



City of Busselton
Geographe Bay

Policy and Legislation Committee Agenda

23 October 2018

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 23 OCTOBER 2018

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Committee Room, Administration Building, Southern Drive, Busselton on Tuesday, 23 October 2018, commencing at 2.00pm.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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



MIKE ARCHER

CHIEF EXECUTIVE OFFICER

17 October 2018

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 23 OCTOBER 2018

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

2. **ATTENDANCE**

Apologies

3. **PUBLIC QUESTION TIME**

4. **DISCLOSURE OF INTERESTS**

5. **CONFIRMATION AND RECEIPT OF MINUTES**

5.1 **Minutes of the Policy and Legislation Committee Meeting held 25 September 2018**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 25 September 2018 be confirmed as a true and correct record.

6. REPORTS

6.1 REVIEW OF PLANNING AND DEVELOPMENT RELATED DELEGATIONS

SUBJECT INDEX:	Authorised Delegation of Power / Authority
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Planning and Development Services
ACTIVITY UNIT:	Planning and Development Support
REPORTING OFFICER:	Director, Planning and Development Services - Paul Needham
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Council Delegation PDR1 ↓ Attachment B Council Delegation MVA1 ↓ Attachment C Council Delegation LCA1 ↓ Attachment D Council Policy 043 Coal Mining Applications ↓ Attachment E Council Delegation PDR1 tracked changes ↓

PRÉCIS

The Council is asked to consider changes to some planning and related delegations. Two delegations are proposed to be rescinded and a relatively minor change to a third is proposed.

BACKGROUND

The *Local Government Act 1995* ('LGA') provides for the establishment of local governments and confers a range of powers and duties on them. There are also other Acts of Parliament that confer powers and duties on local governments.

A local government is established as a body corporate, and must therefore necessarily act through its officers, employees and agents. Each local government has an elected Council as a governing body. The LGA also intends that the local government will have employees, being the CEO and the staff employed by the CEO, to carry out certain functions.

Within this framework, the LGA makes express provision for certain 'delegations' of powers or duties. At the same time, it expressly intends that there will also be certain situations where a power may be exercised or a duty discharged on the basis of 'acting through another person' (see Section 5.45(2) of the LGA). The question in any particular case is one of statutory construction to determine whether the Parliament intended that a power given to a local government might be exercised by another individual or body on behalf of the local government, or whether it is intended that the power be exercised by the Council or (where possible) its duly appointed delegate.

The Council's power of delegation under Section 5.42 of the LGA applies to powers and duties under the LGA and also to certain sections under the *Planning and Development Act 2005*. Council's power of delegation is subject to the limitations in Section 5.43 of the LGA. Other legislation that confers powers and duties on a local government may or may not contain a power of delegation. Other legislation also contains related but different powers of 'authorisation'.

The Council has recently reviewed the delegations it has made under the LGA, in accordance with an annual review required under Section 5.45(2) of the LGA. This report is directed at a review of certain powers and duties under legislation other than the LGA, and considers the exercise of powers under legislation relating to –

- Planning and development;
- Firearms;
- Prostitution;
- Classified publications;
- Motor vehicle sales and repairs;
- Gaming and wagering;
- Liquor; and
- Mining; and
- Petroleum.

Two existing delegations relating to motor vehicle repairs and liquor are considered unnecessary and are recommended to be rescinded, and a relatively minor change to the existing planning delegation is also recommended.

Note that an internal review of powers and duties in relation to legislation impacting on the delivery of ranger and environmental services is currently underway and a further report in relation to associated delegations is expected to be presented to the committee by the end of the year.

STATUTORY ENVIRONMENT

The key statutory environment relevant to this report is outlined below -

- With respect to the power of delegation under Acts other than the LGA, regard is to be given to any power of delegation under those Acts.
- With respect to the concept of 'acting through' (which is different to delegation) under Acts other than the LGA, the term 'local government' is defined in the *Interpretation Act 1984* to mean a local government under the LGA. This is not confined to 'Council', but is a reference to a local government being a body corporate acting through its officers, employees and agents. Each provision of legislation must then be interpreted in its context to determine whether a contrary intention appears. In doing this, regard will generally be had to the purpose of the legislation and whether there can be seen to be some purpose served by restricting the interpretation to mean 'Council' in a particular case.
- Clause 82 of Schedule 2 the *Planning and Development (Local Planning Schemes) Regulations 2015* ('the deemed provisions') sets out that the Council may delegate powers under the City's town planning scheme to the CEO. Clause 83 then sets out that the CEO may sub-delegate those powers. There is a current delegation relating to these powers – Delegation PDR1 (Attachment A).
- Relevant legislation has been reviewed, and there are currently no functions for local governments in legislation relating to firearms, prostitution or classified publications. As such, there is no need to consider whether any of those powers can only be exercised by City officers with a delegation first being established, and there are also no current delegations that require amending or rescinding.
- There are also currently no functions for local governments in legislation relating to motor vehicle sales or repairs. There were previously functions for local governments in both the *Motor Vehicle Dealers Act 1973* and *Motor Vehicle Repairers Act 2003*, but the provisions setting out those functions have now been repealed.

