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

CITY OF BUSSELTON

MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 29 APRIL 2020

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MINUTES

MINUTES OF POLICY AND LEGISLATION COMMITTEE
HELD VIA ELECTRONIC MEANS ON 29 APRIL 2020 AT 11.00AM

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 11.01am.

2. ATTENDANCE

Presiding Member:	Members:
Cr Ross Paine	Cr Grant Henley
	Cr Kelly Hick
	Cr Lyndon Miles
	Cr Kate Cox

(All Members via electronic attendance)

Officers:

Mr Paul Needham, Director, Planning and Development Services
Mrs Naomi Searle, Director, Community and Commercial Services
Mr Tony Nottle, Director, Finance and Corporate Services
Ms Sarah Pierson, Manager, Governance and Corporate Services
Ms Lee Reddell, Manager, Development Services
Ms Sharon Woodford-Jones, Land and Property Leasing Coordinator
Mrs Emma Heys, Governance Coordinator
Ms Stephanie Navarro, Senior Development Planner
Ms Melissa Egan, Governance Officer
(All Officers via electronic attendance)

Apologies:

Nil

3. PUBLIC QUESTION TIME

Nil

4. DISCLOSURE OF INTERESTS

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 26 February 2020

COMMITTEE DECISION

PL2004/302 Moved Councillor K Cox, seconded Councillor G Henley

That the Minutes of the Policy and Legislation Committee Meeting held 26 February 2020 be confirmed as a true and correct record.

6. REPORTS

6.1 LOCAL PLANNING POLICY REVIEW - INITIATION OF LOCAL PLANNING POLICIES EXEMPTED DEVELOPMENT AND OUTBUILDINGS AND NON-HABITABLE BUILDINGS

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	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 LPP: Outbuildings and Non-habitable buildings Attachment B LPP: Exempt Development Attachment C LPP: Outbuildings and Non-habitable buildings with Committee Amendments Attachment D LPP: Exempt Development with Committee Amendments

OFFICER RECOMMENDATION

That the Council adopts as draft for consultation proposed new local planning policies as set out below:

1.1 LPP: Outbuildings and Non-habitable buildings (Attachments A); and

1.2 LPP: Exempt Development (Attachments B).

COMMITTEE RECOMMENDATION

PL2004/303 Moved Councillor K Hick, seconded Councillor K Cox

That the Council adopts as draft for consultation proposed new local planning policies as set out below:

1.1 LPP: Outbuildings and Non-habitable buildings inclusive of the Committee amendments as per Attachment C; and

1.2 LPP: Exempt Development inclusive of the Committee's amendments in Attachment D.

CARRIED 5/0

Reasons: The Committee decided to remove reference to cubby houses until the matter can be further reviewed, with some concern around the different types and size of cubby house that may otherwise be exempt. Other amendments were to include and clarify definitions and to generally improve clarity and readability of the policies.

EXECUTIVE SUMMARY

The City is undertaking a comprehensive review of all its local planning policies (LPPs). Stage 1 of this review, in March 2019, was policy neutral and converted the LPPs into a new format. This review took the LPPs from the existing manual structure and separated them into individual policies.

The City has now commenced Stage 2 of the process which involves reviewing the content and relevance of all LPPs, and the City has already revoked eight LPPs which were considered to be redundant due to changes in legislation.

It is proposed, as part of this report, that the following two new LPPs be initiated for the purposes of public consultation:

- LPP: Outbuildings and Non-habitable buildings; and
- LPP: Exempt Development.

BACKGROUND

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) provide that LPPs may be prepared by a local government in respect of any matter related to the planning and development of the Scheme area.

The intention of an LPP is to provide guidance to applicants and developers in regards to the decision-making process as well as to the local government when exercising discretion under the Scheme. LPPs must be consistent with the intent of the relevant Scheme provisions, including the Residential Design Codes of WA (R-codes), and cannot vary development standards or requirements set out in a Scheme or impose any mandatory requirements upon development.

LPPs are to be given due consideration in the assessment of development 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 LPP review. This stage was policy neutral and did not alter the intent or provisions within the LPPs, however reformatted the LPPs into a new, easier to read template and took the LPPs out of a manual structure, separating them into individual policies.

These changes were adopted by the Council at its meeting held on 27 March 2019 (C1903/053).

The City has now commenced the second stage of the review process and is currently reviewing the content and relevance of all LPPs. Due to the number of LPPs and the complexity of issues which need to be addressed, this review has been broken down into a number of stages. The City has already revoked eight LPPs which were considered to be redundant due to changes in legislation.

It is proposed, as part of this report, that the following two proposed LPPs be initiated for the purposes of public consultation:

- LPP: Outbuildings and Non-habitable buildings; and
- LPP: Exempt Development.

The new LPP for 'Outbuildings and Non-habitable buildings' is proposed to replace two existing LPPs being LPP1J : 'Outbuilding' and LPP 3H : 'Outbuilding Assessment'. LPP1J relates to outbuildings on Residential zoned lots while LPP3H relates to the outbuildings and other non-habitable buildings in the Rural Residential, Rural, Conservation, Rural Landscape, Viticulture and Tourism and Bushland Protection zones.

It is proposed that these two LPPS will be revoked following consultation on the new LPP which will incorporates all outbuilding provisions into one LPP and proposes revised provisions in some instances.

The new 'Exempt Development' LPP will contain additional exemptions from requiring a development approval in addition to those already exempt under Clause 61 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and the City of Busselton Local Planning Scheme No. 21 (the Scheme).

A further, more comprehensive description of each of the above LPPs to be initiated is provided within the Officer Comment section of this report.

OFFICER COMMENT

Division 2 – Local policies of the Regulations outlines matters which can be dealt with by an LPP as well as the procedure for making LPPs. It is considered that the two proposed LPPs are consistent with these requirements and consultation will be undertaken following initiation in accordance with the Regulations as outlined in the Stakeholder Consultation section of this report.

New LPP 'Outbuildings and Non-habitable buildings'

This LPP is proposed to replace two existing LPPs, being LPP1J and LPP 3H. LPP1J relates to outbuildings on Residential zoned lots while LPP3H relates the outbuildings and other non-habitable buildings in the Rural Residential, Rural, Conservation, Rural Landscape, Viticulture and Tourism and Bushland Protection zones. It is proposed that the provisions of these two LPPs be consolidated into a single LPP which will relate to the same type of development across different zones to improve ease of use.

An 'Outbuilding' is defined within the LPP as 'an enclosed non-habitable structure'.

Non-habitable buildings is defined within the LPP as:

> "any building, not considered to be an Outbuilding (as defined above), 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:
> - carports;
> - patios;
> - Shade structure/orchard enclosure; and
> - pergolas/gazebos;
>
> but excludes boundary fences, water tanks and swimming pools and decking not more than 500mm above natural ground level."

A number of changes are proposed to the content of the LPPs which are outlined below, along with justification for the changes.

Outbuildings where associated with Residential Development in the Residential, Regional Centre, Centre and Local Centre Zones.

Outbuildings associated with development that is subject to the R-codes (ie Single House, Ancillary Dwellings, Grouped Dwellings and Multiple Dwellings) that meet the deemed-to-comply (DTC) criteria of the R-codes are exempt from development approval.

Where development does not meet the DTC criteria of the R-codes, a development application is required and development is required to be assessed against, and deemed to meet, the applicable Design Principles. Currently, under LPP1J outbuildings with a wall height of 2.7m, ridge height of 4.5m and which collectively do not exceed 90m^2 in area or 10% in aggregate of the site area are considered to meet the Design Principles of the R-codes. The proposed LPP does not exempt development from requiring a development application, however the LPP is intended to make the City's position on what it will accept without further justification where development exceeds the DTC but meets the Acceptable Development standards clearer.

It is proposed as part of the LPP that outbuildings in these zones have different standards based on the size of the lot and/or the density of the property. This will enable larger outbuildings on larger lots where it is considered their impacts upon amenity can be more easily managed through setbacks and/or landscaping.

The table below outlines the current and proposed wall and ridge height and areas for outbuildings in these zones. Where a change is proposed to the current requirements, these are indicated in **bold:**

	Current	**Proposed**
Wall Height	R-codes : 2.4m (DTC) LPP1J : 2.7m (considered to comply with the Design Principle)	Lots coded R30 or above and/or lots less than 300m^2 : 2.7m Lots coded R25 – R10 and/or lots less than 2,000m^2 : **3.1m** Lots coded R5 – R2 and/or lots 2,000m^2 and greater : **3.1m**
Ridge Height	R-codes : 4.2m (DTC) LPP1J : 4.5m (considered to comply with the Design Principle)	Lots coded R30 or above and/or lots less than 300m^2: 4.5m Lots coded R25 – R10 and/or lots less than 2,000m^2 : 4.5m Lots coded R5 – R2 and/or lots 2,000m^2 and greater : 4.5m
Area	R-codes : 60m^2 of 10 per cent of the site area, whichever is lesser (DTC) LPP1J : 90m^2 of 10 per cent of the site area, whichever is lesser (considered to comply with the Design Principle)	Lots coded R30 or above and/or lots less than 300m^2 : **60m^2 of 10 per cent of the site area, whichever is lesser** Lots coded R25 – R10 and/or lots less than 2,000m^2: 90m^2 or 10% in aggregate of the site area, whichever is the lesser. Lots coded R5 – R2 and/or lots 2,000m^2 and greater : **120m^2**

The proposed changes to the maximum wall height and area for outbuildings will be formalising the current acceptable standards applied by City officers when assessing development applications for outbuildings of a similar nature as those listed above (ie: of up to 3.1m wall height, and 60m^2 or 120m^2 dependent on size of lot).

Outbuildings and Non-habitable buildings in the Rural Residential Zone

The table below outlines the current and proposed wall and ridge height and areas for outbuildings and non-habitable buildings. Where a change is proposed to the current requirements these are indicated in **bold:**

	Current	Proposed
Wall Height	All: 3.6m	Lots 5,000 m^2 and less : **3.1m** Lots greater than 5,000m^2 : 3.6m
Ridge Height	All: 5.5 m	Lots 5,000 m^2 and less : **4.5m** Lots greater than 5,000m^2 : 5.5m
Area	All: 120m^2 (160m^2 subject to referrals)	Lots 5,000 m^2 and less : 120m^2 Lots greater than 5,000m^2 : **200m^2**

Lots within the Rural Residential zone vary in size from 2,000m^2 (0.2ha) to 40ha and therefore it is considered that applying the same standard to outbuildings and non-habitable buildings across this wide range is not practical as it does not take into consideration the large variation in lot sizes.

It is proposed that a smaller wall and ridge height be recommended for outbuildings and non-habitable buildings less than 5,000m² as this aligns with the minimum lot size for properties which are zoned Residential with a density of R2 (the lowest density). It is noted that within the Rural Residential zone, lots less than 4,000m² in area are limited to land uses which more closely align with the Residential zone than the Rural Residential zone. This is also the minimum lot size for residential lots with a density of R2.5, however the 5,000m² is considered a more appropriate limit to align with the residential requirements.

Outbuildings and Non-habitable buildings in the Rural & Viticulture and Tourism zones

No changes proposed to the current requirements which does not limit the height and/or size of outbuildings in these zones.

Outbuildings and Non-habitable buildings in the Rural Landscape, Conservation & Bushland Protection zones

The table below outlines the current and proposed wall and ridge height and areas for Outbuildings and Non-habitable buildings in these zones. Where a change is proposed to the current requirements, these are indicated in **bold:**

	Current	Proposed
Wall Height	All : Height to be determined by reference to the Scheme	**All : 3.6m**
Ridge Height	All : Height to be determined by reference to the Scheme	**All : 5.5m**
Area	All : 120m^2 (160m^2 subject to referrals)	**All : 200m^2**

Currently, unless a structure plan, development guide plan or similar includes provision which limit the height of development, the following height limitations of clause 4.8 – Height of Buildings of the Scheme apply to all development, including outbuildings, in each of these zones:

- Rural Landscape – 7.5 metres;
- Conservation - to be determined by the local government to ensure landscape values of the site and general area are maintained;
- Bushland Protection - 12 metres.

Lots within the Rural Landscape, Conservation & Bushland Protection zones vary greatly in size from 2ha to 256ha, however they all have environmental values that are to be protected and therefore it is considered appropriate that outbuildings and non-habitable buildings be limited in size and scale to ensure these values are protected. It is therefore proposed as part of this LPP that the same standards to maximum wall height, ridge height and area that are to be applied to lots in the Rural Residential zone greater than 5,000m^2 be applied to these zones.

LPP: Exempted Development

Development is defined under the *Planning and Development Act 2005* (the Act) as follows -

> ***development*** *means the development or use of any land, including —*
>
> *(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
>
> *(b) the carrying out on the land of any excavation or other works;*
>
> *(c) in the case of a place to which a protection order made under the Heritage Act 2018 Part 4 Division 1 applies, any act or thing that —*
>
> *(i) is likely to change the character of that place or the external appearance of any building; or*
>
> *(ii) would constitute an irreversible alteration of the fabric of any building.*

All development, as defined by the Act, requires development approval unless a specific exemption applies under Clause 61 of the Regulations 'Development for which development approval not required' or Clause 6.1 of the Scheme 'Permitted Development'.

Clause 61 of the Regulations identifies that development approval is not required for a range of land use and developments and allows local governments the ability to further exempt development types by specifying those development types within a local planning policy.

The types of development proposed to be exempt as part of the proposed LPP, and the reasons for these exemptions, are outlined below:

- Single House, Outbuilding and/or Incidental Development in the Rural, Viticulture and Tourism, Rural Residential, Conservation, Rural Landscape and Bushland Protection zone, where certain criteria are met.

  Justification – As part of Omnibus 2 to the Scheme, which incorporated the deemed provisions into the Scheme, a number of existing exemptions were inadvertently deleted. It is proposed that these exemptions be incorporated into this LPP to restore the previous exemptions included in the Scheme and formalise the City's current practices.

