brigades operating without being established under a local law. However, those risks are minimal in the short term provided a local government had appointed Bush Fire Control Officers (FCOs) in accordance with the BF Act; which the City does.

In addition, the City already has a local law relating to bush fire brigades. However, it was gazetted in 1968 and no longer fit for purpose.

To comply with the BF Act, City officers drafted a local law, based on the WALGA model template. This model is understood to be acceptable to the Joint Standing Committee on Delegated Legislation (JSC) (discussed further under Statutory Environment). In consultation with BFAC, officers have made changes to the model, to achieve a more contemporary local law, as well as ensuring consistency (where feasible) with existing brigade management practices and policies. Following further feedback from the Department of Local Government, Sport and Cultural Industries (DLGSCI) minor textual amendments have been made to the Proposed Local Law, which can be seen in Attachment A.

OFFICER COMMENT

The Proposed Local Law is based on the WALGA model and is consistent with those of many other local governments who have adopted a bush fire brigades local law.

The local law is divided into parts, described further below:

Part 2 – Establishment of Bush Fire Brigades

This part provides that a local government can create brigades. It then lists the positions to which a local government must appoint persons. Following the first AGM of a brigade, those positions are thereafter appointed by the brigade themselves. In a fire ground situation, the chain of command is also established through Part 2, Division 2. This part also incorporates the Rules (at the first Schedule) to be the Rules of each brigade. Existing brigades continue to operate as if they were established under the local law.

Part 3 – Organisation and maintenance of Bush Fire Brigades

The Chief Bush Fire Control Officer (Chief FCO) has primary managerial responsibility for organisation and maintenance of brigades. Brigades must hold annual general meetings and nominate brigade members to serve as the FCO at the Bush Fire Advisory Committee (BFAC). The BFAC then nominates a person for the position of FCO to the local government.

Part 4 – Types of Bush Fire Brigade Membership

The membership types reflect those currently operating within the City's brigades, with the exception of Honorary life member. This has been included within the Proposed Local Law to reflect a motion passed at the BFAC meeting of 13 December 2022 to amend the bush fire brigade management policies to incorporate this membership type.

Part 5 – Appointment Dismissal and Management of Members

Part 5 refers to the Rules (contained in the first Schedule) for dealing with brigade member management.

Part 6 - Equipment of Bush Fire Brigades

Part 6 provides for the making of policies, the provision of equipment and funding requests to the local government.

First Schedule – The Rules

The first schedule outlines the Rules under which the brigades are to operate. This is akin to the rules (or Constitution) of an incorporated association. City officers have spent time with BFAC members in different forums to ensure that the proposed model is fit for purpose for brigades, and in particular those that are currently incorporated. Under section 42A of the BF Act a brigade may be incorporated or otherwise. The registration of some brigade groups as incorporated associations for purposes such as fundraising and community engagement, does not impact on the creation of the brigade by the local government for purposes under the BF Act.

Statutory Environment

Bush Fires Act 1954

Pursuant to section 41(1) of the BF Act, where a local government elects to establish a bushfire brigade, it must do so in accordance with local laws it has made for that purpose.

Section 62 of the BF Act provides a general power to make local laws relating to –

- (a) *the appointment, employment, payment, dismissal, and duties of bush fire control officers; and*
- (b) *the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and*
- (c) *any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.*

Local Government Act 1995

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 make provisions about the organisation, establishment, maintenance, and equipment of bush fire brigades.

Effect: Bush fire brigades are created in accordance with the *Bush Fires Act 1954*.

Local public notice must be given by advertising the Proposed Local Law in accordance with the requirements of sections 3.12(3) of the 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 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

There are a number of City policies relating to bush fire brigades. These policies will continue to operate in the short term. However, should the local law be adopted, these policies will be superseded and will be presented to Council for repeal.

Financial Implications

Costs associated with the advertising and gazettal of the local law will come from the legal budget. These costs are unlikely to exceed \$2,000. Making and implementing the local law should not have any other financial implications for the City.

External Stakeholder Consultation

The Proposed Local Law was advertised publicly in local newspapers, on the City's website, on social media and on public notice boards for a minimum of 6 weeks in accordance with the requirements under section 3.12(3)(a) of the Act.

In accordance with section 3.12(3)(b) of the Act a copy of the Proposed Local Law was forwarded for consideration and comment to the Minister for Local Government and the Minister for Emergency Services.

