



Policy and Legislation Committee Agenda

25 August 2020

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 25 AUGUST 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 Tuesday, 25 August 2020, commencing at 10.00am.

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

20 August 2020

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 25 AUGUST 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 29 July 2020**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 29 July 2020 be confirmed as a true and correct record.

6. REPORTS

6.1 LOCAL PLANNING POLICY REVIEW - ADOPTION OF LOCAL PLANNING POLICIES FOLLOWING PUBLIC CONSULTATION : LPP XX : EXEMPT DEVELOPMENT AND LPP XX : OUTBUILDINGS AND OTHER NON-HABITABLE BUILDINGS; AND REVOCATION OF LPP 4.8 : OUTBUILDINGS AND LPP 4.9 : OUTBUILDING ASSESSMENT

| | |
|----------------------------|--|
| STRATEGIC GOAL | 2. PLACE AND SPACES Vibrant, attractive, affordable |
| STRATEGIC OBJECTIVE | 2.3 Creative urban design that produces vibrant, mixed-use town centres and public spaces. |
| SUBJECT INDEX | Development Control Policy |
| BUSINESS UNIT | Statutory Planning |
| REPORTING OFFICER | Senior Development Planner – Policy - Stephanie Navarro |
| 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 LPP XX : Exempt Development - Final Version   Attachment B LPP XX : Outbuildings and Non-habitable Buildings - Advertised Version   Attachment C LPP XX : Outbuildings and other Non-habitable Buildings - Final Version   Attachment D Table of Submissions - LPP XX : Outbuildings and Non-habitable Buildings   Attachment E LPP 4.8 : Outbuildings   Attachment F LPP 4.9 : Outbuilding Assessment   |

OFFICER RECOMMENDATION

That the Council:

1. Pursuant to Clause 4 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* adopt as final –
 - (a) *LPP XX : Exempt Development*, as set out at Attachment A; and
 - (b) *LPP XX : Outbuildings and other Non-habitable Buildings*, as set out at Attachment C.
2. Publish a notice of adoption in a newspaper circulating within the Scheme area in accordance with clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015* of those Policies set out in 1 above.
3. Pursuant to Clause 6 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* revoke –
 - (a) *LPP 4.8 : Outbuildings* (Attachment D); and
 - (b) *LPP 4.9 : Outbuilding Assessment* (Attachment E).
4. Publish a notice of revocation in a newspaper circulating within the Scheme area in accordance with clause 6 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015* of those Policies set out in 2 above.

EXECUTIVE SUMMARY

Council is asked to consider final adoption of the following local planning policies ('Policies' or 'Policy', as appropriate to the context) which, since being initiated by Council, have been publicly advertised in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations'):

- *LPP XX : Exempt Development*, as set out in Attachment A; and
- *LPP XX : Outbuildings and other Non-habitable Buildings*, as set out in Attachment C.

As *LPP XX : Outbuildings and other Non-habitable Buildings* is proposed to consolidate and replace two existing Policies, Council is also asked to revoke the following two Policies:

- *LPP 4.8 : Outbuildings* ('LPP 4.8'), provided at Attachment D; and
- *LPP 4.9 : Outbuilding Assessments* ('LPP 4.9'), provided at Attachment E.

BACKGROUND

The Regulations provide that policies may be prepared by a local government in respect of any matter relating to planning and development subject to the *City of Busselton Local Planning Scheme No. 21* ('Scheme').

The intention of a policy is to provide guidance to applicants/developers and the community in regards to the decision-making process, as well as to the local government when exercising discretion under the Scheme. Policies 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 any mandatory requirements upon development.

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

In March 2019, the City commenced the first stage of the policy review. The City has now commenced the second stage of the review process and is currently reviewing the content and relevance of all policies. Due to the number of policies and the complexity of issues which need to be addressed, the review has been broken down into a number of stages.

It is proposed as part of this report that Council adopts as final *LPP XX : Exempt Development* (Attachment A) and *LPP XX : Outbuildings and other Non-habitable Buildings* (Attachment C) which were initiated by Council on 13 May 2020 for the purposes of public consultation. The Policies were advertised, in accordance with the Regulations, for 28 days from 27 May 2020 – 24 June 2020 (note: the Regulations require a minimum public consultation period of 21 days). The Policies were advertised via a notice placed in the local newspaper for four consecutive weeks and a portal was created on the City's *Your Say* platform website for the online lodgement of submissions.

In addition to the above, the City sent emails to all outbuildings companies that had lodged development applications in the past 12 months advising of draft *LPP XX : Outbuildings and other Non-habitable Buildings* and the proposed changes to the current requirements.

As it is proposed that *LPP XX : Outbuildings and other Non-habitable Buildings* will consolidate and replace the City's current two existing Policies, Council is also asked to revoke LPP 4.8 and LPP 4.9.

A description of the Policies being considered is set out in the 'Officer Comment' section of this report.

OFFICER COMMENT*LPP XX : Exempt Development*

The purposes of *LPP XX : Exempt Development* is to exempt various kinds of minor development from the requirement to obtain development approval. The exemptions contained within this Policy would be in addition to those types of development already exempt under clause 61 of the Regulations and clause 6.1 of the Scheme.

During the public consultation period, no submissions were received in relation to this Policy. No changes are proposed to the version of the Policy proposed for adoption from what was initiated by Council and advertised.

It is, therefore, recommended that the Policy as set out in Attachment A be adopted as final.

LPP XX : Outbuildings and other Non-habitable Buildings (including revocation of LPP 4.8 and LPP 4.9)

The purposed of *LPP XX : Outbuildings and other Non-habitable Buildings* is to replace two existing Policies, being LPP 4.8 and LPP 4.9. LPP 4.8 relates to outbuildings on Residential zoned lots while LPP 4.9 relates to outbuildings and other non-habitable buildings (as defined by the Policy) in the Rural Residential, Rural, Conservation, Rural Landscape, Viticulture and Tourism, and Bushland Protection zones. It is proposed that the new Policy will consolidate the requirements into a single Policy to improve ease of use. The version of this Policy that was initiated by Council and advertised for public consultation is provided at Attachment B.

During public consultation, two submissions were received. A summary of submissions and comments addressing the comments raised is provided at Attachment F.

Upon completion of the advertising period, further review of the Policy was undertaken at an officer level. As a result of this further consideration a number of modifications are proposed to the version of the Policy that is recommended to be adopted in final form. The modifications do not alter or change the standards or provisions within the Policy and therefore it is considered that re-advertising the amended Policy is not necessary. The changes that are proposed are as follows:

- Change of title from *LPP XX : Outbuildings and Non-habitable Buildings* to *LPP XX : Outbuildings and other Non-habitable Buildings*. An outbuilding by definition is an enclosed non-habitable building. To clarify that the Policy applies to both outbuildings and other types of non-habitable buildings, such as patios and carports as defined by the Policy, as outbuildings are also non-habitable structures.
- The maximum wall heights, ridge heights and total areas for outbuildings and other non-habitable buildings in the different zones have been moved into a single table to improve the utilisation of the Policy and simplify the format of the Policy.
- To facilitate the change above, the individual design principles for each Zone have been removed and incorporated into the Purpose of the Policy.
- Policy provisions advising when a development application is required for an outbuilding and/or other non-habitable building have been removed, as these are not necessary or appropriate as provisions. These were considered to be information only and therefore it is considered that these would be more suited to a note within the Policy and would be supplemented with a fact sheet that would be prepared if the Policy is adopted.

It is, therefore, recommended that the Policy as set out in Attachment C be adopted as final.

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 — Local planning policies

3. Local planning policies

- (1) The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area.*
- (2) A local planning policy —*
 - (a) may apply generally or in respect of a particular class or classes of matters specified in the policy; and*
 - (b) may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.*
- (3) A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.*
- (4) The local government may amend or repeal a local planning policy.*
- (5) In making a determination under this Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme.*

4. Procedure for making local planning policy

- (1) If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows —*
 - (a) publish a notice of the proposed policy in a newspaper circulating in the Scheme area, giving details of —*
 - (i) the subject and nature of the proposed policy; and*
 - (ii) the objectives of the proposed policy; and*
 - (iii) where the proposed policy may be inspected; and*
 - (iv) to whom, in what form and during what period submissions in relation to the proposed policy may be made;*
 - (b) if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;*
 - (c) give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.*
- (2) The period for making submissions in relation to a local planning policy must not be less than a period of 21 days commencing on the day on which the notice of the policy is published under subclause (1)(a).*

- (3) *After the expiry of the period within which submissions may be made, the local government must —*
- (a) *review the proposed policy in the light of any submissions made; and*
- (b) *resolve to —*
- (i) *proceed with the policy without modification; or*
- (ii) *proceed with the policy with modification; or*
- (iii) *not to proceed with the policy.*
- (4) *If the local government resolves to proceed with the policy, the local government must publish notice of the policy in a newspaper circulating in the Scheme area.*
- (5) *A policy has effect on publication of a notice under subclause (4).*
- (6) *The local government —*
- (a) *must ensure that an up-to-date copy of each local planning policy made under this Scheme is kept and made available for public inspection during business hours at the offices of the local government; and*
- (b) *may publish a copy of each of those local planning policies on the website of the local government.*

6. *Revocation of local planning policy*

A local planning policy may be revoked —

- (a) *by a subsequent local planning policy that —*
- (i) *is prepared in accordance with this Part; and*
- (ii) *expressly revokes the local planning policy;*
- Or*
- (b) *by a notice of revocation —*
- (i) *prepared by the local government; and*
- (ii) *published in a newspaper circulating in the Scheme area.*

Relevant Plans and Policies

Local Planning Strategy 2019

The purpose of the LPS is to:

- set out the long-term (25 years-plus) broad planning direction for the whole of the District of the City of Busselton;
- provide a strategic rationale for decisions related to the planning and development of the District;
- apply State and regional planning policies relevant to the strategy; and
- provide a strategic rationale for decisions related to the planning and development of the District. The LPS consists of five 'planning themes' with Theme 4 : Environment, landscape and heritage relating to the natural, rural and urban landscapes of the District.

Financial Implications

There are no financial implications associated with the Officer Recommendation.

Stakeholder Consultation

In accordance with the Regulations, it is proposed that a notice be placed in the local newspaper advising that *LPP XX : Exempt Development* and *LPP XX : Outbuildings and other Non-habitable Buildings* have been adopted as final and that LPP 4.8 and LPP 4.9 have been revoked.

Risk Assessment

An assessment of the risks associated with the implementation of the Officer Recommendation has been undertaken using the City's risk assessment framework. No risks of a medium or greater level have been identified.

Options

As an alternative to the Officer Recommendation, the Council could:

1. Modify one or more of the Policies recommended to be adopted as final; and/or
2. Not to adopt one or more of the Policies recommended to be adopted as final; and/or
3. Not revoke one or more of the Policies recommended to be revoked.

CONCLUSION

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

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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



Local Planning Policy No. XX Exempt Development

Version: Proposed

1. HEAD OF POWER AND SCOPE

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

Clause 61 of the Deemed Provisions identifies that development approval is not required for a range of matters, and further allows local governments the ability to further exempt development types by specifying those development types within a local planning policy.

2. PURPOSE

The purpose of this policy is establish development that is exempt from requiring development approval to:

- 2.1. Provide certainty about what development is exempt from the need for development approval; and
- 2.2. Streamline the land use planning regulatory process; and
- 2.3. Ensure acceptable development outcomes are maintained.

Note 1: These exemptions are in addition to development identified in Clause 61, 'Development for which development approval not required', of the Deemed Provisions and clause 6.1 Permitted Development of the Scheme.

Note 2: It should be noted that whilst this Policy identifies certain development types that do not require development approval, other approvals, including a building permit, may still need to be obtained from the City.

3. INTERPRETATION

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

"BAL" means Bushfire Attack Level as determined in accordance with *Australian Standard AS3959: Construction of buildings in bushfire-prone areas* (as amended).

"Deemed Provisions" means Schedule 2 - Deemed provisions for local planning schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

"Heritage significance" means a place that is —

- (i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990* (WA);
- (ii) the subject of an order under the *Heritage of Western Australia Act 1990* (WA) Part 6;
- (iii) included on a heritage list prepared in accordance with this Scheme;
- (iv) within an area designated under the Scheme as a heritage area; or
- (v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* (WA) section 29.

Note 3: In relation to point (iv) above, there are currently no 'heritage areas' within the City of Busselton



"Incidental development" means any non-habitable structure associated with a Single House, not considered to be an Outbuilding, that is not located under the main roof of the Single House and/or is not attached to the Single House and includes, but is not limited to, the following:

- (a) patio;
- (b) pergola;
- (c) shade sail;
- (d) decking not more than 500mm above natural ground level;
- (e) swimming pool where no part of the swimming pool structure is more than 500mm above natural ground level other than an associated safety barriers in accordance with AS1926.1 & AS1926.2 (as amended) provided the safety barriers comply with the definition of 'visually permeable' (as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended)).
- (f) retaining and fill not more than 500mm above natural ground level; and/or
- (g) water tank/s.