As such, delegation MVA1 (Attachment B), which relates to the *Motor Vehicle Repairers Act 2003* is now clearly redundant and can be rescinded – and was unnecessary anyway, as the function that local governments previously had were clearly ones that involved provision of information, rather than discretionary decision-making.

- Section 55 (3) of the *Gaming and Wagering Commission Act 1987* sets out functions for local governments in providing reports setting out whether gaming and wagering premises comply with health or planning requirements. Those functions, however, are clearly functions that involve provision of information, rather than discretionary decision-making. As such, there is no need for a delegation, and as no delegation has been established, there are no current delegations that require amending or rescinding.
- Sections 39 and 40 of the *Liquor Control Act 1988* identify functions for local governments in advising whether proposed licensed premises comply with relevant health/building and planning requirements – these functions involve providing what are generally known as ‘Section 39 certificates’ and ‘Section 40 certificates’. The decisions regarding whether to issue such certificates are not discretionary decisions. They are statements of fact about whether approval is required and/or if relevant approvals have already been obtained. Given the context and the drafting of the provisions, these are considered functions that can be exercised by the local government without requiring a delegation. As such, no delegation is considered necessary and, accordingly, Delegation LCA1 (Attachment C), which relates to Section 40 certificates, can be rescinded (there is no current delegation for Section 39 certificates).
- There are various provisions in the Mining Act 1978 which enable a local government to be consulted with and/or express views on matters subject of the Act. It is considered those functions can reasonably be exercised by the local government ‘acting through’. The Council has adopted a policy setting out its approach to responding to applications where the target mineral may be coal (Attachment D), which would guide officers in their exercise of those functions. Note that this Policy will require review as part of the City’s overall review of its Council policies, having regard to the recommendations of the Governance System Review carried out by Mr John Woodhouse in 2017.
- Relevant legislation has been reviewed, and there are currently no functions for local governments in legislation relating to petroleum, other than a reference to local governments being notified about applications for a pipeline licence pursuant to the *Petroleum Pipelines Act 1969*, and there is not seen to be a need for a delegation to allow the CEO or other City officers to determine the course of action that should be taken with respect to such notification. The City also occasionally has a broader advocacy or communication role with respect to petroleum extraction proposals, and those functions can be exercised by the local government ‘acting through’ where necessary.

RELEVANT PLANS AND POLICIES

There are no relevant plans or policies requiring consideration.

FINANCIAL IMPLICATIONS

There are no financial implications of the recommendations of this report.

LONG-TERM FINANCIAL PLAN IMPLICATIONS

There are no long-term financial plan implications of the recommendations of this report.

STRATEGIC COMMUNITY OBJECTIVES

This statutory delegation review aligns with and supports the Council's Key Goal Area 6 – 'Leadership' and more specifically Community Objective 6.1 – 'Governance systems, process and practices are responsible, ethical and transparent'.

RISK ASSESSMENT

There are no significant risks associated with the officer recommendation.

CONSULTATION

Consultation was not considered necessary in the preparation of this report.

OFFICER COMMENT

Following the review, rescinding of two delegations is recommended – i.e. MVA1 and LCA1. The reasons for that have been explained in the statutory environment section of this report, and there is not considered to be a need to discuss those changes further here.

A relatively minor change to the existing planning delegation is also recommended, which is to modify the second paragraph of part 6 of Delegation PDR1, which currently sets out that, in relation to 'briefing and reporting' –

As part of the agenda for each ordinary Council meeting ('OCM'), a summary of applications received and determined between the closing date of the previous summary and a date as close as possible to the publication date of the agenda, shall be presented to Councillors as part of 'Councillors' Information Bulletin' ('CIB').

Note that there are no statutory requirements for the provision of this information to Councillors, either in a Council agenda or in any other form, it is a requirement which arises because of the delegation.

The effect of the approach identified above is that it can be as long as 29 days, and regularly as long as 22 days, after an application has been received or determined before Councillors are provided with a summary listing an application. The time gap for some applications would be even longer during the mid-year break, or the longer break between the December and January meetings – the gap between meetings during that period can be as long as 8 weeks, meaning that it can be nearly ten weeks between the receipt or determination of an application and its listing in the CIB.

As an example, for Council's 24 October OCM, the draft report for the CIB (for the draft agenda) would be produced on 5 October and published as part of the agenda on 12 October. That report would be expected to list applications received or determined up to 4 October. The Council's next OCM is then scheduled for 14 November. The earliest applications to be listed in the CIB for that meeting's agenda would therefore have been received or determined on 5 October and the agenda would be published on 2 November. That would mean that the earliest applications listed might have been received 29 days before publication, with the associated agenda briefing session then being a further five days hence.