The DLGSCI responded on behalf of its Minister and made some minor editing suggestions which have been incorporated in the proposed draft before Council. DFES responded on behalf of its Minister

The consultation period did not result in any public submission being received, despite being advertised through a number of platforms including Facebook, City Connect and Your Say. It should be noted that prior to the public advertising City officers undertook extensive consultation with BFAC, as outlined in the prior report to Council. The version of the local law presented to Council was developed in collaboration with BFAC local law working group members.

The local law was again considered by the whole of BFAC at its meeting 13 June 2023 where updates as to its progress through the local-law-making process was provided.

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.

Under the BF Act the City is required to adopt a bush fire brigades local law to ensure its brigades are properly established and brigade officers are properly appointed and empowered. The Officer Recommendation serves to mitigate the currently identified risk of bushfire brigades not being correctly established under the BF Act. Referring to the WALGA summary of advice, in the short term, the City has a local law (under which brigades are established) and also appoints FCOs pursuant to the BF Act; but the longer-term risks need addressing.

Section 3.16 of the Act requires that all local laws of local governments must be reviewed within an 8-year period after their commencement to determine if they should remain unchanged or be repealed or amended. Since the Act came into force in 1996 there have been no amendments made to the City's existing local law relating to bushfire brigades.

There are a number of inconsistencies between the existing local law and the WALGA model and established brigade practices. Continuing to have management practices for brigades that conflict with the existing local law is a risk. As such officers consider it prudent to make a local law which is consistent with the WALGA model and in keeping with modern practices.

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. Further, if any changes are of a significant nature the local law would need to be re-advertised.

CONCLUSION

It is recommended that the Council makes the Proposed Local Law at Attachment B and authorises the CEO to carry out the actions required to give effect to that resolution.

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
Gazettal of Local Law	Within 1 month of adoption
Provision of required material to the JSC	Within 10 days of gazettal
Placement of Local Law on website	14 days after gazettal

6.2 Council Policy Review - Compliance and Enforcement Policy

Strategic Theme:	Key Theme 1: Environment 1.1 Ensure protection and enhancement of environmental values is a central consideration in land use planning Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Manager Legal and Property Services - Ben Whitehill
Authorised By:	Director of Corporate Strategy and Performance - Sarah Pierson
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Compliance Policy [6.2.1 - 3 pages] 2. Ranger and Emergency Services - Approach to Regulatory Functions Policy [6.2.2 - 2 pages] 3. Proposed Compliance and Enforcement Policy [6.2.3 - 5 pages]

OFFICER RECOMMENDATION

That the Council:

1. Rescind the following Council policies:
 - a. Compliance Policy (Attachment 1)
 - b. Ranger and Emergency Services – Approach to Regulatory Functions Policy (Attachment 2)
2. Adopt the Compliance and Enforcement Policy (Attachment 3).

EXECUTIVE SUMMARY

Council's Compliance Policy was adopted in September 2018 and last amended in May 2020. Council's Ranger and Emergency Services – Approach to Regulatory Functions Policy was last amended in December 2018. This report recommends that both policies be rescinded and be replaced with the proposed Compliance and Enforcement Policy.

STRATEGIC CONTEXT

Council policies are an important part of the City's governance systems. They guide the direction of the organisation in line with the community vision and aspirations. The proposed Compliance and Enforcement Policy aligns with the City's strategic goal to deliver governance systems that facilitate open, ethical and transparent decision making,

BACKGROUND

The City has two policies relating to compliance and enforcement being the Compliance Policy and Ranger and Emergency Services – Approach to Regulatory Functions Policy. Both policies are due for review with the City's Policy Framework setting out an ongoing cycle of policy review, with policies to be reviewed at least once every 3 years.

OFFICER COMMENT

Officers have reviewed the Compliance Policy and Ranger and Emergency Services – Approach to Regulatory Functions Policy. After undertaking that review it is proposed that both policies be rescinded and replaced with a new Compliance and Enforcement Policy (Attachment 3). This approach has been recommended to consolidate the themes contained in both existing policies, as well as to provide clearer and more structured guidance.

The new Compliance and Enforcement Policy sets out in broad terms (amongst other things):

1. The principles guiding the City's compliance and enforcement activities;
2. How the City determines its compliance priorities;
3. How the City monitors compliance and handles complaints;
4. The types of enforcement tools the City has its disposal and how it selects the appropriate tool; and
5. How the City publishes enforcement actions and outcomes.

