

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 13 AUGUST 2019

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MINUTES

MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 13 AUGUST 2019 AT 2.00PM.

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 2.00pm

2. ATTENDANCE

Presiding Member:

Cr Grant Henley Mayor

Members:

Cr Ross Paine
Cr Robert Reekie
Cr Kelly Hick
Cr Lyndon Miles

Officers:

Mr Mike Archer, Chief Executive Officer
Mr Tony Nottle, Director, Finance and Corporate Services
Ms Sarah Pierson, Manager Governance and Corporate Services
Mr Martyn Cavanagh, Manager Legal and Property Services
Mrs Emma Heys, Governance Coordinator

Apologies:

Nil

3. PUBLIC QUESTION TIME

4. DISCLOSURE OF INTERESTS

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 11 June 2019

COMMITTEE DECISION


PL1908/253 Moved Councillor K Hick, seconded Councillor R Reekie

That the Minutes of the Policy and Legislation Committee Meeting held 11 June 2019 be confirmed as a true and correct record.

CARRIED 5/0

6. REPORTS

6.3 REVIEW OF DUST AND BUILDING WASTE CONTROL LOCAL LAW

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Local Laws
BUSINESS UNIT:	Corporate Services
REPORTING OFFICER:	Legal Officer - Briony McGinty
AUTHORISING OFFICER:	Director Finance and Corporate Services - Tony Nottle
PRIMARY NATURE OF DECISION	Legislative: to adopt legislative documents e.g. local laws, local planning schemes, local planning policies
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Dust and Building Waste Control Local Law 

COMMITTEE DECISION AND OFFICER RECOMMENDATION

PL1908/254 Moved Councillor R Paine, seconded Councillor R Reekie

That the Council:

1. **has considered the information and advice in this report; and**
2. **determines that that no repeal or amendment to the *Dust and Building Waste Control Local Law* is required; and**
3. **determines the *Dust and Building Waste Control Local Law* should continue in operation.**

CARRIED 5/0

Question on Notice: Clarification to be provide to the Committee in regards to the continuing use of Shire throughout the Local Law and whether this causes any impediments to the taking of action under the Local Law and specifically in relation to clause 1.4, and also in regards to the year of the Local Law in the title versus clause 1.1. The Committee also seeks information as to the amount of infringements issued and prosecutions undertaken in relation to the Local Law.

EXECUTIVE SUMMARY

The Local Government Act (“the Act”) provides that a local government may make local laws, and that any local laws made are reviewed every 8 years. The City’s *Dust and Building Waste Control Local Law* (“Dust Local Law”) is currently due for review. This report considers whether the Dust Local Law should be amended, repealed or continue in operation and recommends that the Dust Local Law continue in operation in its current form.

BACKGROUND

Section 3.16 of the Act requires that a local government must review its local laws every 8 years. The Dust Local Law was first gazetted on 24 February 2010 and came into operation 14 days later.

The Dust Local Law deals with dust (defined to include sand) and building waste. It imposes requirements in relation to stabilising dust and ensuring dust does not escape. Further, building waste must be contained within an approved receptacle. Offences are created for, for example, loads escaping from vehicles that are leaving dust generating developments and building sites. Certain dust generating developments (including extractive industries) require dust management plans. Notices to cease activity are also provided for.

Since its inception in 2010 no deficiencies with regard to the operation of the Dust Local Law have been identified. Working group meetings with key officers of the City have been held regarding the operation of the local law, and no recommendation to amend or repeal the local law resulted.

The review of the Dust Local Law has also been advertised publicly with no submissions being received.

OFFICER COMMENT

Whilst the management of dust issues associated with, for example, subdivision and extractive industries continues to be an issue within the district, the regulatory mechanisms with which to manage those issues are considered adequate and appropriate.

The Dust Local Law is achieving the purpose for which it was made, and should be retained without amendment.

Statutory Environment

The Dust Local Law is made under powers conferred by the Act and the *Waste Avoidance and Resource Recovery Act 2007* ("the WARR Act"). The procedure for making local laws is set out in Section 3.12 of the Act and regulation 3 of the Local Government (Functions and General) Regulations 1996.