A change to the above is proposed which would result in both Councillors and members of the public being able to access information about applications received and determined in a more timely fashion. What is proposed is that a list of applications received in the preceding week (Friday to Thursday) is listed on the City's website each Friday.

Protocols could be agreed and varied over time to ensure that Councillors have an appropriate prompt to review the published lists, and could then forward requests for information to the appropriate officer (ordinarily the responsible Director). In the case of Fridays which are public holidays, publication may need to occur on the next working day. In all other cases, however, this would mean that the earliest applications listed would have been received or determined eight days prior to publication.

The following new wording for the second paragraph of part 6 of Delegation PDR1 is proposed -

Each Friday, or in the case of Fridays which are public holidays, the next working day, a summary of applications received and determined in the preceding period (usually the preceding Friday to Thursday) shall be published on the City's website.

A tracked changes version of Delegation PDR1, illustrating the proposed change, is provided as Attachment E.

CONCLUSION

The recommended changes to delegations will rescind redundant delegations and improve the efficiency of reporting to the Council on development applications.

OPTIONS

The Council could not amend the delegations, or make additional or different changes.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The changes to delegations proposed would be implemented through amending the information published on the City's website within one month of a Council decision consistent with the officer recommendation, and with the proposed changes to Delegation PDR1 being implemented prior to the end of November 2018. That would include informal agreement on the best form of prompt to advise Councillors of the publication of each week's summary of applications.

OFFICER RECOMMENDATION

That the Council resolve to –

1. Rescind Delegation MVA1;
2. Rescind Delegation LCA1; and
3. Amend Delegation PDR 1 by replacing the second paragraph of part 6 with the following –

Each Friday, or in the case of Fridays which are public holidays, the next working day, a summary of applications received and determined in the preceding period (usually the preceding Friday to Thursday) shall be published on the City's website.



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
PDR 1	s.162 Planning and Development Act 2005 cl. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 <i>Deemed Provisions for local planning schemes</i>	Chief Executive Officer	Development Control

Delegator

Council

Power/Duty

To undertake the powers and duties of the local government able to be delegated under cl. 82 of the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed Provisions for local planning schemes*, subject to the conditions set out below.

Conditions

Note: In addition to the conditions set out below, some decisions on applications for development approval cannot be made by the City by virtue of the Planning and Development (Development Assessment Panels) Regulations 2011.

1. 'Call-in' provisions

Any two or more Councillors may consider an application or proposal to be of strategic significance and/or high community interest and *request* the CEO, in writing, to present the application or proposal to the Council for consideration. If the request is supported, the application shall be presented to the first practicable Council meeting for consideration.

Note: Any Councillor may also submit a notice-of-motion in relation to the withdrawal of delegation in relation to a particular application, but it would generally be expected that they would first seek to exercise the call-in provision outlined above.

2. Reconsideration of applications for development approval

Prior to the determination of an application for reconsideration of an application for development approval (other than where a reconsideration is occurring pursuant to section 31 of the *State Administrative Tribunal Act 2004* – see below), the CEO shall ensure that a copy of the reconsideration request, together with a report assessing the application, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.

This condition relates to applications to amend or renew an approval where reconsideration of conditions is being requested, and also to new applications which are substantially the same as

an earlier application refused under delegation.

3. Structure Plans, Activity Centre Plans, Local Development Plans, Developer Contribution Plans

Prior to making a recommendation to the Western Australian Planning Commission regarding adoption or amendment of a Structure Plan, Activity Centre Plan and/or Local Development Plan, the CEO shall ensure that a copy of the respective plan, together with an report, setting out and explaining the recommendation proposed to be made under delegation, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.

These delegations do not extend to the making of recommendations to the Western Australian Planning Commission regarding adoption or amendment of Developer Contribution Plans.

4. Local Planning Policies, Local Heritage List, Heritage Precincts

Decisions relating to adoption, revocation or amendment of Local Planning Policies, the Local Heritage List and/or Heritage Precincts are not delegated.

5. Applications for review by the State Administrative Tribunal (SAT)

Where the original decision was made under delegation, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* may be made under delegation.

Where the original decision was made by the Council, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* shall be presented to the Council for consideration, unless officers have briefed Councillors and Councillors have indicated a general willingness to allow the decision to be made under delegation, in which case a decision may be made under delegation, provided that the 'call-in' provisions set out at Condition 1 above have not been exercised before the decision is made, and that Councillors have also been briefed on the matter as per Condition 6, to provide an opportunity for Councillors to exercise the 'call-in' provisions.

6. Briefing and reporting

Generally on a monthly basis (as agreed/determined by the Mayor and CEO), officers shall provide Councillors with an informal briefing on planning matters of strategic significance and/or high community interest, and on issues raised by Councillors.

As part of the agenda for each ordinary Council meeting, a summary of applications received and determined between the closing date of the previous summary and a date as close as practicable to the publication date of the agenda, shall be presented to Councillors as part of the 'Councillors Information Bulletin'.