It is envisaged that operational practices, work processes and guidelines will be developed by the relevant business units to assist with implementation of the Compliance and Enforcement Policy.

Statutory Environment

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

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

Relevant Plans and Policies

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

Plan:

Not applicable.

Policy:

[Compliance](#)

[Ranger and Emergency Services – Approach to Regulatory Functions](#)

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 choose not to rescind the existing policies and not to adopt the Compliance and Enforcement Policy. Council could also seek amendments to the Compliance and Enforcement Policy.

CONCLUSION

It is recommended that Council rescind the Compliance Policy and Ranger and Emergency Services – Approach to Regulatory Functions Policy. It is also recommended that Council adopt the Compliance and Enforcement Policy at Attachment 3.

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
Update website to remove rescinded policies and include new policy	30 October 2023

6.3 Council Policy Review - Portable Advertising Signs in Public Places

Strategic Theme:	Key Theme 1: Environment 1.1 Ensure protection and enhancement of environmental values is a central consideration in land use planning Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Planning and Development Services
Reporting Officer:	Manager Regulatory Services - Rachel Runco
Authorised By:	Director Planning and Development Services - Paul Needham
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Council Policy Portable Advertising Signs [6.3.1 - 5 pages]

OFFICER RECOMMENDATION

That the Council readopt the Portable Advertising Signs in Public Places Policy (Attachment 1).

EXECUTIVE SUMMARY

Council Policy: Portable Advertising Signs in Public Places (the Policy) was adopted in May 2018 and last amended in March 2019. This report recommends that Council readopt this policy with no substantive amendments and noting that a further review will be undertaken to coincide with review of the City's Activities in Thoroughfares & Public Places & Trading Local Law 2015.

STRATEGIC CONTEXT

Council policies are an important part of the City's governance systems. They guide the direction of the organisation in line with the community vision and aspirations. The Portable Advertising Signs in Public Places Policy aligns with the City's strategic goal to deliver governance systems that facilitate open, ethical and transparent decision making,

BACKGROUND

The Council endorsed the Policy in its current format on 12 March 2019 . The Policy was developed as a means of providing a regulatory framework for the design and placement of portable advertising signs within the City of Busselton. The policy, underpinned by the Activities in Thoroughfares and Public Places and Trading Local Law 2015 (the Local Law), is intended to provide clear direction to local business as to where they can display portable advertising signs, the types of signs requiring a permit, and the restrictions with regard to the number of signs and the times they may be displayed.

OFFICER COMMENT

The regulation of portable signs is governed by the Local Law which currently requires permits for the placement of certain signs, while other signs are exempt. The policy guides decision-making around the issue of permits for those signs requiring authorisation.

Officers have reviewed the Policy and consider it provides sufficient direction to the community as to the circumstances where portable advertising signage may be displayed within the district, along with clarity on where a permit may be required and the circumstances in which signs may be removed from public places (if displayed contrary to the Local law or this Policy).

The City is contemplating exempting certain signage from the requirement to obtain a permit under the Local Law. The Local Law is the next local law due for review under the City's local law review program. It is likely that an amended local law will be presented to Council for consideration towards the end of this year.

It is acknowledged that practical implementation and prioritisation of ensuring compliance with this policy has varied over the life of the policy, however without a policy there is no ability outside the broad controls within Part 3 of the Local Law to manage portable signage.

The only edit to the Policy is the layout of the Strategic Context section, to align it to the updated policy template.

Statutory Environment

Council is the governing body of a local government and is responsible under s 2.7(2)(b) of the *Local Government Act 1995* for the performance of local government functions, including by determining the local government's policies.

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

Pursuant to clause 3.2 of the *Activities in Thoroughfares and Public Places and Trading Local Law 2015*:

- (1) *A person shall not without a permit, erect, place or maintain an advertising sign:*
 - a. *on or above a thoroughfare;*
 - b. *on a path;*
 - c. *over a path where the resulting vertical clearance between the sign and the path is less than 2.5 metres (s.45B of the Building Regulations 2012 requires a vertical clearance of 2.75 metres and supercedes this sub-clause of the Local Law);*
 - d. *in any location where the sign is likely to obstruct line of sight along a thoroughfare or cause danger to the person using the thoroughfare; or*
 - e. *on any natural feature including a rock or tree on a thoroughfare, or on any bridge or the structural approaches to a bridge;*
- (2) *Notwithstanding subclauses (1) and (2), a permit is not required in respect of a home open sign or a garage sale sign provided that:*
 - a. *the sign neither exceeds 500mm in height or 0.5m² in area;*