Further, section 3.16 of the Act requires that every 8 years a local law is to be reviewed to determine whether or not the local government considers that it should be repealed or amended.

Relevant Plans and Policies

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

Financial Implications

There are no financial implications associated with the officer recommendation.

Stakeholder Consultation

The Dust Local Law was advertised publicly in both local and state-wide newspapers for a minimum of 6 weeks in accordance with the requirements under section 3.16(2) of the Act. No public submissions have been received.

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

Alternatively, the Council could chose to repeal or amend the Dust Local Law in any number of ways. Any amendment would require drafting, advertising, and statutory procedure requirements (for example, letters to Ministers, approval and liaison with the Director General of the Department of Water and Environmental Regulation, gazettal and preparation of a compilation local law).

Officers can assist with the drafting of a suitable alternative motion if required.

CONCLUSION

The statutory review process has been effectively and efficiently undertaken. No material issues have been identified. Accordingly, it is recommended that the Dust Local Law continue in operation in its current form.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

If the recommended course of action is taken, no further implementation is required.

2.18pm: At this time Mr Martyn Cavanagh, Manager Legal and Property Services left the meeting.

6.1 PROPOSED COUNCIL POLICY - PREVENTION OF MISCONDUCT, FRAUD AND CORRUPTION

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

OFFICER RECOMMENDATION

That the Council adopt the proposed Council policy 'Prevention of Misconduct, Fraud and Corruption' as included at Attachment A.

COMMITTEE DECISION

PL1908/255 Moved Councillor R Paine, seconded Councillor K Hick

That the Council adopt the proposed Council policy 'Misconduct, Fraud and Corruption' inclusive of Committee requested amendments, additional officer amendments and as detailed below:

COUNCIL POLICY		
		
Council Policy Name:	Prevention of Misconduct, Fraud and Corruption	
Responsible Directorate:	Finance and Corporate Services	Version: Proposed

1. PURPOSE

- 1.1. The purpose of this Policy is to communicate the City's commitment to a zero tolerance approach to misconduct, fraud and corruption.
- 1.2. This Policy ~~also establishes~~acknowledges the City's commitment to maintaining high standards of professional and ethical conduct by supporting strategies that prevent, detect and respond to misconduct, fraud and corruption.

2. SCOPE

- 2.1. This Policy is applicable to the City of Busselton and its Elected Members and employees.

3. DEFINITIONS

Term	Meaning
Fraud	Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property and where deception is used immediately before or immediately following the activity.
Corruption	Dishonest activity that is contrary to the in which a director, executive, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her/their a person's position/s of trust in order to achieve some personal gain or advantage for him or herself themselves or for another person or entity.
<u>Misconduct</u>	<u>Behaviour which is improper and which adversely affects the honest and impartial performance of the functions of an Elected Member or employee, and which may also constitute a form of misconduct as defined within applicable legislation, including (but not limited to) the Local Government Act 1995, the Local Government (Rules of Conduct) Regulations 2007 and the Corruption and Crime Commission Amendment (Misconduct) Act 2014.</u>
<u>Minor Misconduct</u>	<u>Minor misconduct occurs if a public officer engages in conduct that:</u> <ol style="list-style-type: none"> (a) Adversely affects the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or (b) Involves the performance of functions in a manner that is not honest or impartial; or (c) Involves a breach of the trust placed in the public officer; or (d) Involves the misuse of information or material that is in connection with their functions as a public officer or the benefit or detriment of another person; <u>and</u> <u>constitutes, or could constitute, a disciplinary offence providing reasonable grounds for termination of a person's office or employment.</u>
<u>PID Act</u>	<u>The Public Interest Disclosure Act 2003.</u>

Policy	this City of Busselton Council policy entitled " Prevention of Misconduct, Fraud and Corruption".
Serious Misconduct	<p>Series misconduct occurs when:</p> <p>(a) A public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officers officer or employment; or</p> <p>(b) A public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit or himself or herself or for another person or to cause a detriment to any person; or</p> <p>(c)(a) A public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by two or more years imprisonment.</p>

4. STRATEGIC CONTEXT

- a. This Policy links to Key Goal Area 6 – Leadership: of the City's Strategic Community Plan 2017 and specifically Community Objective 6.1: Governance systems, process and practices are responsible, ethical and transparent.

