



City of Busselton

Geographe Bay

Policy and Legislation Committee Agenda

28 October 2020

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 28 OCTOBER 2020


TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Committee Room, Administration Building, Southern Drive, Busselton on Wednesday, 28 October 2020, commencing at 10.00am.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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MIKE ARCHER

CHIEF EXECUTIVE OFFICER

23 October 2020

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 28 OCTOBER 2020

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1. **DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS**

2. **ATTENDANCE**

Apologies

3. **PUBLIC QUESTION TIME**

4. **DISCLOSURE OF INTERESTS**

5. **CONFIRMATION AND RECEIPT OF MINUTES**







5.1 **Minutes of the Policy and Legislation Committee Meeting held 23 September 2020**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 23 September 2020 be confirmed as a true and correct record.

6. REPORTS

6.1 LOCAL PLANNING POLICY REVIEW - REVIEW OF LOCAL PLANNING POLICY 1.5 'COASTAL SETBACKS'

STRATEGIC GOAL	2. PLACE AND SPACES Vibrant, attractive, affordable
STRATEGIC OBJECTIVE	2.1 Planning strategies that foster the development of healthy neighbourhoods that meet our needs as we grow.
SUBJECT INDEX	Development Control Policy
BUSINESS UNIT	Statutory Planning
REPORTING OFFICER	Planning Officer - Joanna Wilkinson
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Legislative: to adopt legislative documents e.g. local laws, local planning schemes, local planning policies
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Existing LPP 1.5   Attachment B Proposed LPP 1.5   Attachment C Data Review  

OFFICER RECOMMENDATION

That the Council resolves to initiate for the purposes of public consultation an amendment to Local Planning Policy 1.5 Coastal Setbacks (Attachment A) by advertising Proposed LPP 1.5 (Attachment B) in accordance with clause 5 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

EXECUTIVE SUMMARY

The City is currently reviewing its suite of local planning policies. As part of this review, officers presented a general discussion item to the Policy and Legislation Committee at its meeting on 25 August 2020. The purpose of this discussion item was to raise awareness of some of the initial review findings and recommend that the Committee note that the review of *Local Planning Policy 1.5 Coastal Setbacks* (LPP 1.5) had commenced.

Officers have since undertaken a comprehensive review of how the existing policy (Attachment A) has been applied since it was adopted, whether the application of the policy has impacted streetscapes, and whether the objectives of the policy have been achieved. As a result of this review, officers have amended the content of the policy and recommend that amendments to LPP 1.5 be initiated for the purposes of public consultation (Attachment B).

A summary of the officers' review is contained in this report.

BACKGROUND

The *Planning and Development (Local Planning Schemes) Regulations* (Regulations) provide that Local Planning Policies (LPPs) may be prepared by a local government in respect of any matter relating to planning and development within the *City of Busselton Local Planning Scheme No. 21* (Scheme) area.

The intention of an LPP is to provide guidance to applicants/developers and the community in regard to the decision-making process, as well as to the local government when exercising discretion under the Scheme. An LPP must be consistent with the intent of the relevant Scheme provisions, including *State Planning Policy 7.3 – Residential Design Codes* (R-Codes), and cannot vary development standards or requirements set out in a Scheme or impose other mandatory requirements upon development.

LPPs are given due regard in the assessment of development applications and are listed as a “matter to be considered” when making determination of a development application under Schedule 2, clause 67 of the Regulations.

In March 2019, the City commenced the first stage of the LPP review. This stage was policy neutral and did not alter the intent or provisions within the LPPs. The LPPs were re-formatted into an easier-to-read template, taking the policies from a single manual structure and separating them into individual policies. These changes were adopted by Council at its meeting on 27 March 2019 (C1903/053).

The City has now commenced the second stage of the review process and is currently reviewing the content and relevance of all LPPs. Due to the number of policies and complexity of issues which need to be addressed, this review has been broken down into a number of stages. It is proposed as part of this report that LPP 1.5 be amended. A detailed discussion is set out in the officer comment section of this report.

OFFICER COMMENT

LPP 1.5 originally formed part of the broader *Residential Design Guidelines Policy* which was adopted by Council on 17 October 2007 (C0710/236). The policy applies to low density coastal nodes (coded R25 or less) that abut coastal foreshore reserves fronting Geographe Bay Road, or which directly abut Geographe Bay Road, but excludes Special Character Areas (e.g. Quindalup).

Broadly the policy provisions can be split into two main parts:

- Primary street setbacks; and
- Rear setbacks.

The policy varies the R-Codes in the following ways:

- For development less than five metres in height, the minimum setback is to be in accordance with Table 1 of the R-Codes (noting that reduced setbacks are not permitted); and
- For development greater than five metres in height, the minimum setback is to be in accordance with Table 1 of the R-Codes plus an additional three metres. A balcony that is unenclosed on three sides does not require the additional three metre setback.

This means that a reduced setback or “averaging” under the R-Codes (where a reduced setback is allowed provided it is compensated for by an equal area of open space behind the front setback line) is not encouraged, however it could be considered on a case by case basis through a development application. Where this has occurred, it is referred to below as a ‘discretion’.

Other provisions relate to rear setbacks only and address matters such as:

- Retention of reserve amenity, private access into a reserve;
- Filling and retaining at a reserve boundary;
- Fencing of the reserve boundary; and
- The setback of ancillary development (e.g. tennis court, gazebo etc).

During 2006 and 2007, the draft *Residential Design Guidelines Policy* was advertised twice to the community, with a total of six submissions received. Of these, one submission objected to the coastal setbacks provisions. Officers provided rationale in support of the provisions, which aimed to strengthen and maintain the open landscape context of the coastal areas as a determinant of local character and identity.

The following policy review is broken down under the broad headings below:

1. Desktop data review (policy application and impact on streetscape);
2. Relevance of current policy provisions; and
3. Proposed policy amendments.