- Solar Collectors

  Justification – While solar collectors attached to development subject to the R-codes are exempt from development approval there are no other exemptions relating to solar collectors in other zones. It is proposed to exempt solar collectors in certain circumstances to formalise the City's current practices in only requiring a development application where:

  - They are standalone structures; or
  - Attached to a building they protrude more than 1.5m from the roof where they are attached; or
  - The building they are attached to exceeds the maximum heights specified in the Scheme.

- Flag Poles

  Justification – Currently no exemptions apply to flag poles, however it is proposed that where a flag pole is not to be used for advertising purposes and satisfies other criteria including maximum size and minimum setbacks, that they be exempt from requiring development approval in keeping with the City's current practices.

- Outdoor eating facilities on a public place

  Justification – While decisions about the granting of outdoor eating permits are made pursuant to the *City of Busselton Activities in Thoroughfares and Public Places and Trading Local Law 2015*, the issuing of a permit under the Local Law does not explicitly exempt the work from also requiring a development approval. The City considers the issuing of a development approval in addition to a permit to be additional 'red tape' and therefore it is proposed that such use be exempt under the LPP.

- Outbuildings less than $10m^2$ on Residential zoned lots where certain criteria is met

  Justification – Under the Building Codes of Australia, outbuildings less than $10m^2$ are not considered to be a building and therefore do not require a building permit. It is therefore proposed that these outbuildings also be exempt from requiring development approval subject to meeting the maximum walls height and not being located within the front setback area. It is considered that due to the small size of these structures that they have no meaningful impact on the amenity of neighboring properties and therefore should be exempt from development approval.

- Children's cubby houses

  Justification – The explanatory guidelines of the R-codes states that "...cubby houses and play fixtures…have not been included in the definition of building and are exempted from planning control". It is also noted that under the Building Codes of Australia children's cubby houses are not considered to be buildings therefore the City does not require these structures to obtain approval (including planning or building approvals). This exemption is therefore proposed to make this exemption explicit and formalise the City's current practices.

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 (Scheme) and the *Planning and Development (Local Planning Schemes) Regulations 2015*, 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.

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 in relation to the two proposed LPPs will be for a period of four weeks and will be undertaken as follows:

- LPP: Outbuildings and Non-habitable buildings
    - Notices in the local newspaper for four consecutive weeks, as well as on the City's website, including the subject and nature as well as objectives of the proposed LPP;
    - A portal is to be created using the City's *YourSay* platform for the online lodgment of submissions; and
    - Targeted letters/emails to outbuilding and patio companies operating with the region.
- LPP: Exempted Development
    - Notices in the local newspaper for four consecutive weeks, as well as on the City's website, including the subject and nature as well as objectives of the proposed LPP; and
    - A portal is to be created using the City's *YourSay* platform for the online lodgement of submissions.

Risk Assessment

An assessment of the risks associated with the implementation of the officer recommendations 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 proposed recommendation, the Council could choose not to initiate one or more of the LPPs recommended to be initiated as part of this report.

CONCLUSION

It is recommended that the Council support the proposed policy changes and initiation as described in this report.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the officer recommendation would involve advertising the policy revocations and advertised the proposed LPPS 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
OUTBUILDINGS AND NON-HABITABLE BUILDINGS

City of Busselton
Geographe Bay

1. HEAD OF POWER AND SCOPE

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

(a) all Outbuildings in the following Zones:
- Residential;
- Regional Centre;
- Centre; and
- Local Centre.

(b) all Outbuildings and Non-habitable buildings in the following Zones:
- Rural Residential;
- Rural;
- Viticultural and Tourism;
- Rural Landscape;
- Conservation; and
- Bushland Protection zones.

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

- that development is of a type referred to in 'Clause 61 – Development for which development approval not required' of the Regulations; or
- the carrying out of any other works specified in a Local Planning Policy or Local Development Plan that applies to the development as 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 a provision which, if satisfied, is deemed compliant with respect to the matters subject of that provision. 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.

"Design Principles" means provisions to be used in the preparation, submission and assessment of development proposals that do not meet the relevant Acceptable Development provisions.

3.2 Other 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:

"Outbuilding" means an enclosed non-habitable structure.

"Non-habitable Buildings" means any building, not considered to be an Outbuilding (as defined above), 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:

- carports;
- patios;
- Shade structure/orchard enclosure; and
- pergolas/gazebos;

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

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

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

"R-codes" means the Residential Design Codes of WA (as amended).

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

4. POLICY STATEMENT

This Policy has been separated in 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 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.

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

City of Busselton
Geographe Bay

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' standards do not amend or replace the 'deemed-to-comply' criteria of the R-codes and therefore where a proposal does not meet the 'deemed-to-comply' criteria of the R-codes the development will require a development application.

The 'deemed-to-comply' 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' standards 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 (ie. 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 2,000m² and greater	
Acceptable Development	**Design Principles**
Max area of outbuildings : 120sqm **Wall Height** : 3.1m **Ridge Height** : 4.5m **Setbacks :** In accordance with the Residential Design Codes of WA.	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

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

Lots coded R10 – R25 and/or lots greater than 300m² and 2,000m² or less	
Acceptable Development	**Design Principles**
Max area of outbuildings : 90 sqm 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 Residential Design Codes of WA.	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 300m² or less	
Acceptable Development	**Design Principles**
Max area of outbuildings : 60 sqm 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 Residential Design Codes of WA.	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' standards 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:

- does not meet the Acceptable Development standards as prescribed below; and/or
- is not exempted under Local Planning Policy XX : Exempt Development.

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

City of Busselton
Geographe Bay

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 (ie. 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 5,000m² and less	
Acceptable Development	**Design Principles**
Maximum combined area of all outbuildings and non-habitable building: Max 120sqm **Wall Height** : 3.1m **Ridge Height** : 4.5m **Setbacks** : Within approved BE. Where there is no BE, consistent with the DGP 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 building envelope (where applicable). Where a lot does not have a designated building envelope, 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. 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 5,000m²	
Acceptable Development	**Design Principles**
Maximum combined area of all outbuildings and non-habitable building: Max 200sqm **Wall Height** : 3.6m	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

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

Ridge Height : 5.5m **Setbacks** : Within approved BE. Where there is no BE, consistent with the DGP or Scheme.	are located within a building envelope (where applicable). Where a lot does not have a designated building envelope, 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. 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.

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;

- is not exempt under Local Planning Policy XX : Exempt Development; and
- 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
No maximum area, wall height or ridge height subject to the provisions of the BCA and subject to satisfying the requirements of Clause 4.8 – Height of Buildings of the Scheme. **Setbacks** : Consistent with the Scheme.	N/A

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

City of Busselton
Geographe Bay

4.5 OUTBUILDINGS AND NON-HABITBALE 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;

- is not to be used in association with a Single House on the site; and/or
- is not exempt under Local Planning Policy XX : 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 (ie. 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 200sqm **Wall Height** : 3.6m **Ridge Height** : 5.5m **Setbacks** : Within approved BE. Where there is no BE, consistent with the DGP 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 building envelope (where applicable). Where a lot does not have a designated building envelope, 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. 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.

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

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 #**	

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

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

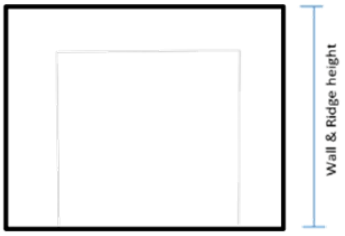


Figure 2 : Skillion Style Roof

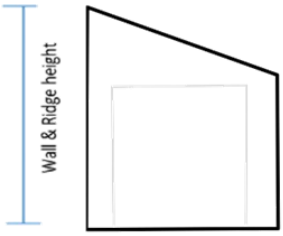


Figure 3 : Pitch Style Roof

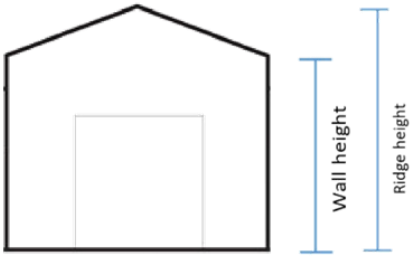


Figure 4 : Outbuilding with lean-to

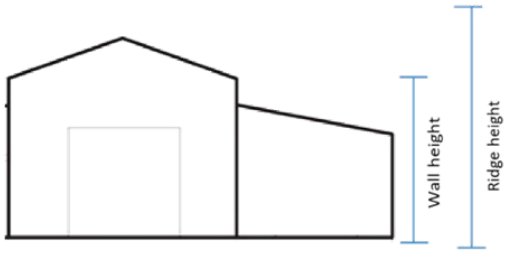
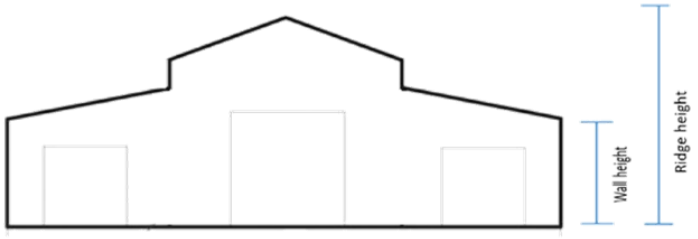


Figure 5 : Barn Style Roof



Local Planning Policy No. XX
EXEMPT DEVELOPMENT

1. HEAD OF POWER AND SCOPE

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

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 no 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;

(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 3: There are currently no 'Heritage Areas' within the City of Busselton.

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

"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:

- patio;
- pergola;
- shade sail;
- decking not more than 500mm above natural ground level;
- 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 the Residential Design Codes of WA).
- retaining and fill not more than 500mm above natural ground level; and/or
- water tank/s.

"Local development plan" means a local development plan approved under Part 6 of the Deemed Provisions.

"Outbuilding" as defined by the Residential Design Codes of WA 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 the Residential Design Codes of WA and means 'Solar collecting components of the following: thermal heating systems, photovoltaic systems (ie. 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: This 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 which :

(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

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

(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 $2m^2$ 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 the Acceptable Development standards of Local Planning Policy X – Outbuildings and Non-habitable Buildings; and

(b) Not located within the front setback area; and

(c) There is a dwelling on the lot; and

4.6 Children's cubby houses and play fixtures associated with Residential Development.

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

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 ~~zones~~.

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 a~~s~~re works that do not require development approval.

Exemptions applicable to Outbuildings and Non-habitable buildings in the different ~~z~~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 ~~a~~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 ~~respect to the matters subject of that provision~~the purpose of this Policy. The local

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

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.

"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 contain 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 above), 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.

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

(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 Llocal ~~d~~Development ~~p~~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 Hh~~H~~eritage 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~~This~~ 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 ~~which~~ :

(a) Are positioned on the roof of a building; and

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

Lots coded R2 - R5 and/or lots 2,000m² and greater	
Acceptable Development	**Design Principles**
Max area of outbuildings : 120m² **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 R10 – R25 and/or lots greater than 300m² and 2,000m² or less	
Acceptable Development	**Design Principles**
Max area of outbuildings : 90m² 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 300m² or less	
Acceptable Development	**Design Principles**
Max area of outbuildings : 60m² 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.

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

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

(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 5,000m² and less	
Acceptable Development	**Design Principles**
Maximum combined area of all outbuildings and non-habitable building: Max 120m² **Wall Height** : 3.1m **Ridge Height** : 4.5m **Setbacks** : Within a (BE). Where there is no BE, consistent with the Structure Plan, ~~Development Guide 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.

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

Lots greater than 5,000m²	
Acceptable Development	**Design Principles**
Maximum combined area of all outbuildings and non-habitable building: Max 200sqm **Wall Height** : 3.6m **Ridge Height** : 5.5m **Setbacks** : Within approved BE. Where there is no BE, Structure Plan, DGP, Local Development Plan or similar, ~~consistent with the DGP~~ 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.

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 XX : 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
No maximum area, wall height or ridge height subject to the provisions of the *Building Codes of Australia* (as amended) and subject to satisfying the requirements of	N/A

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

Clause 4.8 – Height of Buildings of the Scheme. **Setbacks** : Consistent with the Scheme.	

4.5 OUTBUILDINGS AND NON-HABITBALE 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 XX : 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, ~~with the DGP~~ 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

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

	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.

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 #**	

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

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

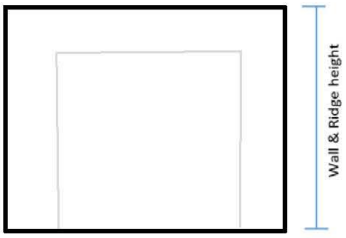


Figure 2 : Skillion Style Roof

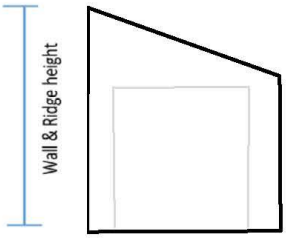


Figure 3 : Pitch Style Roof

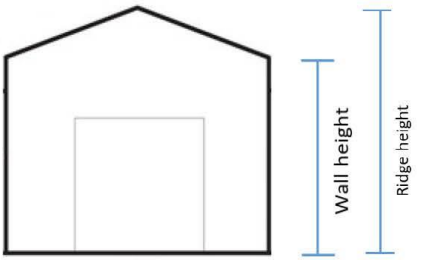


Figure 4 : Outbuilding with lean-to

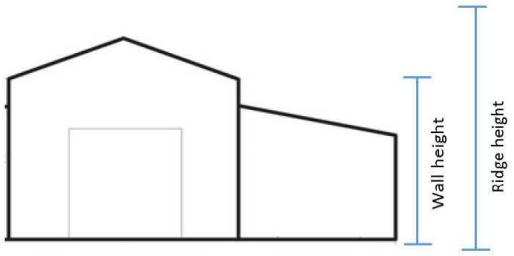
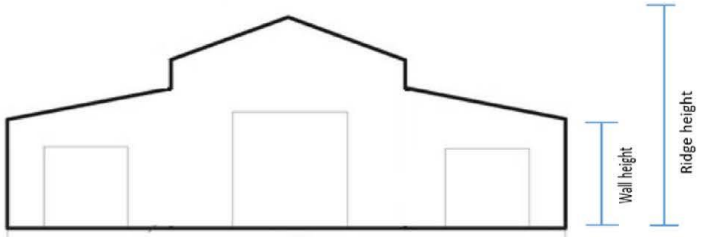


Figure 5 : Barn Style Roof



Local Planning Policy No. XX
EXEMPT DEVELOPMENT

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, tThere are currently no 'hHeritage Aareas' within the City of Busselton.