5. POLICY STATEMENT

- 5.1. The City is committed to providing and promoting ethical and accountable leadership and decision making.

~~5.2. The City's approach to misconduct prevention draws from the resources and information provided by:~~

- ~~a. Western Australian Corruption and Crime Commission;~~
~~b. Western Australian Public Sector Commission;~~
~~c. Standards Australia – AS8001-2008~~
~~d. Office of the Auditor General~~

~~5.3.5.2. The City is committed to providing all Elected Members and employees with education and training in misconduct prevention policies and strategies as they are developed, to ensure that responsibilities and obligations are understood.~~

~~5.4.5.3. This Policy, the City's Codes of Conduct, organisational values, and risk management framework, all work together to prevent, detect and respond to potential or actual misconduct, fraud and corruption.~~

~~5.5.5.4. Elected Members and employees are expected to demonstrate a commitment to preventing and detecting misconduct, fraud and corruption.~~

~~5.6.5.5. In dealing with allegations of suspected misconduct, fraudulent and/or corrupt activities the City is obliged Elected Members and employees are obliged to report and deal with such allegations, through the appropriate channels, suspected misconduct, fraudulent and/or corrupt activities, through the appropriate channels.~~

~~5.7. In dealing with allegations of suspected misconduct, fraudulent and/or corrupt activities, the City is committed to dealing with such allegations, through the appropriate channels, including notifying, reporting and referring any instances of Minor Misconduct or Serious Misconduct to the Public Sector Commission, the Corruption and Crime Commission and/or the Western Australian Police as appropriate.~~

~~5.8.5.6. The City may seek to recover any losses incurred from misconduct, fraud or corruption activities, after considering all relevant issues.~~

Public Interest Disclosure

~~5.9.5.7.~~ The City is committed to the aims and objectives of the *Public Interest Discloser Act 2003*.

~~5.10.5.8.~~ The City will maintain high standards of professional and ethical conduct by receiving disclosures of public interest information in accordance with the requirements and provisions of the *Public Interest Disclosures Act 2003*.

6. RELATED DOCUMENTATION / LEGISLATION

6.1. *Local Government Act 1995*

6.2. *Local Government (Rules of Conduct) Regulations 2007*

~~6.3. *Local Government (Administration) Regulations 1996*~~

~~6.4.6.3. *Public Interest Disclosure Act 2003*~~

6.4. City of Busselton's Guide to Public Interest Disclosure

6.5. *Corruption and Crime Commission Amendment (Misconduct) Act 2014*

~~6.5.6.6. *Standards Australia – AS8001 - 2008*~~

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	

CARRIED 5/0

Reason: The Committee requested amendments to the proposed policy with the aim of applying a higher level policy position in anticipation of the development and implementation of a comprehensive misconduct prevention strategy in the future. Additionally Officers recommended some minor amendments for readability and to related documentation.

EXECUTIVE SUMMARY

This report presents a proposed new Council policy – 'Prevention of Misconduct, Fraud and Corruption' (the Policy, Attachment A) for Council endorsement. The Policy seeks to communicate the City's commitment to a zero tolerance approach to misconduct, fraud and corruption.

The Policy also seeks to progress a recommendation from the misconduct prevention section of the Governance Systems Review (GSR) conducted by Mr John Woodhouse in August 2017.

BACKGROUND

In August 2017 the CEO commissioned a high level independent review of the City's governance systems – the Governance Systems Review (GSR). The GSR made specific recommendations in the area of Misconduct Prevention, with the development of a high level misconduct prevention strategy considered important. This is a significant body of work to be undertaken and the City hopes to progress this over the next twelve months.

The GSR made a specific recommendation that:

...(6) A review should be conducted of the existing Public Interest Disclosure Policy.

In response to this recommendation, officers presented a proposed Council policy 'Public Interest Disclosure (PID)' to the Policy and Legislation Committee in June 2019.

