



Policy and Legislation Committee Agenda

23 September 2020

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CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 23 SEPTEMBER 2020

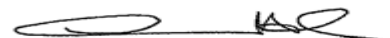
TO: THE MAYOR AND COUNCILLORS

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, 23 September 2020, commencing at 9.00am.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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



MIKE ARCHER

CHIEF EXECUTIVE OFFICER

18 September 2020

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 23 SEPTEMBER 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 25 August 2020**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 25 August 2020 be confirmed as a true and correct record.

6. REPORTS

6.1 REVIEW OF COUNCIL POLICY: SHARK HAZARD RESPONSE

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	Environmental Services
REPORTING OFFICER	Ranger & Emergency Services Coordinator - Ian McDowell
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
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 Council Policy: Shark Hazard Response (Proposed)  Attachment B Council Policy: 044 Shark Hazard Response (Current) 

OFFICER RECOMMENDATION

That the Council adopts the revised Council Policy: Shark Hazard Response (Attachment A), to replace the current Council Policy 044: Shark Hazard Response (Attachment B).

EXECUTIVE SUMMARY

This report presents a revised Council Policy: Shark Hazard Response (the Policy) (Attachment A) with the current policy having been reviewed as part of the City's overall review of its Council policies.

BACKGROUND

The existing Council policy: 044 Shark Hazard Response (Attachment B) was developed in October 2015. Upon review, officers consider the current policy contains information that is very much operational in nature.

The City has implemented a Policy Framework document, the purpose of which is to provide a structure for the development and maintenance of documents intended to guide the City's approach to decision making, namely Council Policies, Operational Practices, Work Processes and Guidelines.

In early 2019, the City in conjunction with the Shire of Augusta Margaret River, developed and implemented an operational practice (OP) with the aim of providing a consistent local government approach when responding to shark attacks and sightings along the neighbouring coastline. The Shark Hazard Response OP was approved by the City's Chief Executive Officer and came into force in March 2019.

OFFICER COMMENT

Under the City's policy framework and structure, a Council policy should provide a strategic statement of the Council's direction. Following a review of the current policy, it has been determined by officers that much of its content provides information more aligned to the operational functions of responding to shark attacks or shark sightings.

The Policy reflects the more strategic aspects of responding to a shark attack, with the operational content having been removed. The removal of the operational content from the Policy will not impact on the City's approach to shark attacks or sightings, as these processes are well documented in the City's Shark Hazard Response OP.

Statutory Environment

In accordance with section 2.7(2)(b) of the *Local Government Act 1995* (the Act), it is the role of the Council to determine the local government's policies. The Council does this on recommendation of a Committee it has established under the provisions of section 5.8 of the Act.

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 could ask that officers revise the Policy further taking into account any matters raised by the Council in relation to the City's shark hazard response.

CONCLUSION

Following a review of the current policy: 044 Shark Hazard Response, it was determined the policy was largely operational in nature and duplicated much of what is already documented in the City's Shark Hazard Response OP. A revised Policy is presented to Council for endorsement.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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



1. PURPOSE

- 1.1. The purpose of this Policy is to guide the City's approach in response to shark attacks and shark sightings, as well as a broader approach for water safety warnings and information provided to the public.

2. SCOPE

- 2.1. This Policy is applicable to beach areas under the care, control and/or management of the City.

3. DEFINITIONS

Term	Meaning
The City	the City of Busselton
Operational Practice	developed for administrative purposes to set direction in relation to an organisational practice (City of Busselton Policy Framework)
Patrolled Beach	a beach that has a SLSWA beach safety and surveillance service in operation
Policy	this Council Policy titled "Shark Hazard Response"
Salmon Season	the period when schools of Salmon are running off the WA Coast (March to May)
SLSWA	Surf Life Saving Western Australia

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 1 – Community of the City's Strategic Community Plan 2017 and specifically the Community Objective 1.1: a friendly safe and inclusive community with a strong community spirit.