"Outbuilding" as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended) and means 'An enclosed non-habitable structure that is detached from any dwelling.'

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

"Scheme" means the *City of Busselton Local Planning Scheme No. 21* (as amended).

"Solar Collectors" as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended) and means 'Solar collecting components of the following: thermal heating systems, photovoltaic systems (i.e. solar panels) and skylights.'

4. POLICY STATEMENT

Except as otherwise provided in the Deemed Provisions or Scheme, the following development does not require the development approval of the local government –

4.1 The erection or extension of a Single House, Outbuilding and/or Incidental Development in the Rural, Viticultural and Tourism, Rural Residential, Conservation, Rural Landscape and Bushland Protection zone, where-

- (a) The development is not located within one of the following Special Control Areas:
 - (i) Airport Protection; or
 - (ii) Coastal Management; or
 - (iii) Development Investigation; or
 - (iv) Floodway; or
 - (v) Landscape Value; or
 - (vi) Special Character; or
 - (vii) Special Provision; or
 - (viii) Waste Water Exclusion; or
 - (ix) Waste Water Buffer; or
 - (x) Wetland; and



- (b) Unless supported by a Local Development Plan, the development does not require the exercise of discretion by the local government under the Scheme including, but not limited to, the following:
 - (i) Clause 4.8 Height of Buildings; and
 - (ii) Clause 4.31 Clearing of land in rural areas or land coded R2, R2.5 or R5; and
 - (iii) Clause 4.33 Building Envelopes in Rural Areas; and
 - (iv) Clause 4.34 Building Materials and Visual Amenity in the Rural Landscape and Conservation zones; and
 - (v) Clause 4.36 Setback requirements in the Rural and Viticulture and Tourism zones; or
 - (vi) Clause 4.37 Special Provisions relating to the Conservation zone; or
 - (vii) Clause 4.38 Special Provisions relating to the Rural Residential Zone; or
 - (viii) Clause 4.39 Special Provisions relating to the Rural Landscape Zone; or
 - (ix) Clause 4.40 Special Provisions relating to the Bushland Protection Zone; and
- (c) The development is consistent with any Detailed Area Plan, Development Guide Plan, Structure Plan adopted pursuant to the Scheme; and
- (d) The development is consistent with the quantitative standards in any local planning policy; and
- (e) The development is not located in a place that is recognised as having Heritage significance; and
- (f) Where the development is located within a Bushfire Prone Area, the development has a BAL of BAL-29 or lower or the works are exempt from compliance with State Planning Policy 3.7 – Planning in Bushfire Prone areas including the Guidelines for Planning in Bushfire Prone Areas.

Note 4: The above exemption excludes dwellings which are re-purposed or second-hand dwelling as defined by the Scheme.

Note 5: The above exemption does not apply to an outbuilding on a vacant lot in the Rural Residential, Conservation, Rural Landscape and Bushland Protection zones. An outbuilding on a vacant Rural and/or Viticulture and Tourism zoned lot, that meets the above requirements, is exempt from requiring development approval.

- 4.2 Solar collectors associated with a development where the Residential Design Codes of WA (R-codes) do not apply and:
 - (a) Are positioned on the roof of a building; and
 - (b) Have a maximum projection of 1.5m from the point of the roof where it is attached; and
 - (c) The building is compliant with the height controls prescribed within clause 4.8 – Height of Buildings of the Scheme; and
 - (d) The development is located in a place that is not recognised as having Heritage significance.

Note 6: Where the R-codes apply, solar collectors which meet the deemed-to-comply criteria of clause 5.4.4 External fixtures of the R-codes, are exempt as per the Deemed Provisions.

- 4.3 A flag pole;
 - (a) That is not an advertisement; and
 - (b) Does not display offensive material; and



- (c) The flag affixed is no larger than 2m² on either side; and
 - (d) Is located such that the pole, including all supporting structures, and flag at full extension when attached to the pole are contained within the lot boundaries; and
 - (e) Has a maximum height of 6m above natural ground level and 200mm in diameter; and
 - (f) Setback a minimum of 1.5m from any lot boundary; and
 - (g) No more than one flag pole per lot is to be erected.
- 4.4 An outdoor eating facility located on a public place subject to an outdoor eating permit pursuant to the City of Busselton Activities in Thoroughfares and Public Places and Trading Local Law 2015.
- 4.5 One outbuilding equal to or less than ten square metres in size per Residential zoned lot that meets the following:
- (a) Wall and ridge height are consistent with Appendix 1 of Local Planning Policy X – Outbuildings and other Non-habitable Buildings; and
 - (b) Not located within the front setback area; and
 - (c) There is a dwelling on the lot.

5. REVIEW DETAILS

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

Local Planning Policy No. **XX** OUTBUILDINGS AND NON-HABITABLE BUILDINGS - ADVERTISED



1. HEAD OF POWER AND SCOPE

This Policy has been adopted pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA), Schedule 2 (Deemed Provisions), Clause 4 and applies to:

- (a) all Outbuildings in the following Zones:
 - (i) Residential; (ii) Regional Centre; (iii) Centre; and (iv) Local Centre.
- (b) all Outbuildings and Non-habitable buildings in the following Zones:
 - (i) Rural Residential;
 - (ii) Rural;
 - (iii) Viticultural and Tourism;
 - (iv) Rural Landscape;
 - (v) Conservation; and
 - (vi) Bushland Protection.

Clause 60 of the Deemed Provisions requires a person to obtain the prior development approval of the local government unless:

- (a) that development is of a type referred to in Clause 61 – 'Development for which development approval not required' of the Regulations; or
- (b) the carrying out of any other works specified in a Local Planning Policy or Local Development Plan that applies to the development are works that do not require development approval.

Exemptions applicable to Outbuildings and Non-habitable buildings in the different Zones are outlined in the applicable Policy Statement below.

2. PURPOSE

The purpose of this Policy is to ensure:

- (a) Outbuildings and Non-habitable buildings do not unreasonably detract from the streetscape and/or the visual amenity of residents or neighbouring properties; and
- (b) Outbuildings and Non-habitable buildings are of a form and scale consistent with the Objectives of the Zone in which they are located as well as their intended use and the use of the property; and
- (c) Outbuildings are not capable of being utilised for Habitable purposes.

3. INTERPRETATION

3.1 The two terms defined below are critical to interpretation and application of this Policy:

"Acceptable Development" means the provisions of this Policy contained within Table 4.1.2, 4.3.2, 4.4.2 and 4.5.2 which, if satisfied with respect to a development proposal, that proposal is deemed compliant with the purpose of this Policy. The local government should not refuse to grant approval to an application where the application satisfies the relevant Acceptable Development provisions provided all other applicable requirements have been met.

Local Planning Policy No. **XX** OUTBUILDINGS AND NON-HABITABLE BUILDINGS - ADVERTISED



“Design Principles” means the provisions of this Policy contained within Table 4.1.2, 4.3.2, 4.4.2 and 4.5.2 to be used in the preparation, submission and assessment of development proposals that do not meet the relevant Acceptable Development provisions, and which if satisfied with respect to a development proposal, that proposal is deemed compliant with the purpose of this Policy. The local government should not refuse to grant approval to an application where the application satisfies the relevant Design Principles provisions provided all other applicable requirements have been met.

- 3.2 Other 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:

“Building Envelope” means an area within which development (other than landscaping or means of access) on a lot should generally be contained and which is identified on a Structure Plan, DGP, Local Development Plan, Building Envelope Plan or similar.

“DGP” means a plan adopted as a Development Guide Plan by the City and WAPC prior to the introduction of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA).

“Habitable purposes” means intended to be lived in on a permanent or temporary basis.

“Non-habitable building” means any building, not considered to be an Outbuilding (as defined below), that can be attached or detached to a dwelling but is not located under the main roof of a dwelling and includes, but is not limited to:

- (a) carports;
- (b) patios;
- (c) Shade structure/orchard enclosure; and
- (d) pergolas/gazebos;

“Outbuilding” means an enclosed non-habitable structure.

but excludes boundary fences, water tanks and swimming pools and decking not more than 500mm above natural ground level.

“R-codes” means *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended).

“Residential Development” means Single Houses, Ancillary Dwelling, Grouped Dwelling and/or Multiple Dwellings.

“Scheme” means the *City of Busselton Local Planning Scheme No. 21* (as amended).

4. POLICY STATEMENT

This Policy has been separated into the following sections:

- 4.1 Outbuildings associated with Residential Development in the Residential, Regional Centre, Centre and Local Centre Zones.
- 4.2 Outbuildings not associated with Residential Development in the Residential, Regional Centre, Centre and Local Centre Zones.
- 4.3 Outbuildings and Non-habitable buildings in the Rural Residential Zone.
- 4.4 Outbuildings and Non-habitable buildings in the Rural and Viticulture and Tourism zones.
- 4.5 Outbuildings and Non-habitable buildings in the Rural Landscape, Conservation and Bushland

Local Planning Policy No. **XX** OUTBUILDINGS AND NON-HABITABLE BUILDINGS - ADVERTISED



Protection zones.

Note: Section 4.1 and 4.2 of this Policy do not apply to Non-habitable buildings as they are to be assessed as a 'building' in accordance with the requirements of the Residential Design Codes of WA and Scheme.

4.1 OUTBUILDINGS ASSOCIATED WITH RESIDENTIAL DEVELOPMENT IN THE RESIDENTIAL, REGIONAL CENTRE, CENTRE AND LOCAL CENTRE ZONES.

It is considered that the following Acceptable Development provisions do not amend or replace the 'deemed-to-comply' criteria of the R-codes and therefore where a proposal does not meet those criteria the proposal will require a development application.

The 'deemed-to-comply' criteria of Clause 5.4.3 Outbuildings of the R-codes are provided below. Those in **bold** below are augmented by this Policy -

- C3 Outbuildings that:**
- i. are not attached to a dwelling;*
 - ii. are non-habitable;*
 - iii. **collectively do not exceed 60m² in area or 10 per cent in aggregate of the site area, whichever is the lesser;***
 - iv. **do not exceed a wall height of 2.4m;***
 - v. **do not exceed ridge height of 4.2m;***
 - vi. are not within the primary or secondary street setback area;*
 - vii. do not reduce the amount of open space required in [Table 1 \[of the R-codes\]](#); and*
 - viii. are set back in accordance with [Tables 2a and 2b \[of the R-codes\]](#).*

In assessing an application for development approval, where a discretion is sought to iii, iv and/or v of Clause 5.4.3 of the R-codes (as outline above) and the development meets the applicable Acceptable Development provisions below, the application will be deemed to meet the associated Design Principles of the R-codes and therefore development approval will be granted by the City.

4.1.1 Outbuildings on vacant lots

Up to one Outbuilding on a vacant lot will be supported where:

- (a) Construction of a dwelling on the lot has substantially commenced (i.e. foundations completed); and
- (b) No bathroom and/or toilet are proposed within the Outbuilding; and
- (c) It is not proposed that the Outbuilding will be used for Habitable purposes.

4.1.2 Acceptable Development and Design Principles for Outbuildings

| Lots coded R2 - R5 and/or lots 2,000m ² and greater | |
|--|--|
| Acceptable Development | Design Principles |
| Max area of outbuildings : 120m ² | As per the R-codes and provided below: |
| Wall Height : 3.1m | Outbuildings that do not detract from the streetscape or |

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| | |
|---|--|
| Ridge Height : 4.5m | the visual amenity of residents or neighbouring properties |
| Setbacks : In accordance with the R-codes. | |

| Lots coded R10 – R25 and/or lots greater than 300m ² and 2,000m ² or less | |
|---|---|
| Acceptable Development | Design Principles |
| Max area of outbuildings : 90m ² or 10% in aggregate of the site area, whichever is the lesser. Wall Height : 3.1m Ridge Height : 4.5m Setbacks : In accordance with the R-codes. | As per the R-codes and provided below: Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties |

| Lots coded R30 or above and/or lots 300m ² or less | |
|---|---|
| Acceptable Development | Design Principles |
| Max area of outbuildings : 60m ² or 10% in aggregate of the site area, whichever is the lesser. Wall Height : 2.7m Ridge Height : 4.5m Setbacks : In accordance with the R-codes. | As per the R-codes and provided below: Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties |

4.2 OUTBUILDINGS NOT ASSOCIATED WITH RESIDENTIAL DEVELOPMENT IN THE RESIDENTIAL, REGIONAL CENTRE, CENTRE AND LOCAL CENTRE ZONES.

While the provisions of the R-codes do not apply to the non-Residential development within the Residential, Regional Centre, Centre and Local Centre Zones it is considered that Outbuildings associated with any non-Residential development within these zones should give due regard to the applicable 'deemed-to-comply' of Clause 5.4.3 Outbuildings of the R-codes and Acceptable Development provisions of this Policy.

4.3 OUTBUILDINGS AND NON-HABITABLE BUILDINGS IN THE RURAL RESIDENTIAL ZONE

Development approval will be required for an Outbuilding and/or Non-habitable building which:

- (a) does not meet the Acceptable Development provisions as prescribed below; and/or

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(b) is not exempted under Local Planning Policy **XX** : Exempt Development.