- b. *the sign is placed or erected on a thoroughfare no more than half an hour prior to the garage sale or home open and is removed within half an hour of the close of the garage sale or home open; and*
- c. *there is no more than one garage sale or home open sign at any road intersection and no more than six separate signs which delineate not more than two alternative routes to the home open or garage sale.*

Relevant Plans and Policies

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

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 choose not to readopt the Policy or to seek amendments to the Policy

CONCLUSION

It is recommended that Council readopt the Policy in its current format as it provides guidance and a clear framework for the management of portable advertising signs within the municipal area.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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

Milestone	Completion Date
Update policy framework	30 October 2023

6.4 **Proposed Local Planning Policy: Identification of Complex Development Applications - Consideration for Final Adoption after Advertising**

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Planning and Development Services
Reporting Officer:	Director Planning and Development Services - Paul Needham
Authorised By:	Director Planning and Development Services - Paul Needham
Nature of Decision:	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Proposed Policy [6.4.1 - 2 pages]

OFFICER RECOMMENDATION

That the Council, pursuant to clauses 3 and 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, proceeds with Local Planning Policy: Complex Development Applications (Attachment 1) without modification.

EXECUTIVE SUMMARY

The Council is asked to consider adopting for final approval a new local planning policy (Policy) that will identify, in addition to what is set out in State level regulation, the scope of development applications to be identified as “complex applications”. At the June 2023 ordinary meeting, the Policy was adopted as a draft for advertising. During the advertising period no submissions were received.

Complex applications must be advertised for public comment before being determined, and the breadth and duration of the advertising process is longer than is the case for non-complex applications. The aim of the Policy is to ensure that applications that are likely to be of significant community interest and/or strategic importance would be subject of longer and broader advertising/consultation processes than would be the case in the absence of the policy.

STRATEGIC CONTEXT

Strategic Priority 4.2 of the *Strategic Community Plan 2021-2031* is that the City deliver governance systems that facilitate open, ethical and transparent decision making. It is considered the Policy, if finally adopted as recommended, would help ensure that the community is better able to contribute to consideration of strategically significant development applications, helping facilitate open decision making.

BACKGROUND

The Council is asked to consider adopting the Policy (as at Attachment 1) for final approval. Doing so would mean that, in addition to those set out in State level regulation, the scope of development applications to be identified as 'complex applications' would be expanded. State level regulation only identifies what are known as 'use-not-listed' applications as complex applications.

A use-not-listed is as set out in clause 3.4.2 of the City of *Busselton Local Planning Scheme No. 21* ('Scheme'), and arises where an application is;

"in respect of a use that is not specifically referred to in the zoning table and...cannot reasonably be determined as falling within a use class referred to in the zoning table".

Applications for uses-not-listed are quite unusual and very small in number, with perhaps the key example in the City of Busselton being display homes or display home villages.

State level regulation does, however, explicitly allow local governments to adopt local planning policies that identify other types or forms of applications as complex applications. That is set out in part (b) of the definition of complex application. That definition forms part of clause 1 ('terms used') of Schedule 2 (the 'Deemed Provisions') of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations'). The Deemed Provisions are incorporated into all local government town planning schemes in Western Australia and, in the event of any conflict between the Deemed Provisions and a local government town planning scheme, the Deemed Provisions prevail.

Where an application is identified as a complex application, it must be advertised for a period of 28 days, and must be advertised by:

- (1) the publication of a notice on the City's website;
- (2) by giving notice to owners and occupiers of land in the vicinity of the site; and
- (3) by the placement of a sign on the site.

Where an application is not a complex application, if it needs to be advertised, it can only be advertised for a period of 14 days and does not need to be advertised through all three means. Note that non-complex applications can be advertised for longer periods, but only with the agreement of the applicant.

Both complex and other applications can also be advertised in other ways, such as through advertising in a newspaper, or through notices on social media. It should be noted that applications of a single residential nature, including outbuildings, that require discretion around matters such as setbacks, are usually only advertised through the sending of a notice to potentially affected neighbours, and are not advertised more broadly.