While acknowledging the future progression of a Misconduct Strategy, the Committee requested that the proposed PID policy be deferred and further reviewed in terms of content and approach. The Committee felt that the City, through its existing PID guidelines, already complied with provisions of the Public Interest Disclosure Act 2003 in a transparent and effective manner, and that a Council policy should complement these guidelines and existing legislation, without seeking to replicate or potentially inadvertently dilute them in any way.

OFFICER COMMENT

Upon reflection, officers feel that the proposed PID policy was too narrow in its focus and that a broader misconduct prevention policy which communicated the City's commitments and approach in respect to this topic would complement the current PID guidelines and more actively progress the recommendations of the GSR.

While no statutory requirement exists for the City to have a misconduct prevention policy, it was identified in the GSR that the City would benefit from the development and implementation of a misconduct strategy. The development of such a strategy will require a significant amount of resourcing. This will be planned for over the next twelve months.

In the interim officers have prepared a policy that communicates the City's commitment to maintaining high standards of professional and ethical conduct by supporting the development of strategies to prevent, detect and respond to misconduct, fraud and corruption. The Policy includes the City's obligations to the provisions of the Public Interest Disclosures Act 2003.

Statutory Environment

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

A number of pieces of legislation contain provisions with respect to the prevention, and reporting, of misconduct, fraud and corruption. These include, but are not limited to:

- *Local Government Act 1995*;
- *Local Government (Rules of Conduct) Regulations 2007*;
- *Local Government (Administration) Regulations 1996*;
- *Corruption, Crime and Misconduct Act 2003*; and
- *Public Interests Disclosures Act 2003*.

Relevant Plans and Policies

The City has a policy framework (the Framework) which was developed and endorsed by Council in response to the recommendations of the GSR. The Framework sets out the intent of Council policies, as opposed to operational practice documents.

Guidelines which provide information to members of the public in relation to making Public Interests of Disclosure are available on the City's website.

Financial Implications

Adoption of the Policy has no budget implications, noting that development of a more comprehensive misconduct prevention strategy will require resourcing in the form of officer and council time.

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.

There are no risks identified of a medium or greater level associated with the officer recommendation, with the Policy seeking to clearly articulate Council's strategic direction in relation to the management of misconduct, fraud and corruption, and establishing the framework for development of a comprehensive strategy in the future.

Options

As an alternative to the proposed recommendation the Council could consider making amendments to the Policy or choose to not endorse the Policy





















CONCLUSION

While acknowledging and working towards the completion of the recommendations made in the GSR, officers have developed the Policy, seeking to communicate the City's commitment to the prevention of misconduct, fraud and corruption and to establish the framework in which a comprehensive strategy may be developed in the future.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will become effectively immediately upon endorsement by Council.

6.2 ANNUAL STATUTORY REVIEW OF DELEGATIONS

STRATEGIC GOAL	6. LEADERSHIP Visionary, collaborative, accountable
STRATEGIC OBJECTIVE	6.1 Governance systems, process and practices are responsible, ethical and transparent.
SUBJECT INDEX	Authorised Delegation of Power/Authority
BUSINESS UNIT:	Governance Services
REPORTING OFFICER:	Governance Coordinator - Emma Heys
AUTHORISING OFFICER:	Director Finance and Corporate Services - Tony Nottle
PRIMARY NATURE OF DECISION	Legislative: to adopt legislative documents e.g. local laws, local planning schemes, local planning policies
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A DA 1 - 01 Issuing Notices 
	Attachment B DA 1 - 03 Power to Remove and Impound 
	Attachment C DA 1 - 05 Closure of Thoroughfares 
	Attachment D DA 1 - 07 Inviting, Rejecting and Accepting Tenders 
	Attachment E DA 1 - 08 Preliminary Selection of Tenderers 
	Attachment F DA 1 - 09 Airport Redevelopment Project - Inviting, Rejecting and Accepting Tenders 
	Attachment G DA 1 - 10 Panels of Pre-Qualified Suppliers 
	Attachment H DA 1 - 11 Amendments to the Consolidated Parking Scheme 
	Attachment I DA 1 - 20 Administer Local Laws 
	Attachment J DA 1 - 21 Acquisition of Property 
	Attachment K DA 1 - 22 Disposition of Property 
	Attachment L DA 1 - 24 Affixing of the Common Seal 
	Attachment M DA 2 - 01 The Powers and Duties of the Local Government pursuant to the Building Act 2011 
	Attachment N DA 3 - 01 The Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954 
	Attachment O DA 3 - 02 Appointment of Bush Fire Control Officers 
	Attachment P DA 4 - 01 The Powers and Duties of the Local Government pursuant to the Cat Act 2011 
	Attachment Q DA 5 - 01 The Powers and Duties of the Local Government pursuant to the Dog Act 1976 
	Attachment R DA 6 - 01 The Powers and Duties of the Local Government pursuant to the Graffiti Vandalism Act 2016 
	Attachment S DA 8 - 01 Certificate of Approval pursuant to the Strata Titles Act 1985 
	Attachment T Current Delegations (proposed to be amended) 

