

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES OF THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 22 SEPTEMBER 2021

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MINUTES

MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN COMMITTEE ROOM,
ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 22 SEPTEMBER 2021 AT 10.00AM.

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

The Presiding Member opened the meeting at 10.00am.

The Presiding Member noted this meeting is held on the lands of the Wadandi people and acknowledged them as Traditional Owners, paying respect to their Elders, past and present, and Aboriginal Elders of other communities who may be present.

2. ATTENDANCE

Presiding Member:

Cr Ross Paine

Members:

Cr Grant Henley

Cr Kate Cox

Cr Lyndon Miles

Cr Paul Carter (*Deputy Member*)

Officers:

Mr Tony Nottle, Director, Finance and Corporate Services

Mr Paul Needham, Director, Planning and Development Services

Ms Lee Reddell, Manager, Development Services

Mrs Emma Heys, Governance Coordinator

Mr Cobus Botha, Legal Services Coordinator

Ms Melissa Egan, Governance Officer

Apologies:

Cr Kelly Hick

3. PUBLIC QUESTION TIME

Nil

4. DISCLOSURE OF INTERESTS

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 24 August 2021

COMMITTEE DECISION

PL2109/423 Moved Councillor K Cox, seconded Councillor G Henley























That the Minutes of the Policy and Legislation Committee Meeting held 24 August 2021 be confirmed as a true and correct record.



















CARRIED 5/0

10.02am: At this time, the Presiding Member agreed that Item 6.2 'Annual Statutory Review of Delegations Authority' would be moved forward for the benefit of officers presenting the item.

6. REPORTS

6.2 ANNUAL STATUTORY REVIEW OF DELEGATIONS OF AUTHORITY

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
SUBJECT INDEX	Delegations of Authority
BUSINESS UNIT	Governance Services
REPORTING OFFICER	Governance Coordinator - Emma Heys
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Absolute Majority
ATTACHMENTS	<p>Attachment A DA1 - 01 Issuing notices ↓ </p> <p>Attachment B DA1 - 02 Entry in an emergency ↓ </p> <p>Attachment C DA1 - 03 Abandoned vehicle wreck ↓ </p> <p>Attachment D DA1 - 04 Confiscated or uncollected goods ↓ </p> <p>Attachment E DA1 - 05 Closure of thoroughfares ↓ </p> <p>Attachment F DA 1 - 07 Inviting Rejecting and Accepting Tenders (Committee Amendments) ↓ </p> <p>Attachment G DA1 - 08 Expression of interest for goods and services ↓ </p> <p>Attachment H DA 1 - 10 Panels of Pre-Qualified Suppliers (Committee Amendments) ↓ </p> <p>Attachment I DA1 - 11 Amendments to the consolidated parking scheme ↓ </p> <p>Attachment J DA1 - 12 Disposing of property (leases at the BMRA) ↓ </p> <p>Attachment K DA1 - 13 Dispose of sick or injured animal ↓ </p> <p>Attachment L DA1 - 14 Power to defer, grant discounts, waive or write-off debts ↓ </p> <p>Attachment M DA1 - 15 Rates and service charges ↓ </p> <p>Attachment N DA1 - 16 Investment of surplus funds ↓ </p> <p>Attachment O DA1 - 19 Urgent legal representation ↓ </p> <p>Attachment P DA1 - 20 Administer local laws (amended) ↓ </p> <p>Attachment Q DA1 - 21 Acquisition of Property ↓ </p> <p>Attachment R DA1 - 22A Disposition of property: other than by lease ↓ </p> <p>Attachment S DA1 - 22B Disposition of property: leasing and licensing of land and buildings ↓ </p> <p>Attachment T DA1 - 23 Payments from municipal fund or trust fund ↓ </p> <p>Attachment U DA1 - 24 Affixing of the common seal ↓ </p> <p>Attachment V DA2 - 01 The powers and duties of the local government pursuant to the Building Act 2011 ↓ </p> <p>Attachment W DA3 - 01 The powers and duties of the local</p>

- government pursuant to the Bush Fires Act 1954  [↓](#)
- Attachment X DA3 - 02 Appointment of Bush Fire Control officers  [↓](#)
- Attachment Y DA 3 - 03 To Institute a Prosecution or to Issue an Infringement (Committee Amendments)  [↓](#)
- Attachment Z DA 3 - 04 Variation of Prohibited and Restricted Burning Times (Committee Amendments)  [↓](#)
- Attachment AA DA4 - 01 The powers and duties of the local government pursuant to the Cat Act 2011  [↓](#)
- Attachment AB DA5 - 01 The powers and duties of the local government pursuant to the Dog Act 1976  [↓](#)
- Attachment AC DA6 - 01 The powers and duties of a local government pursuant to the Graffiti Vandalism Act 2016  [↓](#)
- Attachment AD DA7 - 01 Development control (amended)  [↓](#)
- Attachment AE DA7 - 02 Unauthorised development  [↓](#)
- Attachment AF DA8 - 01 Certificate of approval pursuant to the Strata Titles Act 1985  [↓](#)
- Attachment AG DA9 - 01 Criminal Procedure Act 2004 - Authorised and Approved Persons (delete)  [↓](#)
- Attachment AH DA10 - 01 Designated Authorised Officers (amended)  [↓](#)
- Attachment AI DA10 - 02 Appoint authorised officer or approved officer (Asbestos Regulations) (amended)  [↓](#)
- Attachment AJ DA11 - 01 Meelup Regional Park Management Committee  [↓](#)
- Attachment AK DA11 - 02 Audit and Risk Committee (amended)  [↓](#)
- Attachment AL DA12 - 01 Prohibition orders (proposed)  [↓](#)
- Attachment AMDA12 - 02 Food Business Registration (proposed)  [↓](#)
- Attachment AN DA12 - 03 Appoint authorised officers and designated officers (proposed)  [↓](#)

COMMITTEE RECOMMENDATION**PL2109/424**

Moved Councillor G Henley, seconded Councillor K Cox

That the Council adopts the City of Busselton Delegations of Authority, inclusive of Committee amendments, as per Attachments A through to AN and as outlined in the table below:

DELEGATION	CHANGES
DA1 – 01 Issuing Notices	No changes
DA1 – 02 Entry in an Emergency	No changes
DA1 – 03 Abandoned vehicle wreck	No changes
DA1 – 04 Confiscated or Uncollected Goods	No changes
DA1 – 05 Closure of Thoroughfares	No changes
DA1 – 07 Inviting, Rejecting and Accepting Tenders	No changes

DA1 – 08 Expression of Interest for Goods and Services	No changes
DA1 – 10 Panels of Pre-Qualified Suppliers	Change to Conditions: Correction in Condition (b): ‘connect’ to ‘connection’.
DA1 – 11 Amendments to the Consolidated Parking Scheme	No changes
DA1 – 12 Disposing of Property (Leases at the Busselton Margaret River Airport)	No changes
DA1 – 13 Dispose of sick or injured animals	No changes
DA1 – 14 Power to Defer, Grant Discounts, Waive or Write-Off Debts	No changes
DA1 – 15 Rates and Service Charges	No changes
DA1 – 16 Investment of Surplus Funds	No changes
DA1 – 19 Urgent Legal Representation	No changes
DA1 – 20 Administer Local Laws	Change to Conditions: Addition of condition to provide clarity in the function of each local law.
DA1 – 21 Acquisition of Property	No changes
DA1 – 22A Disposition of Property: Other than by Lease	No changes
DA1 – 22B Disposition of Property: Leasing and Licensing of Land and Buildings	No changes
DA1 – 23 Payments from Municipal Fund or Trust Fund	No changes
DA1 – 24 Affixing of the Common Seal	No changes

DA2 – 01 The Powers and Duties of the Local Government pursuant to the Building Act 2001	No changes
DA3 – 01 The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	No changes
DA3 – 02 Appointment of Bush Fire Control Officers	No changes
DA3 – 03 To Institute a Prosecution, or to Issue an Infringement	Change to Conditions: Express power to delegate has been corrected to s.59(3) of the <i>Bush Fires Act 1954</i>.
DA3 – 04 Variation of Prohibited and Restricted Burning Times	Change to Conditions: Express power to delegate has been corrected to s.17(10) of the <i>Bush Fires Act 1954</i>.
DA4 – 01 The Powers and Duties of the Local Government pursuant to the Cat Act 2011	No changes
DA5 – 01 The Powers and Duties of the Local Government pursuant to the Dog Act 1976	No changes
DA6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	No changes
DA7 – 01 Development Control	Changes to Conditions: Various minor wording amendments to reflect contemporary terminology from the Regulations, delete reference to Developer Contribution Plans (now dealt with under the Scheme), and delete reference to Local Development Plans (WAPC has no power to approve or amend).
DA7 – 02 Unauthorised Development	No changes
DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes

DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes
DA9 – 01 Criminal Procedure Act 2004 – Authorised Persons	Remove – see new DA 10 – 02.
DA 10 – 01 Public Health Act 2016 – Authorised Persons of	Change to Title: To more clearly reflect the nature of the power being delegated. Addition of Conditions: To outline the requirements relating to authorised persons.
DA 10 – 02 Appoint Authorised Officer or Approved Officer (Asbestos Regulations)	Amended: Previously DA 9 – 01, the delegation has been amended to reflect the correct head of power from which the delegation flows from, being the <i>Health (Asbestos) Regulations 1992</i>.
DA 11 – 01 Meelup Regional Park Management Committee	No changes
DA 11 – 02 Audit and Risk Committee	Amended: Updated to include Risk to reflect the expansion of the Committee to Audit and Risk, as per Council resolution C2109/201.
NEW DELEGATIONS	
DA 12 – 01 Prohibition Orders	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the Food Act 2008 – specifically in relation to Prohibition Orders.
DA 12 – 02 Food Business Registration	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the registration of food businesses.
DA 12 – 03 Appoint Authorised Officers and Designated Officers	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the appointment of authorised officers and designated officers.

CARRIED 5/0

BY ABSOLUTE MAJORITY

Reasons: The Committee recommended the retention of the maximum threshold of \$500,000 in relation to the value of the contract or service under DA 1 - 07 and DA 1 – 10; corrections to the express powers for DA 3 – 03 and DA 3 – 04 under the *Bush Fires Act 1954*; and minor typographical amendments to various delegations.

OFFICER RECOMMENDATION

That the Council adopts the City of Busselton Delegations of Authority as per Attachments A through to AN and as outlined in the table below:

DELEGATION	CHANGES
DA1 – 01 Issuing Notices	No changes
DA1 – 02 Entry in an Emergency	No changes
DA1 – 03 Abandoned vehicle wreck	No changes
DA1 – 04 Confiscated or Uncollected Goods	No changes
DA1 – 05 Closure of Thoroughfares	No changes
DA1 – 07 Inviting, Rejecting and Accepting Tenders	Change to Conditions: Increase contract value from \$500,000 to \$750,000 to reflect rising costs and in recognition of the increase to the tender threshold to \$250,000 per annum.
DA1 – 08 Expression of Interest for Goods and Services	No changes
DA1 – 10 Panels of Pre-Qualified Suppliers	Change to Conditions: Increase contract value from \$500,000 to \$750,000 to reflect rising costs and in recognition of the increase to the tender threshold to \$250,000 per annum. Correction in Condition (b): 'connect' to 'connection'.
DA1 – 11 Amendments to the Consolidated Parking Scheme	No changes
DA1 – 12 Disposing of Property (Leases at the Busselton Margaret River Airport)	No changes
DA1 – 13 Dispose of sick or injured animals	No changes
DA1 – 14 Power to Defer, Grant Discounts, Waive or Write-Off Debts	No changes
DA1 – 15 Rates and Service Charges	No changes
DA1 – 16 Investment of Surplus Funds	No changes
DA1 – 19 Urgent Legal Representation	No changes

DA1 – 20 Administer Local Laws	Change to Conditions: Addition of condition to provide clarity in the function of each local law.
DA1 – 21 Acquisition of Property	No changes
DA1 – 22A Disposition of Property: Other than by Lease	No changes
DA1 – 22B Disposition of Property: Leasing and Licensing of Land and Buildings	No changes
DA1 – 23 Payments from Municipal Fund or Trust Fund	No changes
DA1 – 24 Affixing of the Common Seal	No changes
DA2 – 01 The Powers and Duties of the Local Government pursuant to the Building Act 2001	No changes
DA3 – 01 The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	No changes
DA3 – 02 Appointment of Bush Fire Control Officers	No changes
DA3 – 03 To Institute a Prosecution, or to Issue an Infringement	No changes
DA3 – 04 Variation of Prohibited and Restricted Burning Times	No changes
DA4 – 01 The Powers and Duties of the Local Government pursuant to the Cat Act 2011	No changes
DA5 – 01 The Powers and Duties of the Local Government pursuant to the Dog Act 1976	No changes
DA6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	No changes
DA7 – 01 Development Control	Changes to Conditions: Various minor wording amendments to reflect contemporary terminology from the Regulations, delete reference to Developer Contribution Plans (now dealt with under the Scheme), and delete reference to Local Development Plans (WAPC has no power to approve or amend).

DA7 – 02 Unauthorised Development	No changes
DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes
DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes
DA9 – 01 Criminal Procedure Act 2004 – Authorised Persons	Remove – see new DA 10 – 02.
DA 10 – 01 Public Health Act 2016 – Authorised Persons of	Change to Title: To more clearly reflect the nature of the power being delegated. Addition of Conditions: To outline the requirements relating to authorised persons
DA 10 – 02 Appoint Authorised Officer or Approved Officer (Asbestos Regulations)	Amended: Previously DA 9 – 01, the delegation has been amended to reflect the correct head of power from which the delegation flows from, being the <i>Health (Asbestos) Regulations 1992</i> .
DA 11 – 01 Meelup Regional Park Management Committee	No changes
DA 11 – 02 Audit and Risk Committee	Amended: Updated to include Risk to reflect the expansion of the Committee to Audit and Risk, as per Council resolution C2109/201.
NEW DELEGATIONS	
DA 12 – 01 Prohibition Orders	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to Prohibition Orders.
DA 12 – 02 Food Business Registration	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the registration of food businesses.
DA 12 – 03 Appoint Authorised Officers and Designated Officers	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the appointment of authorised officers and designated officers.

EXECUTIVE SUMMARY

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

This report propose new delegations under the *Food Act 2008*, in regards to prohibition orders, the registration of food businesses and the appointment of authorised/designated officers, which are not covered under by section 9.10 of the Act.

Delegations made under the *Building Act 2011* and the *Bushfire Act 1954* do not require an annual review, however officers have include these delegations in this year's review.

BACKGROUND

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

Section 5.46(2) of the Act requires all delegations by Council to the CEO to be reviewed at least once each financial year. A review has been completed and this report details the outcomes of that review, and seeks Council's endorsement of the continuing and amended delegations of authority.