Generally on a monthly basis, and generally as part of the agenda for every second ordinary Council meeting in any given month, a summary and update of planning and development-related State Administrative Tribunal matters involving the City shall be presented to Councillors as part of the 'Councillors Information Bulletin'.

Verification

Recent Council Resolution
C1808/150

Initial Council Resolution
C1703/042

Review Requirements

At Council's discretion as necessary (no statutory requirement)

Notes of Recent Alterations
Minor amendments to the requirements in Condition 5 for delegated decision-making in relation to applications for review by the State Administrative Tribunal for the purpose of avoiding the 3-4 week delay associated with the reconsideration provisions in resolving matters where mediation has resulted in an opportunity to reconsider an application <i>(24 July 2018)</i>



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
MVA1	Motor Vehicle Repairers Act 2003	Chief Executive Officer	Section 58(2) Motor Vehicle Repairers Act 2003

Delegator

Council.

Power/Duty

To issue certificates of compliance with planning laws, under Section 58(2) of the *Motor Vehicle Repairers Act 2003*.

Conditions

Nil.

Statutory Framework

Council, as the authority responsible for local planning matters as referred to in Section 58 *Motor Vehicle Repairers Act 2003*, is exercising its power of delegation under Clause 12.2 (Delegation of Authority) of the City of Busselton Local (Town) Planning Scheme No21.

Motor Vehicle Repairers Act 2003

58 . Business licence application to specify premises that comply with planning laws

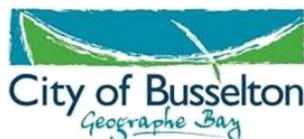
- (2) A planning certificate is a certificate —
- (a) issued by the authority responsible for planning matters in the district in which the premises are situated; and
- (b) showing that the proposed use of the premises will be permitted under the written laws relating to planning that apply in respect of the premises because the proposed use will either:
 - (i) comply with all relevant requirements of those laws; or
 - (ii) be a non-conforming use under those laws.

Verification

Initial Council Resolution
C1409/235

Review Requirements

At Council's discretion as necessary (no statutory requirement).



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
LCA1	Liquor Control Act 1988	Chief Executive Officer	Section 40 Certificates under the Liquor Control Act 1988

Delegator

Council

Power/Duty

To issue certificates of compliance with planning laws, under Section 40 of the *Liquor Control Act 1988*.

Conditions

Nil.

Statutory Framework

Council, as the authority responsible for Building and Health as referred to in Section 39 and as responsible for local planning matters Section 40 of the *Liquor Control Act 1988*, is exercising its power of delegation under Clause 12.2 (Delegation of Authority) of the City of Busselton Local (Town) Planning Scheme No 21.

Liquor Control Act 1988

40 . Certificate of planning authority as to whether use of premises complies with planning laws

- (1) An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the authority responsible for planning matters in the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.

Verification

Recent Council Resolution
C1409/235

Initial Council Resolution
C0310/432

Review Requirements

At Council's discretion as necessary (no statutory requirement).

Notes of Alterations
Position titles updated (<i>22 June 2011</i>)
Position titles updated. Removal of Manager, Strategic Planning; Manager, Statutory Planning; Manager, Building &
Manager, Health Services updated to reflect proper position title of Manager, Environmental Services (<i>14 Novemb</i>
Position of Senior Planning Officer, Major Projects and Appeals removed from delegation. Name of the governing
New position of Senior Development Planner added on 9 August, 2006, by Council Resolution Number C0608/266

6.1 Attachment D Council Policy 043 Coal Mining Applications

Last updated 09/03/2016

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



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
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Delegator

Council

Power/Duty

To undertake the powers and duties of the local government able to be delegated under cl. 82 of the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed Provisions for local planning schemes*, subject to the conditions set out below.

Conditions

Note: In addition to the conditions set out below, some decisions on applications for development approval cannot be made by the City by virtue of the Planning and Development (Development Assessment Panels) Regulations 2011.

1. 'Call-in' provisions

Any two or more Councillors may consider an application or proposal to be of strategic significance and/or high community interest and *request* the CEO, in writing, to present the application or proposal to the Council for consideration. If the request is supported, the application shall be presented to the first practicable Council meeting for consideration.

Note: Any Councillor may also submit a notice-of-motion in relation to the withdrawal of delegation in relation to a particular application, but it would generally be expected that they would first seek to exercise the call-in provision outlined above.

2. Reconsideration of applications for development approval

Prior to the determination of an application for reconsideration of an application for development approval (other than where a reconsideration is occurring pursuant to section 31 of the *State Administrative Tribunal Act 2004* – see below), the CEO shall ensure that a copy of the reconsideration request, together with a report assessing the application, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.

This condition relates to applications to amend or renew an approval where reconsideration of conditions is being requested, and also to new applications which are substantially the same as

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Decisions relating to adoption, revocation or amendment of Local Planning Policies, the Local Heritage List and/or Heritage Precincts are not delegated.