COMMITTEE DECISION AND OFFICER RECOMMENDATION

PL1908/256

Moved Councillor K Hick, seconded Councillor R Paine

That the Council

- 1. Adopt the amendments to the following delegations as outlined below and included in Attachments A through to S:**

Current	New		
Local Government Act 1995			
LG3D Notices Requiring Certain Things to be Done by Owner or Occupier of Land and Additional Powers When Notice is Given	DA1 – 01 Issuing Notices	Changes Title of delegation	Attachment A
LG3F Power to Remove and Impound Abandoned Vehicle Wrecks may be taken	DA1 – 03 Power to Remove and Impound	Changes Title of delegation	Attachment B
LG3H Closing of Certain Thoroughfares to Vehicles and Partial Closure of Thoroughfare for Repairs or Maintenance	DA1 – 05 Closure of Thoroughfares	Changes Title of delegation	Attachment C
LG3J Inviting Tenders and Rejecting and Accepting Tenders	DA1 – 07 Inviting, Rejecting and Accepting Tenders	Changes Title of delegation	Attachment D
LG3K Preliminary Selection of Tenderers	DA1 – 08 Preliminary Selection of Tenderers	Changes Removal of description of regulations from Delegation reference	Attachment E
LG3L Airport Redevelopment Project – Inviting Tenders and Rejecting and Accepting Tenders	DA1 – 09 Airport Redevelopment Project – Inviting, Rejecting and Accepting Tenders	Changes Title of delegation Addition of <i>Local Government Act 1995</i> references	Attachment F
LG3M Establishment of Panels of Pre-Qualified Suppliers	DA1 – 10 Panels of Pre-Qualified Suppliers	Changes Title of delegation Corrected the <i>Local Government Act 1995</i> Reference	Attachment G
LG3N Amendments to the Consolidated Parking Scheme	DA1 – 11 Amendments to the Consolidated Parking Scheme	Changes Corrected the Local Law reference	Attachment H
	DA1 – 20	Changes	Attachment

LG3A Executive Function – Determining Applications Under Local Laws and Enforcement of Local Law Provisions	Administer Local Laws	Title of delegation Improved wording to clarify the delegation	I
LG3B Acquisition of Property	DA1 – 21 Acquisition of Property	Changes Corrected reference to power/duty being delegated Rewording of condition for clarity	Attachment J
LG3C Disposing of Property	DA1 – 22 Disposition of Property	Changes Title of delegation Addition of reference to Regulations	Attachment K
LG9B Authorising the Affixing of the Common Seal to Documents	DA1 – 24 Affixing of the Common Seal	Changes Title of delegation Remove list of document categories (see further detail in officer comment)	Attachment L
<i>Building Act 2011</i>			
BA1 Powers of the Local Government pursuant to the Building Act 2011	DA2 – 01 Powers of the Local Government pursuant to the Building Act 2011	Changes Minor wording corrections	Attachment M
<i>Bush Fires Act 1954</i>			
BF1 The performance of any of the functions of the local government under the Act	DA3 – 01 Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	Changes Title of delegation Improved wording to clarify the delegation	Attachment N
BF2 Appointment of Bush Fire Control Officers	DA3 – 02 Appointment of Bush Fire Control Officers	Changes Addition of relevant policies	Attachment O
<i>Cat Act 2011</i>			
CA1 The Powers and Duties of the Cat Act 2011	DA4 – 01 The Powers and Duties of a Local Government pursuant to the Cat Act 2011	Changes Title of delegation Improved wording to clarify the delegation	Attachment P

