



Policy and Legislation Committee

Agenda

Wednesday 24 January 2024



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 24 January 2024, commencing at 10:00am.

Your attendance 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

19 January 2024

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, Committee 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.

Elected 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 meeting to be held on 24 January 2024

TABLE OF CONTENTS

1 OFFICIAL OPENING	6
2 ATTENDANCE	6
3 DISCLOSURES OF INTEREST	6
4 PUBLIC QUESTION TIME	7
4.1 RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE	7
4.2 QUESTION TIME FOR PUBLIC	7
5 CONFIRMATION AND RECEIPT OF MINUTES	8
5.1 POLICY AND LEGISLATION COMMITTEE 8 NOVEMBER 2023	8
6 REPORTS	9
6.1 COUNCIL POLICY REVIEW - NAMING OF CITY ROADS AND ASSETS	9
6.2 COUNCIL POLICY REVIEW - RECORDING AND LIVESTREAMING OF MEETINGS.....	18
6.3 COUNCIL POLICY REVIEW: LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES	27
6.4 AMENDMENT TO DELEGATION DA 3 - 03: TO INSTITUTE A PROSECUTION, OR TO ISSUE AN INFRINGEMENT (BUSHFIRES ACT 1954)	38
7 CONFIDENTIAL MATTERS.....	42
8 NEXT MEETING DATE.....	42
9 CLOSURE	42

1 OFFICIAL OPENING

The City of Busselton welcomes Elected Members, staff, guests and members of the public to the Policy and Legislation Committee meeting of 24 January 2024.

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 on which 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

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. It also assists the City in identifying issues of importance to the community and assists the public to be better informed about how the City is governed.

- 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 8 November 2023

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee 8 November 2023 be confirmed as a true and correct record.

6 REPORTS

6.1 Council Policy Review - Naming of City Roads and Assets

Strategic Theme:	Key Theme 2: Lifestyle 2.1 Recognise, respect and support community diversity and cultural heritage.
Directorate:	Economic and Business Development
Reporting Officer:	Manager Events and Culture - Peta Pulford
Authorised By:	Director of Economic and Business Development - Maxine Palmer
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. Draft Council Policy Naming of City Roads and Assets [6.1.1 - 3 pages]2. Current Council Policy Naming of City Roads and Assets [6.1.2 - 3 pages]

OFFICER RECOMMENDATION

That the Council adopts the amended Council Policy: Naming of City Roads and Assets (Attachment 1) to replace the current policy, with the policy having been reviewed as part of the City's ongoing policy review cycle.

EXECUTIVE SUMMARY

This report presents an amended Council Policy: Naming of City Roads and Assets (the Policy) (Attachment 1). The Policy has been reviewed as part of the City's ongoing policy review cycle and amended with minor amendments and edits to improve readability and to reflect changes in related documentation and legislation. It has also been amended to allow for future dual naming projects.

STRATEGIC CONTEXT

Outlining the process and rationale for the naming of City Roads and Assets assists the Council to make well informed decisions that respect the culture and heritage of the City and its residents. Regular review of City policies reflects good governance.

BACKGROUND

In 2007, a report was presented to Council to adopt a policy that established clearly defined guidelines and selection criteria for the naming of City owned and managed facilities. The Council resolved (C0702/038) that Policy 237 "Naming of Parks, Gardens, Reserves, Memorials, Sports Grounds and Building" be adopted. The adopted policy specifically dealt with any proposal for a facility or part thereof to be named after a person.

On 25 July 2012 a recommendation was made to Council to review this policy to include reference to the consideration of geographical and purpose driven names. The Council resolved (C1207/197) to adopt the updated policy.

On 14 June 2017, a recommendation was made to Council to review the policy and specifically to delete a clause requiring a proposal be advertised for public comment for a 30 day period following its receipt. The Council resolved (C1706/126) to adopt the updated policy.

On 12 December 2018, a recommendation was made to Council for review of the policy which included minor updates but also the inclusion of key aspects of the Street Names Policy, with a view to rescinding this policy. Council resolved (C1812/255) to endorse the revised Council Policy: Naming of City Roads and Assets to replace the Council Policy: Naming of Parks, Gardens, Reserves, Memorials, Sports Grounds and Buildings, and to rescind the Street Names Policy.

The Policy has now been amended with some minor updates to improve readability and to reflect changes in related documentation and legislation. It has also been amended to allow for future dual naming projects.

OFFICER COMMENT

The purpose of the Policy is to assist Council to appropriately deal with and assess proposals to name City roads and assets.

The proposed amendments to the Policy are:

1. Update of the Responsible Directorate from 'Community and Commercial Services' to 'Economic and Business Development';
2. Addition of the use of dual Australian English and local Aboriginal languages as a naming convention;
3. Consideration given to the length of residency of the proposed persons, rather than specifying a time frame;
4. Consideration of proposed persons that may not have lived in City of Busselton for a lengthy period but have made an outstanding contribution that brings positive promotion or recognition to the City;
5. Update of related documentation/legislation to reflect current versions; and
6. Minor amendments for accuracy, structure or readability.

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 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:

[Naming of City Roads and Assets](#)

The current version of the policy is provided at Attachment 2.

The Policies and Standards for Geographical Naming in Western Australia is a relevant policy. The Geographic Names Committee, an appointed advisory committee, utilises the Landgate Policies and Standards for Geographical Naming in Western Australia, (version 03:2017) in regards to geographical naming issues.

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 ‘Naming of City Roads and Assets’, to replace the current 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
Policy placed on City’s website	28 February 2024



Council Policy

Council Policy Name: Naming of City Roads and Assets
Responsible Directorate: Economic and Business Development **Version:** Draft

1. PURPOSE

- 1.1. The purpose of this Policy is to assist Council to appropriately deal with and assess proposals to name a City Road or City Asset.

2. SCOPE

- 2.1. This Policy is applicable to the naming of City Roads and City Assets, inclusive of the entire asset or specific portion/s of it, which require a determination for naming.