5. POLICY STATEMENT

- 5.1. The Chief Executive Officer will prepare more detailed internal Operational Practices to supplement this policy and to guide operational staff in the exercise of their functions. The City will seek to align its response protocols with those of the Shire of Augusta Margaret River.
- 5.2. The Chief Executive Officer will consult with Councillors as appropriate in the development of those Operational Practices.
- 5.3. The City will continue to advocate through the State Government the management of sharks including a consistent state wide approach to shark sightings and incidents regardless of land tenure.
- 5.4. Shark sighting reports received from the SLSWA helicopter surveillance service and Shark Monitoring Network generally provide details about the location of the shark, size, species and in some instances direction of travel, which are essential for making decisions about swimmer safety. The SLSWA

6.1 Attachment A Council Policy: Shark Hazard Response (Proposed)

helicopter surveillance and Shark Monitoring Network service when available, will inform the City's response to a shark sighting.

- 5.5. In the event of a shark attack fatality, WA Police are the lead agency. The City will provide assistance with the management of the shark attack and implement beach safety measures as considered necessary and under the direction of the WA Police.
- 5.6. Where an order to capture a shark has been granted to the Department of Primary Industries and Regional Development (Fisheries) and a direction given to swimmers to leave the water following a shark attack, the decision to re-open a beach for swimming should be not less than 24 hours after the shark attack occurred and/or after Fisheries advise that the order to capture the shark has been lifted.
- 5.7. The decision to re-open beaches under the care and control of the City shall be made by the City in consultation with Fisheries.
- 5.8. At a Patrolled Beach, an SLSWA life guard is the authorised person for responding to a shark sighting and for implementing the SLSWA response procedure which may include sounding alarms to alert swimmers, clearing the water of swimmers and monitoring shark presence.
- 5.9. Community awareness of shark hazards will be promoted by:
 - a. providing information on the City website about how to access recent reports of shark activity from the WA Government information and communication platforms including Shark Smart website and SLSWA Twitter feed, the times and dates of SLSWA patrolled beaches to encourage swimmers to use SLSWA patrolled beaches and the beach enclosures at Dunsborough and Busselton;
 - b. temporary signage installed in accordance with the City's Shark Hazard Response Operational Practice to inform beach users and swimmers that a shark has been sighted in the vicinity and provide information on how to access the latest shark sighting report information from SLSWA and from the WA Government information and communication platforms; and
 - c. temporary signage to inform beach users and swimmers of increased shark activity during the annual salmon season.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. The City's Operational Practice for: Shark Hazard Response

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	14 October 2015	Resolution #	C1510/286

6.1 Attachment B Council Policy: 044 Shark Hazard Response (Current)

Last updated 14/10/2015 (implementation)

044	Shark Hazard Response	V1 Current
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1. PURPOSE

The purpose of this policy is to –

- 1.1. Provide direction for responding to shark attacks and shark sightings, as well as the broader approach to water safety warnings and information provided to the public.
- 1.2. Guide the administration of the City of Busselton Property Local Law 2010, under which a sign may be erected to regulate, prohibit or restrict specific activities on the beach or in the water and the giving of directions to swimmers to leave the water if a shark is suspected of being in the vicinity of the beach.

2. SCOPE

This policy applies to beach areas under the care, control or management of the City, excluding privately owned land and land in National Park, extending along the coast from the Shire of Capel boundary to the Shire of Augusta Margaret River boundary.

3. INTERPRETATION

Authorised Person means the Chief Executive Officer or a person or class of persons appointed under section 9.10 of the Local Government Act 1995 for the purpose of administering the City of Busselton Property Local Law 2010 and Jetty Local Law 2014

SLSWA means Surf Life Saving Western Australia

Patrolled Beach means a beach that has a SLSWA beach safety and surveillance service in operation.

Unverified Shark Sighting means a shark sighting reported to the City from Water Police WA and forwarded to the City from the Water Police WA.

Verified Shark Sighting means a shark sighting reported to the City by the SLSWA Helicopter service and or WA Government Shark Monitoring Network.

4. GENERAL PRINCIPLES

- 4.1. The Chief Executive Officer will prepare more detailed internal procedures/protocol to supplement this policy and to guide operational staff in the exercise of their functions. The Chief Executive Officer will consult with Councillors as appropriate in the development of those procedures/protocol.
- 4.2. This policy recognises that at a beach patrolled by SLSWA, the on duty life saver will be responsible for implementing shark sighting response in accordance with the SLSWA standard operating procedures.
- 4.3. The City will engage with the Margaret River Busselton Tourism Association and Busselton Jetty Environment and Conservation Association with the aim of having these organisations assist the City's response to shark sightings including the

6.1 Attachment B Council Policy: 044 Shark Hazard Response (Current)

Last updated 14/10/2015 (implementation)

active placement of shark sighting signage at the Busselton Beachfront and on the Busselton Jetty generally in accordance with this policy.