OFFICER COMMENT

The annual statutory review of delegated authorities over the last two years have included significant changes to the format of the delegations and delegations register. As a result of the review in 2020, the City settled on the position that delegations should clearly identify the powers and duties that are being delegated, by reference to both relevant sections and subsections.

This format provides transparency with respect to the powers that are being delegated within a section, where there is more than one, and assists with officer understanding, noting that the City's register of sub-delegations flow from these head delegations. This aligns with advice from WALGA that each provision that can be delegated should be delegated separately, to ensure clarity in Council's decision-making process.

This format has worked well in the last 12 months, achieving clarity in the decision making chain and providing officers with confidence they are working within the scope of their powers. To this end, we are not seeking as a result of this year's review to make any wholesale changes to the format of the delegations or register.

Proposed Changes

The following changes have been identified as part of the review and are recommended for Council's adoption:

Delegation DA 1 – 07 Inviting, Rejecting and Accepting Tenders and DA 1 – 10 Panel of Pre-Qualified Suppliers have both been amended with proposed changes to Condition (c) and (b) respectively. The increase in the threshold to accept tenders and enter into contracts from a value not exceeding \$500,000 to \$750,000 is reflective of rising costs and in recognition of the increase to the tender threshold to \$250,000 per annum. This is particularly important in recognition of the City's multiyear contracts.

Delegation DA 7 – 01 Development Control has been amended with proposed changes to Condition 3:

- 1) Update the reference to Structure Plans and Activity Centre Plans to reflect contemporary terminology in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) which now refer to Structure Plans as ‘Standard Structure Plans’ and Activity Centre Plans as ‘Precinct Structure Plans’;
- 2) Delete reference to Developer Contribution Plans which are now dealt with in the Scheme and therefore require Council approval for initiation and adoption in any case; and
- 3) Delete reference to Local Development Plans (LDPs) which, while generally requiring WAPC approval for their preparation (e.g. as a condition of subdivision, as identified in an approved structure plan, where considered orderly and proper planning by the WAPC) there is actually no power for the WAPC to approve or amend an LDP in the Regulations. It is proposed in association with this change to update the sub-delegations in respect of LDPs to restrict their approval to the Director Planning and Development Services and the Manager Development Services only.

Previous delegation DA9 – 01 Criminal Procedure Act 2004, Authorised and Approved Persons has been retitled to DA10 – 02 Appoint Authorised Officer or Approved Officer (Asbestos Regulations) and amended to reflect the correct head of power from which the authority to appoint authorised persons flow from.

Proposed New Delegations

Officers are proposing the adoption of three new delegations of authority for specific powers and duties, pursuant to the functions of an enforcement agency (Local Government) under the *Food Act 2008*. These are:

- a. DA12 – 01 Prohibitions Orders
- b. DA12 – 02 Food Business Registration
- c. DA12 – 03 Appoint Authorised Officers and Designated Officers

The proposed delegations ensure efficiencies in the registration of food businesses and the appointment of authorised officers by the CEO in a timely manner to undertake enforcement functions under the *Food Act 2008*. The power to appoint authorised officers is prescribed by s1.22 of the *Food Act 2008*, as opposed to section 9.10 of the Act, which provides for the power to appoint authorised officers under different acts.

The proposed amendments to the delegations are summarised in the table below, and have been made to reflect efficiencies identified through the review process and/or due to recently legislative changes or updates.

DELEGATION	CHANGES
DA1 – 01 Issuing Notices	No changes
DA1 – 02 Entry in an Emergency	No changes
DA1 – 03 Abandoned vehicle wreck	No changes

DA1 – 04 Confiscated or Uncollected Goods	No changes
DA1 – 05 Closure of Thoroughfares	No changes
DA1 – 07 Inviting, Rejecting and Accepting Tenders	Change to Conditions: Increase contract value from \$500,000 to \$750,000 to reflect rising costs and in recognition of the increase to the tender threshold to \$250,000 per annum.
DA1 – 08 Expression of Interest for Goods and Services	No changes
DA1 – 10 Panels of Pre-Qualified Suppliers	Change to Conditions: Increase contract value from \$500,000 to \$750,000 to reflect rising costs and in recognition of the increase to the tender threshold to \$250,000 per annum. Correction in Condition (b): 'connect' to 'connection'.
DA1 – 11 Amendments to the Consolidated Parking Scheme	No changes
DA1 – 12 Disposing of Property (Leases at the Busselton Margaret River Airport)	No changes
DA1 – 13 Dispose of sick or injured animals	No changes
DA1 – 14 Power to Defer, Grant Discounts, Waive or Write-Off Debts	No changes
DA1 – 15 Rates and Service Charges	No changes
DA1 – 16 Investment of Surplus Funds	No changes
DA1 – 19 Urgent Legal Representation	No changes
DA1 – 20 Administer Local Laws	Change to Conditions: Addition of condition to provide clarity in the function of each local law.
DA1 – 21 Acquisition of Property	No changes
DA1 – 22A Disposition of Property: Other than by Lease	No changes

DA1 – 22B Disposition of Property: Leasing and Licensing of Land and Buildings	No changes
DA1 – 23 Payments from Municipal Fund or Trust Fund	No changes
DA1 – 24 Affixing of the Common Seal	No changes
DA2 – 01 The Powers and Duties of the Local Government pursuant to the Building Act 2001	No changes
DA3 – 01 The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	No changes
DA3 – 02 Appointment of Bush Fire Control Officers	No changes
DA3 – 03 To Institute a Prosecution, or to Issue an Infringement	No changes
DA3 – 04 Variation of Prohibited and Restricted Burning Times	No changes
DA4 – 01 The Powers and Duties of the Local Government pursuant to the Cat Act 2011	No changes
DA5 – 01 The Powers and Duties of the Local Government pursuant to the Dog Act 1976	No changes
DA6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	No changes
DA7 – 01 Development Control	Changes to Conditions: Various minor wording amendments to reflect contemporary terminology from the Regulations, delete reference to Developer Contribution Plans (now dealt with under the Scheme), and delete reference to Local Development Plans (WAPC has no power to approve or amend).

DA7 – 02 Unauthorised Development	No changes
DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes
DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	No changes
DA9 – 01 Criminal Procedure Act 2004 – Authorised Persons	Remove – see new DA 10 - 02
DA 10 – 01 Public Health Act 2016 – Authorised Persons of	Change to Title: To more clearly reflect the nature of the power being delegated. Addition of Conditions: To outline the requirements relating to authorised persons.
DA 10 – 02 Appoint Authorised Officer or Approved Officer (Asbestos Regulations)	Amended: Previously DA 9 – 01, the delegation has been amended to reflect the correct head of power from which the delegation flows from, being the <i>Health (Asbestos) Regulations 1992</i> .
DA 11 – 01 Meelup Regional Park Management Committee	No changes
DA 11 – 02 Audit and Risk Committee	Amended: Updated to include Risk to reflect the expansion of the Committee to Audit and Risk, as per Council resolution C2109/201
NEW DELEGATIONS	
DA 12 – 01 Prohibition Orders	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to Prohibition Orders.
DA 12 – 02 Food Business Registration	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the registration of food businesses.
DA 12 – 03 Appoint Authorised Officers and Designated Officers	New instrument of delegation to formally delegate to the CEO the functions of a local government under section 118(2) of the <i>Food Act 2008</i> – specifically in relation to the appointment of authorised officers and designated officers.

Statutory Environment

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

Section 5.16 of the Act provides the ability for powers and duties to be delegated to Committees.

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

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

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

The *Building Act 2011* does not prescribe a review period for powers or duties delegated under its legislation, however officers have reviewed the relevant delegations as part of this annual review.

The *Bushfires Act 1954* does not prescribe a review period for powers or duties delegated under its legislation, however officers have reviewed the relevant delegations as part of this annual review.

The *Food Act 2008* does not prescribe a review period for powers or duties delegated under its legislation.

Section 5.46 of the *Local Government Act 1995* requires that all delegations are contained within a Register. The *Local Government (Administration) Regulations 1996* require that where a decision has been made under delegated authority, records of that decision must be kept in accordance with the Regulations.

Relevant Plans and Policies

There are no relevant plans or policies to consider in relation to this matter.

Financial Implications

There are no financial implications associated with the officer recommendation.

Stakeholder Consultation

No external stakeholder consultation was required or undertaken in relation to this matter.

Risk Assessment

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

Options

As an alternative to the proposed recommendation, the Council may choose:

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

CONCLUSION

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

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Delegation of Authority Register will be amended immediately following adoption by Council.

DA 1 – 01	Issuing Notices
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.25, s.3.26
FUNCTION	s.3.25(1) <u>The power to give notices requiring certain things to be done by owner or occupier of land</u> s.3.26(2) <u>The power to do anything that is considered necessary to achieve, so far as is practicable, the purpose for which the notice was given</u> s.3.26(3) <u>The power to recover the cost of anything from an action under subsection (2)</u>
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3D - Notices requiring certain things to be done by owner or occupier of land and additional powers when notice is given	

DA 1 – 02	Entry in an Emergency
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.34
FUNCTION	s.3.34(1) The power to lawfully enter s.3.34(3) The power to use reasonable force s.3.34(4) To exercise the power of entry
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3E – General procedure for entering property	

DA 1 – 03	Abandoned vehicle wreck
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.40A
FUNCTION	s.3.40A(4) <u>The power to declare that the vehicle is an abandoned vehicle wreck</u>
CONDITIONS	Disposal of a declared abandoned vehicle wreck is to be undertaken in accordance with Delegation DA1 – 04 Confiscated or Uncollected Goods
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3F – Power to Remove and Impound; Abandoned Vehicle Wrecks may be taken	

DA 1 – 04	Confiscated or Uncollected Goods
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.46, s.3.47, s.3.48,
FUNCTION	s.3.46(1) The power to refuse to allow impounded goods to be collect until costs are paid s.3.46(2) The power to refuse to allow removed goods to be collect until costs are paid s.3.47(1) The power to sell or otherwise dispose of goods under s.3.43 s.3.47(2) The power to sell or otherwise dispose of any vehicle s.3.47(2a) The power to sell or otherwise dispose of impounded goods s.3.48 The power to recover impounding expenses
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3G – Disposing of Uncollected Goods	

DA 1 – 05	Closure of Thoroughfares
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.50, s.3.50A
FUNCTION	s.3.50(1) The power to close any thoroughfare, for a period not exceeding 4 weeks s.3.50(1a) The power to close any thoroughfare for a period exceeding 4 weeks s.3.50(6) The power to revoke an order s.3.50A The power to partially close a thoroughfare for repairs or maintenance
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3H – Closing of Certain Thoroughfares to Vehicles and Partial Closure of Thoroughfare for Repairs or Maintenance	

DA 1 – 07	Inviting, Rejecting and Accepting Tenders
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	Local Government Act 1995 s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	Local Government Act 1995 s.3.18, s.3.57 Local Government (Functions and General) Regulations 1996 Regulations 11 , 13, 14, 18, 20, 21A
FUNCTION	<p><u>s.3.18</u> <u>The power to perform executive functions</u> <u>Power to enter into a contract for the purchase of</u> <u>goods and services</u></p> <p><u>s.3.57</u> <u>Tenders for providing goods or services</u></p> <p><u>Regulation 11(1)</u> <u>The power to determine when tenders</u> <u>have to be publicly invited</u></p> <p><u>Regulation 11(2)</u> <u>The power to determine that a relevant</u> <u>exemption applies</u></p> <p><u>Regulation 13</u> <u>Requirements when local government</u> <u>invites tenders when not required to do so</u></p> <p><u>Regulation 14(2a)</u> <u>The power to determine in writing, before</u> <u>tenders are called, the criteria for</u> <u>acceptance of tenders</u></p> <p><u>Regulation 14(4)(a)</u> <u>The power to determine the information</u> <u>that is to be disclosed</u></p> <p><u>Regulation 14(5)</u> <u>The power to vary tender information after</u> <u>public notice and provide notice of variation</u> <u>to information</u></p> <p><u>Regulation 18(4)</u> <u>The power to evaluate tenders, by written</u> <u>evaluation, and decide which is the most</u> <u>advantageous</u></p> <p><u>Regulation 18(4a)</u> <u>The power to seek clarification from</u> <u>tenderers in relation to information</u> <u>contained in their tender submission</u></p> <p><u>Regulation 18(5)</u> <u>The power to decline any tender</u></p> <p><u>Regulation 18(6), (7)</u> <u>The power to accept another tender where</u> <u>within 6 months of either accepting a</u> <u>tender, a contract has not been entered into</u> <u>or the successful tenderer agrees to</u> <u>terminate the contract.</u></p> <p><u>Regulation 20</u> <u>The power to vary the requirements before entry</u> <u>into contract</u></p> <p><u>Regulation 21A</u> <u>The power to vary a contract for the supply of goods</u> <u>or services</u></p>

CONDITIONS	<p><u>This delegation is limited to the power to enter into a contract for the purchase of goods and services.</u></p> <p>This delegation is subject to:</p> <ul style="list-style-type: none"> (a) Complying with the requirements of the City of Busselton's Purchasing Policy as it relates to tendering; (b) Following any applicable staff management practices and operational procedures; and (c) Not accepting any tender or entering into any contract having a value exceeding \$500,000<u>\$500,000</u>
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Tender Register
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instruments of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1103/179	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	LG3J – Inviting Tenders and Rejecting and Accepting Tenders	

DA 1 – 08	Expression of Interest for Goods and Services
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.57 <i>Local Government (Functions and General) Regulations 1996</i> Regulations 21, 23
FUNCTION	<p>s.3.57 The power to call tenders for providing goods or services</p> <p>Regulation 21 The power to determine when to seek Expressions of Interest and to invite Expressions of Interest for the supply of goods or services.</p> <p>Regulation 23(2) The power to determine when an Expression of Interest may be rejected</p> <p>Regulation 23(3) The power to consider an expression of interest that has not rejected</p>
CONDITIONS	Expressions of interest for goods and services may only be called where there is an adopted budget for the proposed goods or services.
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1606/139	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3K – Preliminary Selection of Tenderers	

DA 1 – 10	Panels of Pre-Qualified Suppliers
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government (Functions and General) Regulations 1996</i> Part 4, Division 3
FUNCTION	Regulation 24AB The power to establish panels of pre-qualified suppliers Regulation 24AC The power to set the requirements before establishing panels of pre-qualified suppliers Regulation 24AD The power to set the requirements when inviting persons to apply to join panel of pre-qualified suppliers Regulation 24AH The power to reject and accept applications to join panel of pre-qualified suppliers Regulation 24AJ The power to enter into contracts with pre-qualified suppliers
CONDITIONS	This delegation is subject to: (a) Compliance with the requirements of the City of Busselton’s Purchasing Policy as it relates to panels of pre-qualified suppliers; and (b) The contract value of any particular goods or services to be procured from a particular supplier or in connection with a particular project is not to exceed \$500,000 <u>\$500,000</u> .
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN051 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1508/219	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	LG3M – Establishment of Panels of Pre-Qualified Suppliers	