3. DEFINITIONS

Term	Meaning
City Asset	any park, garden, reserve, memorial, sporting ground or building or other infrastructure asset owned or under the care, control or management of the City of Busselton
City Road	any Road or variation of Road, including street, place, boulevard, etc.
Policy	this City of Busselton Council policy titled "Naming of City Roads and Assets"

4. STRATEGIC CONTEXT

Strategic Theme	Strategic Priority
KEY THEME 2 LIFESTYLE	a. 2.1: Recognise, respect and support community diversity and cultural heritage.

5. POLICY STATEMENT

Naming Considerations

- 5.1. Council may consider naming a City Asset in honour of persons considered to be pioneers, persons who have made an outstanding humanitarian contribution or who, in the opinion of the Council, are worthy of such an honour. This may also be in acknowledgment of events of historical, environmental or cultural significance or collective community action.
- 5.2. Where personal names are used, the person commemorated should preferably be recognised in memoriam.
- 5.3. To facilitate ease of geographical identification and identification of purpose, where possible a locality name and purpose should be associated with the naming of a City Asset, even when it is determined that an honorary name will be applied.
- 5.4. In general terms, naming should use the form, spelling and style of contemporary Australian English or Aboriginal language consistent to the local Aboriginal language area.

- 5.5. The use of Aboriginal names and words for naming features are a way of recognising the different enduring cultural and language groups. Where appropriate, the use of dual naming will be supported as a means of giving concurrent and shared recognition of two cultures. Dual names will consist of two distinct name parts; usually one part of Australian English and the other of Aboriginal language consistent with the local Aboriginal language area. Names originating from an Aboriginal language local to the area must be written in a standard recognised format and their use shall be endorsed through consultation with the relevant Aboriginal communities prior to any public consultation on the proposed name(s). In instances where there is more than one relevant Aboriginal community or family group, consultation with all parties will be undertaken. Evidence of this endorsement must be included with the naming proposal.
- 5.6. Where applicable and always in the first instance, naming guidelines as set out in Policies and Standards for Geographic Naming in Western Australia will be adhered to. The City must apply to Landgate for the naming of City Roads.
- 5.7. Renaming will only occur in an extraordinary case or where a name is no longer deemed appropriate.
- 5.8. A proposal to name a significant City asset can be put forward to Council for consideration by:
- a. an Elected Member by way of a notice of motion;
 - b. an employee via a report to Council;
 - c. a member of the public via a submission to the CEO; or
 - d. users of a facility via a submission to the CEO.
- 5.9. Any proposal to name a significant City Asset will include:
- a. details of the proposed City Asset to be named;
 - b. proposed name; and
 - c. justification for the proposal.
- 5.10. Through its consideration Council may endorse the name or determine that the proposal requires further community consultation, subject to policy statement 5.11b.

Criteria for Assessment for Personal Recognition

- 5.11. A request to name a City Asset after a person shall be assessed against the following criteria:
- a. whether the person being honoured has been instrumental in the development of the City Asset or activities to be undertaken or contributed in a significant way to the City Asset;
 - b. the views of the community with respect to honouring the person or event after which the City Asset is proposed to be named;
 - c. the length of residency of the person proposed will be considered;
 - d. the contribution made by the person to the local community through areas such as education, heritage, cultural, representation on Council or another level of government, volunteering, association with local sporting or service club or through business development. A significant contribution could include:
 - i. two (2) or more terms of office on the local government Council;
 - ii. twenty (20) or more years association with a local community, sporting or service club;
 - iii. action by an individual to protect, restore, enhance or maintain an area that produces substantial long-term improvements for the community of area; or
 - iv. evidence of works undertaken being of a pioneering nature for the benefit of the community.
 - e. whether the person has attained honours or made an outstanding contribution in their field, that brings positive promotion and recognition to the City of Busselton.

Policies and Standards for Geographic Naming in Western Australia

- 5.12. The established guidelines provide, among other things, that:
 - a. names should not be a duplication (within 50km radius of each other);
 - b. inappropriate names should not be used including but are not limited to:
 - i. obscene, derogatory, racist or discriminatory names;
 - ii. incongruous names; and
 - iii. company or commercial names.
 - c. preferred sources of names include:
 - i. Aboriginal names;
 - ii. pioneers, early settlers, war casualty lists; and
 - iii. thematic names, including flora, ships, etc.

- 5.13. In addition, the naming of City Roads or City Assets:
 - a. must not risk public and operational safety for emergency responders, or cause confusion for transport, communication and mail services;
 - b. should be reasonably easy to read, spell and pronounce; and
 - c. must avoid a duplication of names which are spelt or pronounced the same or similar within the Council area.

- 5.14. The City maintains an approved list of City Road names and any application for a name that does not appear on the approved list, must include supporting documentation / justification prior to the City forwarding complying proposals to the Geographical Naming Committee (GNC).

- 5.15. The City may, in certain special circumstances, support an application for naming of a City Road that departs from the Policies and Standards for Geographic Naming in Western Australia GNC guidelines. A proposal that departs from the GNC guidelines must:
 - a. demonstrate exceptional circumstances warranting special consideration;
 - b. be considered to be particularly beneficial for the District;
 - c. have great significance which may be lost without the use of the proposed City Road name; and
 - d. have significant community support for the proposal.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Landgate Policies and Standards for Geographical Naming in Western Australia (V 03:2017)
- 6.2. *Land Administration Act 1997*
- 6.3. *Land Information Authority Regulations 2007*
- 6.4. Australian Standard AS/NZS 4819:2011 Rural and urban addressing
- 6.5. Names covered by other legislation or regulations

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	12 December 2018	Resolution #	C1812/255



Council Policy

Council Policy Name: Naming of City Roads and Assets
Responsible Directorate: Community and Commercial Services **Version:** Adopted

1. PURPOSE

- 1.1. The purpose of this Policy is to assist Council to appropriately deal with and assess proposals to name a City Road or City Asset.

