

ITEMS FOR DEBATE
COUNCIL MEETING 18 OCTOBER 2023

ADOPTION BY EXCEPTION RESOLUTION

RECOMMENDATION

That the Committee Recommendations for items 10.1, 10.3, 10.4, 10.5, 10.6, 10.9 and 10.10 and the Officer Recommendations for items 11.1, 11.3, 11.4, 12.1, 13.1, 14.2 and 15.1 be adopted en bloc:

10.1	Audit and Risk Committee - 13/09/2023 - CEO Review of Systems and Procedures (REG 17) - Update on Recommendations
10.3	Policy and Legislation Committee - 13/09/2023 - Council Policy Review - Compliance and Enforcement Policy
10.4	Policy and Legislation Committee - 13/09/2023 - Council Policy Review - Portable Advertising Signs in Public Places
10.5	Policy and Legislation Committee - 13/09/2023 - Proposed Local Planning Policy: Identification of Complex Development Applications - Consideration for Final Adoption after Advertising
10.6	Policy and Legislation Committee - 13/09/2023 - Various Council Policy Reviews - Environment, Investment, Loan Facilities, Payment and Presentations on Termination, Misconduct, Fraud and Corruption
10.9	Finance Committee - 4 October 2023 - List of Payments Made
10.10	Finance Committee - 4 October 2023 - Monthly Financial Report - Year to Date 31 August 2023
11.1	Proposed Amendment 57 To Local Planning Scheme No. 21 - Lots 1 (No 45A) and 2 (No 45B) Clydebank Avenue West Busselton
11.3	Application for Development Approval - DA23/0359 – Holiday Home (Single House) 8 People – Lot101 (18) Eagle Crescent, Eagle Bay
11.4	Bushfire Notice Review
11.6	Application for Development Approval (DA23/0434) - Single House (Outbuilding) - Lot 6 (4) Wilson Avenue Quindalup <i>Supplementary Agenda</i>

12.1	RFT 12/23 Jalbarragup Rd Shoulder Widening
13.1	Relinquish management over portion of Holgate Reserve 41550
14.2	Recognition of Nina Kennedy
15.1	Councillors Information Bulletin

ITEMS TO BE DEALT WITH BY SEPARATE RESOLUTION

Item No.	Item Title	Reason
10.2	Policy and Legislation Committee - 13/09/2023 - Bush Fire Brigades Local Law	Absolute Majority Required Disclosure of Interest Cr Phill Cronin
10.8	Finance Committee – 04/10/2023 – Budget Amendment – Reserve Closures	Absolute Majority Required
11.5	Surf Lifesaving Services 2023/24 Season	Absolute Majority Required

ITEMS FOR DEBATE

<p>Item No. 10.7</p>	<p>Annual Review of Statutory Delegated Authority</p>	<p>Pulled by Cr Henley Absolute Majority Required</p>	<p>Page 37</p>
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ALTERNATIVE RECOMMENDATION

That the Council adopts the City of Busselton Delegations of Authority as per the Committee Recommendation, with the exception of delegation *DA 7 – 01 Development Control* which be amended as set out below:

Delete the current condition 2:

2. 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 the Council for determination, unless the application has been approved under delegated authority.

Replace the current condition 2 with the following new condition:

2. Applications in Special Character Areas requiring the exercise of discretion

- a. All applications for development approval affecting land within the Special Character Areas, as identified in Schedule 4 of the Scheme, will be identified in a separate table within the summary of applications received and published on the City's website pursuant to Condition 7.
- b. Prior to determination of applications for development approval affecting land within the Special Character Areas, as identified in Schedule 4 of the Scheme, a summary of the application, outlining key areas of discretion and issues raised in any submissions received, shall be provided to Councillors, and a decision shall not be made to determine the application until at least seven full days has elapsed. This information shall generally be provided in the form of a weekly summary, including all relevant applications that have been assessed and which are considered ready for determination at the time the weekly summary is prepared.
- c. If a Councillor would like to be briefed on an application, they will contact the CEO or the CEO's nominee/s.
- d. Note, additionally officers shall pro-actively identify applications which may be of significant community interest, and bring those applications to the monthly development application briefing update required pursuant to Condition 7 and/or to the Council for determination.
- e. Further note that, if and when Amendment 56 to Local Planning Scheme 21 is Gazetted, the Council shall review whether conditions related to the exercise of delegations in Special Character Areas are necessary (in particular, that reflects the

fact that Amendment 56 proposes that discretion would be able to be exercised in relation to development controls specifically contained within Schedule 4).