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

"Incidental development" means any non-habitable structure associated with a Single House, not considered to be an ~~o~~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)~~the Residential Design Codes of WA~~).
- (f) retaining and fill not more than 500mm above natural ground level; and/or
- (g) water tank/s.

~~**"Local development plan"** means a local development plan approved under Part 6 of the Deemed Provisions.~~

"Outbuilding" as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended)~~the Residential Design Codes of WA~~ 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) ~~the Residential Design Codes of WA~~ 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

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

(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 Llocal ~~d~~Development ~~p~~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 Hh~~H~~eritage 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~~This~~ 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 ~~which~~ :

(a) Are positioned on the roof of a building; and

Local Planning Policy No. XX
EXEMPT DEVELOPMENT

(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 ~~h~~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 $2m^2$ 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 the Acceptable Development standards of Local Planning Policy X – Outbuildings and Non-habitable Buildings; and

(b) Not located within the front setback area; and

(c) There is a dwelling on the lot~~; and~~.

~~4.6 Children's cubby houses and play fixtures associated with Residential Development.~~

5. REVIEW DETAILS

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

11.42am: At this time, Ms Navarro and Ms Reddell left the meeting.

6.2 REVIEW OF NON-EXCLUSIVE COMMERCIAL USE OF CITY LAND AND MOBILE VENDORS ON THE JETTY POLICIES

STRATEGIC GOAL	4. ECONOMY Diverse, resilient, prosperous
STRATEGIC OBJECTIVE	4.1 An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice.
SUBJECT INDEX	Policies
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Manager Governance and Corporate Services - Sarah Pierson Economic and Business Development Coordinator - Jaylene Chambers Environmental Health Coordinator - Jane Cook
AUTHORISING OFFICER	Director, Community and Commercial Services - Naomi Searle
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 Current Council Policy - Non Exclusive Commercial Use of City Land Attachment B Proposed Council Policy - Commercial Use of City Land and Facilities Attachment C Current Council Policy - Mobile Vendors on the Jetty Attachment D Commercial Hire Site Locations Attachment E Proposed Council Policy - Commercial Use of City Land and Facilities with Committee Amendments

OFFICER RECOMMENDATION

That the Council:

1. **adopts the revised Council policy titled 'Commercial Use of City Land and Facilities' as per Attachment B, to replace the current policy 'Non-Exclusive Commercial Use of City Land' (Attachment A); and**
2. **rescinds Council policy 'Mobile Vendors on the Jetty', effective immediately, with the proposed Council policy 'Commercial Use of City Land' providing adequate policy direction.**

12.10pm: At this time, Cr Paine lost connection and left the meeting.

12.10pm: At this time, Cr Hick assumed the Chair of the meeting.

COMMITTEE RECOMMENDATION

PL2004/304 Moved Councillor K Hick, seconded Councillor K Cox

That the Council:

1. **adopts the revised Council policy titled 'Commercial Use of City Land and Facilities' inclusive of the Committee amendments as per Attachment E, to replace the current policy 'Non-Exclusive Commercial Use of City Land' (Attachment A); and**
2. **rescinds Council policy 'Mobile Vendors on the Jetty', effective immediately, with the proposed Council policy 'Commercial Use of City Land and Facilities' providing adequate policy direction.**

CARRIED 4/0

Reasons: To widen the definition of "Trading" to include any use for profit and delete cl. 5.10 to remove reference to operational practice, noting it is not a Council adopted document.

EXECUTIVE SUMMARY

This report presents a revised policy with regards to Commercial Use of City Land and Facilities, with Council Policy 'Non-Exclusive Commercial Use of City Land' (Attachment A) having been reviewed. Officers recommend it is replaced with an updated policy titled 'Commercial Use of City Land and Facilities (Attachment B) (the Policy). The Policy has been updated to provide policy level guidance reflective of the City's current and recommended future approach to facilitating and regulating the commercial use of City Facilities and land owned and managed by the City (City Land), and is recommended for adoption.

Additionally, officers have reviewed the Council policy 'Mobile Vendors on the Busselton Jetty' (Attachment C) (Mobile Vendors Policy) and recommend it be rescinded, with the proposed Commercial Use of City Land and Facilities policy covering the circumstance of trading on the Jetty.

BACKGROUND

The current policy was initially adopted in December 2016 to provide an overall framework and set of guiding principles for the management of non-exclusive commercial use of City Land. The policy was developed in recognition of the increasing potential for commercial use of public land, and the need to develop a coherent, fair and workable approach to managing that activity.

There is a range of commercial activity that occurs on local government owned and/or managed land in the City of Busselton. That includes commercial activity undertaken on land leased from the City, the frameworks for which are well established and reasonably well understood, and other kinds of commercial activity, which this policy was designed to cover.

The City currently facilitates the commercial use of City Land under non-exclusive arrangements through the following initiatives:

- the issuing of food trading permits – advertised every two years, with permits issued annually;
- the establishment of commercial hire site permits – previously advertised every three years but moving to a two year period as at the end of June 2020 to align with above;
- the establishment of kiosks on the foreshore, and
- the provision of mobile vendors on the jetty.

At present, there are approvals in place for the following:

- 11 mobile food vendors;
- 9 itinerant food vendors;
- 4 'commercial hire sites'; and
- 5 outdoor exercise operators.

The City continues to receive approximately 2 requests per week for new sites/businesses, and will shortly advertise for an increased number (12) of commercial hire sites (Attachment D).

Additionally, the City allows through hire arrangements some commercial use of City facilities such as halls and function rooms at the YCAB and the CRC, with the City's fees and charges containing both commercial and community rates. Commercial use of halls is generally secondary to community use of these facilities.

The continued shift to more flexible trading continues to represent a significant opportunity for the City and its residents, while also bringing with it a range of challenges.

It is often the case that such activity:

- provides a relatively low-cost and low-risk basis for new business development;
- provides a service in a location where services would not otherwise be provided;
- assists in activating and increasing the vibrancy of public spaces, and in some cases improves the broader commercial/trading environment in the area;
- delivers additional financial return to the City (and therefore the community as a whole) related to the value of City land, and the value of infrastructure developed and maintained by the City; and
- may provide a service that is genuinely different to that which can be provided by seemingly equivalent permanent, fixed businesses.

There are sometimes concerns however about whether activity of this kind may:

- benefit from an 'uneven playing field' relative to permanent, fixed businesses, in particular those offering equivalent goods and/or services;
- undermine the viability of equivalent permanent, fixed businesses; and/or
- in an overall sense, generate less social and/or economic benefit than equivalent permanent, fixed businesses.

It is in this broader context that the City developed the current policy; with the policy designed to provide overarching strategic direction, and a set of consistent principles which could be applied to different kinds of activities and situations. The review of this policy, along with the Mobile Vendors on the Jetty Council policy, has been prompted by the City's ongoing policy review process and presents a timely opportunity to ensure that the use of City Land for non-exclusive commercial purposes is aligned to Council expectations.

OFFICER COMMENT

The facilitation of an innovative and diversified economy, offering a variety of business and employment opportunities in addition to consumer choice, is a key community objective within the City's Strategic Community Plan 2017 (review 2019) (SCP). The support of local business as a driver of economic growth is also important and is an objective reflected in the SCP. Facilitating the use of City Land and facilities for commercial purposes is one means by which the City can support these objectives, offering traders the opportunity to trade in a semi-flexible fashion.

Commercial Use of City Land and Facilities Council Policy

In reviewing and re-drafting the Policy officers asked themselves three key questions:

1. What do we want to achieve? (Or, what should the policy objectives be?)
2. What types of activities need to be considered and how are they best categorised?
3. How are those activities regulated and managed currently?

Policy Objectives

The Policy reiterates the following objectives for non-exclusive commercial use of City Land and facilities, i.e. commercial use of City Land outside of a lease arrangement:

- encouraging innovation, business development, and overall economic growth;
- providing diversified goods and services to residents and visitors;
- value adding to the overall resident and visitor experience; and
- enhancing the vibrancy and activation of public spaces

While primarily economic, the capacity for such land use to create vibrancy and activates spaces is also recognised, and aligns to community objective 2.3 of the SCP - to facilitate creative urban design which produces vibrant, mixed use town centres and public spaces.

Policy Scope

The scope of the Policy has been simplified and broadened to cover any use of City Land or facilities for Trading (as defined) excluding for events or markets (covered by the Events Policy), for outdoor eating (covered by the Al Fresco Policy), for use by buskers and street entertainers (a separate policy will be developed for this use), or use under a lease.

The types of activities are broadly categorised as:

- Fixed Trading – Trading that operates from a particular location for fixed periods of time; and
- Itinerant Trading –Trading that operates from place to place on a roaming basis with a set time limit at any one place e.g. an ice cream van

This covers a range of more specific activities, including:

- Commercial Hire Sites such as Aquatastic and Dunsborough Bike Hire
- Kiosks on the foreshore
- Ice-cream vans such as Mr Whippy
- Boot camp and other PT based activity

Fixed Trading can occur at City facilities and on City Land at pre-determined Designated Sites; and for non-food based trading, ad hoc proposals and locations may be considered at the discretion of the CEO. The Policy maintains the current approach of publicly seeking applications (generally through an expression of interest process) for Fixed Trading at Designated Sites and for Itinerant Trading.

Regulation and Management

Relevant City of Busselton Local Laws (listed as Related Documents in the Policy) establish the requirement for a permit for certain activities and empower the City to grant such permits. Any applications for a permit must be assessed by the City in a fair, consistent, efficient and reasonable fashion, guided by the relevant considerations set out in the respective local laws. Policies adopted by the Council would be relevant and important considerations. If an application is submitted which is inconsistent with a policy that restricts or regulates particular kinds of activities in particular locations, the policy would generally be a reasonable basis on which to refuse the application.

To this end the Policy sets out factors for consideration when assessing an application, including:

- the type and regularity of the activity as it relates to its location;
- the potential economic benefit of the activity;
- the potential impact on the surrounding existing businesses;
- the impact of the activity on the surrounding amenity;
- the cost to ratepayers of facilitating the activity; and
- the experience and capacity of the applicant to operate the activity.

Overall, the revised policy continues the City's current approach to facilitating and regulating the use of City Land and facilities for commercial purposes and provides updated, appropriate overarching direction and guidance.

Mobile Vendors on the Jetty Council Policy

The Mobile Vendors Policy was adopted in November 2011 to set out the process for recruitment and selection of suitable mobile vendors on the Busselton Jetty. It was reviewed in April 2017 to ensure it was consistent with the Non-Exclusive Commercial Use of City land Policy, adopted in 2016.

The policy was developed at a time when the offerings on the Jetty were not overly diversified. The policy was designed to encourage food and beverage vendors that did not compete directly with Busselton Jetty Inc. at various locations on the jetty (heritage node 4 and section 7). It is officers' view that, at this point, the revised Commercial Use of City land and Facilities policy provides adequate coverage of such trading, and that the Mobile Vendors Policy can be rescinded.

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.

The *Activities in Thoroughfares and Public Places and Trading Local Law 2015* and the *Property Local Law 2010* sets out the statutory provisions for trading and the use of City Land. The *Jetties Local Law 2014* sets out the statutory provisions for trading at the Jetty.

Much of the activity covered by the Policy consists of the sale of food and drink, requiring the registration of food premises pursuant to the *Food Act 2008*. Generally, that will, in addition to a permit under one of the above local laws, require registration of the food premises with the City.

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 Governance Service 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.

The fees and charges set out above are established under the *Local Government Act 1995*, and reflect the administrative cost associated with assessing and managing applications – they do not represent a return on the value of the land or infrastructure that the business uses and/or benefits from.

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 and / or could choose not to rescind the Mobile Vendors Policy.

CONCLUSION

In accordance with the City's Policy Framework, the City's current policies in relation to the non-exclusive commercial use of City land and mobile vendors on the Busselton Jetty have been reviewed and revised to provide policy level guidance reflective of the City's current and recommended future approach to the facilitation and regulation of City Land for commercial purposes.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be placed on the City's website within one week of Council adoption, with the Mobile Vendors Policy rescinded immediately.

Updated 13/12/2017

249	NON-EXCLUSIVE USE OF CITY LAND AND FACILITIES	V2 Current

PURPOSE

This Policy provides a consistent framework and methodology to facilitate, control and regulate the non-exclusive commercial use of City owned and managed land across the District.

BACKGROUND

Prior to development of this Policy, the City had been managing a significant amount of non• exclusive of commercial land, but without an overarching or integrated policy framework. Because of the level of interest in the subject, the potential implications of such activity, both positive and negative, and the need to provide for administrative fairness, consistency, efficiency and robust decision-making, this policy was developed. Further background to the development of this Policy can be found in the report to the Council that supported the Policy's consideration and adoption by the Council.

SCOPE

The Policy relates to the following kinds of non-exclusive commercial use of City land -

- Mobile traders (i.e. traders that operate from particular locations for certain periods of time);
- Itinerant traders (i.e. traders that offer goods and services by travelling around the District, stopping only for as long as it takes to serve customers in a particular location);
- Al fresco dining on footpaths or other City land adjacent or close to a permanent, fixed business (other than where this is facilitated via a lease);
- Recreational activities of various kinds (including fitness classes or similar - i.e. 'exercise permits' - and things like mobile climbing walls or water playgrounds);
- The running of tours or similar, which wholly or partly take place on City land and/or using City infrastructure;
- Businesses involved in the short-term hiring of recreational equipment, such as bikes, kayaks or jet skis; and
- Trading that operates from more or less temporary premises and/or from fixed premises, but on the basis of relatively short-term arrangements, such as trading from a converted/adapted sea container, or from some other relocatable and/or relatively low cost structure (although note that once there is a significant degree of 'permanence' associated with a business and/or structure in this kind of example, it becomes indistinguishable from a more conventional leasehold situation, and is therefore not subject of this policy).
- Short term and seasonal hire of City land and facilities such as sporting grounds, halls, public open spaces or reserves

Updated 13/12/2017

The Policy does not relate to the following kinds of activities -

- Events, and the trading activity associated with events;
- Markets;
- Buskers/street entertainers;
- ; or
- Leasehold use/development of City land.