DA 1 – 11	Amendments to the Consolidated Parking Scheme
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>City of Busselton Parking Local Law 2020</i> Section 1.10
FUNCTION	s.1.10 Powers of Council
CONDITIONS	<p>The Chief Executive Officer shall ensure Councillors are provided with details of all proposed amendments to the Scheme, and given a period of not less than 14 days to submit a written request to the CEO for the matter to be presented to Council before a delegation is exercised.</p> <p>Any two or more Councillors may consider a proposed amendment to the Consolidated Parking Scheme to be of strategic significance and/or high community interest and request the CEO in writing, to present the proposal to Council for consideration. If the request is supported, the proposed amendment shall be presented to the first practicable Council meeting for consideration.</p> <p><i>Note: any Councillor may also submit a notice-of-motion in relation to the withdrawal of delegation in relation to a particular proposal, but it would generally be expected that they would first seek to exercise the call-in provision as outlined above.</i></p>
POLICY	Council Policy: Ranger and Emergency Services Approach to Regulator Functions
REFERENCE DOCUMENTS	City of Busselton Parking Local Law 2020
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1802/021	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2020	
PREVIOUS DELEGATION REFERENCE	LG3N – Amendments to the Consolidated Parking Scheme	

DA 1 – 12	Disposing of Property (Leases at the Busselton Margaret River Airport)
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.58
FUNCTION	s.3.18 The power to perform executive functions s.3.58 The power to dispose of property
CONDITIONS	This delegation is subject to: <ol style="list-style-type: none"> 1. The property being located at the Busselton Margaret River Airport; 2. The means of disposal being a lease; 3. The term of the lease (including options) being up to a maximum of 20 years; 4. The initial annual market rental value of the lease being less than: <ol style="list-style-type: none"> a. \$10,000.00 per annum for a ground lease; and b. \$50,000.00 per annum for any other lease; 5. The disposition not being of a significant commercial and strategic nature; and 6. At least every six months City officers must provide Councillors a summary and update of leases entered into under this delegation.
POLICY	Council Policy: Purchasing
REFERENCE DOCUMENTS	
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1811/244	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG30 – Disposing of Property (Leases at Busselton Margaret River Airport)	

DA 1 – 13	Dispose of sick or injured animals
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.47A
FUNCTION	s.3.47A The power to humanely destroy an animal and dispose of the carcass
CONDITIONS	This delegation is only to be used where the all reasonable efforts to identify and contact an owner have been exhausted
POLICY	Council Policy: Ranger and Emergency Services Approach to Regulatory Functions Council Policy: Rehoming of Impounded Dogs and Cats
REFERENCE DOCUMENTS	Cat Act 2011 Keeping and Control of Cats Local Law 2014 Dog Act 1976 Dogs Local Law 2014
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1812/264	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3Q – Authority to destroy an impounded sick or injured animal	

DA 1 – 14	Power to Defer, Grant Discounts, Waive or Write-Off Debts
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.6.12
FUNCTION	<p>s.6.12(1)(b) The power to waive or grant concessions in relation to any amount of money</p> <p>s.6.12(1)(c) The power to write off any amount of money</p> <p>s.6.12(3) The power to determine conditions imposed on the granting of a concession</p>
CONDITIONS	<ol style="list-style-type: none"> Any waiver or granting of concession shall only be up to \$2,000 and considered solely on its merits; and any debt write-off approved shall be less than \$2,000. Any waiver or granting of concession as it applies to any COVID-19 Financial Hardship application, shall only be up to \$50,000 and considered solely on its merits; and any COVID-19 Financial Hardship application approved for debt write-off shall be less than \$50,000 and will take into account the COVID-19 Financial Hardship Policy. The power to defer, grant discounts, waive or write-off debts as it relates to any COVID-19 Financial Hardship application is applicable only until the cessation date of the Western Australian State of Emergency Declaration or any extension thereof.
POLICY	Council Policy: COVID-19 Financial Hardship
REFERENCE DOCUMENTS	City of Busselton COVID-19 Financial Hardship Brochure and FAQ's City of Busselton COVID-19 Financial Hardship Application Form
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG6B – Power to Defer, Grant Discounts, Waive or Write-off Debts	

DA 1 – 15	Rates and Service Charges
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.6.45, s.6.49, s.6.50, s.6.56, s.6.60, s.6.64, s.6.71, s.6.74, s.6.76
FUNCTION	<p>s.6.45(3) The power to impose an additional charge for instalments</p> <p>s.6.49 The power to enter into an agreement for the payment of rates and service charges</p> <p>s.6.50 The power to set rates or service charges due and payable</p> <p>s.6.56 The power to recover, in court, rates or service charges due</p> <p>s.6.60(4) The power to recover the amount of the rate or service charge as a debt from the lessee if the rent is not paid in accordance with a notice</p> <p>s.6.64(1) The power to take possession of land and hold land against a person having an estate or interest in the land where rates or service charges have remained unpaid for at least three years</p> <p>s.6.69(2) The power to agree to the terms and conditions between parties and accept payment of the outstanding rates or service charges</p> <p>s.6.71 The power to transfer land to Crown or local government</p> <p>s.6.74 The power to have land vested in Crown if rate in arrears 3 years</p> <p>s.6.76(4) The power to extend the time for a person to make an objection to a rate records</p> <p>s.6.76(5) The power to consider any objection and disallow or allow it, wholly or in part</p>
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG6C – Rates and Service Charges	

DA 1 – 16	Investment of Surplus Funds
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.6.14
FUNCTION	s.6.14(1) The power to invest money held in the municipal fund or trust fund that is not, for the time being, required for any other purpose
CONDITIONS	Council approval is required for any investment in Managed Investments
POLICY	Council Policy: Investment
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG6D – Investment of Surplus Funds	

DA 1 – 19	Urgent Legal Representation
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<u>Council Policy: <i>Legal Representation for Council Members and Employees</i></u>
FUNCTION	
CONDITIONS	<ol style="list-style-type: none"> 1. The authority to grant approval for applications for urgent legal representation for Council members and employees is limited to a maximum of \$10,000; 2. An application approved by the CEO is to be submitted at the next ordinary meeting of Council; 3. The determination must be made pursuant to Council Policy 'Legal Representation for Council Members and Employees'.
POLICY	<u>Council Policy: <i>Legal Representation for Council Members and Employees</i></u>
REFERENCE DOCUMENTS	<u>Local Government Operational Guideline Number 14 April, 2016</u>
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG5A – Provision of Urgent Legal Services	

DA 1 – 20	Administer Local Laws
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18
FUNCTION	s.3.18 The power to perform executive functions
CONDITIONS	To perform the duties of the local government pursuant to the powers of each local law. Nil
POLICY	Nil
REFERENCE DOCUMENTS	<p>City of Busselton Local Laws:</p> <ul style="list-style-type: none"> • Activities in Thoroughfares and Public Places and Trading Local Law 2015 • Busselton Regional Airport Local Law 2012 • Keeping and Control of Cats Local Law 2014 • Cemeteries Local Law 2015 • Waste Local Law 2016 • Dogs Local Law 2014 • Dust and Building Waste Control Local Law 2010 • Health Local Law 1997 • Holiday Homes Local Law 2012 • Jetties Local Law 2014 • Local Government Property Local Law 2010 • Parking Local Law 2020 • Standing Orders Local Law 2018
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	LG3A – Executive Function – Determining Applications Under Local Laws and Enforcement of Local Law Provisions	

DA 1 – 21	Acquisition of Property
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18
FUNCTION	s.3.18 The power to perform executive functions
CONDITIONS	In accordance with s.5.43(d) of the Local Government Act 1995, the value of the property to be acquired shall not exceed \$100,000
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1706/151	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG3B – Acquisition of Property	

DA 1 – 22A Disposition of Property: Other than by Lease
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.58 <i>Local Government (Functions and General) Regulations 1996</i> Regulations 30
FUNCTION	<p>s.3.18 The power to perform executive functions</p> <p>s.3.58(2) The power to dispose of property at a public auction or by public tender</p> <p>s.3.58(3) The power to dispose of property by private treaty</p> <p>Regulation 30 (2)(a)(ii) The power to determine an insignificant benefit</p>
CONDITIONS	<ol style="list-style-type: none"> 1. The value of the land to be disposed of shall not exceed \$20,000 other than if paragraph (2) applies; or 2. Where the property is land valued at less than \$100,000 and has been put to public auction or put out to tender and not sold, the land may be disposed of in accordance with Regulation 30 (2)(a) of the <i>Local Government (Functions and General) Regulations 1996</i>; and 3. The value of property other than land to be disposed of shall not exceed \$100,000; and 4. Where the value of property other than land does not exceed \$20,000 the property may be disposed of in accordance with Regulation 30 (3)(a) of the <i>Local Government (Functions and General) Regulations 1996</i>.
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C2006/050	Recent Council Resolution C2101/010
RECENT ALTERATIONS	June 2020 Rescission of DA 1 – 22: Adoption of DA 1 – 22A and DA 1 – 22B	
PREVIOUS DELEGATION REFERENCES	DA 1 – 22 – Disposing of Property LG3C – Disposing of Property	

DA 1 – 22B	Disposition of Property: Leasing and Licensing of Land and Buildings
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18, s.3.58
FUNCTION	<p>s.3.18 The power to perform executive functions s.3.58(2) The power to dispose of property at a public auction or by public tender s.3.58(3) The power to dispose of property by private treaty</p>
CONDITIONS	<ol style="list-style-type: none"> 1. Leasing and licensing of land and buildings, including assignments of existing leases and licences and the renewal of a lease by a lessee, where – <ol style="list-style-type: none"> (a) The land and/or buildings are established sporting or community facilities (including on managed reserve land) and where any part of the land or building has been leased or licensed before by the City: or (b) The land and/or buildings are for the purpose of storage only and are of an area of not more than 100 square metres. 2. The permitted use of the land or buildings must be consistent with: <ol style="list-style-type: none"> (a) The designated purpose of the property; or (b) The general or ancillary use of the land or buildings immediately prior to the entering into of a lease; or (c) If the land or building has recently been acquired or a new or amended management order has been made in respect of a managed reserve, the purpose for which the property has been acquired or is to be managed. 3. The value of the lease or licence (inclusive of all options or rights to renew or extend, but not including any provisions for holding over on a month by month basis) must not exceed \$25,000). 4. The maximum term of the lease or licence, including any right by a lessee to assign the lease or licence or to sublease or sublicense the land and/or buildings shall not exceed 10 years (inclusive of all options or rights to renew or extend, but not including any provisions for holding over on a month by month basis). 5. At least every six months City officers shall provide Councillors a summary and update of leases or licences entered into under this delegation.
POLICY	Nil

6.2

Attachment S

DA1 - 22B Disposition of property: leasing and licensing of land and buildings

REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C2006/050	Recent Council Resolution C2101/010
RECENT ALTERATIONS	June 2020 Rescission of DA 1 – 22: Adoption of DA 1 – 22A and DA 1 – 22B	
PREVIOUS DELEGATION REFERENCES	DA 1 – 22 – Disposing of Property LG3C – Disposing of Property	

DA 1 – 23	Payments from Municipal Fund or Trust Fund
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.6.10 <i>Local Government (Financial Management) Regulations 1996</i> Regulation 12
FUNCTION	s.6.10 Financial management regulations Regulation 12(1) The power to make payments from municipal fund or trust fund
CONDITIONS	With respect to allocation of donations and sponsorship from the fund established for this purpose in accordance with the Council’s tiered funding scheme, individual payments from this fund are not to exceed \$1,000 unless prior consultation with the Finance Committee has occurred.
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATON	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C0806/188	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG6A – Payments from the Municipal Fund or Trust Fund	

DA 1 – 24	Affixing of the Common Seal
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.9.49A
FUNCTION	s.9.49A(2) The power to affix the common seal
CONDITIONS	The CEO is authorised to affix the Common Seal to all documents that require it to be legally effective and to carry out the functions of a CEO.
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1005/169	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG9B – Authorising the Affixing of the Common Seal to Documents	

BUILDING ACT 2011	
DA 2 – 01	The Powers and Duties of the Local Government pursuant to the Building Act 2011

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Building Act 2011</i> Part 8, Division 2, Section 96 Part 10, Section 127
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Building Act 2011</i>
FUNCTION	The powers and duties of the local government pursuant to the Building Act 2011
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1110/334	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	BA1 – Powers of the Local Government pursuant to the Building Act 2011	

BUSH FIRES ACT 1954	
DA 3 – 01	The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Bush Fires Act 1954</i> Part V, Section 48
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Bush Fires Act 1954</i>
FUNCTION	All powers of the local government pursuant to the <i>Bush Fires Act 1954</i>
CONDITIONS	<ol style="list-style-type: none"> 1. Excludes the powers and duties that are subject to separate delegated authority within this Register as set out below: <ol style="list-style-type: none"> (a) DA 3 – 02 Appointment of Bush Fire Control Officers; (b) DA 3 – 03 Prosecutions and Infringements; (c) DA 3 – 04 Variation of Prohibited and Restricted Burning Times 2. A delegation as per s.48 does not include the power to sub-delegate
POLICY	Council Policy: Bush Fire Brigade Accounting Council Policy: Bush Fire Brigade Grievance Process Disciplinary Action Council Policy: Meetings of Bush Fire Brigades Council Policy: Membership of Bush Fire Brigades Council Policy: Qualifications of Bush Fire Brigades Officers Council Policy: Roles of Bush Fire Brigade Officers Council Policy: Code of Conduct, Bush Fire Brigade Objectives and Values
REFERENCE DOCUMENTS	Annual Firebreak and Fuel Hazard Reduction Notice
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C969/0425	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	BF1 – The performance of any of the functions of the local government under the Act	

DA 3 – 02	Appointment of Bush Fire Control Officers
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Bush Fires Act 1954</i> Part V, Section 48 Delegation by Local Governments
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Bush Fires Act 1954</i> Part IV, Section 38
FUNCTION	s.38 Local government may appoint bush fire control officer
CONDITIONS	<ol style="list-style-type: none"> 1. This delegation is limited to the appointment of members of volunteer bush fire brigades and the City Ranger and Emergency Services Staff; 2. In the case of appointment of members of volunteer bush fire brigades, the delegation shall only be exercised where there is a recommendation to appoint from the Bush Fire Advisory Committee; and 3. This delegation does not extend to the appointment of Chief or Deputy Bush Fire Control Officers.
POLICY	Council Policy: Membership of Bush Fire Brigades Council Policy: Qualifications of Bush Fire Brigades Officers Council Policy: Roles of Bush Fire Brigade Officers Council Policy: Code of Conduct, Bush Fire Brigade Objectives and Values
REFERENCE DOCUMENTS	Annual Firebreak and Fuel Hazard Reduction Notice
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C969/0425	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	BF2 – Appointment of Bush Fire Control Officers	