OFFICER COMMENT

As set out in the report considered by the Council in June 2023, it is considered that, where an application has the potential to be of significant community interest or strategic importance, an advertising period of greater than 14 days is appropriate – with the 28 day period for complex applications being seen as a more appropriate period. It is also considered appropriate that such applications are not only advertised through the sending of notices to the owners and occupiers of land in the vicinity. It is considered that such applications should be advertised more broadly,

providing greater opportunity for others in the community to become aware of the application and make submissions.

The rationale for the Policy was set out in more detail in the report considered by the Council in June and, as no submissions were received during the advertising period, there is not seen to a need to further outline or reflect on that rationale or the details of the Policy at this time.

Statutory Environment

The officer recommendation supports the general function of a local government under the *Local Government Act 1995* to provide for the good government of persons in its district. The report considered by the Council in June 2023 also set out key, more specific statutory environment relevant to consideration of the Policy.

Relevant Plans and Policies

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

Plan:

Not applicable.

Policy:

[Community Engagement](#)

Financial Implications

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

External Stakeholder Consultation

The Policy was advertised through the placement of a notice in the newspaper and the publication of information on the City's website. The open period for submissions was 28 days. No submissions were received. It should be noted that it had been intended that correspondence would be sent to key community stakeholder groups (e.g. PGLOA, DDPA) during the advertising period, but that did not occur. Rather than deferring consideration of the Policy at this time so that can occur, it is seen as preferable that the City engage with such groups after a final decision by the Council, and bring back a report to amend the Policy if significant issues are identified as a result of that engagement.

Risk Assessment

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

Options

As an alternative to the proposed recommendation the Council could not adopt the Policy.

CONCLUSION

It is considered that the Policy, if adopted, will help ensure that applications that are likely to be of significant community interest and/or strategic importance would be subject of longer and broader

advertising/consultation processes than would be the case in the absence of the policy. That is considered appropriate and, as such, it is recommended that the Council finally adopt the 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
Advertising of final adoption of Policy	15 October 2023

6.5 Various Council Policy Reviews - Environment, Investment, Loan Facilities, Payment and Presentations on Termination, Misconduct, Fraud and Corruption

Strategic Theme:	Key Theme 4: Leadership 4.4 Govern a professional organisation that is healthy, capable and engaged.
Directorate:	Finance and Corporate Services
Reporting Officer:	Director of Corporate Strategy and Performance - Sarah Pierson
Authorised By:	Director of Corporate Strategy and Performance - Sarah Pierson
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Proposed Council Policy Environment Policy [6.5.1 - 2 pages] 2. Proposed Council Policy Investment [6.5.2 - 3 pages] 3. Proposed Council Policy Loan Facilities [6.5.3 - 3 pages] 4. Proposed Council Policy Payments and Presentat [6.5.4 - 3 pages] 5. Proposed Council Policy Misconduct Fraud and Corru [6.5.5 - 2 pages] 6. Council Policy Environment Policy track changes [6.5.6 - 2 pages] 7. Council Policy Investment track changes [6.5.7 - 3 pages] 8. Council Policy Loan Facilities track changes [6.5.8 - 3 pages] 9. Council Policy Payments and Presentations on Termination track changes [6.5.9 - 3 pages] 10. Council Policy Misconduct Fraud and Corruption track changes [6.5.10 - 2 pages]

OFFICER RECOMMENDATION

That the Council adopts the following policies to replace the current council policies, with the policies having been reviewed as part of the City's ongoing policy review cycle:

1. Environment (Attachment 1)
2. Investment (Attachment 2)
3. Loan Facilities (Attachment 3)
4. Payment and Presentation on Termination (Attachment 4)
5. Misconduct, Fraud and Corruption (Attachment 5)

EXECUTIVE SUMMARY

This report presents five amended Council Policies (the Policies) (Attachments 1 to 5), each having been reviewed as part of the City's ongoing review of its Council policies. Officers recommend the Policies replace the current Council policies.

STRATEGIC CONTEXT

The regular review of Council policies ensures strategic guidance remains relevant and appropriate and aids in the good governance of the City.

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 policies to be reviewed every 3 years, with the aim of determining the ongoing strategic importance and applicability of the policy.

OFFICER COMMENT

The Policies have been reviewed and are considered of ongoing relevance and strategic importance. Minor changes have been made to the Policies to clarify their purpose and improve their readability, as well as update any terms and references used. The strategic context linkage has also been updated in the Investment and Loan Facilities policies.