1. Desktop Data Review

Officers carried out a desktop assessment of all lots to which the policy applies, with the findings collated into broader 'streetscape' and 'locality' assessments in order to determine the extent to which the policy has been applied, any resultant effect on the streetscape, and whether the objectives of the policy have been achieved. A breakdown of approvals, setbacks, building height and street block context for the localities within the policy area is provided at Attachment C.

Policy application

In total, there are 587 Residential zoned lots within the policy area, of which:

- 111 or 19% of those lots have been subject to planning and/or building approvals since 2008;
- 60% of approvals were compliant with the LPP;
- 40% required a discretion; and
- 81% of lots have not been subject of any relevant approvals since the policy was introduced.

Impact of built form on the streetscape - Setbacks

The density coding for lots to which the policy applies varies from R2 to R15. Front setbacks vary from 20m for R2 lots to 6m for R15 lots (which comprise the bulk of the policy area).

The data review revealed that there is very little consistency in front or rear setbacks within street blocks or localities, except where other planning controls such as easements, building envelopes or structure plans apply.

Closer analysis revealed that where the setbacks are substantially less or greater than required, the development pre-dates the LPP. It is likely that future development applications will seek to locate development closer to the relevant boundary to maximise views and the overall development potential of the lot, resulting in a more consistent setback line over time.

Impact of built form on the streetscape - Building Height

Built form within the streetscape is also influenced by whether dwellings are single or double storey. The data review indicates that the majority of dwellings within the LPP area are double storey. A high percentage of approvals since 2008 have been for double storey dwellings, and it can be assumed that the majority of vacant lots will be developed as double storey given the high property values and access to sea views. In some localities such as Marybrook and Broadwater a significant percentage of dwellings that were constructed prior to 2008 are also double storey. In some areas subject of the policy, the broader strategic direction is towards greater density and urban consolidation, including apartment development of 3-5 floors in time.

Rear setback provisions

The current rear setback provisions apply to one or more street blocks in almost all localities, except Dunsborough and Quindalup. In almost all cases, planning instruments and considerations other than the LPP are relevant. Various factors include the Coastal Management Special Control Area (CMSCA), easements, structure plans, presence and density of vegetation, and bushfire considerations. These factors tend to override the LPP and in the case of rear setbacks it is considered that the LPP adds little value to the higher order planning framework. Instead it adds a layer of complexity that is not required.

2. Relevance of current policy objectives

One of the purposes of this policy review is to determine whether the objectives of the policy have been achieved. This leads to a further two questions – are the objectives appropriate, and are they achievable? The following is a broad assessment against the policy objectives and assumptions.

B1.1 To provide for development projects of a low rise residential character and reduce the dominance of the built form in the coastal setting outside key nodes which the Scheme zones or identifies land for more intensive residential development.

Clause 4.8.1 of the Scheme includes controls relating to Building Height and states:

“4.8.1 A person must not erect any building that -

- (a) contains more than two storeys or exceeds a height of 9 metres where land is within 150 metres of the mean high water mark; or*
- (b) contains more than three storeys or exceeds a height of 12 metres where land is more than 150 metres from the mean high water mark, except where otherwise provided for in the Scheme.”*

Sites to which this LPP applies are either wholly or partially subject to the 9 metre building height control however, it is also noted that Clause 4.8.3 of the Scheme provides discretion to vary the maximum heights. As demonstrated in the data referenced above, development across all localities is a mix of single and double storey. Given two-storey development is anticipated by both the Scheme and the R-Codes in the areas to which the policy applies, this objective is considered unclear (e.g. what is low rise?) and redundant.

B1.2 To ensure coastal processes are not adversely affected by the modification of ground levels for building purposes in the coastal management area.

All development sites abut either the coastal reserve or a road reserve that abuts the coastal reserve. Impacts of development on coastal processes is a significant matter that is being addressed at a higher level through the City’s Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) and does not need to be addressed through this LPP which carries limited statutory weight.

B1.3 (a) Setbacks from coastal reserves are important to protect the intended use for which the adjoining land has been reserved, and to recognise coastal processes within coastal residential areas.

All of the lots affected by the front setback provisions are separated from the coastal reserve by a road reserve. Factors that may affect the impact of development on the coastal reserve include:

- The width of the road and/or coastal reserve;
- The presence of vegetation within the reserves;
- The location of the dual use pathway (beside the road reserve or within the coastal reserve);
- Sections of streetscape that are intercepted by different zoning (e.g. Tourism); and
- The approximate ‘era’ that land parcels were created and dwellings constructed.

It is considered that the presence of mature vegetation such as peppermint trees and the location of the dual use pathway away from the road reserve are critical factors in ‘softening’ the impact of built form – this applies to localities such as Dunsborough, Quindalup, Abbey and Broadwater.

Mature vegetation contributes to the amenity of users of the coastal reserve by enhancing the streetscape; providing micro-climate, habitat and shade; and particularly where peppermint trees are present by maintaining a local ‘sense of place’. There are many instances where the dual use path is located within coastal reserve vegetation and built form is either partially or wholly screened by vegetation.

This scenario is not evident in portions of West Busselton and Geographe, where the dual use path is located at the northern edge of the road reserve and there is very little mature vegetation to provide screening. These areas are addressed below.

West Busselton (between Craig Street and Dolphin Road)

In West Busselton, between Craig Street and Dolphin Road, the road and coastal reserves are generally narrow.

Between Craig Street and Earnshaw Road the dual use path is located on the back of kerb and there is only a very narrow stretch of coastal reserve with setbacks of approximately 20m – 38m from the front boundary of the affected lots and the edge of the beach as there is no, or very little, dune system. The impact of building bulk on these three street blocks is noticeable because of the proximity of dwellings to both the dual use path and the beach. It is considered reasonable in this location that additional setbacks be encouraged through the policy to reduce the impact of new development on the users of the adjacent dual use path and beach.