4.3.1 Outbuildings on vacant lots

Up to one Outbuilding on a vacant lot will be supported where:

- (a) Construction of a dwelling on the lot has substantially commenced (i.e. foundations completed); and
- (b) No bathroom and/or toilet are proposed within the Outbuilding; and
- (c) It is not proposed that the Outbuilding will be used for Habitable purposes.

4.3.2 Acceptable Development and Design Principles for Outbuildings and Non-habitable buildings

| Lots 5,000m ² and less | |
|---|--|
| Acceptable Development | Design Principles |
| Maximum combined area of all outbuildings and non-habitable building: Max 120m ² Wall Height : 3.1m Ridge Height : 4.5m Setbacks : Within a (BE). Where there is no BE, consistent with the Structure Plan, DGP, Local Development Plan or similar, or Scheme. | D1. Outbuildings and Non-habitable buildings that do not detract from the streetscape, the visual amenity of residents or neighbouring properties; and D2. Outbuildings and Non-habitable buildings that are located within a BE (where applicable). Where a lot does not have a designated BE, development should be located in proximity to, or clustered with, other development including the dwelling on the site; and D3. Outbuildings and Non-habitable buildings are located with consideration given to the retention of native vegetation and/or remnant vegetation on site; and D4. Outbuildings and Non-habitable buildings are located such that they do not increase the threat of bushfire to habitable buildings on the site; and D5. Outbuildings and Non-habitable buildings are of a form and scale consistent with the Objectives of the zone in which they are located as well as their intended use and the use of the property. |

| Lots greater than 5,000m ² | |
|--|--|
| Acceptable Development | Design Principles |
| Maximum combined area of all outbuildings and non-habitable building: Max 200sqm | D1. Outbuildings and Non-habitable buildings that do not detract from the streetscape, the visual amenity of residents or neighbouring properties; and |

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| | |
|--|--|
| <p>Wall Height : 3.6m</p> <p>Ridge Height : 5.5m</p> <p>Setbacks : Within approved BE. Where there is no BE, Structure Plan, DGP, Local Development Plan or similar, or Scheme.</p> | <p>D2. Outbuildings and Non-habitable buildings that are located within a BE (where applicable). Where a lot does not have a designated BE, development should be located in proximity to, or clustered with other development, including the dwelling, on the site; and</p> <p>D3. Outbuildings and Non-habitable buildings are located with consideration given to the retention of native vegetation and/or remnant vegetation on site; and</p> <p>D4. Outbuildings and Non-habitable buildings are located such that they do not increase the threat of bushfire to habitable buildings on the site; and</p> <p>D5. Outbuildings and Non-habitable buildings are of a form and scale consistent with the objectives of the Zone in which they are located as well as their intended use and the use of the property.</p> |
|--|--|

4.4 OUTBUILDINGS AND NON-HABITABLE BUILDINGS IN THE RURAL AND VITICULTURE AND TOURISM ZONES

Development approval will be required for an Outbuilding and/or Non-habitable building which;

- (a) is not exempt under Local Planning Policy : Exempt Development; and
- (b) is not associated with a Permitted ("P") land use in that zone as designated under Table 1 : The Zoning Table of the Scheme.

4.4.1 Outbuildings on vacant lots

Outbuildings may be located on vacant lots.

4.4.2 Acceptable Development and Design Principles and Non-habitable buildings

| Acceptable Development | Design Principles |
|---|-------------------|
| <p>No maximum area, wall height or ridge height subject to the provisions of the <i>Building Codes of Australia</i> (as amended) and subject to satisfying the requirements of Clause 4.8 – Height of Buildings of the Scheme.</p> <p>Setbacks : Consistent with the Scheme.</p> | N/A |

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4.5 OUTBUILDINGS AND NON-HABITABLE BUILDINGS IN THE RURAL LANDSCAPE, CONSERVATION AND BUSHLAND PROTECTION ZONE

Development approval will be required for an Outbuilding and/or Non-habitable building in the Rural Landscape, Conservation & Bushland Protection zones which;

- (a) is not to be used in association with a Single House on the site; and/or
- (b) is not exempt under Local Planning Policy: Exempt Development.

4.5.1 Outbuildings on vacant lots

Up to one outbuilding on a vacant lot will be supported where:

- (a) Construction of the dwelling on the lot has substantially commenced (i.e. foundation completed); and
- (b) No bathroom and/or toilet are proposed within the outbuilding; and
- (c) It is not proposed that the outbuilding will be used for Habitable purposes.

4.5.2 Acceptable Development and Design Principles and Non-habitable buildings

| Acceptable Development | Design Principles |
|--|---|
| Maximum combined area of all outbuildings and non-habitable buildings : Max 200m ² Wall Height : 3.6m Ridge Height : 5.5m Setbacks : Within approved BE. Where there is no BE, consistent with the Structure Plan, DGP, Local Development Plan or similar, or Scheme. | D1. Outbuildings and Non-habitable buildings that do not detract from the streetscape, the visual amenity of residents or neighbouring properties; and D2. Outbuildings and Non-habitable buildings that are located within a BE (where applicable). Where a lot does not have a designated BE, development should be located in proximity to, or clustered with other development, including the dwelling, on the site; and D3. Outbuildings and Non-habitable buildings are located with consideration given to the retention of native vegetation and/or remnant vegetation on site (including any applicable covenants for the retention of vegetation); and D4. Outbuildings and Non-habitable buildings are located such that they do not increase the threat of bushfire to habitable buildings on the site; and D5. Outbuildings and Non-habitable buildings are of a form and scale consistent with the Objectives of the zone in which they are located as well as their intended use and the use of the property. |

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*Note: In relation to measuring wall and ridge height refer to **Figures 1 – 5 : Measuring wall and ridge height of an Outbuilding and/or Non-habitable building.***

5. REVIEW DETAILS

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

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Figures 1 – 5 : Measuring wall and ridge height of an Outbuilding and/or Non-habitable buildings.

Measurements are to be taken from natural ground level. Where fill above natural ground level is proposed or has been previously approved the wall and ridge height are to be taken from the ground levels prior.

Figure 1 : Flat Style Roof



Figure 2 : Skillion Style Roof

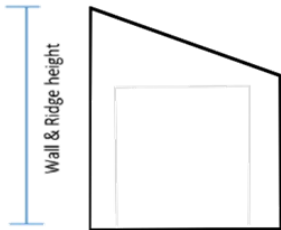


Figure 3 : Pitch Style Roof

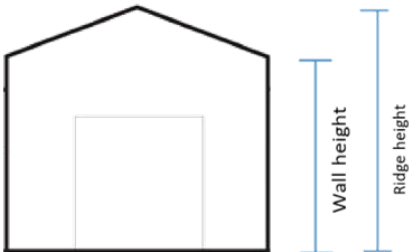


Figure 4 : Outbuilding with lean-to

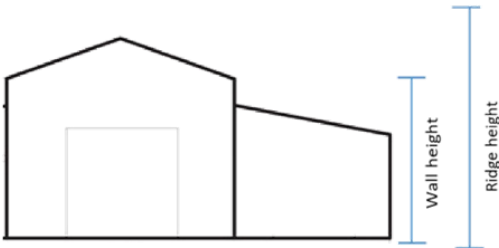


Figure 5 : Barn Style Roof





Local Planning Policy No. XX Outbuildings and Other Non-Habitable Buildings

Version: Proposed

1. HEAD OF POWER AND SCOPE

This Policy has been adopted pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA), Schedule 2 ('Deemed Provisions'), Clause 4 and applies to:

- (a) All Outbuildings in the following Zones:
 - (i) Residential;
 - (ii) Regional Centre;
 - (iii) Centre; and
 - (iv) Local Centre.
- (b) All Outbuildings and other Non-habitable buildings in the following Zones:
 - (i) Rural Residential;
 - (ii) Rural;
 - (iii) Viticulture and Tourism;
 - (iv) Rural Landscape;
 - (v) Conservation; and
 - (vi) Bushland Protection.

Note 1 : See the City's 'Outbuildings and other Non-habitable Buildings Information Sheet' for guidance on exemptions from Development Approval.

2. PURPOSE

The purpose of this Policy is to outline standards and other guidance in relation to development of Outbuildings and other Non-habitable Buildings which are subject to this Policy as outlined in Part 1 above.

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:

"Building Envelope" means an area within which development (other than landscaping or means of access) on a lot should generally be contained and which is identified on a Structure Plan, DGP, Local Development Plan, Building Envelope Plan or similar.

"Centre Zones" includes land zoned 'Regional Centre', 'Centre' and/or 'Local Centre' under the Scheme.

"DGP" means a plan adopted as a Development Guide Plan by the City and WAPC prior to the introduction of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA).

"Habitable Purposes" means intended to be lived in on a permanent or temporary basis.

"Heritage significance" means a place that is —

- (i) entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990;
- (ii) the subject of an order under the Heritage of Western Australia Act 1990 Part 6;



- (iii) included on a heritage list prepared in accordance with this Scheme;
- (iv) within an area designated under the Scheme as a heritage area; or
- (v) the subject of a heritage agreement entered into under the Heritage of Western Australia Act 1990 section 29.

Note 2 : There are currently no 'Heritage Areas' within the City of Busselton.

"Non-habitable Building" means any building, not considered to be an Outbuilding (as defined below), that can be attached or detached to a dwelling but is not located under the main roof of a dwelling and includes, but is not limited to:

- (a) carports;
- (b) patios;
- (c) shade structure/orchard enclosure; and
- (d) pergolas/gazebos;

but excludes boundary fences, water tanks and swimming pools and decking not more than 500mm above natural ground level.

"Outbuilding" as defined by the R-codes and provided below:

An enclosed non-habitable structure that is detached from any dwelling. .

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

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

"Scheme" means the *City of Busselton Local Planning Scheme No. 21* (as amended).

4. POLICY STATEMENT

4.1 OUTBUILDINGS IN THE RESIDENTIAL OR CENTRE ZONES

- (a) All Outbuildings associated with Residential Development in the Residential or Centre Zones should comply with the deemed-to-comply criteria of Part 5.4.3 Outbuildings of the R-codes as provided below:

C3 Outbuildings that:

- i. are not attached to a dwelling;
- ii. are non-habitable;
- iii. **collectively do not exceed 60m² in area or 10 per cent in aggregate of the site area, whichever is the lesser;**
- iv. **do not exceed a wall height of 2.4m;**
- v. **do not exceed ridge height of 4.2m;**
- vi. are not within the primary or secondary street setback area;
- vii. do not reduce the amount of open space required in [Table 1 \[of the R-codes\]](#); and
- viii. are set back in accordance with [Tables 2a and 2b \[of the R-codes\]](#).

- (b) Further to 4.1 (a) above, in assessing an application for development approval where a discretion is sought to iii, iv and/or v of Part 5.4.3 of the R-codes (indicated in **bold** above) and the development meets the applicable provisions within Appendix 1 : Outbuilding and



other Non-habitable Building Standards of this Policy, the application will be deemed to meet the associated Design Principles of the R-codes and therefore development approval will be granted by the City.

- (c) All Outbuildings not associated with Residential Development in the Residential or Centre Zones should comply with Appendix 1 : Outbuilding and other Non-habitable Building Standards of this Policy.

4.2 OUTBUILDINGS AND OTHER NON-HABITABLE BUILDINGS IN RURAL RESIDENTIAL, RURAL LANDSCAPE, CONSERVATION, BUSHLAND PROTECTION, RURAL AND VITICULTURE AND TOURISM

- (a) All Outbuildings and other Non-habitable Buildings in the Rural Residential, Rural Landscape, Conservation, Bushland Protection, Rural and Viticulture and Tourism should comply with Appendix 1 : Outbuilding and other Non-habitable Building Standards of this Policy.

4.3 OUTBUILDINGS AND OTHER NON-HABITABLE BUILDINGS ON VACANT LOTS

- (a) Details regarding the circumstances where an Outbuilding and other Non-habitable Building may be supported on a vacant lot (i.e. a lot without a dwelling) are outlined in Appendix 1 : Outbuilding and other Non-habitable Building Standards of this Policy.

4.4 OBJECTIVES FOR THE ASSESSMENT OF APPLICATIONS

An outbuilding and other Non-habitable Building that meets the standards outlined in Appendix 1 is deemed compliant, with respect to the objectives below

Note 3: Development may also require assessment against other planning requirements, not directly identified or addressed in this Policy.

Where development does not meet those standards, it will be considered and required to satisfy the following objectives (in addition to any other relevant 'matters to be considered', as per clause 67 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*);

- (a) Outbuildings and other Non-habitable Buildings are to be of a scale that will not unreasonably detract from the streetscape and/or the visual amenity of residents or neighbouring properties.
- (b) Outbuildings and other Non-habitable Buildings are to be of a form and scale consistent with the Objectives of the Zone in which they are located.
- (c) Outbuildings and other Non-habitable Buildings are to be suitably located on a site with adequate setbacks and located within a Building Envelope (where applicable). Where a lot does not have a designated Building Envelope but one is applicable under the Scheme, Outbuildings and other Non-habitable Buildings should be located in proximity to, or clustered with, other development (including the dwelling) on the site.
- (d) Outbuildings and other Non-habitable Buildings are to be located with consideration given to the retention of native vegetation and/or remnant vegetation on site.
- (e) Outbuildings and other Non-habitable Buildings are to be located such that they do not increase the threat of bushfire to habitable buildings on the site.