In the Payment and Presentations on Termination policy and the Investment policy definitions considered unnecessary have been removed. Additionally in the Payment and Presentations on Termination policy reference to Senior Employees (as per 5.37 of the *Local Government Act 1995*) has been removed, with the City no longer designating any positions as Senior Employees. The scope has therefore been amended to exclude the Chief Executive Officer.

Track changes versions are provided at Attachments 6 to 10.

With respect to the Misconduct, Fraud and Corruption policy, it is noted that the City intends to develop a Misconduct, Fraud and Corruption Strategy / Plan over the course of the 2023/2024 financial year, as per the findings of the recently conducted Regulation 17 review. Development of supporting plans and strategies has not been prioritised to date given other work demands.

With respect to the Environment policy, the City (as per the recent Organisational Review) will be recruiting over the next few months a dedicated Manager, Parks and Environment. This position will undertake a review of the City's Environment Strategy and any supporting plans and strategies. It is recommended that, outside of the Environment Strategy, reference to other specific supporting documents are removed from the policy content and retained in related documentation only.

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:

Not applicable.

Policy:

Not applicable, outside of the policies being reviewed.

The officer recommendation aligns to the City's Policy Framework. The framework sets out the intent of Council policies, as opposed to operational documents such as operational practices and work procedures.

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 not to adopt the Policies or require further amendments to be made.

CONCLUSION

The Policies have been reviewed as part of the City's ongoing review of its Council policies are recommended for approval, with minor edits and updates having been made.

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
Policies placed on Council website	30 October 2023

6.6 Annual Statutory Review of Delegated Authority

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Director of Corporate Strategy and Performance - Sarah Pierson
Authorised By:	Director of Corporate Strategy and Performance - Sarah Pierson
Nature of Decision:	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations.
Voting Requirements:	Absolute Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. City-of- Busselton- Register-of- Delegated- Authority- Council-to- CEO Draft Review [6.6.1 - 53 pages]

OFFICER RECOMMENDATION

That the Council adopts the City of Busselton Delegations of Authority as per Attachment A and as outlined in the table below:

DELEGATION	CHANGES
<i>Local Government Act 1995</i>	
DA 1 – 01 Issuing Notices	No change
DA1 – 02 Entry in an Emergency	No change
DA 1 – 03 Abandoned Vehicle Wreck	No change
DA 1 – 04 Confiscated or Uncollected Goods	No change
DA 1 – 05 Closure of Thoroughfares	No change
DA 1 – 07 Inviting, Rejecting and Accepting Tenders	No change
DA 1 – 08 Expression of Interest for Goods and Services	No change

DELEGATION	CHANGES
DA 1 – 10 Panels of Pre-Qualified Suppliers	No change
DA 1 – 11 Amendments to the Consolidated Parking Scheme	Deleted
DA 1 – 12 Disposing of Property (Leases at the Busselton Margaret River Airport)	Functions expanded for completeness and clarity from s.3.58 to 3.58(2) and 3.58(3).
DA 1 – 13 Dispose of Sick or Injured Animals	No change
DA 1 – 14 Power to Defer, Grant Discounts, Waive or Write-Off Debts	No change
DA 1 – 15 Rates and Service Charges	No change
DA 1 – 16 Investment of Surplus Funds	No change
DA 1 – 19 Urgent Legal Representation	Function description added.
DA 1 – 20 Administer Local Laws	No change
DA 1 – 21 Acquisition of Property	Function expanded to better describe the function being delegated
DA 1 – 22A Disposition of Property: Other than by Lease	No change
DA 1 – 22B Disposition of Property: Leasing of Property	Title and conditions amended to remove reference to licence (unless issued in conjunction with a lease), reflecting that a licence is not a disposition of property. Additionally, terminology amended to better align with the Act.
DA1 – 22C Disposition of Residential Property by Lease	New delegation As approved by Council 16 August 2023 (C2308/79)

DELEGATION	CHANGES
DA 1 – 23 Payments from Municipal Fund or Trust Fund	No change
DA 1 – 24 Affixing of the Common Seal	No change
DA 1 – 25 Complaints Officer – Code of Conduct	Express power or duty delegated refined to the relevant statutory power.
DA 1 - 26 Rate Exemptions	Function expanded to better describe the function being delegated.
<i>Building Act 2011</i>	
DA 2 – 01 Grant a Building Permit	Function expanded to better describe the function being delegated
DA 2 – 02 Demolition Permits	Function expanded to better describe the function being delegated
DA 2 – 03 Occupancy Permits and Building Approval Certificates	Function expanded to better describe the function being delegated
DA 2 – 04 Designate Employees as Authorised Persons	No change
DA 2 – 05 Building Orders	No change
DA 2 – 06 Inspection and Copies of Building Records	Function expanded to better describe the function being delegated
DA 2 – 07 Referrals and Issuing Certificates	Function expanded to better describe the function being delegated
DA 2 – 08 Private Pool Barriers – Alternative and Performance Solutions	Function expanded to better describe the function being delegated
DA 2 – 09 Smoke Alarms – Alternative Solutions	No change