STATUTORY/POLICY ENVIRONMENT

- *Land Administration Act 1997* and associated regulations
- *Local Government Act 1995* and associated regulations
- *Planning and Development Act 2005* and associated regulations
- *Building Act 2012* and associated regulations
- *Health Act 1911* and associated regulations
- *Public Health Act 2016*
- *Food Act 2008* and associated regulations
- *Local Planning Scheme 21* and associated structure plans and policies
- *Activities in Thoroughfares and Public Places and Trading Local Law*
- *Property Local Law*
- *Jetties Local Law*
- *Airport Local Law*
- *Busse/ton Foreshore Master Plan*
- *Busse/ton City Centre Conceptual Plan*
- *Dunsborough Town Centre Conceptual Plan*
- *Commercial Hire Site Policy*- Reference No. 008*
- *Trading in Public Places Policy*- Reference No. 020*
- *Mobile Vendors on the Busselton Jetty Policy*- Reference No. 006*
- *Community Facilities Bookings Policy*- Reference No. 027
- *Markets Policy*- Reference No. 074
- *Events Policy*- Reference No. 231
- *Leases of City Land and Buildings Policy*- Reference No. 248

Updated 13/12/2017

OBJECTIVES

1. Achieving fair outcomes, in both procedural and outcome terms, in relation to the treatment of different businesses, business models,activities, community groups and individuals;
2. Preserving and enhancing the vibrancy and attractiveness of City, Town and other activity centres, and other important public spaces, such as the Busselton and Dunsborough Foreshores;
3. Providing convenient and attractive services to residents and visitors;
4. Encouraging innovation, new business development, and economic and employment growth;
5. Generating financial return to ratepayers associated with use of City land and infrastructure;
6. Supporting the delivery of other City strategies and objectives; and
7. Ensuring legal robustness, simplicity and comprehensibility, and administrative efficiency and workability.

GUIDING PRINCIPLES FOR IMPLEMENTATION

1. Where there is competition for space/sites (including with other kinds of uses, such as general public recreation or public car parking requirements) and/or concerns that activity should be managed carefully and/or not be supported in certain locations, applications will only be considered as part of an expression-of-interest process and not as a result of *ad hoc* applications;
2. Expression-of-interest sites and assessment criteria will be periodically reviewed and updated, including through appropriate Council consultation/consideration and industry/community consultation;
3. Novel proposals or *ad hoc* proposals may, however, be considered where it is clear they are supportable, given the broader policy direction, and/or to trial a new kind of activity and/or location;
4. Where there is more than one regulatory option, once it is clear that a particular activity or proposal is broadly supported, the most administratively simple option, or combination of options, will be used; and
5. Where there is identified to be a need to ensure a return on the value of City land and/or infrastructure, there will be a requirement for an 'agreement' and/or 'licence', in addition to a 'permit', with a 'licence' only being required where there is a need for a registerable interest in land.
6. Notwithstanding clause 1 above, where there is a need for short term or seasonal hire of City land and/or facilities for a specific use, these will be managed through appropriate guidelines specific to each portion of land or facility, in keeping with the broader policy direction

ADMINISTRATION OF THIS POLICY

The Chief Executive Officer {CEO} has the authority (including through necessary delegations and/or authorisations) to administer the requirements of the Non-Exclusive Use of City Land and Facilities on behalf of Council.

Updated 13/12/2017

Policy Background

Policy Reference No - 249

Owner Unit - Environmental Health

Originator- Manager Environmental Services

Policy considered by Policy and Legislation Committee and approved by- Council

Date Approved - 9 November 2016

Review Frequency-As required

Related Documents -

- Activities in Thoroughfares and Public Places and Trading Local Law 2015
- Properties Local Law
- Jetties LocalLaw
- Busselton Foreshore Master Plan
- *Busse/ton City Centre Conceptual Plan*
- *Dunsborough Town Centre Conceptual Plan*
- *Commercial Hire Site Policy*- Reference No. 008
- *Trading in Public Places Policy*- Reference No. 020
- *Mobile Vendors on the Busselton Jetty Policy*- Reference No. 006
- *Community Facilities Bookings Policy*- Reference No. 027
- *Markets Policy*- Reference No.074
- *Events Policy*- Reference No. 231
- *Leases of City Land and Buildings Policy*- Reference No. 248

Background/History-

Implementation of new policy to facilitate, control and regulate the non-exclusive commercial use of City owned and managed land across the District.

History

Council Resolution	Date	Information
C1712/322	13 December 2017	Reviewed
1611/123	9 November 2016	Date of Implementation Version 1

COUNCIL POLICY

City of Busselton
Geographe Bay

Council Policy Name:	Commercial Use of City Land and Facilities
Responsible Directorate:	Community and Commercial Services / Planning and Development Services
Version:	Draft

1. PURPOSE

1.1. This Policy provides support for the use of City Land in a manner that encourages and creates economic and community vibrancy, diversity and opportunity.

2. SCOPE

2.1. This Policy is applicable to the use of City Land and Community Facilities for Trading.

2.2. This Policy does not relate to events, approved outdoor eating facilities, markets, buskers / street entertainers, or use of City Land under a lease.

3. DEFINITIONS

Term	Meaning
Community Facilities	Buildings managed by the City
City Land	Land owned or managed by the City
Designated Site	Pre-determined site for Fixed Trading outside of a Community Facility
Fixed Trading	Trading that operates from a particular location for fixed periods of time.
Itinerant Trading	Trading that operates from place to place on a roaming basis with a set time limit at any one place e.g. an ice cream van
Policy	this City of Busselton Council policy titled "Commercial Use of City Land and Facilities"
Trading	• the selling or hiring of, the offering for sale or hire of, or the soliciting of orders for goods or services; and • the displaying of goods for the purpose of offering or inviting offers for their sale or hire, soliciting orders for them or carrying out any other transaction in relation to them

4. STRATEGIC CONTEXT

4.1. This policy links to Key Goal Areas 4 (Economy), 2 (Places and Spaces) and 1 (Community) of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:

a. 4.1: An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice;
b. 2.3: Creative urban design that produces vibrant, mixed use town centres and public spaces;
c. 1.3: A community with access to a range of cultural and art, social and recreational facilities and experiences.

5. POLICY STATEMENT

5.1. The objectives of this Policy are to set out a framework for managing the commercial use of City Land and Community Facilities which:

a. encourages innovation, business development, and overall economic growth;
b. provides diversified goods and services to residents and visitors;
c. value adds to the overall resident and visitor experience; and
d. enhances the vibrancy and activation of public spaces.

5.2. Trading activities can generally be classified as Fixed Trading and Itinerant Trading.

5.3. Fixed Trading may occur at Community Facilities, on City Land at Designated Sites, and, with the exception of food based Trading, at other locations approved on an ad-hoc basis.

5.4. Fixed Trading at Community Facilities will generally only be supported where it does not conflict with community use of the facility, approved in accordance with Council Policy 'Community Use of City Property'.

5.5. Designated Sites will be determined by the CEO, generally for a particular type of Trading, and will be periodically reviewed through appropriate community consultation.

5.6. Applications to use City Land for Fixed Trading outside of Designated Sites will be considered against the objectives of this Policy and the factors outlined in paragraph 5.9. Where there is a high level of interest in a particular location an expression of interest process may be undertaken.

5.7. Applications for Fixed Trading permits at Designated Sites and for Itinerant Trading permits will be sought publicly every two years. Permits will be issued for one year, with, at the City's discretion, a one year renewal. Permits may be issued for Trading at vacant Designated Sites, subject to the permit length aligning to the next round of public advertising.

5.8. The CEO at their discretion may limit the number of permits for Itinerant Traders.

5.9. Factors that will be considered when assessing applications to use City Land for Trading include:
a. the type and regularity of the activity as it relates to its location;
b. the potential economic benefit of the activity;
c. the potential impact on the surrounding existing businesses;
d. the impact of the activity on the surrounding amenity;
e. the cost to ratepayers of facilitating the activity;
f. the experience and capacity of the applicant to operate the activity; and
g. other considerations outlined in relevant City of Busselton local laws.

5.10. Applications will be assessed in accordance with the Commercial Use of City Land Operational Practice.

5.11. Fees for the use of City Land will be as per the City's Fees and Charges, reviewed annually.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Activities in Thoroughfares and Public Places and Trading Local Law 2015*
6.3. *Property Local Law 2010*
6.4. *Jetties Local Law 2014*
6.5. *Council Policy 'Community Use of City Property'*
6.6. *Commercial Use of City Land Operational Practice*
6.7. *Designated Sites Map*

7. REVIEW DETAILS

Review Frequency	3 yearly

Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**		**Resolution #**	

Last Updated 14/06/2017

006	Mobile Vendors on the Busselton Jetty	V2

1. PURPOSE

Mobile Vendors in recreational areas and tourist attractions add further dimensions of character and vibrancy to a location. Furthermore, the prosperity achieved by the operators contributes to the overall economic success of the Region and provides a potential source of income for the City of Busselton to re-invest into publicly owned or controlled facilities, including the Busselton Jetty.

2. DEFINITIONS

For the purposes of this policy, the following definitions apply;

'CEO' means the Chief Executive Officer or delegated Officer of the City of Busselton;

'Jetty' means the Busselton Jetty

'Commercial Site' means a pre-determined portion of Sections 4 and 7 on the Busselton Jetty from which a Mobile Vendor is permitted to operate.

'Mobile Food Premises' means a business operated from a vehicle, van, stand, cart or similar device that complies with ANZFA Food Safety Standards;

'Mobile Vendors' means a business operator operating from a 'Commercial Site' and may mean a 'Mobile Food Premises';

'Permit' means a permit issued under the Busselton Jetties Local Law 2014;

'City' means the City of Busselton.

3. SCOPE

The policy covers the;

a) recruitment and selection of suitable Mobile Vendors to operate from the Busselton Jetty; and
b) criteria by which City officers will assess applications for the commercial hiring of sites.

4. POLICY CONTENT

The City of Busselton recognises the social, cultural and economic value of Mobile Vendors and has established Policy 249 (Non-exclusive Commercial use of City land) which provides a consistent framework and methodology to facilitate, control and regulate the non-exclusive commercial use of City-owned and managed land across the District.

4.1 Promotion of Jetty Vendor Opportunities

The City may publicly advertise the availability of commercial sites on the Busselton Jetty as part of an expression of interest (EoI) process. If an EoI is called for commercial sites on the Jetty, selection criteria will be set prior to advertising and included in EoI guidelines.

4.2 Selection / Approval of Jetty Vendor Sites

The City can approve an application for a permit in accordance with the City of Busselton Jetties Local Law 2014.

4.2.1 Location

Commercial sites on the Jetty will be pre-approved by the City giving due consideration to their practical location and with regard to other activities that take place on the Jetty and in consultation with the Busselton Jetty Reference Group (BJRG).

When assessing suitability of a trading location, consideration will be given to;

a) the type and regularity of business that could operate from that location;

b) the impact the business will have on the surrounding amenity, and

c) the strategic implications and impact the location may have on the local economy.

Consideration will also be given to the nature of fixed businesses, specifically; preference will be given to businesses that are not of an identical nature to a nearby fixed business.

4.2.2 Term

A permit for trading on the Busselton Jetty may be granted by the City for a term of up to two (2) years. Prior to expiry of an existing permit, the site will be readvertised seeking expressions of interest.

4.2.3 Assessment of applications

Applications for a permit may be approved by the CEO or an authorised person and will be considered, in part, according to the appropriateness of the proposed activity in relation to the location and the social, cultural and economic benefits the business may bring to the City, residents and visitors. The proposed activity should not impede Busselton Jetty Inc business operations.

As a minimum, applications for sites on the Jetty will be considered according to;

- the product being offered, bearing in mind that the sale or provision of alcohol will not be approved;
- the cart, stand or similar device used as the premises being an acceptable standard to the City of Busselton, including the dimensions and maximum weight being suitable for positioning on the Jetty;
- the incorporation of biodegradable / eco products where applicable;
- the proposed operating hours or days, and;
- the nature of adjoining commercial activities on the Jetty, specifically, preference will be given to businesses that are not of an identical nature to an existing operator.

Applications for licences to sell food and / or beverages must also comply with conditions imposed either regulatory or discretionary, by the City's Environmental Health section.

Additionally, the following decision making criteria will apply;

a) the applicant/operator must be of good character, demonstrated by:
   i. two character references
   ii. a National Police Clearance Certificate;
b) the business operation will not impede public use of the Jetty;
c) the business operation will not have a detrimental effect on the Jetty or surrounding area; and,
d) relevant sections of the Busselton Jetties Local Law (2014) or other Local, State and Federal laws.

The City may refuse an application on any one or more of the following grounds;

i. the applicant is an undischarged bankrupt or is in liquidation;
ii. the applicant has entered into any composition or arrangement with creditors; or
iii. a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property;

or such other grounds the City may consider to be relevant in the circumstances of the case.

Detailed guidelines will be issued in publicly advertised expression of interest documentation for food and non-food commercial operators and will be available on the City's website.

Consultation
Prior to final approval of a permit, the City will consult with Busselton Jetty Inc.

4.3 Establishment of Fees

Permit fees are set out in the City of Busselton's Annual Fees and Charges Schedule available on the City's website.