5. RELATED DOCUMENTS

- *State Planning Policy 7.3 Residential Design Codes*

6. REVIEW DETAILS

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

APPENDIX 1 : OUTBUILDING AND OTHER NON-HABITABLE BUILDING STANDARDS

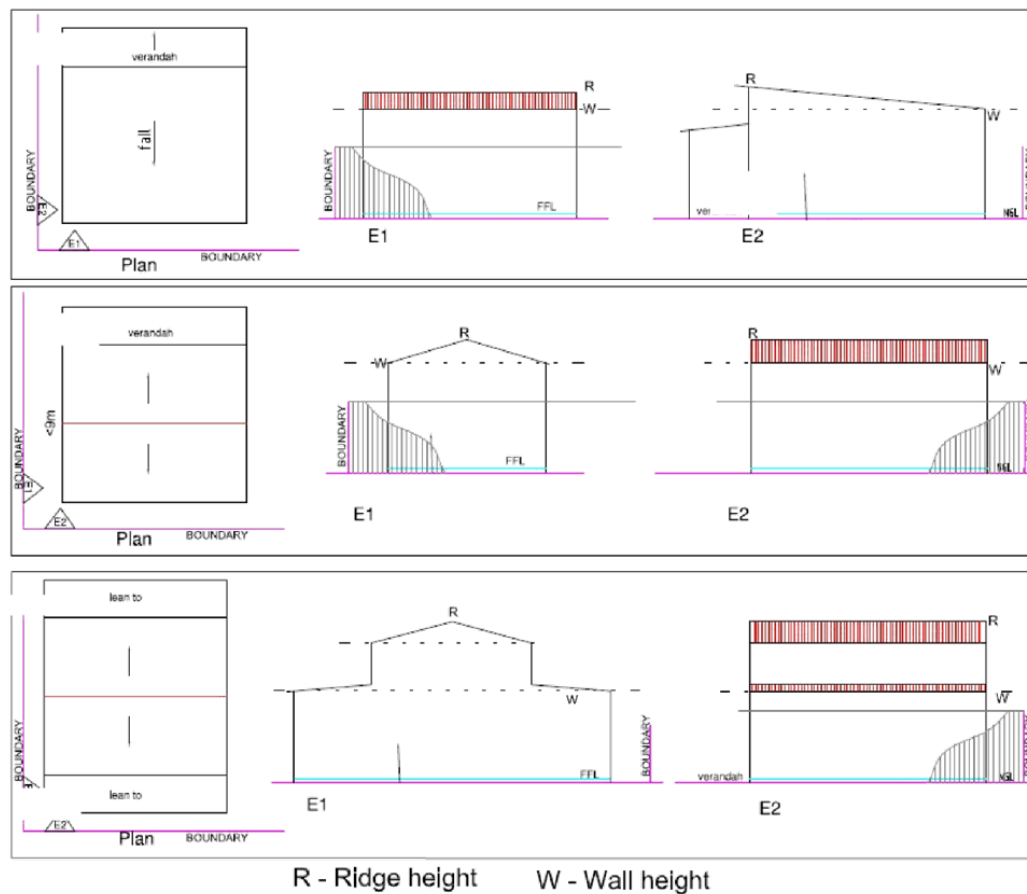
| ZONE | DENSITY/LOT SIZE ⁴ | MAXIMUM WALL HEIGHT ⁶ | MAXIMUM RIDGE HEIGHT ⁶ | MAXIMUM TOTAL AREA | VACANT LOTS |
|--|--|------------------------------------|-----------------------------------|--|--|
| <ul style="list-style-type: none"> Residential⁵ Centre Zones | R30 and above (including RAC) and/or lots less than 300m ² | 2.7m | 4.5m | 60m ² or 10% of the lot (whichever is lesser) | Up to one Outbuilding on a vacant may be supported where: (a) Construction of a dwelling on the lot has substantially commenced (i.e. foundations completed); and (b) No bathroom and/or toilet are proposed within the Outbuilding; and (a) It is not proposed that the Outbuilding will be used for Habitable Purposes. |
| | R10 – R25 and/or lots 300m ² or greater but less than 2,000m ² | 3.1m | 4.5m | 90m ² or 10% of the lot (whichever is lesser) | |
| | R2 - R5 and/or lots 2,000m ² or greater | 3.1m | 4.5m | 120m ² | |
| <ul style="list-style-type: none"> Rural Residential | Lots 5000m ² or less | 3.1m | 4.5m | 120m ² | |
| | Lots greater than 5000m ² | 3.6m | 5.5m | 200m ² | |
| <ul style="list-style-type: none"> Rural Landscape Conservation Bushland Protection | All | 3.6m | 5.5m | 200m ² | |
| <ul style="list-style-type: none"> Rural Viticulture and Tourism | All | As per clause 4.8.1 of the Scheme. | | No limit | Outbuildings may be located on vacant lots. |

Note 4 : Where a lot falls within two categories of the density/lot size within the same zone the lesser/lower wall height, ridge height and total maximum area requirement shall apply.

Note 5: Maximum wall and ridge height and area do not apply to Non-habitable Buildings in the Residential zone as they are to be assessed as a 'building' in accordance with the requirements of the R-codes.

Note 6: In relation to measuring wall and ridge height refer to Appendix 2 : Measuring wall and ridge height of an Outbuilding and/or other Non-habitable building.

APPENDIX 2 : MEASURING WALL AND RIDGE HEIGHT OF AN OUTBUILDING AND/OR OTHER NON-HABITABLE BUILDING



SUMMARY OF SUBMISSIONS – FILE No. PO20/01

PROPOSAL: LPP Outbuildings and Non-habitable Buildings

SUBMISSIONS PERIOD : 27 MAY 2020 – 24 JUNE 2020

| No | NAME & ADDRESS | Nature of Submission | Comment |
|----|--|--|--|
| 1 | Douglas Lindberg 4798 Bussell Highway Reinscourt | <p>Comment:</p> <ul style="list-style-type: none"> • There are a lot of sea containers used as storage. Can provision be made for these ? • Permanent containers should apply for permanent outbuilding permission or a cost difference for permanent or temporary . ? | <p>The City requires all sea contains to obtain development approval. Each application is then required to be assessed on a case by case basis, including the potential impact of the sea containers on the visual amenity of the area. Where considered necessary the City requires upgrades to the external appearance of sea containers via conditions of development approval.</p> <p>The City's above position and expectations are to be set out within a fact sheet.</p> |
| 2 | Graham Edwards 14 Averil Street Abbey | Concerns regarding an outbuilding built abutting property's rear boundary including impacts of outbuildings on the amenity of surrounding properties and how the City can ensure that they are used for non-habitable purposes? | <p>The standards set out within the draft LPP are consistent with the standards routinely applied by City Officers when assessing similar applications. By included them within the LPP it will improve consistency with the expectations of applicants and the community.</p> <p>By definition an 'Outbuilding' is a non-habitable structure and as part of the building permit is assessed against the requirements of a class 10A building. If the City becomes aware that an outbuilding is being used for habitable purposes the City is able to undertake compliance action.</p> |

Local Planning Policy No. 4.8 OUTBUILDINGS



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

To provide further interpretation of the Residential Design Codes and the Local Planning Scheme No. 21 in the assessment of applications for residential outbuilding development.

3. INTERPRETATION

N/A

4. POLICY STATEMENT

These provisions apply to all applications for Class 10A, Class 7 or 8 buildings including garages, sheds, carports, patios, pergolas and gazebos, but excluding swimming pools, on lots subject to the provisions of the R Codes.

The following provisions apply:-

4.1 Outbuildings on vacant lots Outbuildings that are proposed for construction on vacant residential lots will be actively discouraged except in the circumstance listed below:

4.2 Construction of a dwelling is imminent on the lot and a Building Licence for a dwelling has been approved by the City. In such circumstances the lodgement of a bond may be required to cover the value of removal of the structure and grading/ stabilising of the site to the satisfaction of the City of Busselton.

Outbuildings with WC and wet area facilities will not be approved until construction of a dwelling has substantially commenced.

4.3 Variation to the R Codes - wall height and size.

Provision 6.10.1 A1 (iv) and (v) of the R Codes shall be taken to read 'do not exceed a wall height of 2.7m' and 'do not exceed a ridge height of 4.5m' respectively.

Outbuildings that collectively do not exceed 90 sqm in area or 10% in aggregate of the site area, whichever is the lesser may be approved without Planning Consent subject to satisfying Performance Criteria of the R Codes.

Consultation with neighbouring and affected landowners

Where a proposed outbuilding is considered to have the potential to adversely impact on neighbouring residents, the City will require applicants to supply written comments from adjoining and affected landowners to assist in determining the application.

Local Planning Policy No. 4.8 OUTBUILDINGS



Where written comments are not able to be obtained by the applicant, staff will provide written advice to affected landowners of the proposed construction and invite them to submit comments to the City. If an affected landowner does not respond within the time provided (generally 14 days), the City will consider the application on the basis that the landowner has not exercised their opportunity to comment.

Where objections are received and the objections are not able to be adequately dealt with through Conditions of approval, the application will generally be refused. An application may be referred to Council for determination or reconsideration.

5. REVIEW DETAILS

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

* Policy number changed from LPP 1J to LPP 4.8 on the 11th May 2020. The change is administrative only, no resolution by Council required.

Local Planning Policy No. 4.9 OUTBUILDING ASSESSMENT



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

The objective of these provisions is to streamline the approval process and provide further interpretation of the District Town Planning Scheme No. 20 in the assessment of applications for outbuilding development within the City of Busselton outside of the areas covered by the Residential Design Codes. These provisions are intended to guide decision making in respect of building that is defined under the Building Code of Australia as a Class 10A building (outbuilding), or a Class 7 or 8 building.

These provisions apply to all applications for Class 10A, Class 7 or 8 buildings including garages, sheds, carports, patios, pergolas and gazebos, rural sheds but excluding swimming pools, on lots not subject to the provisions of the R Codes. The provisions apply to, but are not limited to, land within the Rural Residential, Agriculture, Conservation, Rural Landscape, Viticulture and Tourism and Bushland Protection zoning. The Industrial, Tourist, Business and Restricted Business zones are excluded from these provisions.

All applications for Outbuildings within those areas defined in Schedule 1 will be assessed against this policy. Where there is an inconsistency between these provisions and the R Codes or another City Policy then these provisions prevail to the extent of such inconsistency. Where there is an inconsistency between these provisions and the Scheme then the Scheme prevails to the extent of such inconsistency.

3. INTERPRETATION

For the purpose of interpretation the 'Scheme' shall be the City of Busselton Local Planning Scheme.

For the purposes of these provisions an outbuilding is defined as a Class 10A or Class 7 or 8 building pursuant to the Building Code of Australia.

4. POLICY STATEMENT

4.1 Outbuildings on vacant lots - Rural Residential Zone

Approval will be granted for a maximum of one outbuilding on a vacant lot that is zoned Rural Residential. Approval for further outbuildings will not be issued until application and approval for a Building Licence for a dwelling has been issued and the dwelling is substantially completed.

Outbuildings are not to be used for cottage industry or other commercial purposes unless Planning Consent for a specific use has been issued. Outbuildings will not be approved which incorporate WC and wet area facilities unless an application for temporary accommodation has been approved or construction of a dwelling has substantially commenced.

Local Planning Policy No. 4.9 OUTBUILDING ASSESSMENT



4.2 Outbuildings on vacant lots - Agriculture, Rural Landscape, Bushland Protection, Viticulture/Tourism, Conservation zones.

Approval can be granted for outbuildings and associated farm buildings on properties zoned as outlined above and on which there is no dwelling. Outbuildings will not be approved with WC and wet area facilities unless an application for temporary accommodation has been approved, construction of a dwelling has substantially commenced or the applicant demonstrates to the satisfaction of the City of Busselton that the facilities are required for use by persons involved in an agricultural pursuit carried out upon the subject lot.

4.3 Size of outbuildings - outbuilding area and height

The total combined area of outbuildings permitted on a lot without formal planning consent being required is dependant on the scale of the proposal and zoning of the lot as indicated in the following Table 1. An outbuilding that would result in a total combined outbuilding area greater than permitted in the table is defined as an 'oversized' outbuilding for the purposes of these provisions.

Applications which satisfy the Table 1 requirements will normally only require a building licence from the City of Busselton.