2. SCOPE

- 2.1. This Policy is applicable to the naming of City Roads and City Assets, inclusive of the entire asset or specific portion/s of it, which require a determination for naming.

3. DEFINITIONS

Term	Meaning
City Asset	any park, garden, reserve, memorial, sporting ground or building or other infrastructure asset owned or under the care, control or management of the City of Busselton
City Road	any Road or variation of Road, including street, place, boulevard, etc.
Policy	this City of Busselton Council policy titled "Naming of City Roads and Assets"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Strategic Theme 1. LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing, of the City's Strategic Community Plan June 2021 and specifically the following Strategic Priority:
- a. 2.1: Recognise, respect and support community diversity and cultural heritage.

5. POLICY STATEMENT

Naming Considerations

- 5.1. Council may consider naming a City Asset in honour of persons considered to be pioneers, persons who have made an outstanding humanitarian contribution or who, in the opinion of the Council, are worthy of such an honour. This may also be in acknowledgment of events of historical, environmental or cultural significance or collective community action.
- 5.2. Where personal names are used, the person commemorated should preferably be recognised in memoriam.
- 5.3. To facilitate ease of geographical identification and identification of purpose, where possible a locality name and purpose should be associated with the naming of a City Asset, even when it is determined that an honorary name will be applied.
- 5.4. In general terms, naming should use the form, spelling and style of contemporary Australian English or a recognised Australian Aboriginal language local to the area of the feature.

- 5.5. Where applicable and always in the first instance, naming guidelines as set out in Policies and Standards for Geographic Naming in Western Australia will be adhered to. The City must apply to Landgate for the naming of City Roads.
- 5.6. Renaming will only occur in an extraordinary case or where a name is no longer deemed appropriate.
- 5.7. The use of Aboriginal names and words for naming features are a way of recognising the different enduring cultural and language groups. Names originating from an Australian Aboriginal language local to the area must be written in a standard recognised format and their use shall be endorsed by the recognised local community. Evidence of this endorsement must be included with the naming proposal.
- 5.8. A proposal to name a significant City asset can be put forward to Council for consideration by:
 - a. a Councillor by way of a notice of motion;
 - b. an employee via a report to Council;
 - c. a member of the public via a submission to the CEO; or
 - d. users of a facility via a submission to the CEO.
- 5.9. Any proposal to name a significant City Asset will include:
 - a. details of the proposed City Asset to be named;
 - b. proposed name; and
 - c. justification for the proposal.
- 5.10. Through its consideration Council may endorse the name or determine that the proposal requires further community consultation, subject to policy statement 5.11b.

Criteria for Assessment for Personal Recognition

- 5.11. A request to name a City Asset after a person shall be assessed against the following criteria:
 - a. whether the person being honoured has been instrumental in the development of the City asset or activities to be undertaken or contributed in a significant way to the City asset;
 - b. the views of the community with respect to honouring the person or event after which the City asset is proposed to be named;
 - c. the length of residency of the person proposed. For the purposes of guidance, residency of ten (10) years or more in a relevant location is likely to qualify a person for further consideration;
 - d. the contribution made by the person to the local community through areas such as education, representation on Council or another level of government, volunteering, association with local sporting or service club or through business development. A significant contribution could include:
 - i. two (2) or more terms of office on the local government Council;
 - ii. twenty (20) or more years association with a local community, sporting or service club;
 - iii. action by an individual to protect, restore, enhance or maintain an area that produces substantial long-term improvements for the community of area; or
 - iv. evidence of works undertaken being of a pioneering nature for the benefit of the community.

Policies and Standards for Geographic Naming in Western Australia

- 5.12. The established guidelines provide, among other things, that:
 - a. names should not be a duplication (within 50km radius of each other);
 - b. inappropriate names should not be used including but are not limited to:
 - i. obscene, derogatory, racist or discriminatory names;
 - ii. incongruous names; and
 - iii. company or commercial names.
 - c. preferred sources of names include:
 - i. Aboriginal names;

- ii. pioneers, early settlers, war casualty lists; and
- iii. thematic names, including flora, ships, etc.

- 5.13. In addition, the naming of City Roads or City Assets:
- a. must not risk public and operational safety for emergency responders, or cause confusion for transport, communication and mail services;
 - b. should be reasonably easy to read, spell and pronounce; and
 - c. must avoid a duplication of names which are spelt or pronounced the same or similar within the Council area.
- 5.14. The City maintains an approved list of City Road names and any application for a name that does not appear on the approved list, must include supporting documentation / justification prior to the City forwarding complying proposals to the Geographical Naming Committee (GNC).
- 5.15. The City may, in certain special circumstances, support an application for naming of a City Road that departs from the Policies and Standards for Geographic Naming in Western Australia GNC guidelines. A proposal that departs from the GNC guidelines must:
- a. demonstrate exceptional circumstances warranting special consideration;
 - b. be considered to be particularly beneficial for the District;
 - c. have great significance which may be lost without the use of the proposed City Road name; and
 - d. have significant community support for the proposal.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Landgate Policies and Standards for Geographical Naming in Western Australia (V 01:2017)
- 6.2. Land Administration Act 1997
- 6.3. Land Information Authority Regulations 2007
- 6.4. Australian Standard AS/NZS 4819:2001 Rural and urban addressing
- 6.5. Names covered by other legislation or regulations

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	12 December 2018	Resolution #	C1812/255
Previous Adoption	DATE	14 June 2017	Resolution #	C1706/126

6.2 Council Policy Review - Recording and Livestreaming of Meetings

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Governance and Risk Coordinator - Tegan Robertson
Authorised By:	Acting Director of Corporate Strategy and Performance - Paul Sheridan
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. Draft Council Policy Recording and Livestreaming of Meetings [6.2.1 - 3 pages]2. Current Council Policy Recording and Livestreaming of Meetings [6.2.2 - 2 pages]

OFFICER RECOMMENDATION

That the Council adopts the amended Council Policy ‘Recording and Livestreaming of Council Meetings’ (the Policy) (Attachment 1) to replace the current policy (Attachment 2).