Note: The CEO may nominate the Director, Community Planning, or Manager, Planning Development as their nominee for the purpose of parts c above.

REASONS FOR ALTERNATIVE

The alternative recommendation sets out steps to be taken when considering items currently precluded from discretionary decisions, which may change subject to Amendment 56 being gazetted.

The alternative honours an undertaking by Council in initiating Amendment 56 that any discretion introduced under the Special Character Areas, and in particular those under schedule 4, is transparent and visible to Council and the community.

The alternative recognises the time limitations of both the potential gazetting of Amendment 56 and the imminent preparation of a new Local Planning Scheme.

OFFICER COMMENT

It is considered that the experience of the last two months' meetings has shown that the majority of applications where discretion is involved do not generate significant community interest, and do not need to come to the Council for determination.

It is considered that the proposed change will identify applications that generate significant interest and allow them to come to the Council for determination, whilst allowing other applications to be determined under delegation. That would have significant benefits in terms of workload for the City and turnaround times for applicants, whilst still seeing applications of significant community interest come to the Council for determination.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations* 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

Item No. 11.2	Development Application - DA20/0437.01 - Industry - Extractive - 157 Haag Road, Yelverton	Pulled by Cr Cox	Page 73
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ALTERNATIVE RECOMMENDATION

That the Council determines:

- A. That application DA20/0437.01 submitted for 'Amendment to Development Approval - Industry – Extractive' (sand) at Lot 75 (157), Haag Road, Yelverton is considered by the Council to be generally consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.
- B. That the conditions of Development Approval for the proposal referred to in (A) above be amended as follows –

GENERAL CONDITIONS

1. The development hereby approved is permitted to operate over a period of **two five** years from the date of **this the original** decision notice. ~~issued by the City on 6 May 2022.~~ The site must be fully rehabilitated in accordance with the approved Closure and Rehabilitation Plan dated 1 October 2021 before the expiry date of this development approval.
2. The owner must ensure that the development hereby approved is undertaken in accordance with the approved plans, which are as follows, and any plans approved pursuant to other conditions of approval:
 - 2.1 Staging Plan with existing contours and maximum seasonal groundwater levels; and
 - 2.2 Concept Final Contour Plan; and
 - 2.3 Conservation Covenant Areas Plan dated 16 November 2021; and
 - 2.4 Operations Environment Management Plan dated 16 November 2021 (OEMP 2021); and
 - 2.5 Social Impact Assessment dated 16 November 2021 (SIS 2021); and
 - 2.6 Closure and Rehabilitation Plan dated 1 October 2021.

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 DEVELOPMENT CONDITIONS:

3. The development hereby approved, or any works required to implement the development, shall not commence until the owner/applicant has applied for, and obtained, a Permit to Commence certificate from the City. The following plans/details are to be submitted to and approved by the City prior to requesting the issue of a Permit to Commence:
 - 3.1 Details validating the water supply available for dust suppression to implement the approved dust management plan **and the dust management plan being amended to include a water truck available on site to wet down Haag Road to suppress dust.**

- 3.2 Details of the proposed crossover. The location / construction of the crossover shall be agreed to by the City and shall ensure that adequate sightlines are achieved.**
- 3.3 Details of warning signage to be erected along the transport route. Signage shall include signs on both approaches to the pit along Haag Road 100 metres from the crossover.**
- 3.4 Details of entry signage to be erected within the lot boundaries adjacent to the driveway and pit entrance visible to vehicles entering/exiting the Site. Signage shall include the following details:**
- i. Approved operating hours; and**
 - ii. Site contact details; and**
 - iii. Ultra high frequency (UHF) channel for operators; and**
 - iv. Approved haulage route.**
- 3.5 Means of ensuring adequate protection of conservation areas indicated on the approved Conservation Covenant Area Plan.**
- 3.6 A 3D Digital Terrain Model prepared by a licensed surveyor for the whole of Lot 75 (157) Haag Road, Yelverton indicating the following in Australian Height Datum:**
- (i) Existing ground levels;**
 - (ii) Proposed maximum extraction depths to maintain a minimum 500mm above maximum seasonal groundwater table ; and**
 - (iii) Minimum final ground levels after rehabilitation to maintain a minimum 700mm above maximum seasonal groundwater table.**
- 3.7 A Clearing Permit for the removal of the vegetation from the Department of Water and Environmental Regulation.**
- 3.8 The following bonds and agreement:**
- (i) A road maintenance bond of \$20,000 (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 approval. Those portions of public roads affected by the activities related to the approval shall be maintained to a standard acceptable to the City. The City may use the bond to maintain the affected public roads as it deems necessary.**
 - (ii) A dust bond to the value of \$5,000 (being an unconditional bank guarantee), which shall be held against satisfactory compliance with the Dust Management Plan.**
 - (iii) A rehabilitation bond to the value of \$30,000 (being an unconditional bank guarantee), which shall be held against satisfactory compliance with the Closure Plan.**
 - (iv) Further to Conditions 3.8(i) – 3.8(iii) an executed legal agreement with the City (with the costs of preparation of that agreement being borne by the owner or nominee). The legal agreement shall provide for:**
 - (a) The ability for the City to be able to use the bonds, or parts of the**