DA 3 – 03	To Institute a Prosecution, or to Issue an Infringement
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Bush Fires Act 1954</i> Section 48 Delegation by Local Governments s.59 (3) <u>Prosecution of Offences</u>
DELEGATED TO	Chief Executive Officer Bush Fire Control Officer/s Director Planning and Development Manager Environmental Services Ranger and Emergency Services Coordinator Senior Ranger/s Ranger/s
POWER / DUTY DELEGATED	The <i>Bush Fires Act 1954</i>
FUNCTION	s.59 Prosecution of offences s.59A Alternative procedure – infringement notices
CONDITIONS	<ol style="list-style-type: none"> 1. Rangers and Senior Rangers are prohibited from commencing a prosecution for an offence against the <i>Bush Fire Act 1954</i>; 2. Rangers and Senior Rangers are prohibited from instituting legal proceedings pursuant to s.59A(3) of the <i>Bush Fire Act 1954</i>; and 3. A delegation as per s.48 of the <i>Bush Fire Act 1954</i> does not include the power to sub-delegate
POLICY	Council Policy: Ranger and Emergency Services Approach to Regulatory Functions
REFERENCE DOCUMENTS	Annual Firebreak and Fuel Hazard Reduction Notice
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1812/264	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	BF3 – To Institute a Prosecution, or to Issue an Infringement	

DA 3 – 04	Variation of Prohibited and Restricted Burning Times
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Bush Fires Act 1954</i> Section 48 Delegation by Local Governments Section 17 (10)
DELEGATED TO	Mayor Chief Bush Fire Control Officer
POWER / DUTY DELEGATED	The <i>Bush Fires Act 1954</i>
FUNCTION	s.17 Prohibited burning times may be declared by Minister s.18 Restricted burning times may be declared by FES Commissioner
CONDITIONS	<ol style="list-style-type: none"> 1. The powers and duties pursuant to sections 17 and 18 of the <i>Bush Fires Act 1954</i> are jointly delegated to the Mayor and Chief Bush Fire Control Officer; and 2. Decisions under s.17 (7) must comply with the requirements of s.17(7B) and s.17(8).
POLICY	Nil
REFERENCE DOCUMENTS	Annual Firebreak and Fuel Hazard Reduction Notice
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1812/264	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	BF4 – Variation of Prohibited and Restricted Burning Times	

CAT ACT 2011	
DA 4 – 01	The Powers and Duties of the Local Government pursuant to the Cat Act 2011

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Cat Act 2011</i> Part 4, Division 2, Section 44
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Cat Act 2011</i>
FUNCTION	All powers and duties of a local government pursuant to the <i>Cat Act 2011</i>
CONDITIONS	Nil
POLICY	Council Policy: Rehoming of Impounded Dogs and Cats Council Policy: Ranger and Emergency Services Approach to Regulatory Functions
REFERENCE DOCUMENTS	Keeping and Control of Cats Local Law 2014
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1310/285	Recent Council Resolution C2010/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	CA1 – The Powers and Duties of the <i>Cat Act 2011</i>	

DOG ACT 1976	
DA 5 – 01	The Powers and Duties of the Local Government pursuant to Dog Act 1976

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Dog Act 1976</i> Section 10AA
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Dog Act 1976</i>
FUNCTION	All the powers and duties of the local government pursuant to the <i>Dog Act 1976</i>
CONDITIONS	Nil
POLICY	Council Policy: Rehoming of Impounded Dogs and Cats Council Policy: Ranger and Emergency Services Approach to Regulatory Functions
REFERENCE DOCUMENTS	Dogs Local Law 2014
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1310/285	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	DA1 – The powers and duties of the Dog Act 1976 including the authority to further delegate	

GRAFFITI VANDALISM ACT 2016	
DA 6 – 01	The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Graffiti Vandalism Act 2016</i> Section 16
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Graffiti Vandalism Act 2016</i>
FUNCTION	All the powers and duties of a local government pursuant to the <i>Graffiti Vandalism Act 2016</i>
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1706/131	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	GV1 – Exercise of any of the local governments powers or the discharge of any of its duties under Part 3 of the <i>Graffiti Vandalism Act 2016</i>	

PLANNING AND DEVELOPMENT ACT 2005	
DA 7 – 01	Development Control

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Planning and Development Act 2005</i> s.162 <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Schedule 2 <i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	The <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>
FUNCTION	<u>The powers and duties of the local government able to be delegated under clause 82, Schedule 2 – Deemed Provisions for local planning schemes.</u>
CONDITIONS	<p>1. ‘Call-in’ provisions Any two or more Councillors may consider an application or proposal to be of strategic significance and/or high community interest and <i>request</i> the CEO in writing, to present the application or proposal to the Council for consideration. If the request is supported, the application shall be presented to the first practicable Council meeting for consideration.</p> <p><i>Note: Any Councillor may also submit a notice of motion in relation to the withdrawal of delegation in relation to a particular application, but it would generally be expected that they would first seek to exercise the call-in provision outlined above.</i></p> <p>2. Reconsideration of applications for development approval Prior to the determination of an application for reconsideration of an application for development approval (other than where a reconsideration is occurring pursuant to section 31 of the State Administrative Tribunal Act 2004 – see below), the CEO shall ensure that a copy of the reconsideration request, together with a report assessing the application, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.</p> <p>“Reconsideration” is a not a defined term in the City of Busselton Local Planning Scheme No. 21 or the Planning and Development (Local Planning Scheme) Regulations 2015, however for the purposes of this delegation, the term relates to applications to:</p> <p>a) a request to amend or delete conditions of a development approval, where City officers are not supportive of that request and informal discussion with the applicant has not resolved the issue; and</p>

	<p>b) to new development applications which are substantially the same as an earlier application refused under delegation. This condition relates to applications to amend an approval where reconsideration of conditions is being requested, and also to new applications which are substantially the same as an earlier application refused under delegation (where the request is made within 60 days of the original determination date).</p> <p>3. Standard Structure Plans, and Precinct Structure Plans, Activity Centre Plans, Local Development Plans, Developer Contribution Plans</p> <p>Prior to making a recommendation to the Western Australian Planning Commission regarding adoption or amendment of a Structure Plan or Precinct Structure Plan, Activity Centre plan and/or Local Development Plan, the CEO shall ensure that a copy of the respective plan, together with a report, setting out and explaining the recommendation proposed to be made under delegation, is circulated to all Councillors, giving a period of not less than 14 days before a <u>recommendation is forwarded to the Commission, delegated decision is made.</u></p> <p>These delegations do not extend to the making of recommendations to the Western Australian Planning Commission regarding adoption or amendment to the Developer Contribution Plans.</p> <p>4. Local Planning Policies, Local Heritage List, Heritage Precincts Decisions relating to adoption, revocation or amendment of local Planning Policies, the Local Heritage List and/or Heritage Precincts are not delegated.</p> <p>5. Applications for review by the State Administrative Tribunal (SAT) Where the original decision was made under delegation, a reconsideration decision pursuant to section 31 of the State Administrative Tribunal Act 2004 may also be made under delegation.</p> <p>Where the original decision was made by the Council, a reconsideration decision pursuant to section 31 of the State Administrative Tribunal Act 2004 shall be presented to the Council for consideration, unless officers have <u>first</u> briefed Councillors and Councillors have indicated a general willingness to allow the decision to be made under delegation, in which case a decision may be made under delegation, provided that the 'call-in' provisions set out at Condition 1 above have not been exercised before the decision is made, and that Councillors have also been briefed on the matter as per Condition 6 below, to provide an opportunity for Councillors to exercise the 'call-in' provisions.</p> <p><u>Note that where the original decision was made by a Development Assessment Panel, the Panel is the respondent in relation to any application for review.</u></p> <p>6. Briefing and Reporting Generally on a monthly basis (as agreed/determined by the Mayor and CEO), officers shall provide Councillors with an informal</p>
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	<p>briefing on planning matters of strategic significant and/or high community interest, and on issues raised by Councillors. Each Friday, or in the case of Fridays which are public holidays, the next working day, a summary of applications received and determined in the preceding period (usually the preceding Friday to Thursday) shall be published on the City's website.</p> <p>Generally on a monthly basis, and generally as part of the agenda for every second ordinary Council meeting in any given month, a summary and update of planning and development-related State Administrative Tribunal matters involving the City shall be presented to Councillors as part of the 'Councillors Information Bulletin'.</p>
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1703/042	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	PDR1 – Development Control	

DA 7 – 02	Unauthorised Development
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Planning and Development Act 2005</i> <i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>The Planning and Development Act 2005</i> s.214
FUNCTION	s.214(2) The power to give written direction to stop or not recommence s.2.14(3) The power to give written direction to remove or restore s.2.14(5) The power to given written direction to execute the work
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1106/199	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	LG5B – Directions regarding unauthorised development	

STRATA TITLES ACT 1985	
DA 8 – 01	Certificate of Approval pursuant to the Strata Titles Act 1985

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Strata Titles Act 1985</i> s.25 <i>Local Government Act 1995</i> s.5.42 Delegation of some powers or duties to CEO s.5.43 Limitations on delegations to CEO
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Strata Titles Act 1985</i>
FUNCTION	s.25 Certificate of Commission
CONDITIONS	Nil
POLICY	Nil
REFERENCE DOCUMENTS	Planning Bulletin 52/2009
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1409/235	Recent Council Resolution C2101/010
RECENT ALTERATIONS	August 2019	
PREVIOUS DELEGATION REFERENCE	STA1 – Certificate of Approval	

CRIMINAL PROCEDURE ACT 2004

~~DA 9 – 01 Criminal Procedure Act 2004 – Authorised and Approved Persons~~

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	Criminal Procedure Act 2004 Part 2;
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	Health (Asbestos) Regulations 1992
FUNCTION	All the powers of an authorised person pursuant to the Health (Asbestos) Regulations 1992 All the powers of an approved persons pursuant to the Health (Asbestos) Regulations 1992
CONDITIONS	Authorised Persons: Authorised persons can issue infringement notices under the Criminal Procedure Act 2004 for breaches of the Health (Asbestos) Regulations 1992. Authorised Persons cannot withdraw or extend the pay period of an infringement notice issued under this legislation. Approved Persons: Approved persons can withdraw or extend the pay period of infringement notices issues under the Criminal Procedure Act 2004 for breaches of the Health (Asbestos) Regulations 1992. Approved Persons cannot issue infringement notices under this legislation.
POLICY	Nil
REFERENCE DOCUMENTS	Criminal Procedure Act 2004 Health (Asbestos) Regulations 1992
SUB-DELEGATION	

RECORD KEEPING	ECM – GOVN001 ‘Authorised Delegation of Power/Authority’	
VERIFICATION	Initial Council Resolution C1703/061	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021	
PREVIOUS DELEGATION REFERENCE	CPA1 – Authorised Persons of the Criminal Procedure Act 2004	

PUBLIC HEALTH ACT 2016

DA 10 – 01 ~~Public Health Act 2016 – Authorised Persons of~~ Designated Authorised Officers

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Public Health Act 2016</i> Section 21
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Public Health Act 2016</i> Section 24
FUNCTION	s.24 Designation of authorised officers
CONDITIONS	<p>a. Subject to each person so appointed being:</p> <ol style="list-style-type: none"> 1. Appropriately qualified and experienced; 2. Issued with a certificate, badge or identity card identifying the authorised officer. <p>a.b. A Register of authorised offices is to be maintained in accordance with s.27 Nil</p>
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution C1706/061	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	PHA1 – Section 21 under the Public Health Act 2016, Authorised Persons of the Public Health Act 2016	

DA 10 – 02	Appoint Authorised Officer or Approved Officer (Asbestos Regulations)
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Health (Asbestos) Regulations 1992</i> r.15D (7)
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Health (Asbestos) Regulations 1992</i> r.15D
FUNCTION	r.15D(5) Infringement Notices Authority to appoint a person or classes of person as an authorised officer or approved officer for the purposes of the <i>Criminal Procedure Act 2004</i> Part 2
CONDITIONS	Subject to each person so appointed being issues with a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1703/061	Recent Council Resolution C2101/010
RECENT ALTERATIONS	September 2021	
PREVIOUS DELEGATION REFERENCE	DA 9 – 01 Criminal Procedure Act 2004 – Authorised and Approved Persons	

LOCAL GOVERNMENT ACT 1995	
DA 11 – 01 Meelup Regional Park Management Committee	
POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Local Government Act 1995</i> s.5.16 Delegation of some powers and duties to certain committees s.5.17 Limits on delegation of powers and duties to certain committees
DELEGATED TO	Meelup Regional Park Management Committee
POWER / DUTY DELEGATED	<i>Local Government Act 1995</i> s.3.18
FUNCTION	s.3.18 Performing executive functions
CONDITIONS	The above power or duty is to adopt plans, policies or documents that relate to the management of the park other than where those plans, policies or documents require adoption pursuant to a particular statutory power. The Committee may not make any decision that would require expenditure of funds contrary to the adopted budget and any decisions shall not be actioned until the Committee meeting minutes have been formally received and noted by the Council.
POLICY	Council Policy: Governance of Meelup Regional Park
REFERENCE DOCUMENTS	Meelup Regional Park Management Committee’s Terms of Reference Working Group Terms of Reference
SUB DELEGATION	
RECORD KEEPING	ECM – GOVN015 ‘Instrument of Council Delegation to CEO’
VERIFICATION	Initial Council Resolution C0806/188 Recent Council Resolution C2101/010
RECENT ALTERATIONS	January 2021
PREVIOUS DELEGATION REFERENCE	LG3I – Reserve Under the Control of the Local Government

DA 11 – 02	Audit and Risk Committee
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POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<p><i>Local Government Act 1995</i></p> <p>s.5.16 Delegation of some powers and duties to certain committees</p> <p>s.5.17 Limits on delegations of some powers and duties to certain committees</p> <p>s.7.1B Delegation of some powers and duties to audit committees</p>
DELEGATED TO	Audit and Risk Committee
POWER / DUTY DELEGATED	<p><i>Local Government Act 1995</i></p> <p>s.7.12A</p>
FUNCTION	<p>s.7.12A(2) Authority to meet with the City's Auditor at least once every year on behalf of the Council</p> <p>s.7.12A(3) Authority to:</p> <p>a. Examine the report of the Auditor and determine matters that require action to be taken by the City; and</p> <p>b. Ensure that appropriate action is taken in respect of those matters.</p> <p>s.7.12A(4) Authority to review and endorse the City's report on any actions taken in response to the Auditor's report, prior to it being forwarded to the Minister.</p>
CONDITIONS	Delegation of s.7.12A(3) and s.7.12A(4) is not to be used where a Management Letter or Audit Report raises significant issues and the local governments meeting with the Auditor must be directed to the Council.
POLICY	Nil
REFERENCE DOCUMENTS	Terms of Reference: Audit and Risk Committee
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instrument of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution C1001/015	Recent Council Resolution C2101/010
RECENT ALTERATIONS	January-September 2021	
PREVIOUS DELEGATION REFERENCE	LG7A – Meeting with the Auditor	