EXECUTIVE SUMMARY

This report presents an amended Council Policy ‘Recording and Livestreaming of Council Meetings’ (the Policy) (Attachment 1). The Policy has been reviewed after the *Local Government Amendment Bill 2023* came into effect, which included a new section into the *Local Government Act 1995* covering electronic broadcasting (livestreaming) and video and audio recording of council meetings.

STRATEGIC CONTEXT

The provision of good meeting and associated record keeping practices ensures consistent communication improves the transparency and accessibility of meetings of Council.

BACKGROUND

Council policy ‘Audio Recording of Council Meetings’ was adopted on 26 June 2019 (C1906/108), following a request from a member of the public for a copy of a recording of an Ordinary Council Meeting taken under the City’s *Standing Orders Local Law 2018* for minute taking purposes.

The policy was subsequently amended by Council at its Ordinary Council Meeting on 11 November 2020 (C2011/127) to allow for the livestream of meetings when personal attendance was limited due to Covid-19 related restrictions. The livestream of Council meetings as a regular practice commenced on 23 June 2021. The policy in its current form was endorsed by Council at its meeting on 11 May 2022 (C2205/095).

Section 58 of the *Local Government Amendment Act 2023* (the Amendment Act), which commenced on 19 October 2023, inserts a new section 5.23A into the *Local Government Act 1995* (the Act) covering electronic broadcasting (livestreaming) and video and audio recording of council meetings.

Section 5.23A(2) of the Act is a power that allows regulations to be made that may require, regulate, or otherwise make provision for any of the following matters:

- electronic broadcasting of council meetings;
- making or retaining recordings of council meetings;
- making recordings of council meetings publicly available; and
- provision, or otherwise making available, recordings of council meetings.

The Local Government Regulations Amendment Regulations (No. 3) were published on 18 October 2023, and prescribe various new requirements for local governments with respect to electronic broadcasting. For class one local governments, including the City of Busselton, this includes:

- video and audio livestreaming of council meetings (open proceedings);
- no livestreaming of closed proceedings;
- video and audio recording of council meetings (open proceedings);
- audio recordings of closed proceedings;
- livestreaming and recording technology installed at the council's usual meeting place; and
- portable technology for meetings held outside of the usual meeting place or in case of a technological failure.

Although new electronic broadcasting requirements are not compulsory until 1 January 2025, the City has reviewed and updated this Policy to ensure compliance as soon as possible.

OFFICER COMMENT

Following the adoption of the Policy in its current form, Council meetings were livestreamed and recordings were retained on the City of Busselton's You Tube page for public viewing for a period of three months.

Regulation 14I(1)(b)(ii) of the *Local Government (Administration) Regulations* 1996 prescribes that class one local governments must make a video (with audio) recording of the Council meeting publicly available until the end of the period of 5 years after the meeting day. The Policy has been amended to comply with this new regulation.

The proposed amendments to the Policy include the removal of a clause providing that the Presiding Member may rule that the livestream be stopped as this is no longer allowed under the updated regulations.

Further minor amendments to the Policy include the addition of information around the recording of members of the public, alignment to the Community Plan 2021, and the updating of related documentation/ legislation.

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 recommendation of a committee it has established in accordance with section 5.8 of the Act.

The *Local Government Amendment Act 2023* inserts a new section 5.23A into the *Local Government Act 1995* which allows that regulations be made that require, regulate, or otherwise make provision for the electronic broadcasting and recording of Council meetings.

The proposed Policy aligns to Part 2A of the *Local Government (Administration) Regulations 1996* which prescribe requirements for the electronic broadcasting and video or audio recording of council meetings.

Relevant Plans and Policies

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

Plan:

Not applicable.

Policy:

[Recording and Livestreaming of Council Meetings](#)

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. Retain the Policy in its current form, noting the new statutory requirements commence on 1 January 2025; or
2. Make further amendments to the Policy.

CONCLUSION

The Policy has been reviewed and amended in accordance with section 5.23A of the *Local Government Act 1995* and associated regulations, with the amended Policy (at Attachment 1) presented to Council for adoption.

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
Policy placed on City's website	28 February 2024



Council Policy

Council Policy Name: Recording and Livestreaming of Council Meetings
Responsible Directorate: Corporate Strategy and Performance **Version:** Draft

1. PURPOSE

- 1.1. Amendments to the *Local Government Act 1995* require all class 1 and class 2 local governments to broadcast and make recordings of Council meetings publicly available from 1 January 2025.
- 1.2. The purpose of recording and livestreaming Council meetings is to:
 - a. facilitate increased engagement by the community in the City’s decision making processes;
 - b. improve the transparency and accessibility of meetings of Council; and
 - c. assist in the preparation of the minutes of Council meetings
- 1.3. This Policy outlines the City’s position with respect to the recording and livestreaming of Council meetings and access to the recorded proceedings.

2. SCOPE

- 2.1. This Policy is applicable to Livestreaming and Recordings of Council meetings, and all requests for such recordings.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995</i>
Council Meeting / Meeting	Any City of Busselton Ordinary Council meeting or Special Council meeting
Livestream	to transmit or receive live video and audio coverage of an event over the internet with the content simultaneously recorded and broadcast in real time to the viewer
Recording	Any recording made by an electronic device capable of recording vision and / or audio
Policy	this City of Busselton Council policy titled “Recording and Livestreaming of Council Meetings”

4. STRATEGIC CONTEXT

Strategic Theme	Strategic Priority
KEY THEME 4 LEADERSHIP	4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. All Ordinary and Special Council meetings will, be video and audio recorded, and will be made available by Livestream