bonds as appropriate, and any costs to the City including administrative costs of completing or rectifying any outstanding works in accordance with the conditions of this development approval and any further costs;

- (b) 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;
- (c) If at any time any 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
- (d) The ability to lodge a caveat over the site to secure the City's interest.

ONGOING CONDITIONS:

4. The owner must ensure that the plans, details and works undertaken to satisfy Conditions 1, 2 and 3 are subsequently implemented and maintained for the life of the development and, in addition, the following conditions must be complied with:

- 4.1 The development hereby approved shall be limited to the excavation or movement of sand from its natural state on the site; screening of sand; transportation of sand within or off the site; construction of internal roads and rehabilitation works. At no time shall any blasting works be carried out.
- 4.2 Operating hours, including in respect of any use of any vehicle or machinery or the transportation of materials, shall be restricted to the hours between:
 - a. 7.00am and 6.00pm Mondays to Fridays; and
 - ~~b. 7.00am and 1.00pm Saturdays for rehabilitation works~~ only.No works of any kind to be carried out at any time on Sundays or public holidays.
- 4.3 The designated haulage route to Bussell Highway will be east along Haag Road and then south along Chambers Road. No other routes may be used until trucks have reached Bussell Highway.
- 4.4 A maximum number of 70 truck movements (i.e. 35 trucks entering and 35 trucks exiting the site) shall be permitted on any operating day. No truck movements shall be permitted on any other day or outside the approved operating hours.
- 4.5 Notwithstanding Conditions 4.3 and 4.4 above, should more than 70 truck movements per day and/or an alternative haulage route be proposed, a Traffic Management Plan is to first be both 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 Conditions 4.3 and 4.4 occurring.

Note: 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 further additional days will require a Modification to Development Approval to be submitted to, and approved by, the City.

- 4.5** No more than 2 hectares shall be worked at any one time; this area shall then be rehabilitated in accordance with the approved details pursuant to Condition 2.1 concurrently with the extraction of the following 2 hectare area.
- 4.6** All operations related to the extractive industry shall be carried out in accordance with the approved OEMP 2021 and SIS 2021, including but not limited to:
- i.** part 3.1.4 – Quarantine - dieback and weeds of the OEMP; and
 - ii.** part 3.1.1 – Noise and Dust Management of the OEMP; and
 - iii.** on-going ground water monitoring in accordance with Table 8 : Hydrology and Pit Floor Management of the SIS 2021
- 4.7** The approved Closure and Rehabilitation Plan shall be implemented and carried out in accordance with the approved details. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.
- 4.8** The owner must 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 75 (157) Haag Road, Yelverton indicating ground levels at the time of survey in Australian Height Datum.
- 4.9** The owner must ensure that, annually and within three months following every anniversary of the issue by the City of the Permit to Commence certificate, a written report is given to the City that includes the following to the satisfaction of the City:
- (a)** A copy of the 3D Digital Terrain Model prepared in accordance with Condition 6.11 and a statement 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; and
 - (b)** Details confirming that the conditions of this approval have been complied with and how the conditions have been complied with.
- 4.10** No extraction operations, including the use of any vehicle or machinery or the stockpiling or transportation of extracted material, is to be undertaken on the site at any time when an annual written report is due under Condition 4.8 and has not been provided to the City.
- 4.11** No development, including the use of any vehicle or machinery or the stockpiling or transportation of extracted material, may be carried out at any time when any bond that is required to be in force and effect under Condition 3.8 (or any agreement made in accordance with Condition 3.8) is not in full force and effect.