Between Earnshaw Road and Dolphin Road however, the dual use path moves off the back of kerb and the width of the coastal reserve widens. Setbacks of approximately 40m – 98m between the front boundary of the affected lots and the edge of the beach which lessens the building bulk impact associated with these two street blocks to a point where it is considered unlikely that any additional setback, over and above what is required by the R-codes, would have a significant impact on the coastal amenity.

Geographe (between Guerin Street and Ford Road)

In Geographe, while there is very little vegetation, the width of road reserve/verge depth varies and is generally wider than in West Busselton, in places substantially so with properties near to Ford Road having front verges of up to 37m. While the dual use path along this section of coast is generally located close to the road reserve, it is not located on the back of back of kerb (minimum setback of approximately 5m). Further, the dune system in Geographe is substantial in comparison to the section of West Busselton discussed above, with setbacks of approximately 80m - 150m between front property boundaries and the beach.

Given the wider road verges, the siting of the dual use path off the back of kerb and the significant distance provided between the front of the lots and the beach, the impact on the public realm posed by new residential development in this area is not considered significant enough to justify the imposition of additional setback requirements.

Further, it would be difficult to argue that there is a consistent character along this section of coast that is worth protecting through policy given the age, height, bulk, architectural style and setbacks of dwellings vary significantly.

B1.3 (b) Setbacks from development should assist in ameliorating the impacts of building bulk when viewed from the coastal reserve and primary street.

B1.3 (c) The taller and longer a wall is, the further it should be setback from the coastal reserve or primary street.

Apart from the various factors noted above, the impact of building bulk is also influenced by building design and the use of materials. Rather than bulky, buildings can be perceived as visually interesting through adopting a combination of articulation, horizontal and vertical elements, and use of different materials, openings, and other elements.

The setback provisions within the LPP may assist in ameliorating the impact of building bulk, but they may also contribute to poor design outcomes, for example when 'visually interesting' upper floors are setback behind ground floor garages which tend to provide little visual interest.

The policy requirement for an increased upper floor setback also conflicts with visual privacy requirements within the R-Codes, where an unenclosed balcony must be set back 7.5 metres from the side lot boundary. Use of good design elements can serve to both satisfy visual privacy requirements and provide a visually interesting building.

B1.3 (d) The localities along Geographe Bay Road and associated foreshore areas, comprise predominantly single storey detached single dwellings on large lots with generous front and rear setbacks. These developments are low rise, contribute to the open landscape character along the beachfront locality and generally reflect a Western Australian seaside architectural vernacular.

This objective is considered to be a statement containing a series of assumptions; it is broken down into parts and addressed below.

- Predominantly single storey detached single dwellings – it has been demonstrated above that dwellings within the policy area are not predominantly single storey.
- Large lots with generous front and rear setbacks – this assumption is, very broadly, correct.
- Low rise contributing to open landscape character – the terms ‘low rise’ and ‘open landscape character’ are subject to interpretation and neither term is defined within the policy.
- Western Australian seaside architectural vernacular – again this is a subjective term that isn’t defined within the policy. It is difficult to quantify any evidence of a ‘seaside vernacular’.

It is questionable whether the objectives of the policy have been achieved, and whether all of them are appropriate. Accordingly, the policy is proposed to be amended so that the two key and appropriate objectives are retained – the impact of built form when viewed from Geographe Bay Road and the coastal reserve, and contribution to/consistency with the established streetscape.

3. Proposed policy amendments

As detailed above, it is recommended that the scope of the policy be reduced to cover only the section of West Busselton between Craig Street and Earnshaw Road. Further recommended modifications to the policy are as follows:

- The objectives (purpose) have been refined so that they are relevant and appropriate;
- Introduction of interpretations for clarification;
- Removal of all rear setback provisions;
- Clarification that the policy applies to all sites adjoining Geographe Bay Road, where previously corner lots where Geographe Bay Road was the secondary street were excluded;
- Introduction of a provision that allows for privacy screening;
- Introduction of diagrams to clarify setback provisions; and
- A change to the title, to reflect the much narrower scope proposed.

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, clauses 5 and 6 respectively set out the requirements for the amendment or revocation of a local planning policy.

Relevant Plans and Policies

State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes)

The purpose of the R-Codes is to provide a comprehensive basis for the control of residential development throughout Western Australia.

The R-Codes provide for residential development of an appropriate design for the intended residential purpose, density, context of place and Scheme objectives.

Local Planning Scheme No. 21 (the Scheme)

Relevantly, the purposes of the Scheme are to control and guide land use and development; and to set out procedures for the assessment and determination of applications for development approval.

Financial Implications

There are no financial implications associated with the Officer Recommendation.

Stakeholder Consultation

Should Council resolve to initiate for the purpose of public consultation the amended policy, then the following consultation will be undertaken:

Part 2, Division 2 of the Deemed Provisions requires that a local government undertake consultation before adopting or amending a local planning policy (although a minor amendment can be made without consultation). At least 21 days must be allowed for the making of submissions.

It is proposed that consultation will be for a period of four weeks and will be undertaken as follows:

- Targeted letters/emails to landowners within the policy area;
- Notices in the local newspaper for four consecutive weeks, as well as on the City's website, including the subject and nature as well as objectives of the proposed LPP; and
- A portal is to be created using the City's *YourSay* platform for the online lodgment of submissions.

Risk Assessment

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

Options

As an alternative to the proposed recommendation the Council could:

1. Retain the existing policy;
2. Further modify the policy recommended to be initiated for the purposes of public consultation; or
3. Revoke the policy in its entirety.