- 5.2. Recordings of a meeting will be available on the City's YouTube page and / or website for a period of five years after the meeting date.
- 5.3. The official record of the meeting will be the written minutes prepared in accordance with the requirements of the Act and the *Local Government (Administration) Regulations 1996*.
- 5.4. Council may resolve to close the Council meeting to the public in accordance with section 5.23 of the Act.
- 5.5. Video recording and Livestreaming of the meeting will be ceased when the meeting is closed to the public.
- 5.6. Closed proceedings will be audio recorded and the Recording will be retained for at least a period of 5 years after the meeting day. Audio Recordings of closed proceedings will not be made publicly available.
- 5.7. Clear signage will be placed in the Council chamber advising members of the public that the meeting will be recorded and livestreamed, and the Presiding Member will announce that the meeting is to be recorded and livestreamed at the commencement of the meeting.
- 5.8. It is intended that recording equipment will provide live and recorded vision and audio of the Council Chambers, including the Presiding Member, Elected Members and City officers when they speak, for the duration of the Council meeting (other than for confidential items or meetings).
- 5.9. This Policy recognises that there may be incidental capture of other City officers or members of the public due to seating arrangements in the Council Chambers and the position of recording equipment.
- 5.10. By participating in a public Council meeting, those members of the public in attendance consent to being recorded.
- 5.11. Other than in accordance with this Policy, a person must not use any recording device or instrument to record the proceedings of a meeting without the written permission of the Presiding Member.
- 5.12. The City retains copyright over its Livestreaming and Recordings of its Council meetings.
- 5.13. Members of the public may, by written request to the CEO, purchase a copy of an audio Recording of a meeting, with the fee for purchase set out in the City's fees and charges each year.
- 5.14. Members of the public are not entitled to receive a copy of the Recording of any part of the meeting that was declared confidential and closed to the public.
- 5.15. Current Elected Members may request from the CEO an audio Recording of a meeting at no charge.
- 5.16. All Elected Members are to be notified when requests for Recordings have been received.
- 5.17. Recordings will not be transcribed.
- 5.18. Recordings will be stored and disposed of in accordance with the *State Records Act 2000*.

5.19. Under section 9.57A of the Act, the City is not liable for defamation in relation to a matter published on its website as part of a Livestream or Recording of a Council meeting. Elected Members and City officers are not liable in defamation for any statements made in good faith or to which a defence is available under the *Defamation Act 2005*.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1 *City of Busseton Standing Orders Local Law 2018*
- 6.2 *Local Government Act 1995*
- 6.3 *Local Government (Administration) Regulations 1996*
- 6.4 *State Records Act 2000*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	11 May 2022	Resolution #	C2205/195

COUNCIL POLICY



Council Policy Name: Recording and Livestreaming of Council Meetings

Responsible Directorate: Finance and Corporate Services

Version: ADOPTED

1. PURPOSE

- 1.1. The City of Busselton's *Standing Orders Local Law 2018* provides for the Chief Executive Officer to record the proceedings of a meeting for the purpose of taking minutes.
- 1.2. The purpose of this Policy is to outline the City's position with respect to the recording and Livestreaming of Council meetings and access to the recorded proceedings.

2. SCOPE

- 2.1. This Policy applies to the Livestreaming and recordings of Council meetings and all requests for such recordings.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995</i>
Livestream	to transmit or receive live video and audio coverage of an event over the internet with the content simultaneously recorded and broadcast in real time to the viewer
Policy	this City of Busselton Council policy titled "Recording and Livestreaming of Council Meetings"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 – Leadership of the City's Strategic Community Plan 2017 and specifically Community Objective 6:1: Governance systems, process and practices are responsible, ethical and transparent.

5. POLICY STATEMENT

- 5.1. All Ordinary and Special Council meetings will, wherever technically possible, be recorded on an audio device and will be made available by Livestream.
- 5.2. The primary purpose of recording and Livestreaming Council meetings is to:
 - a. assist in the preparation of the minutes of Council meetings; and
 - b. facilitate increased engagement of the community in the City's decision making processes.
- 5.3. The official record of the meeting will be the written minutes prepared in accordance with the requirements of the Act and the *Local Government (Administration) Regulations 1996*.

- 5.4. Council may resolve to close the meeting to the public in accordance with section 5.23 of the Act. Recording and the Livestream of the meeting will be ceased when the meeting is closed to the public.
- 5.5. Clear signage will be placed in the Council chamber advising members of the public that the meeting will be recorded and Livestreamed.
- 5.6. Other than in accordance with this Policy, a person must not use any recording device or instrument to record the proceedings of a meeting without the written permission of the Presiding Member.
- 5.7. The Presiding Member may rule at any time prior to or during a meeting that the Livestream be stopped.
- 5.8. Recordings of the Livestream of a meeting will be available on the City's YouTube page and / or website for a period of three months after the Livestream.
- 5.9. The City retains copyright over its Livestreaming and recordings of its Council meetings.
- 5.10. Members of the public may, by written request to the CEO, purchase a copy of an audio recording of a meeting, with the fee for purchase set out in the City's fees and charges each year.
- 5.11. Members of the public are not entitled to receive a copy of the recording of any part of the meeting that was declared confidential and closed to the public.
- 5.12. Elected Members may request from the CEO an audio recording of a meeting at no charge.
- 5.13. All Elected Members are to be notified when requests for recordings have been received.
- 5.14. Recordings will not be transcribed.
- 5.15. Recordings will be stored and disposed of in accordance with the *State Records Act 2000*.
- 5.16. Under section 9.57A of the Act, the City is not liable for defamation in relation to a matter published on its website as part of a Livestream or recording of a Council meeting. Elected members and City Officers are not liable in defamation for any statements made in good faith or to which a defence is available under the *Defamation Act 2005*.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1 *City of Busselton Standing Orders Local Law 2018*
- 6.2 *Local Government Act 1995*
- 6.3 *Local Government (Administration) Regulations 1996*
- 6.4 *State Records Act 2000*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	11 May 2022	Resolution #	C2205/095
Previous Adoption	DATE	11 November 2020	Resolution #	C2011/127

6.3 Council Policy Review: Legal Representation for Elected Members and Employees

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Manager Legal and Governance - Ben Whitehill
Authorised By:	Acting Director of Corporate Strategy and Performance – Paul Sheridan
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. Draft Council Policy - Legal Representation for Council Members and Employees [6.3.1 - 4 pages] 2. Current Council Policy - Legal Representation for Council Members and Employees [6.3.2 - 4 pages]

OFFICER RECOMMENDATION

That the Council adopts the revised Council Policy ‘Legal Representation for Elected Members and Employees’ (the Policy) (Attachment 1) to replace the existing policy (Attachment 2).