Food Act 2008	
DA 12 – 01	Prohibition Orders

POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Food Act 2008</i> s.118 Functions of enforcement agencies and delegation (2)(b) Enforcement agency may delegate a function conferred on it (3) Delegation subject to conditions [s.119] and guidelines adopted [s.120] (4) Sub-delegation permissible only if expressly provided in regulations
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Food Act 2008</i> s.65, s.66, s.67
FUNCTION	<u>s.65(1)</u> Prohibition orders <u>s.66</u> Certificate of clearance to be given in certain circumstances <u>s.67(4)</u> Request for re-inspection
CONDITIONS	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
POLICY	Nil
REFERENCE DOCUMENTS	Nil
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 'Instruments of Council Delegation to CEO'	
VERIFICATION	Initial Council Resolution	
RECENT ALTERATIONS	Implementation September 2021	
PREVIOUS DELEGATION REFERENCE	Nil	

Food Act 2008	
DA 12 – 02	Food Business Registration





POWER / DUTY ASSIGNED TO	Local Government
POWER TO DELEGATE	<i>Food Act 2008</i> s.118 Functions of enforcement agencies and delegation (2)(b) Enforcement agency may delegate a function conferred on it (3) Delegation subject to conditions [s.119] and guidelines adopted [s.120] (4) Sub-delegation permissible only if expressly provided in regulations
DELEGATED TO	Chief Executive Officer
POWER / DUTY DELEGATED	<i>Food Act 2008</i> s.110, s.112
FUNCTION	<u>s.110(1) and (5)</u> Registration of a food business <u>s.112</u> Variation of conditions or cancellation of registration of food businesses
CONDITIONS	In accordance with s.118(3)(b), this delegation is subject to relevant Department of Health CEO Guidelines, as amended from time to time.
POLICY	Nil
REFERENCE DOCUMENTS	1. Food Act 2008 Regulatory Guideline No.1 Introduction of Regulatory Food Safety Auditing in WA 2. Food Unit Fact Sheet 8 – Guide to Regulatory Guideline No.1 3. WA Priority Classification System 4. Verification of Food Safety Program Guideline
SUB DELEGATION	

RECORD KEEPING	ECM – GOVN015 ‘Instruments of Council Delegation to CEO’	
VERIFICATION	Initial Council Resolution	
RECENT ALTERATIONS	Implementation September 2021	
PREVIOUS DELEGATION REFERENCE	Nil	

10.19am: At this time, Mrs Heys left the meeting.

10.19am: At this time, Mr Needham and Mr Botha entered the meeting.

6.1 LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2021

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
SUBJECT INDEX	Local Laws
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Legal Officer - Briony McGinty
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Local Government Property Amendment Local Law 2021   Attachment B Consolidated LG Property Local Law incorporating proposed changes marked up  

COMMITTEE RECOMMENDATION

PL2109/425 Moved Councillor G Henley, seconded Councillor L Miles

That the Council:

- Commences the law-making process for the *City of Busselton Local Government Property Amendment Local Law 2021*, with clauses 5.1(1)(a)(i)-(ii) amended to refer to being under the age of 10 years and a responsible person over the age of 16 years; the purpose and effect of the local law being as follows:

Purpose: To regulate the care, control and management of local government property (except thoroughfares) by amending sections of the *Shire of Busselton Local Government Property Local Law 2010*.

Effect: To control the use of local government property by updating minimum age requirements for entry to swimming pools, updating penalties, and clarifying other powers.

- Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:
 - Giving local public notice of the Amendment Local Law; and
 - Giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.
- Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

CARRIED 5/0

Reasons:	The Committee recommended that the relevant ages under clauses 5.1(1)(a)(i)-(ii) should be in accordance with the WA Department of Health 'Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities'.
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OFFICER RECOMMENDATION

That the Council:

- 1. Commences the law-making process for the *City of Busselton Local Government Property Amendment Local Law 2021*, the purpose and effect of the local law being as follows:**

Purpose: To regulate the care, control and management of local government property (except thoroughfares) by amending sections of the *Shire of Busselton Local Government Property Local Law 2010*.

Effect: To control the use of local government property by updating minimum age requirements for entry to swimming pools, updating penalties, and clarifying other powers.

- 2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:**
 - (a) Giving local public notice of the Amendment Local Law; and**
 - (b) Giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.**
- 3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the proposed local law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.**

EXECUTIVE SUMMARY

The *Shire of Busselton Local Government Property Local Law 2010* (Property Local Law) was first published in the government gazette in 2010, with little change since. Throughout the first half of 2021 a statutory review of the Property Local Law was conducted pursuant to section 3.16 of the *Local Government Act 1995* (the Act). On 9 June 2021, Council resolved that, among other things, amendments were required to the Property Local Law and that a local law amendment should be initiated.

In accordance with that resolution, an amendment to the Property Local Law has been prepared (Amendment Local Law) for consideration by the Council. It is recommended that the Council initiates the law-making process and authorises the CEO to give local public notice of the Amendment Local Law.

BACKGROUND

The Property Local Law was introduced in 2010 and further amended in 2011. At that time, the Property Local Law replaced the outdated Reserves and Foreshores Local Law which covered a limited subject matter. The impetus for the Property Local Law was to better regulate use of public spaces, with particular emphasis on vegetation protection. The Property Local Law largely adopted the WALGA model and is consistent with similar local laws of many other local governments across the State.

Section 3.16 of the Act requires that local laws are reviewed every 8 years to consider whether or not a local law under review should be repealed or amended. As part of this review process, submissions may be made to the local government in relation to the local law under review. During the public consultation phase for the statutory review of the Property Local Law in 2021, the City did not receive any submissions. However, given the local law covers a significant subject matter of broad and regular application, an extensive internal review was conducted by officers which identified various matters requiring attention.

Those matters which were recommended for detailed review in the June 2021 report to Council were as follows:

Launching and/or Landing of Drones (Schedule 2, clause 2.2)

The City has no control over airspace, which, under the current legislation, is reserved for the Civil Aviation Safety Authority. Therefore, the City cannot regulate drone usage in the air. However, there is the capacity, if the City chooses, to regulate launching and/or landing of drones from local government property.

Under the current Property Local Law, the City has the ability to regulate launching and/or landing motorised model aeroplanes from local government property. It is open to interpretation as to whether a drone could be classified as a motorised model aeroplane, which could cause some ambiguity around this capacity. Therefore, it is recommended to strengthen and clarify those provisions of the Property Local Law to enable regulation.

The Amendment Local Law does not seek to change the current position with regard to how the City regulates drone usage. However, it seeks to clarify that, if the City chooses to do so, it could restrict the use of drones on local government property pursuant to a determination process. This change will allow Council to designate particular areas where the launching and landing of drones may, for example, be prohibited, permitted, or permitted subject to various conditions.

Exercise Classes on Reserves (clause 3.13 (1)(d))

The review noted that permits for “boot camps etc.” under the Property Local Law are currently only required on beaches or at City owned pools or recreation centres. There are other City facilities/venues currently being used for these activities – for example City managed ovals. It is therefore recommended that the City consider introducing provisions to clarify the City’s powers to regulate these types of activities, in order to respond to conflicts of use, where appropriate.

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

Currently, the Property Local Law restricts entry to children under 10 years old unless accompanied by a responsible person over the age of 12. It is recommended that the City considers amending the age requirements so that children under the age of 12 will not be permitted entry unless accompanied by a person over the age of 18. This age limit is above the Minimum Entry Age requirements under the Code of Practice for swimming pools (issued under the *Health Act 1911*), being that a child under 10 must be accompanied by a person 16 years or older, but is in line with industry benchmarking and more recent understandings of best practice.

Penalties (Schedule 1)

Penalties for breaches of the Property Local Law are currently set at (mostly) \$200. The Act allows for maximum infringements of up to \$500. Given the current penalties were set over 10 years ago, it is recommended that appropriate increases are made. If the City was to raise penalties in line with Perth CPI from when the local law was first introduced (and penalties last amended), this would represent an approximate \$50 increase in penalties. A review of other local government’s practices suggests this represents a modest increase.

OFFICER COMMENT

The Property Local Law has operated effectively since its gazettal. The Property Local Law is based on the WALGA model but was modified to accommodate the particular circumstances of the locality. However, during the statutory review conducted during 2020/2021, various opportunities for improvement have been identified. The matters identified during the review are as discussed in the background section of this report and have been incorporated into the attached Amendment Local Law.

Statutory Environment***Local Government Act 1995***

Section 3.16 of the Act requires that within a period of 8 years from the day when a local law commenced or a report of a review of the local law was accepted, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended. The City developed and maintains a local law review program to ensure compliance with the requirements of Section 3.16.

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

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

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

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

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

Purpose: To regulate the care, control and management of local government property (except thoroughfares) by amending sections of the *Shire of Busselton Local Government Property Local Law 2010*.

Effect: To control the use of local government property by updating minimum age requirements for entry to swimming pools, updating penalties, and clarifying other powers.

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

Parliamentary Scrutiny

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

Relevant Plans and Policies

The following policies are used to assist in the application of the Property Local Law:

- Commercial Use of City Land and Facilities;
- Community Hire of City Property; and
- Private Work on City Land, including private coastal protection work on City Land.

Financial Implications

Costs associated with the advertising and gazettal of the Amendment Local Law will come from the legal budget. These costs are unlikely to exceed \$2,000 and there are sufficient funds in the legal budget for this purpose.

In terms of the increase in modified penalties, the City is unlikely to see any significant increase in income, given the City's approach to its regulatory functions. Proposed increases are minor and based on a review of the City's existing amounts and a comparison of other local governments.

Making and implementing the Amendment Local Law should not have any other financial implications for the City.

Stakeholder Consultation

Should Council resolve to commence the process of making the Amendment Local Law, public submissions will be invited as part of the statutory consultation process prescribed under section 3.12(3) of the Act.

The submission period must run for a minimum period of 6 weeks after which the Council, having considered any submissions received, may resolve to adopt the proposed local law or a law which is not significantly different.

Risk Assessment

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

Options

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

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

CONCLUSION

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

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Within two weeks of the Council decision to commence the law-making process, the Amendment Local Law will be advertised for public comment. The statutory consultation period is a minimum of six weeks and following the close of the advertising period a report will be submitted to the Council for further consideration which, depending on the number and nature of submissions received, could be within three months.

City of Busselton

**LOCAL GOVERNMENT PROPERTY
AMENDMENT LOCAL LAW 2021**

Local Government Act 1995

City of Busselton

Local Government Amendment Property Local Law 2021

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Local Government Act 1995

City of Busselton

Local Government Property Amendment Local Law 2021

Under the powers conferred on it by the *Local Government Act 1995* and under all powers enabling it, the Council of the City of Busselton resolved on [add date] to make the following local law.

1. Short title

This is the *Local Government Property Amendment Local Law 2021*.

2. Commencement

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

3. Local law amended

This local law amends the *Shire of Busselton Local Government Property Local Law 2010*.

4. Clause 1.1 amended

In clause 1.1, delete “*Shire of Busselton Local Government Property Local Law 2010*” and insert:

City of Busselton Local Government Property Local Law 2010

5. Clause 1.5 amended

In clause 1.5 –

(a) delete the definition of “Shire”; and

(b) insert, in their appropriate alphabetical sequence:

“**City**” means the City of Busselton;

“**drone**” means a powered aerial vehicle that does not carry a human operator and is piloted remotely;

6. Clause 2.2 amended

In clause 2.2(2)(b), delete “Shire’s offices” and insert:

City’s offices

7. Clause 2.7 amended

In clause 2.7(1)(b), delete “fly or use a motorised model aeroplane;” and insert:

fly or use a motorised model aeroplane, helicopter, drone or other similarly remotely piloted device;

8. Clause 2.8 amended

In clause 2.8(1) –

- (a) at the end of paragraph (g), delete “and”;
- (b) at the end of paragraph (h), insert:
and
- (c) after paragraph (h), insert:
 - (i) fly or use a motorised model aeroplane, helicopter, drone or other similarly remotely piloted device.

9. Clause 3.13 amended

In clause 3.13(1)(d), after “beach,” insert:

reserve,

10. Clause 5.1(1) amended

In clause 5.1(1)(a)(i) and (ii) –

- (a) delete each reference to “12 years” and insert:
18 years
- (b) delete each reference to “10 years” and insert:
12 years

11. Various references to “Shire” amended

In the provisions listed in the Table, delete “Shire” (each occurrence) and insert:

City

Table

Clause 1.5 definitions of – “authorised person” “CEO” “Council” “district” “local government property” “Manager” “person”	Clause 3.10(4)
	Clause 3.13(1)(f)
	Clause 3.14(2)
	Clause 5.3(1)
	Clause 5.4 (heading and text)
	Clause 9.1
Clause 1.7	Clause 9.4 (heading and subclauses (1) and (2))
Clause 2.7(1)(f)(iii)	Clause 9.7 (heading)
Clause 2.8(1)(f)(ii) and (h)	Clause 9.9(3)

Clause 2.9(1)	Schedule 2 – (a) opening words; (b) clause 1.1; (c) clause 2.1(b); (d) clause 2.4(a); and (e) clause 2.5(1).
Clause 3.1	
Clause 3.4(1)(b) and (f)	
Clause 3.4(2)(k)	
Clause 3.5(1)	
Clause 3.7	

12. Schedule 1 amended

In Schedule 1, delete the Table and insert:

CLAUSE	DESCRIPTION	MODIFIED PENALTYS
2.4	Failure to comply with determination	\$250
3.6	Failure to comply with conditions of permit	\$250
3.13(1)	Failure to obtain a permit	\$250
3.14(3)	Failure to obtain permit to camp outside a facility	\$250
3.15(1)	Failure to obtain permit for liquor	\$250
3.16	Failure of permit holder to comply with responsibilities	\$250
4.2(1)	Behaviour detrimental to property	\$250
4.3	Taking, Injuring, Killing any Fauna	\$375
4.4	Removing, damaging, interfering, with any flora or planting or depositing any flora	\$375
4.5	Under influence of liquor or prohibited drug	\$250
4.7(2)	Failure to leave local government property	\$250
4.8(1)	Tethering animal to tree etcetera or permitting animal to enter local government property	\$250
4.9	Depositing or discarding waste on local government property	\$250
4.10	Taking a glass container within 5m of pool, to a children's playground or within local government property as indicated by a sign	\$250
4.11(2)	Failure to comply with sign on local government property	\$250
5.2	Consuming food or drink in prohibited area	\$250
5.5	Failure to comply with sign or direction on beach	\$250
5.6	Unauthorised entry to fenced or closed local government property	\$250
5.7	Gender not specified using entry of toilet block or change room	\$250
6.1(1)	Unauthorised entry to function on local government property	\$250
8.5	Making a false or misleading statement	\$250
9.6	Failure to comply with notice	\$250

Dated **[add date]**

The Common Seal of the)
City of Busselton was)
affixed by authority of a)
a resolution of the Council)
in the presence of)

MICHAEL STEPHEN LEE ARCHER
Chief Executive Officer

GRANT HENLEY
Mayor

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

Deleted: Shire

Deleted: 5 April 2011

City of Busselton
Local Government Property Local Law 2010

Deleted: Shire

Local Government Act 1995

City of Busselton

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Local Government Property Local Law 2010

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Local Government Act 1995

City of Busselton

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Local Government Property Local Law 2010

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

Part 1 - Preliminary

1.1 Citation

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

Deleted: Shire

1.2 Commencement

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

1.3 Application

This local law applies –

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

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1.4 Repeal

The following local laws are repealed-

- (a) *Local Law Relating to Poundage Fees*, published in the *Government Gazette* on 14 April 1939;
- (b) *Local Law Relating to Caravan Parks and Camping Grounds*, published in the *Government Gazette* on 24 December 1975; and
- (c) *Local Law Relating to Reserves and Foreshores*, published in the *Government Gazette* on 17 January 1986 and as amended and published in the *Government Gazette* on 20 July 1990, 24 December 1993 and 13 May 1994.