CONCLUSION

It is recommended that Council consider the discussion set out in this report and resolve to support the amendments to LPP 1.5 and initiate for the purposes of public consultation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the Officer Recommendation would involve notification of the amended or revoked policy as outlined in the consultation section of this report. It is expected that this will commence within one month of the Council decision.

Local Planning Policy No. 1.5 COASTAL SETBACKS



1. HEAD OF POWER

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.

2. PURPOSE

- 2.1 To provide for development projects of a low rise residential character and reduce the dominance of the built form in the coastal setting outside key nodes which the Scheme zones or identifies land for more intensive residential development.
- 2.2 To ensure coastal processes are not adversely affected by the modification of ground levels for building purposes in the coastal management area.
- 2.3 This Policy recognises that:
- Setbacks for development from coastal reserves are important to protect the intended use for which the adjoining land has been reserved and to recognise ongoing coastal processes within coastal residential areas.
 - Setbacks for development should assist in ameliorating the impacts of building bulk when viewed from the coastal reserve and primary street.
 - The taller and longer a wall is, the further it should be setback from the coastal reserve or primary street.
 - The localities along Geographe Bay Road and associated foreshore areas, comprise predominantly single storey detached single dwellings on large lots with generous front and rear setbacks. These developments are low rise, contribute to the open landscape character along the beachfront locality and generally reflect a Western Australian seaside architectural vernacular.

3. INTERPRETATION

- 3.1 This policy provision applies to all low density (R 25 and below) residential lots that abut a coastal foreshore reserve fronting Geographe Bay; or which front a street that adjoins a coastal foreshore reserve immediately opposite the lot, and are outside any higher density coastal nodes which may be identified for specific design control through a development guide plan.
- 3.2 This policy provision does not apply to lots with canal frontage.
- 3.3 For the purposes of this Policy, a coastal foreshore reserve is defined as any Reserve for Recreation abutting the oceanfront of Geographe Bay, as depicted on the Scheme Map.

4. POLICY STATEMENT

The following provisions apply:

4.1 Streetscape and Primary Street Setbacks

- 4.1.1 For all residential development up to five (5) metres in height, including the exterior face of any roofed, unroofed or partially roofed verandas, decks and balconies, carports and

Local Planning Policy No. 1.5 COASTAL SETBACKS



garages, the minimum setback from the primary street shall be in accordance with the setbacks specified in Table 1 of the R Codes.

- 4.1.2 For the purpose of assessing applications against this policy, the Acceptable Development provisions of the R Codes at 6.2.1 (setbacks of buildings generally) and 6.2.3 (setbacks of garages and and carports from the primary street) are superseded by this policy and do not apply.
- 4.1.3 For all residential development above five (5) metres in height, including the exterior face of any roofed, or partially roofed verandas, decks and balconies the minimum setback from the primary street shall be calculated to be a value of the setback distance specified in Table 1 of the R Codes plus an additional three (3) metres. Notwithstanding the aforementioned provision, the exterior face of any roofed verandas, decks and balconies above five metres in height may be setback from the primary street in accordance with Table 1 of the R Codes provided the outdoor area is "open" (non-enclosed) on at least three sides.
- 4.1.4 The City may accept minor projections, and projecting sections of wall and roofs, such as gable ridges which do not meet the height and setback distances required in the preceding provisions provided any minor projection does not increase the building bulk or visual impact of the wall when viewed from the street.
- 4.1.5 In applying the foregoing provisions the City will consider the setback of adjoining buildings and the relationship of the proposal to the existing streetscape in the vicinity of the proposal.

4.2 Lots abutting a Coastal Reserve - Rear Setbacks

- 4.2.1 For all residential development up to five (5) metres in height, including the exterior face of any roofed, unroofed or partially roofed verandas, decks and balconies, carports and garages, the minimum setback from the rear boundary shall be in accordance with the R Codes having regard for setbacks prevailing in the locality and any requirement pursuant to the coastal management area of the Scheme.
- 4.2.2 For all residential development above five (5) metres in height, excluding the exterior face of any roofed, or partially roofed verandas, decks and balconies the minimum setback from the rear boundary shall be calculated to be a value of the setback distance specified in Table 1 of the R Codes plus an additional three (3) metres.
- 4.2.3 The exterior face of any unroofed or partially roofed verandas, decks and balconies above five metres in height may be setback from the rear boundary in accordance with Table 1 of the R Codes, provided the structure is open (non-enclosed) on at least three sides.
- 4.2.4 The City may accept minor projections, and projecting sections of wall and roofs, such as gable ridges which do not meet the height and setback distances required in the preceding provisions provided these do not increase the building bulk that is the purpose of these controls or basic impact of the wall when viewed from the coastal reserve.

Local Planning Policy No. 1.5 COASTAL SETBACKS



- 4.2.5 Where a lot has one or more than one boundary abutting a foreshore or public open space reserve the setback to be applied to development from that reserve boundary shall be determined by the City following onsite inspection. In determining the required setback the City shall have regard to the existing development line, retaining the natural amenity of the Reserve and avoiding the encroachment of development on the amenity of the reserve area.
- 4.2.6 While private access from an adjoining property into a reserve is generally not supported, any intended access point from a lot onto a reserve is to be indicated on the submitted plans and will be considered in the context of the suitability of the access location, impact on the reserve and current management orders for the reserve. (note: breaches of management orders or indiscriminate access to reserves may be pursued by the City through its use of reserves regulatory system).
- 4.2.7 For lots which abut a coastal foreshore reserve, filling and retaining of the private land at the reserve boundary shall be limited to a maximum of 450mm above natural ground level, irrespective of the minimum finished floor level applicable to the dwelling.
- 4.2.8 Fencing of the reserve boundary will require approval and will be limited to open steel grill construction fencing with or without masonry piers, visually permeable and no higher than 1.5 m above natural ground level.
- 4.2.9 Fill should be minimised through pole or pier construction or alternative building or footing design to avoid vegetation loss and to ensure minimal disturbance to coastal areas.
- 4.2.10 Ancillary developments such as swimming pools (unless constructed at or below ground level), sun rooms, gazebos, tennis courts, prepared surfaces and outdoor decks shall be setback from the rear boundary in accordance with Table I of the R Codes.