DELEGATION	CHANGES
DA 2 – 10 Appoint Approved Officer	New delegation To cover the appointment of an approved officer under r.70 of the Building Regulations 2012 for the purposes of sections 6(a) and (b) of the <i>Criminal Procedure Act 2004</i> .
<i>Bushfires Act 1954</i>	
DA 3 – 01 The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	No change
DA 3 – 02 Appointment of Bush Fire Control Officers	No change
DA 3 – 03 To Institute a Prosecution, or to Issue an Infringement	No change
DA 3 – 04 Variation of Prohibited and Restricted Burning Times	Functions expanded for completeness and clarity from s.17 and s.18 to s.17 (7) (8) and s.18 (5). Additional condition added referencing requirement to comply with requirements of s.18 (5B) when using powers under s.18 (5).
<i>Cat Act 2011</i>	
DA 4 – 01 The Powers and Duties of the Local Government pursuant to the Cat Act 2011	No change
<i>Dog Act 1976</i>	
DA 5 – 01 The Powers and Duties of the Local Government pursuant to the Dog Act 1976	No change
<i>Graffiti Vandalism Act 2016</i>	
DA 6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	No change

DELEGATION	CHANGES
<i>Planning and Development Act 2005</i>	
DA 7 – 01 Development Control	Updated to reflect Council decision 16 August 2023 (C2308/90)
DA 7 – 02 Unauthorised Development	No change
<i>Strata Titles Act 1985</i>	
DA 8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	Deleted. No longer applicable.
<i>Local Government Act 1995</i> - Delegations to Committees	
DA 11 – 01 Meelup Regional Park Management Committee	No change
DA 11 – 02 Audit and Risk Committee	No change
DA 11 – 03 Behaviour Complaints Committee	No change

EXECUTIVE SUMMARY

The *Local Government Act 1995* (the Act) requires all delegations of authority to the CEO under the Act to be reviewed by the delegator at least once every financial year. Additionally, delegations made under the *Cat Act 2011* and the *Dog Act 1976* are required to be reviewed once every financial year. This review is to fulfil those requirements.

Delegations made under the *Planning and Development Act 2005*, *Building Act 2011* and the *Bushfire Act 1954* do not require an annual review, however, officers have reviewed the existing delegations. Delegations under the *Food Act 2008* and the *Public Health Act 2016* are not included in this review and will be reported separately.

STRATEGIC CONTEXT

Delegations of authority are an integral part of the City's governance functions, and are an effective and efficient means of carrying out the functions or discharging the duties of the local government, allowing Council to remain strategically focused.

BACKGROUND

Delegations of authority allow 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.

Section 5.46(2) of the Act requires all delegations by Council to the CEO to be reviewed at least once each financial year. The last review was undertaken and adopted by Council in December 2022 (C2212/315), on recommendation from the Policy and Legislation Committee. This was slightly later than in previous years, with the 2021 review adopted by Council in October 2021.

OFFICER COMMENT

This report details the outcomes of the 2023/2024 review and seeks Council's endorsement of the continuing, new and amended delegations of authority, with recommended changes to delegations outlined in the following table.

There are two delegations proposed for deletion and two new delegations, one already approved by Council. All other delegations are recommended to remain unchanged.