EXECUTIVE SUMMARY

This report presents an amended Council Policy: ‘Legal Representation for Elected Members and Employees’ (the Policy) (Attachment 1). The Policy has been reviewed as part of the City’s ongoing policy review cycle and amended with minor edits.

STRATEGIC CONTEXT

The policy is directed at protecting the interests of Council members and employees who become involved in legal proceedings because of their official functions and is part of the City’s governance systems that facilitate open, ethical and transparent decision making.

BACKGROUND

The Policy and Legislation Committee assists the Council by considering new and reviewing 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.

Council policy ‘085: Legal Representation - Costs Indemnification Policy’ was implemented in 2008 and amended in 2012, with minor changes made to align the policy with the re-released Department of Local Government Guideline. Further changes were made to the policy in 2017, with the title amended to ‘Legal Representation for Council Members and Employees’. An update to the Council delegation relating to urgent legal representation was also made at this time. In 2020 further changes were made to improve clarity and readability.

OFFICER COMMENT

The policy was based on the model policy contained in the Department of Local Government Operational Guideline for Legal Representation for Council Members and Employees. The Policy has been subject to minor amendments for clarity and readability.

Since the last review in 2020, there have been no material concerns or issues raised about the operation of the Policy. Therefore, no significant amendments are recommended or proposed.

It is recommended that the Council adopt the amended Council Policy: 'Legal Representation for Elected Members and Employees', with updates to legislative references following the commencement of the Uniform Law in Western Australia and repeal of the Legal Profession Act 2008 as well as minor amendments to improve clarity.

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:

[Legal Representation for Elected Members and Employees](#)

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 retain the existing policy without the minor amendments or make further amendments.

CONCLUSION

A revised 'Legal Representation for Council Members and Employees' Council Policy is presented for Council's adoption.

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
Revised Policy published on website	28 February 2024



Council Policy

Council Policy Name: Legal Representation for Elected Members and Employees
Responsible Directorate: Corporate Performance and Strategy **Version:** Draft

1. PURPOSE

- 1.1. The purpose of this Policy is to provide guidance as to when the City may protect the interests of Council members and employees who become involved in legal proceedings because of their official functions.

2. SCOPE

- 2.1. This Policy is applicable to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the Policy.

3. DEFINITIONS

Term	Meaning
Applicant	a current or former Council member or employee who makes an application under paragraph 5.6 of this Policy
Approved Lawyer	<ul style="list-style-type: none"> a Lawyer as defined in the <i>Legal Profession Uniform Law (WA)</i>; and from a law firm on the City's or WALGA's panel of legal service providers, if relevant, unless the Council considers that this is not appropriate - for example where there is or may be a conflict of interest or insufficient expertise
Policy	this City of Busselton Council policy titled "Legal Representation for Elected Members and Employees"

4. STRATEGIC CONTEXT

Strategic Theme	Strategic Priority
KEY THEME 4 LEADERSHIP	a. 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The City of Busselton may assist a current or former Council member or employee to meet reasonable expenses incurred in relation to legal proceedings they become involved in as a result of carrying out their official functions.
- 5.2. The provision of assistance must be justified for the good government of the district. Additionally, the following key criteria will apply when determining whether the City will pay the legal representation costs of a Council member or employee:
- the legal representation must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
 - the legal representation must be in respect of legal proceedings that have been, or may be, commenced;
 - in performing their functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and

- d. the legal representation costs do not relate to a matter that is of a personal or private nature.
- 5.3. If the criteria in clause 5.2 are satisfied, the City may approve the payment of legal representation costs in the following circumstances:
- a. where proceedings are brought against a Council member or employee in connection with his or her functions - for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee;
 - b. to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a Council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee;
 - c. where exceptional circumstances are involved - for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Council members or employees.
- 5.4. Legal representation must be provided by an Approved Lawyer and the engagement of an Approved Lawyer must be approved in writing by the Council or the CEO under delegated authority.
- 5.5. The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action or a negligence action instituted by a Council member or employee.

Application for payment

- 5.6. An Applicant is to make an application, in writing, to the Council or the CEO. The Applicant is to give details of:
- a. the matter for which legal representation is sought;
 - b. how that matter relates to the functions of the Applicant;
 - c. the Approved Lawyer who is to be asked to provide the legal representation;
 - d. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);
 - e. an estimated cost of the legal representation; and
 - f. why it is in the interests of the City for payment to be made.
- 5.7. The application is to contain:
- a. a declaration by the Applicant stating that they have acted in good faith and, to the best of the Applicant's knowledge, the Applicant has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and
 - b. a signed statement that the Applicant:
 - i. has read, and understands, this Policy;
 - ii. acknowledges that any approval of legal representation costs is conditional on the repayment provisions of paragraph 5.17 and any other conditions to which the approval is subject; and
 - iii. undertakes to repay to the City any legal representation costs in accordance with the provisions of paragraph 5.17 of this Policy.
- 5.8. Other than in exceptional circumstances, the application is to be made before commencement of the legal representation to which the application relates.

- 5.9. The Council must determine all applications made under this Policy. Applications to the Council must:
- a. be accompanied by a report prepared by the CEO; or
 - b. where the CEO is the Applicant, the accompanying report must be prepared by an appropriate employee, generally a director or senior governance employee.
- 5.10. In determining an application, the Council may:
- a. refuse;
 - b. approve; or
 - c. approve subject to conditions.
- 5.11. Conditions of approval of an application may include a financial limit and/or a requirement to enter into a formal agreement, including a security agreement relating to the payment, and repayment of legal representation costs.
- 5.12. The Council, in approving an application in accordance with this Policy:
- a. must set a limit on the costs to be paid, based on the estimated costs in the application; and
 - b. may also consider and approve additional costs in respect of the same matter.
- 5.13. In assessing an application, the Council may have regard to any City insurance policies that may apply to the Applicant.