5. Applications for review by the State Administrative Tribunal (SAT)

Where the original decision was made under delegation, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* may be made under delegation.

Where the original decision was made by the Council, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* shall be presented to the Council for consideration, unless officers have briefed Councillors and Councillors have indicated a general willingness to allow the decision to be made under delegation, in which case a decision may be made under delegation, provided that the 'call-in' provisions set out at Condition 1 above have not been exercised before the decision is made, and that Councillors have also been briefed on the matter as per Condition 6, to provide an opportunity for Councillors to exercise the 'call-in' provisions.

6. Briefing and reporting

Generally on a monthly basis (as agreed/determined by the Mayor and CEO), officers shall provide Councillors with an informal briefing on planning matters of strategic significance and/or high community interest, and on issues raised by Councillors.

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Review Requirements

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6.2 REVIEW OF COUNCIL POLICY 234 - RISK MANAGEMENT

SUBJECT INDEX:	Risk Management
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Governance Services
REPORTING OFFICER:	Manager Governance and Corporate Services - Sarah Pierson
AUTHORISING OFFICER:	Director Finance and Corporate Services - Tony Nottle
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Proposed Council Policy - Risk Management Attachment B Current Council Policy - Organisation Wide Risk Management

PRÉCIS

This report presents a revised Risk Management Policy (Attachment A) (the Policy) for Council approval, with the current policy having been amended as part of the City's overall review of its Council policies, having regard to the recommendations of the Governance System Review (GSR) carried out by Mr John Woodhouse in 2017.

The Policy, which has been moved into the new policy template and refined, including a small change in title, is considered to be of continuing relevance and importance and is therefore recommended for Council approval.

BACKGROUND

A policy in relation to risk management was originally adopted in May 2006, in order to demonstrate the City's commitment to the development of a culture of risk based decision making aimed at the effective management of potential opportunities, and reduction of potential impacts of risk. Since then the current policy has been reviewed four times, most recently in 2016, with only very minor changes made such as updating Shire to City.

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.

In accordance with regulation 17 of the *Local Government (Audit) Regulations 1996* (Regulation 17) the CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to risk management, as well as internal control and legislative compliance. The CEO is to report to the audit committee the results of that review at least once every three financial years. A report in this respect was last provided in October 2016.

RELEVANT PLANS AND POLICIES

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the GSR. Included in the scope of the review was the City's policy and procedure framework with the following recommendations made:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
 - a. *Should deal with higher level objectives and strategies;*

While Regulation 17 requires that the CEO provide a report in relation to its risk management systems (inclusive of systems relating to internal control and legislative compliance), this Policy serves to strengthen that direction by outlining requirements for the CEO to develop a risk management framework aligned to Standard AS/NZS ISO 3100:2009 and for communicating and establishing risk management process, defined as the systematic application of management policies, procedures and practices to activities of communicating, consulting, establishing the context, and identifying, analysing, evaluating, treating monitor and reviewing risk.

The Policy also outlines the role of the Audit Committee in relation to risk management.

Due to the Policy being transferred into the new policy template a tracked changes version is not provided. The current policy is provided at Attachment B for reference. The key changes relate to removing operational aspects such as responsibilities of the Senior Management Group, the Risk Management Committee, management and employees.

CONCLUSION

The Policy updates the current Organisation Wide Risk Management Policy and in doing so maintains Council's strategic direction in relation to the development of a culture of risk based decision making directed towards the effective management of potential opportunities and reduction of potential impacts of risk.

OPTIONS

Council could decide not to adopt the Policy and instead choose to take a different position / approach in relation to risk management. Council could also require further amendments to the Policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be effective as of its adoption by Council.

OFFICER RECOMMENDATION

That the Council adopts the revised Risk Management Policy as per Attachment A, to replace the current policy (Attachment B).

COUNCIL POLICY



City of Busselton
Geographic Bay

Council Policy Name: Risk Management

Responsible Directorate: Finance and Corporate Services Version: Proposed

1. PURPOSE

- 1.1. The purpose of this Policy is to demonstrate the City of Busselton’s commitment to the development of a culture of risk based decision making directed towards the effective management of potential opportunities and reduction of potential impacts of risk.

2. SCOPE

- 2.1. This Policy is applicable to the City of Busselton and its operations.