REASONS FOR ALTERNATIVE

As we are all well aware, the approval of extractive industries is becoming increasingly problematic. Whilst they are located in rural areas in the City of Busselton our rural areas also contain a large number of small lifestyle blocks, intensive agricultural activities and tourist accommodation businesses. Whilst I acknowledge the need for an ongoing local supply of raw materials this needs to be balanced with amenity of those who choose to live in rural areas specifically for this reason - amenity.

Enforcement of conditions and compliance of extractive industries is often fraught with difficulty. There is no doubt in my mind that the increase in truck movements from this property from 24 per day to 70 per day **will** have some degree of impact on the other properties located on Haag Rd. Therefore, I am proposing the following alternatives;

1. General Conditions: Development permitted to operate over two years instead of five years. We heard from a representative of the applicant last week, that with the substantially increased truck movements it could be possible to have all of the sand removed in 18 months. If this is not achieved then there may be an opportunity for the applicant to submit an application for an extension. If this was to occur it would provide officers and Council with an opportunity to assess and evaluate any issues relating to works undertaken in the previous 2 years. Subsequently, submissions received from landowners in the area indicated that they could tolerate the increased truck movements if it was for a shorter period of time.
2. Development Conditions: Amend the Dust Management Plan to include a water truck available to wet down Haag Road to suppress dust. There is no question that the increased truck movements will cause an increase of dust on Haag Road which will undoubtedly impact amenity and driving conditions. Having the ability, onsite to quickly mitigate and suppress any dust issues when they arise from the unsealed clay based Haag Road will be of benefit to the adjoining landowners and tourism businesses.
3. No operations to occur on a Saturday. Again, due to the incompatibility of extractive industries with other land uses such as tourist accommodation, this will go some way to minimizing the amenity impacts of haulage traffic noise, vibration and dust. The applicant has already indicated that they are happy to comply with this requirement.

OFFICER COMMENT

With respect to changes 2 and 3, whilst these are not considered to be necessary, it is understood that they may be acceptable to the applicant and could provide some additional comfort to some nearby residents.

With respect to change 1 (two year approval term, rather than the usual five years), it is noted that the key rationale for time limited approvals is not to require an operation to be complete within a specified time period, they are in recognition of the fact that the context can change over time (principally in the form of changes to regulations or to the surrounding environment – for instance, approvals for new houses in the area).

Five years is generally considered to strike an appropriate balance between the interests of the owner and operator, who require some certainty to invest in approvals processes and the other investment involved in the operation, and the interests of the regulator, to ensure that extractive

industries are not able to operate for long periods in locations where the context has changed. There is not considered to be any foreseeable reason the context of this site is more likely to change within the 5 year period than for other extractive industry sites across the District. Further, there is also not considered to be any reason to think that, should the material not be extracted within two years, a further extension should not be granted.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations* 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

Item No. 14.1	2023 REVIEW OF COMMITTEES, WORKING GROUPS AND TERMS OF REFERENCE	Pulled by Cr Riccelli Absolute Majority Required	Page 109
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ALTERNATIVE RECOMMENDATION

That the Council,

1. Pursuant to s. 5.8 of the *Local Government Act 1995*, retains the following Committees:
 - a. Audit and Risk Committee
 - b. Finance Committee
 - c. Policy and Legislation Committee
 - d. Airport Advisory Committee
 - e. CEO Performance Review Committee
 - f. Behaviour Complaints Committee
 - g. Meelup Regional Park Committee

2. Pursuant to s. 67 of the *Bushfires Act 1954*, retains the Bush Fire Advisory Committee.

3. Pursuant to s. 38 of the *Local Emergency Management Act 2005*, retains the Local Emergency Management Committee.

4. Notes the Terms of Reference previously endorsed by Council for the following Committees:
 - a. Audit and Risk Committee (C2306/110)
 - b. Finance Committee (C2306/115)
 - c. Policy and Legislation Committee (C2208/80)
 - d. Airport Advisory Committee (C2307/61)