Local Government Act 1995	
DELEGATION	CHANGES
DA 1-25 Complaints Officer – Code of Conduct	Express power or duty delegated refined to the relevant statutory power, noting the Council resolution in relation to the initial delegation authorisation.
DA 1-26 Rate Exemptions	Function expanded to better describe the function being delegated.
DA 1-11 Amendments to the Consolidated Parking Scheme	Delegation Removed. The Joint Standing Committee on Delegated Legislation disallowed the previous clause 1.10 of the Parking Local Law that allowed the 'local government' to effectively amend the Consolidated Parking Scheme. The Local Law requires the Council to by resolution.
DA1-12 Disposing of Property (Leases at the BMRA)	Functions expanded for completeness and clarity from s.3.58 to 3.58(2) and 3.58(3).
DA1-19 Urgent Legal Representation	Function description added.
DA1-21 Acquisition of Property	Function expanded to better describe the function being delegated
DA1-22B Disposition of Property: Leasing of Property	Title and conditions amended to remove reference to licence (unless issued in conjunction with a lease), reflecting that a licence is not a disposition of property as it does not dispose of an interest. Additionally, the term property replaces land and buildings to align with the Act, and condition 3 and 4 have been amended to refer to the value and term of the 'disposition' as opposed to value and term of the 'lease or licence'.
DA1-22C Disposition of Residential Property by Lease	New delegation As approved by Council 16 August 2023 (C2308/79)

<i>Building Act 2011</i>	
DELEGATION	CHANGES
DA2-01 Grant a Building Permit	Section 18 function expanded to better describe the function being delegated
DA2-02 Demolition Permits	Section 18 function expanded to better describe the function being delegated
DA2-03 Occupancy Permits and Building Approval Certificates	Section 55 function expanded to better describe the function being delegated
DA2-06 Inspection and Copies of Building Records	Function expanded to better describe the function being delegated
DA2-07 Referrals and Issuing Certificates	Function expanded to better describe the function being delegated
DA2-08 Private Pool Barriers – Alternative and Performance Solutions	Function expanded to better describe the function being delegated
DA2-10 Appoint Approved Officer and Authorised Officers	New Delegation. Delegation to cover the appointment of an approved officer under r.70 of the Building Regulations 2012 for the purposes of sections 6(a) and (b) of the Criminal Procedure Act 2004. While the CEO has the power to authorise employees under s.9.10 and s.9.16 of the Local Government Act 1995 (a precedent to them being appointed under r.70 of the Building Regulations) advice from WALGA indicates it is safer to delegate the power under r.70 to the CEO to carry out the next step of the process under r.70.

<i>Cat Act 2011</i>	
DELEGATION	CHANGES
N/A	No Change

<i>Dog Act 1976</i>	
DELEGATION	CHANGES

N/A	No Change
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Bushfires Act 1954

DELEGATION	CHANGES
DA3-04 Variation of Prohibited and Restricted Burning Times	Functions expanded for completeness and clarity from s.17 and s.18 to s.17 (7) (8) and s.18 (5). Additional condition added referencing requirement to comply with requirements of s.18 (5B) when using powers under s.18 (5).

Planning and Development Act 2005

DELEGATION	CHANGES
DA7-01 Development Control	Updated to reflect Council decision 16 August 2023 (C2308/90)

Strata Titles Act 1985

DELEGATION	CHANGES
DA8-01 Certificate of Approval pursuant to the Strata Titles Act 1985	Delegation removed. An amendment to the Strata Titles Act in 2019/2020 deleted a previous section 25 – which this delegation originally referred to – which related to the WAPC providing Certificates of Commission. That function no longer exists. The current section 25 of the Strata Titles Act relates to the approval by the local government of leases creating temporary common property for a term exceeding the period prescribed by regulations. There is however no power of delegation for local governments under the Strata Titles Act, and therefore this delegation is not valid. It is also worth noting that this is not a power City officers have required exercising of.

Statutory Environment

Section 5.42 of the Act provides the Council with the ability to delegate powers and duties to its CEO. 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 5.16 of the Act provides the ability for powers and duties to be delegated to Committees.

Section 44 of the *Cat Act 2011* provides the power for the CEO to delegate the exercise of its functions and discharge of its duties to the CEO.

Section 10AA of the *Dog Act 1976* provides Council with the ability to delegate powers and duties to the CEO.

The *Local Government Act 1995*, the *Cat Act 2011* and the *Dog Act 1976* require the review of delegations at least once every financial year.

Relevant Plans and Policies

Policies have been referenced in the delegations where 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 may choose:

1. Not to accept proposed amendments to the delegations; or
2. To request that further amendments are made to the delegations.

CONCLUSION

The annual statutory review has been completed and it is recommended that Council adopt the proposed, continuing and amended delegations as per the Officer Recommendation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
The Delegation of Authority Register will be amended within 2 weeks of Council's adoption	31 October 2023

7 CONFIDENTIAL MATTERS

Nil

8 NEXT MEETING DATE

9 CLOSURE