3. DEFINITIONS

Term	Meaning
Policy	This City of Busselton Council policy entitled “Risk Management Policy”
Risk Management	The coordinated activities to direct and control an organisation with regard to risk (AS/NZS ISO 31000:2009)
Risk Management Process	The systematic application of management policies, procedures and practices to activities of communicating, consulting, establishing the context, and identifying, analysing, evaluating, treating monitor and reviewing risk (AS/NZS ISO 31000:2009)

4. STRATEGIC CONTEXT

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

5. POLICY STATEMENT

- 5.1. The City of Busselton is committed to the effective management of risk and will implement a Risk Management Framework based on the AS/NZS ISO 31000 Standard to achieve this. The Council recognises that adequate resources are needed to effectively manage risks.
- 5.2. The Council is responsible for:
 - a. Ensuring that a Risk Management Policy has been developed and adopted;
 - b. Ensuring that the Chief Executive Officer has implemented the Risk Management framework using Standard AS/NZS ISO 31000:2009; and
 - c. Establishment of an Audit Committee to assist the Council in fulfilling its corporate governance, stewardship, leadership and control responsibilities in relation to risk management.
- 5.3. The Chief Executive Officer is responsible for:
 - a. Communicating the Risk Management Policy throughout the City;
 - b. Establishing Risk Management Process across the City’s operations;

6.2 Attachment A Proposed Council Policy - Risk Management

- c. Reviewing "...the appropriateness and effectiveness of a local government’s systems and procedures in relation to –
 - i. risk management; and...
 - ii. internal control; and
 - iii. legislative compliance
 not less than once in every 3 financial years..." (*Local Government (Audit) Regulations 1996 r.17*); and
- d. Reporting "...to the audit committee the result of that review." (*Local Government (Audit) Regulations 1996 r.17*)

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Australian and New Zealand Standard AS/NZS ISO 31000:2009 - Risk Management Principles and Guidelines
- 6.2. *Local Government (Audit) Regulations 1996*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	12 October 2016	Resolution #	C1610/096

Last updated 12 October 2016

234	Organisation Wide Risk Management	V4 Current
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PURPOSE

The purpose of this policy is to demonstrate the City of Busselton’s commitment to the development of a culture of risk based decision making directed towards the effective management of potential opportunities and reduction of potential impacts of risk.

SCOPE

This policy applies to all Councillors and employees of the City of Busselton and covers all City operations.

POLICY STATEMENT

Risk Management is the systematic application of management policies, practices and procedures in order to identify, analyse, evaluate, treat and monitor risk.

The City of Busselton is committed to the effective management of risk and will implement a Risk Management Framework based on the AS/NZS ISO 31000:2009 Standard to achieve this. The Council recognises that adequate resources are needed to effectively manage risks. The Risk Management Committee has been established to assist in developing, maintaining and implementing the City’s Risk Management Framework and is responsible for championing risk management processes throughout the organisation.

Responsibilities

The Council is responsible for:

- * Ensuring that a Risk Management Policy has been developed, adopted and communicated throughout the City.
- * Ensuring that the CEO has implemented the Risk Management Framework using Standard AS/NZS ISO 31000:2009.
- * Communicating with the community about the City’s approach to risk
- * Establishment of an Audit Committee

The Audit Committee is responsible for:

- * Assisting the Council to fulfil its corporate governance, stewardship, leadership and control responsibilities in relation to risk management.
- * Providing guidance and assistance in relation to risk management initiatives and the effective conduct of risk management activities.

CEO and the Senior Management Group are responsible for:

- * As part of the Risk Management Framework establishing the risk tolerance level of the City.
- * Conducting risk assessments as part of decision making & future planning.

Risk Management Committee is responsible for:

- * Communicating the policy and framework to all employees.
- * Developing and managing the risk management plan for the City.
- * Development of Risk Management skills through training and education.
- * Establishing and maintaining an appropriate risk register or risk registers for the City.

Last updated 12 October 2016

Management are responsible for:

- * Identifying and assessing all the risks in their area of responsibility as part of business planning reporting, project management and daily decision making.
- * Collating, assessing, treating and reporting to the Risk Management Committee in relation to areas and tasks under their responsibility.

All Employees are to:

- * Comply with the City's risk management policy and procedures.
- * Attend relevant risk management training.
- * Actively participate in the risk management programme.

Policy Background

Policy Reference No. - 234
Owner Unit – Corporate Services
Originator – Risk and OHS Officer
Policy approved by – Council
Date Approved – 12 August, 2015
Review Frequency – As required

Related Documents –

Australian and New Zealand Standard AS/NZS ISO 31000:2009 - Risk Management Principles and Guidelines.

History

Council Resolution	Date	Information
C1610/096	12 October, 2016	Minor improvements aimed at ensuring a clear policy statement and a clear set of responsibilities at all levels. Version 4
C1508/217	12 August, 2015	Version 3
C1107/229	27 July, 2011	Version 2
C0605/146	10 May, 2006	Date of implementation. Version 1

6.3 REVIEW OF COUNCIL POLICY 241 - BRANDS AND STYLE GUIDE

SUBJECT INDEX:	Council Policies
STRATEGIC OBJECTIVE:	Council engages broadly and proactively with the community.
BUSINESS UNIT:	Governance Services
ACTIVITY UNIT:	Governance Services
REPORTING OFFICER:	Governance Coordinator - Emma Heys
AUTHORISING OFFICER:	Director Finance and Corporate Services - Tony Nottle
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Proposed Council Policy - City Branding Policy Attachment B Current Council Policy - Brands and Style Guide

PRÉCIS

The purpose of this report is to present a revised Brands and Style Guide Policy (Attachment B), with the current policy having been amended as part of the City's overall review of its Council policies, having regard to the recommendations of the Governance System Review (GSR) carried out by Mr John Woodhouse in 2017. The new Policy is focused more broadly on, and entitled, City Branding (Attachment A) (the Policy).