Dog Act 1976			
DA1 The powers and duties of the Dog Act 1976 including the authority to further delegate	DA5 – 01 The Powers and Duties of a Local Government pursuant to the Dog Act 1976	Changes Title of delegation Improved wording to clarify the delegation Addition of relevant policies	Attachment Q
Other Acts included in the review			
GV1 Exercise any of the local government's powers or discharge any of its duties under Part 3 of the Graffiti Vandalism Act 2016	DA6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	Changes Title of delegation Improved wording to clarify the delegation	Attachment R
STA1 Certificate of Approval	DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	Changes Title of delegation	Attachment S

2. Remove delegation LG10A 'Claims against the local government'; and
3. Authorise, under Section 9.49A (4) of the Act, the Chief Executive Officer to sign documents that are necessary or appropriate to enable a CEO to carry out their functions under any written law.

CARRIED 5/0

EXECUTIVE SUMMARY

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

BACKGROUND

Delegations of authority are an integral part of the City's governance functions. Delegations of Authority are an effective and efficient means of carrying out the functions or discharging the duties of the local government, by allowing the day to day decisions of Council to be made by the Chief Executive Officer, who in turn can delegate to other staff where appropriate, without requiring Council to make all decisions through the process of an ordinary council meeting.

Section 5.46(2) of the Act requires all delegations by Council to the CEO to be reviewed at least once each financial year. A review has been completed of the City's delegations and this report details the outcomes of that review. In addition, a new Authority of Delegation register has been developed providing for a clearer, more user friendly and modern register.

OFFICER COMMENT

With the exception of all delegations being transferred into a new format, the majority of existing delegations are proposed to be amended only slightly for consistency and clarity. A smaller number have been identified as requiring more significant amendment to improve operational efficiencies and or to amend references.

In addition, opportunities were identified to improve the Authority of Delegations Register and a new register has been developed, providing the opportunity to apply consistency to the content and format of the delegations, making the register more user friendly and understandable. Title changes have been made to some delegations to more aptly describe the information that they contain.

With the transfer to a new register, all delegations have been allocated new reference numbers. The new referencing is structured by legislation e.g. DA1 - ## for the *Local Government Act 1995*, DA2 – ## the *Building Act 2011* and so on. The previous delegation numbers have been retained as a reference to assist Councillors and officers in obtaining historical information.

In most instances, the explanatory notes from the current delegations have been removed and the function description has been limited to only the relevant section of the Act and the heading of that section. This has been done to provide officers with the opportunity to seek out and interpret the relevant sections of the Act themselves, noting hyperlinks will be provided within the final register to facilitate this. In addition, by not duplicating or paraphrasing the legislation within the delegation itself, errors in the transfer of information will be avoided and information will remain current. Linkages to relevant sections of acts, plans and policies ensure supporting documentation are easily referenced.

While this review is in relation to Authority of Delegations from Council to the CEO only, the new register will include linked delegations from the CEO to officers, providing improved transparency of decision making. Creating this correlation, from legislation, to Council, to CEO and through to Officer, gives the delegator and the delegate a legislative reference to the power or duty granted by or to them.

This year, due to the transfer of delegations into the new register, copies of the amended delegations with tracked changes have not been included in this report. The instruments of delegation that have been amended as part of this review have been included as attachments to this report and are listed in the table below. Where no change or amendment has been proposed to a delegation (other than numbering and formatting within the register as described above), it has not been included.

The current versions of the delegations proposed to be amended have been bound and included at Attachment T for comparative purposes.