4.3 PERFORMANCE CRITERIA

The provisions of this Policy may be varied where at least one of the following applies:

- 4.3.1 The physical dimension of the lot, that is its depth or width, prevents reasonable compliance with this policy in respect of rear setbacks.
- 4.3.2 The topography of the land or of the surrounding land does not make the required provisions practicable.

5. REVIEW DETAILS

Review Frequency	2 yearly		
Council Adoption	10/3/2010		C1003/069
Previous Adoption	DATE		Resolution #

* Policy number changed from LPP 1B to LPP 1.5 on the 11th May 2020. The change is administrative only, no resolution by Council required.



Local Planning Policy No. 1.5 Coastal Setbacks – West Busselton

Version: Draft

1. Head of Power and Scope

This Policy has been adopted pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 ('Deemed Provisions') Part 2, Clause 4 and R-Codes Volume 1 clause 7.3 Scope of Local Planning Policies, Local Development Plans and Activity Centre Plans.

This Policy applies to all Residential Development on lots zoned Residential that adjoin Geographe Bay Road and are located:

- (a) between the intersections of Earnshaw Road and Craig Street (refer Appendix 1)

This Policy replaces the deemed-to-comply requirements of clause 5.1.2 (i – iv) Street Setbacks and clause 5.2.1 Setback of Garages and Carports for lots within the Policy Area as identified above and as such, accordance with Clause 61(c) of the 'Deemed Provisions' where a development does not comply with this Policy it is subject to development approval.

2. Purpose

The purpose of this Policy is to require additional setbacks for Residential Development within the Policy Area and adjacent to Geographe Bay Road to:

- 2.1. Reduce the impact of built form when viewed from Geographe Bay Road and the adjoining coastal reserve; and
- 2.2. Provide for development that contributes to, and is consistent with, the established streetscape.

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:

"Balcony" as defined by the R-Codes and provided below:

"A balustraded platform on the outside of a dwelling with access from an upper internal room."

"External Face" means the same as a "Wall" as defined by the R-Codes and provided below:

"The vertical external face of a constructed building comprising solid building material and including enclosures to verandahs and balconies."

"R-Codes" means State Planning Policy 7.3 Residential Design Codes Volume 1 (as amended).

"Residential Development" means Single House, Ancillary Dwelling, Grouped Dwelling and/or Multiple Dwelling.



4. Policy Statement

4.1. For the purpose of assessing clause 5.1.2 ‘Street Setbacks’ and clause 5.2.1 ‘Setback of Garages and Carports’ of the R-Codes, all Residential Development subject to this Policy, the External Face:

- (a) up to five (5) metres in height, should be set back from the Geographe Bay Road lot boundary in accordance with the primary street setbacks specified in Table 1 of the R-Codes; and
- (b) five (5) metres or greater in height, should be set back from the Geographe Bay Road lot boundary in accordance with the primary street setbacks specified in Table 1 of the R-Codes, plus an additional three (3) metres.

Note 1 : Parts 4.1 (a) and (b) are applicable irrespective of whether Geographe Bay Road is to be treated as the primary or secondary street (where applicable).

4.2. Notwithstanding provision 4.1 above, where a Balcony is covered by an impermeable roof and any part of that roof is five (5) metres or greater in height, the Balcony may be set back in accordance with Table 1 of the R-Codes provided the Balcony is unenclosed by a solid wall on at least three sides.

If a privacy screen is proposed in order to comply with clause 5.4.1 Visual Privacy of the R-Codes, the screening should comply with the following -

- i) a maximum height of 1.6m; and
- ii) no greater than 75 per cent obscure; and
- iii) be restricted in size and design to only the extent that is necessary to restrict view in the direction of overlooking into any adjoining property.

Note 2 : See explanatory diagrams at Appendix 2.

4.3. Where a provision of this Policy is inconsistent with the City of Busselton Local Planning Scheme No. 21 (‘Scheme’), the provisions of the Scheme prevail.