1.5 Definitions

In this local law -

“**Act**” means the *Local Government Act 1995*;

“**applicant**” means a person who applies for a permit under clause 3.2;

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

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

“**building**” means any building which is on local government property and includes a –

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) jetty;

“**CEO**” means the chief executive officer of the City;

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“**City**” means the City of Busselton;

“**commencement day**” means the day on which this local law commences under clause 1.2;

“**Council**” means the council of the City;

Deleted: Shire

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

“**determination**” means a determination made under clause 2.1;

“**district**” means the district of the City;

Deleted: Shire

“**drone**” means a powered aerial vehicle that does not carry a human operator and is piloted remotely;

“**function**” means an event or activity characterised by all or any of the following –

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

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

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

“local government property” means anything except a thoroughfare –

- (a) which belongs to the City or in which the City has an interest;
- (b) of which the City is the management body under the Land Administration Act 1997; or
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act.

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

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

Deleted: Shire

“permit” means a permit issued under this local law;

“permit holder” means a person who holds a valid permit;

“person” does not include the City;

Deleted: Shire

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

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

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

Deleted: “Shire” means the Shire of Busselton; ¶

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

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

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them.

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

“vehicle” includes –

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes –

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

“waste” includes matter –

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed by regulations under the *Waste Avoidance and Resource Recovery Act 2007* to be waste.

1.6 Interpretation

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

1.7 Overriding power to hire and agree

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

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- (a) hire local government property to any person; or
- (b) enter into an agreement with any person regarding the use of any local government property.

Part 2 - Determinations in respect of local government property

Division 1 - Determinations

2.1 Determinations as to use of local government property

- (1) The Council may make a determination in accordance with clause 2.2 –
 - (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
 - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
 - (c) as to the matters in clauses 2.7(2) and ~~2.8(1)~~; and
 - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Schedule 2 –
 - (a) are to be taken to have been made in accordance with clause 2.2;

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- (b) may be amended or revoked in accordance with clause 2.6; and
- (c) have effect on the commencement day.

2.2 Procedure for making a determination

- (1) The CEO or an authorised person is to give local public notice of the Council's intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that –
 - (a) the Council intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the City's offices; and
 - (c) submissions in writing about the proposed determination may be lodged with the CEO within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide –
 - (a) to give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) to amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not to continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council –
 - (a) is to consider those submissions; and
 - (b) is to decide –
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice –
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).

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

2.3 Discretion to erect sign

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

2.4 Determination to be complied with

A person must comply with a determination.

2.5 Register of determinations

- (1) The CEO is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.
- (2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6 Amendment or revocation of a determination

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination, the CEO is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

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

2.7 Activities which may be pursued on specified local government property

- (1) A determination may provide that specified local government property is set aside as an area on which a person may –
 - (a) take, ride or drive a vehicle, or a particular class of vehicle;
 - (b) fly or use a motorised model aeroplane, helicopter, drone or other similarly remotely piloted device;
 - (c) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
 - (d) launch, beach or leave a boat;
 - (e) take or use a boat, or a particular class of boat;
 - (f) play or practice –
 - (i) golf or archery;

- (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the City, may cause injury or damage to a person or property;
 - (g) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
 - (h) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –
- (a) the days and times during which the activity may be pursued;
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
 - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
 - (e) may specify that the activity can be pursued by a class of persons or all persons; and
 - (f) may distinguish between different classes of the activity.

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2.8 Activities which may be prohibited on specified local government property

- (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—
- (a) smoking on premises;
 - (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
 - (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
 - (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
 - (e) taking or using a boat, or a particular class of boat;
 - (f) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or

- (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the City may cause injury or damage to a person or property; Deleted: Shire
- (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; Deleted: and
- (h) the traversing of sand dunes or land which in the opinion of the City has environmental value warranting such protection, either absolutely or except by paths provided for that purpose; and Deleted: Shire
- (i) fly or use a motorised model aeroplane, helicopter, drone or other similarly remotely piloted device.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular – Deleted: †
- (a) the days and times during which the activity is prohibited;
 - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
 - (d) that an activity is prohibited in respect of a class of persons or all persons; and
 - (e) may distinguish between different classes of the activity.
- (3) In this clause –
- “**premises**” means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3 - Transitional

2.9 Signs taken to be determinations

- (1) Where a sign erected on local government property has been erected under a local law of the City that is repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1. Deleted: Shire
- (2) Clause 2.5 does not apply to a sign referred to in subclause (1).

Part 3 - Permits

Division 1 - Preliminary

3.1 Application of Part

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

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Division 2 - Applying for a permit

3.2 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person must apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law must -
 - (a) be in the form determined by the CEO;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.
- (3) The CEO or an authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The CEO or an authorised person may require an applicant to give local public notice of the application for a permit.
- (5) The CEO or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

3.3 Decision on application for permit

- (1) The CEO or an authorised person may -
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the CEO or an authorised person approves an application for a permit, he or she is to issue to the applicant, a permit in the form determined by the Chief Executive Officer.
- (3) If the CEO or an authorised person refuses to approve an application for a permit, he or she is to give written notice of that refusal to the applicant.

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

Division 3 - Conditions

3.4 Examples of conditions

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

- (a) the payment of a fee;
- (b) compliance with a standard or a policy adopted by the City;
- (c) the duration and commencement of the permit;
- (d) the commencement of the permit being contingent on the happening of an event;
- (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (f) the approval of another application for a permit which may be required by the City under any written law;
- (g) the area of the district to which the permit applies;
- (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
- (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the CEO or an authorised person.

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

- (a) when fees and charges are to be paid;
- (b) payment of a bond against possible damage or cleaning expenses or both;
- (c) restrictions on the erection of material or external decorations;
- (d) rules about the use of furniture, plant and effects;
- (e) limitations on the number of persons who may attend any function in or on local government property;
- (f) the duration of the hire;
- (g) the right of the CEO or an authorised person to cancel a booking during the course of an annual or seasonal booking, if the CEO or an authorised person sees fit;

- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the CEO or an authorised person and the hirer, indemnifying the CEO or the authorised person in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the **City** in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

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3.5 Imposing conditions under a policy

- (1) In this clause –
“policy” means a **City** policy adopted by the Council under section 2.7 of the Act containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).
- (2) Under clause 3.3(1)(a) the CEO or an authorised person may approve an application subject to conditions by reference to a policy.
- (3) The CEO or an authorised person must give to the permit holder a copy of the policy or, at the discretion of the CEO or the authorised person, the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).
- (4) An application for a permit is not to be taken to have been approved subject to the conditions contained in a policy until the CEO or an authorised person gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act apply to a policy and, for that purpose, a policy is deemed to be information within section 5.94(u)(i) of the Act.

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3.6 Compliance with conditions

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

Division 4 - General

3.7 Agreement for building

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

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3.8 Duration of permit

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.12.

3.9 Renewal of permit

- (1) A permit holder may apply to the CEO in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part must apply to an application for the renewal of a permit as though it were an application for a permit.

3.10 Transfer of permit

- (1) An application for the transfer of a valid permit is -
 - (a) to be made in writing;
 - (b) to be signed by the permit holder and the proposed transferee of the permit;
 - (c) to provide such information as the CEO or an authorised person may require to enable the application to be determined; and
 - (d) to be forwarded to the CEO together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.
- (2) The CEO or an authorised person may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the CEO or an authorised person approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO or the authorised person.
- (4) Where the CEO or an authorised person approves the transfer of a permit, the City is not required to refund any part of any fee paid by the former permit holder.

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3.11 Production of permit

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

3.12 Cancellation of permit

- (1) Subject to clause 9.1, a permit may be cancelled by the CEO or an authorised person if the permit holder has not complied with –
 - (a) a condition of the permit;
 - (b) a direction under clause 3.16(b); or

- (c) a determination, or a provision of any written law, which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit, the permit holder -
 - (a) must return the permit as soon as practicable to the CEO; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5 - When a permit is required

3.13 Activities needing a permit

- (1) A person must not without a permit -
 - (a) subject to subclause (3), hire local government property;
 - (b) advertise anything by any means on local government property;
 - (c) erect, on local government property, a structure for public amusement or for any performance, whether for gain or otherwise;
 - (d) teach, coach or train, for profit, any person on a beach, ~~reserve~~, in a pool area or in an indoor recreation facility which is local government property;
 - (e) carry on any trading on local government property unless the trading is conducted -
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (f) unless an employee of the ~~City~~ in the course of her or his duties or on an area set aside for that purpose -
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
 - (g) conduct a function on local government property ;
 - (h) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
 - (i) light a fire on local government property except in a facility provided for that purpose;
 - (j) parachute, hang glide, abseil or base jump from or on to local government property;
 - (k) erect a building or a refuelling site on local government property;

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- (l) make any excavation on or erect or remove any fence on local government property;
 - (m) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
 - (n) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
 - (o) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly, or
 - (p) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The CEO or an authorised person may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.14 Permit required to camp outside a facility

- (1) In this clause –
- “**facility**” has the meaning given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.
- (2) This clause does not apply to a facility operated by the City.
- (3) A person must not without a permit –
- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
 - (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.
- (4) The maximum period for which the CEO or an authorised person may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

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3.15 Permit required for possession and consumption of liquor

- (1) A person must not, on local government property, consume any liquor or have in her or his possession or under her or his control any liquor, unless –
- (a) that is permitted under the *Liquor Control Act 1988*; and
 - (b) a permit has been obtained for that purpose.

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

Division 6 - Responsibilities of permit holder

3.16 Responsibilities of permit holder

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

- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) comply with a direction from the CEO or an authorised person to take the action specified in the direction for the purpose of maintaining public safety;
- (c) leave the local government property in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property to the CEO or an authorised person; and
- (e) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose.

Part 4 - Behaviour on all local government property

Division 1 - Behaviour on and interference with local government property

4.1 Behaviour which interferes with others

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

- (a) is likely to interfere with the enjoyment of a person who might use the property or who might otherwise lawfully be on the property; or
- (b) interferes with the enjoyment of a person using, or otherwise lawfully on, the property.

4.2 Behaviour detrimental to property

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

- (2) In subclause (1) -

“**detrimental to the property**” includes -

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

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

4.3 Fauna

- (1) A person must not take, injure or kill any fauna that is on or above any local government property, unless that person is authorised to do so under a written law or by the CEO or an authorised person.
- (2) In this clause –
 - “**animal**” means any living thing that is not a human being or plant; and
 - “**fauna**” means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal –
 - (a) any class of animal or individual member;
 - (b) the eggs or larvae; or
 - (c) the carcass, skin, plumage or fur.

4.4 Flora

- (1) Unless authorised to do so under a written law or with the written approval of the CEO or an authorised person, a person must not –
 - (a) remove, damage or interfere with any flora that is on or above any local government property; or
 - (b) plant or deposit any flora on local government property.
- (2) In this clause –
 - “**flora**” means all vascular plants, seeds and other flora, whether living or dead.

4.5 Intoxicated persons not to enter local government property

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

4.6 No prohibited drugs

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

4.7 Refusal of entry and removal

- (1) If the CEO or an authorised person considers that a person has behaved in a manner contrary to the provisions of this Part, the CEO or authorised person may –
 - (a) refuse to allow that person to enter local government property; and

- (b) if the person is on local government property, direct the person to leave the local government property.
- (2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.
- (3) If a person fails to comply with subclause (2), the CEO or an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

4.8 Animals

- (1) A person must not—
 - (a) tether any animal to a tree, shrub, tree guard, wall or fence; or
 - (b) permit any animal to enter upon or into any local government property,unless authorised by a permit.
- (2) The CEO or an authorised person may, by the placement of an approved sign, prohibit dogs from being in a children's playground or in the vicinity of a children's playground.
- (3) This clause does not apply to a guide dog used for the assistance of visually impaired persons and is subject to the provisions of section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*.

4.9 Waste

- (1) A person must not deposit or discard waste on local government property except—
 - (a) in a place or receptacle set aside by the CEO or an authorised person for that purpose and subject to any conditions that may be specified on the receptacle or a sign, such as a condition in relation to the type of waste that may be deposited; or
 - (b) at the Busselton Waste Facility, Rendezvous Road Busselton and the Dunsborough Waste Facility, Vidler Road Dunsborough, and subject to directions issued from time to time by the CEO or an authorised person for the orderly and proper use of those waste facilities in relation to hours of business, separation of waste into designated receptacles, prohibition of the deposit of certain types of refuse or waste, and conduct of persons or persons in charge of vehicles while on the site.

4.10 Glass containers

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

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

- (b) on to a children's playground; or
- (c) within any area of local government property as indicated by a sign.

Division 2 - Signs

4.11 Signs

- (1) The CEO or an authorised person may erect a sign on local government property –
 - (a) specifying any conditions of use which apply to that property; or
 - (b) for any other purpose relevant to this local law, including giving notice of a breach of clause 4.4 and substituting a sign for flora that has been removed, damaged or interfered with contrary to clause 4.4.
- (2) A person must comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is –
 - (a) not to be inconsistent with any provision of this local law or any determination; and
 - (b) to be for the purpose of giving notice of the effect of a provision of this local law.

Part 5 - Matters relating to particular local government property

Division 1 - Swimming pool areas

5.1 When entry must be refused

- (1) A Manager or an authorised person must refuse admission to any person who –
 - (a) in her or his opinion is –
 - (i) under the age of 12 years and who is unaccompanied by a responsible person over the age of 18 years;
 - (ii) under the age of 12 years and who is accompanied by a responsible person over the age of 18 years where the responsible person is incapable of or not providing, adequate supervision of or care for that person;
 - (iii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
 - (iv) under the influence of liquor or a prohibited drug; or
 - (b) is to be refused admission by the CEO or an authorised person for breaching a clause of this local law.