Table 1 Outbuilding Assessment and Approval Requirements

| Zoning of lot | Permitted total outbuilding area | Special Considerations |
|--|---|--|
| Rural Residential | Maximum of 120 sqm or Maximum of 160 sqm subject with the consent of the adjoining land owner(s). | Building envelopes, height restrictions and DGP's may apply to these lots and may impose further restrictions. A maximum wall height of 3.6 metres and a maximum ridge height of 5.5 metres will be accepted without neighbour's comments. |
| Agriculture zone Viticulture/Tourism zone | No limit subject to the provisions of the BCA and subject to satisfying the requirements of provision 4.4 Height to be determined by reference to the Scheme | Landscape Value Areas may apply (Refer to schedule 1) |
| Rural Landscape zone Conservation zone | Maximum of 120 sqm or Maximum of 160 sqm subject to satisfying the requirements of provision 4.4 below and with the consent of the adjoining land owner(s). Height to be determined by reference to the Scheme | Water storage tanks which are visible from any area outside the lot shall be painted to match adjacent dwellings or outbuildings and be entirely screened by planted vegetation. *building envelopes, height restrictions, DGP's and Landscape Value Areas may apply Walls and roofing are to be constructed of non reflective |

Local Planning Policy No. 4.9 OUTBUILDING ASSESSMENT



| | | |
|---------------------------------|---|---|
| | | materials and in colours other than white or silver and shall be of colours and textures that are essentially natural and earthy. Clause 5.38 |
| Bushland Protection Zone | Maximum of 120 sqm subject to satisfying the requirements of provision 4.4. Height to be determined by reference to the Scheme | * Building envelopes and DGP's may be applicable to these lots. * Landscape Value Areas may apply (Refer to schedule 1) |

- * The 'Use of Reflective Materials' Provisions will apply in some instances.
- * Outbuildings proposed within the Business zone, Restricted Business, Tourist, Industrial zone or Public Purposes reserve are subject to application for Planning Consent in accordance with the Scheme.

4.4 Consideration of oversized and / or overheight outbuildings

These may require Planning Consent and in most cases will require consultation with adjoining and affected landowners.

An application for an 'oversized' or 'overheight' outbuilding will be assessed in accordance with the following:

- a. Size of the lot
- b. Zoning of the lot
- c. Materials of construction
- d. Height of the proposed building
- e. Visibility from nearby vantage points
- f. Effect on adjoining properties and written comments from affected landowners
- g. Any other circumstances and factors affecting the application
- h. Other Scheme matters including, Structure Plan, DGP, DAP's Policies or State Planning Policies

5. REVIEW DETAILS

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

* Policy number changed from LPP 3H to LPP 4.9 on the 11th May 2020. The change is administrative only, no resolution by Council required.

Local Planning Policy No. 4.9 OUTBUILDING ASSESSMENT



APPENDIX 1

All applications for outbuildings within those areas defined below may require Planning Consent to be issued but in any event will require assessment in accordance with the Scheme to determine whether they require a Planning Consent:

1. Land within 200m, or for land from 200m - 400m where the outbuilding is potentially visible from the carriageway, of any road identified as a 'Travel Route Corridor' pursuant to Statement of Planning Policy No. 6.1 Leeuwin-Naturaliste Ridge Policy, including:
 - * Metricup Road
 - * Metricup Yelverton Road
 - * Wildwood Road
 - * Vasse Yallingup Siding Road
 - * Commonage Road
 - * Chain Avenue
 - * Caves Road
 - * Cape Naturaliste Road
2. Land within 200m of Bussell Highway, Busselton Bypass or Vasse Highway within the Agriculture, Conservation, Bushland Protection or Rural Landscape zone.
3. All land in a 'Landscape Value' Area outside of an urban area (an urban area is defined as Residential, Tourist, Business, Industrial, Restricted Business, Vasse Development and Special Purposes zones) or Rural Residential zone, pursuant to the City of Busselton District Town Planning 20 ("the Scheme") and any successive town planning scheme.

The inclusion of land within 400m of a road identified as a travel route corridor is based on the scaled width of these corridors on the Landscape Classes Map pursuant to State Planning Policy No. 6.1 – Leeuwin Naturaliste Ridge.

The inclusion of land within 200m of an important regional highway is on the basis that these areas are general rural character areas only.

6.2 LOCAL PLANNING POLICY REVIEW - INITIATION OF NEW LPP XX : ADVERTISEMENTS AND ADVERTISING SIGNS

| | |
|----------------------------|---|
| STRATEGIC GOAL | 2. PLACE AND SPACES Vibrant, attractive, affordable |
| STRATEGIC OBJECTIVE | 2.3 Creative urban design that produces vibrant, mixed-use town centres and public spaces. |
| SUBJECT INDEX | Development Control Policy |
| BUSINESS UNIT | Statutory Planning |
| REPORTING OFFICER | Senior Development Planner – Policy - Stephanie Navarro |
| 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 LPP ** : Advertisements and Advertising Signs - proposed  |

OFFICER RECOMMENDATION

That the Council:

1. **Initiates for the purposes of public consultation a new *Local Planning Policy – LPP ** : Advertisements and Advertising Signs* (Attachment A); and**
2. **Advertise the initiated Local Planning Policy in a newspaper circulating within the Scheme area for four weeks in accordance with clause 4 of Part 2 of Schedule 2 – Deemed Provisions for Local Planning Schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015*.**

EXECUTIVE SUMMARY

Council is asked to consider initiation for the purposes of public consultation a new local planning policy ('Policy'), *LPP ** : Advertisements and Advertising Signs* following Council's decision to defer consideration of any earlier version of the draft Policy at its meeting on 12 August 2020.

BACKGROUND

The *Planning and Development (Local Planning Schemes) Regulations 2015* ('Regulations') provide that policies may be prepared by a local government in respect of any matter relating to planning and development subject to the *City of Busselton Local Planning Scheme No. 21* ('Scheme').

The intention of a policy is to provide guidance to applicants/developers and the community in regards to the decision-making process, as well as to the local government when exercising discretion under the Scheme. Policies 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 any mandatory requirements upon development.

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

In March 2019, the City commenced the first stage of the policy review. The City has now commenced the second stage of the review process and is currently reviewing the content and relevance of all policies. Due to the number of policies and the complexity of issues which need to be addressed, this review has been broken down into a number of stages.

The purpose of this report is to request that Council initiate for the purposes of public consultation a new Policy, *LPP ** : Advertisements and Advertising Signs*, following Council's decision to defer any earlier version of the draft Policy at its meeting on 12 August 2020. A copy of the Policy requested to be initiated for public consultation is provided at Attachment A.

OFFICER COMMENT

An earlier version of the draft *LPP** : Advertisements and Advertising Signs* was considered by Council at its meeting on 12 August 2020 where it was determined to defer consideration to allow further work in relation to advertising signs which incorporate 'animation' to occur.

Policy Rationale (as per previous Council report)

It is proposed that this Policy be applicable to all Advertisements and Advertising Signs within the City not subject to the portable signs requirements under the *Activities in Thoroughfares and Public Places and Trading Local Law 2015* and *Council Policy - Portable Advertising Signs in Public Places*.

Under the proposed Policy, an Advertisement is proposed to be defined as follows:

Advertisement as defined by the Deemed Provisions and provided below -

means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, that is used wholly or partly for the purposes of advertising, announcing or directing, and includes –

- a) any hoarding or similar structure used, or adapted for use, for the display of advertisements; and*
- b) any airborne device anchored to any land or building used for the display of advertising; and*
- c) any vehicle or trailer or other similar object placed or located so as to serve the purpose of displaying advertising.*

The distinction is made within the Policy between an Advertisement and an Advertising Sign, which is a type of Advertisement, and is proposed to be defined as follows:

Advertising Sign means a permanent structure/s used for the purpose of advertisement, or to draw attention to, a product, business, person or event.

Currently, the only controls that the City has in place in relation to Advertisements are contained with clauses 4.36.4, 4.41 and Schedule 11 – Exempted Advertising of the Scheme as outlined below:

- Clause 4.36.4 outlines requirements for entry statements within the Rural and Viticulture and Tourism zones; and
- Clause 4.41 outlines that Advertisements are prohibited if they advertise goods and services which are not produced, displayed or offered for sale, or which is otherwise not relevant to, the land upon which the advertisement is located; and
- Schedule 11 includes specific types and requirements for Advertising Signs that if met are exempt under clause 6.1 Permitted Development of the Scheme from requiring development approval.

If an Advertisement does not comply with the requirements of clause 4.36.4 or Schedule 11, the City has no further requirements in place and development applications are required to be assessed on a case by case basis against the “matters to be considered” of the Regulations. A lack of further requirements has resulted in uncertainty regarding what the City considers to be acceptable when determining a development application for an Advertisement which requires approval. Therefore, it is proposed as part of the Policy that provisions relating to the maximum dimension/s and number of signs be introduced. Requirements for different zones are proposed to reflect the different land uses permissible in those areas, as well as the desired amenity of each zone.

As part of the preparation of this Policy, the City has considered the requirements of other local governments within Western Australia, including the City of Bunbury and various Perth metropolitan local governments. In addition, officers have reviewed the City’s former local law relating to signs and other advertising devices (which was repealed in 2015) as well as previous development approvals for various types of signs within the City. It is considered that the provisions proposed within this Policy are consistent with the current requirements that are generally applied by the City when assessing development applications.

Changes to draft Policy relating to animation

In addition to the above, it is proposed as part of the Policy to set requirements for advertisements which incorporates static illumination and/or animation. Currently, the City does not have any specific controls around the illumination of advertisements, including the use of animation.

Static Illumination is proposed to be defined within the Policy as follows:

Static Illumination means an internal or external light source that lights any type of sign.

It is proposed under the Policy that Static Illumination of advertising signs would only be permitted where the applicant is able to demonstrate to the satisfaction of the City that there will be unacceptable impact on surrounding residential properties.

Animation is proposed to be defined within the Policy as follows:

Animation means the movement or the appearance of movement through the use of patterns of lights, changes in colour or light intensity, computerized special effects, video displays, or through any other method.

In the earlier draft version of the Policy, consideration of which was deferred by Council at its meeting on 12 August 2020, it was proposed that Advertising Signs that incorporate Animation would not be permissible for any commercial purposes and would only be permitted for not-for-profit organisations, schools and/or other authorities when used to display community messages.

Following further consideration, it was recognised that Advertising Signs which propose to incorporate Animation may be appropriate in ‘Local Activity Centres.’ The Policy proposes to define a ‘Local Activity Centre’ as follows:

Local Activity Centre means lot(s) which are zoned Local Centre under the Scheme and are identified within Table 3 : Activity Centre Framework of the Local Planning Strategy (LPS) as a ‘Local Centre’.

Currently, the following locations would meet the above definition and are already developed:

- Lot 1 (170) Bussell Highway (West Busselton);
- Lot 114 (328) Marine Terrace, Geographe (Bayside Shops);
- Lots 65 (545) & Lots 1 – 14 (1/539 – 9/539) Bussell Highway (Broadwater);

- Lots 34 (235) & Lot 58 (231) Bussell Highway (Bower Road);
- Lot 24 (20) Monaghans Way Abbey (Monaghan's Corner); and
- Lots 1 – 5 (2) Eagle Bay-Meelup Road, Eagle Bay and Lot 1 -4 (1) Ella Gladstone Drive, Eagle Bay (Eagle Bay).

In addition to the above, the following locations would meet the above definition however are yet to be developed include the following:

- Lot 1 (1/28) Clydebank Avenue, West Busselton (Clydebank); and
- Lot 1001 (7) Switchback Parade, West Busselton (Old Broadwater Farm); and
- Lots 1 – 23 (19) and Lot 584 (5) Spinnakers Boulevard and Lot 585 (2) Port Lane Lot 9501 Port Lane (Port Geographe) (note: pending changes to the planning framework will result in this land being rezoned for residential development only).

The LPS identifies a number of additional Local Centres, being Blum Boulevard, Airport North, Ambergate North West, Dunsborough Lakes, Yallingup and Smiths Beach, however these Local Centres would not meet the definition proposed under the Policy as they are currently not zoned Local Centre under the Scheme. It is noted that when, and if, these Local Centres are rezoned they would meet the definition of a Local Activity Centre (as defined by the Policy) and therefore the provisions relating to Animation would also apply in these locations.

In addition, there are a number of lots which would fall outside the definition of a Local Activity Centre under the Policy but are zoned Local Centre under the Scheme. As per the proposed definition, Advertisements which incorporate Animation would not be supported in these locations.

Under the proposed Policy, one Advertising Sign which incorporates Animation would be permitted per Local Activity Centre (as defined by the Policy). It is proposed that where such signage is proposed other Freestanding Signage (i.e. Pylon signs) within that Local Activity Centre may need to be consolidated. It is considered that this will provide an incentive for lots with multiple tenancies to consolidate signage and therefore reduce clutter and improve the overall amenity of the sites.

The objectives of the Local Centre zone within the Scheme are as follows:

- To provide for development at a scale sufficient to serve the Centre's catchment, but not detract from the commercial primacy of the Regional Centre and Centre zones.*
- Providing for limited expansion of existing smaller centres to ensure access to services at a local level and building neighbourhood identity.*
- To ensure that development provides for activation of the street and public spaces, high quality design and a variety of land uses.*

By nature of the objectives of the zone, as well as their smaller size compared to lots zoned 'Centre' and 'Regional Centre', those locations that would be considered a Local Activity Centres under the Policy are generally occupied by smaller businesses. Signage which incorporates Animation is considered suitable within Local Activity Centres, as these do not form part of larger commercial strips, and the centres do substantially rely on passing vehicle traffic.