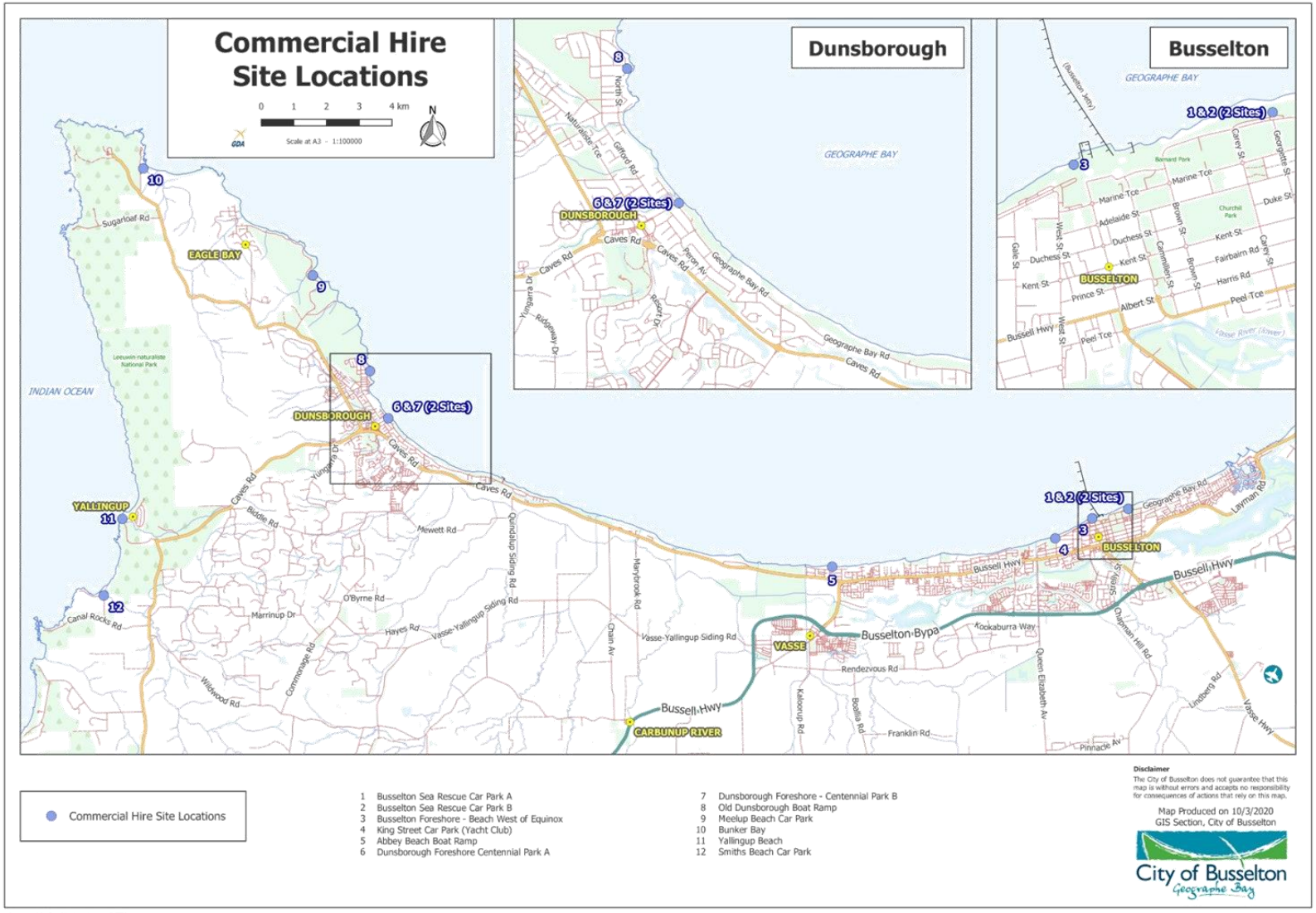
Policy Background

Policy Reference No. - 006
Owner Unit – Commercial Services
Originator – Economic and Business Development Co-ordinator
Policy approved by – Council
Date Approved – 14 June 2017
Review Frequency – As required
Related Documents – Jetties Local Law 2014; Property Local Law 2010, Activities in Thoroughfares and Public Places and Trading Local Law 2015; Policy # 249 (Non-exclusive Commercial Use of City Land 2016)

Last Updated 14/06/2017

History

Council Resolution	Date	Information
C1706/127	14 June 2017	Establishment of a policy to provide for a limited number of small, mobile vendor businesses which would enhance the Busselton Jetty experience of visitors and locals Version 2


Commercial Hire Site Locations
0 1 2 3 4 km
Scale at A3 - 1:100000
Dunsborough
Busselton
GEOGRAPHE BAY
INDIAN OCEAN
EAGLE BAY
DUNSBOROUGH
YALLINGUP
BUSSELTON
VASSE
CARBUNUP RIVER
6 & 7 (2 Sites)
1 & 2 (2 Sites)
Busselton Bypa
Bussell Hwy
Caves Rd
Commercial Hire Site Locations
1 Busselton Sea Rescue Car Park A
2 Busselton Sea Rescue Car Park B
3 Busselton Foreshore - Beach West of Equinox
4 King Street Car Park (Yacht Club)
5 Abbey Beach Boat Ramp
6 Dunsborough Foreshore Centennial Park A
7 Dunsborough Foreshore - Centennial Park B
8 Old Dunsborough Boat Ramp
9 Meelup Beach Car Park
10 Bunker Bay
11 Yallingup Beach
12 Smiths Beach Car Park
Disclaimer
The City of Busselton does not guarantee that this map is without errors and accepts no responsibility for consequences of actions that rely on this map.
Map Produced on 10/3/2020
GIS Section, City of Busselton
City of Busselton
Geographe Bay
Commercial Hire Site Locations - 74758.qgz

COUNCIL POLICY

City of Busselton
Geographe Bay

Council Policy Name:	Commercial Use of City Land and Facilities
Responsible Directorate:	Community and Commercial Services / Planning and Development Services
Version:	Draft

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2.2. This Policy does not relate to events, approved outdoor eating facilities, markets, buskers / street entertainers, or use of City Land under a lease.

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Policy	this City of Busselton Council policy titled "Commercial Use of City Land and Facilities"
Trading	• the selling or hiring of, the offering for sale or hire of, or the soliciting of orders for goods or services; and • the displaying of goods for the purpose of offering or inviting offers for their sale or hire, soliciting orders for them or carrying out any other transaction in relation to them; and • the selling of a service for profit

4. STRATEGIC CONTEXT

4.1. This policy links to Key Goal Areas 4 (Economy), 2 (Places and Spaces) and 1 (Community) of the City's Strategic Community Plan 2017 and specifically the following Community Objective/s:

a. 4.1: An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice;
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5.7. Applications for Fixed Trading permits at Designated Sites and for Itinerant Trading permits will be sought publicly every two years. Permits will be issued for one year, with, at the City's discretion, a one year renewal. Permits may be issued for Trading at vacant Designated Sites, subject to the permit length aligning to the next round of public advertising.

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c. the potential impact on the surrounding existing businesses;
d. the impact of the activity on the surrounding amenity;
e. the cost to ratepayers of facilitating the activity;
f. the experience and capacity of the applicant to operate the activity; and
g. other considerations outlined in relevant City of Busselton local laws.

~~5.10. Applications will be assessed in accordance with the Commercial Use of City Land Operational Practice.~~

~~5.11.~~5.10. Fees for the use of City Land will be as per the City's Fees and Charges, reviewed annually.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Activities in Thoroughfares and Public Places and Trading Local Law 2015*
6.3. *Property Local Law 2010*
6.4. *Jetties Local Law 2014*
6.5. *Council Policy 'Community Use of City Property'*
6.6. *Commercial Use of City Land Operational Practice*
6.7. *Designated Sites Map*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**		**Resolution #**	

6.4 REVIEW OF COUNCIL POLICY: LEASES OF CITY LAND AND BUILDINGS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Property Management Coordinator - Sharon Woodford-Jones
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: Leases of City Land and Buildings (Current) Attachment B Council Policy: Leasing of City Premises (Proposed) Attachment C Council Policy: Leasing of City Premises (Proposed) with Committee Amendments

12:12pm: At this time, Sharon Woodford-Jones entered the meeting.

12:14pm: At this time, Cr Paine re-entered the meeting and resumed the Chair.

OFFICER RECOMMENDATION

That the Council adopts the revised policy 'Leasing of City Premises' at Attachment B, replacing the current policy 'Leases of City Land and Buildings' at Attachment A.

COMMITTEE RECOMMENDATION

PL2004/305 Moved Councillor G Henley, seconded Councillor K Hick

That the Council adopts the revised policy 'Leasing of City Premises' inclusive of Committee Amendments as per Attachment C, replacing the current policy 'Leases of City Land and Buildings' at Attachment A.

CARRIED 5/0

Reasons: To remove reference in the policy statement (cl. 5.5) to the operational practice, noting it is not a Council adopted document, and to amend "Lease" in cl. 5.1 to lower-case "lease", being general terminology and not a defined term.

EXECUTIVE SUMMARY

This report presents a revised Council policy 'Leasing of City Land and Buildings' (Attachment A), with officers recommending it is replaced with an updated policy 'Leasing of City Premises' (Attachment B) (the Policy).

The Policy has been updated to the new Council policy format and minor amendments have been made for readability and clarity. In addition, the Policy contemplates scenarios that may require novel provisions driven by community expectations, fairness and responsible asset management.

BACKGROUND

Council policy 'Leases of City Land and Buildings' was developed in 2016. During the four years since, there have been a number of significant developments in the district resulting in the creation of new property assets and a major overhaul of others. The Policy revisions take into consideration Council's approach in relation to those developments and revisions to the Strategic Community Plan. In particular, it acknowledges the need to address long term asset management.

Whilst the aim will always be to use a standardised format lease (in non-commercial scenarios) some flexibility is necessary in adapting to modern requirements and circumstances; the means by which this will be addressed will be contained in any Operational Practice linked to this Policy.

OFFICER COMMENT

As an important resource for the community, the City's land and buildings need to be managed in a manner that reflects the goals and aspirations of the City's Strategic Community Plan. The objective is to ensure a good range and quality of services and facilities available to the community.

This Policy will provide a framework and methodology for effective utilisation of City Premises. It will facilitate responsible asset management and address the need to properly preserve land and property assets. It is designed to reflect the need for some flexibility to meet particular circumstances such as a long or short term capital works program or the preservation of heritage or conservation assets.

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.

The *Land Administration Act 1997 (WA)* (LAA) governs leases on Crown land. The City is responsible for the care, control and management of land reserved by the Minister for Lands under the LAA. The City manages land according to management orders made under section 46 of the LAA. Any proposal to lease or licence land requires the prior written approval of the Minister.

Relevant Plans and Policies

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

Financial Implications

The aim of the Policy is to develop an approach that facilitates responsible asset management and long term sustainability of City assets. The intent is to limit the financial burden on the City of maintaining land and buildings where there are opportunities for lessees to take on some or all of that responsibility.

Otherwise, 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 uniform and transparent approach to leasing City Premises will give direction and guidance to all those involved and affected. Council decisions have generally established a consistent approach and a move towards more standard lease (or lease/licence) terms and conditions. This Policy seeks to capture and reinforce this whilst at the same time acknowledging the fact that the uniqueness of land and building assets require varying levels of control and management.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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

Last updated 27/07/2016

248	Leases of City Land and Buildings	V1 Current

1. PURPOSE

The City's land and buildings are an important resource for the community and should be managed in a manner that reflects the goals and aspirations of the City's Strategic Community Plan to ensure there is a good range and quality of services and facilities available to the community.

The purpose of this policy is to provide a framework and methodology to facilitate responsible and effective utilisation of City owned and controlled land and buildings in a consistent manner that achieves maximum community benefit.

2. SCOPE

This policy applies to any grant of a right of exclusive of land or buildings within the City of Busselton district, being either land owned outright by the City of Busselton or land owned by the Crown and managed by the City. It does not cover licences for occasional or short term hire or non-exclusive use of Council property (such as the hire of rooms or halls for a day or the hire of sporting grounds for limited periods).

3. DEFINITIONS

A Lease is an agreement in which the Landlord (or Lessor) agrees to give the Tenant (or Lessee) the exclusive right to occupy land for a specific term.

A Licence is a contractual right for the Licensee to carry out a permitted activity on land or within a building without the right of exclusive occupation.

4. RELEVANT LEGISLATION AND POLICY

The Land Administration Act 1997 (WA) governs leases on Crown Land. The City is responsible for the care, control and management of land reserved by the Minister for Lands under the Land Administration Act 1997. The City manages land in accordance with management orders made under section 46 of the Act which may include a power to lease or licence the whole or a part of the land. Any proposal to lease or licence land may not proceed without the prior written approval from the Minister.

The Local Government Act 1995 governs all systems and operations of local governments in Western Australia. The City is bound by specific conditions under this Act with regard to the disposal of property. Section 3.58 of the Act provides that a local government can only dispose of property by public auction, public tender or by undertaking the local public notice procedure set out in section 3.58(3). In this context, disposing of property means to 'sell, lease or otherwise dispose or, whether absolutely or not', but does not include licensing.

However, there are a number of exemptions to these requirements set out in regulation 30 of the Local Government (Functions & General) Regulations 1996. These include:

- Where property is to be disposed to not for profit, charitable, benevolent, religious, cultural, educational, recreational or sporting organisations; and
- If the property is to be occupied for a period of less than two (2) years and the agreement does not give exclusive possession.

The City of Busselton Strategic Community Plan 2013 sets out the community goals, aspirations and objectives for the next ten (10) years. It is reviewed every four (4) years. Any proposals for leasing or licencing property within the City of Busselton will be required to fit within the key goals and objectives outlined in the plan.

The Building Asset Management Plan is a framework for determining the approach to building maintenance (which includes leased buildings or buildings constructed on leased land). Where relevant, it may guide the maintenance provisions in a lease and, in certain circumstances, could impact on the term to be granted.

5. LEASING PRINCIPLES

5.1 The provision of benefits to the community through leasing

Leasing should support the development of healthy communities and, where appropriate, promote positive social, economic and environmental outcomes. Factors that may be taken into account in assessing a report to lease include, but are not limited to, the following:

Community

- Consideration of benefits to the community;
- Promotion of public health and wellbeing;
- Improvement of sporting, recreational and cultural facilities;
- Protection of public land values; and
- Any other impacts on social, economic and environmental outcomes.

Commercial

- Attracting investment and enhancement of an amenity (e.g. Busselton and Dunsborough foreshores);
- Creation of employment;
- Promotion of tourism;
- Economic return; and
- Impacts on social, economic and environmental outcomes

5.2 **Governance that meets ethical and statutory standards**

Consideration must be given to the purpose of the City entering into a lease and whether it provides for the effective control and management of the land, building and/or facility.