- 4.4. Shark sighting reports received from the SLSWA helicopter surveillance service and Shark Monitoring Network generally provide details about the location of the shark, size, species and in some instances direction of travel, which are essential for making decisions about swimmer safety. The SLSWA helicopter surveillance and Shark Monitoring Network service when available, will inform the City's response to a shark sighting.
- 4.5. In the event of a shark attack fatality, WA Police are the lead agency. The City will provide assistance with the management of the shark attack and implement beach safety measures as considered necessary and under the direction of the WA Police.
- 4.6. Where an order to capture a shark has been granted to the Department of Fisheries and a direction given to swimmers to leave the water following a shark attack, the decision to re-opening a beach for swimming should be not less than 24 hours after the shark attack occurred and or after the Department of Fisheries advise that the order to capture the shark has been lifted.
- 4.7. Better community awareness and education about the shared responsibility of risk is needed. The City will actively promote the WA Governments Shark Smart website, SLSWA twitter feed and other communication platforms in place to inform the community of recent reports of shark activity.

5. POLICY CONTENT

- 5.1. At a Patrolled Beach, an SLSWA life guard is the authorised person for responding to a shark sighting and for implementing the SLSWA response procedure which may include sounding alarms to alert swimmers, clearing the water of swimmers and monitoring shark presence.
- 5.2. City Rangers are authorised persons for the purpose of responding to a shark sighting. Subject to availability (i.e. during rostered hours, usually 6am-6pm, seven days per week, and when priorities allow, noting that fire/emergency management response, dog attacks or other work that addresses more pressing risks will be prioritised when there is a need to prioritise due to resources being finite), City Rangers will respond to a verified shark sighting at an unpatrolled beach as follows:
 - 5.2.1. If the shark sighted is less than 2.5 metres in length, the City will maintain normal operations and not take any action.
 - 5.2.2. If the shark sighted is greater than 2.5 meters in length and less than 500 meters from the shore, temporary signage is to be placed on the beach immediately adjacent to the shark sighting location, at intervals of approximately 500 metres and/or on key beach entry points, for a distance of approximately 500 meters from a point on the beach immediately adjacent to the shark sighting location.

Last updated 14/10/2015 (implementation)

- 5.2.3. Signage installed on a beach shall not mean beach closure and shall be advisory signage only and remain in place for at least two hours from the time of installation after the last shark sighting (if after 5pm, signs are to remain in-situ overnight).
- 5.3. Unless the authorised person has a very clear basis to think there is a significantly high risk than is normally the case (i.e. there is always a level of risk as only a very small portion of shark activity is ever seen) the City will generally not install signage and patrol beaches as a response to an unverified shark sighting where the report relates to an unpatrolled beach, except where the unverified shark sighting is more than 2.5 meters in length and is within one 500 meters from the Busselton Jetty and or within 500 meters of the Dunsborough beach area adjacent to the intersection of Dunn Bay Road and Geographe Bay Road.
- 5.4. In response to a shark sighting at the Busselton Jetty an authorised person will install on the Busselton Jetty in an appropriate location, signage approved by the City to inform the public entering the Busselton Jetty of the time and location of shark sighting. Signage shall remain in place for at least two hours after the last shark sighting (if after 5pm, signs are to remain in-situ overnight).
- 5.5. Community awareness of shark hazard will be promoted by:
- 5.5.1. Providing information on the City website about how to access recent reports of shark activity from the WA Government information and communication platforms including Shark Smart website and SLSWA Twitter feed, the times and dates of SLSWA patrolled beaches to encourage swimmers to SLSWA patrolled beaches and the beach enclosures at Dunsborough and Busselton.
- 5.5.2. Installing permanent signage at key beach car parks to inform and promote to beach users, how to access the most recent information on local shark activity and include appropriate QR codes for international visitors.
- 5.5.3. Temporary signage installed in accordance with this policy shall inform beach users and swimmers that a shark has been sighted in the vicinity and provide information on how to access the latest shark sighting report information from SLSWA and from the WA Government information and communication platforms.