Concerns regarding third party advertising

The requirements under Clause 4.41 of the Scheme prevent the potential for widespread proliferation of third party billboard advertising within the City. It is considered that this type of advertising would significantly detract from the visual amenity of the District, in particular along Bussell Highway and the entrances into the Busselton City Centre and Dunsborough Town Centre, and would be inconsistent with the City's *Local Planning Strategy* ('LPS'), *Leeuwin Naturaliste Sub-Regional Strategy* ('LNSRS') and associated *State Planning Policy 6.1: Leeuwin-Naturaliste Ridge* (SPP6.1), inter alia. The strategic direction provided within the documents discourage commercialisation along travel route corridors and support the retention of the existing visual and environmental character and amenity of the District.

It is considered, under the current controls, the City has been relatively successfully in maintaining the natural and rural landscapes along these highly visible tourism routes providing a significant 'point of difference' relative to Perth and all other major regional centres in Western Australia. There are considered to be significant benefits that arise from that 'point of difference'.

There are concerns that, if the City were to introduce provisions which allow for the use of Animation in advertising signs in locations other than those defined as Local Activity Centres within the Policy, it would undermine visual amenity and local character. There are also substantial practical difficulties with enforcing controls that relate to dynamic content in signs. Note that the City has been approached on several occasions, including recently, seeking support for LED or similar signage.

It is recommended that the Policy as set out in Attachment A be initiated for the purposes of public consultation.

Statutory Environment

The key statutory environment is set out in the *Planning and Development Act 2005* and related subsidiary legislation, including the Scheme and the Regulations, especially Schedule 2 (Deemed Provisions) of the Regulations, which form part of the Scheme.

Division 2 — Local planning policies

3. Local planning policies

- (1) The local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area.***
- (2) A local planning policy —***
 - (a) may apply generally or in respect of a particular class or classes of matters specified in the policy; and***
 - (b) may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.***
- (3) A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.***
- (4) The local government may amend or repeal a local planning policy.***
- (5) In making a determination under this Scheme the local government must have regard to each relevant local planning policy to the extent that the policy is consistent with this Scheme.***

4. Procedure for making local planning policy

- (1) *If the local government resolves to prepare a local planning policy the local government must, unless the Commission otherwise agrees, advertise the proposed policy as follows –*
 - (a) *publish a notice of the proposed policy in a newspaper circulating in the Scheme area, giving details of –*
 - (i) *the subject and nature of the proposed policy; and*
 - (ii) *the objectives of the proposed policy; and*
 - (iii) *where the proposed policy may be inspected; and*
 - (iv) *to whom, in what form and during what period submissions in relation to the proposed policy may be made;*
 - (b) *if, in the opinion of the local government, the policy is inconsistent with any State planning policy, give notice of the proposed policy to the Commission;*
 - (c) *give notice of the proposed policy in any other way and carry out any other consultation the local government considers appropriate.*
- (2) *The period for making submissions in relation to a local planning policy must not be less than a period of 21 days commencing on the day on which the notice of the policy is published under subclause (1)(a).*
- (3) *After the expiry of the period within which submissions may be made, the local government must –*
 - (a) *review the proposed policy in the light of any submissions made; and*
 - (b) *resolve to –*
 - (i) *proceed with the policy without modification; or*
 - (ii) *proceed with the policy with modification; or*
 - (iii) *not to proceed with the policy.*
- (4) *If the local government resolves to proceed with the policy, the local government must publish notice of the policy in a newspaper circulating in the Scheme area.*
- (5) *A policy has effect on publication of a notice under subclause (4).*
- (6) *The local government –*
 - (a) *must ensure that an up-to-date copy of each local planning policy made under this Scheme is kept and made available for public inspection during business hours at the offices of the local government; and*
 - (b) *may publish a copy of each of those local planning policies on the website of the local government.*

Relevant Plans and Policies

The policies affecting this proposal include:

- Leeuwin-Naturaliste Sub-regional Strategy (LNSRS) and associated SPP6.1; and
- Local Planning Scheme (LPS).

LNSRS and associated SPP 6.1

The LNSRS is an overarching planning document that guides the future planning and development of all the land within the local government areas of the Shire of Augusta-Margaret River and the City of Busselton. The LNSRS was released in May 2019 with the following vision for the Leeuwin-Naturaliste sub-region:

The Leeuwin-Naturaliste sub-region to continue to develop and be managed in a manner consistent with the character, amenity and value of the natural and built environments, and the efficient use and equitable distribution of resources.

SPP 6.1 includes a statement of intent to conserve the unique landscape values of the Leeuwin-Naturaliste Ridge, including those along travel route corridors. Both documents support the retention of the visual and environmental values along these routes and discourage commercialisation along travel route corridors. The City would consider that third party billboards along these routes would not be in keeping with the intention of LNSRS and SPP 6.1 and that controls regarding advertising signage, including restrictions on animated signage outside the Local Centre zone, proposed in the new Policy will reinforce intent of these documents.

LPS

The purpose of the LPS is to:

- set out the long-term (25 years-plus) broad planning direction for the whole of the District of the City of Busselton;
- provide a strategic rationale for decisions related to the planning and development of the District;
- apply state and regional planning policies relevant to the strategy; and
- provide a strategic rationale for decisions related to the planning and development of the District. The LPS consists of five 'planning themes' with Theme 4 : Environment, landscape and heritage relating to the natural, rural and urban landscapes of the District.

Strategies j) of Theme 4 states as follows:

- j) *Protect and enhance the visual character of the District by avoiding the further commercialisation of land-use and development visible from: i) key public vantage points (e.g. scenic lookouts, trails) within National Parks and conservation parks; and ii) regional roads, strategic local roads and travel route corridors (as defined in the Leeuwin-Naturaliste Ridge State Planning Policy); as well as providing, wherever possible and consistent with maintaining landscape and visual character values, screening landscaped buffers where development is being undertaken in locations visible from these sites, roads and travel routes.*

It is considered that the controls regarding advertising signage, including restrictions on animated signage outside the Local Centre zone, is in keeping with the intent of the LPS.

Financial Implications

There are no financial implications associated with the Officer Recommendation.

Stakeholder Consultation

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:

- 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 Policy; and
- A portal is to be created using the City's *Your Say* platform for the online lodgment of submissions.

Risk Assessment

An assessment of the risks associated with the implementation of the Officer Recommendation has been undertaken using the City's risk assessment framework. No risks of a medium or greater level have been identified.

Options

As an alternative to the Officer Recommendation, the Council could:

1. Choose not to initiate the Policy recommended to be initiated as part of this report; and/or
2. Modify the Policy before initiation.

CONCLUSION

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

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the Officer Recommendation would involve public consultation of the initiated Policy as outlined in the consultation section of this report above. It is expected that this will commence within one month of the Council decision. A subsequent report will be presented to the Council following public consultation outlining the nature of any submissions received in relation to the Policy and any necessary modifications to the Policy (where applicable).



Local Planning Policy No. XX ADVERTISEMENTS AND ADVERTISING SIGNS

Version: Proposed

1. HEAD OF POWER AND SCOPE

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 (Deemed Provisions) and applies to all Advertisements and Advertising Signs not defined as a Portable Signs located across the whole of the City.

Note 1: This Policy does not apply to Portable Signs, refer to Council Policy 'Portable Advertising Signs in Public Places' for provisions relating to Portable Signs.

2. PURPOSE

The purpose of this Policy is to:

- 2.1 Set standards relating to the design and placement of Advertisements and Advertising Signs within the City. Where Advertisements and Advertising Signs do not meet these standards they are to be:
 - (a) Designed, constructed and maintained to a high aesthetic standard and quality of presentation; and
 - (b) Integrated within the design of the development and are consistent with the character of the local area; and
 - (c) Designed such that they do not result in visual clutter and/or have a detrimental impact on the streetscape or visual amenity of the surrounding area and present a visually attractive appearance to public areas; and
 - (d) Consistent with the heritage values of a place (where applicable); and
 - (e) Integrated and rationalised where a site contains multiple tenancies; and
 - (f) Designed, constructed, secured and maintained so that they do not pose a hazard to motorists, pedestrians, cyclists and the public at large; and
- 2.2 In addition to the above, where Static Illumination and/or Animation are proposed, help ensure that illumination levels do not have an adverse impact on the amenity of the area or cause a nuisance to occupiers of surrounding residential premises.

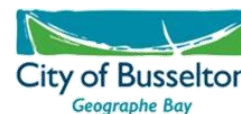
3. INTERPRETATION

Other than those terms defined below, and in Appendix 1 : 'Types of Advertising Signage' of this Policy, terms should be interpreted in the same way as they would be interpreted if they were contained or within the Scheme, including those terms defined in the deemed provisions and Schedule 11 of the Scheme -

"Advertisement" as defined by the Deemed Provisions and provided below -

means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, that is used wholly or partly for the purposes of advertising, announcing or directing, and includes —

- a) *any hoarding or similar structure used, or adapted for use, for the display of advertisements; and*



- b) *any airborne device anchored to any land or building used for the display of advertising; and*
- c) *any vehicle or trailer or other similar object placed or located so as to serve the purpose of displaying advertising.*

“Advertising Sign” means a permanent structure used for the purpose of Advertisement, or to draw attention to, a product, business, person or event.

“Animation” means the movement or the appearance of movement through the use of patterns of lights, changes in color or light intensity, computerized special effects, video displays, or through any other method.

“Local Activity Centre” means lot(s) which are zoned Local Centre under the Scheme and are identified within Table 3 : Activity Centre Framework of the City’s Local Planning Strategy as a Local Centre.

“Main Roads WA Roads” means any road which is under the care and control of Main Roads WA, including Primary Distributor & Regional Distributor Roads, and includes the following roads within the City;

- (a) Caves Road;
- (b) Bussell Highway from the southern boundary of the Shire of Capel to Causeway Road;
- (c) Bussell Highway from the intersection with Caves Road to the northern boundary of the Shire of Augusta Margaret River;
- (d) Busselton Bypass;
- (e) Vasse Highway; and
- (f) Sues Road.

“Portable Sign” means an Advertising Sign that is made from lightweight materials which can be easily moved and includes but is not limited to:

- (a) ‘A’ frame of ‘T’ frame sign;
- (b) Garage Sale Sign;
- (c) Home Open Sign;
- (d) Horizontal banner sign;
- (e) City project sign;
- (f) Vertical banner sign; and
- (g) Variable message sign.

“Scheme” means the *City of Busselton Local Planning Scheme No. 21* (as amended).

“Static Illumination” means an internal or external light source that lights any type of sign.

4. POLICY STATEMENT

4.1 BACKGROUND

Clause 6.1 ‘Permitted Development’ of the Scheme outlines development which is exempt from requiring development approval. Clause 6.1.1(d) of the Scheme exempts; “the erection, placement or display of any advertisement and the use of land or buildings for that purpose as exempted by Schedule 11, except in respect of a place included in the Heritage List or in a heritage area.”



In addition to Clause 6.1.1(d) of the Scheme, the following Scheme provisions are also relevant to Advertising Signage within the City:

- (a) Clause 4.36.4 of the Scheme outlines requirements for entry statements within the Rural and Viticulture and Tourism zones;
- (b) Clause 4.41 'Prohibited Advertisements' states; "Advertisements that advertise goods and services which are not produced, displayed or offered for sale, or which is otherwise not relevant to, the land upon which the advertisement is located, are prohibited".

Where not exempted by Schedule 11 of the Scheme, Advertising Signage requires a development approval and an assessment against the Scheme and this Policy.

4.2 SIGN TYPE AND ZONE SPECIFIC REQUIREMENTS

Advertisements should comply with 'Appendix 2: Zoning Specific Provisions - Free Standing Signs' or 'Appendix 3: Zoning Specific Provisions - Signs Attached to a Building'.

4.3 GENERAL REQUIREMENTS

In addition to the requirements above, the following considerations are relevant to applications for all Advertisements:

- (a) Advertisements should generally be integrated into the architectural design of all new development; and
- (b) All Advertisements should be contained wholly within the lot to which it relates with the exception of Cantilever and Verandah/Awning Signs which may project into the adjoining road reserve or other public land (with the appropriate consent of the agency responsible for managing that land); and
- (c) A minimum clearance of 2.75m (in accordance with the *Building Code of Australia*) should be provided underneath Pylon Sign - Large, Cantilever and Verandah/Awning signs unless it can be demonstrated that 2.75m clearance cannot reasonably be achieved and a lower clearance, should that be proposed, is unlikely to have any significant impact on pedestrian amenity or safety; and
- (d) The City does not support more than one "Pylon Sign – Large", "Pylon Sign – Small" or "Commercial Flag Sign" per road frontage.