The following are factors that may be relevant to Council's assessment of a proposal:

- The ability, in terms of experience and competence, of the prospective tenant to fund, resource and manage the lease over the lease term;
- The potential opportunities for future utilisation of the asset;
- The existence of any statutory restrictions or implications for heritage or conservation value of the asset;
- The extent and current use of the land proposed to be leased and the impact on adjoining land;
- Whether the purpose of the lease and activities proposed meet the objectives of Council strategies and initiatives;
- Whether the proponent proposes a capital works programme that is compatible with the authorised purpose and the Council's vision for the land or facility;
- The overall financial viability of the proposal;
- The outcome of any consultation processes if considered necessary;
- Any potential risks to the City and/or the Community of entering into the arrangement; and
- Whether the proposal achieves the highest and best use of the land or facility.

6. LEASES TO NOT FOR PROFIT, SPORTING AND COMMUNITY ORGANISATIONS

6.1 **Criteria**

In addition to the generic governance factors listed in section 5.2, the following are criteria that should be applied to the assessment of a proposed lease. The outcome of that assessment would assist in determining the terms and conditions of the lease.

- The aims and objectives of the organisation as expressed in its Constitution;
- The history and experience in the area of activity expressed in the aims and objectives;
- The length of time the organisation has been active in the district and/or its connection with the community;
- The services offered to the community;

- Whether there are other organisations nearby offering the same or similar services and the demand for such services;
- The costs and expenses Council would incur for maintenance and other outgoings if it did not lease the land or building;
- Whether the organisation is able to generate an income from the premises and if so whether that income is used for the leased premises only or the services to the local community;
- Financial viability and the potential to be self-funded through membership and social activities;
- The ability to obtain insurance for public liability, building and contents;
- The ability to provide at least one year's accounts and any other financial information considered appropriate;
- Good governance practices including annual general meeting and appropriate policies and procedures;
- The ability to enter into regular communication with the broader community where appropriate; and
- A program of social and/or community activities and events for members, the broader community and visitors to the district.

7. DURATION OF LEASE

7.1 Not for Profit, Sporting and Community Organisations

The usual or standard length of lease term for leases to not for profit, sporting and community organisations would generally be for a period of five (5) years with an option for the lessee to extend the term by a further five (5) years subject to being in compliance with lease obligations. By offering a five (5) year term with a five (5) year option the intention is to find the balance between the need for the community group lessee to have security of tenure and thus be able to effectively run its services and facilities for the benefit of the community and the obligation on the City to ensure that community resources are utilised in an appropriate and effective manner. A review of tenure arrangements every ten (10) years enables the City to ensure that community land continues to be effectively and appropriately used and sufficient community benefit is being achieved and provides an opportunity to review lease terms to ensure they are current.

There may be circumstances where it would be appropriate to offer a lease term to a not for profit, sporting or community organisation which is longer than five (5) years with a five (5) year option. In those circumstances lease terms would usually not exceed twenty-one (21) years, which is usually the maximum period for which a reserve vested for community purposes can be leased in accordance with the usual terms of a reserve management order. The factors which would support the granting of a community group lease for a longer overall term than ten (10) years in total include:

- The record of the relevant community group and in particular whether it has an established history of providing quality services and/or facilities to the community from the leased land;
- Whether the community group has paid for or substantially contributed to the construction of the buildings and/or facilities on the leased land and/or whether they have made or it is proposed that they will make a significant capital investment in those buildings and/or facilities;
- The extent of the membership of the community group and/or the number of persons utilising the services and/or facilities on the leased land; and
- The quality of the governance of the community organisation and its compliance history and/or demonstrated capacity to comply with lease obligations.

The City may elect to grant a longer term in the form of up to a ten (10) year lease with up to a ten (10) year option. An option in these circumstances may be subject to additional criteria that could enable the City to review such things as the leased area and/or rent and other terms to ensure that they are appropriate to meet the needs and best interests of the community at that time, while not altering the fundamental nature of the lease.

There are circumstances in which community groups may be given leased terms which are less than ten (10) years. This will be appropriate in the circumstances where a shorter or different lease term is consistent with the business plan or overall management requirements of a larger facility such as in the case of the Busselton Community Resource Centre and the ArtGeo Old Court House Cultural Complex.

7.2 **Renewal of Lease to Not for Profit, Sporting and Community Organisations**

The following factors are relevant when the City is considering whether or not to grant a renewal of an expiring lease to a not for profit, sporting or community organisation:

- The extent of compliance by the lessee throughout the term, including whether the lessee has properly maintained the premises as required and/or completed any required works;
- Whether the lessee has demonstrated good governance practices throughout the term of their lease;
- Whether demand by other groups for access to land or premises has increased or decreased and whether it is appropriate for one organisation to continue to have exclusive use; and
- The level of community benefit the lessee provides.

The principles and factors referred to in paragraph 7.1 are also relevant in considering the length of term granted where a community group lease is renewed.

7.3 **State Government Agencies and Providers of Essential Services**

Leases to State government agencies or organisations that provide essential services will generally be granted a longer term that is reflective of the nature of the services and facilities that these organisations provide. The Lessee in such circumstances will generally take full responsibility under the lease for the construction and ongoing maintenance of the facility and associated outgoings and other costs.

Organisations within this category currently include St John's Ambulance, the Volunteer Marine Rescue Service, the Department of Child Protection and Family Protection and the Department of Fire and Emergency Services (DFES). The nature of the service provided and the level of capital investment will be taken into consideration when determining the duration of a lease, noting that generally leases of reserve land generally cannot exceed twenty-one (21) years in length.

7.4 **Commercial Leases**

The term of Commercial leases will be negotiated on a case by case basis.

8. RENT AND OUTGOINGS

8.1 **Not for Profit, Sporting and Community Organisation**

Generally the City will charge a nominal rent, established each year as part of the fees and charges schedule, in relation to leases to not for profit, sporting and community organisation. Leases of this type will generally require the lessee to meet the full cost of the building and facilities leased including construction, maintenance, utilities and insurance.

Where a building or facility is provided by the City and the City retains responsibility for maintenance and other outgoings, rents should be sufficient to meet or substantially contribute to the cost of such maintenance and outgoings including insurance. The rent should also be sufficient to meet or contribute to the funding required for ongoing management in accordance with the relevant building asset management plan.

8.2 **Commercial Leases**

Rent and other payments associated with commercial leases will be negotiated on a case by case basis.

9. FORM OF COMMUNITY GROUP LEASE

The City maintains a standard form Community Group lease that deals with a range of usual leasing matters such as payment of rent and outgoings, rent reviews, insurance requirements and payment of building insurance, permitted use, maintenance and repair, rights of access of other groups and other statutory and miscellaneous obligations. The City's standard community group lease will be used for all leases to not-for-profit, sporting and other community organisations.

Last updated 27/07/2016

Policy Background

Policy Reference No. – 248
Owner Unit – Property Services
Originator – Property Management Coordinator
Policy approved by – Council
Date Approved – 27 July 2016
Review Frequency – As Required
Related Documents –

History

Council Resolution	Date	Information
C1607/167	27 July, 2016	Date of Implementation Version 1

COUNCIL POLICY

City of Busselton
Geographe Bay

Council Policy Name: Leasing of City Premises

Responsible Directorate: Finance and Corporate Services Version: DRAFT

1. PURPOSE

1.1. To ensure City Premises are preserved and managed responsibly in a manner that provides a range of quality services and benefits to the community.

2. SCOPE

2.1. This Policy applies to any grant of a right of exclusive use of City Premises within the City of Busselton. A Lease may include a Licence which is ancillary to the main purpose of the Lease.

2.2. Agreements for occasional, short-term hire or non-exclusive use of Council property are outside of the scope of this Policy.

3. DEFINITIONS

Term	Meaning
City Premises	Land and/or buildings owned or managed by the City
Lease	an agreement in which the Landlord (or Lessor) agrees to give the Tenant (or Lessee) the exclusive right to occupy land for a specific term
Licence	a contractual right to use land or buildings for a specified purpose without the right of exclusive possession
Policy	this City of Busselton Council policy titled "Leasing of City Premises"

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Areas 6 (Leadership) and 1 (Community) of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:
   a. 6.4: Assets are well maintained and responsibly managed (including maintaining assets at an appropriate standard).
   b. 1.3: A community with access to a range of cultural and art, social and recreational facilities and experiences.

5. POLICY STATEMENT

5.1. A decision to Lease City Premises should be based on the achievement or promotion of positive social, economic and environmental outcomes and the most advantageous use.

5.2. In considering whether to enter into a Lease for City Premises, the following factors will be considered where relevant:
   a. the ability of the prospective tenant to fund, resource and manage the Lease over the proposed term;

b. potential opportunities for future utilisation of the asset;
c. the extent and current use of the site and the impact on adjoining premises;
d. the need for wider stakeholder consultation;
e. impacts on social, economic and environmental outcomes;
f. the potential impact of any related capital works program;
g. any statutory restrictions or obligations relating to heritage or conservation of the site.

5.3. Relevant additional factors when considering a Lease or Licence to a not for profit organisation or entity include:
a. the benefit to the community;
b. the promotion of public health and wellbeing;
c. protection of public land values;
d. impacts on social, economic and environmental outcomes;
e. the history, purposes and governance of the organisation.

5.4. Relevant additional factors when considering a Lease or Licence to a commercial entity include:
a. the potential to attract investment and enhance amenities in the district;
b. the creation of employment;
c. the promotion of tourism;
d. economic return;
e. impacts on social, environmental and economic outcomes.

5.5. Applications for a Lease will be considered and determined in accordance with the Leasing of City Premises Operational Practice.

Term

5.6. To achieve a balance between the need for security of tenure and utilisation of community resources in an appropriate and effective manner:
a. the recommended term of a Lease or Licence to not for profit organisations is a period of 5 years with an option to extend the term by a further 5 years.
b. subject to meeting certain additional criteria, and where there are exceptional circumstances, Leases and Licences for a duration greater than 5 plus 5 years may be considered in conjunction with additional criteria or conditions such as a review of the leased area, rent or other terms.
c. where consistency with the City's business plan, future strategies or overall management requirements would be supported or enhanced, Leases or Licences of a shorter duration may be appropriate
d. the term of commercial Leases will be negotiated on a case by case basis.

Rent

5.7. Not for profit Lessees will generally be charged a nominal rent as a contribution towards the administration costs to the City of managing the Lease.

5.8. The City reserves the right to negotiate a higher rent where the permitted use of the City Premises enables the lessee to generate periodic or regular income from their activities or the City are responsible for maintenance of all or part of the Premises.

5.9. Rent and other payments associated with commercial Leases will be negotiated on a case by case basis.

Form of Lease

5.10. The City's standard community group Lease will be used for all Leases to not for profit lessees unless circumstances require otherwise. The need for any specific terms and conditions relative to the unique nature or requirements of the City Premises will also be considered where appropriate.

State Government Agencies and Providers of Essential Services

5.11. Leases to State government agencies or organisations providing essential services will generally be granted a longer term reflective of the nature of the service or facility provided. The Lease in such

circumstances will require the lessee to take full responsibility for construction and ongoing maintenance of the facility and associated outgoings.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Land Administration Act 1997*
6.3. Leasing of City Premises Operational Practice.

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**	27 July 2016	**Resolution #**	C1607/167

COUNCIL POLICY

City of Busselton Geographe Bay

Council Policy Name: Leasing of City Premises

Responsible Directorate: Finance and Corporate Services Version: DRAFT

1. PURPOSE

1.1. To ensure City Premises are preserved and managed responsibly in a manner that provides a range of quality services and benefits to the community.

2. SCOPE

2.1. This Policy applies to any grant of a right of exclusive use of City Premises within the City of Busselton. A Lease may include a Licence which is ancillary to the main purpose of the Lease.

2.2. Agreements for occasional, short-term hire or non-exclusive use of Council property are outside of the scope of this Policy.

3. DEFINITIONS

Term	Meaning
City Premises	Land and/or buildings owned or managed by the City
Lease	an agreement in which the Landlord (or Lessor) agrees to give the Tenant (or Lessee) the exclusive right to occupy land for a specific term
Licence	a contractual right to use land or buildings for a specified purpose without the right of exclusive possession
Policy	this City of Busselton Council policy titled "Leasing of City Premises"

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Areas 6 (Leadership) and 1 (Community) of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:
   a. 6.4: Assets are well maintained and responsibly managed (including maintaining assets at an appropriate standard).
   b. 1.3: A community with access to a range of cultural and art, social and recreational facilities and experiences.

5. POLICY STATEMENT

5.1. A decision to ~~L~~lease City Premises should be based on the achievement or promotion of positive social, economic and environmental outcomes and the most advantageous use.

5.2. In considering whether to enter into a Lease for City Premises, the following factors will be considered where relevant:
   a. the ability of the prospective tenant to fund, resource and manage the Lease over the proposed term;
   b. potential opportunities for future utilisation of the asset;

c. the extent and current use of the site and the impact on adjoining premises;
d. the need for wider stakeholder consultation;
e. impacts on social, economic and environmental outcomes;
f. the potential impact of any related capital works program;
g. any statutory restrictions or obligations relating to heritage or conservation of the site.

5.3. Relevant additional factors when considering a Lease or Licence to a not for profit organisation or entity include:
a. the benefit to the community;
b. the promotion of public health and wellbeing;
c. protection of public land values;
d. impacts on social, economic and environmental outcomes;
e. the history, purposes and governance of the organisation.

5.4. Relevant additional factors when considering a Lease or Licence to a commercial entity include:
a. the potential to attract investment and enhance amenities in the district;
b. the creation of employment;
c. the promotion of tourism;
d. economic return;
e. impacts on social, environmental and economic outcomes.