Policy Background





Policy Reference No. - 044
Owner Unit – Environmental Services
Originator – Manager, Environmental Services
Policy approved by – Council
Date Approved – 14 October, 2015
Review Frequency – As required
Related Documents – N/A

Last updated 14/10/2015 (implementation)

History

Council Resolution	Date	Information
C1510/286	14 October, 2015	Version 1

6.2 REVIEW OF COUNCIL POLICY: LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES

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 Coordinator - Emma Heys
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 Council Policy: Legal Representation for Council Members and Employees (Proposed)   Attachment B Council Policy: Legal Representation for Council Members and Employees (Current)  

OFFICER RECOMMENDATION

That the Council adopts the revised Council policy: Legal Representation for Council Members and Employees at Attachment A, to replace the current Council policy '085: Legal Representation for Council Members and Employees' at Attachment B.

EXECUTIVE SUMMARY

This report presents a revised Council policy: Legal Representation for Council Members and Employees (Attachment A) (the Policy) with officers recommending it replace the current Council policy '085: Legal Representation for Council Members and Employees' (Attachment B).

BACKGROUND

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

The Policy was presented to the Policy and Legislation Committee at the meeting of 25 August 2020. The Committee requested minor amendments to the wording and for the Policy to be returned to the Committee for consideration at its next meeting.

OFFICER COMMENT

The Policy provides strategic guidance and clarity as to when and under what circumstances a Council Member and Employee of the City may receive assistance for legal representation.

The Policy has been transferred into the new Council policy template and reviewed by officers, with minor amendments proposed to improve readability and clarity. Additional amendments have also been made in response to feedback from the Policy and Legislation Committee, namely to amend the definition of an Approved Lawyer and to reword paragraphs 5.15 and 5.16 for readability.

Statutory Environment

In accordance with section 2.7(2(b) of the *Local Government Act 1995* (the Act), it is the role of the Council to determine the local government policies. The Council does this on recommendation of a Committee it has established in accordance with section 5.8 of the Act.

Relevant Plans and Policies

The Department of Local Government has provided an Operational Guideline and model policy in relation to legal representation for Council members and employees. The Policy maintains alignment overall with this model policy.

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 Governance Systems Review. The framework sets out the intent of Council policies, as opposed to operational documents such as Operational Practices.

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 require further amendments to the Policy.

CONCLUSION

A revised 'Legal Representation for Council Members and Employees' Council policy 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.



1. PURPOSE

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

2. SCOPE

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

3. DEFINITIONS

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

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. The City of Busselton may assist Council members and employees to meet reasonable expenses incurred in relation to Legal Proceedings they become involved in as a result of carrying out their official functions.
- 5.2. The provision of assistance must be justified for the good government of the district. Additionally the following key criteria will apply when determining whether the City will pay the legal representation costs of a Council member or employee:

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

Application for Payment

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

- 5.9. An application to the Council is also to be accompanied by a report prepared by the CEO, or where the CEO is the Applicant, by an appropriate employee, generally a Director or senior governance employee.
- 5.10. The Council may:
- a. refuse;
 - b. approve; or
 - c. approve subject to conditions
- an application for payment of legal representation costs.
- 5.11. Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
- 5.12. The Council, in approving an application in accordance with this Policy, shall set a limit on the costs to be paid, based on the estimated costs in the application. Nothing prevents the Council from considering and approving additional costs in respect of the same matter.
- 5.13. In assessing an application, the Council may have regard to any City insurance policies that may apply to the Council members or employee.

Revocation and Variation

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

Delegation to Chief Executive Officer

- 5.16. An application approved by the CEO under delegation is to be submitted to the next ordinary meeting of the Council.

Repayment of legal representation costs

- 5.17. A Council member or employee whose legal representation costs have been paid by the City is to repay the City:
- a. all or part of those costs – in accordance with a determination by the Council under paragraph 5.155;
 - b. as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.
- 5.18. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Operational Guideline 'Legal Representation for Council Members and Employees'
- 6.2. Delegation DA1-19 Urgent Legal Representation

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	8 March, 2017	Resolution #	C1703/043

Last updated 8 March 2017

085	Legal Representation for Council Members and Employees	V3 Current
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1.0 PURPOSE

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

2.0 SCOPE

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

3.0 POLICY CONTENT

3.1 Definitions

approved lawyer is to be –

- (a) a ‘certified practitioner’ under the *Professions Act 2008*
- (b) from a law firm on the City’s or WALGA’s panel of legal service providers, if relevant, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
- (c) approved in writing by the Council or the CEO under delegated authority.

council member or employee means a current or former Commissioner, Council member or employee of the City of Busselton.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of:

- (a) a matter or matters arising from the performance of the functions of the Council member or employee; and
- (b) legal proceedings involving the Council member or employee that have been, or may be, commenced.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the City of Busselton of legal representation costs may be either by –

- (a) a direct payment to the approved lawyer (or the relevant firm); or
- (b) a reimbursement to the Council member or employee.