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- (2) If a person referred to in paragraph (a) or (b) of subclause (1) is in a pool area, a Manager or an authorised person must –
- (a) direct the person to leave; and
 - (b) if the person refuses or fails to leave, remove the person or arrange for the person to be removed, from the pool area.

5.2 Consumption of food or drink may be prohibited

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

Division 2 - Beaches

5.3 Powers of authorised persons or surf life saving club members

- (1) An authorised person employed by the City may perform all or any of the following functions in relation to a beach – Deleted: Shire
- (a) patrol any beach;
 - (b) carry out any activity on any beach;
 - (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;
 - (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and
 - (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Subject to sub clause (3), the CEO may, where the power to appoint authorised persons has been delegated under section 5.42 of the Act, appoint under section 9.10 of the Act a member or members of a surf life saving club to perform all or any of the functions listed in subclause (1).
- (3) A person appointed by the CEO under subclause (2) must have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorised.
- (4) Under subclause (2), the CEO may appoint members generally, or in relation to particular times, days or months.

5.4 Authority of City employee to prevail

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

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5.5 Persons to comply with signs and directions

A person must -

- (a) not act in contravention of any sign erected on a beach under clause 5.3(1)(c);
- (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained from the club permission to enter;
- (c) comply with any direction given under clause 5.3(1)(c) or 5.3(1)(e); and
- (d) not interfere with, obscure, obstruct, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

Division 3 - Fenced or closed property

5.6 No entry to fenced or closed local government property

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

Division 4 - Toilet blocks and change rooms

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

- (1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by –
 - (a) females, then a person of the male gender must not use that entry of the toilet block or change room;
 - (b) males, then a person of the female gender must not use that entry of the toilet block or change room; or
 - (c) families, then persons who are not immediate members of a family must not use that entry of the toilet block or change room where it is already being used by a different family.
- (2) Clause 5.7(1)(a) and (b) does not apply to children under the age of 6 years when accompanied by a parent or guardian.

5.8 Hire of lockers

- (1) A person may hire a locker in or near a changeroom for the purpose of safekeeping articles on the conditions that –
 - (a) it is the responsibility of the person hiring the locker to lock the locker once the articles to be stored are placed in the locker and to return the key to the attendant; and

- (b) on receiving a receipt given in respect of the hire of the locker, an attendant is to hand to that person the key for the locker described in the receipt in order to remove the articles from the locker.
- (2) A person must not store in any locker a firearm or offensive weapon or any article or substance that has been unlawfully acquired or which is a substance or article within the meaning of 'dangerous goods' under the *Dangerous Goods Safety Act 2004*.
- (3) An attendant or authorised person may open and inspect the contents of a locker at any time, where the attendant or authorised person reasonably suspects that a breach of this local law has occurred.

5.9 Unclaimed property in locker

- (1) If an article in a locker is not claimed or collected within 48 hours after the date of hire, the article may be removed by an attendant or authorised person.
- (2) An attendant or authorised person must record in the Unclaimed Property Register, with respect to each article removed from a locker –
 - (a) a description of the article removed;
 - (b) the time and date the article was removed; and
 - (c) the time and date recorded on the original receipt.
- (3) An attendant or authorised person must ensure that an article removed from the locker is stored at the place determined by the CEO or an authorised person.
- (4) An attendant or authorised person may deliver to a person an article recorded in the Unclaimed Property Register on receiving –
 - (a) satisfactory evidence of the person's right to obtain the article;
 - (b) an accurate description of the article being claimed; and
 - (c) payment of any outstanding fees or storage charges.
- (5) A person who receives delivery of an article from the Unclaimed Property Register must, by way of acknowledging receipt of the article, write his or her name and address and sign his or her name in the Unclaimed Property Register.

5.10 Use of shower or bath facilities

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

- (a) the facilities must be used by the person only for the purpose of cleansing, bathing and washing themselves;
- (b) use of the facilities must be restricted to a maximum period of 15 minutes or such lesser time as required by an attendant; or
- (c) the facilities must not be used for the purpose of laundering or washing any clothing or other articles.

Part 6 - Fees for entry on to local government property

6.1 No unauthorised entry to function

- (1) A person must not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except –
 - (a) through the proper entrance for that purpose; and
 - (b) on payment of the fee chargeable for admission at the time.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1)(b).

Part 7 - Objections and Review

7.1 Objection and appeal rights

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

Part 8 - Miscellaneous

8.1 CEO and authorised person to be obeyed

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

8.2 Persons may be directed to leave local government property

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

8.3 Disposal of lost property

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

8.4 Decency of dress

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

8.5 False or misleading statement

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

Part 9 - Enforcement

Division 1 - Notices

9.1 Definition

In this Division –

“costs” of the City include its administrative costs.

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9.2 Damage to local government property

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

9.3 Breach of a permit

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

9.4 City may undertake requirements of notice

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

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- (a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference; and
- (b) recover from the person, as a debt, the costs of doing so.

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

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- (a) take whatever remedial action it considers appropriate to put the City in the position it would have been in if the breach or failure had not occurred; and
- (b) recover from the person, as a debt, the costs of doing so.

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9.5 Notice requirements

A notice under this Division must –

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

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

9.6 Offence to fail to comply with notice

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

9.7 City may undertake requirements of notice

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

Division 2 - Offences and penalties

9.8 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

9.9 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is the amount specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, the City should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

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9.10 Form of notices

- (1) For the purposes of this local law –
 - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
 - (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

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

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

9.11 Evidence of a determination

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

Schedule 1 – Prescribed offences

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$	
2.4	Failure to comply with determination	\$250	Deleted: 0
3.6	Failure to comply with conditions of permit	\$250	Deleted: 0
3.13(1)	Failure to obtain a permit	\$250	Deleted: 0
3.14(3)	Failure to obtain permit to camp outside a facility	\$250	Deleted: 0
3.15(1)	Failure to obtain permit for liquor	\$250	Deleted: 0
3.16	Failure of permit holder to comply with responsibilities	\$250	Deleted: 0
4.2(1)	Behaviour detrimental to property	\$250	Deleted: 0
4.3	Taking, Injuring, Killing any Fauna	\$375	Deleted: 00
4.4	Removing, damaging, interfering, with any flora or planting or depositing any flora	\$375	Deleted: 00
4.5	Under influence of liquor or prohibited drug	\$250	Deleted: 0
4.7(2)	Failure to leave local government property	\$250	Deleted: 0
4.8(1)	Tethering animal to tree etcetera or permitting animal to enter local government property	\$250	Deleted: 0
4.9	Depositing or discarding waste on local government property	\$250	Deleted: 0
4.10	Taking a glass container within 5m of pool, to a children's playground or within local government property as indicated by a sign	\$250	Deleted: 0
4.11(2)	Failure to comply with sign on local government property	\$250	Deleted: 0
5.2	Consuming food or drink in prohibited area	\$250	Deleted: 0
5.5	Failure to comply with sign or direction on beach	\$250	Deleted: 0
5.6	Unauthorised entry to fenced or closed local government property	\$250	Deleted: 0
5.7	Gender not specified using entry of toilet block or change room	\$250	Deleted: 0
6.1(1)	Unauthorised entry to function on local government property	\$250	Deleted: 0
8.5	Making a false or misleading statement	\$250	Deleted: 0
9.6	Failure to comply with notice	\$250	Deleted: 0

Schedule 2 - Determinations

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

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Part 1 - Preliminary

1.1 Definitions

In these determinations unless the context otherwise requires –

“local law” means the *Local Government Property Local Law* made by the City.

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1.2 Interpretation

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

Part 2 - Application

2.1 Vehicles on local government property

- (1) Unless under the authority of a permit or determination, a person must not take or cause a vehicle to be taken onto or driven on local government property unless –
 - (a) the local government property is clearly designated as a road, access way or car park;
 - (b) the vehicle is driven by a City employee, authorised person or contractor engaged by the City, who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;
 - (c) the person is driving an emergency vehicle in the course of his or her duties; or
 - (d) the vehicle is a motorised wheelchair.
- (2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour, or in such a manner as to cause danger to any person.

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2.2 Motorised model aeroplanes, toys or ships

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

2.3 Children’s playgrounds

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

- (2) The Council may limit the ages of persons who are permitted to use a children's playground and the CEO or an authorised person may erect a sign under clause 2.3 of this local law to that effect on or in the immediate vicinity of the playground.
- (3) A person over the age specified in that sign, other than a person having the charge of a child or children in the playground, must not use a playground or interfere with the use by children of the playground.

2.4 Launching and retrieval of boats

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

- (a) the person is a City employee, authorised person or contractor engaged by the City and who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;
- (b) the person is in charge of a boat engaged in rescue services or dealing with an emergency;
- (c) the local government property is a boat ramp that is delineated by a sign to that effect.

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2.5 Activities prohibited on local government property

- (1) A person is prohibited from playing or practising archery, pistol or rifle shooting on local government property except on land which is reserved by the City for that purpose, or as otherwise provided by determination or permit.
- (2) A person is prohibited from playing or practising golf, on local government property except on the Dunsborough and Districts Country Club, Reserve No. 34894.
- (3) A person must not use or ride a bicycle or wheeled recreational device, skateboard, or sand board on any local government property except on an area specified by a sign erected on the local government property.
- (4) A person must not use or take on to, a spear gun, hand spear, gidgie or similar device on any local government property.

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2.6 Fish cleaning

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

2.7 Waste

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

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

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

Dated 16 February 2010

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

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

Notes

This is a compilation of the [City of Busselton Local Government Property Local Law 2010](#) and includes any amendments referred to in the following table. Local laws and amendments come into operation on the 14th day after the day of publication in the gazette unless a later day is specified: s 3.14 of the *Local Government Act 1995*.

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Compilation Table

Citation	Gazettal date
Shire of Busselton Local Government Property Local Law 2010	9 March 2010
Shire of Busselton Local Government Property Amendment Local Law 2011	22 March 2011
City of Busselton Local Government Property Amendment Local Law 2021	xxxxxxxxxx

10.38am: At this time, Mr Nottle and Mr Botha left the meeting.

10.38am: At this time, Ms Reddell entered the meeting.

6.3 SOUTH WEST DESIGN REVIEW PANEL AND ADOPTION OF PROPOSED LOCAL PLANNING POLICY 4.13 - DESIGN REVIEW

STRATEGIC THEME	LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing.
STRATEGIC PRIORITY	2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
SUBJECT INDEX	Local Planning Policy
BUSINESS UNIT	Development Services
REPORTING OFFICER	Manager Development Services - Lee Reddell
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Draft Policy for consultation   Attachment B Schedule of Submissions   Attachment C Revised Policy for adoption  

The officer recommendation was moved and carried.

COMMITTEE RECOMMENDATION

PL2109/426 Moved Councillor L Miles, seconded Councillor K Cox

That the Council:

1. Pursuant to Clause 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* adopt as final LPP 4.13 : Design Review, as set out at Attachment C.
2. Publish a notice of adoption in a newspaper circulating within the Scheme area in accordance with clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015* of the Policy set out in 1 above.

CARRIED 5/0

OFFICER RECOMMENDATION

That the Council:

1. Pursuant to Clause 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* adopt as final LPP 4.13 : Design Review, as set out at Attachment C.
2. Publish a notice of adoption in a newspaper circulating within the Scheme area in accordance with clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015* of the Policy set out in 1 above.

EXECUTIVE SUMMARY

Council is asked to consider final adoption of *LPP 4.13 : Design Review* as set out in Attachment C, which since being initiated by Council, has been publicly advertised in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations'). A minor change is recommended, addressing an issue identified in one of the submissions.

BACKGROUND

Design Review Panels (DRPs) are groups of independent experts who advise on the design quality of a project or development proposal. DRPs have been operating in Australia for over 20 years and 80% of Perth's metropolitan local governments have established a DRP, which are now reinforced through the State Government's Design WA initiative.

State Planning Policy 7.0 'Design of the Built Environment' (SPP 7.0) states that planning authorities, including local government, should establish or arrange access to design review processes to review:

- complex planning proposals;
- proposals identified as benefitting from design review; or
- matters as set out in the Regulations or recommended in the Design Review Guide.

Officers have been working with other local authorities within the South West region to establish a South West Design Review Panel (SWDRP). A Memorandum of Understanding (MOU) and Terms of Reference (TOR) have been prepared by the participating local governments. The advantages of a SWDRP are lower costs and a larger pool of experts to draw from, thus improving the potential pool of expertise and lowering the risk of conflict of interest.

The proposed Policy was drafted to achieve three things:

1. establish a 'head of power', in creating a relationship between the development assessment and design review process;
2. outline the types of applications that will require design review; and
3. outline process on fees and charges.

At this point in time, there is commitment to a SWDRP from the following local governments:

- City of Bunbury
- Shire of Augusta Margaret River
- Shire of Harvey
- Shire of Collie

Draft *LPP 4.13 : Exempt Development* (Attachment A) was initiated by Council on 12 May 2021 for the purposes of public consultation. The Policy was advertised via a notice placed in the local newspaper for four consecutive weeks and a portal was created on the City's *Your Say* platform website for the online lodgement of submissions. A total of two submissions were received.

OFFICER COMMENT

Design review is an independent and impartial evaluation process through which a panel of experts on the built environment assess the design of a proposal. DRPs can be used for development applications, major public works, structure plans, local development plans and design related local planning policies.

DRPs often contain a wide range of experience that can cover architecture, heritage, urban design, landscape architecture and planning. Their focus is principally on pre-lodgement advice, so that the DRP can influence the drafting of plans before the applicant is committed through fully worked up drawings.

In order for the SWDRP to function, an MOU has been drafted between the participating local governments. The MOU is an agreement between the parties to work together to establish and maintain a DRP. The MOU states that participating local governments will contribute equally to funding an Expression of Interest (EOI) process and ongoing member recruitment costs, after which the DRP will operate on a 'user pays' basis, where costs incurred presenting an item (such as panel member sitting fees) will be borne by the local government presenting an item.

Further operational guidance will be provided by way of the TOR document which sets out the role and stature of the DRP, governance, member appointment and responsibilities, remuneration, and meeting procedures. Importantly, the TOR refer to a Policy to establish the types of applications that will require design review, as well as a process around fees and charges.

A Policy is advantageous as it can be tailored from place to place to recognise the differences in development scale and frequency between local authorities. Under Part 3 of the Deemed Provisions of the Regulations, the City must have regard to a Policy in determining a development application, meaning the proposed Policy will provide a relationship between the development assessment and design review process.

Council approval for the MOU or TOR is not proposed given their operational nature.

Consultation

The draft Policy was advertised in the local newspaper for four consecutive weeks and a portal was created on the City's *Your Say* platform website for the online lodgement of submissions.

A total of two submissions were received which can be viewed in full in Attachment B.