Current	New		
Local Government Act 1995			
LG3D Notices Requiring Certain Things to be Done by Owner or Occupier of Land and Additional Powers When Notice is Given	DA1 – 01 Issuing Notices	Changes Title of delegation	Attachment A
LG3F Power to Remove and Impound Abandoned Vehicle Wrecks may be taken	DA1 – 03 Power to Remove and Impound	Changes Title of delegation	Attachment B

LG3H Closing of Certain Thoroughfares to Vehicles and Partial Closure of Thoroughfare for Repairs or Maintenance	DA1 – 05 Closure of Thoroughfares	Changes Title of delegation	Attachment C
LG3J Inviting Tenders and Rejecting and Accepting Tenders	DA1 – 07 Inviting, Rejecting and Accepting Tenders	Changes Title of delegation	Attachment D
LG3K Preliminary Selection of Tenderers	DA1 – 08 Preliminary Selection of Tenderers	Changes Removal of description of regulations from Delegation reference	Attachment E
LG3L Airport Redevelopment Project – Inviting Tenders and Rejecting and Accepting Tenders	DA1 – 09 Airport Redevelopment Project – Inviting, Rejecting and Accepting Tenders	Changes Title of delegation Addition of <i>Local Government Act 1995</i> references	Attachment F
LG3M Establishment of Panels of Pre-Qualified Suppliers	DA1 – 10 Panels of Pre-Qualified Suppliers	Changes Title of delegation Corrected the <i>Local Government Act 1995</i> Reference	Attachment G
LG3N Amendments to the Consolidated Parking Scheme	DA1 – 11 Amendments to the Consolidated Parking Scheme	Changes Corrected the Local Law reference	Attachment H
LG3A Executive Function – Determining Applications Under Local Laws and Enforcement of Local Law Provisions	DA1 – 20 Administer Local Laws	Changes Title of delegation Improved wording to clarify the delegation	Attachment I
LG3B Acquisition of Property	DA1 – 21 Acquisition of Property	Changes Corrected reference to power/duty being delegated Rewording of condition for clarity	Attachment J
LG3C Disposing of Property	DA1 – 22 Disposition of Property	Changes Title of delegation Addition of reference to Regulations	Attachment K

LG9B Authorising the Affixing of the Common Seal to Documents	DA1 – 24 Affixing of the Common Seal	Changes Title of delegation Remove list of document categories (see further detail in officer comment)	Attachment L
<i>Building Act 2011</i>			
BA1 Powers of the Local Government pursuant to the Building Act 2011	DA2 – 01 Powers of the Local Government pursuant to the Building Act 2011	Changes Minor wording corrections	Attachment M
<i>Bush Fires Act 1954</i>			
BF1 The performance of any of the functions of the local government under the Act	DA3 – 01 Powers and Duties of the Local Government pursuant to the Bush Fires Act 1954	Changes Title of delegation Improved wording to clarify the delegation	Attachment N
BF2 Appointment of Bush Fire Control Officers	DA3 – 02 Appointment of Bush Fire Control Officers	Changes Addition of relevant policies	Attachment O
<i>Cat Act 2011</i>			
CA1 The Powers and Duties of the Cat Act 2011	DA4 – 01 The Powers and Duties of a Local Government pursuant to the Cat Act 2011	Changes Title of delegation Improved wording to clarify the delegation	Attachment P
<i>Dog Act 1976</i>			
DA1 The powers and duties of the Dog Act 1976 including the authority to further delegate	DA5 – 01 The Powers and Duties of a Local Government pursuant to the Dog Act 1976	Changes Title of delegation Improved wording to clarify the delegation Addition of relevant policies	Attachment Q

Other Acts included in the review			
GV1 Exercise any of the local government's powers or discharge any of its duties under Part 3 of the Graffiti Vandalism Act 2016	DA6 – 01 The Powers and Duties of a Local Government pursuant to the Graffiti Vandalism Act 2016	Changes Title of delegation Improved wording to clarify the delegation	Attachment R
STA1 Certificate of Approval	DA8 – 01 Certificate of Approval pursuant to the Strata Titles Act 1985	Changes Title of delegation	Attachment S

Delegation to be removed

It is proposed to remove delegation LG10A 'Claims against the local government'. The current delegation relates to insurance claims, specifically to consider claims against the local government for damage to property to either accept or deny liability and to make payment against that claim up to a maximum amount.