4.4 STATIC ILLUMINATION OF ADVERTISEMENTS AND ANIMATION

- (a) Advertisements that incorporate Animation will only be considered for not-for-profit organisation, school and/or other authority where used to display community messages.
- (b) Notwithstanding the above, the City may approve up to one Advertisement that incorporates Animation for commercial purposes per Local Activity Centre where the City is satisfied of the following:
 - (i) There is no more than one Free Standing Signs (i.e. Pylon – Large or Pylon – Small sign) per Local Activity Centre. Where there is more than one Free Standing Sign, the City will require that they be consolidated into a single sign; and
 - (ii) All other signage on the lot is consolidated to the satisfaction of the City; and
 - (iii) Where a Local Activity Centre is in multiple ownership, a signage strategy for all lots within that Local Activity Centre has been prepared and approved by the City.



- (c) Where Advertisements proposes Static Illumination and/or Animation, as part of the development application, the applicant will be required to demonstrate to the satisfaction of the City that the proposal will not have an unacceptable impact on occupiers of surrounding residential premises, cause a traffic hazard or distraction to drivers on the adjacent public road or be confused with traffic signals.
- (d) Static Illumination and Animation shall only be permitted to be in use when the business is operating and shall not be operated between the hours of 9pm and 7am.
- (e) Animation shall be required to comply with the following:
 - (i) Animation cannot chase, flash or have any moving features or animations effects such as 'fade', 'zoom' or 'fly-in' for the change of messages or images; and
 - (ii) The minimum dwell time of each message or image shall not be less than 45 seconds.

Note 2: In addition to the City's requirements, approval from Main Roads WA is required for all advertisements on, in the vicinity of, or visible from a Main Road. In addition, all illuminated signs within 50m of traffic signals require approval from Main Roads WA.

Note 3: Some Advertising Signs may require a Building Permit in addition to Development Approval.

5. RELATED DOCUMENTATION/LEGISLATION

5.1 Activities in Thoroughfares and Public Places and Trading Local Law 2015.

5.2 Council Policy - Portable Advertising Signs in Public Places.



6. REVIEW DETAILS

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



| APPENDIX 1 - TYPES OF ADVERTISING SIGNS | |
|--|--|
| Freestanding signs | |
| <p>"Pylon Sign – Large" means an Advertising Sign supported by one or more pole that is not attached to a building and is greater than 1.2m in overall height.</p> | |
| <p>"Pylon Sign – Small" means an Advertising Sign supported by one or more poles and not attached to a building and is no greater than 1.2m in overall height.</p> | |
| <p>"Entry Statement Sign" as defined by the Scheme and provided below:</p> <p><i>"a structure placed at, and denoting, the entry point to a defined area or site and includes associated landscaping and structures."</i></p> | |
| <p>"Commercial Flag Sign" means a piece of cloth, or other flexible material, which is used to advertise a business and is attached to a pole that is permanently installed into the ground.</p> | |
| Signs attached to building | |
| <p>"Cantilever Sign" means an Advertising Sign that is affixed to a building or structure at or by one of its ends.</p> | |
| <p>"Verandah/Awning Sign" means an Advertising Sign affixed on, above or under a verandah and includes a sign that is affixed to cantilevered awnings and balconies.</p> | |
| <p>"Window Sign" means an Advertising Sign painted or affixed to either the interior or exterior surface of the glazed area of a window.</p> | |



| | |
|--|---|
| <p>"Wall Sign" as defined in Schedule 11 of the Scheme and provided below:</p> <p><i>"a sign attached to or otherwise displayed on a building or a structure no part of which projects further than 0.3m from that building or structure other than an advertisement that is displayed on, above or below a verandah or a verandah fascia."</i></p> |  A line drawing of a building facade. A sign is attached to the wall above a window. The sign is rectangular and has the word "SIGN" written on it. The building has a verandah area below the sign. |
| <p>"Roof Sign" means an Advertising Sign that is erected or painted directly on the roof of a building.</p> |  A line drawing of a building with a sign mounted on its roof. The sign is rectangular and has the word "SIGN" written on it. The building has a verandah area below the roof. |

APPENDIX 2 : ZONING SPECIFIC PROVISIONS - FREE STANDING SIGNS

| | <ul style="list-style-type: none"> Residential Tourism lots without vehicular access from Bussell Highway. | <ul style="list-style-type: none"> Regional Centre Centre Local Centre Tourism lots with vehicular access from Bussell Highway. | <ul style="list-style-type: none"> Service Commercial Light Industry General Industry | <ul style="list-style-type: none"> Rural Landscape Conservation Bushland Protection | <ul style="list-style-type: none"> Rural Viticulture and Tourism Rural Residential |
|------------------------|---|--|--|--|--|
| Pylon – Large | Not permitted. | <ul style="list-style-type: none"> One per Lot – multi tenancy sites should combine into one sign. Maximum Height : 6m or the height of the associated building whichever is lesser. Maximum Area : 10m² Shall be located so as to not impede sightlines. | <ul style="list-style-type: none"> One per Lot – multi tenancy sites should combine into one sign. Maximum Height : 6m or the height of the associated building whichever is lesser. Maximum Area : 10m² Shall be located so as to not impede sightlines. | Not permitted. | Not permitted. |
| Pylon – Small | <ul style="list-style-type: none"> One per lot when associated with an approved non-residential use. Maximum height : 1.2m Maximum area : 2m² Shall be located so as to not impede sightlines. | <ul style="list-style-type: none"> One per Lot Maximum height : 1.2m Maximum area : 2m² <p>Shall be located so as to not impede sightlines.</p> | <ul style="list-style-type: none"> One per Lot Maximum height : 1.2m Maximum area : 2m² <p>Shall be located so as to not impede sightlines.</p> | Not permitted. | Not permitted. |
| Entry Statement | Estate signage – case by case | Not permitted. | Not permitted. | <ul style="list-style-type: none"> One per lot when associated with an approved non-residential use. Average height : 1.2m Maximum height : 1.8m Maximum length : 9m | <ul style="list-style-type: none"> One per lot when associated with an approved non-residential use. Average height : 1.2m Maximum height : 1.8m Maximum length : 9m |
| Commercial Flag | Not permitted. | Not permitted. | <ul style="list-style-type: none"> One per Lot Maximum height : 6m Maximum area of flag: 4.5m² | Not permitted. | Not permitted. |

APPENDIX 3: ZONING SPECIFIC PROVISIONS - SIGNS ATTACHED TO BUILDINGS



| | <ul style="list-style-type: none"> Residential Tourism lots without vehicular access from Bussell Highway. | <ul style="list-style-type: none"> Regional Centre Centre Local Centre Tourism lots with vehicular access from Bussell Highway. | <ul style="list-style-type: none"> Service Commercial Light Industry General Industry | <ul style="list-style-type: none"> Rural Landscape Conservation Bushland Protection | <ul style="list-style-type: none"> Rural Viticulture and Tourism Rural Residential |
|---------------------------|---|---|---|--|---|
| Cantilever sign | Not permitted. | <ul style="list-style-type: none"> One per tenancy To be wholly located under the roofline and/awning. Maximum area : 2m² | <ul style="list-style-type: none"> One per tenancy To be wholly located under the roofline and/awning. Maximum area : 2m² | Not permitted. | Not permitted. |
| Verandah/ Awning | Not permitted. | <ul style="list-style-type: none"> One per tenancy Must be contained within the outline of the Verandah/ Awning | <ul style="list-style-type: none"> One per tenancy Maximum height & Area : Must be contained within the outline of the Verandah/Awning | Not permitted. | Not permitted. |
| Window⁵ | Not permitted | <ul style="list-style-type: none"> Maximum 25% of the glazing or 10m² per tenancy, whichever is lesser. Must not be solid or prevent two way vision. | <ul style="list-style-type: none"> Maximum 25% of the glazing or 10m² per tenancy, whichever is lesser. Must not be solid or prevent two way vision. | Not permitted. | Not permitted. |
| Wall⁶ | Residential Use <ul style="list-style-type: none"> Indicate the name of the building only Maximum letter and number height of 300mm. Non Residential Use/s <ul style="list-style-type: none"> Indicate the name & contact details of the business only Maximum letter and number height of 300mm. | <ul style="list-style-type: none"> Maximum 25% of the façade or 10m² per tenancy, whichever is lesser. | <ul style="list-style-type: none"> Maximum 25% of the façade or 10m² per tenancy, whichever is lesser. | Not permitted. | Not permitted. |
| Roof | Not permitted. | Not permitted. | Not permitted. | Not permitted. | Not permitted. |

Note 5: Advertisements affixed inside or painted on a shop window are exempt under Schedule 11 of the Scheme.

Note 6: Wall signage below the top of an awning or in the absence of an awning below a line measured at 5 metres from the ground floor level of any shop/bulky goods showroom.

Local Planning Policy No. X : Advertisements and Advertising Signs

6.3 AMENDMENT TO DELEGATION 'DA7 - 01 DEVELOPMENT CONTROL'

| | |
|----------------------------|--|
| STRATEGIC GOAL | 6. LEADERSHIP Visionary, collaborative, accountable |
| STRATEGIC OBJECTIVE | 6.1 Governance systems, process and practices are responsible, ethical and transparent. |
| SUBJECT INDEX | Delegations |
| BUSINESS UNIT | Governance Services |
| REPORTING OFFICER | Governance Coordinator - Emma Heys |
| 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 DA7-01 Development Control (Amended)   |

OFFICER RECOMMENDATION

That the Council adopts Delegation DA7 – 01 ‘Development Control’ (Attachment A), having been amended to include a definition of the term ‘Reconsideration’.

EXECUTIVE SUMMARY

Upon the review of Council delegation DA7 – 01 ‘Development Control’ (DA7 - 01), it has been identified a need to provide a definition of the term ‘Reconsideration’, to assist officers in providing information to applicants in relation to the reconsideration process for a development application.

BACKGROUND

The term ‘Reconsideration’ has been included in the Development Control Council delegation since its initial adoption (previously PDR1). A reconsideration process for a development application is intended to provide applicants a recourse to a decision, prior to a matter going before SAT.

Officers are seeking to include more clarity of the term ‘Reconsideration’ within DA7 – 01 in order to assist officers in providing improved information to applicants in relation to the reconsideration process for a development application.

OFFICER COMMENT

The term ‘Reconsideration’ is not a defined term under the *Planning and Development Act 2005* or the *Planning and Development (Local Planning Scheme) Regulations 2015*. Officers are proposing to amend Condition 2 of DA7 – 01 to include the following:

"Reconsideration" is a not a defined term in the City of Busselton Local Planning Scheme No. 21 or the Planning and Development (Local Planning Scheme) Regulations 2015, however for the purposes of this delegation, the term relates to applications to: a) a request to amend or delete conditions of a development approval, where City officers are not supportive of that request and informal discussion with the applicant has not resolved the issue; and b) to new development applications which are substantially the same as an earlier application refused under delegation.

This condition relates to applications to amend an approval where reconsideration of conditions is being requested, and also to new applications which are substantially the same as an earlier application refused under delegation (where the request is made within 60 days of the original determination date).

Statutory Environment

Clause 82 of Schedule 2 the *Planning and Development (Local Planning Schemes) Regulations 2015* ('the deemed provisions') sets out that the Council may delegate powers under the City's town planning scheme to the CEO.

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 choose not to amend delegation DA7 – 01 'Development Control'.

CONCLUSION

Officers have identified a need to provide clarity of the term 'Reconsideration' in delegation DA7 – 01 'Development Control' to assist officers when dealing with requests from applicants of development applications.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The amended delegation DA7 - 01 'Development Control' will be included within Council's Delegation of Authority Register within one week of Council's endorsement.

| PLANNING AND DEVELOPMENT ACT 2005 | |
|--|----------------------------|
| DA 7 – 01 | Development Control |




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

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

| | |
|----------------------------|--|
| | Generally on a monthly basis, and generally as part of the agenda for every second ordinary Council meeting in any given month, a summary and update of planning and development-related State Administrative Tribunal matters involving the City shall be presented to Councillors as part of the 'Councillors Information Bulletin'. |
| POLICY | Nil |
| REFERENCE DOCUMENTS | Nil |
| SUB DELEGATION | S7 – 01A PDR1 Planning and Development (Local Planning Schemes) Regulations 2015 S7 – 01B PDR2 Planning and Development (Local Planning Schemes) Regulations 2015 S7 – 01C PDR3 Planning and Development (Local Planning Schemes) Regulations 2015 S7 – 01D PDR4 Planning and Development (Local Planning Schemes) Regulations 2015 S7 – 01E PDR5 Planning and Development (Local Planning Schemes) Regulations 2015 |

| | | |
|--------------------------------------|--|-------------------------------------|
| RECORD KEEPING | ECM – GOVN001 'Authorised Delegation of Power/Authority' | |
| VERIFICATION | Initial Council Resolution C1703/042 | Recent Council Resolution C1808/150 |
| RECENT ALTERATIONS | November 2018 | |
| PREVIOUS DELEGATION REFERENCE | PDR1 – Development Control | |

6.4 REVIEW OF COUNCIL POLICY: COMMUNITY ENGAGEMENT

| | |
|----------------------------|---|
| STRATEGIC GOAL | 6. LEADERSHIP Visionary, collaborative, accountable |
| STRATEGIC OBJECTIVE | 6.2 Council engages broadly and proactively with the community. |
| SUBJECT INDEX | Governance |
| BUSINESS UNIT | Corporate Services |
| REPORTING OFFICER | Manager Governance and Corporate Services - Sarah Pierson Public Relations Coordinator - Meredith Dixon |
| 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: Community Engagement (Proposed) ↓ Attachment B  Council Policy: Community Engagement and Consultation (Current) ↓  |

OFFICER RECOMMENDATION

That the Council adopts the revised Council policy ‘Community Engagement’ at Attachment A to replace the existing Council policy ‘023: Community Engagement and Consultation’ at Attachment B.