Last updated 8 March 2017

3.2 Payment Criteria

There are four major criteria for determining whether the City of Busselton will pay the legal representation costs of a Council member or employee. These are –

- (a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
- (b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

3.3 Examples of legal representation costs that may be approved

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –

- (a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
- (b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
- (c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3.4 Application for payment

A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO. The written application for payment of legal representation costs is to give details of –

- (a) the matter for which legal representation is sought;
- (b) how that matter relates to the functions of the Council member or employee making the application;
- (c) the lawyer (or law firm) who is to be asked to provide the legal representation;
- (d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
- (e) an estimated cost of the legal representation; and
- (f) why it is in the interests of the City for payment to be made.

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The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates. As far as possible the application is to be made before commencement of the legal representation to which the application relates.

An application to the Council is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

3.5 Written Statement

The application is to be accompanied by a signed written statement by the applicant that he or she –

- (a) has read, and understands, the terms of this Policy;
- (b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of Clause 3.11 and any other conditions to which the approval is subject; and
- (c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.11 of this policy.

3.6 Application for Payment

In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.7 Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application. A council member or employee may make a further application to the council in respect of the same matter.

3.8 Council Powers – Decision process and conditions

The council may –

- (a) refuse;
- (b) grant; or
- (c) grant subject to conditions

an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Councilmembers' or employees' insurance policy or its equivalent.

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3.9 Revocation and variation

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which legal representation costs were approved –

- (a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- (b) given false or misleading information in respect of the application

A determination under this clause may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination under this clause, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 3.11.

3.10 Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.8, to a maximum of \$10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy.

3.11 Repayment of legal representation costs

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –

- (a) all or part of those costs – in accordance with a determination by the Council under clause 3.9;
- (b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Policy Background

Policy Reference No. - 085
Owner Unit – Office of the Chief Executive
Originator – Manager, Governance Services
Policy approved by – Council
Date Approved – 8 March, 2017
Review Frequency – As required
Related Documents – N/A


Last updated 8 March 2017

History

Local Government Operational Guidelines Number 14 – modified April 2006

Council Resolution	Date	Information
C1703/043	8 March, 2017	Policy amended to include Department of Local Government recommendations Version 3
C1206/166	27 June, 2012	Department of Local Government has republished its model policy. This version is based on that model policy Version 2
		Version 1

6.3 RESCISSION OF COUNCIL POLICY 063: PRIVATE WORKS MARGIN

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	Corporate Services
REPORTING OFFICER	Manager Governance and Corporate Services - Sarah Pierson
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 Council Policy 063: Private Works Margin 

OFFICER RECOMMENDATION

That the Council rescinds Council Policy 063: Private Works Margin (Attachment A), effective immediately.

EXECUTIVE SUMMARY

This report recommends the rescission of Council policy 063: Private Works Margin (the Policy) (Attachment A), with the Policy having been reviewed as part of the City's overall review of its Council policies. It is recommended the Policy be rescinded, as the fees and charges outline the fee structure for private works, and the remainder of its content is operational in nature.

BACKGROUND

The City is, on occasion, although not regularly, requested to undertake private works, including road reinstatement works. The City's fees and charges contain a fee for private works and road reinstatement works, which is the full cost plus a margin of 30%.

DESCRIPTION	ADOPTED FEE 2019/20 (Exc GST)	ADOPTED FEE 2020/21 (Exc GST)	ADOPTED FEE 2020/21 (Inc GST)
<u>Reinstatements/ Private Works</u>			
Road reserves charge for reinstatement of road reserves is the full cost plus profit margin as per Policy	Cost plus 30%	Cost plus 30%	Cost plus 30% plus GST
Private works charge for works requested to be undertaken by City resources is the full cost plus profit margin as per Policy	Cost plus 30%	Cost plus 30%	Cost plus 30% plus GST

The Policy was developed to provide additional guidance to officers as to the application of this margin. The Policy was reviewed in 2010, and again in 2016, with only minor amendments made. On review in 2010, the Committee considered rescinding the policy, noting that the fees and charges provide for private works to be levied, however officers felt it provided them with necessary operational guidance and so it was retained.