5. Endorses the attached Terms of Reference for the following Committees:
 - a. CEO Performance Review Committee (Attachment 1)
 - b. Behaviour Complaints Committee (Attachment 3)
 - c. Meelup Regional Park Committee (Attachment 5)
 - d. Bush Fires Advisory Committee (Attachment 7)
 - e. Local Emergency Management Committee (Attachment 8)

6. Retains the following Reference / Working Groups / Panels with elected member representation of 2 elected members and 1 deputy member for each:
 - a. Economic Development Advisory Group
 - b. Busselton Jetty Reference Group
 - c. Disability Access and Inclusion Plan Reference Group
 - d. Business Development, Events and Marketing Reference Group
 - e. Saltwater Working Group
 - f. Community Assistance Program Panel

7. Disbands the following Reference / Working Group / Panels and / or elected member representation as specified:
 - a. Sustainability and Energy Working Group (elected member representation)
 - b. Economic Development Working Group (disband group)

~~c. Dunsborough Reference Group (elected member representation)~~

- ~~8. Notes that the City will continue to engage with the Dunsborough Reference Group, while resolving not to seek to bring the relationship into line with the arrangements described in Council Resolution C2111/089.~~ Requests the CEO to work in partnership with the DRG to determine if any amendments need to be made to their Terms of Reference to ensure it functions in a manner consistent with the original Council's resolution.
9. Endorses the appointment of a Councillor as an ex-officio board member to the Busselton Jetty Inc. board upon invitation from Busselton Jetty Inc.
10. Endorses the continued delegation of 1 elected member and 1 deputy elected member to the following external groups:
 - a. Peron-Naturaliste Partnership
 - b. Busselton and Sugito Cities Association
 - c. Regional Road Group and Convention
11. Endorses the continued attendance of an elected member at the Australian Coastal Councils annual conference / Annual General Meeting.
12. Endorses the continued appointment of the Mayor to the following external groups:
 - a. Regional Capital Australia Alliance (subject to appointment by the Regional Capitals Australia Alliance Board)
 - b. Regional Capitals Western Australia Alliance
 - c. South West Zone Local Government Association
13. Endorses the nomination of elected members as required to the following Ministerial Committees subject to approval of the relevant Minister:
 - a. Yallingup Land Conservation District Committee (1 member)
 - b. Development Assessment Panel (2 members, 2 deputy members)
 - c. Vasse Ministerial Taskforce (1 member, 1 deputy member)
 - d. GeoCatch (the Mayor or delegate as appointed by the Minister)

REASONS FOR ALTERNATIVE

As quoted below in the Officer's Report:

"The DRG is now a well-established reference group within Dunsborough and has proved to be a valuable group for the purposes of City engagement on matters affecting Dunsborough, as intended. It is envisaged that the City would continue to have a proactive and constructive relationship with the DRG, which brings together a range of stakeholders and stakeholder groups with an interest in the future of Dunsborough."

That the Council, in line with its adopted Community Engagement Framework, supports engagement with a 'Dunsborough Reference Group' on strategic planning and other issues or proposals of strategic importance to the long term future of the Dunsborough community, generally as described below:

1. *Key aims from a City perspective are as follows:*

- a) *Provision of greater opportunity for stakeholders to contribute to considered decision making with respect to the future development of Dunsborough;*
- b) *Assisting in identifying current and future community needs, and identifying and assessing options to meet those needs; and*
- c) *Assisting in building partnerships and two-way communication between the City and the community..."*

To ensure continuation of the above, I believe it is important that the Reference Group includes formal Councillor representation.

As City Officers have advised that the DRG has not been operating in line with the aims of the current TOR, I recommend both parties discuss and refine as needed, to ensure more consistency in the future.

OFFICER COMMENT

As outlined in the agenda report, officers believe that continuing with a formalised arrangement as contemplated by the original council resolution may prevent the more organic development of the relationship with the Dunsborough Reference Group over time, and that constructive engagement with the group can continue without the effort required to bring the arrangements into line with the resolution. Additionally the appointment of Councillors to represent the City in its engagement with the group can create some tension if the nominated Councillors wish to be part of the group or attend the group in their broader capacity as a Councillor.

Having said that, if Council are supportive of the alternative recommendation officers will liaise with the Dunsborough Reference Group and request that their terms of reference are reviewed, noting that the City is not in a position to make changes to the group's Terms of Reference. In the event that engagement does not come into line with the intent of the original resolution, officers will further report to Council.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations* 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.