5. Review Details

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

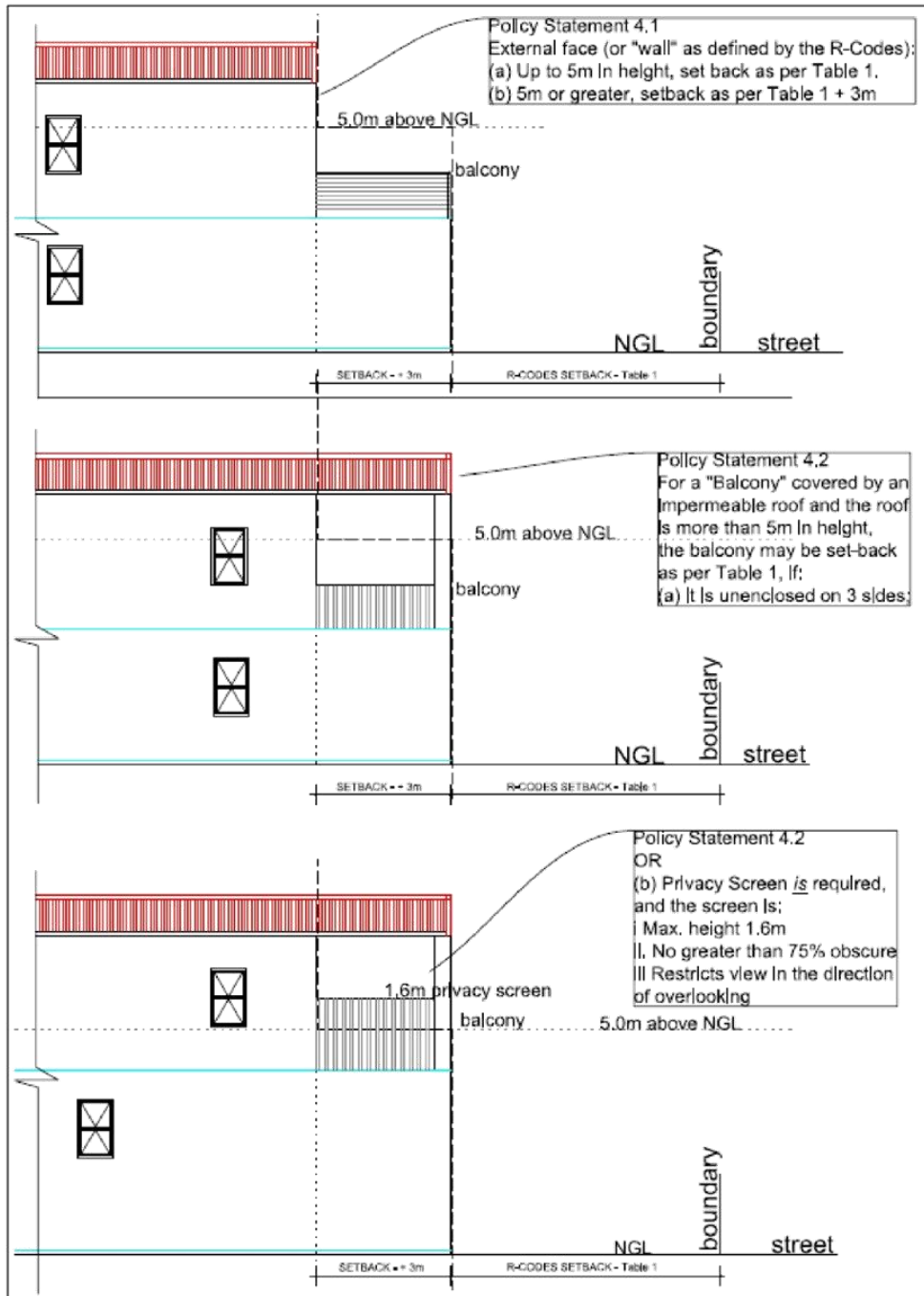


Appendix 1 – Policy Area





Appendix 2 – Explanatory Diagrams



ATTACHMENT C - LOCAL PLANNING POLICY 1.5 REVIEW - DATA ANALYSIS

Policy Application

The table below provides a break-down for each locality.

LOCALITY	TOTAL LOTS	APPROVALS SINCE 2008		COMPLIES		DISCRETION ALLOWED
DUNSBOROUGH	47	22	47%	13	59%	8
QUINDALUP	25	4	16%	4	100%	0
MARYBROOK	60	13	22%	12	92%	1
SIESTA PARK	57	8	14%	4	50%	4
ABBEY	73	8	11%	3	37%	5
BROADWATER	65	11	17%	4	36%	7
WEST BSN	88	17	19%	10	59%	7
GEOGRAPHE	141	25	18%	15	60%	9
WONNERUP	31	3	10%	1	33%	2
TOTAL	587	111	19%	66	60%	45 (40%)

These calculations demonstrate that in the majority of locations, the majority of development for which approvals were issued complied with the LPP provisions, noting that approximately 80% of sites have not been subject to any (relevant) development within the past 13 years.

Impact of built form on the streetscape – Setbacks

The table below provides a summary of how front or rear setbacks (as applicable) can vary for each locality. The 'required setback' is what is required by Table 1 of the R-Codes.

The approximate minimums and maximums are setbacks that were calculated through the desktop assessment, although it should be noted that variations may be less extreme within a street block (i.e. one street block may have varied from 5m minimum setback to 10m maximum).

LOCALITY	R-CODING	REQUIRED SETBACK F = front R = rear	APPROX MINIMUM SETBACK	APPROX MAXIMUM SETBACK
DUNSBOROUGH	R15	F = 6m	4m	15.5m
QUINDALUP	R15	F = 6m	6.5m	19m
	R12.5	F = 7.5m	5m	13.5m
MARYBROOK	R2.5	R = 7.5m	0m	67m
	R5	R = 6m	6m	47m
SIESTA PARK	R2.5	R = 7.5m	0m	56m
ABBEY	R15	F = 6m	3m	41m
BROADWATER	R15	F = 6m	2m	14m
WEST BSN	R15	F = 6m	3m	17m
	R15	R = 6m	3m	52m
GEOGRAPHE	R15	F = 6m	3m	18m
	R15	R = 6m	1m	17m
WONNERUP	R2	F = 20m	13m	26m
	R15	F = 6m	3m	15m

Impact of built form on the streetscape - Building Height

The following table provides a snapshot of single and double storey dwellings in each locality, as well as vacant lots. In some instances it was not clear from the desktop review whether a dwelling was single or double storey – these dwellings have not been included in the data below.

LOCALITY	TOTAL LOTS	SINGLE STOREY		DOUBLE STOREY		VACANT	
DUNSBOROUGH	47	14	30%	32	68%	1	2%
QUINDALUP	25	7	28%	15	60%	3	12%
MARYBROOK	37	10	27%	24	65%	3	8%
SIESTA PARK	31	16	52%	12	39%	3	9%
ABBAY	65	31	48%	29	45%	5	7%
BROADWATER	56	20	36%	33	59%	3	5%
WEST BSN	81	38	47%	39	48%	4	5%
GEOGRAPHE*	124	52	42%	58	47%	14	11%
WONNERUP	29	9	31%	10	34.5%	10	34.5%
TOTAL	495	197	40%	252	51%	46	9%

*It should be noted that there are a disproportionately high number of vacant lots in Spinnaker Boulevard (60%) – use of this outlier would lead to skewed data and an inaccurate overall conclusion. Therefore these lots have not been included.