EXECUTIVE SUMMARY

This report presents a revised Council policy: Community Engagement (Attachment A) (the Policy). Officers recommend it replace the existing Council policy 023: Community Engagement and Consultation (Attachment B).

BACKGROUND

Council policy 023: Community Engagement and Consultation was implemented on 22 September 2010 (C1009/318) following a request from Council for a high level policy document detailing engagement principles, roles and responsibilities of Councillors and officers. A draft policy was advertised for community consultation in June / July 2010. No feedback was received and the policy was subsequently adopted. The policy was reviewed in August 2017 (C1708/186) as part of Council’s regular review of policies, with only minor changes made.

OFFICER COMMENT

The Policy has been transferred into the new Council policy template and reviewed by officers in accordance with the recommendations of the 2017 Governance Systems Review (GSR). The Policy has been retitled ‘Community Engagement’ and terminology within the Policy has been amended from engagement and consultation to just engagement. This change reflects the IAP2 (International Association for Public Participation) approach which is widely referenced across the Australian Local Government sector and is referenced in the Integrated Planning and Reporting Framework and Guidelines produced by the Department of Local Government, Sport and Cultural Industries (DLGSC). In the IAP2 model, the term ‘Engagement’ refers to a range of objectives one of which is consultation.

The Policy reflects the City's strategic intent and approach to community engagement and provides guiding principles for ensuring that stakeholders are informed of matters that affect them, have the opportunity to make informed comment and are advised of the outcomes and how their feedback helped to inform the decision. The guiding principles are similar in intent to those contained in the current policy.

The Policy also sets out when the City will undertake engagement and when it may not be appropriate to engage. As opposed to the current policy, which identifies more specific routine or established issues for engagement, the Policy is designed to provide broader guidance (e.g. informing future strategic and community planning as opposed to sports, recreation and cultural plans), and to be reflective of the increasing community expectations for engagement.

Operational details such as the mechanisms for engagement have been removed from the Policy, with a Community Engagement Framework to be developed, setting out in more detail how the City will engage with stakeholders.

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 City has a policy framework which was developed and endorsed by Council in response to the recommendations of the GSR. The framework sets out the intent of Council policies, as opposed to operational documents such as operational practices and work procedures.

Financial Implications

There are no financial implications associated with the Officer Recommendation.

Stakeholder Consultation

No external stakeholder consultation was required in relation to this matter. Stakeholder engagement was identified as a priority in the 2020 Community Satisfaction Survey.

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

The Policy has been transferred into the new Council policy template and reviewed by officers to ensure that the Policy objectives are clear and that it provides appropriate guidance for Councillors and employees in relation to community engagement.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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



1. PURPOSE

- 1.1. The purpose of this Policy is to provide guiding principles for Engagement to ensure Stakeholders are informed of matters that affect them and have the opportunity to make informed comment.

2. SCOPE

- 2.1. This Policy applies to City Councillors, employees and contractors who engage with Stakeholders in relation to the delivery of services, projects or the implementation of policies.

3. DEFINITIONS

| Term | Meaning |
|--------------|---|
| Policy | This City of Busselton Council policy titled "Community Engagement". |
| Engagement | Connecting with community groups, organisations and individuals for the purpose of informed decision making. This may include some or all of the following objectives: <ul style="list-style-type: none">• Informing Stakeholders• Consulting with Stakeholders• Involving Stakeholders in decision making• Collaborating with Stakeholders about decisions• Empowering Stakeholders to make a final decision |
| Stakeholders | Community members, groups or individuals that have an interest in the business of the Council and the governance of the City. |

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 of the City's Strategic Community Plan 2017 and specifically the Community Objective 6.2 - Council engages broadly and proactively with the community.

5. POLICY STATEMENT

- 5.1. The City places high priority on Engagement which provides Stakeholders with the opportunity to participate in decision making processes at the appropriate level. Different levels of Engagement will be appropriate depending on the issue, Stakeholder objectives and characteristics, and the sort of information to be relayed or obtained.
- 5.2. The City's Engagement objectives are to ensure that:
- a. Stakeholders are informed of matters that affect them;
 - b. Stakeholders are provided with sufficient information to make informed comment on matters affecting them;
 - c. it is easy for Stakeholders to comment;

- d. all comments received are given due consideration by decision makers; and
- e. Stakeholders who provide comment are informed of the outcome.

5.3. The following principles guide the City in achieving its Engagement objectives:

- a. encourage broad Stakeholder representation;
- b. minimise barriers to participation by considering people's different needs;
- c. clearly state the purpose of the Engagement initiative and any associated limitations or constraints;
- d. ensure relevant information is readily available, accurate and easy to understand;
- e. allow sufficient time and opportunity for Stakeholders to participate;
- f. listen to Stakeholders and provide feedback about how the information gathered was used to inform the outcome; and
- g. allocate appropriate resourcing for the development and implementation of effective and efficient Stakeholder Engagement.

5.4. The City will undertake Engagement when:

- a. a decision is likely to have significant impact on a particular individual or group in the community;
- b. a decision is likely to have a significant impact on the broad economy, lifestyle, or environment of the City and its residents;
- c. there is, or is likely to be, strong community concern or interest in the issue;
- d. the resolution of an issue or implementation of a proposal is likely to require a substantial redirection of ratepayer funds;
- e. the future use of a significant area of land within the City is being decided;
- f. information is needed to inform future strategic and community planning;
- g. the City has statutory obligations to consult; or
- h. Council otherwise determines it to be appropriate.

5.5. Engagement may not be undertaken where:

- a. a decision must be made quickly in the interests of the City;
- b. the City is bound by legal, commercial or legislative constraints;
- c. the City is unable to influence a decision being made by another agency or party; or
- d. the decisions concern 'day to day' operational matters.

5.6. It is important that Councillors are made aware of Engagement occurring within the City. Councillor feedback shall be sought prior to Engagement commencing on projects that set a direction or define a position for the City, have a high level of media interest, or are considered high risk under the City's Risk Management Framework.

5.7. In support of this Policy, the CEO will develop a Community Engagement Framework.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. Council policy: Media and Public Statements.

7. REVIEW DETAILS

| | | | | |
|------------------|------|----------|--------------|--|
| Review Frequency | | 3 yearly | | |
| Council Adoption | DATE | | Resolution # | |

Last updated 9 August 2017

| | | |
|-----|---------------------------------------|------------|
| 023 | Community Engagement and Consultation | V2 Current |
|-----|---------------------------------------|------------|

STATEMENT

Council places high priority on engaging with the community and encouraging community participation in decision-making processes.

The purpose of this policy is to outline the framework Council and the City will use to engage with the community and key stakeholders.

PURPOSE / RATIONALE

This policy guides the Council and City Officers on community engagement and consultation objectives. The policy takes into account key factors impacting community consultation and engagement activities such as statutory obligations, stakeholder expectations, risk management issues, budget and time constraints and appropriate consultation and engagement mechanisms (ortools).

SCOPE

The Policy will inform the engagement and consultation activities undertaken by Busselton City Councillors, City Officers, and Contractors of the City of Busselton. Its application is suitable for large and small-scale projects and policy decision-making processes across all areas of City business. It should be noted that different levels of consultation will be appropriate depending on the issue to be addressed; stakeholder objectives and characteristics; and the sort of information needed to be relayed or obtained.

DEFINITIONS

Engagement means connecting with community groups, organisations and individuals for the purpose of:

- communicating information to stakeholders;
- ensuring transparency in the decision-making process; and
- building permanent relationships.

Consultation involves two-way information exchange and its primary purpose is to obtain public feedback to inform decision-making on a particular issue(s).

Stakeholders – Groups or individuals that have an interest in the business of the Council and its governance of the City. These include residents and business operators (rate paying and non-rate paying); people who work in the district, visitors and tourists; statutory and government agencies; service providers (profit and non-profit); sporting and cultural groups; associations and organisations based in the City of Busselton.

Last updated 9 August 2017

POLICY CONTENT

The City of Busselton Community Engagement and Consultation Policy outlines the organisation's commitment to:

- the principles of open and accountable decision-making;
- identifying engagement and consultation opportunities;
- formalising engagement and consultation mechanisms; and
- outlining community engagement and consultation responsibilities across the organisation.

The Policy is supported by procedural documents including media guidelines and social media policy..

Principles of openness and accountability in decision-making processes

Council will be guided by the following principles:

-);
- informing the community of decisions made and actions taken in relation to Council activity;
- being open and transparent about the purpose of consultation activity;
- listening to and acknowledging community concerns;
- providing feedback on how public input has influenced decision making;
- allowing sufficient consultation time;
- striving to develop new and enhanced engagement opportunities and consultation methods, and
- meeting the statutory requirements for community engagement and consultation outlined in the Local Government Act (1995).

Identifying engagement and consultation opportunities

Particular areas of routine or established consultation include (but are not limited to) issues such as development of or amendment to:

- strategic planning documents;
- sports, recreation and cultural plans;
- town plans;
- development applications;
- specific works and services;
- master plans and conceptual designs for areas designated to community use.

Consultation and Engagement mechanisms include but are not limited to:

- the Your Say Busselton online engagement portal via the City's website which offers discussion forums, surveys, quick polls, Q&A, guest books
 - social media including Facebook, Instagram and Twitter;
 - access to Council meetings and briefings for presentations;
 - planned stakeholder information sessions;
 - school /community group visits;
 - electors meetings;
 - informal meet and greet sessions with elected members;
 - expos, public displays, open days and community events;
 - formal advertising in print, broadcast and TV;
 - public meetings or community forums held to address specific issues;
 - market research projects carried out using proven sampling processes and market analysis;
- Any combination of the above mechanisms may be used.

Responsibilities

Elected Members: Will ensure principles outlined in this Policy are included in the decision-making processes of Council.

Last updated 9 August 2017

- **City Officers:** Will ensure principles outlined in this Policy are included in project planning. This requires Officers to: identify consultation opportunities;
- recommend appropriate mechanism(s) and budget requirements;
- ensure that the community has adequate opportunity to make its view known to the Council; and
- report to Council on the Engagement/consultation outcomes (if required).

Policy Background

Policy Reference No. - 020

Owner Unit – Public Relations



Policy approved by – Council on 9 August 2017

Review Frequency – As Required

History

| Council Resolution | Date | Information |
|--------------------|--------------------|------------------------|
| C1708/186 | 9 August, 2017 | General Update |
| C1009/318 | 22 September, 2010 | Date of implementation |

6.5 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 085: Legal Representation for Council Members and Employees (Current Policy)  Attachment B Council policy: Legal Representation for Council Members and Employees (Proposed)  |

OFFICER RECOMMENDATION

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

EXECUTIVE SUMMARY

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

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 City has developed and implemented a policy framework, which sets out the intent of Council policies, as opposed to operational documents such as Operational Practices and Guidelines. The Policy has been reviewed by officers in this context and has been transferred to the current Council policy template as per the requirements of the policy framework.

OFFICER COMMENT

The Policy is considered of ongoing relevance, and to have an important purpose; providing 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 being proposed to improve readability and clarity. The Policy does not depart from the model policy developed by the Department of Local Government Guideline 'Legal Representation for Council Members and Employees' published in April 2019 and remains an important strategic Council policy.

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 which has informed this 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 Council policy 'Legal Representation for Council Members and Employees' 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.

Last updated 8 March 2017

| | | |
|-----|--|------------|
| 085 | Legal Representation for Council Members and Employees | V3 Current |
|-----|--|------------|

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.

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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.

Last updated 8 March 2017

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.

Last updated 8 March 2017

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 |



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 'certified practitioner' under the <i>Professions Act 2008</i>;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; 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:
- the legal representation must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
 - the legal representation must be in respect of legal proceedings that have been, or may be, commenced;

- c. in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
 - d. the legal representation costs do not relate to a matter that is of a personal or private nature.
- 5.3. If the criteria in clause 5.2 are satisfied, the City may approve the payment of legal representation costs in the following circumstances:
 - a. where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee;
 - b. to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee;
 - c. where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.
- 5.4. Legal representation must be provided by an Approved Lawyer.
- 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 5.18 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 5.18 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.

6.5 Attachment B

Council policy: Legal Representation for Council Members and Employees (Proposed)

- 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, 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.
- 5.16. A determination under paragraph 5.15 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 such a determination, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 5.18.

Delegation to Chief Executive Officer

- 5.17. 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

- 5.18. 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 5.16;
 - 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.
- 5.19. 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 |

7. GENERAL DISCUSSION ITEMS

8. NEXT MEETING DATE

9. CLOSURE