Revocation and variation

- 5.14. The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.15. The Council may, subject to natural justice principles and consistent with the findings of a court, tribunal or inquiry, determine that a Council member or employee whose application has been approved has, in respect of the matter:
- a. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - b. given false or misleading information in respect of the application;
- and where the Council makes such a determination, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 5.17.

Delegation to Chief Executive Officer

- 5.16. An application for urgent legal representation approved by the CEO under delegation is to be submitted for Council's noting to the next ordinary meeting of the Council.

Repayment of legal representation costs

- 5.17. An Applicant whose legal representation costs have been paid by the City is to repay the City:
- a. all or part of those costs - in accordance with a determination by the Council under paragraph 5.15; or
 - b. as much of those costs as are available to be paid by way of set-off - where the Applicant receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.
- 5.18. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Operational Guideline 'Legal Representation for Council Members and Employees'
- 6.2. Delegation DA 1 - 19 Urgent Legal Representation

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	14 October 2020 8 March 2017	Resolution #	C2010/111 C1703/043



Council Policy

Council Policy Name: Legal Representation for Elected Members and Employees
Responsible Directorate: Finance and Corporate Services **Version:** Adopted

1. PURPOSE

- 1.1. The purpose of this Policy is to provide guidance as to when the City may protect the interests of Council members and employees who become involved in legal proceedings because of their official functions.

2. SCOPE

- 2.1. This Policy is applicable to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the Policy.

3. DEFINITIONS

Term	Meaning
Applicant	a current or former Council member or employee who makes an application under paragraph 5.6 of this Policy
Approved Lawyer	<ul style="list-style-type: none"> a Lawyer as defined in section 4 'Terms relating to lawyers' and section 5 'Terms relating to legal practitioners' under the <i>Legal Profession Act 2008</i>; and from a law firm on the City's or WALGA's panel of legal service providers, if relevant, unless the Council considers that this is not appropriate - for example where there is or may be a conflict of interest or insufficient expertise
Policy	this City of Busselton Council policy titled "Legal Representation for Elected Members and Employees"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Strategic Theme 4. LEADERSHIP - A Council that connects with the community and is accountable in its decision making, of the City's Strategic Community Plan June 2021 and specifically the following Strategic Priority:
- a. 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The City of Busselton may assist a current or former Council member or employee to meet reasonable expenses incurred in relation to legal proceedings they become involved in as a result of carrying out their official functions.
- 5.2. The provision of assistance must be justified for the good government of the district. Additionally, the following key criteria will apply when determining whether the City will pay the legal representation costs of a Council member or employee:
- the legal representation must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
 - the legal representation must be in respect of legal proceedings that have been, or may be, commenced;

- c. in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
 - d. the legal representation costs do not relate to a matter that is of a personal or private nature.
- 5.3. If the criteria in clause 5.2 are satisfied, the City may approve the payment of legal representation costs in the following circumstances:
- a. where proceedings are brought against a Council member or employee in connection with his or her functions - for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee;
 - b. to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee;
 - c. where exceptional circumstances are involved - for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.
- 5.4. Legal representation must be provided by an Approved Lawyer and the engagement of an Approved Lawyer must be approved in writing by the Council or the CEO under delegated authority.
- 5.5. The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action or a negligence action instituted by a Council member or employee.

Application for payment

- 5.6. A current or former Council member or employee who seeks assistance under this Policy is to make an application, in writing, to the Council or the CEO. The Applicant is to give details of:
- a. the matter for which legal representation is sought;
 - b. how that matter relates to the functions of the Council member or employee making the application;
 - c. the Approved Lawyer who is to be asked to provide the legal representation;
 - d. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);
 - e. an estimated cost of the legal representation; and
 - f. why it is in the interests of the City for payment to be made.
- 5.7. The application is to contain:
- a. a declaration by the Applicant that he or she has acted in good faith and, to the best of the Applicant's knowledge, the Applicant has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and
 - b. a signed statement that he or she:
 - i. has read, and understands, this Policy;
 - ii. acknowledges that any approval of legal representation costs is conditional on the repayment provisions of paragraph 5.17 and any other conditions to which the approval is subject; and
 - iii. undertakes to repay to the City any legal representation costs in accordance with the provisions of paragraph 5.17 of this Policy.
- 5.8. Other than in exceptional circumstances, the application is to be made before commencement of the legal representation to which the application relates.

- 5.9. The Council must determine all applications made under this Policy. Applications to the Council must:
- a. be accompanied by a report prepared by the CEO; or
 - b. where the CEO is the Applicant, the accompanying report must be prepared by an appropriate employee, generally a Director or senior governance employee.
- 5.10. In determining an application, the Council may:
- a. refuse;
 - b. approve; or
 - c. approve subject to conditions.
- 5.11. Conditions of approval of an application may include a financial limit and/or a requirement to enter into a formal agreement, including a security agreement relating to the payment, and repayment of legal representation costs.
- 5.12. The Council, in approving an application in accordance with this Policy:
- a. must set a limit on the costs to be paid, based on the estimated costs in the application; and
 - b. may also consider and approve additional costs in respect of the same matter.
- 5.13. In assessing an application, the Council may have regard to any City insurance policies that may apply to the Applicant.

Revocation and variation

- 5.14. The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.15. The Council may, subject to natural justice principles and consistent with the findings of a court, tribunal or inquiry, determine that a Council member or employee whose application has been approved has, in respect of the matter:
- a. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - b. given false or misleading information in respect of the application;
- and where the Council makes such a determination, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 5.17.

Delegation to Chief Executive Officer

- 5.16. An application for urgent legal representation approved by the CEO under delegation is to be submitted for Council's noting to the next ordinary meeting of the Council.