Current delegation LG6A 'Payments from Municipal Fund or Trust Fund' (new reference DA1-23) allows for the CEO to make payments from the Municipal Fund or Trust Fund in accordance with Regulation 12 of the *Local Government (Financial Management) Regulations 1996*, in relation to s.6.10 of the *Local Government Act 1995*.

A payment against an insurance claim, within the City's insurance policy excess levels, constitutes a payment being made from the municipal fund and therefore is already covered by Delegation LG6A.

Planning Delegations

Officers have not included a review of the planning delegation PDR1 'Development Control' in this report. The review of PDR1 'Development Control' is proposed to be undertaken with planning officers as part of a broader review of planning delegations and policies and will be presented to Council at a later time. There is no statutory requirement for this delegation to be reviewed once every financial year.

Execution/Signing of Documents

In undertaking a review of the City's current delegations, a number of issues became apparent with the delegations concerning the City's affixing of the Common Seal and the execution of documents.

Currently the City has one delegation from Council to CEO, LG9B 'Authorising the Affixing of the Common Seal to Documents'. The current delegation from Council to CEO is problematic in that it narrows the types or categories of documents the CEO is authorised to affix the Common Seal to, thereby excluding a range of documents that may require the affixing of the Common Seal, resulting in a large number of document types or categories requiring a resolution of council to have the Common Seal affixed. This creates efficiency issues for the day to day operations of the City. In accordance with s.9.49A (3) of the Act, the Common Seal is required to be affixed in the presence of the Mayor and the Chief Executive Officer (or a senior employee so authorised), each of whom is to sign the document to attest that the common seal was so affixed.

Officers have proposed that this delegation be amended by removing the list of document categories and to instead provide the power for the CEO to authorise the affixing of the Common Seal to all documents that require it to be legally effective. In respect to the signing or execution of documents, separate to the Common Seal, officers recommend that Council resolve to authorise (under Section 9.49A (4) of the Act) the CEO to sign any documents that are necessary or appropriate to enable a CEO to carry out their functions under any written law. Section 9.49A (4) of the Act requires the transfer of this power in the form of an authorisation, as opposed to a delegation. This authorisation is included as part of the officer recommendation.

Statutory Environment

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

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

Section 127 of the *Building Act 2011* provides Council with the ability to delegate powers and duties to its CEO and Section 96(3) of the *Building Act 2011* provides Council with the ability to delegate the designation of authorised persons.

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

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

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

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

Relevant Plans and Policies

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

Financial Implications

There are no financial implications associated with the officer recommendation.

Stakeholder Consultation

A review of delegations from other comparative Local Governments was undertaken and the WALGA model delegations were also reviewed.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place.

No risks of a medium or greater level have been identified.

Options

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

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

Officers can assist with the drafting of a suitable alternative motion if required.

CONCLUSION

The statutory review of delegations has been completed and it is recommended that Council adopt the proposed changes to the delegations as listed in officer comment, and also authorise the CEO to sign any document necessary to enable him to carry out his functions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The amended delegations will be incorporated into the new Delegations Register immediately following adoption by Council.

2.58pm: At this time, Mr Mike Archer, Chief Executive Officer, entered the meeting.

7. GENERAL DISCUSSION ITEMS

7.1 POLICY FRAMEWORK

RECOMMENDATION

That the Policy and Legislation Committee note receipt of the Policy Framework for information and discussion.

7.2 ELECTED MEMBERS CORPORATE ATTIRE

RECOMMENDATION

That the Policy and Legislation Committee further discuss Corporate Attire provisions contained within the Fees, Allowances and Expenses for Elected Members Council Policy to consider the practical impacts of the recent amendments.

7.3 CARETAKER POLICY POSITION

RECOMMENDATION

That the Policy and Legislation Committee further discuss the City's position on a Caretaker Policy.

8. NEXT MEETING DATE

Tuesday, 10 September 2019

9. CLOSURE

The meeting closed at 3.35pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 23 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON TUESDAY, 10 SEPTEMBER 2019.

DATE: _____ PRESIDING MEMBER: _____