BACKGROUND

Council last considered a revision of this policy on 17 April 2018 as part of the process of updating policies to the new policy template and to incorporate changes that have occurred over recent years.

At its meeting of the 17 April 2018 the Committee resolved to defer the policy for consideration pending review and presentation of the City's Style Guide, a referenced and related document, back to the Policy and Legislation Committee, with the Committee noting that the Style Guide may require further revision prior to consideration of the overarching policy.

While Officers agree that a review of the City's Style Guide is required, it is the view of Officers that the Style Guide is administrative in nature and is a document which requires continuous refinement and review. Further commentary in relation to the proposed direction of the Policy is provided in the Officer Comment section of this report.

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 governments policies. The Council does this on recommendation of a Committee it has established in accordance with Section 5.8 of that Act.

RELEVANT PLANS AND POLICIES

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the GSR. Included in the scope of the review was the City's policy and procedure framework with the following recommendations made:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
 - a. *Should deal with higher level objectives and strategies;*
 - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
 - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*

2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*
3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures, and a Council policy template developed.

This report recommends replacing the Brands and Style Guide Policy with a higher level, more strategic policy.

FINANCIAL IMPLICATIONS

Adoption of the Policy has no additional financial implications.

LONG-TERM FINANCIAL PLAN IMPLICATIONS

Adoption of the Policy has no long term financial plan implications.

STRATEGIC COMMUNITY OBJECTIVES

The Policy aligns with and supports the Council's Key Goal Area 6 – 'Leadership' and more specifically, Community Objective 6.2 'Council engages broadly and proactively with the community'.

RISK ASSESSMENT

There are no risks identified of a medium or greater level associated with the Officers recommendation, with the Policy reiterating and maintaining Council's direction in relation to City Branding.

CONSULTATION

No external consultation is required in relation to this policy review. The City will ensure its communication materials are consistent with the Policy.

OFFICER COMMENT

The Policy has been revised for the purposes of clarifying the development and application of the City's branding, taken to mean the City of Busselton Brand, associated Brands, logos and emblems (City Branding).

The Policy replaces the Brands and Style Guide Policy with the Style Guide considered an administrative document; its purposes being to guide staff in the development and application of the City's Branding. In accordance with the recommendations of the GSR, the Policy seeks to provide strategic direction with respect to key aspects of the City's Branding.

Officers agree a review of the City's Style Guide is required and acknowledge this is likely to be an on-going and somewhat incremental process.

CONCLUSION

The Policy is a reflection of Councils direction to refine current policies; updated to ensure the relevance of the Policy continues; and seeks to make clear the differentiation between Council policy and administrative documents and guidelines.

OPTIONS

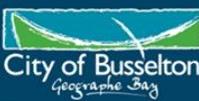
The Council could choose not to endorse the new Policy, or make additional changes to the Policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The revised Policy would be effective immediately upon endorsement by Council.

OFFICER RECOMMENDATION

That the Council adopts the revised City Branding Policy as per Attachment A, to replace the Brands and Style Guide Policy (Attachment B).

COUNCIL POLICY		
		
Council Policy Name:	City Branding	
Responsible Directorate:	Finance and Corporate Services	Version: Draft

1. PURPOSE

- 1.1. The purpose of this Policy is to provide for the appropriate development and application of the City of Busselton’s Brand, associated Brand’s, Logos and Emblems, to ensure that a positive and consistent image of the City of Busselton is maintained.

2. SCOPE

- 2.1. This Policy is applicable to internal and external individuals or organisations in relation to the development, reproduction and application of the City’s Branding, including those no longer in use.
- 2.2. This Policy also applies to facilities, events or programs that may have separately identifiable Logos but still fall under the City of Busselton Brand. These include, but are not limited to:
 - a. Geographe Leisure Centre;
 - b. ArtGeo Cultural Complex;
 - c. Naturaliste Community Centre;
 - d. Busselton and Dunsborough Libraries;
 - e. Busselton Jetty Tourist Park;
 - f. Busselton Margaret River Airport; and
 - g. Busselton Youth Services and SHIFT;

3. DEFINITIONS

Term	Meaning
Branding	The City of Busselton’s Brand, associated Brands, Logos and Emblems
Brand	An identifying symbol, design or feature distinguishing the organisation from others.
Emblem	A symbolic or distinctive badge of an organisation
Logo	A symbol or object adopted by an organisation to identify its products, services or uniform
Policy	This City of Busselton Council policy entitled “City Branding”

4. STRATEGIC CONTEXT

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

5. POLICY STATEMENT

- 5.1. Any development and application of the City’s Branding must be in accordance with and reflect this Policy and any associated principles and guidelines of the City, ensuring the City is able to maintain and present a consistent professional image.