Rear Setbacks

The majority of affected lots in Marybrook and Siesta Park are located within the Coastal Management Special Control Area (CMSCA). Any future development proposals will be subject to assessment under the CMSCA and SPP 2.6. These higher order planning instruments consider impact on proposed development from coastal processes, the impact on dunes, and the impact on the landscape or scenic and environmental quality of the land. The aims of these instruments are similar to those of the LPP and it is considered that the LPP adds little additional value.

A portion of a street block in Abbey is subject to a rear easement. The purpose of the easement is unknown however it is noted that the setback distance is 10m or greater. Enforcement of this easement means that the policy loses effect and is irrelevant in the assessment of an application.

Street blocks in Geographe and Wonnerup to which the rear setback provisions apply are subject to separate development guide plans (structure plans). Older development guide plans tend to have development controls relating to the context of the site. The original 2007 *Residential Design Guidelines Policy* explicitly stated that where a development guide plan or detailed area plan applied to a lot, then the provisions of that plan would prevail. It is clear that the intent of the policy was that it should not override planning controls put in place for a particular development guide plan area.

Many lots to which the rear setback provisions apply tend to be heavily vegetated at the rear and therefore are not visible from the dual use path or coastal reserve – as a result, there is no perceived impact on the amenity of the reserve from building bulk

6.2 REVIEW OF COUNCIL POLICY: AUDIO RECORDING OF COUNCIL MEETINGS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Governance Services
REPORTING OFFICER	Governance Officer - Melissa Egan
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Proposed Council Policy Recording and Livestreaming of Council Meetings Attachment B Current Policy - Audio Recording of Council Meetings

OFFICER RECOMMENDATION

That the Council adopts the revised Council policy: ‘Recording and Livestreaming of Council Meetings’ at Attachment A, to replace the current Council policy ‘Audio Recording of Council Meetings’ at Attachment B.

EXECUTIVE SUMMARY

This report presents a revised Council policy ‘Recording and Livestreaming of Council Meetings’ (Attachment A) (the Policy), with officers recommending it replace the current Council policy ‘Audio Recording of Council Meetings’ (Attachment B).

BACKGROUND

The policy was originally adopted by Council at its Ordinary Meeting on 11 June 2019 (C1906/108) following a request from a member of the public for a copy of a recording of an Ordinary Council Meeting and pursuant to advice from the Western Australian Local Government Association (WALGA). The review of the policy also considered the recommendations of the Governance Services Review conducted in 2017.

The City’s *Standing Orders Local Law 2018* (Standing Orders) provides for the Chief Executive Officer to audio record meetings for the purpose of taking minutes. Any such recordings are considered a record under the *State Records Act 2000* and are required to be retained for one year after the minutes are confirmed. These recordings are therefore considered to be available under the *Freedom of Information Act 1992*.

The City has, in the past, facilitated the electronic attendance of Councillors at meetings pursuant to regulation 14A of the *Local Government (Administration) Regulations* (Regulations), only on an as-needs basis and in accordance with the conditions of the applicable regulation. With the onset of COVID-19 and amendments made to the *Local Government Act 1995* (Act) to provide for circumstances of a natural disaster, public health emergency or state of emergency, officers have provided electronic means of attendance (i.e. Zoom meeting connection) and have developed meeting procedures that incorporates electronic attendance. The City also began livestreaming its meetings on a regular basis to allow the public to watch a meeting when personal attendance in Chambers was restricted.

Due to COVID, and the physical restrictions on attendance at Council meetings, the City facilitated the attendance of Councillors and the public through electronic means as a way to continue Council business and the engagement of the public in the Council's decision-making processes. This process also included receiving questions to Council via email to be responded to during Council meetings (as provided for by regulation 14E of the *Local Government (Administration) Amendment Regulations 2000*).

As an outcome of a briefing to Council on 14 October 2020, officers have prepared a revised Policy that incorporates Council's direction and extends the scope of the Policy to include video recordings and livestreaming of meetings, with the renaming of the Policy to reflect this extension of its scope.

OFFICER COMMENT

Following a relaxation of physical distancing guidelines imposed as a result of COVID, Councillors and Senior Management have been attending meetings in person, with public attendance encouraged but carefully regulated to maintain social distancing and health guidelines. Officers are comfortable that the Act, Regulations and the City's Standing Orders are sufficient to guide the attendance of Councillors at meetings, by electronic means or otherwise. As the City has an obligation to encourage and enable public participation in Council meetings – and the increasing expectation that alternative (electronic) means of participation will be offered – officers have sought direction from Council as to providing these options to the public on a standard basis. Having obtained Council's direction at a briefing presented on 14 October 2020, officers recommend that the current policy is amended to provide for video as well as audio recordings and the livestreaming of meetings. This will give greater clarity for officers and enable further development of operational practices as required.

In revising the Policy, officers considered several relevant issues which are set out briefly below.

Technical Requirements

The City has sufficient technical infrastructure to manage the electronic attendance of Councillors and the public at its meetings. The City's technical capabilities will continue to be developed into the future in conjunction with the implementation of the City's new website, which will assist in a more efficient process and ease of public access.

It will be important to manage expectations and the extent of the City's responsibility for a person's electronic connection to a meeting. Unless it is clear that a technical issue is caused and can be remedied by the City, a person should remain responsible for their technical and internet capabilities. This will be managed at an operational level, for example, when accepting a request for electronic attendance, the City's response will contain a disclaimer of the City's responsibilities to the extent a person is responsible for their own internet connection and computer technology, and that the City takes no responsibility if a person loses connection to a meeting.