~~5.5. Applications for a Lease will be considered and determined in accordance with the Leasing of City Premises Operational Practice.~~

Term

~~5.6.~~5.5. To achieve a balance between the need for security of tenure and utilisation of community resources in an appropriate and effective manner:
a. the recommended term of a Lease or Licence to not for profit organisations is a period of 5 years with an option to extend the term by a further 5 years.
b. subject to meeting certain additional criteria, and where there are exceptional circumstances, Leases and Licences for a duration greater than 5 plus 5 years may be considered in conjunction with additional criteria or conditions such as a review of the leased area, rent or other terms.
c. where consistency with the City's business plan, future strategies or overall management requirements would be supported or enhanced, Leases or Licences of a shorter duration may be appropriate
d. the term of commercial Leases will be negotiated on a case by case basis.

Rent

~~5.7.~~5.6. Not for profit Lessees will generally be charged a nominal rent as a contribution towards the administration costs to the City of managing the Lease.

~~5.8.~~5.7. The City reserves the right to negotiate a higher rent where the permitted use of the City Premises enables the lessee to generate periodic or regular income from their activities or the City are responsible for maintenance of all or part of the Premises.

~~5.9.~~5.8. Rent and other payments associated with commercial Leases will be negotiated on a case by case basis.

Form of Lease

~~5.10.~~5.9. The City's standard community group Lease will be used for all Leases to not for profit lessees unless circumstances require otherwise. The need for any specific terms and conditions relative to the unique nature or requirements of the City Premises will also be considered where appropriate.

State Government Agencies and Providers of Essential Services

~~5.11.~~5.10. Leases to State government agencies or organisations providing essential services will generally be granted a longer term reflective of the nature of the service or facility provided. The Lease in such

circumstances will require the lessee to take full responsibility for construction and ongoing maintenance of the facility and associated outgoings.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Land Administration Act 1997*
6.3. Leasing of City Premises Operational Practice.

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**	27 July 2016	**Resolution #**	C1607/167

6.5 REVIEW OF COUNCIL POLICY: GRANTING OF ACCESS TO PUBLIC VENUES

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: Council Property - Granting of Access to Public Venues (Current) Attachment B Council Policy: Community Hire of City Property (Proposed)) Attachment C Council Policy: Community Hire of City Property (Proposed) with Committee Amendments

OFFICER RECOMMENDATION

That the Council adopts the proposed Council policy titled 'Community Hire of City Property' as per Attachment B, and rescinds the current policy 'Council Property – Granting of Access to Public Venues' (Attachment A).

COMMITTEE RECOMMENDATION

PL2004/306 Moved Councillor K Hick, seconded Councillor G Henley

That the Council adopts the proposed Council policy titled 'Community Hire of City Property' inclusive of Committee amendments as per Attachment C, and rescinds the current policy 'Council Property – Granting of Access to Public Venues' (Attachment A).

CARRIED 5/0

Reasons: To provide clarity, to streamline the scope and clearly delineate the City's right to decline and condition bookings, as well as correction of a typographical error.

EXECUTIVE SUMMARY

This report presents a proposed Council policy, 'Community Hire of City Property' (Attachment B) (the Policy), which addresses the prioritisation of community use and access to City properties, with officers recommending the current Council Policy 'Council Property – Granting of Access to Public Venues' (Attachment A) be rescinded.

The Policy has been developed to provide a framework for equitable and consistent community access to City properties and facilities for one-off and seasonal hire.

BACKGROUND

The objective of Council policy: Council Property – Granting of Access to Public Venues was to manage the use of hall facilities for retail or commercial purposes and where there may be a perception of an unfair advantage by way of direct competition with other activities carried out in recognised commercial floor space throughout the district.

The policy outlined the categories which were to be used to prioritise applications from community groups to gain access to public venues. The policy was previously used to support Council policy 027 Community Facilities Bookings, which was rescinded in November 2017 and replaced with an amended version of Council policy, 249 Non-Exclusive use of City Land and Facilities (C1712/322) (Council Policy 249).

A report was presented to the Policy and Legislation Committee in 9 April 2019, recommending the rescission of Council policy: Council Property – Granting of Access to Public Venues. The Committee deferred consideration of the policy until a future meeting so that it can be further reviewed in conjunction with a review of Council Policy 249.

Council Policy 249 has now been reviewed and is the subject of separate report in this agenda.

OFFICER COMMENT

The City facilitates the one off and seasonal hire of City owned and managed properties and facilities, including function areas, office space, community facilities, public open space and sporting grounds, for purposes that demonstrate a direct benefit to the district.

Currently, the broad framework which guides officers and the community is provided for in point 6 of the 'Guiding Principles for Implementation' in Council Policy 249:

> *…6. Notwithstanding clause 1 above, where there is a need for short term or seasonal hire of City land and/or facilities for a specific use, these will be managed through appropriate guidelines specific to each portion of land or facility, in keeping with the broader policy direction.*

Council policy Council Property – Granting of Access to Public Venues is in addition to this and is not well utilised in the assessment of hire applications for City property. Having said that, there is a need for a revised policy level document that provides clear objectives and principles to guide the assessment of community applications for hire.

The Policy seeks to set a more complete framework for the use of City Property which enables community focused programs, activities and services aligned to the Council's Strategic Community Plan, and guides the fair and equitable access to City Property for community groups and residents. While use by locally based organisations, groups, and individuals for community purposes is to be prioritised, some commercial use is also permissible under the revised Council Policy 249 – proposed as the Commercial Use of City Land and Facilities policy.

The objectives of the Policy are achieved through applying a set of assessment criteria to community applications, including considering the capacity of the specific City property, and how well the application aligns with the Council's Community Strategic Plan and the principles outlined in the Policy.

It is recommended that Council Property – Granting of Access to Public Venues be rescinded and the Policy be adopted.

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 2017 Governance Service. 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 and / or could choose not to rescind the Mobile Vendors Policy.

CONCLUSION

Having captured the criteria and principles in which priority is given to community access and use of Council Property in the Policy, it is recommended that Council Property – Granting of Access to Public Venues be rescinded and the Policy be adopted.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be placed on the City's website within one week of Council adoption, with Council Property – Granting of Access to Public Venues being immediately rescinded.

065/2	Council Property - Granting of Access to Public Venues	Current

The following categories to be utilised as Council Policy to prioritise applications for Community Group Access to Public Venues:

(a) Local Community Groups.

Groups that are locally constituted and service the local community. Generally these groups have little or no access to funds other than their own fund raising efforts. This group would typically include (not limited to) sporting clubs, cultural and arts groups, service clubs, and so on.

(b) Locally Based Welfare/State or Federal Funded Groups.

These are organisations that are locally based groups which may be totally or partially funded by either State or Federal Government. Council may choose to support or assist these groups even though they are not strictly its responsibility.

(c) State/Federal Government Programmes and Services.

There are some fields Council may, as a matter of policy, choose to assist on a short term or limited basis. Areas such as education, employment and health care are either Federal or State issues, however, Council can provide support if required.

(d) Commercial Users.

Council can support commercial users once the other priorities have been satisfied and they can be incorporated into the program in a complementary manner.

However, it is Council's policy to decline the use of any hall facility under Council's direct care and control in cases where there is a retail or commercial element of a nature which represents unfair advantage by way of direct retail competition with other activities carried out in recognised commercial floor space throughout the Shire.

COUNCIL POLICY

City of Busselton Geographe Bay

Council Policy Name: Community Hire of City Property

Responsible Directorate: Finance and Corporate Services Version: DRAFT

1. PURPOSE

1.1. The purpose of this Policy is to provide a framework for equitable and consistent community access to City Property for one-off and seasonal hire.

2. SCOPE

2.1. This Policy applies to the one-off and seasonal hire of City Property for community purposes.

2.2. This Policy does not relate to events, approved outdoor eating areas, markets, buskers/street entertainers, leasehold use of City Land, or the commercial use of City Land and Community Facilities already covered by Council policy: Commercial use of City Land and Facilities.

3. DEFINITIONS

Term	Meaning
Community Facilities	Halls, function venues and community centres owned and /or managed by the City
City Property	Community Facilities, Public Open Space, and Sporting Grounds
Policy	this City of Busselton Council policy titled "Community Hire of City Property"
Public Open Space	Parks, beaches and reserves owned and/or managed by the City
Sporting Grounds	Ovals, reserves and hard courts owned and/or managed by the City

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 1 of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:
   a. 1.3: A community with access to a range of cultural and art, social and recreational facilities and experiences.
   b. 1.4: Community services and programs that support people of all ages and backgrounds.

5. POLICY STATEMENT

5.1. To facilitate community access and usage, the City makes available a range of Community Facilities, Public Open Spaces and Sporting Grounds for one-off and seasonal hire.

5.2. The objectives of this Policy are:
   a. provide a framework for the use of City Property which enables community programs, activities and services that provide social, recreational, health and wellbeing outcomes in line with the Council's Strategic Community Plan;
   b. ensure fair and equitable access and use of City Property to community groups and residents; and

c. support priority use of City Property to locally based organisations, groups, and individuals for community purposes that deliver a direct benefit to the district.

Sporting Grounds

5.3. The City provides Sporting Grounds for seasonal hire in support of organised sport and recreational clubs. These include :

a. Barnard Park
b. Bovell Park
c. Churchill Park
d. Lou Weston
e. Sir Stewart Bovell Sporting Complex
f. Vasse Playing Fields
g. Dunsborough Playing Fields

Public Open Spaces

5.4. The City facilitates the one-off hire of Public Open Spaces for general community use, including the following parks and beaches:

a. Parks
    i. Rotary Park
    ii. Signal Park
    iii. Mitchell Park
    iv. Centennial Park
    v. Dunsborough Lions Park
b. Beaches
    i. Bunker Bay Beach
    ii. Busselton Beach and Foreshore
    iii. Dunsborough Beach and Foreshore
    iv. Eagle Bay Beach
    v. Meelup Beach
    vi. Castle Rock Beach
    vii. Point Piquet
    viii. Smiths Beach
    ix. Yallingup Beach

Community Facilities

5.5. The City facilitates the one-off hire of Community Facilities for general community and some commercial use. These include:

a. Undalup Room (City Civic and Administration Building)
b. Busselton Community Resource Centre
c. Youth & Community Activities Building (YCAB)
d. High Street Hall
e. Yallingup Hall
f. Churchill Park Hall

5.6. Applications for use will be assessed using criteria such as:

a. capacity of the venue, facility or public open space;
b. compatibility/suitability of the facility or property for the intended usage;
c. compatibility of use with other users and the surrounding community;
d. demand for the facility or property and usage history;
e. alignment of use with objectives of the Council's Community Strategic Plan
f. the principals outlined in this Policy.

5.7. The City may limit the use of City Property by groups and organisations to ensure fair and equitable access.

5.8. Council reserves the right to decline requests for bookings that it determines unsuitable for City Property and impose requirements on bookings.

5.9. Application forms, information sheets, rules and conditions of use and guidelines will support the implementation and interpretation of this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Liquor Licensing Act 1988*
6.3. *Shire of Busselton Local Government Property Local Law 2010*
6.4. Council Policy: Commercial Use of City Land and Facilities (DRAFT)
6.5. City of Busselton Contract of Hire Form
6.6. Application to Sell and Consume Alcohol
6.7. Rules and Regulations – City Venues and Public Open Spaces
6.8. Function Facilities for Hire Guidelines

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**		**Resolution #**	

COUNCIL POLICY

City of Busselton
Geographe Bay

Council Policy Name:	Community Hire of City Property	
Responsible Directorate:	Finance and Corporate Services	Version: DRAFT

1. PURPOSE

1.1. The purpose of this Policy is to provide a framework for equitable and consistent community access to City Property for one-off and seasonal hire.

2. SCOPE

2.1. This Policy applies to the one-off and seasonal hire of City Property for community purposes.

2.2. This Policy does not relate to events, approved outdoor eating areas, markets, buskers/street entertainers, leasehold use of land owned and managed by the City ~~Land~~, or ~~the~~ commercial use ~~of City Land and Community Facilities~~ already covered by Council policy: Commercial use of City Land and Facilities.

3. DEFINITIONS

Term	Meaning
Community Facilities	Halls, function venues and community centres owned and /or managed by the City
City Property	Community Facilities, Public Open Space, and Sporting Grounds
Policy	this City of Busselton Council policy titled "Community Hire of City Property"
Public Open Space	Parks, beaches and reserves owned and/or managed by the City
Sporting Grounds	Ovals, reserves and hard courts owned and/or managed by the City

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 1 of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:
   a. 1.3: A community with access to a range of cultural and art, social and recreational facilities and experiences.
   b. 1.4: Community services and programs that support people of all ages and backgrounds.

5. POLICY STATEMENT

5.1. To facilitate community access and usage, the City makes available a range of Community Facilities, Public Open Spaces and Sporting Grounds for one-off and seasonal hire.

5.2. The objectives of this Policy are:
   a. provide a framework for the use of City Property which enables community programs, activities and services that provide social, recreational, health and wellbeing outcomes in line with the Council's Strategic Community Plan;
   b. ensure fair and equitable access and use of City Property to community groups and residents; and

c. support priority use of City Property to locally based organisations, groups, and individuals for community purposes that deliver a direct benefit to the district.

Sporting Grounds

5.3. The City provides Sporting Grounds for seasonal hire in support of organised sport and recreational clubs. These include :
   a. Barnard Park
   b. Bovell Park
   c. Churchill Park
   d. Lou Weston
   e. Sir Stewart Bovell Sporting Complex
   f. Vasse Playing Fields
   g. Dunsborough Playing Fields

Public Open Spaces

5.4. The City facilitates the one-off hire of Public Open Spaces for general community use, including the following parks and beaches:
   a. Parks
      i. Rotary Park
      ii. Signal Park
      iii. Mitchell Park
      iv. Centennial Park
      v. Dunsborough Lions Park
   b. Beaches
      i. Bunker Bay Beach
      ii. Busselton Beach and Foreshore
      iii. Dunsborough Beach and Foreshore
      iv. Eagle Bay Beach
      v. Meelup Beach
      vi. Castle Rock Beach
      vii. Point Piquet
      viii. Smiths Beach
      ix. Yallingup Beach

Community Facilities

5.5. The City facilitates the one-off hire of Community Facilities for general community and some commercial use. These include:
   a. Undalup Room (City Civic and Administration Building)
   b. Busselton Community Resource Centre
   c. Youth & Community Activities Building (YCAB)
   d. High Street Hall
   e. Yallingup Hall
   f. Churchill Park Hall

5.6. Applications for use will be assessed using criteria such as:
   a. capacity of the venue, facility or public open space;
   b. compatibility/suitability of the facility or property for the intended usage;
   c. compatibility of use with other users and the surrounding community;
   d. demand for the facility or property and usage history;
   e. alignment of use with objectives of the Council's Community Strategic Plan
   f. the principlesals outlined in this Policy.