OFFICER COMMENT

In response to the Governance Services Review carried out in 2017, the City developed a policy framework to clearly establish the strategic nature and intent of Council policies, as opposed to operational documents. Since then, Council has been reviewing its Council policies to ensure that they align to the policy framework and that they provide strategic, and not operational, guidance.

The Council have, at a strategic level, adopted a margin for the provision of private works, as per the adopted fees and charges. The fee description sets out a description of private works being “works requested to be undertaken by City resources”. Notably, the margins outlined in the Policy vary from those in the fees and charges. The fees and charges as adopted would apply over the Policy, resulting in sections of the Policy being effectively redundant.

The remainder of the Policy details the operational processes by which quotes are to be provided by the City, and how the customer is to be charged. Given that the fee structure for private works is outlined in the fees and charges, and the operational nature of the Policy, it is recommended that it be rescinded and converted to an Operational Practice.

It is noted that the fee descriptor refers to the profit margin as per Policy. The adopted fee on its own is clear and is not impacted by reference to the Policy, and therefore we don’t feel this reference poses any issues in terms of rescinding the Policy. We will however remove reference to the Policy at the first available opportunity.

Statutory Environment

In accordance with section 2.7(2)(b) of the *Local Government Act 1995* (the Act), it is the role of the Council to determine the local government’s policies. The Council does this on recommendation of a committee it has established in accordance with section 5.8 of the Act.

Relevant Plans and Policies

As already outlined, the City has a policy framework which sets out the intent of Council policies. The recommendation to rescind the Policy is in line with that framework.

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 choose not to rescind the Policy and direct the CEO to review and update it instead.

CONCLUSION

The objectives of the Policy are reflected (and updated) in the City’s Fees and Charges, with the Policy providing operational guidance to officers, guidance which is better placed in an Operational Practice. For these reasons, it is recommended that the Policy be rescinded.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be rescinded and removed from the website within one week of Council's endorsement.

Last updated 13/04/2016

063	Private Works Margin	V3 Current
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1. PURPOSE

The City of Busselton occasionally receives requests for the City to undertake private works. A fee, in the form of cost plus margin, is established to ensure that the community's assets are properly used and applied.

2. SCOPE

Private works are defined as those works carried out using Council resources for other organisations, whether on private land or within Council, Crown or other public land.

3. POLICY CONTENT

Quotes in writing are given by managerial or supervisory staff of Council's Engineering and Works Services Directorate for private works undertaken by Council's plant and works crews. The quotes are compiled using all Council's internal costing with margins in accordance with this policy added to the total of the whole of Council's internal estimated costs.

The customer is to be charged the quoted price including, where agreed extras occur, the full Council cost plus the margin. Payment shall be in advance by cash or bank guarantee for jobs with the exception that jobs under the estimated cost of \$5,000 may be dealt with by the client or customer signing a form works description in which he/she commits to paying the cost plus the margin, based on the estimate provided by staff.

The following margins are applicable to all quotes for private works and on charges raised for incidental works that were not quoted on (such as small jobs where a customer has agreed to pay all material, plant and labour costs). The margins are:

- On Council's plant, labour and materials charges, not less than 15%;
- On any private works for local community, sporting or school groups, NIL;
- For road reinstatement works, 30%;
- On plant, labour and materials for private works on private land and/or for finishing forfeited outstanding and maintenance bonds for subdivision and development - not less than 15% and up to 30% depending on difficulty and indirect cost implications in each case;
- The Chief Executive Officer will assess the market conditions for individual projects at a value of greater than \$200,000 gross and may vary the above stated margins on those projects in circumstances where he believes that market conditions warrant.

Policy Background

Policy Reference No. - 063

Owner Unit – Operations Services

Originator – Director, Engineering and Works Services

Policy approved by – Council

Date Approved – 13 April, 2016

Review Frequency – As required

Related Documents –

City of Busselton Fees and Charges

Last updated 13/04/2016

History

Council Resolution	Date	Information
C1604/077	13 April, 2016	Update to City Terminology and responsible business unit and Directorate. Increase to payment in advance. Version 3
C1012/415	8 December, 2010	Policy re-adopted in new standard format Version 2
		Version 1

7. GENERAL DISCUSSION ITEMS

8. NEXT MEETING DATE

9. CLOSURE