In summary, the submissions raised the following queries and concerns:

1. Questioned whether residential development would be included;
2. Unclear who determines whether the design review process is triggered;
3. No definition for 'major development proposal';
4. Unclear what timeframes will apply;
5. Excludes ratepayers and residents from the decision making process.

In response to these submissions, the following comments are made:

1. Mixed-use development containing a residential component or Multiple Dwelling development is likely to trigger review by the SWDRP. There is no intention however to capture 'Single Houses', irrespective of scale or development value, through this process and it is noted that Single Houses are also excluded from the Development Assessment Panel decision making pathway. For the purpose of clarity, a note is to be added to the proposed Policy (Attachment C) which specifies that all Single Houses are excluded from consideration under the Policy.

2. City officers engaged in pre-application discussion with an applicant will determine, in consultation with the Director Planning and Development, whether an application is appropriate to be considered by the SWDRP.
3. No definition of ‘major development’ has been included in order to ensure there is the flexibility to request design review for any application that the City believes is of sufficient scale or importance to justify review by the SWDRP. It is expected that mixed use commercial development, Multiple Dwellings, significant tourism proposals, most mandatory DAP applications will be captured. There is also the ability to consider strategic planning projects such as Precinct Structure Plans or significant City led projects through this process.
4. Timeframes for provision of advice on reviewed projects will be set through the TOR. It is not intended that the SWDRP meetings be open to the public as it is considered likely that many developers will choose not to engage in the process based on concerns relating to commercial confidentiality prior to advice from the SWDRP on whether a design is likely to be supported and a decision can be made on whether to lodge a formal development application. It is noted however that the advice issued by the SWDRP for any application will be a public document and will be required to be addressed in consideration of any subsequent development application.
5. The design review process does not exclude rate payers and residents from the decision making process. The SWDRP is intended to offer advice only and has no decision making power. All applications reviewed by the SWDRP will be required to seek development approval through the normal development application pathway and given the nature of development captured through this process, it is expected that the vast majority, if not all of the applications which undertake review, will be advertised for public consultation.

Future Scheme Amendment

A Scheme Amendment may be appropriate at some point to introduce a trigger to require applicants of specified development to participate in the design review process, however this is not considered necessary at this time, given the level of positive buy-in from applicants to the informal design review processes being undertaken on significant development within the City currently. Officers will liaise with the Department of Planning Lands and Heritage on this matter and seek to introduce a relevant provision as part of the Scheme Review process or amendment if deemed necessary.

Statutory Environment

The key statutory environment is set out in the *Planning and Development Act 2005* and related subsidiary legislation, including the *City of Busselton Local Planning Scheme No. 21* (the Scheme) and the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), especially Schedule 2 (Deemed Provisions) of the Regulations, which form part of the Scheme.

Division 2, clause 4 sets out the procedure for making a local planning policy.

Relevant Plans and Policies

State Planning Policy 7.0 Design of the Built Environment (SPP7.0)

SPP7.0 states that planning authorities should establish or provide access to design review processes for complex planning proposals. This is set out in the WAPC’s “Design Review Guide – Guidance for Local Governments to set up and operate a design review process”.

Financial Implications

Establishment and Maintenance Costs

Estimates put establishment costs at \$5,000, covering advertising and circulating an Expression of Interest Campaign (EOI). This estimate is based on costings from the City of Stirling. The South West Development Commission have issued a \$3,000 grant towards establishment of the SWDRP with the remaining costs to be shared between the participating local governments.

In initial discussions between the participating local governments, an option to 'rotate' the hosting of the DRP was explored, such that the Cities of Bunbury and Busselton and the Shire of Augusta Margaret River take turns in hosting the DRP meetings and undertaking the administrative tasks, including preparing and circulating agendas, invites, taking minutes and formulating recommendations with the Panel Chair.

While this would reduce this workload to once quarterly, which is more manageable within existing staffing arrangements, upon reflection, it is considered more appropriate that the City of Busselton volunteer to trial hosting the DRP administrative function for a 12 month period from establishment. This is in order to ensure that the initial set up of administrative procedures, development of templates, workflow changes, records keeping guidelines, meeting and panel member arrangements, payment of panel sitting fees etc are embedded for the sake of consistency and efficiency. It is also expected that the City of Busselton will generate the most demand for this service given the higher number of development applications processed by the City.

It is intended that an administration fee be charged to the participating local governments for each application reviewed through the DRP process to assist with covering staffing costs. The value of this fee is yet to be determined but will be reviewed and established through an agreed fee arrangement with participating local governments prior to establishment of the Panel. Before the end of the initial 12 month period, it is proposed that the City of Busselton review the workload impacts with a view to either continuing or suggesting alternate administrative arrangements be agreed.

Meeting Costs

The TOR sets the remuneration of the Panel Members, which is at \$500 per meeting for the chair and \$400 per meeting for other members, inclusive of preparation time. Costings have been based on five panel members, but this may be adjusted down depending on the outcomes of the EOI process. Based on this approach, one meeting would cost \$2,100.

The estimated budget for operating the SWDRP would be \$33,070 annually based on 12 meetings per year. Under the terms of the draft MOU, the meeting costs would be divided equally between those local governments with matters to be considered at a particular meeting. This model is yet to be tested through an EOI process however so there may need to be changes to the model if there is insufficient interest based on offering only one fee per meeting, irrespective of the number of matters to be considered.

Based on the details above, a budget allocation of \$35,470 for the 2021/22 financial year was requested through the budgeting process. This budget bid has not progressed as it appears to have been missed in the budget setting process but options for funding the City's costs through the existing consultancy budgets are being investigated. The costs to run the DRP process are expected to fluctuate dependent on the level of development proposed on any given year and could be returned to general municipal funds at budget review if unlikely to be expended in the financial year. It is noted that development applications the subject of Design Review are likely to generate significant application fees which would off-set the cost of the review. City projects referred to DRP would need to account for referral costs in the project budget.

Stakeholder Consultation

In accordance with the Regulations, it is proposed that a notice be placed in the local newspaper advising that *LPP 4.13 : Design Review* has been adopted as final.

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 Officer Recommendation, the Council could:

1. Modify the Policy recommended to be adopted as final; or
2. Not to adopt the Policy recommended to be adopted as final.

CONCLUSION

It is recommended that Council support the proposed adoption of the Policy as described in this report.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the officer recommendation would involve notification of the adopted Policy as outlined in the consultation section of this report above. It is expected that this will commence within one month of the Council decision.

Local Planning Policy No. XX Design Review

Version: Proposed

DRAFT

1. Head of Power and Scope

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 (Deemed Provisions), Clause 4 and applies to development across the whole of the City.

The Panel will be established and operate consistent with the process outlined by the State Government Design Review Guide - Guidance for local governments (the Design Review Guide) as augmented by the adopted Terms of Reference.

2. Purpose

The purpose of this Policy is to:

- 2.1 Supplement the City's development assessment process and projects by providing design input from an independent panel of design experts; and
- 2.2 Ensure higher quality built form outcomes and an improved public realm through Design Review of development applications and City projects; and
- 2.3 Outline the types of applications of other planning documents that will require Design Review; and
- 2.4 Set out the weight afforded to the advice provided by a Panel; and
- 2.5 Establish process for fees and charges.

3. Interpretation

Terms should be interpreted in the same way as they would be interpreted if they were contained or within the Scheme, other than those terms defined below:

"Design Review" means an independent and impartial evaluation process in which experts on the built environment assess the design of a proposal.

"Panel" means a selected panel of experts who undertake a design review of a proposal.

"Scheme" means *City of Busselton Local Planning Scheme No. 21*

4. Policy Statement

4.1 THE DESIGN REVIEW PROCESS

- a) The City will use the Panel to undertake design review for matters outlined at Part 4.2 of this policy;
- b) The establishment and operation of the Panel is to occur in accordance with an adopted term of reference;
- c) The Panel shall assess proposals against the design principles of *State Planning Policy 7.0 Design of the Built Environment* (WAPC, 2019);
- d) The Panel performs an advisory function and the decision maker shall give due regard to the Panel's advice. The Panel does not report on compliance with the Scheme or policies;

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- e) The City encourages proponents to undertake design review early in the design concept stage, prior to the submission of a development application. A number of referrals to the Panel may be required depending on the complexity of the proposal.

4.2 THRESHOLD

- a) The Design Review process may apply to:
 - i) All applications that meet the mandatory or optional requirement for Development Assessment Panels applications, where there is a design element that may impact on the character, appearance or streetscape of an area; or
 - ii) Major development proposals where there is a design element that may have a significant impact on the character, appearance, or streetscape of an area at the discretion of the City; or
 - iii) Any other planning proposal (e.g. Scheme Amendment, Structure Plan, Precinct Plan, Local Planning Policy, Local Development Plan, Design Guidelines; or City project) relating to the design of development and places may be referred to the Panel at the discretion of the City.

The purpose of the Panel is to provide independent, expert advice on the design quality of the proposed development to the applicant, City officers, Council and the decision maker, to encourage innovative, high-quality designs that meet the needs of all stakeholders and the community.

4.3 FEES AND CHARGES

- a) No charge will be incurred by the proponent for up to three Design Reviews, provided at least one of those occur prior to lodgement of a development application.
- b) The proponent shall reimburse the City for the sitting fees of Panel members for all subsequent Panel meetings.
- c) Fees are to be paid to the City in accordance with Council's adopted schedule of fees and charges.

5. Review Details

Review Frequency		2 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE		Resolution #	

**ATTACHMENT B - SUMMARY OF SUBMISSIONS
DRAFT LOCAL PLANNING POLICY - DESIGN REVIEW**

NUMBER	NAME AND ADDRESS	COMMENT
1	T. Hodges Dunsborough	I need more information regarding the THRESHOLD as described in Clause 4.2 of the Draft. My queries are as follows: <ol style="list-style-type: none"> 1. Will the Design Review Process be applicable to residential developments that require a development application, such as houses in Rural Residential areas within designated Landscape Value zones and also strata residential developments? 2. Who, within the CoB structure determines if a design element may or may not impact on the character, appearance or streetscape of an area and therefore triggers the need for the Design Review Process? 3. What is the definition of a 'major development proposal'? 4. What kind of time frame will apply to the the Design Review Process, in terms of period of time lapse between making a submission and receiving a response?
2	L Nixon Quedjinup	It would appear that the stakeholders ie the ratepayers and local residents are now being completely excluded from any say in local developments - and especially those where their submissions over a number of years are completely disregarded by the CoB and its delegated staff authority on amendments to approved developments. Dunsborough Lakes abutment to Koopin Place, Quedjinup, is a classical example where approved design plans over the years are then "quietly" continuously amended, with no CoB Register as to the whys and wherefores, and how the adjoining landowners have been consulted or their submissions dealt with. Environmental, drainage and fire issues are "overridden" by the CoB to the detriment of the area and abutting land owners who in the case of Koopin Place, will now face adverse effects from drainage on metre high soil adjacent to their entry road; backyard BBQs and fire pits abutting their "high fire risk categorised" properties through the "selling off of buffer zones" previously approved to prevent the above from happening. Submissions to the CoB have fallen on "deaf ears" and it appears "development at all costs" with landowners now required to seek legal opinion because "OUR" City of Busselton is not listening to the people who live within its boundaries. Koopin Place is not the only such development currently under the spotlight where the ratepayers are being ignored, resulting in legal action. The formation of an 'exclusive new Design Review Panel' will not solve the problem until the CoB listens to its ratepayers. Linda NIXON, OAM

Local Planning Policy No. 4.13 Design Review

Version: Proposed

DRAFT

1. Head of Power and Scope

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 (Deemed Provisions), Clause 4 and applies to development across the whole of the City.

The South West Joint Design Review Panel will be established and operate consistent with the process outlined by the State Government Design Review Guide - Guidance for local governments (the Design Review Guide) as augmented by the adopted Terms of Reference.

2. Purpose

The purpose of this policy is to:

- 2.1 Supplement the City's development assessment process and projects by providing design input from an independent panel of design experts; and
- 2.2 Ensure higher quality built form outcomes and an improved public realm through Design Review of development applications and City projects; and
- 2.3 Outline the types of applications of other planning documents that will require Design Review; and
- 2.4 Set out the weight afforded to the advice provided by a Design Review Panel; and
- 2.5 Establish process for fees and charges.

3. Interpretation

Terms should be interpreted in the same way as they would be interpreted if they were contained or within the Scheme, other than those terms defined below:

"Design Review" means an independent and impartial evaluation process in which experts on the built environment assess the design of a proposal.

"Panel" means a selected panel of experts who undertake a design review of a proposal.

"Scheme" means *City of Busselton Local Planning Scheme No. 21*

4. Policy Statement

4.1 THE DESIGN REVIEW PROCESS

- a) The City will use the Panel to undertake design review for matters outlined at Part 4.2 of this policy;
- b) The establishment and operation of the panel is to occur in accordance with an adopted term of reference;
- c) The Panel shall assess proposals against the design principles of *State Planning Policy 7.0 Design of the Built Environment* (WAPC, 2019);
- d) The Panel performs an advisory function and the decision maker shall give due regard to the panel's advice. The Design Review Panel does not report on compliance with the Scheme or policies;

Local Planning Policy No. 4.13 Design Review

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- e) The City encourages proponents to undertake design review early in the design concept stage, prior to the submission of a development application. A number of referrals to the Panel may be required depending on the complexity of the proposal.

4.2 THRESHOLD

- a) The Design Review Process may apply to:
 - i) All applications that meet the mandatory or optional requirement for Development Assessment Panels applications, where there is a design element that may impact on the character, appearance or streetscape of an area; or
 - ii) Major development proposals where there is a design element that may have a significant impact on the character, appearance, or streetscape of an area at the discretion of the City; or
 - iii) Any other planning proposal (e.g. Scheme Amendment, Structure Plan, Precinct Plan, Local Planning Policy, Local Development Plan, Design Guidelines; or City project) relating to the design of development and places may be referred to the Design Review Panel at the discretion of the City.

The purpose of the panel is to provide independent, expert advice on the design quality of the proposed development to the applicant, City officers, Council and the decision maker, to encourage innovative, high-quality designs that meet the needs of all stakeholders and the community.

Note 1: All 'Single Houses' are excluded from consideration under this Policy.

4.3 FEES AND CHARGES

- a) No charge will be incurred by the proponent for up to three design reviews, provided at least one of those occur prior to lodgement of a development application.
- b) The proponent shall reimburse the City for the sitting fees of Design Review Panel members for all subsequent Design Review Panel meetings.
- c) Fees are to be paid to the City in accordance with Council's adopted schedule of fees and charges.

5. Review Details

Review Frequency		2 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE		Resolution #	

7. **GENERAL DISCUSSION ITEMS**

Nil

8. **NEXT MEETING DATE**

Wednesday, 27 October 2021

9. **CLOSURE**

The meeting closed at 10.54am.

THESE MINUTES CONSISTING OF PAGES 1 TO 119 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 27 OCTOBER 2021.

DATE: 27/10/2021

PRESIDING MEMBER: Paine