Repayment of legal representation costs

- 5.17. An Applicant whose legal representation costs have been paid by the City is to repay the City:
- a. all or part of those costs - in accordance with a determination by the Council under paragraph 5.15; or
 - b. as much of those costs as are available to be paid by way of set-off - where the Applicant receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.
- 5.18. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Operational Guideline 'Legal Representation for Council Members and Employees'
- 6.2. Delegation DA 1 - 19 Urgent Legal Representation

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	14 October 2020	Resolution #	C2010/111
Previous Adoption	DATE	8 March 2017	Resolution #	C1703/043

6.4 Amendment to delegation DA 3 - 03: To Institute a Prosecution, or to Issue an Infringement (Bushfires Act 1954)

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Corporate Strategy and Performance
Reporting Officer:	Governance and Risk Coordinator - Tegan Robertson
Authorised By:	Acting Director of Corporate Strategy and Performance – Paul Sheridan
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. City-of- Busselton- Delegated- Authority- D A-3-03 [6.4.1 - 1 page]

OFFICER RECOMMENDATION

That the Council adopts the amended delegation of authority DA 3 – 03: To Institute a Prosecution, or to Issue an Infringement, as per attachment 1.

EXECUTIVE SUMMARY

Delegations under the *Bushfire Act 1954* were reviewed by officers and considered by the Policy and Legislation Committee in September 2023 (PL2309/510).

No change was recommended to delegation DA 3 – 03: *To Institute a Prosecution, or to Issue an Infringement*, and all delegations by the local government were adopted by the Council at the October 2023 Ordinary meeting (C2310/129).

Subsequent to this review, the City implemented a structural realignment which delivered changes to the scope and responsibilities of some existing positions, the creation of new positions, and the termination of others. The attached amended delegation of authority DA 3 – 03: *To Institute a Prosecution, or to Issue an Infringement*, reflects these position changes in the listed delegates.

As this delegation was recently reviewed, no further review or amendments are considered to be required at this time. It is recommended that the Council adopt the attached amended delegation of authority DA 3 – 03: *To Institute a Prosecution, or to Issue an Infringement*.

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 the local government (the Council) to be made (with or without conditions) by the Chief Executive Officer or other officers, pursuant to the legislation that provides for such a delegation.

Section 59(3) of the *Bushfire Act 1954* provides that:

“A local government may, by written instrument of delegation, delegate authority generally, or in any class of case, or in any particular case, to its bush fire control officer, or other officer, to consider allegations of offences alleged to have been committed against this Act in the district of the local government and, if the delegate thinks fit, to institute and carry on proceedings in the name of the local government against any person alleged to have committed any of those offences in the district, and may pay out of its funds any costs and expenses incurred in or about the proceedings.”

Existing delegation DA 3 – 03 delegates the authority to institute a prosecution or to issue to infringement to two positions which were substantively changed or impacted by a title change in the October 2023 organisational restructure.

Delegation to position under existing DA 3 - 03	Amendment required due to org restructure
Director Planning and Development Services	Remove delegation to: Director Planning and Development Services New delegation to: Director Community Planning
Manager Regulatory Services	Title change only: Manager Community Safety

OFFICER COMMENT

The attached amended delegation *DA 3 – 03: To Institute a Prosecution, or to Issue an Infringement* updates existing delegates in line with position changes implemented as a result of the City of Busselton organisational restructure.

No further review, changes to delegates or other amendments are considered to be required, with this delegation last reviewed in September 2023.

It is recommended that the Council adopt the attached amended delegation of authority *DA 3 – 03: To Institute a Prosecution, or to Issue an Infringement* to ensure there is an appropriate delegation in place for this function moving forward.

Statutory Environment

Bushfires Act 1954:

s.59: Prosecution of offences

s.59A: Alternative procedure – infringement notices

Relevant Plans and Policies

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. Request further amendments to *DA 3 – 03 To Institute a Prosecution, or to Issue an Infringement*
2. Not adopt the amended delegation *DA 3 – 03 To Institute a Prosecution, or to Issue an Infringement*, and retain the existing delegation (noting that this delegation is to two positions which no longer exist in the City’s organisational structure)
3. Revoke delegation *DA 3 – 03 To Institute a Prosecution, or to Issue an Infringement*

CONCLUSION

It is recommended that the Council adopt the attached amended delegation of authority *DA 3 – 03: To Institute a Prosecution, or to Issue an Infringement* to ensure there is an appropriate delegation in place for this function moving forward.

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
Amended delegation issued to officers	6 March 2024
Updated Delegation of Authority register made available on the City’s website	6 March 2024



Delegation of authority

Delegation	DA 3 - 03 To Institute a Prosecution, or to Issue an Infringement (DRAFT)
Head of power	03 Bushfires Act 1954
Delegator	Local Government
Express power to delegate	Bush Fires Act 1954 Section 59(3)
Express power or duty delegated	The Bush Fires Act 1954
Function	s.59 Prosecution of offences s.59A Alternative procedure – infringement notices
Delegates	Bush Fire Control Officer CEO Director Community Planning Manager Community Safety Ranger Ranger Coordinator Senior Ranger
Conditions	1. Rangers and Senior Rangers are prohibited from commencing a prosecution for an offence against the Bush Fire Act 1954; 2. Rangers and Senior Rangers are prohibited from instituting legal proceedings pursuant to s.59A(3) of the Bush Fire Act 1954; and 3. A delegation as per s.48 of the Bush Fire Act 1954 does not include the power to sub-delegate
Statutory framework	Annual Firebreak and Fuel Hazard Reduction Notice
Policy	Council Policy: Ranger and Emergency Services Approach to Regulatory Functions
Record keeping	GOVN015 - Instrument of Council Delegation to CEO

Amendments			
Approved	Type	Amendment	References
3 Dec 2018	New delegation	Initial Council Resolution: C1812/264	Nil
21 Dec 2022	Amended delegation	Recent Council Resolution: C2212/315	Nil

7 CONFIDENTIAL MATTERS

Nil

8 NEXT MEETING DATE

Wednesday 20 March 2024

9 CLOSURE