5.7. The City may limit the use of City Property by groups and organisations to ensure fair and equitable access.

5.8. The City may ~~Council reserves the right to~~ decline requests for bookings that it determines unsuitable.

~~5.8.~~5.9. The City may ~~for City Property and~~ impose conditions ~~requirements~~ on bookings.

~~5.9.~~5.10. Application forms, information sheets, rules and conditions of use and guidelines will support the implementation and interpretation of this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*
6.2. *Liquor Licensing Act 1988*
6.3. *Shire of Busselton Local Government Property Local Law 2010*
6.4. Council Policy: Commercial Use of City Land and Facilities (DRAFT)
6.5. City of Busselton Contract of Hire Form
6.6. Application to Sell and Consume Alcohol
6.7. Rules and Regulations – City Venues and Public Open Spaces
6.8. Function Facilities for Hire Guidelines

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**	N/A	**Resolution #**	N/A

12.40pm: At this time, Ms Pierson and Ms Woodford-Jones left the meeting.

6.3 REVIEW OF COUNCIL POLICY 043: APPLICATIONS FOR EXPLORATION OR MINING / EXTRACTION LICENCES FOR COAL

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Governance Services
REPORTING OFFICER	Governance Officer - Melissa Egan
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Executive: substantial direction setting, including adopting strategies, plans and policies (excluding local planning policies), tenders, setting and amending budgets, funding, donations and sponsorships, reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Council Policy: Applications for Exploration or Mining / Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing (proposed) Attachment B Council Policy: Applications for Exploration or Mining / Extraction Licences for Coal (current) Attachment C Council Policy: Applications for Exploration or Mining / Extraction Licences for Coal with Committee Amendments

OFFICER RECOMMENDATION

That the Council endorse the revised Council policy 'Applications for Exploration or Mining / Extraction Licences for Coal or Gas Extraction With Hydraulic Fracturing" (Attachment A), noting no substantive changes from the current Council policy.

COMMITTEE RECOMMENDATION

PL2004/307 Moved Councillor G Henley, seconded Councillor K Hick

That the Council endorse the revised Council policy 'Applications for Exploration or Mining / Extraction Licences for Coal or Gas Extraction With Hydraulic Fracturing" inclusive of Committee amendments to include an advocacy response, and as per Attachment C (as circulated to the Committee).

CARRIED 5/0

Reasons: To amend the proposed policy to add an advocacy response in cl. 5.3.

EXECUTIVE SUMMARY

This report presents Council policy 043: Applications for Exploration or Mining / Extraction Licences for Coal (the Policy), which has been transferred into the City's updated policy template (Attachment A) in accordance with the City's Policy Framework. The Policy is considered of continuing relevance and is recommended for endorsement by Council. The current Policy is attached at Attachment B for reference.

BACKGROUND

The Policy relates to applications made under the *Mining Act 1978* for the purposes of coal and related materials extraction, for all land within the district of the City of Busselton.

As the Policy stands alone from the application process relating to mineral sands and related materials, it is still considered relevant and applicable to officers in the assessment of applications for the exploration of coal. Before this type of licence is granted, the applicant is required to undergo a consultation process and notify the relevant local government of the application. The local government may object to the application, however the grounds of any objection are limited, particularly if the subject area lies outside a designated townsite (as defined by the *Land Administration Act 1997*). The Policy provides some guidance as to the grounds on which the City of Busselton may object to an application.

The Policy has been reviewed and, although it is rare for such applications to be made in the City of Busselton district, it is considered of continuing importance. The changes proposed are mainly minor amendments, and mostly involve the Policy being transferred into the updated Council policy template in accordance with the City's Policy Framework. The other key changes relate to the replacement of references to 'coal seam gas' with references to 'gas extraction using hydraulic fracturing'. The rationale for the proposed changes is set out below in the Officer Comment.

It should be noted that there are some gas reserves in the Whicher Range, and there has been exploratory drilling undertaken at times over the last few decades. At this stage, there has not been, and nor is there any active proposal for, commercial gas extraction. The current tenement owners have also indicated that, were they to proceed to commercial extraction, they would not use 'hydraulic fracturing' to do so.

OFFICER COMMENT

The objectives of the Policy are still current and, having been reviewed by officers, it is considered that no particularly substantive amendments are required to the content of the Policy. Officers have made some minor amendments to the Policy to reflect current community attitudes towards the extraction of gas by means of hydraulic fracturing, and the evolution of terminology since the Policy was first adopted. There is also a definition for the applicable petroleum legislation under which such extraction would take place (note that there are several separate pieces of legislation, and the definition is broader than simply a single act and/or regulation). This report seeks Council endorsement of these minor amendments and the transfer of the Policy into the updated template.

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.

The Policy relates to applications made under section 8A of the Mining Act, as well as to applications made under applicable State petroleum legislation, which relates to onshore gas extraction. Offshore gas extraction is generally regulated under Federal law, and at this stage there have not been any proposals for offshore gas extraction within the region, although exploration permits have been sought in the past.

Relevant Plans and Policies

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the 2017 GSR. 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:

1. Request the Policy remains in its current template; or
2. Require further amendments to the Policy.

CONCLUSION

This report presents the Council policy 043: Applications for Exploration or Mining / Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing (Attachment A), having been transferred into the City's updated policy template, for endorsement by Council.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be uploaded to the website immediately after Council's endorsement.

COUNCIL POLICY

City of Busselton
Geographe Bay

Council Policy Name:	Applications for Exploration or Mining/Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing
Responsible Directorate:	Planning and Development Services
Version:	Current

1. PURPOSE

1.1. The purpose of this Policy is to guide the City's response to notification of applications for exploration or mining licences for coal, or for extraction of gas using hydraulic fracturing.

2. SCOPE

2.1. This Policy is applicable to all land within the district of the City of Busselton and relates to applications under the Mining Act, whether wholly or partly over land within the district, for the purposes of coal and related materials extraction, or for extraction of gas using hydraulic fracturing under the Petroleum Legislation.

2.2. The Policy is not applicable to notification of applications that relate to mineral sands and related materials.

3. DEFINITIONS

Term	Meaning
Mining Act	*Mining Act 1978*
Petroleum Legislation	Means various State legislation relating to the extraction of petroleum and which applies to onshore gas extraction (offshore gas extraction is generally regulated at a Federal level)
Policy	this City of Busselton Council policy titled "Applications for Exploration or Mining/Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing"
Warden	As defined in section 8 of the Mining Act

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 3 (Environment), 4 (Economy) and 6 (Leadership) of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:

a. 3.1: Development is managed sustainably and our environment valued;
b. 4.1: An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice; and
c. 6.1: Governance systems, processes and practices are responsibility, ethical and transparent.

5. POLICY STATEMENT

5.1. The City of Busselton is committed to ensuring that the extraction of natural resources within the district is consistent with the economic, environmental and social sustainability of the area.

5.2. The mining of coal within the district is considered to be inconsistent with the objective in clause 5.1 due to the following:

a. the potential for coal mining to jeopardise the quality and quantity of groundwater and surface water available in the district as is required for environmental and other uses.
b. the potential for coal mining to conflict with existing land uses in the district such as tourism, recreation, agriculture and viticulture.
c. the significant community concern about proposed coal mining in the district and the potential for a coal mine to impact on the character, attraction and quality of life in the district.

5.3. Lodge a letter of objection to any application for an exploration licence where it can be reasonably ascertained that coal is one of or the principal target mineral, and for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in clause 5.2 above.

5.4. Lodge a formal objection (Form 16) with the Warden to any application for a mining lease for coal for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in clause 5.2 above.

Gas proposals that may involve hydraulic fracturing

5.5. The Council has significant concerns regarding the potential implications, particularly on groundwater resources, of any gas extraction activity in the district that may require hydraulic fracturing and therefore requires that any referral or advertising of an application or notification pertaining to this activity is to be reported to the Council for consideration of lodgement of a formal objection.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Mining Act 1978*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**	9 March 2016	**Resolution #**	C1603/048

Last updated 09/03/2016

043	Applications for Exploration or Mining/extraction licenses for coal within the City of Busselton	V4 Current

1. PURPOSE

This policy will guide the City's response to notification of applications for exploration or mining licences for coal under the *Mining Act, 1978*.

2. SCOPE

This policy covers all land within the district of the City of Busselton and relates to applications under the Mining Act whether wholly or partly over land within the district, for the purpose of coal and related materials extraction. The policy is not applicable to notification of applications that relate to mineral sands and related materials.

3. POLICY CONTENT

3.1 The City of Busselton is committed to ensuring that the extraction of natural resources within the district is consistent with the economic, environmental and social sustainability of the area. The mining of coal within the district is considered to be potentially inconsistent with this objective due to the following:

* The potential for coal mining to jeopardise the quality and quantity of groundwater and surface water available in the area as is required for environmental and other uses.
* The potential for coal mining to conflict with existing land uses in the region such as; tourism, recreation, agriculture and viticulture.
* The significant community concern about proposed coal mining in the region and the potential for a coal mine to impact on the character, attraction and quality of life in the region.

3.2 In achieving the above objective the City of Busselton will as a minimum:

a) lodge a letter of objection to any application for an exploration licence where it can be reasonably ascertained that coal is one of or the principal target mineral, and for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in 3.1 above.

b) lodge a formal objection (form 16) with The Warden to any application for a mining lease for coal for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in 3.1 above.

4. COAL SEAM GAS PROPOSALS

The Council has significant concerns regarding the potential implications, particularly on ground water resources, of any coal seam gas extraction activity in the district and therefore requires that any referral or advertising of an application or notification pertaining to this activity is to be reported to the Council for consideration of lodgement of a formal objection.

Policy Background

Policy Reference No. - 043
Owner Unit – Planning and Development Services
Originator – Director, Planning and Development Services
Policy approved by – Council
Date Approved – 22 February, 2012

Last updated 09/03/2016

History

Council Resolution	Date	Information
C1603/048	9 March, 2016	Version 4 Reviewed by Council but no changes made
C1202/030	22 February, 2012	Version 3 Differentiates responses to exploration applications and mining licence applications
		Version 2 Developed and considered by the Council but not adopted – direction given to review further
C1108/269	24 August, 2011	Version 1 Implementation

COUNCIL POLICY

City of Busselton Geographe Bay

Council Policy Name:	Applications for Exploration or Mining/Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing
Responsible Directorate:	Planning and Development Services
Version:	Current

1. PURPOSE

1.1. The purpose of this Policy is to guide the City's response to notification of applications for exploration or mining licences for coal, or for extraction of gas using hydraulic fracturing.

2. SCOPE

2.1. This Policy is applicable to all land within the district of the City of Busselton and relates to applications under the Mining Act, whether wholly or partly over land within the district, for the purposes of coal and related materials extraction, or for extraction of gas using hydraulic fracturing under the Petroleum Legislation.

2.2. The Policy is not applicable to notification of applications that relate to mineral sands and related materials.

3. DEFINITIONS

Term	Meaning
Mining Act	*Mining Act 1978* (WA)
Petroleum Legislation	Means various State legislation relating to the extraction of petroleum and which applies to onshore gas extraction (offshore gas extraction is generally regulated at a Federal level)
Policy	This City of Busselton Council policy titled "Applications for Exploration or Mining/Extraction Licences for Coal or Gas Extraction with Hydraulic Fracturing"
Warden	As defined in section 8 of the Mining Act

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 3 (Environment), 4 (Economy) and 6 (Leadership) of the City's Strategic Community Plan 2017 and specifically the following Community Objectives:

a. 3.1: Development is managed sustainably and our environment valued;
b. 4.1: An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice; and
c. 6.1: Governance systems, processes and practices are responsibility, ethical and transparent.

5. POLICY STATEMENT

5.1. The City of Busselton is committed to ensuring that the extraction of natural resources within the district is consistent with the economic, environmental and social sustainability of the area.

5.2. The mining of coal within the district is considered to be inconsistent with the objective in clause 5.1 due to the following:

a. the potential for coal mining to jeopardise the quality and quantity of groundwater and surface water available in the district as is required for environmental and other uses.
b. the potential for coal mining to conflict with existing land uses in the district such as tourism, recreation, agriculture and viticulture.
c. the significant community concern about proposed coal mining in the district and the potential for a coal mine to impact on the character, attraction and quality of life in the district.

5.3. With respect to a proposal that may be associated with exploration for or mining of coal, and which is referred to the City for comment, the City will, as appropriate to the circumstances, do the following things:

a. lodge a letter of objection to any application for an exploration licence where it can be reasonably ascertained that coal is one of or the principal target mineral, and for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in clause 5.2 above.

b. lodge a formal objection (Form 16) with the Warden to any application for a mining lease for coal for which the City has received notification, with the reasons for that objection based on the City's concerns with coal mining identified in clause 5.2 above;~~.~~

c. in the case of either (a) or (b) above~~,~~ consider advocacy, both with the entity(s) involved in the proposal and at a political level, reflecting the concerns identified in clause 5.2 above, on behalf of the community.

~~5.3.~~

Gas proposals that may involve hydraulic fracturing

5.4. The Council has significant concerns regarding the potential implications, particularly on groundwater resources, of any gas extraction activity in the district that may require hydraulic fracturing and therefore requires that any referral or advertising of an application or notification pertaining to this activity is to be reported to the Council for consideration of lodgement of a formal objection.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Mining Act 1978* (WA)

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	**DATE**		**Resolution #**	
Previous Adoption	**DATE**	9 March 2016	**Resolution #**	C1603/048

7. GENERAL DISCUSSION ITEMS

Nil

8. NEXT MEETING DATE

The next Committee Meeting is to be advised.

9. CLOSURE

The meeting closed at 12.58pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 96 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON _____

DATE:_____ PRESIDING MEMBER: _____