- 5.2. The City of Busselton Geopraphe Bay Brand is a registered trademark. Variations to this Brand require the approval of the Chief Executive Officer.
- 5.3. The official Emblems of the City of Busselton are:
 - a. Fauna – The Common (Western) Ringtail Possum
Pseudocheirus peregrinus occidentalis
 - b. Flora – The One-Sided Bottle Brush
Calothamnus graniticus var graniticus
- 5.4. Permission for the use of the City’s Branding, by any person or organisation external to the City is to be obtained from the City, prior to use.
- 5.5. The City of Busselton Logo is to be displayed at all City of Busselton operated facilities, in addition to the display of other separately identifiable Logos.
- 5.6. Changes to the City’s Branding must be formally endorsed by Council on recommendation by the Chief Executive Officer.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Trade Mark 1477428

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	12 November 2014	Resolution #	C1411/284

Last updated 12/11/2014

241	Brands and Style Guide	V3 Current
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1. PURPOSE

This policy provides for the appropriate usage of the City of Busselton's brand and any associated brands and emblems, including for facilities owned and managed by the City.

2. SCOPE

It is important to apply continuity and consistency to the City's corporate image through the development and reproduction of its brand(s) and implementation of associated guiding principles. As such any development and use of the brand and associated brands shall reflect the principles of the official City of Busselton Style Guide enabling the City to maintain and present a consistent professional image.

3. POLICY CONTENT

The City of Busselton Geographe Bay brand and Shire of Busselton Geographe Bay brand are registered trademarks. Approved variations to these brands include City of Busselton Events Capital of Regional WA (no longer in use) and City of Busselton Events Capital WA. Any approved variations to these brands will be included in the City's Style Guide.

In addition, this policy applies to facilities that may have separately identifiable brands, including but not limited to the Geographe Leisure Centre, Naturaliste Community Centre, Busselton and Dunsborough Libraries, Kookaburra Caravan Park and Busselton Regional Airport.

The official emblems of the City of Busselton are:

Fauna

The Common (Western) Ringtail Possum

Pseudocheirus peregrinus occidentalis

Floral

The One-Sided Bottle Brush

Calothamnus graniticus var graniticus

Any use of the City of Busselton's brands needs to be undertaken in a manner that is consistent with the City's Style Guide. Permission for use of the brands by any person or organisation external to the City is to be obtained from the City.

All City of Busselton employees are required to utilise the branding principles as outlined in the Style Guide and the Public Relations team is responsible for monitoring compliance of the Style Guide principles.

General administrative updates and inclusions to the Style Guide, that do not affect the branding or general principles of the guide, can be undertaken without reference to Council. All other changes are required to be endorsed by Council.

Last updated 12/11/2014

Policy Background

Policy Reference No. - 241

Owner Unit – Public Relations

Originator – Media and PR

Policy approved by – Council

Date Approved - For consideration

Review Frequency – As required

Related Documents –

City of Busselton Style Guide

Background/History - Initiated April 2007 to capture all branding and styles following development of new logo.

History

Council Resolution	Date	Information
C1411/284	12 November, 2014	Version 3
C1201/006	25 January, 2012	Version 2
C0704/087	11 April, 2007	Date of Implementation Version 1

7. GENERAL DISCUSSION ITEMS

7.1 REVIEW OF COUNCIL POLICY FEES ALLOWANCES AND EXPENSES FOR ELECTED MEMBERS

The Council adopted the proposed amendments to the Fees Allowances and Reimbursements for Elected Members policy, with the exception of amendments relating to corporate attire expenses (clase below). The Council felt that the corporate attire expenses required more discussion.

Corporate attire expenses

- 5.25 Each Elected Member is eligible to be provided with a range of corporate attire (with City logo) on being elected and is entitled to an additional amount of \$750pa for business attire for each year of the election term.
- 5.26 Upon election, Elected Members will be entitled to be issued with the following items:
- a. Corporate attire with City logo (and not charged against the allowance):
 - i. corporate suit (male – Trousers and Jacket);
 - ii. corporate suit (female – Skirt, Dress, Pants and Jacket);
 - iii. corporate shirts/blouses etc.;
 - iv. casual/Light weight Fleecy Jacket;
 - v. polo top;
 - vi. City tie/scarf.
 - b. Other (charged against the allowance):
 - i. business attire (which may consist of a suit, jacket and shirts/blouses);
 - ii. shoes (up to the value of \$150);
 - iii. dry cleaning and maintenance of corporate and business attire.
- 5.27 All of the corporate attire acquisitions should be acquired through the City's approved uniform supplier.
- 5.28 All items of corporate attire which are branded with the City of Busselton's logo should be returned to the City on expiry of office.

8. NEXT MEETING DATE

Tuesday, 27 November 2018

9. CLOSURE