Confidentiality

There is a concern that a recording of a meeting will expose matters of confidentiality and that the City has less control over a broadcast of a meeting than it does with written minutes (which record only a summary of pertinent questions and responses, and the decisions made by Council). The *Local Government (Administration) Amendment Regulations 2000* deal with matters of confidentiality, in the sense that a recording and livestream of a meeting can be ceased in the same manner a meeting is closed to the members of the public. This provides clarity to officers to simply cease the audio and video stream of a meeting at the time a meeting is closed for reasons of confidentiality, so that any confidential matters heard behind closed doors are not broadcast or recorded.

Defamation

There is also the concern that Councillors and members of the public may be conscious of being recorded and broadcast live, which in turn impacts on their ability speaking freely while in Chambers.

Section 9.57A of the *Local Government Legislation Amendment Act 2019* (WA) encourages local governments to livestream its proceedings and provides statutory protection for the local government from defamation for publishing Council proceedings on its website. This protection does not extend to the individual who made the comment, however, this is no different to circumstances if the meeting is not broadcast, as it is still deemed to be a statement made in a public forum.

Record of Meeting

It is important to emphasise that a livestream and recording should not replace the Minutes as the formal record of a meeting. This can, again, be managed at an operational level with, for example, a written disclaimer on the City's streaming platform, and the ability to add a caption or watermark on the video which states that it is a broadcast only and not a formal record of the meeting.

It is also important to note that a video or audio recording of a meeting would be considered as a "record" under the *State Records Act 2000*, and that the publication and storage of the recording should be treated pursuant to the requirements of this Act. Officers are comfortable, having received internal advice from the City's Records officers, that the intention to retain the record on the City's streaming platform, with a link to the recording available on the City's website, provides sufficient access to, and storage of, the record to meet the requirements of the *State Records Act*. The file of the recording and its link will be removed or deleted after one year in accordance with the guidelines of the State Records Office.

Statutory Environment

- The *Local Government Act 1995* and the City's Standing Orders provide for and encourage public attendance and transparency at meetings.
- The *Local Government (Administration) Amendment Regulations 2000* deal with matters of confidentiality and the closure of meetings.
- Section 9.57A of the *Local Government Legislation Amendment Act 2019* provides statutory protection for the local government from defamation for publishing Council proceedings on its website.

Relevant Plans and Policies

There are no relevant plans or other 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 could:

1. Make additional amendments to the Policy; or
2. Decline to endorse the Policy and rely on the current Policy. It is the opinion of officers that the scope of the current Policy does not sufficiently cover electronic means of attendance and the livestreaming of meetings, which is becoming an accepted practice for local government.

CONCLUSION

A revised Policy 'Recording and Livestreaming of Council Meetings' is presented for Council's approval.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be placed on the City's website within one week of Council adoption.

COUNCIL POLICY

Council Policy Name: Recording and Livestreaming of Council Meetings

Responsible Directorate: Finance and Corporate Services **Version:** Proposed

1. PURPOSE

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

2. SCOPE

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

3. DEFINITIONS

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

4. STRATEGIC CONTEXT

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

5. POLICY STATEMENT

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

6.2 Attachment A Proposed Council Policy Recording and Livestreaming of Council Meetings

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

6. RELATED DOCUMENTATION / LEGISLATION

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

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	26 June 2019	Resolution #	C1906/108

COUNCIL POLICY

Council Policy Name: Audio Recording of Council Meetings

Responsible Directorate: Finance and Corporate Services Version: Current

City of Busselton
Geographic Bay

1. PURPOSE

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

2. SCOPE

- 2.1. This Policy applies to all Council meetings, all recorded Council meeting proceedings and all requests for such recordings.

3. DEFINITIONS

Term	Meaning
Act	<i>Local Government Act 1995</i>
Policy	this City of Busselton Council policy entitled "Audio Recording of Council Meetings"

4. STRATEGIC CONTEXT

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

5. POLICY STATEMENT

- 5.1. All Ordinary and Special Council meetings will, wherever technically possible, be recorded by the City on sound recording equipment, including where Council has resolved to close the meeting to members of the public in accordance with Section 5.23 of the Act and the *City of Busselton's Standing Orders Local Law 2018*.
- 5.2. The primary purpose of recording Council meetings is to assist in the preparation of the minutes of Council meetings.
- 5.3. The official record of the meeting will be the written minutes prepared in accordance with the requirements of the Act and the *Local Government (Administration) Regulations 1996*.
- 5.4. Clear signage will be placed in the Council chamber advising members of the public that the meeting will be audio recorded. Signage will also alert members of the public to the use of any other recording, audio or visual devices in use from time to time.

- 5.5. Other than in accordance with this Policy, a person must not use any electronic, visual or audio recording device or instrument to record the proceedings of a Council (or committee) meeting without the written permission of the Presiding Member.
- 5.6. Members of the public may, by written request to the CEO, purchase a copy of the recorded proceedings, with the fee for purchase set out in the City's fees and charges each year.
- 5.7. Members of the public are not entitled to receive a copy of the recording of that part of the meeting that was declared confidential and closed to the public.
- 5.8. Elected Members may request from the CEO a copy of the recorded proceedings at no charge.
- 5.9. All Elected Members are to be notified when requests for recordings have been received.
- 5.10. Recordings will not be transcribed.
- 5.11. Recordings will be stored in accordance with the *State Records Act 2000*.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *State Records Act 2000*
- 6.3. *City of Busselton Standing Orders Local Law 2018*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	26 June 2019	Resolution #	C1906/108
Previous Adoption	DATE	N/A	Resolution #	N/A

7. **GENERAL DISCUSSION ITEMS**

8. **NEXT MEETING DATE**

9. **CLOSURE**